



Ex-post evaluation of social legislation in road transport and its enforcement

Final report

Study contract no. MOVE/D3/2014-256

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ABSTRACT

This ex-post evaluation covers Regulation (EC) No 561/2006 on driving times and rest periods, Directive 2002/15/EC on mobile workers' working time and Directive 2006/22/EC on enforcement requirements for Member States. These pieces of legislation form part of the EU road transport social legislation. The results show that the legislation remains a relevant tool to address risks of distortions of competition in the transport market as well as deterioration in working conditions of drivers and in road safety levels. However, due to ongoing differences in the interpretation and enforcement of the rules, as well as some unclear and inconsistent provisions, which do not reflect the market and sector developments and lead to non-compliance with the rules in force, the objectives of the legislation are not entirely and cost-effectively achieved. Concerning working conditions, not all risk factors are (adequately) addressed by the legislation. Factors such as long periods away from home, time pressure, inadequate resting facilities, performance-based payments, as well as complex, and sometimes illicit employment practices have adverse effects on drivers' working conditions and can contribute to increased infringement levels. The impact of the legislation on road safety cannot be discerned. However, consulted stakeholders mostly believe that its effect has been positive or at least neutral. The authors recommend measures that further harmonise enforcement systems, improve the clarity and enforceability of the rules and better address the challenges faced by the sector, taking into account the market developments and changes in the employment structure.

1 EXECUTIVE SUMMARY

1.1 Scope of the evaluation

This ex-post evaluation study covers the following pieces of legislation, which form part of the EU road social legislation:

- **Regulation (EC) No. 561/2006:** which sets limits on drivers' permissible daily, weekly and fortnightly driving time, as well as minimum requirements for breaks from driving, and minimum daily and weekly rest periods.
- **Directive 2002/15/EC:** which supplements the provisions of Regulation (EC) No 561/2006 by setting a limit on mobile workers' working time, i.e. time spent working whether or not this involves driving.
- **Directive 2006/22/EC:** which imposes minimum requirements for Member States to check a certain proportion of all mobile workers' working days for infringements of Regulation (EC) No 561/2006. The evaluation covers the period from 2007 to 2014.

1.2 Evaluation methodology

The main research tools used included:

- Desk research and literature review.
- Analysis of official biennial monitoring data reported by the Member States to the Commission.
- Exploratory interviews with six organisations.
- Five tailored surveys targeted at the following stakeholder groups: national transport ministries; enforcement authorities; undertakings; trade unions; and general stakeholders (such as industry associations). Almost 1500 responses in total were received (of which 1300 were received from transport undertakings).
- Interviews with 90 stakeholders (of which 37 with drivers).
- Study visits to eight different sites (two freight transport undertakings, three parking areas to interview drivers, one enforcement authority, one EU-level meeting of trade unions, one EU-level meeting of enforcement authorities).
- Case studies covering nine countries: Belgium, France, Germany, Italy, Sweden, Spain, Poland, Romania and the UK.

The main limitations of the research were due to a lack of quantitative data. This was variously due to the difficulty of monitoring certain key aspects (such as compliance with road social legislation – detection of infringements can only be used as proxy), a lack of monitoring at the required level of detail, and the subjective nature of certain impacts (such as “working conditions”). These limitations were addressed to the extent possible by supplementing with qualitative analysis conducted on the basis of the literature review and stakeholder engagement.

1.3 Evaluation results

Relevance

Road social legislation is found to remain a relevant and proportionate tool to address the three **risks** of the sector - 1) an unlevelled playing in the transport market, 2) deterioration in social and working conditions of drivers and 3) deterioration in road safety levels – especially since market competition in the road transport sector has become increasingly intense and this exacerbates the risk of non-compliance by undertakings or drivers who are under greater pressure to remain competitive.

Concerning the **scope** of the social legislation, it is concluded that it is still relevant today. This applies to the scope in terms of the type of vehicles covered, the type of drivers covered, considering the system of derogations and exemptions and modern employment arrangements.

Concerning the **needs of the sector**, the analysis shows that these have not substantially changed; however the underlying issues that make compliance with prescriptive driving and working time rules more difficult have become more pervasive. As such, industry representatives have argued for more flexibility in the rules, supported to a certain extent by drivers (although this may be dependent on the type of work the drivers are engaged in). For the passenger transport sector specifically, there are distinct service needs that are not seen in freight transport. Industry representatives argue that the lack of flexibility in the current road social legislation makes it more difficult to comply and have advocated for a more specific consideration of the passenger transport sector.

Effectiveness

Concerning the impact of the provisions on **working conditions**, the legislation affects only some of the factors that affect overall working conditions, namely: fatigue and stress. It appears that the social legislation has not had significant impacts on fatigue in terms of either working or driving times, in part due to the similarity of the rules to previously existing provisions. Additionally, for the Working Time Directive there is a low priority given to enforcement and concurrent evidence of low compliance with working time provisions across the EU. The apparent stability of the situation can however be seen as a success in light of the development of increased competition and other pressures in the sector. Also various factors that contribute to **stress** were assessed. The analysis showed that especially performance-based payments, roadside checks and long periods away from home and time pressures continue to contribute to increased stress levels among drivers. Nevertheless, stakeholders in general (trade unions, associations, ministries and enforcers) consulted for this study consider that the road social legislation has had a positive impact on working conditions. Conversely, drivers and undertakings express a much more mixed view (though not overwhelmingly positive or negative) – potentially because the perceived downsides of the Regulations (e.g. lack of flexibility and high fines) are considered by some to negate the intended benefits on working conditions when confronted with day-to-day demands of driving.

Although **road safety** levels have improved over the last decade, the impact of road social legislation on this development is impossible to discern given that in the same time period numerous other road safety measures have been implemented and available data typically does not allow to identify the cause of an accident. Nevertheless, the stakeholder groups consulted for this study mostly believe that the analysed legal acts had a positive or at least neutral effect on road safety levels.

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

Concerning the effectiveness of **enforcement**, the enforcement Directive has contributed to a more uniform application of the rules across the EU. At the same time, key differences include: the risk rating system, penalty systems, co-liability and the use of forms for attestation of driver activities. **Cooperative measures** have not been sufficient to overcome the diversity of national applications. The direct impacts of the principle of co-liability on improving compliance are rather minimal since it is difficult to enforce in practice, but there are indications that it has long-term benefits especially in terms of raising awareness of the social rules among customers of transport operators. Considering wider factors that are not directly regulated under the social legislation shows that there are widespread issues reported concerning a **lack of financial and human resources**. Overall, enforcement measures are therefore found to be only partially effective in addressing the risk of non-compliance. Concerning the effectiveness of the **reporting requirements**, the set of indicators available in the Member States' reports is found to allow for adequate monitoring and follow-up of the legislation in terms of the implementation of its core requirements. The timeliness, completeness and consistency of the monitoring data submitted has increased over time. Nevertheless, continuing difficulties concern the provision of data around certain indicators where Member States are not able to collect the data at the level of detail that is requested by the Commission. Concerning Directive 2002/15/EC specifically, the availability of data with respect to enforcement and compliance is very limited, mainly due to the fact that Member States are only required to provide qualitative data (quantitative data is only provided on a voluntary basis).

Concerning the **clarity** of the provisions, certain uncertainties have remained after the coming into force of the legal texts. In several cases, the additional clarification efforts have resolved these remaining uncertainties, but a lack of uniform application still remains because of the non-binding nature of the clarifications. Nevertheless, consultation with enforcers confirmed that clarification efforts have in general been appreciated and useful.

The system of **exemptions and derogations** seems appropriate and proportionate given the type of transport operations that are predominantly covered. Only very specific issues have been uncovered concerning four exemptions from Regulation (EC) No 561/2006, mainly pertaining to the clarify of the provisions. Also five derogations appear to have resulted in uncertainty over precisely which activities are included or not, of which, however only one appears to be of relevance.

Efficiency

The limited availability of the underlying data requires that the estimated **costs for enforcement authorities** should be interpreted with caution. The analysis suggests overall that the largest share of the overall enforcement cost is represented by ongoing staff costs required to maintain the enforcement capacity. The main additional cost category to the ones identified above was found to be related to the risk-rating systems, although this could not be quantified. At the same time, the risk-rating systems are considered in general to have led to efficiency and effectiveness improvements, and is one of the key areas recommended to focus on as a means to further improve the efficiency of checks. No other additional costs impacts were identified as being significant. In terms of benefits, the TRACE common curriculum is generally considered positively, and the potential for greater digitalisation of enforcement systems appears to be strong. In particular, a higher degree of digitalising enforcement systems could lead to (i) easier compilations of reports and (ii) access to real-time information on vehicle's and driver's status, leading to cost-savings. Qualitative assessments provided by enforcers responding to the survey suggest that the requirements under Directive 2006/22/EC have led to higher

costs while at the same time contributing to higher effectiveness in terms of improved compliance. Although only based on qualitative estimates, this seems to suggest that any increased costs have been accompanied by benefits in terms of compliance.

Overall, ongoing **cost increases for transport operators** have been estimated to be around 1-3% of the annual transport-related turnover for operators to comply with the social legislation. This covers costs related to the following main items:

- Hardware (e.g. tools to download digital tachograph data)
- Administrative effort and monitoring e.g. the cost of understanding complex rules, inspection of data, scheduling etc.
- Staff costs and training.
- IT/software.

The relatively large ranges reported (with some firms indicating cost increases of as high as 20-25%) indicates that firms are not equally affected by such increases. The majority (more than 50%) of undertakings responding to the survey reported that no changes were required to their operations to maintain the same level of revenue following the introduction of Regulation (EC) No 561/2006. However, some firms reported additional costs, in particular:

- 35% of operators identified a need to make changes to daytime distribution schedules, and 25% said that night-time distribution patterns had to be adapted.
- 29% of operators identified a need to hire more drivers, with the median being 2 additional drivers (not necessarily full-time).
- 11% of operators identified a need to purchase additional vehicles (median of 2 additional vehicles).

It is not possible to weigh these additional costs against the magnitude of benefits (if any) since these relate to subjective or diffuse issues that are impossible to quantify.

Concerning **costs for reporting**, national authorities and ministries typically do not consider that there are significant costs involved to meet reporting requirements. An estimate has been calculated in order to gauge the possible level of costs, starting from the value reported by Slovenia. Overall, the cost for reporting and monitoring has been estimated at €7-8 million/year for the period 2011-2012. For operators and drivers, administrative costs for reporting activities with digital tachographs have been estimated at €61 million on a yearly basis. For analogue tachographs, this cost has been estimated at €51 million on a yearly basis.

Coherence

Concerning **coherence among the legal acts subject of this study**, the comparative analysis of the two legal acts shows that Regulation (EC) No 561/2006 and Directive 2002/15/EC are legally coherent with regards to their objectives, general scope and definitions/provisions. The scopes of workers covered by the two acts are complementary with some overlaps (for drivers) and some workers out-of-scope (self-employed travelling staff). Although there are no problems of coherence in a strict legal sense, the analysis did point to practical problems regarding i) the two systems of breaks provided by the Directive and the Regulation; and ii) the combination of the driving and working time requirements.

In-built mechanisms to assure the **coherence across different pieces of legislation external to the road social legislation** are provided in nearly all pieces of legislation analysed in this study, through the use of cross-references.

Only a limited number of potential issues of inconsistencies, overlaps and gaps were identified. All issues related to differences in definitions across the different legislative

texts, namely on the definitions of 'vehicle', 'competent authority', 'cabotage operations', 'international carriage', and 'roadworthiness tests'. Another problematic instance is the lack of definitions in the road social legislation. It appears with the definition of 'undertakings' which is absent in the road social legislation, even though it is used in Directive 2002/15/EC. However, these discrepancies do not seem to have a significant impact on the proper application of the road social legislation nor on its objectives of increased road safety, improved working conditions and harmonised competition.

With regards to Directive 2003/88/EC and AETR Agreement, the articulation between those texts and the road social legislation is unambiguous from a legal perspective, even though from a more practical point of view, the similar scope has been raised as a source of confusion in terms of implementation. On the other hand, discrepancies have been observed between Directive 2003/59/EC and Regulation (EC) 561/2006. Even though these do not cause problems in legal terms, an alignment of the scope of the two acts would benefit road safety.

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

EU added value

The opinions of the stakeholders with respect to added value generally validate the notion found in the legislation itself and in the literature that the EU level is the most relevant level to provide road transport social rules. The objectives of harmonisation of the legislation in this area and the creation of a level playing field are, in general, evaluated positively. However, some issues remain in relation to the effectiveness of reaching these objectives in the light of derogations that can be applied by individual Member States and due to weak enforcement.

Coordination

Coordination between checks of Regulation (EC) No 561/2006 and Directive 2002/15/EC is generally high (i.e. checks of compliance with both pieces of legislation are carried out at the same time by enforcement authorities). There appears to be a higher degree of coordination for checks at the premises than at the roadside where not all of the required records for working time can be made available in the vehicle and where enforcers are not always competent to control compliance with the working time provisions. At the level of the firms, coordination of the processes for the driving time and working time rules can be achieved through the use of ICT systems. Nevertheless, the design of the legislation seems to indicate that a level of duplication and complexity in terms of record-keeping cannot be completely avoided.

1.4 Recommendations

Measures to improve the enforcement system

The application of the social rules is not uniform, yet this is a crucial objective in order to ensure fair competition and a level playing field. **Further harmonisation** should therefore be encouraged, by:

- Ensuring compliance with the minimum requirements on controls set out in the legislation.
- Introducing additional guidance for setting sanctions to infringements.
- Supporting further EU wide guidelines on training of enforcement officers (such as TRACE) to improve enforcement capacity and raise awareness among Member States of the importance of high quality training.
- Investigating and encouraging the use of innovative enforcement practices that make the most of scarce resources.
- Improving the level of administrative cooperation by:
 - o Improving the exchange of data between Member States.
 - o Standardising the format of information exchange regarding detected infringements against an undertaking of another Member State.
 - o Introducing the exchange of data on clear checks (where no infringements are found) to facilitate the improvement of national risk-rating systems.
 - o Considering increasing the required number of concerted checks in an Impact Assessment.
 - o Encouraging further participation of enforcement authorities in collaborative networks.

To **improve the enforcement of the co-liability principle** it is recommended to

- Issue guidance (or clarifications) at a European level, which define the duties, roles and responsibilities of different parties in the subcontracting chain.
- Raise awareness of the road social rules among the clients of transport operators by promoting best practice examples.
- Analyse the impacts of introducing mandatory co-liability in an Impact Assessment.
- Consider introducing co-liability provisions into the Working Time Directive.

Measures to clarify the legislation

It is recommended to **mitigate existing uncertainties** regarding specific provisions of the rules according to the type of uncertainties:

- For the uncertainties, where a lack of uniform application is the key issue, a legally-binding approach is recommended.
- For uncertainties where non-binding clarifications have not yet been attempted, it is recommended to address these in the first instance with guidance.

If there is to be a review of the legislation, it would streamline the process if these remaining uncertainties were clarified in the legal texts.

Furthermore, in order to **simplify the legal texts**, it is suggested to:

- Include an explicit definition of "breaks" in Directive 2002/15/EC, coherent with Regulation (EC) No 561/2006.
- Update the cross-references included in Directive 2002/15/EC in order to remove the references to the previous Regulation (EEC) No 3820/85, replaced by Regulation (EC) No 561/2006.
- Clarify the relationships between exemptions under Regulation (EC) No 561/2006 and the obligations under Directive 2002/15/EC, through explicit cross-references.
- Consider combining the provisions on working and driving times in one legislative act (horizontal recast).
- Include a definition of 'undertaking' in Directive 2002/15/EC or an adequate cross-reference. This would improve the readability and sense of coherence of the texts.

- Align the scopes of Regulation (EC) 561/2006 and Directive 2003/59/EC.

Measures to better address the risks and needs of the sector

Specific actions should be considered, as follows:

- To improve enforcement of rules regarding **payment schemes**, it is recommended to consider:
 - o Introducing guidelines and test procedures that allow for a differentiation of what precisely constitutes a performance-based payment scheme that is not considered to be a "risk to road safety".
 - o Abolishing the if-clause in the respective Article (meaning a strict prohibition of all performance-based payments).
- To address increasing problems in the industry of **long periods away from home**, in particular in the context of insufficient suitable parking, rest and sanitary facilities, it is recommended to consider whether the legislation can be amended to address such concerns, or whether other interventions are needed.

Concerning the needs of the sector, specific requests for increased **flexibility** have been made by industries that would need to be analysed in more detail in the context of an Impact Assessment, with a view to obtaining a balance between flexibility and the protection of drivers' working conditions and road safety.

The study team recommends that further work should investigate additional **tools that could be used to the address issues that are currently outside the scope** of the social rules, such as risk-based approaches to fatigue management and the applicable terms and conditions of employment, other than those related to the organisation of the working time.

Measures to improve the reporting and monitoring information

To mitigate difficulties in the provision of data and to improve transparency and comparability of reports, the consultants recommend to:

- Ask Member States to clarify more precisely the definitions that they currently use when reporting their data.
- Develop and disseminate guidance on interpretations of key inputs, so as to improve the harmonisation of the reporting.
- Examine potential areas for simplification/reduction of the reporting requirements, in particular considering the need for detailed disaggregation.
- Require countries to report on the functioning of their risk-rating systems in more detail.
- Ensure accuracy of reported information by seeking and disseminating best practices.

Concerning the reporting on Directive 2002/15/EC, an expansion of the reporting requirements is not recommended. The main focus should lie on improving the data submissions that are required in the current reporting, based on qualitative information.

2 INTRODUCTION

2.1 Purpose of the evaluation

This evaluation study has been commissioned by DG Mobility and Transport and focuses on the following three interrelated pieces of legislation, known collectively as the “**social legislation in road transport**”:

- **Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport:** sets limits on drivers’ permissible daily, weekly and fortnightly driving time, as well as minimum requirements for breaks from driving, and minimum daily and weekly rest periods. It also introduces a principle of co-responsibility throughout a transport chain for infringements against the Regulation's provisions.
- **Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities:** supplements the provisions of Regulation (EC) No 561/2006 by setting a limit on mobile workers’ working time, i.e. time spent working whether or not this involves driving. The Directive makes special provisions for night work and requires Member States to ensure mobile workers are informed of the national working time restrictions and that records are kept of working time.
- **Directive 2006/22/EC on minimum conditions for the implementation of social legislation relating to road transport activities:** imposes minimum requirements for Member States to check compliance with the provisions of Regulation (EC) No 561/2006 and Regulation (EU) No 165/2014. The Directive requires Member States to create risk rating systems that can be used to enhance the effectiveness of enforcement by targeting the controls.

The purpose of this evaluation is to provide insight into the actual performance of the three legislative acts and the overall impacts (both intended and unintended). The evaluation report therefore aims to:

- Establish evidence-based conclusions on the effectiveness, efficiency, relevance, coherence and EU added value of the legislation and the factors that may have resulted in the interventions being more or less successful than anticipated;
- Assess developments in compliance levels and in the efficacy of enforcement; and
- Provide the basis for policy conclusions on the future of this legislative framework by making suggestions on possible improvements to the provisions in force, in case they are observed to be ineffective or inefficient.

The results of the evaluation may contribute to improving implementation of the rules or feed into an impact assessment study.

2.2 Scope of the evaluation

This evaluation provides an assessment of the road transport social legislation in the years 2007 to 2014.

The road social legislation works together with Regulation (EU) No 165/2014, which sets out obligations and requirements in relation to the tachographs used in road transport. Although the provisions of Regulation (EU) No 165/2014 are out of scope of this study, the tachograph rules are important in order to support monitoring and verify compliance with Regulation (EC) No 561/2006 and Directive 2002/15/EC.

3 BACKGROUND TO THE INITIATIVE

3.1 *Description of the initiative*

The three legislative acts constitute the EU social legislation framework in road transport.

Regulation (EC) No 561/2006, also known as the Driving Time Regulation, repealed Regulation (EEC) 3820/85 and applied in full since 11 April 2007, with the exception of a limited set of provisions related to tachographs, which entered into force on 1 May 2006. Details of the implementation of Regulation (EC) No 561/2006 and its specific provisions are provided in Section 5.1.

Directive 2002/15/EC, also known as the Working Time Directive, sets out specific requirements for the organisation of working time for mobile workers and therefore takes precedence over the general Working Time Directive (2003/88/EC)¹. The deadline for transposition of Directive 2002/15/EC was 23 March 2005. As of 23 March 2009 the Directive is also applicable to self-employed drivers, who until then were temporarily excluded from its scope. Details of the implementation of Directive 2002/15/EC and its specific provisions are provided in Section 5.3.

Directive 2006/22/EC, also known as the Enforcement Directive, specified that the relevant national transposing measures shall be effective as of 1 April 2007. The Directive repealed Directive 88/599. Details of the implementation of Directive 2006/22/EC and its specific provisions are provided in Section 5.4.

3.2 *Baseline*

The list of problems and needs that this legislation was originally intended to address is outlined below.

- **Unclear or inconsistent provisions on organisation of driving time, rest periods, and other work of drivers:** Prior to Regulation (EC) No 561/2006, the previous rules under Regulation (EEC) 3820/85 provided considerable flexibility. However, it was recognised that this had often been at the expense of effective enforcement and consistent interpretation. In particular, the provisions on compensation for reduced daily or weekly rest made the calculation of permissible schedules “a complex and difficult business” (European Commission, 2001a). Hence, there was a need to simplify the rules and make the provisions suitable for computation by digital tachographs (RoSPA, 2002). In addition, it was identified that there was a lack of clarity in the previous rules due to the absence of specific definitions, which further complicated enforcement and made uniform interpretation more challenging. The lack of common definitions had led to individual interpretations, which in turn resulted in many cases being referred to the European Court of Justice and to variations in enforcement (RoSPA, 2002). For example, there was a lack of clarity as to which activities counted as a period of work, rest, or availability time for mobile workers.

Finally, there was a need to update the rules in order to reflect changes that had occurred in the transport sector since the prior legislation was drafted in the 1980s. Since then, certain activities traditionally undertaken by government had been privatised, and the number of activities subject to commercial competition had increased (European Commission, 2001a). The Commission also found that some of the vehicles that had previously been granted exemptions from the rules because they undertook short distance journeys or operated within a restricted area (such as specialised breakdown vehicles) were actually being used in other ways, and

¹ The following Directives were consolidated and replaced by Directive: 2003/88/EC: Directive 2000/34/EC amending Directive 93/104/EC concerning certain aspects of the organisation of Working Time to cover sectors and activities excluded from that Directive; Directive 93/104/EC concerning certain aspects of the organisation of Working Time

hence there was a need to update the list of exemptions permitted to reflect the market conditions (European Commission, 2001a).

- **Lacking or ineffective and inconsistent enforcement of existing social rules:** Prior to the introduction of the Enforcement Directive (Directive 2006/22/EC), compliance with the social rules in road transport was felt to be low, with “laxity in enforcing the Regulations” being identified as one of the root causes of this (European Commission, 2001b). Therefore the 2001 Transport White Paper stated that controls and penalties needed to be “tightened up” by making controls and penalties more consistent across Member States, and also increasing the number of controls. It was recognised that good checks were a vital link in a chain starting with the adoption of good legislation and ending with effective penalties (EESC, 2004). Furthermore, there was a generally perceived view – expressed consistently by the European Parliament, in Transport Council Resolutions and through statements from road transport social partners sectoral social dialogue committee at European level – that an improvement in enforcement of Community law concerning road transport operations within the Union is imperative (European Commission, 2003). The European Parliament had also often called for better enforcement of the social rules, particularly during debates on the biennial Commission report on the implementation of Regulation (EEC) No 3820/85 (European Commission, 2003). Within the road transport sector the social partners had long called for better enforcement of the rules to promote a level playing field within the single market and ensure that the driver’s working conditions provided for in the legislation are respected (European Commission, 2003).

There were also problems with enforcement caused by “loopholes” in the rules themselves. One such loophole was the fact that drivers who switched between vehicles that were within the scope of the Regulation and others which were not were not required to provide records of all of their driving activity (European Commission, 2001a). This created a risk that drivers could be driving in-scope vehicles without having taken sufficient rest and not be detected. There was therefore felt to be a need for a requirement on drivers of in-scope vehicles to provide records of *all* their driving activity, including the driving of out-of-scope vehicles (European Commission, 2001a). A second apparent “loophole” in the rules was that offences detected in one Member State were not being sanctioned simply because they were committed on the territory of another Member State. There was therefore a need for Member States to enable their enforcement authorities to sanction infringements that had been committed on the territory of another Member State and not previously sanctioned (European Commission, 2001a).

- **Unclear liabilities of drivers, operators, and others in the logistics chain:** There was a lack of clarity about the extent to which drivers, operators, and others in the logistics chain could be held liable for infringements of the social rules. For example, Regulation (EEC) No 3820/85 stated that undertakings should organise drivers’ work in such a way that drivers are able to comply with the driving time rules, but it was still felt to be unclear about the extent to which undertakings could be liable for infringements committed by drivers acting contrary to the instructions of the undertaking. The responsibilities of others in the logistics chain, such as consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies, were also not made clear by Regulation (EEC) 3820/85. Therefore there was a need for clearer legal provisions on the responsibilities of different parties in the logistics chain and the extent to which Member States were entitled to hold these parties liable (European Commission, 2001a) (European Commission, 2001b). The need to address the issue of liability was also identified as a means to ensure a uniform and effective approach to enforcement (RoSPA, 2002).
- **Poor cooperation between Member States on uniform application of the rules:** The 2001 Transport White Paper indicated the need to encourage the systematic exchange of information between Member States, to co-ordinate inspection activities and to promote the training of inspecting officers (European Commission, 2001b). It was identified that a number of competent authorities

within a Member State are typically responsible for enforcing European road transport social legislation, rather than having a single coordination point. This leads to a lack of coordination of checks within the Member State as well as difficulties for the enforcement authorities of neighbouring Member States to identify correctly the competent authority with which they should be maintaining dialogue (European Commission, 2003). Another problem with achieving a uniform application of the rules was that Member States had devised their own individual interpretations (European Commission, 2001a). Finally, the Commission recognised that dialogue between enforcement agencies in different Member States was variable and recognised that a system should be put in place for a regular exchange of information and best practice between Member States (European Commission, 2003). Therefore the Commission saw a need to create a standing committee to consider these interpretive issues as they arose and draft guidance notes to encourage a harmonised approach across the Member States to interpreting the rules.

In terms of possible indicators that could be used to establish the baseline in terms of working conditions, road safety and level playing field, no quantitative indicators could be identified. Since the legislation predated the current requirements for the Commission to provide Impact Assessments to accompany its legislative proposals, there is very limited documentation on either the baseline or the likely impacts of the legislation. There is only a brief "Impact Assessment Form" appended to the Commission's proposal for the Driving Time Regulation (European Commission, 2001a). Information on the previous situation was also sought from stakeholders and literature to inform this study, but results could not be obtained, reflecting the difficulty of quantifying the issues at hand.

Hence, only a qualitative description of the baseline is possible. In the absence of the revised road social legislation, it was expected that:

- Enforcement would be less effective due to:
 - o The continued use of flexibilities (particularly the provisions on compensation for reduced daily or weekly rest), which would have been difficult to compute using digital tachographs;
 - o Increasingly non-harmonised due to different interpretations of the provisions, owing to the absence of specific definitions;
 - o Inconsistent controls and penalties; and
 - o Poor cooperation between Member States.
- The scope would be inappropriate due to:
 - o Trends toward privatisation of activities in the transport sector;
 - o Changes in the usage patterns of vehicles that have been previously exempted or derogated; and
 - o Loopholes in the provisions that would be increasingly exploited.
- Responsibilities would be unclear due to:
 - o Unclear provisions on liability; and
 - o Unclear enforcement practices concerning liability.

Incoherent enforcement systems would have contributed to distortions in the market. As a result, this would create a risk that undertakings would increasingly infringe the rules in order to remain competitive with undertakings operating out of lower cost countries. Eventually, this would lead to increases in working hours, have adverse effects on drivers' working conditions, contribute to their fatigue and consequently impact road safety.

3.3 Intervention logic

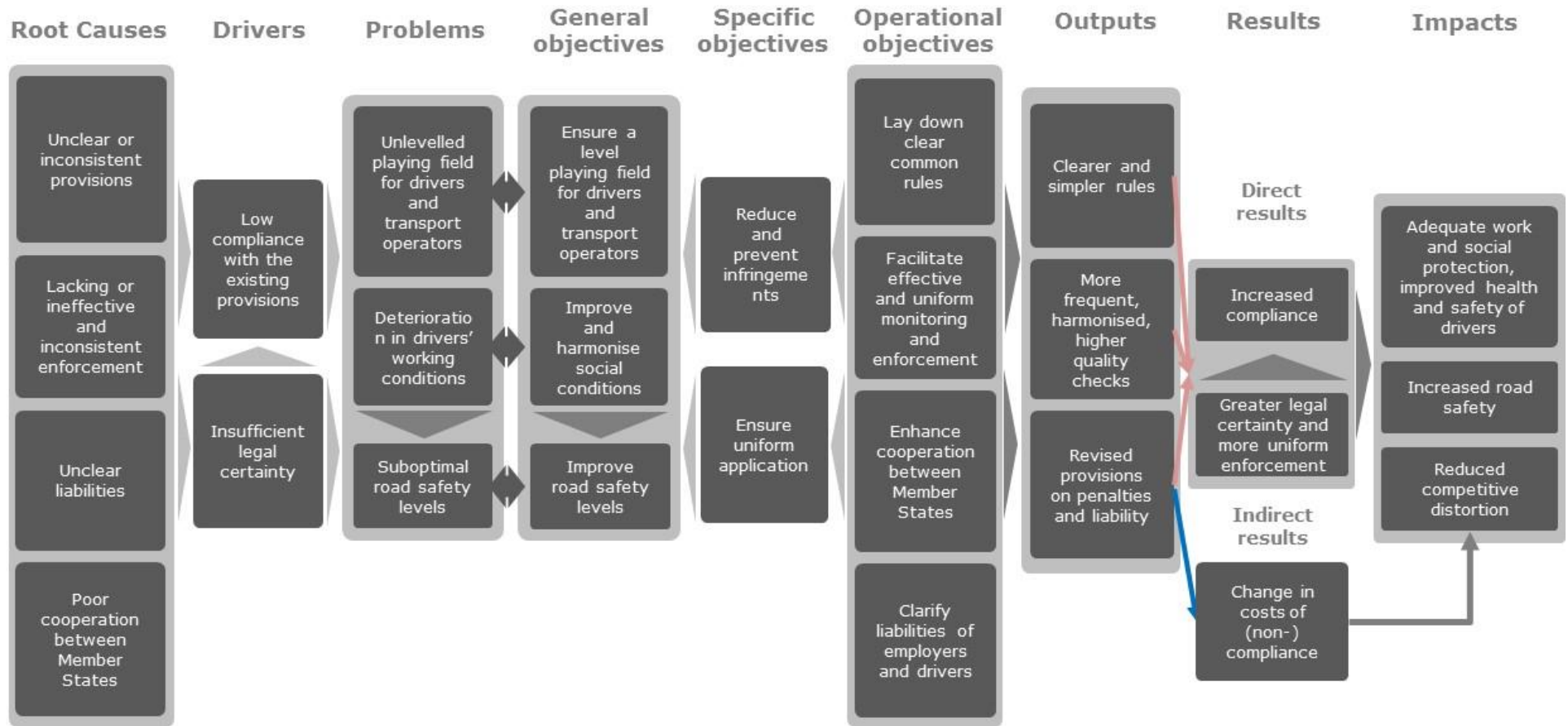
As *general objectives*, Regulation (EC) No 561/2006, Directive 2002/15/EC and Directive 2006/22/EC aimed to improve working conditions of drivers, enhance road safety by averting driver's fatigue and ensure undistorted competition among companies.

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

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

A graphical version of the intervention logic is shown in the overleaf.

Figure 3-1: Intervention logic diagram



4 METHOD/PROCESS FOLLOWED

4.1 Process/Methodology and limitations

This section provides a brief overview is presented of the research tools used during this study.

4.1.1 Desk research

The literature review covered published literature, reports and results of EC public consultations. The purpose of the desk research was to provide an overview of the available information relevant to the study, to provide background information for other research activities and to help triangulate the information found in the data collection, interviews and surveys. Almost 150 pieces of literature were used - all of the literature is referenced throughout the report, as well as in Annex F.

As part of the desk research, the monitoring reports required under the road social legislation were analysed. Article 17 of Regulation (EC) No 561/2006 and Article 3 of Directive 2006/22/EC lay down that Member States shall communicate the necessary information for the Commission to be able to draw up biennial reports on the application of this Regulation using a standard form set out in Decision 93/173/EEC. These requirements cover statistics on the number of checks at the roadside and on the premises as well as the number of offences recorded.

4.1.2 Exploratory interviews

Exploratory interviews were carried out with six organisations (three EU-level organisations, two national enforcement authorities and one national ministry). These interviews were conducted to help inform the development of the surveys (see also the next section), before the wider consultation activities took place.

4.1.3 Surveys

Tailored surveys were developed for five different target groups, as follows:

- National transport ministries: focussing on national implementation and interpretation of the legislation, quantification of impacts and assessment of effectiveness of the legislation at a national level;
- Enforcement authorities: focussing on enforcement practice and challenges, interpretations of the provisions, estimations of costs and benefits, quantification of impacts and assessment of effectiveness;
- Undertakings: focussing on impacts at the level of individual undertakings that might not be captured or adequately reflected in other sources;
- Trade unions: focussing on the impacts that the legislation has had on drivers;
- High level (general) survey: Identification of high level, cross-cutting views on the relevance, effectiveness, efficiency and added value of the legislation – this survey that was mainly distributed among industry associations.

Each survey was pilot tested before it was distributed more widely among stakeholders.

Due to the breadth and depth of issues that needed to be covered in the evaluation, the questionnaires were necessarily long and complex, and may have been difficult for some stakeholders to find the time to answer. Overall, the stakeholder response rate can be considered to be good in light of the length and complexity of the questionnaires, and also considering the highly technical and specific nature of the road social legislation. Further details are given below, and in Annex E.

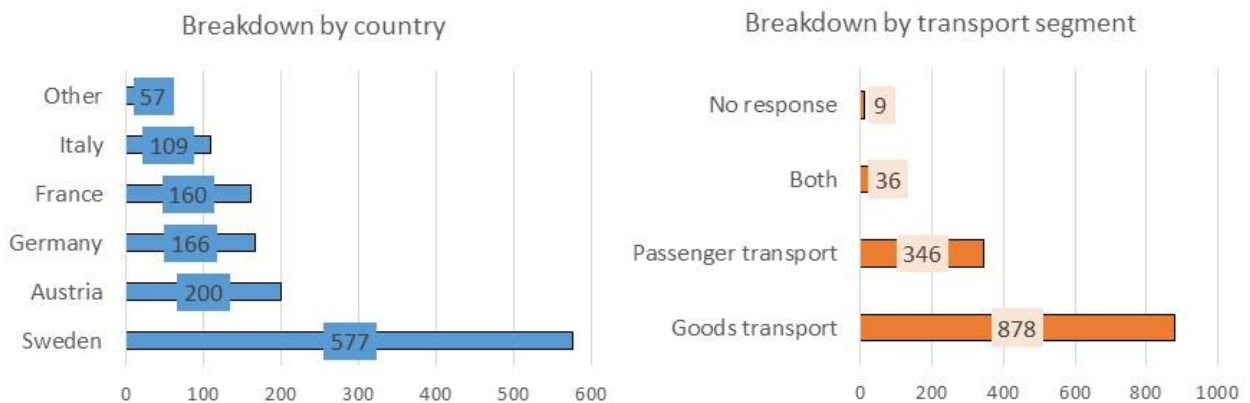
Responses were received from the national ministries of 15 Member States, with eight from the EU-15 and seven from the EU-13. The response rate for the questionnaire parts on Directive 2002/15/EC was slightly lower than for Regulation (EC) No 561/2006. The quality

of the responses was overall good. Questions on quantitative elements remained frequently unanswered or the “don’t know” option was chosen, reflecting a lack of data availability.

A total of 52 different enforcement authorities responded to the survey. 28 of these responses were obtained from national-level enforcement authorities of 17 different Member States (and Norway and Switzerland). 8 national-level responses were received from EU-15 countries and 12 from EU-13 countries. More than 20 German enforcement authorities with sub-national (regional or even communal) jurisdictions responded to the survey. The surveys for enforcement authorities aimed to gather much of the quantitative information needed to answer the evaluation questions (especially regarding the number of checks, number of infringements and costs). The quality of the responses overall was considered good (within the limitations of data availability).

A breakdown of responses to the survey of transport undertakings is shown in Figure 4-1. A total of 1,269 responses were received from undertakings. The geographical distribution is rather skewed, with high response rates in several EU-15 Member States (particularly Sweden, Austria, Germany and France where responses respectively make up 45%, 16%, 13% and 13% of responses). It proved to be very difficult to find participants in EU-13 countries, despite providing the questionnaires in the national languages, contacting 4-5 national associations in each country and directly emailing more than 140 companies. The majority of responses were from companies solely engaged in the freight transport sector (70%), which is not surprising given the relatively larger share of these companies in the general transport industry.

Figure 4-1: Breakdown of responses to the survey of transport undertakings



The survey for trade unions was responded to by 14 trade unions. The distribution of the survey was supported by the European Transport Worker’s Federation (ETF) who organised a coordinated response among their members. As a result six almost-identical responses were received. Out of all drivers unions that participated, eight represent drivers in both goods and passenger transport. Four represent only goods transport drivers, two cover passenger transport only. Next to ETF, one trade union of each of the following Member States responded: Austria, Cyprus, Denmark, Germany, Lithuania, Poland, Romania, Slovenia, Spain and UK. Three Italian unions responded.

The high level survey aimed to capture responses from stakeholders for which there is not a targeted survey. It was answered by a total of 64 organisations, mainly associations of transport operators (50), a small number of NGOs (4), individual experts (3) and other types of association (such as an undertaking, a tachograph software developer, and other that were not specified).

The survey activities are summarised in Table 4-1.

Table 4-1: Summary of stakeholder engagement - Surveys

Type of stakeholder	Approached	Responded	% response rate
National ministries	119	15	13%
Enforcement authorities	142	52 (28 (a))	37%
Undertakings survey	(b)	1269	n/a
Trade union survey	102	14 (c)	14%
High level (general) survey	198	64	32%
TOTAL (surveys)		1441	

Notes: Stakeholder surveys were conducted from June 2015 until August 2015. Response rates are approximate, as some organisations forwarded the request to participate to other organisations on our behalf.

(a) 28 national-level authorities and 24 regional-level authorities, totalling to 52 authorities that responded; (b) Undertakings surveys were distributed via national associations, hence it is not known how many organisations were contacted in total. (c) A number of coordinated responses were received from trade unions – they are here counted as individual responses, assuming that also the coordinated responses adequately reflect the opinion of the respective trade unions.

The total number of responses per questionnaire as shown above do not necessarily reflect the responses that were obtained for single questions (that might have been skipped by respondents).

4.1.4 Main interview programme (including follow-up interviews from the surveys)

The purpose of the main interview programme was to gain further insight into the experiences of stakeholders, beyond what could be gathered in the surveys. This related in particular to the functioning and effectiveness of national enforcement and the reasons for trends in infringement rates seen (for ministries and enforcers), and a better understanding of challenges and best practices in compliance (for undertakings and associations).

Coverage of the different stakeholder groups was in line with the planned distribution of interviews, largely also concerning their distribution across the different Member States (where a specific focus was given to the case study countries, as described in the following section). Table 4-2 also shows the interviews that were carried out with 'specific industry sectors' that had raised problems with compliance with road social legislation (e.g. the fuel supply sector, the bakery industry, the fishery industry and the building sector). Contact with five organisations from relevant sectors was established, of which three reported that they were not aware of any issues regarding road social legislation. Two organisations agreed to more in-depth interviews. Specific focus was also put on the passenger transport sector. Altogether 15 interviews had a specific passenger transport focus (of which 6 were carried out with transport undertakings, 2 with trade unions, and 7 with industry associations).

Table 4-2: Summary of stakeholder engagement - Interviews (not including exploratory or pilot interviews)

Type of stakeholder	Approached	Responded	% response rate
National ministries	9	7	78%
Enforcement authorities	25	8	32%
Industry associations	16	12	75%
Undertakings	41	14	34%
Trade union	10	5	50%
Specific industry sectors	11	5 (2 (a))	45%
Other (TISPOL, CLECAT)	2	1	50%
TOTAL (interviews)	114	53	46%
Drivers (b)	n/a	37	n/a

Notes: Stakeholder interviews were conducted from September 2015 until November 2015. Response rates are approximate, as some organisations forwarded interview requests to participate

to other organisations on our behalf. Interviews listed here do not comprise exploratory interviews (6) or the interviews carried out for pilot testing stakeholder surveys (7).

(a) Out of the 5 interviews 3 respondents said that they had not identified any issues with road social legislation and could therefore not provide any further comments; (b) Driver interviews were carried out during study visits, see section 4.1.5.

4.1.5 Study visits

Study visits were carried out to gain additional insight from stakeholders that could not be obtained otherwise, to engage with larger groups of stakeholders or to engage with drivers that would be difficult to reach in the form of online/electronic stakeholder surveys. In total, eight study visits were carried out as follows:

1. Participation in the ETF workshop and presentation of this evaluation study, March 2015 (targeting trade unions)
2. Participation in the CORTE enforcement workshop and presentation of this evaluation study, March 2015 (targeting enforcers)
3. Participation in roadside checks/ Presentation on checks at premises, Belgium, May 2015 (enforcers/ministry)
4. Visit to a Belgian freight transport undertaking, June 2015 (undertaking)
5. Visit to a French freight transport undertaking, July 2015 (undertaking)
6. Driver interviews (freight transport) at Comodocks parking area, Italy, August 2015 (drivers)
7. Driver interviews (freight transport) at AutoparcoBrescia parking area, Italy, August 2015 (drivers)
8. Driver interviews (passenger transport) at Lampugnano Bus station, Milano, Italy, October 2015 (drivers)

In total, 37 interviews with drivers (of which 31 engaged in the freight transport and 6 in the passenger transport segment) were carried out during the study visits to the parking areas and the bus station.

Another ninth study visit was intended to be carried out to a transport undertaking specifically engaged in passenger transport. However, multiple and repeated attempts to engage with undertakings in order to organise the study trip were not successful.

4.1.6 Case studies

The case study investigations were carried out in order to conduct more in-depth analysis of specific national situations, which would not be possible for all Member States within the scope of this study. The analysis was conducted for nine Member States, as follows:

1. Belgium;
2. France;
3. Germany;
4. Italy;
5. Sweden;
6. Spain;
7. Poland;
8. Romania; and
9. UK.

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

Interviews were also conducted with stakeholders in each country, in order to confirm and expand upon the findings of the desk research. These interviews included additional case study-specific questions in order to clarify details found in the desk research and gain greater insight into the national implementation and experience with road social legislation and its enforcement.

The interviews are reported in the general interview programme above (Table 4-2), since they also contained general questions asked of other stakeholders. Overall the following interviews were conducted in each country: 7 interviewees from Belgium, 5 from France, 5 from Germany, 12 from Italy, 4 from Poland, 3 from Romania, 4 from Sweden, 5 from UK and 1 interview in Spain (where efforts to secure additional interviews were not successful). The full findings of the nine case studies are summarised in **Annex F** (Section 14).

4.2 Limitations

Due to the subjective nature of many of the types of impacts arising from the social legislation (e.g. around working conditions and fatigue), stakeholder opinions are the only way to gather relevant intelligence despite the well-known limitations of such research. Such information was gathered both from the literature (where available) and from the surveys/interviews. There is clear value in gathering these qualitative indicators as a means to better understand the functioning of the social legislation; nevertheless, the results need to be interpreted with caution. Most importantly, the literature often reported the views of a limited sample of stakeholder that were captured via interviews and/or surveys. In these cases, the precise conditions and wording of the questions used to inform the literature could not be checked by the study team, so there is a possible risk that the results were biased (e.g. by having leading questions, or by the selection process). To improve the robustness of any conclusions made on the basis of this type of research, the study team attempted to compare studies that reported the views of stakeholders across different groups/countries, or attempted to cross-check the views with interviews/surveys carried out in the course of this study.

Nevertheless, for surveys and interviews, the results are subject to well-understood limitations that affect the interpretation of results, namely that a relatively small sample was collected for some stakeholder groups, that responses were entirely voluntary and that the opinions are subjective. To some extent, the reliability of the results can be improved by ensuring a good coverage of representative stakeholders (as broadly achieved for this study), but the non-response bias cannot be corrected by increasing the survey size and hence results still need to be interpreted with care.

Other types of indicators can in theory be measured quantitatively. These aspects include many of the items covered in the bi-annual monitoring reports, such as the number of checks conducted, infringement rates (among others). For the relevant indicators, the main limitations were gaps and insufficient detail in the data reported by the Member States, as well as missing reports in some cases. This meant that a complete picture could not be attained, especially when trying to evaluate progress over time. Particular difficulties appear to concern the provision of data around certain indicators, such as the number of vehicles fitted with a digital tachograph or the number and type of offences detected at premises and roadside. In several cases the Member States are not able to collect the data at the level of detail that is requested by the Commission – for instance, in the most recent reporting period (2011-2012) four Member States² indicated that they were not collecting data in a disaggregated enough way or in the right format to fit the required reporting format (European Commission, 2014b).

Other limitations in the data provided in the monitoring reports relate to the consistency of the reported information, both across different countries and across different years in the same country. Since it was not possible within the time and budget of the study to investigate all Member States, the case studies formed the main research tool through which the trends and possible discrepancies in the data could be analysed in more depth,

² Latvia, Portugal, Spain and United Kingdom

seeking support from national stakeholders where possible. The study team posed direct questions to the national authorities in order to clarify issues around the data, such as what definitions they use, whether the data were accurate and/or what the underlying reason for any major changes was. In many cases, the relevant authorities could not clarify the uncertainties, or did not have access to any better data themselves (further details are given in the relevant case studies). Discussion of the limitations regarding each specific indicator is given in the relevant evaluation questions (see Section 6).

Information on quantitative indicators that were not included in the monitoring reports (including information on costs and various further disaggregation of existing monitoring data, such as the number of prosecutions of co-liable parties) were sought from the literature and directly from stakeholders. In general, it was found that quantitative information was extremely sparse in the available published literature, which mainly focussed on the subjective elements described above. There was mixed success in terms of gathering additional quantitative information from stakeholders – in some cases it was possible to obtain estimates from multiple stakeholders that could be cross-checked whereas in others it was not possible to gather any additional information. The findings for each specific indicator are discussed in the relevant evaluation questions for which the data were required.

It is generally the case that information for the Working Time Directive was more qualitative and sparse. This is in part because there is no explicit legal obligation for Member States to include quantitative information in their monitoring reports, as well as the generally lower priority that appears to be afforded to its enforcement (discussed further in Section 5.3).

It is also generally the case that the information and evidence is poorer for the passenger transport sector, both at the European and national levels. As described further in Section 5.1, the poor availability of statistics is due to the highly fragmented nature of the industry in terms of the authorities involved, size and type of market operators and differing definitions. The stakeholder engagement activities (interviews and surveys) carried out for this study attempted to make up for this lack of public information by reaching out to the passenger transport sector. Nevertheless, this meant that it was generally more difficult to find robust information, and to find alternative sources with which to triangulate the responses received.

5 IMPLEMENTATION STATE OF PLAY (RESULTS)

5.1 Market context and development

This section outlines the high-level developments in the sector over the period from 2007 to 2014, in order to describe the context in which the road social legislation has been working.

5.1.1 Market size

Freight transport sector

The total volume of road freight transport in the EU-28 was around 1,720 billion t-km in 2013, some 10% less than during its peak in 2007, but showing a small increase compared to 2009 (1,700 billion t-km). This development has been shaped by the global financial and economic crisis, which has had severe impacts on the EU.

Overall, road freight transport accounts for around 45% of freight moved in the EU-28 (72% excluding intra-EU sea and air transportation), a share which has remained largely unchanged over the past decade (European Commission, 2014). Around two thirds of road freight movements are within Member States and one third is between Member States.

Passenger transport

There are considerable difficulties in obtaining statistics for the passenger transport sector because data are not harmonised across Member States and are therefore not comparable (European Commission, 2014). Bearing this limitation in mind, high-level figures are provided in the following in order to give a sense of the scale of the sector. Eurostat reports that bus and coach travel combined accounted for 549 billion passenger kilometres in 2007, falling to 526 billion in 2012 (European Commission, 2014). In 2012 it accounted for around 8.2% of all passenger transport, down from 8.5% in 2007 (European Commission, 2014).

5.1.2 Market structure

Freight transport sector

The road freight market is broadly divided into two main segments. The first are small firms that account for the vast majority of the total number of hauliers - 90% of enterprises in the sector have fewer than 10 employees and account for close to 30% of turnover (including self-employed) (Eurostat, 2015). These firms tend to compete mainly on price, with labour costs being a key determinant of competitiveness (WTO, 2010).

At the time the Regulations were adopted, 95% of road transport firms had fewer than 10 employees (European Commission, 2007a), reflecting a slight trend toward consolidation in recent years.

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

Subcontracting plays a major role in road haulage. Even in 2007, it was recognised that a proportion of small companies tend to be economically dependent on larger operators who prefer to subcontract through exclusive or preferential contracts rather than to invest in additional vehicles (European Commission, 2007a). According to AECOM (2014a), there has been a strong increase in subcontracting within the EU road haulage market compared to a decade ago. Overall, the European road haulage market can be characterised by a chain of hire and reward companies with large pan-European logistics companies at the top controlling the largest contracts but subcontracting much of that down the chain (AECOM, 2014b). Small enterprises and owner drivers either form small consortiums to

obtain work, rely on subcontracting from larger firms or move loads identified through freight exchanges.

In the past, the EU road haulage market has been highly competitive and price-sensitive because it has been dominated by a large number of small companies and owner-operators. Rapid expansion of larger operators offering integrated logistics services was identified at the time the Regulations were introduced, along with intense corporate restructuring (European Commission, 2007a) – the importance of pan-European logistics integrators has continued to grow in recent years (AECOM, 2014b). Large multimodal third party logistics providers (3PLs) help to meet the demand for high quality, reliable and predictable door-to-door truck services (AECOM, 2014b). Cost pressures for logistics providers means that many heavily rely on subcontracting less profitable operations to smaller enterprises and owner-operators, driving the number of links in the logistics chain upward (AECOM, 2014b).

A long-term trend suggests that freight integrators³ and forwarding agents will play an important and growing role in the organisation of international road freight movements, helping to optimise the entire supply chain, improving vehicle usage and reducing empty running (AECOM, 2014b).

Passenger transport

The enlargement of the EU increased the importance of scheduled coach travel, due to its advantages in terms of safety, flexibility and ability to respond to changing demand (SDG, 2009).

Although there are a number of very large coach operators in the EU, the average size of companies are small, with an estimated average of 16 vehicles per company (SDG, 2009). The sector is highly fragmented in terms of the size and type of market operators and the range of transport operations (SDG, 2009). Services include scheduled long distance services, to school transport services, and shuttle services operated for tourists between airports and hotels. The importance of these different types of services also varies significantly between Member States. Due to these wide differentials there are no reliable statistics available at the EU level that would enable giving more detailed overview of this part of the transport market.

5.1.3 Cost structure

Freight transport sector

Cost differentials between Member States have long been noted and it was found that in 2006 road haulage costs can be almost double from one Member State to another (European Commission, 2007a).

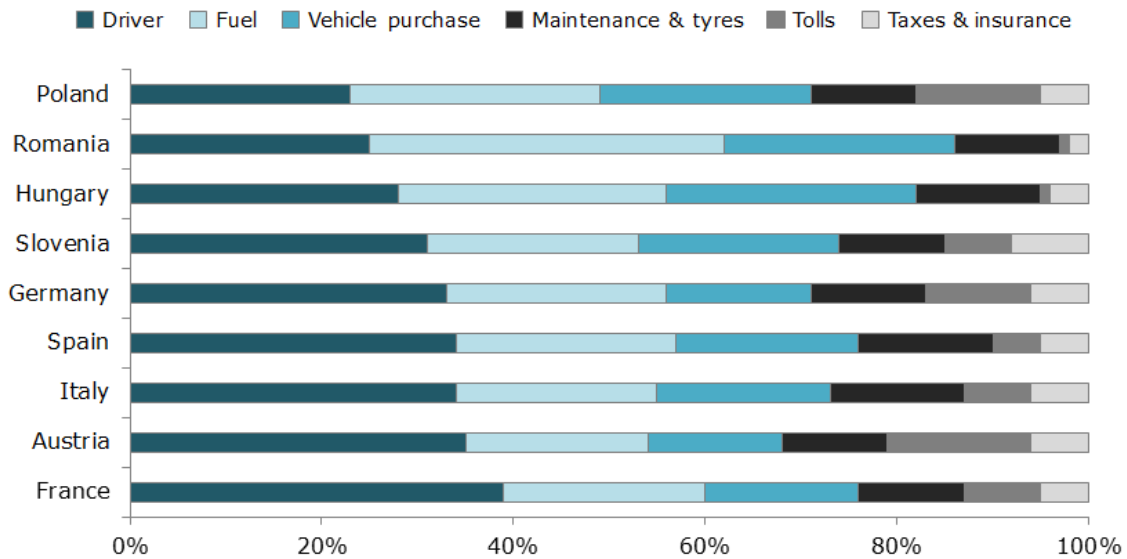
During the economic downturn, profit margins have contracted within the logistics sector as well as in the road haulage sector (European Commission, 2014b). A key effect has been the substantially increased price competition created within road transport, which has then extended to the entire freight market (KombiConsult, 2015). On the trunk lines of European corridors, reported freight rates have fallen even below pre-boom prices in the years up to 2006 to as low as €0.7 per vehicle-km or less. This corresponds to a reduction of some 30% compared to previous market prices of about €0.9 to €1.0 per vehicle-km, which barely covers the variable costs of haulage, let along the full cost of vehicle utilisation (KombiConsult, 2015).

Cost levels are one of the key factors determining competitiveness in the road haulage sector. As shown in Figure 5-1, the most important cost components are the driver's wages and fuel, followed by vehicle purchase costs. While in absolute terms, labour costs in the

³ A freight forwarder is a person or company that organises shipments for individuals or firms. A forwarder is not typically a carrier, but is an expert in supply chain management.

Member States that joined in 2004 and 2007 remain lower than in the EU-15, the gap is steadily narrowing (European Commission, 2014b).

Figure 5-1: 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 (TRT, 2013). For example, the cost of a French driver is 2.4 times higher than a Polish driver spending three weeks per month outside their respective domestic markets⁴ (SDG, 2013a). Even taking into account possible differences in terms of skills and productivity, the pay gaps are sufficiently high to conclude that there are still substantial differences in the labour costs. Also differences in social insurance contributions can be quite substantial. As an example, the estimated amount of the employers' mandatory (net) social security contributions for a driver operating is €736 per month in France; €446-630 in Germany, €481-584 in Spain, as compared to €316 in Slovakia and €111 in Poland.⁵ (CNR, 2013).

The high competition in the industry means that transport undertakings are often price takers rather than price makers, which yields low profit margins (AECOM, 2014a). For this reason, hauliers are always looking at ways to improve margins by reducing operational cost. Efforts to improve productivity and competitiveness have been made in areas such as reducing empty running, outsourcing unprofitable work and sourcing cheaper fuel (AECOM, 2014a). For the passenger transport sector, no similar literature could be identified.

Passenger transport

Similarly as for freight transport, the driver costs are the main part of operating costs, and there are similar issues to do with competition from low-cost labour (SDG, 2009).

5.1.4 Employment

⁴ Converted on a PPP (purchasing power parity) basis, the wage differentials of French drivers reduce to 1.27 for Poland and to 1.25 compared to Spain, indicating that there are still differences.

⁵ On a PPP basis: approximately €800 per month in France; €500-700 in Germany, €650-800 in Spain, as compared to €550 in Slovakia and €250 in Poland

Freight transport sector

In total, there were around 575,000 registered road freight transport and removal enterprises in Europe in 2012⁶, employing around 3.0 million people (largely unchanged compared to 2007) (European Commission, 2014b).

For a number of years, the industry has been concerned about skill shortages and tight labour supply. A shortage of 74,500 professional drivers in Europe was estimated in 2008, which at the time was mitigated by the economic downturn (Samek Lodovici et al, 2009). More recently, AECOM (2014a) report shortages of 30% in Germany and the UK and that 36% of transport operators in Belgium have difficulty in hiring drivers. Research from the case studies (see Annex F, Section 14) shows that countries are still experiencing problems with driver shortages – including eastern European Member States - although precise quantification was rare.

Currently, the vast majority of heavy truck drivers are still employees (on average, 92%⁷), with the remainder being self-employed (Broughton et al, 2015). In 2008, the Commission estimated that up to 50% of these self-employed drivers may be falsely self-employed (Lodovici et al., 2009). While it is difficult to determine the current true extent of bogus self-employment, evidence from the literature indicates that it is particularly common in countries with strong neoliberal trends and weak trade unions, as well as becoming increasingly common in Eastern European countries (REMESO, 2013).

However, the proportion of self-employed is growing in some countries and some sources (i.e. ETF (2010) and TRT (2013)) claim that large companies within the EU-15 had converted workers' contracts to "false self-employment" prior to the extension of the Working Time Directive to cover self-employed workers in 2009. At the same time, some employers do not consider self-employment as a viable option because the company must maintain liability over the goods and the vehicle assets (REMESO, 2013), suggesting that the problem is not universal. False self-employment has reportedly become an increasing problem in the Swedish road haulage industry, particularly in the long-distance carriage of goods, where there are an estimated 1,000 workers engaged in false self-employment (REMESO, 2013).

Conversely, in France there is little self-employment and hence false self-employment is also thought to be limited (Werner et al., 2013). The strong domestic orientation and culture of working with employees rather than self-employed workers is thought to protect the sector from a strong growth of false self-employment (Werner et al., 2013). Nevertheless, incentives to use self-employment to cut labour costs were thought to have increased following the financial crisis, particularly due to the relatively higher wages of French drivers – leading to subcontracting of foreign firms with migrant or self-employed drivers.

According to one French study "*subcontracting to dependent [false] self-employed implies a level of compensation that cannot cover costs if the worker follows all road and labour regulations, thereby implicitly forcing the subcontractor to break the law*" (Bernardet et al., 2008). More recent reports have suggested that this difficult situation is not restricted to false self-employed, but rather affects all self-employed due to their weak bargaining positions – hence, dependency might not be the determining factor (Werner et al., 2013).

In more recent years, growing cost pressures in the transport sector (as sketched above) have led to an increased use of complex employment arrangements, such as (cross-border) sub-contracting chains or temporary contracts (Broughton et al., 2015), (Tassinari et al.,

⁶ Note that the Eurostat business indicators only cover hire and reward road transport businesses. These account for around 85% of all t-km while own account transportation (transportation carried out by other businesses for their own purposes) accounts for 15%. The transport activities for hire and reward are those carried out by the road haulage sector in the EU as defined in the business statistics while own account transport is carried out by other economic sectors for their own purposes.

⁷ For the 20 Member States for which data are available: AT, BE, CZ, DE, EE, FI, FR, HU, HR, IE, LT, LU, MT, NL, PL, RO, SE, SI, SK, UK

2014), (TRT, 2013). The actual extent of such arrangements remains however largely unknown (Ricardo Energy & Environment et al, 2015).

Similar statistics could not be found for the passenger transport sector.

Passenger transport

Figures from Eurostat describing employment in road passenger transport also include all urban and suburban land transport modes (motor bus, tramway, streetcar, trolley bus, underground and elevated railways). The level of employment was around 2.0 million in 2011 – a slight reduction from 2.1 million in 2007 (European Commission, 2014).

In a number of Member States, local bus/coach operators have taken advantage of the free movement of workers to employ drivers from other Member States. For example, it has been reported that a UK bus operators have recruited drivers in Poland. This has led to a shortage of drivers in Poland, which has in turn prompted Polish operators to recruit drivers from Ukraine (SDG, 2009). The extent of such recruitment policies could not be identified. Another study reports that between 2004 and 2009, 7,010 heavy goods vehicle drivers from the A8 countries⁸ registered in the UK, hereby exacerbating problems of driver shortages in their own countries (SfL, 2012).

Outlook

As in the EU economy as a whole, employment in the transport sector is facing challenges arising from demographic changes – in particular, the challenge of a growing shortage of skilled workers in an increasingly competitive global environment. Labour shortages are expected to become an increasing problem in the next 10 to 15 years as the economy and the transport sector return to growth and the number of people retiring from the sector increases (TRIP, 2014). Projections of the demand for labour in the land transport sector also predict that the shortage will worsen in 2020 (due to a predicted additional demand of 200,000 to 500,000 jobs) compared to an approximate equilibrium in 2015⁹ (Christidis et al, 2014). In practice this means there is a need to ensure that potential employees with the right skills are available to cover the retiring employees and increased transport activity by 2020, and that the problem of driver shortages is unlikely to reduce without intervention.

5.2 Implementation of Regulation (EC) No 561/2006

Most parts of the Regulation came into force on 11th April 2007. However, certain elements relating to tachographs came into force on 1st May 2006.

Regulation (EC) No 561/2006 defines in its **Article 4** a set of terms used throughout the legal text. However, some of the definitions provided are considered to be unclear and are subject to different interpretations. For example, only a general definition of 'driver' is provided by 4(c), meaning that the explicit scope regarding the types of driver covered by the Regulation is defined by national authorities, resulting in, for example, Hungary and Austria applying the rules to 'professional' drivers only (while the term 'professional' is not explicitly defined). Such issues and their implications on enforcement are discussed in Evaluation Question 4 (see Section 6.4), which assesses the clarity of the rules.

The provisions on **driving times, breaks and rest periods** are laid down in **Articles 6 to 9**. There is a limited and clearly specified flexibility provided in the application of the

⁸ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

⁹ The calculations of future demand were based on quantitative projections in the White Paper Reference scenario, with productivity growth modelled based on the existing trends in its underlying factors (capital investment, return on capital, labour productivity). Potential supply was assumed to remain stable and gradually adapt, with a lag, to increasing demand.

established minimum and maximum thresholds for driving times, breaks and rest periods. The transport operators throughout the EU build their business models based on those available flexibilities. However, due to different interpretations and enforcement practices (as further described in Evaluation Question 4 that discusses the clarity of the rules) there is a lack of coherence between and within the Member States regarding the implementation of those rules. **Article 8** sets out the **rules on daily and weekly rest periods**. It states that a driver should start a weekly rest period no later than at the end of six 24-hour periods from the end of the previous weekly rest. The 12-day rule was first introduced by Council Regulation (EEC) 3820/85, then abolished by Regulation (EC) No 561/2006 and re-introduced, with more stringent conditions to avoid abuse, in 2009 through Regulation (EC) No 1073/2009. The latter Regulation introduced a derogation from this weekly rest provision and allowed drivers who are engaged in a single occasional service of international carriage of passengers to postpone the weekly rest period for up to 12 consecutive 24-hour periods (known as the "**12 day rule**") following a previous regular weekly rest, provided that specific conditions are met. The Commission report (COM(2014)337) assessing the consequences of the 12-day derogation in respect of road safety and social aspects concluded that there is no need to propose any amendments to the legislation with regard to this derogation.

Article 8(8) refers to reduced weekly rest periods and notes that: "*Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.*" This provision was intended to ensure that drivers were able to obtain proper restorative rest in order to combat fatigue. The wording of the Article does not explicitly forbid a driver to take their **regular weekly rest periods in the vehicle**. However, some Member States prohibit the driver from spending their regular weekly rest in the vehicle. For example, in Belgium there is fine amounting to 1,800 EUR for those drivers taking their regular weekly rests in their vehicles, whereas in France there is a fine of up to 30,000 EUR and 1 year imprisonment for the transport operator in case of such infringement (Petarneychev, 2014). Other Member States (such as Bulgaria, Lithuania and Luxembourg) do not prohibit drivers from spending their regular weekly rests in their vehicle. Still others (such as the Netherlands) take the stance that spending regular weekly rests in vehicles is prohibited but that an enforcement of this prohibition can exclusively happen at company checks where it is possible to check whether a company's trip planning is in line with the requirement of drivers not spending their regular weekly rest in a vehicle. A more detailed overview of stakeholders' stances on the interpretation and enforcement of Article 8(8) is provided in Annex A (Section 9.1.1).

Article 10(1) aims to contribute to improved road safety by prohibiting the **linkage of driver pay to distances covered or load carried**, even in the form of a bonus or wage supplement "*if that payment is of such a kind as to endanger road safety or encourage infringement of the Regulation*". This was expected to contribute to limiting the financial incentives for drivers to break the rules. Evaluation Question 4 shows that this Article causes difficulties in enforcement since, in practice, it is difficult to prove whether a specific type of payment has adverse effects on road safety or on compliance. Evaluation Question 11 explores the impact of this provision on working conditions, health and safety of drivers.

Article 10(3) sets out that a transport undertaking shall be liable for infringements committed by drivers of the undertaking. Member States may also consider any evidence that the transport undertaking cannot reasonably be held responsible for the infringement committed. Annex A, Section 9.1.3 shows that many Member States¹⁰ for which evidence could be gathered allow undertakings

Article 13 provides a set of predefined derogations¹¹ that Member States can flexibly choose to apply on their territory. Annex A, Section 9.1.5, shows which derogations have

¹⁰ PL, PT, BE, BG, ES, FI, LV, SI, SE, UK, FR, LU, NL, CY, HU

¹¹ Annex A, Section 9.1.4, provides a comparison between 'old' and 'new' derogations (according to Article 13) and exemptions (according to Article 3) of respective Regulations (EEC) No 3820/85 and (EC) No 561/2006.

been applied with or without a country-specific modifications. Whereas 2 Member States (Finland and Greece) have not adopted any of the derogations defined in that Article, 16 Member States have decided to adopt 15 derogations or more (out of the 17 that are available, considering Article 13 (d) as two separate derogations). 13 Member States have decided to allow for one or more restricted versions of the derogations as provided in Article 13. For example, these modifications make the derogations conditional to a certain radius within which the transport operation is to take place or excludes a certain group of persons being transported (such as children). Greece and Finland have not allowed for any derogations. Malta makes use of the exemption for small islands not exceeding 2 300 square kilometres by applying it to all domestic transport operations by all kind of vehicles.

Evaluation Question 5 (Section 6.5) explores the impact of the use of derogations on the general objectives of road social legislation.

Article 14(1) further provides Member States the possibility to grant exceptions from Articles 6 to 9 to transport operations carried out in *exceptional circumstances* after the authorisation of the Commission. According to the Commission's report that was provided to the consultants, a total of 10 of such exceptions were granted in the 9-year period from 2007 to 2015, of which four are permanent exceptions (for carriage of live fish in Finland, for the territorial army in the UK, and for truck runs in the Netherlands and Belgium). Recent temporary exceptions were granted to Slovenia and Germany at the end of November 2015 for transport operations for refugees. Annex A, Section 9.1.5, provides more details. **Article 14(2)** of the Regulation stipulates that Member States may grant *in urgent cases* exceptions from the application of Articles 6 to 9 up to maximum 30 days to transport operations – exceptions that shall be notified immediately to the Commission. According to Commission records that were provided to the consultants, in total 36 temporary exemptions were granted up until 12 August 2015. Most of them can be related to extreme or unusual weather conditions. Two of them were granted in relation to volcanic ashes (in France and Luxembourg in April 2010); one was granted due to unexpected bus transport needs during the FIS Nordic World Ski Championships in Oslo in 2011. In total 27 exemptions were granted to the UK, either for extreme weather conditions (24) or for unexpected fuel demands (3). Annex A, Section 9.1.5 provides more details.

Article 17 defines the **reporting requirements** for the Member States. Each Member State has to use the standard reporting form (as last set out in the Commission Decision of 22 September 2008) to enable the Commission to draw up a report on the application of Regulation (EC) No 561/2006. The number of Member States that fail to submit their reports on time or to use the required reporting format has improved over time but is still significant: in 2011-2012, there were still seven¹² Member States who failed to submit their reports on time (European Commission, 2014c). In several cases the Member States are not able to collect the data at the level of detail that is requested by the Commission – for instance, six Member States¹³ reported that inconsistent or missing data was due to technical constraints and four Member States¹⁴ indicated that they were not collecting data in a disaggregated enough way or in the right format to fit the reporting tables (European Commission, 2014b). Evaluation Question 10 assesses the sufficiency and effectiveness of the reporting requirements for adequate checking and follow-up of the legislation in more detail.

Article 19 sets out that Member States shall lay down **rules on penalties** that are to be effective, proportionate, dissuasive and non-discriminatory. Figure 5-2 provides the maximum fines that can be imposed under national law on undertakings for infringements of Regulation (EC) No 561/2006. It can be seen that the level of fines varies greatly across Member States. Converting the fines to the Purchasing Power Standard (PPS) makes the

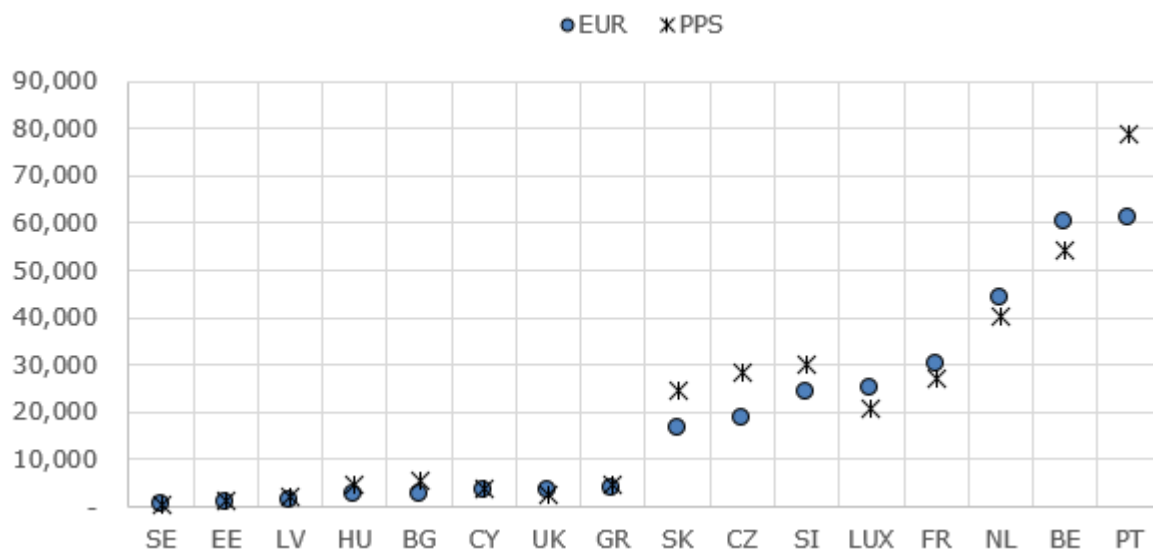
¹² Belgium, Cyprus, France, Germany, Greece, Luxembourg, Malta, the Netherlands

¹³ Finland, Denmark, Italy, Estonia, France and Sweden

¹⁵ The European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport

discrepancies larger, indicating that socioeconomic differences between the Member States cannot explain the differences.

Figure 5-2: Maximum potential fines imposed that could be imposed on undertakings (in Euro and PPS), according to national legislation in a selection Member States



Notes: PPS = Purchase Power Standard (an artificial common currency that eliminates the effect of price level differences across countries)

Source: Responses to the survey of national authorities (Ministries and enforcers) conducted for this study. It was outside the scope of the study to review the national legislation in all 28 Member States, hence only a selection of countries are shown.

Table 5-1 shows other possible sanctions that might be imposed for most serious infringements (whether or not the definition of most serious infringements follows the Commission's guidelines according to Directive 2009/5/EC). It shows that the other possible sanctions vary greatly across Member States. As shown, eight Member States foresee the immobilisation of the concerned vehicle as a possible additional sanction. Annex A (Section 9.1.6) provides the detailed responses that were received from national ministries on the type of sanctions (and level of fines) for the different types of infringements.

Table 5-1: Other possible sanctions for most serious type of infringements

Other possible sanctions	Member State
Immobilisation	HU, NL, RO, SE, UK, FR, FI, PT
Imprisonment up to 6 months	BE, CY
Other	DK (€26 for each % the provisions are exceeded) FI (€90 - €120 day fines according to the incomes, no exact sums) EE (Removal from driving vehicle) GR (Criminal proceedings) RO (Good repute procedure and suspension of certified copy) UK (Possible prohibitions) SE (Administrative sanctions)

Source: Stakeholder surveys conducted for this study

Recital 15 of Regulation (EC) No 561/2006 notes that Member State enforcement authorities should strive to reach a common understanding of the implementation of this Regulation, through a standing committee. As such, **Article 22** states that the Commission shall support dialogue between Member States concerning national interpretation and application of the Driving Time Regulation through the Committee set up under Article 18(1) of Regulation 3821/85. In accordance with this requirement, the Commission

supports ongoing dialogue between Member States concerning national interpretation and application of the Regulation. In 2007 the Commission established a Legal Working Group on the harmonised application of social rules in road transport under the auspices of the Committee on social rules in road transport, which was subsequently merged with the Infringement Working Group resulting in the creation of the Enforcement Working Group in 2015. The Working Group drafts Guidance Notes that are endorsed by the Committee on certain provisions of the Regulation. An overview of the existing Guidance Notes is provided in Annex A (see Section 9.4.1).

5.3 Implementation of Directive 2002/15/EC

The Working Time Directive addresses a gap in the Regulations on driving time and rest periods (561/2006; 3820/85), which do not stipulate maximum hours for activities other than driving, such as loading and unloading and other activities as listed in **Article 3(a)**. The Directive only applies to activities and drivers falling in the **scope** of Regulation (EC) No 561/2006 or the AETR¹⁵ Agreement (**Article 2**). Since March 2009, also self-employed drivers are subject of Directive 2002/15/EC. As concerns employed drivers who would be excluded from the scope of this specific Working Time Directive, they may fall under the scope of the general directive (2003/88/EC).

Article 3 sets out **definitions** of working time, periods of availability, place of work, mobile worker, self-employed driver, week, night time and night work. National debates during the process of adoption of national law revealed that some definitions were perceived as vague or contradictory to other legislation or rules, which was a cause of delay and/or inaccurate transposition (European Commission, 2008a). According to TNO (2006) only four Member States had adopted the Directive by 23 March 2005: Finland, Hungary, Poland and Slovakia. According to questionnaire responses obtained for this study, France had also transposed the Directive by that date. Estonia, Slovenia, Sweden and UK also stated that they did so in 2005. Austria stated the transposition happened in 2006, and Belgium, Bulgaria, Latvia and Portugal stated it was transposed in 2007.

In its definition of “working time”, the Directive has specifically included driving, (monitoring of) loading and unloading, assisting passengers boarding and disembarking from the vehicle, cleaning and technical maintenance, administrative formalities with police, customs, immigration officers etc., as well as other periods during which the driver cannot dispose freely of his time and is required to remain at his workstation, “in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance”.¹⁶ Periods of availability are defined as periods known in advance with a foreseeable duration known in advance during which the driver is not required to be at his workstation but ‘on call’, ready to take up work when required. During double manning, the period spent in cab while the other person is driving also counts as availability time. See Evaluation Question 4 (Section 6.4) for an assessment of the clarity of these definitions.

Articles 4 to 7 set out the **main provisions** of the Directive: the rules on maximum weekly working times (Article 4), on breaks (Article 5), rest periods (Article 6) and night work (Article 7). Those mobile workers, whose working hours fall within the night time period determined by the Member State or agreed between the social partners, may work up to 10 hours in any 24-hour period. “Night time” is defined in Article 3 as “*a period of at least four hours, as defined by national law, between 00.00 hours and 07.00 hours*”.

¹⁵ The European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport

¹⁶ Finding a common definition for working time was one of the challenges in the legislative process and a reason why road transport had not been included in the original Working Time Directive of 1993. Germany, France and the Netherlands took an extensive view on working time (in the case of the Netherlands the time between the start and the end of the duty period) while Spain, Italy and Belgium took a restrictive view (in the case of Belgium only driving and loading/unloading) (Burniewicz, 1999). Depending on the definition of working time a 48h working week could easily be exceeded. The definition finally used Directive 2002/15/EC takes a fairly restrictive view.

Article 8 allows for **derogations** from the provisions of Article 4 and Article 7 “*by means of collective agreements, agreements between the social partners, or if this is not possible, by laws, regulations or administrative provisions*”. However, derogations may not result in the in a reference period exceeding six months for calculation of the average maximum weekly working time. **Article 10** allows **more favourable provisions** to the protection of the health and safety of drivers. TNO (2006) and (Eurofound, 2007) provide some insights in the use of derogations or more favourable provisions that have been applied in Member States:

- Overall, 23 Member States stated that they made use of derogations by means of collective agreements and/or social dialogue: only France stated that they did not make use of this possibility, and Italy did not provide any answer (TNO, 2006).
- Concerning *night time*, many countries have derogated from the definition of night time and have used their own (already existing) definitions. These definitions vary between Member States, only seven Member States use the definition of the Directive (00.00-07.00). All Member States have at least a period between 01.00 and 04.00 hours in their definition of night time. Most countries follow the daily limit of 10 hours if night work is performed, four countries (intend to) use a stricter limit (Belgium, Czech Republic, Germany, and Spain) (TNO, 2006). Ireland, the UK, the Netherlands and Norway allow the extension of maximum daily work hours in case of night work. However, in Norway, none of the major collective agreements contain derogations, as the implementing legislation gives the derogation powers to the company-level social partners. In the UK, few companies appear to have made use of this derogation. A survey found that one fifth of companies employing night-time drivers had extended the night work limit, while three fifths had extended it by two hours to 12 hours. Two companies extended the limit by one hour to 11 hours. In Austria, some agreements allow the maximum working day to be extended beyond 10 hours in the case of night work (Eurofound, 2007).
- Concerning *weekly working time*, four countries (intended to) follow more strict rules for the average working week (Belgium (38), Czech Republic (40), France (45/46) and Spain (40)) (TNO, 2006).
- Ireland, Lithuania, Norway and the UK, make full use of the directive’s derogation on maximum working time (as distinct from the average working time discussed in the previous point). Collective agreements in Denmark also make full use of the derogation (Eurofound, 2007). In Austria, the *maximum working week* may be extended to 60 hours, as long as an average working week of 48 hours is not exceeded over a reference period of 26 weeks (Eurofound, 2007). In the Netherlands, individual employees are allowed to work a maximum of 55 hours a week on the basis of a collective agreement that has been settled (Eurofound, 2007). Three countries (intended to) have more strict rules with regard to the maximum weekly working time (Belgium, Czech Republic, and France) (TNO, 2006).
- Concerning the *reference period* (i.e. the Directive sets out that over a period of four months an average of 48 hours a week is not to be exceeded) two countries (intended to) use more strict rules (Luxembourg, France). Two countries (intended to) go beyond the 6 month possibility by derogation and use a reference period of 12 months (Czech Republic and Spain, while using a more strict average of 40 working hours) (TNO, 2006). In the Netherlands, the implementing legislation allows collective agreements to set a reference period of up to six months for the calculation of average working time. Italy intended a reference periods for maximum working time of six months in agreement with the social partners (Eurofound, 2007).
- In Finland, collective agreements use the full scope of the directive’s derogations in relation to maximum working time and night work (Eurofound, 2007).

Article 11 sets out that Member States must lay down a **system of penalties** for breaches of the national provisions adopted pursuant to the Directive. These penalties “*shall be effective, proportional and dissuasive*”. Maximum penalties that were reported by national authorities for this study range from €1,250 in Slovenia and €61,200 in Portugal (further details are provided in Annex A, Section 9.2.1).

Article 13 of the Directive provides that Member States must report on its practical implementation to the Commission every two years, presenting the views of the two sides of industry at national level. In contrast with the Driving Time Regulation, there is no explicit legal obligation to include quantitative information in the reports. The Commission has repeatedly encouraged the submission of quantitative data, however, it is still only rarely submitted: the number of Member States that provided such data had increased from two¹⁷ in 2005-2006 up to seven¹⁸ in the last reporting period. Evaluation Question 10 (Section 6.10) provides an analysis of the effectiveness of these reporting requirements.

Directive 2002/15/EC does not contain explicit provisions on **co-liability** as is the case for Regulation (EC) No 561/2006. Nevertheless, some Member States have chosen to adopt co-liability principles. Annex A (Section 9.2.2) provides more information on which parties can be held co-liable for infringements of Directive 2002/15/EC.

5.4 Implementation of Directive 2006/22/EC

Article 2(1) of the Enforcement Directive obliged Member States to set up a system of appropriate and regular checks, both at roadside and on the premises of transport undertakings. Since the frequency of checks had previously varied significantly between Member States, and since raising the requirements too quickly could place a serious burden on the administrative facilities in a large number of Member States (especially new Member States), a gradual introduction of minimum requirements was introduced in **Article 2(3)** (EESC, 2004). The **number of checks** was increased from 1% of drivers' working days from 1 May 2006, to at least 2% from 1 January 2008 and to at least 3% from 1 January 2010. In the reporting period 2011-2012, Denmark, Italy, Greece, Latvia and the Netherlands did not meet the minimum threshold of 3% of drivers' working days to be checked.

From 1 January 2012, this minimum percentage could be increased to 4% provided that on average more than 90% of all vehicles checked are equipped with a digital tachograph. However, since the average number of vehicles equipped with digital tachograph that were controlled in the 2011-2012 reporting period did not exceed 56%, there are currently no grounds for raising the minimum checks to 4% (European Commission, 2014b).

Roadside checks (Article 4) are required to be organised in various places and at any time, and to cover a sufficiently extensive part of the road network. Inspectors should have the capability to check the driving time of drivers over the previous 28 days and to take the vehicle off the road immediately in the case of a serious infringement. Initially at least 15% of all checks were required to take place at the roadside, rising to at least 30% from 1 January 2008. The transitional period was intended to allow Member States time to adapt to the new provisions (EESC, 2004). In the implementation periods 2011-2012, only Ireland did not meet this requirement.

Checks at the premises of undertakings (Article 6) are based on past experience and in cases where a serious infringement of the two Regulations (Regulations (EEC) 3820/85 or (EEC) 3821/85) has been detected at the roadside. Initially, at least 30% of all checks were required to take place at the premises of the undertaking, rising to at least 50% from 1 January 2008. The higher emphasis on checks at the premises is because such checks can cover more issues, and they can provide a picture of the extent to which a company as a whole abides by the rules (EESC, 2004). In the reporting period 2011-2012, only seven Member States (Cyprus, Greece, Ireland, Lithuania, Netherlands, Ireland and Slovenia) met this minimum requirement of 50%.

Under **Article 5**, Member States are required to undertake six **concerted roadside checks** per year. Member States are required to report on the number of concerted checks in each year in their official monitoring (see Annex A, Section 9.3.1). In the 2011-2012

¹⁷ Slovakia and Hungary

¹⁸ Austria, Bulgaria, Cyprus, Czech Republic, Greece, Poland, Spain

reporting period 16¹⁹ out of 18 reporting Member States met the minimum requirements for six checks per year, and two did not (Estonia and Malta). However, 9²⁰ Member States did not provide (quantitative) information on the number of concerted checks.

Member State shall designate a **body for intracommunity liaison (Article 7)**. This body shall in particular ensure coordination with equivalent bodies in other Member States with regards to concerted checks and promote the exchange of data, of experience and of intelligence between Member States. Further roles of the body were also defined, including assisting the competent authorities of other Member States in cross-border investigations and forwarding biennial statistical returns to the Commission. All Member States have established a body for intracommunity liaison²¹.

Article 9 requires Member States to introduce a **risk rating system** for undertakings. The overall aim of this system is to target checks on undertakings with a poor record concerning the compliance with the driving time. According to Bayliss (2012), all Member States have notified the Commission of their creation of such a system. However, responses obtained for this study show that this does not necessarily mean that all enforcement authorities in the Member States work with a risk-rating system. Table 5-2 provides an overview in each Member State of whether a risk rating system is used by the national authority (either a national ministry or a national enforcement authority). The table shows that at least 17 out of the 25 Member States responding to the relevant question use a risk rating system (the number might be higher considering that some Member States might use a risk rating system that is not used by the authority responding to the relevant question). A more detailed analysis of the use of risk rating systems and their effectiveness is provided in Evaluation Question 6 (see Section 6.6).

Table 5-2: Use of a risk rating system and its information content by Member State

MS	Do you use a risk-rating system?	If yes, what information is fed into the system?		
		Info from ALL responsible authorities in your MS	Info obtained from other MS	Comment
AT	Yes	?	?	
BE	Yes / No	Yes	No	[Yes = BE Labour inspectorate; No = BE police]
CY	Yes	No	No	
CZ	Yes	No	No	
DE	Yes	No	No	
DK	Yes	?	?	
EE	Yes	Yes	No	
ES	Yes	?	?	
FI	Yes	Yes	No	
HR	Yes	Yes	Yes	
LV	Yes	No	No	
LT	Yes	No	Yes	
NL	Yes	No	Yes	
PL	Yes	Yes	No	
RO	Yes	No	Yes	
SI	Yes	Yes	No	
SE	Yes	Yes	Yes	

¹⁹ BG, CZ, DK, FR, DE, HU, IE, LV, LT, NL, PL, RO, SK, SI, ES, UK

²⁰ BE, CY, DK, FI, GR, IT, LU, PT, SE

²¹ A full list of intercommunity liaison contact points is available with the most recent version being from 2012

MS	Do you use a risk-rating system?	If yes, what information is fed into the system?		
		Info from ALL responsible authorities in your MS	Info obtained from other MS	Comment
UK	Yes	No	?	
BG	No	-	-	
FR	No	-	-	Are considering to set up a system
HU	No	-	-	Under construction
LU	No	-	-	
NO	No	-	-	Under development
PT	No	-	-	
SK	No	-	-	
CH	No	-	-	

Source: Authorities' responses to this study's questionnaires and interviews

Article 10 required that the Commission must submit a report analysing the penalties provided for in Member States' legislation for serious infringements by 1 May 2009. This was published in 2009 (European Commission, 2009). The report showed that penalties for serious infringements of the social legislation varied appreciably between Member States (see earlier Section 5.2 for updated information that shows that the fine levels still vary greatly across Member States).

Article 11(2) specifies that Member States shall establish **joint training programmes** on best practice to be held at least once per year and shall facilitate **exchanges of staff**, at least once per year, of their respective bodies for intracommunity liaison with their counterparts in other Member States. Annex A, Section 9.3.2 gives an overview of all joint training initiatives and exchange programmes that were reported for the biennial reports by Member States in the last three reporting periods. Quantitative data on exchanges of enforcement officers is only available for 7²² Member States in the latest reporting period, all of which comply with the minimum requirement. An indication of involvement in exchanges in the last reporting period (without specifying the number) has also been given by 5²³ Member States. Overall this indicates that most Member States are active in some way, and most likely the Member States that report activity do comply (since only 2 exchanges are required in the two-year reporting period). Evaluation Question 8 provides an assessment of the effectiveness of measures on administrative cooperation between Member States.

Article 11(3) sets out that the Commission shall draw up **an electronic and printable attestation form to be used** when a driver has been on sick leave or on annual leave, or when the driver has driven another vehicle exempted from the scope of Regulation (EC) No 561/2006. This form was established by the Commission Decision (2009/959/EU)²⁴. In 2007, the Commission reported that nine Member States²⁵ had made the use of this form mandatory, while in 15 Member States the form was non-mandatory²⁶ (EC, 2007). This issue was addressed in Article 34 of Regulation (EU) No 165/2014, which states that when a driver is unable to use the tachograph fitted to the vehicle, as a result of being away from the vehicle, the periods of time should be entered manually into the record sheet of the analogue or digital tachograph. Regulation (EU) No 165/2014 further specifically states

²² AT, CZ, DE, PL, RO, ES, UK

²³ FR, HU, IE, LV, NL

²⁴ The form of attestation of activities is available here: http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/form_attestation_activities_en.htm

²⁵ LT, HU, EE, SI, ES, SK, RO, BG, PL

²⁶ NO, AT, UK, DK, IE, LU, FI, CZ, CY, BE, NL, DE, PT, SE, LV

that "*Member States shall not impose on drivers a requirement to present forms attesting to their activities while away from the vehicle.*" Responses to questionnaires to ministries and enforcement authorities obtained for this study show that also today there is no coherent approach to the use of these forms (see Annex A, Section 9.3.3, for a detailed overview of the authorities' responses obtained to the relevant questionnaires in the context of this study). For example, in Portugal the form appears to be the only means to prove out-of-scope activities, while in other Member States the form is seen as a *possible* means for avoiding the potentially quite time-consuming recording of out-of-scope activities retrospectively via a digital tachograph (which allows the retrospective recording of activities). Enforcement authorities from the Netherlands expressed in the CORTE enforcement meeting that they do not require any proof for out-of-scope activities that go back to before the last daily or weekly rest, referring here to Article 6(5) of the Regulation, which states that a driver is required to record his non-driving activities (such as 'other work' or driving an out-of-scope vehicle) "*since his last daily or weekly rest period*" – a point that is also noted by Norway in the questionnaire responses. In Slovenia it therefore appears to have been made clear that such forms are required for national drivers only, while non-national drivers can also provide other proof.

The use of the form of attestations is topic of Guidance Note 5, which is further discussed in Evaluation Question 4 (see Section 6.4).

5.5 Supporting measures

In accordance with **Article 22(4)** of Regulation (EC) No 561/2006, the European Commission shall support dialogue between Member States concerning national interpretation and application of this Regulation through the Committee on social rules in road transport. The Committee was established to serve as a forum for Member States, the Commission and the EU stakeholders to examine the cases of diverging understanding, application and enforcement of the provisions. It has resulted in the publication of eight **Guidance Notes** on implementation and enforcement. Guidance notes provide comments on certain provisions of the Regulation with the aim to improve efficiency, effectiveness and consistency in the enforcement of these rules across the EU. Further six **Clarification Notes** have been published regarding the application and implementation of a number of provisions of Regulation (EC) No 561/2006, as well as a Commission Recommendation on guidelines for best enforcement practice concerning checks of recording equipment to be carried out at roadside checks and by authorised workshops (**2009/60/EC**). Evaluation Question 4 (see Section 6.4) that assesses how these clarifications have improved the legal certainty of the rules and their uniform application. Annex A, Section 9.4, provides an overview and short description of the available Guidance and Clarification Notes. Information on the uptake of the guidance provided in the Notes across the Member States is not available as no official reporting requirement exists.

The Commission also co-financed **TRACE** (Transport Regulators Align Control Enforcement), which aimed to develop a harmonised training format for enforcers. This was in recognition of the need to improve the consistency between approaches to conducting controls and to the training of control officers. Its main output was the manual containing simplified explanations and guidance on the application of the main provisions of Regulation (EC) No 561/2006. Responses to this study's questionnaire showed that out of 25 responding national enforcement authorities, eight authorities²⁷ had partially taken up TRACE, eight²⁸ had completely taken up TRACE, three²⁹ did not take it up and six³⁰ respondents did not know. Annex A, Section 9.4.2 provides a more detailed overview of the responses obtained in this study's stakeholder consultation and also shows the respondents view on the impact TRACE has had on the effectiveness on enforcement activities. The effectiveness of enforcement measures is furthermore explored in Evaluation Question 6 (see Section 6.6).

²⁷ National enforcement authorities from BE, CY, DE, GR, HU, PL, SE, SI

²⁸ National enforcement authorities from CZ, LT, LU, LV, NL, NO, RO, SI

²⁹ National enforcement authorities from BE, CH, HU

³⁰ From national enforcement authorities from CR, EE, FI, LU, SI, SK

Another EU co-financed project called **CLOSER** (Combined Learning Objectives for Safer European Roads) is currently ongoing, and aims to contribute to further enhancement and harmonisation of enforcement and compliance with the social rules in road transport.

Furthermore, the rules of the Court of Justice of the European Union that pertain to earlier legislation remain relevant as guidance on key provisions carried over into the current legislation³¹.

³¹ http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/doc/european-court-judgements.pdf

6 ANSWERS TO THE EVALUATION QUESTIONS

This section sets out in turn, analysis for each of the evaluation questions presented under the general evaluation headings of effectiveness, relevance, efficiency, coherence and EU-added value.

6.1 *Relevance: To what extent a set of uniform rules for drivers' work organisation and their uniform enforcement is a relevant and proportionate tool to address the risks of the sector?*

To what extent a set of uniform rules for drivers' work organisation and their uniform enforcement is a relevant and proportionate tool to address the risk, identified at the time, of:

- a) an unlevelled playing field for drivers and transport operators;
- b) deterioration in the driver's working conditions;
- c) deterioration in road safety?

The evaluation of relevance first considers whether the adoption of a uniform set of rules and their uniform enforcement was relevant and proportionate to address the risks identified at the time. Consideration is also given to whether these specific risks are still relevant today and will still be relevant in the future.

The analysis is presented in three sub-sections according to the three risks identified in the evaluation question.

6.1.1 *The risk of an unlevelled playing field*

The social legislation was adopted in order to address the risk of an unlevelled playing field arising due to the ineffective and uneven enforcement of the previous legal framework (as discussed in Section 3.2). Uniform and effective enforcement is needed, since non-compliance gives undue competitive advantage to those breaking the law (ETSC, 2011).

The rules were therefore directly relevant to the identified problem, since they aimed to define minimum requirements for enforcement across all Member States – thereby ensuring a level playing field and safeguarding fair competition between undertakings. The proportionality of this approach is confirmed by the form of the problem itself, which by definition is a matter of public policy that (i) transcends national boundaries, and (ii) may not be the first priority of the industry in every situation, particularly in conditions of harsh competition.

However, the road social legislation directly addresses the general risk of unfair competition only to a limited extent, because other factors (as reviewed in Section 5.1) are the main causes for an unlevelled playing field in the road transport sector. Importantly, there are considerable cost differentials among EU Member States - especially in terms of wage levels and taxes - that create unequal market conditions. In addition, market competition in the road transport sector has become increasingly intense due to various developments that are external to the social rules (including in particular the enlargement of the EU and the economic downturn).

This means that the external factors that contribute to the risk of non-compliance and distorted competition have intensified compared to the situation when the rules were adopted – these developments are reviewed in detail in Evaluation Question 9 (see Section 6.9). This implies that there is a greater need to guard against an unlevelled playing field, since more intense competition gives rise to additional pressure for transport operators to look for ways to reduce their costs - including through infringing the road social legislation.

Numerous reports have identified the risk of conflicts of interest between respecting driving and working time rules and the commercial pressures faced by companies to reduce their costs, e.g. (OSHA, 2010); (ETSC, 2011); (TRT, 2012); (AECOM, 2014b); (Broughton et al, 2015). This strongly suggests that in the absence of the clear and fair rules and their effective enforcement, the problem of an unlevelled playing field would be greater.

These developments can also be considered along with the fact that ensuring fair competition has been an important part of the EU's work ever since it was set out in the Treaty of Rome in 1957. Therefore, the identified problem of an unlevelled playing field that the social legislation seeks to address is still a clear concern and the road social legislation can be seen as a necessary part of a wider, comprehensive framework to address the risk of uneven competition arising in the road transport market.

In conclusion, driving and working times are not the only elements that affect a level playing field. An unlevelled playing field can emerge from more general market conditions, such as the cost differentials between Member States (especially in terms of wage levels and taxes). In addition, intensified competition has created downward pressures on profits and wages, which further exacerbates the risks of an unlevelled playing field. These developments demonstrate that without the social rules, there would be an even higher risk of an unlevelled playing field arising from divergences in (or excessive levels of) driving and working times. Hence, the road social legislation can be considered relevant and proportionate to target the risks that are controllable within its scope.

6.1.2 The risk of deterioration in the drivers' working conditions

A second risk identified at the time of adoption was the possible deterioration in the social and working conditions of drivers. Improved compliance with the road social rules (ensured through better enforcement and clearer provisions) was expected to address this issue (see Section 3.2 for a more detailed discussion).

The road social legislation targets specific factors that contribute to overall working conditions – as discussed Evaluation Question 11 (see Section 6.11) – which are mainly related to working hours and resting periods, which have direct impacts on drivers' fitness for driving, the fatigue and stress to which they are subject, and subsequently their health and safety.

In this regard, reports on the status of the sector indicate that the potential risk factors to drivers working conditions are increasing, which in turn indicates the continued relevance of the problem today. For instance, Tassinari et al (2014) highlighted continued issues of above-average levels of long, atypical and irregular working hours reported by professional drivers when compared to other sectors, demonstrating that high levels of protection are needed to prevent further deterioration of their working 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). There are also further knock-on consequences of drivers' fatigue, which is found to be associated with various adverse health effects such as cardiovascular diseases, retirement on grounds of disability, subjective fatigue and chronic sleeping problems (Broughton et al, 2015). Other studies find that lack of sleep is associated with health problems such as diabetes, hypertension, cardiovascular diseases, obesity and increased cholesterol (although the causal links are not clear) (Energy Institute, 2014). 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 (Broughton et al., 2015) (TRT, 2013), (Lodovici et al., 2009).

Overall this shows that the problem is still relevant today, and the factors affected by the social legislation (mainly related to issues of fatigue and stress and to the drivers' health and safety) constitute important parts of the overall spectrum of issues. By providing a legislative discipline for driving and rest times, EU social rules directly affect risk factors of fatigue and stress and is therefore considered a fully relevant and proportionate tool to address the risk of deterioration of working conditions regarding excessive working and driving times, and insufficient rest periods.

As will also be discussed in Evaluation Question 11 (see Section 6.11), there are a host of factors outside the scope of the social legislation that contribute to the overall working conditions of drivers – including lack of promotion opportunities, congestion, fear of violence, unsafe vehicle conditions, exposure to dangerous chemicals, poor road or weather conditions and others. As such, the social legislation cannot be a relevant tool to

address all risks, since it mainly targets the working and driving time, but these are nonetheless extremely important issues in the overall picture.

Related to the scope, there are several aspects of working conditions that are indirectly related to the social legislation – i.e. they are not controlled within its scope but may interact with the social legislation to have an impact on working conditions. In particular, various reports note that working conditions have deteriorated with respect to issues such as inadequate resting facilities, long periods of work away from the drivers' home base, difficult work-life balance and increasing time pressure (European Parliament, 2014), (TRT, 2013), (ETF, 2012). The interaction of these variables with the social legislation and their impact on working conditions is covered in Evaluation Question 11 (see Section 6.11).

In summary, the social legislation is a means to contribute to improving the working conditions of drivers in several specific and important areas, but it still needs to work in concert with other legislation to ensure the adequate coverage of all dimensions of working conditions. Moreover, as discussed above, the intensified competition and developments in job demands in the sector suggests that without the road social legislation, there would be an even greater risk of deterioration of drivers' working conditions.

6.1.3 The risk of deterioration in road safety

A third key area was linked to the possible deterioration in road safety due to drivers' fatigue, which represents a risk factor for accidents, in particular when it is caused by long working hours and sleep restriction (Smolarek and Jamroz, 2013).

Driving is highly susceptible to fatigue because it involves many of the skills that are impaired by fatigue, such as vigilance (DfT, 2014). Numerous studies provide strong evidence linking fatigue of drivers to increased accident risks (ETSC, 2011), (SWOV, 2011), (Smolarek and Jamroz, 2013), (Stutts et al, 2003), (Knauth, 2007). This demonstrates the relevance of the social rules as a means to ensure road safety. Although the typical representation of fatigue in official road accident statistics may be around 3% or less, the actual contribution of fatigue is hidden by systematic under-reporting (Aworemi et al., 2010)³².

Evidence from the literature suggests that in the absence of the road social rules, the problem of fatigue among drivers should be expected to be considerably worse. Indeed, there are numerous reports of drivers continuing to drive despite excessive self-reported levels of fatigue (ETF, 2012); (Broughton et al., 2015); (Goldenbled et al, 2011); (Fourie et al, 2010).

The pressures are equally relevant to goods and passenger transport:

- **For drivers of goods vehicles**, there is pressure to deliver goods to schedule - if they fail to meet such schedules the transport operator may have to compensate the client for delays incurred (ETSC, 2011). This situation encourages drivers to flout the rules in relation to rest times so that they can deliver on time and remain competitive (ETSC, 2011).
- In the **passenger transport sector**, fatigue is considered a problem both for coach drivers (due to long driving distances on motorways) and bus drivers (given the amount of distractions and high level of concentration needed) (DfT, 2014). Pressure often comes from the passengers who may not understand why their driver needs to take scheduled breaks and may require compensation (SVBF, 2015).

All of this has clear implications for road safety – both of the drivers themselves and other road users (due to the higher mass of HGVs and buses/coaches, accidents tend to be more serious and most of those killed are other road users (ETSC, 2013); (Panteia, 2014)). This demonstrates that continued regulation of working and driving times, along with rules requiring effective enforcement, are still fully relevant to directly addressing risk factors of

³² For example, where it is not conclusive that fatigue was the cause the accidents may be recorded as some other factor (e.g. inattention). Drivers may also not be willing to admit to fatigue in case this constitutes reckless driving etc

fatigue and stress, which in turn are important to ensure a high level of road safety. The rules can be considered proportionate when looking at the risks involved, especially the fact that collisions that are caused by fatigue are usually more severe than other types of accidents and that a greater proportion of them are fatal (Åkerstedt and Haraldsson, 2001). In addition, professional drivers undertake more long journeys, drive more often under time pressure and are more likely to carry out distracting tasks while driving (ETSC, 2011).

At the same time, many important factors that influence fatigue are not covered in the road social legislation. For example, it is not just the amount of sleep but also the quality of sleep that is important, as it has a direct effect on alertness and the ability to drive a vehicle safely (Hanowski et al, 2003); (ETSC, 2011). Medical aspects – in particular, sleep-related disorders that are prevalent among commercial drivers – can also reduce the quality of sleep for some drivers even if they have appropriate time and place to rest (Hakkanen et al, 2000). Irregular sleep schedules between work periods have been found to generate long episodes of staying awake (Philip et al, 2002).

The increased risk of fatigue is influenced by a combination of other factors - in isolation, a set of simple limits on work and rest hours cannot take into account the impact on fatigue of operational factors such as differences in workload (e.g. the number of times a driver has to unload per shift), working conditions (e.g. driving in fine conditions versus icy conditions), and personal factors, such as age, health, and domestic and social activities (Fourie et al, 2010). All of this also points to a need to consider factors outside of the scope of the social legislation in order to provide comprehensive protection from the impaired performance caused by fatigue.

6.1.4 Summary and conclusions

This Evaluation Question has analysed whether a set of uniform social rules is a relevant and proportionate tool to address the three risks of: 1) an unlevelled playing in the transport market, 2) deterioration in social and working conditions of drivers and 3) deterioration in road safety levels. For all three risks, it is concluded that the social legislation is a relevant and proportionate tool. This is due both to the nature of the risks – which arise from uneven and ineffective enforcement, and hence by definition can only be addressed by uniform rules transcending national boundaries – as well as developments in the market that make it more important than ever to control the risks, which have intensified compared to the situation when the legislation was first adopted.

In particular, market competition in the road transport sector has become increasingly intense and this exacerbates the risk of non-compliance by undertakings or drivers who are under greater pressure to remain competitive. This means that the external factors that contribute to the risk have intensified compared to the situation when the rules were adopted, which in turn implies that there is a greater need to guard against them. In the absence of the rules and their effective enforcement, there would be greater problems of an unlevelled playing field, as well as deteriorating working conditions and road safety.

For all three risk areas, it was also identified that the road social legislation targets only part of the full spectrum of factors that contribute to the risks and problems, showing that the rules need to work in concert with other legislation in order to provide comprehensive coverage.

6.1.5 Recommendations

The road social legislation is valuable because it provides unambiguous upper limits within which organisations must work. Although it is clear that the current scope of the road social legislation does not include many relevant factors, it is also clear that the best approach to deal with these risks may not necessarily be to try to incorporate them into the working and driving hours rules.

One approach is to consider that the rules should be complemented by flexible instruments that manage risks at a level appropriate to the specific needs of the operators/drivers serving different industries and customers. Examples of these other instruments that have been suggested include: awareness-raising, voluntary commitments and in-vehicle fatigue detection and warning systems (ETSC, 2011); (Fourie et al, 2010). A small number of

proactive operators use additional strategies, such as fatigue management training and education for drivers, to enhance the extent to which the operation is protected from fatigue risk (Fourie et al, 2010).

Best practice examples indicate the use of fatigue risk management systems, which take hours of work limits as a basis but apply multiple layers of control rather than relying on a single approach (Energy Institute, 2014). Accordingly, hours of work limits should be supported by additional layers of defence against fatigue using risk-management approaches that are customised to reflect the nature of the industry/operations (Energy Institute, 2014).

Looking at the regulatory approaches taken in other sectors could also be informative. For instance, the Railways and Other Guided Transport Systems (Safety) Regulations (ROGS) require train companies to make arrangements to ensure train drivers do not drive or carry out other safety critical duties when they are fatigued.

The study team therefore recommends that further work should investigate the optimal tools that could be used to address risk factors outside the current scope of the social rules, in order to better support the achievement of their overall objectives.

6.2 Relevance: Is the current scope of application of the legislative framework relevant in the context of the road transport market developments?

Is the current scope of application of the legislative framework (including a system of exemptions and national derogations) relevant in the context of the road transport market developments, including modern complex employment arrangements? If not, what are the points of concern and why?

This evaluation question assesses whether the scope of the road social legislation is still relevant in the context of market developments. The analysis is presented in three subsections according to the different aspects of the scope regarding: vehicles and transport operations; drivers; and allowed exemptions and derogations.

6.2.1 Scope regarding vehicles and transport operations

The scope of road social legislation in terms of vehicles and transport operations covered is defined in Article 2 of Regulation (EC) No 561/2006. The legislation applies to "carriage by road" of:

- i) Goods where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 3.5 tonnes, and
- ii) Passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.

The scope of Directive 2002/15/EC is directly and explicitly linked: Article 2(1) of the Directive specifies that the Directive applies to 'mobile workers participating in road transport activities covered by Regulation (EC) No 561/2006'. The following sections discuss the scope of goods and passenger vehicles in turn.

6.2.1.1 Goods vehicles

The scope of the social legislation includes vehicles exceeding 3.5 tonnes, which essentially covers all goods vehicles except light commercial vehicles (LCVs, or vans). Hence, the relevance of the scope is analysed by considering whether it is still relevant and proportionate to exclude vans, given the market developments to date.

A specific concern is that vans represent an increasing number of vehicles on the road – and hence an increasing number of drivers (ETSC, 2014). It is therefore worth considering whether vans should be included in road social legislation by looking at the relevance of its objectives to this segment, in terms of safety, working conditions and alleviating competitive distortion.

Per kilometre travelled, the safety of vans is generally better than that of the entire vehicle fleet (ETSC, 2014). Despite this, there has been an increase in accidents recorded in some countries in recent years (Belgium, Germany, Spain) – partly due to the design of the types of vans typically used for deliveries and the type of drivers employed (often less experienced or without necessary professional training). The main contributory factors to safety risks of vans therefore include many things outside of the scope of the social legislation – in particular, driver training, roadworthiness, speed limiters, load securing etc. As such, it is not clear that the social legislation is the most relevant tool to address the safety risks of vans.

There is also mixed evidence as to the extent to which fatigue is a problem for van drivers in Europe. For example, an investigation in the UK found that van drivers are 23% more likely to be fatigued in crashes compared to other road users; however, when viewed relative to their share in the fleet there were fewer van drivers assigned to fatigue-related contributory factors than would be expected (AXA, 2014). Data for Germany show that

fatigue is a contributory factor to van collisions in 4% of cases on motorways³³ (compared to 6% for cars) and in 1% of cases on rural roads (the same proportion as cars) (VDA, 2010).

Yet, considering that Member States have typically implemented their own national drivers' hours restrictions for vehicles <3.5t, which are typically based on the limits established in the road social legislation (Danklefsen, 2009), the relevance of explicitly extending the rules to vans as a means to reduce fatigue seems limited. Indeed, in some Member States the national rules for vans are even stricter than for HGVs³⁴. In fact, levels of fatigue as a whole are similar for LGV drivers and HGV drivers, despite the fact that EU drivers' hours rules apply to HGVs and are enforced by tachographs whereas only domestic hours rules apply to vans with less stringent enforcement (due to the absence of tachographs on vans) (Danklefsen, 2009). The data also suggests that for drivers of vans it is common for the fatigue to have occurred **without exceeding the regulated hours limits** (Danklefsen, 2009) – meaning that it is not necessarily excessive driving and working times that are the most important underlying causes of fatigue. Rather, the more important root cause of the fatigue of van drivers seems more clearly linked with the demands of the job such as the pressures of keeping to schedules, increasing traffic, and a higher proportion of drivers' working time taken up by non-driving activities (ETSC, 2014). ETSC (2014) report that competition in the transport of goods using vans and a relative lack of regulation (in general, not pertaining to social legislation in particular): *"has led employers to bypass rules, and this has affected the working conditions of van drivers"*.

In summary, extending the social legislation to cover vans will not address all of the safety risks pertinent to these vehicle types. However, given the increasing share of such vehicles on the roads and the competitive pressures that the drivers are subject to, application of the road social legislation may contribute to reducing the health and safety risks, especially if this is done in concert with the extension of other legislation such as driver training.

6.2.1.1 Passenger vehicles

In the passenger transport sector, the scope of the legislation excludes vehicles that carry fewer than nine persons including the driver – i.e. drivers of smaller segment vehicles, such as taxis, car hire vehicles, or company car vehicles. Such drivers frequently face fatigue issues due to extended driving and/or working hours (RoSPA, 2001) (Lim, 2015).

It may therefore be argued that extending the rules to these smaller vehicle classes is relevant. However, the impact of fatigue on the concerned drivers' safety (or road safety in general) is likely to be less significant compared to bus or coach drivers, for the following reasons:

- Concerned drivers predominantly operate in urban environments where the risk of falling asleep is lower (RoSPA, 2001) and travelling speeds are lower;
- The respective vehicles are, per definition, lower capacity and lower vehicle mass; as a result, the severity of accidents tends to be lower (since the kinetic energy of the vehicle is smaller) (Panteia et al, 2014).
- Many drivers have work breaks that interrupt their driving, end their shift at their home base, and sleep in their own beds at night (ILO, 2005).

At the same time, various studies over the years have revealed a lower level of concern among taxi drivers with regard to sleepiness and driving risk – in part due to lower awareness, as well as risk-taking behaviour or optimism bias concerning their ability to

³³ Whereas speeding is identified as a factor in 31% of cases

³⁴ For example, Austria applies more stringent requirements (max. 8 hours per day instead of 9). In Germany the requirements for LGVs between 2.8 tonnes and 3.5 tonnes maximum authorised weight are the same as for heavy goods vehicles but the requirements for lighter LCVs of up to 2.8 tonnes are more stringent than for HGVs (similar to Austrian LCV requirements) (Danklefsen, 2009)

drive fatigued (DaCoTa, 2012), (ILO, 2005). This suggests that a proportionate tool (rather than applying strict regulations) is to raise awareness in the relevant sectors.

The working times of employed taxi drivers are subject to the general working time rules (Directive 2003/88/EC). At the same time, self-employed taxi drivers remain outside of the scope of this Directive which also only concerns working time rules as opposed to driving time. Only some Member States, such as Austria, have opted for national collective agreements that also regulate the driving times (in Austria, these are largely in line with Regulation (EC) No. 561/2006) (WKO, 2009). As such, also the UK Society for the Prevention of Accidents believes that a review of the driving and work hours of drivers of taxis and private hire vehicles should be conducted to see whether a better protection of taxi drivers is relevant. It is argued that many such drivers work very long shifts, and possibly have more than one job, so work a shift as a taxi driver after completing a shift in some other job. It is also argued that even though these drivers do not drive for all of their shifts and may in fact spend more time waiting for fares than actually driving, it is unlikely that they are getting good quality rest during these 'waiting' periods. Furthermore, taxi and private hire vehicles take long distance fares, and sleep-related crashes can occur. If accidents happen on urban roads, there is furthermore a higher likelihood that pedestrians or other vulnerable road users (i.e. cyclists) are involved. (RoSPA, 2009)

Quantitative evidence relating to the level of fatigue among drivers of passenger transport vehicles outside the scope of the social rules could however not be identified. Similarly, specific trends in accidents for such vehicles was not available - most data sources do not distinguish between regular passenger cars and taxi/car hire vehicles (e.g. (ADAC, 2015) or (CARE, 2015)), and so no conclusions concerning the taxi/car hire market specifically can be derived.

On the one hand, the risks affecting the drivers of taxis and private hire cars appear lower than for drivers that are already in-scope of the road social legislation. Also, stakeholder responses do not suggest significant demand from stakeholders to include the category of smaller passenger transport vehicles. While some drivers of taxis and private hire cars may still be subject to the provisions of the general Working Time Directive or even more comprehensive provisions set out on the national level, the extent of coverage of these drivers is unclear.

On the other hand, the fact that risks appear lower does not mean that they are negligible. Any quantitative evidence of such risks and their extent could however not be identified, but literature suggests that there are some specific risk factors that also lead to high levels of fatigue among drivers of taxis and private hire vehicles.

It is therefore concluded that, as a first and most proportionate tool, awareness-raising or codes of conduct would be a good first step to mitigate risky behaviour among these drivers. If this approach proves inadequate then more stringent rules such as the social legislation could be considered.

6.2.2 Scope regarding drivers

The scope of Directive 2002/15/EC in terms of drivers is all "employed" mobile workers. Since March 2009 this also includes self-employed drivers. This is in contrast to the more general working time rules (as set out in the Working Time Directive (2003/88/EC)) that do not apply to self-employed persons in order to guarantee their own entrepreneurial freedom (EC, 2008c). As described in more detail in Evaluation Question 17 (Section 6.17) the scope of Directive 2002/15/EC in terms of drivers is therefore in line with the scope of Regulation (EC) No 561/2006, which has covered all drivers since its entry into force.

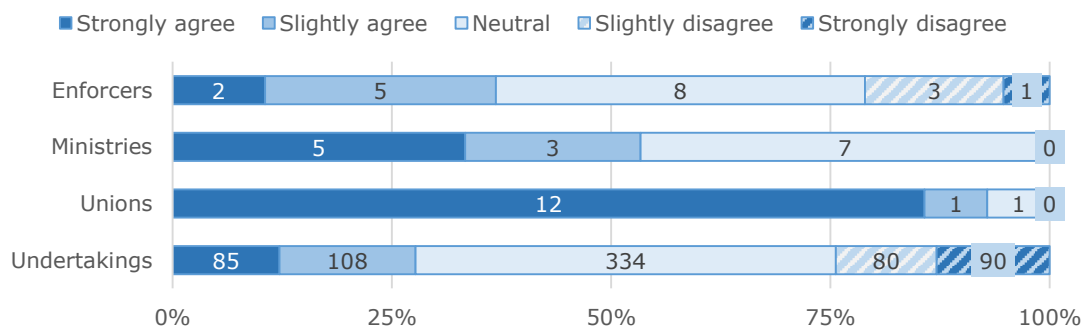
The overall disadvantages and advantages of inclusion or non-inclusion of self-employed drivers within the scope of the Directive 2002/15/EC were seen to be mixed (EC, 2008c): On the one hand, working time rules were seen as having positive impacts on health, safety

and working conditions of drivers. On the other hand, working time rules were also seen to bring negative side-effects, such as loss of salary, shortage of drivers and increase in costs. This would be especially relevant in case of self-employed drivers whose entrepreneurial advantages lie in being able to make their own decisions concerning working time. However, as stated in Section 5.4.1, prior to 2009 it was observed that companies within the EU-15 had started to convert workers' contracts to "false self-employment", hereby undermining the objectives of Directive 2002/15/EC and endangering the health, safety and working conditions of the concerned drivers. Extending the scope to self-employed drivers was seen at the time to be a relevant and proportionate means to mitigate such developments. Given the increasing cost pressure on transport undertakings that incites (false) self-employment in order to cut labour costs – a phenomenon that was increasingly observed for example in France, after the financial crisis (see Section 5.1.4) – the inclusion of self-employed drivers can still be seen as a relevant measure to avert driver's fatigue resulting from working excessive hours.

In more recent years, above-mentioned cost pressures in the transport sector have also led to an increased use of complex employment arrangements, such as (cross-border) sub-contracting chains or temporary contracts (see Section 5.1.4). While in such settings the argument concerning the positive impact of the rules on health, safety and working conditions of drivers remains relevant, the enforcement of the rules becomes increasingly challenging. Maintaining correct records of working time is already in case of 'simple' self-employed difficult to prove. For (cross-border) sub-contracting chains, the retracing and proving of a drivers activities over longer periods of time is all the more difficult. Also, more generally, simply identifying the employing companies and carrying out checks at their premises becomes difficult (as highlighted by Swedish and Belgian enforcement authorities in this study's stakeholder questionnaire). As such, drivers under these employment arrangements are at higher risk of infringing the rules – whether this may be in their own interest, in the interest of the employer or unintentionally (e.g. due to a lack of record keeping and the ability to retrace their activities). The scope of road social legislation in terms of covering all concerned drivers is therefore all the more relevant today.

Figure 6-1 shows the views of the different stakeholder groups that were consulted for this study on the topic. While not more than 25% of any stakeholder group sees road social legislation to be inadequate in view of modern employment structures, opinions as to whether they are actually adequate are mixed. Unions show the clearest agreement, which is likely to reflect the relevance of working time rules with regards to ensuring the health, safety and adequate working conditions of drivers. However, national authorities are more reserved, which is likely to stem from the difficulties in enforcement, as raised by the Swedish enforcement authority and also supported by the Belgian enforcement authority (see above). The latter also commented that cross-border employment by foreign companies became "the rule". As a result, authorities are increasingly dependent on the cooperation of the relevant authorities in other Member States.

Figure 6-1: Response by different stakeholder groups to the question: In your opinion, is the current road social legislation adequate in view of changing employment structures?



Source: Stakeholder questionnaires

In summary, the scope of road social legislation to include self-employed drivers appears to be still relevant today. The needs of such drivers in terms of health, safety and working conditions are the same as for employed drivers. However, cost pressures combined with the high probability that non-compliance remains undetected puts them at a higher risk of infringing the rules.

The same argument applies to drivers subject to complex employment arrangements (such as temporary contracts and/or (cross-border) subcontracting chains), whose activities are difficult to retrace for enforcement authorities. Also here, the risk of infringing the rules is comparatively higher with adverse effects on their health, safety and working conditions. Consequently, their coverage under the road social legislation is relevant today.

6.2.3 Scope of exemptions

Regulation (EC) No 561/2006 contains specific **exemptions** (in Article 3) – this defines nine types of vehicles/ their types of uses for which the Regulation does not apply.

Exemptions refer to very specific vehicles or transport operations for which competitive pressures on the activity of driving can be considered as insignificant since they fall into one of the following categories of vehicle types (as discussed in more detail in Evaluation Question 5):

- **Vehicles of very specialist nature** (e.g. vehicles with a maximum authorised speed of less than 40 km/hr (Article 3(b)), vehicles with a historic status (Article 3(i)) that are typically very rare (see for example RSA (2009)).
- **Vehicles carrying out operations in the public interest** (e.g. emergency services or fire services (Article 3(c)), in emergencies or rescue operations (Article 3(d)), specialist vehicles used for medical purposes (Article 3(e)) or for non-commercial purposes (Article 3(h)).
- Vehicles covering **short distances travelled** or that operate within the restricted areas (e.g. Article 3(g) - vehicles undergoing road tests for technical development, repair or maintenance purposes).

Given these definitions of exemptions, the extent to which concerned vehicles are subject to competitive pressures can be seen to be very limited. Also, there are no market developments that could be identified to have significant impact on the scope of the exemptions or their adequacy. However, two specific exemptions are worth further discussion:

Concerning **Article 3(a)** that exempts vehicles used for passenger transport with routes not exceeding 50 kilometres, there were relevant developments in terms of deregulation of the market (see Evaluation Question 5) that introduced competitive pressures in the market. However, such developments had already taken place before 2007 which allowed the introduction of Article 15 in Regulation (EC) No 561/2006. It obliges Member States to “ensure that drivers of [these] vehicles are governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods”. With this addition, the potential adverse effects of this exemption on the achievement of the objectives of road social legislation were mitigated. The scope of Article 3(a) can therefore still be seen to be adequate.

Concerning **Article 3(f)** that exempts specialised breakdown vehicles, a potential loophole has been identified: According to authorities from Denmark and Belgium³⁵ specialised breakdown vehicles can be acquired and used for other means of transport. The Danish police report cases of this occurring however, the extent of this practice is not known.

It can be noted that the drivers exempted from the driving time regulation would still be subject to the working time rules, as set out in the Working Time Directive (2003/88/EC) where they are not self-employed.

³⁵ respectively via their survey response and during a study visit

6.2.4 Scope of derogations

Regulation (EC) No 561/2006 provides also in its Article 13 for specific national derogations from the driving times and rest periods (Articles 5 to 9 of the same Regulation) provided the transport/drivers concerned meet either of two main conditions:

1. Either: That they are restricted to those elements that are **not subject to competitive pressures**. Since the absence of competitive pressures means that there is less pressure for excessively long driving times, the Regulation was considered less relevant than the more general working time rules for mobile workers in Directive 2002/15/EC, which still applies to all drivers that are derogated from Regulation (EC) No 561/2006 (see Evaluation Question 17, Section 6.17 for a further discussion).
2. Or: That the transport concerned **is limited in terms of scope and/or geographical area**. The extent of such derogations should be reduced to a minimum and justified only on account of their light weight or size, short distance travelled, or public interest (European Commission, 2001a).

As such, if these conditions are still satisfied the scope of the derogations can be seen to be still relevant – moreover since the working time rules for mobile workers (Directive 2002/15/EC) which limit the overall working time and therefore the level of fatigue of a driver (or a worker that carries out driving as ancillary activity) still apply. In the following it is therefore assessed whether the two conditions above are still satisfied, given ongoing market developments.

For most (15 out of 17) derogations the nature of the activity clearly remains non-competitive or limited. The derogations can therefore be seen to be still relevant and adequate today (discussed further below).

For four of these derogations, driving is only an **ancillary activity** to the main activity of the driver or the business, meaning that it is typically carried out over shorter times and unlikely to be directly subject to competitive pressures. This in turn means that the application of the Regulation would likely be an excessive (disproportionate) tool to manage their driving time as compared to the working time rules (Article 13(g) - vehicles used for driving instructions; Article 13(j) - vehicles that transport circus or funfair equipment; Article 13(k) - vehicles with the primary purpose of acting as an educational facility when stationary; Article 13(m) - vehicles transporting money). No complaints or issues with the use of these derogations were raised by consulted stakeholders or found in the literature.

Nine other derogations are, per definition, **limited in their geographic reach**. As a result, services are provided only locally, have minor impact on the market and driving is, as a result, frequently an ancillary activity only (Article 13(b) – agricultural vehicles within a radius of up to 100km, Article 13(c) - agricultural tractors within a radius of up to 100km; Article 13(d) - vehicles by universal service providers within a 100km radius; Article 13(e) – vehicles operating exclusively on islands not exceeding 2,300km²; Article 13(f) – vehicles up to 7.5t propelled by means of natural or liquefied gas or electricity within a 100km radius; Article 13(l) – vehicles used for the milk collection from farms; Article 13(o) – vehicles used exclusively inside hub facilities; and Article 13(p) – vehicles used for the carriage of animals within a radius of 100km).

Two derogations specifically refer to **non-commercial** activities or to activities carried out by **public authorities** (Article 13(a) - vehicles by **public authorities** that “do not compete with private transport undertakings”, Article 13(i) – vehicles for the non-commercial carriage of passengers). As such, they are not subject of competitive pressures and there is less pressure for excessive driving times. Consequently, the objectives of road social legislation are not seen to be in danger.

Concerning **Article 13(n)** that derogates vehicles used for carrying animal waste or carcasses no market developments can be identified that would impact on the relevance of this derogation. As mentioned in Evaluation Question 4, a Belgian enforcement authority raised some uncertainty regarding the wording of the derogation, however, the relevance of the derogation itself was not put into question.

From the above it appears that only the derogation provided in **Article 13(h)** needs to be questioned in terms of its relevance. The article derogates vehicles (such as used in connection with sewerage, water, gas etc.) that were used for the provision of state-controlled services. Many of such activities had however been privatised. Ongoing liberalisation of these markets has resulted in many activities that are today also carried out by private companies, which has resulted in competitive pressures. However, this pressure is more closely related to the main activity of the service provider than to the ancillary activity of driving. As a result, the derogation is seen to be still relevant.

Since 2009, **Article 8(6a)** of Regulation (EC) No 561/2006 furthermore provides a derogation to the resting time provisions for international passenger transport services under specific conditions, called the 12-day rule. The impacts of the 12-day rule were recently assessed in (EC, 2014c). No concrete indication of a real negative effect on road safety was identified and the overall concept of the derogation was acknowledged as valuable - resulting in the Commission not considering it appropriate to propose any amendments to the derogation. As shown in Evaluation Question 3, also stakeholder inputs obtained for this study confirm the continuous relevance of increased flexibility in the passenger transport sector and therefore the 12-day rule.

In summary, the scope of the *existing* derogations can be seen to be still relevant today. Whether the scope of derogations should be extended in order to satisfy the needs of the market is discussed in Evaluation Question 3.

It can be noted that the drivers that are subject to derogations would still be subject to the working time rules, as set out in the Working Time Directive (2002/15/EC).

6.2.5 Summary and Conclusions

This Evaluation Question has analysed whether the current scope of application of road social legislation is still relevant in the context of market developments, including modern complex employment arrangements.

It is concluded that the scope of the legislation is still relevant today. This applies to the scope in terms of the type of vehicles covered, the type of drivers covered, and considering the system of derogations and exemptions. With regards to freight transport vehicles, extending the social legislation to cover vans would not address the most important safety risks pertinent to these vehicle types, but may contribute to reducing them if done in concert with the extension of other legislation such as driver training.

Considering modern complex employment arrangements, it is found that the scope remains relevant today. Concerned drivers are at a higher risk to infringe the rules with adverse effects on road safety and their working conditions. This is because checking and keeping track of activities across multiple employers and/or (cross-border) subcontracting chains over a period of time has become an increasing challenge for enforcement officers and drivers themselves. In the case of cross-border contracting chains, any enforcement activities furthermore rely on the cooperation of (sometimes multiple) national enforcement authorities, which, in practice, appears to hinder effective enforcement (see Evaluation Question 8, Section 6.8, on administrative cooperation between Member States). As this type of employment arrangements has intensified compared to when the rules were adopted, there is today even a greater need to cover the concerned drivers by the social legislation.

6.2.6 Recommendations

The consultants recommend to maintain the current scope of road social legislation as it continues being relevant in the context of market developments. Consideration of the extension of the rules to include other vehicle types (such as vans and taxis) may be relevant, but at the same time the difficulties of enforcing the rules is an important consideration in any cost-benefit analysis, particularly considering that these vehicles do not currently require tachographs. From the analysis above it is not clear that the benefits of extending the rules would be significant and would outweigh the considerable additional efforts, administrative burdens and operational costs that such an extension would entail.

The analysis provided has shown that market developments in terms of employment structures pose increasing difficulties for enforcers, especially in terms of monitoring activities over longer periods of time. Necessary evidence in complex employment structures is difficult to gather and to assess. The consultants therefore recommend to carry out assessments with the aim to identify measures or provisions that have the potential to support the enforcement of the rules under such employment arrangements.

6.3 Relevance: Do the current EU provisions still respond, and to what extent, to the current needs of the freight transport sector? Do they satisfy, and to what extent, the needs of passengers transport sector? If not, which provisions appear not relevant for the sector and why?

Do the current EU provisions still respond, and to what extent, to the current needs of the freight transport sector? Do they satisfy, and to what extent, the needs of passengers transport sector? If not, which provisions appear not relevant for the sector and why?

This evaluation question is concerned with whether the current EU social rules still respond adequately to the needs of the freight and passenger transport sectors. In the following the relevance of the social legislation against these needs is analysed by looking at each transport segment in turn.

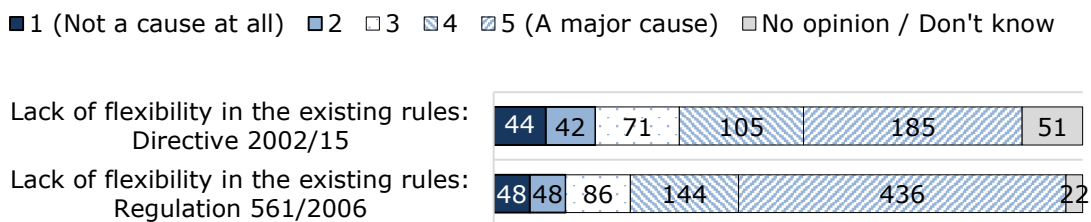
The analysis of responsiveness to the needs of the freight and passenger sectors was conducted through reviewing input from stakeholders via interview and surveys, as well as reviewing complaints put forward to the Commission. In addition, these views were supplemented and cross-checked with desk research.

6.3.1 Responsiveness to the needs of the freight sector

Several industry associations responding to the high level survey (at EU and national level) submitted identical comments indicating that the road transport industry has managed to adapt well to the requirements, and suggested that the rules are good in principle. Yet, when it comes to the practical aspects, the survey of undertakings indicates a mismatch between the needs of the sector and the rules in place. Respondents stated that the two most important factors (out of 17 options offered) that contributed to non-compliance with the rules were: "Lack of flexibility in existing rules and guidelines" and that "Rules do not fit to the specificities of certain transport operations".

More specifically, Figure 6-2 shows that the majority of respondents from the freight sector considered that a lack of flexibility in the rules is a major cause (rating of 4 or 5) of difficulties in compliance (70% for Regulation (EC) No 561/2006 and 55% for Directive 2002/15). The responses indicate that the problems are felt to be more severe for the Regulation (EC) No 561/2006 as compared to the Directive 2002/15/EC.

Figure 6-2: Views of freight transport operators on whether a lack of flexibility in the existing rules leads to difficulties in compliance

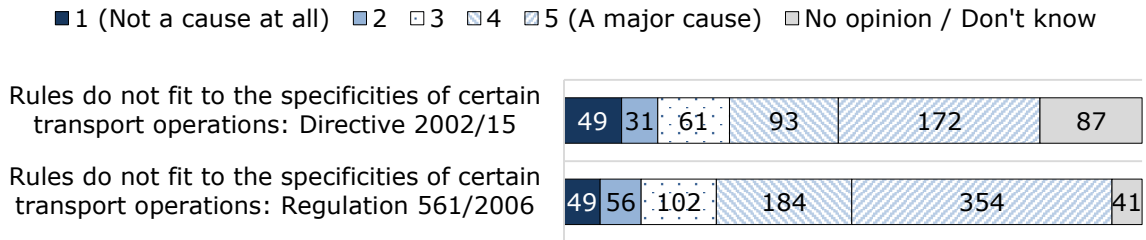


Survey among freight transport operators conducted for this study.

Notes: n=786 for Regulation (EC) No 561/2006, n=498 for Directive 2002/15/EC

Figure 6-3 shows that the majority of respondents (65% for Regulation (EC) No 561/2006 and 54% for Directive 2002/15/EC) rated the fact that rules do not fit the specificities of certain transport operations as significant contributing factor to non-compliance (a rating of 4 or 5). This issue is therefore ranked at a similar level of importance to the lack of flexibility, and again the issues are again ranked more severely for the Regulation as compared to the Directive.

Figure 6-3: Views of freight transport operators on whether the suitability of the existing rules leads to difficulties in compliance



Survey among freight transport operators conducted for this study.

Notes: n=786 for Regulation (EC) No 561/2006; n=493 for Directive 2002/15/EC

The possible reasons for the perceived mismatch between the social legislation and the needs of the sector were explored in more detail via interviews and the surveys. Comments received most frequently alluded to the following problems:

- Congestion, accidents and other unforeseen delays (undertakings from Italy, Sweden and Austria, and industry associations from Ireland),
- Client pressure (undertakings from Sweden and Germany, industry associations from France, Germany and Italy),

These identified issues were present at the time of adoption of the legislation – so the important question concerning relevance is whether the nature of these issues has changed.

Regarding **congestion, accidents and other unforeseen delays**, there have been major changes in the road freight industry in terms of the types of services required, with higher emphasis on just-in-time deliveries, increased road traffic/congestion and faster deliveries (ETSC, 2011). Although some flexibility to meet unforeseen circumstances is foreseen in the rules – such as under Article 12 - the discussion in Evaluation Question 4 (Section 6.4) indicates that such provisions are applied in a non-uniform way, leading to a lack of certainty over how such flexibilities can be used. This suggests that a significant contributor to the root cause of the problem lies in the uneven enforcement and lack of clarity around the rules regarding flexibilities.

Client pressures can also be seen to have increased as a result of the heightened competition in the sector (as previously discussed in Section 5 and Evaluation Question 1). Several industry representatives (from Italy, France and Germany) noted during interviews that the current market conditions put transport companies in a weaker bargaining position and are forced to accept conditions that do not necessarily allow for respect of the social rules. As a French industry association noted: *“Transport contracts are more and more demanding in terms of quality, deadlines, security, but at the same time, they do not reflect the real price.”*. A German association suggested that the problem is partly because clients are not aware of or liable for problems that they cause, such as delays in loading. Although Regulation (EC) No 561/2006 contains provisions on the co-liability of parties in the transport chain that aimed to alleviate client pressures, Evaluation Question 7 (Section 6.7) shows that the enforcement of co-liability remains difficult and is rarely achieved in practice.

The developments of the two above-identified issues therefore suggest that the problems have become more intense, which in turn means that compliance with the rules is more difficult when considering the amount of permitted flexibility has remained the same.

It is worth recalling that the road social legislation allows for a certain degree of flexibility in order to accommodate specific (e.g. unforeseen) circumstances, as well as making allowances for certain operational schedules that would otherwise not fit the rules³⁶. In the

³⁶ For example, Article 12 allows drivers to deviate from the rules to find a suitable stopping place. Flexibilities that may accommodate various operation schedules are, for example, provided in

Commission's Proposal for a Regulation (European Commission, 2001a), it is made clear that the rules seek to combine uniformity of the rules of basic provisions with a "considerable flexibility", all while ensuring the enforceability of the rules.

However, ensuring the right degree of flexibility, while not undermining the objectives of enhancing working conditions, safety and health of drivers, has proven to be challenging. Industry representatives have typically advocated for increased flexibility in the rules (e.g. (IRU, 2005), (SKAL, 2013)). Flexibility in the rules is seen to be crucial for carrying out efficient road transport operations – whether this concerns the passenger or freight transport sector (IRU, 2005). The industry view put forward in the literature is largely supported by this study's stakeholder consultation: around 80% of responding undertakings stated that additional flexibilities in the rules were needed.

The view from industry is not only built around the cost-effectiveness of operations and customer satisfaction, but also around the argument of drivers' working conditions: it is argued that a lack of flexibility in the provisions on resting times has adverse effects on working conditions, as they result in drivers being forced to spend their rest away from home (SKAL, 2013) (BDO, 2015). This, in turn, undermines the legislation's objectives with regards to the health and safety of drivers.

The identified literature suggests that **drivers** also perceive the rules as being too inflexible given the unpredictable nature of the drivers' work (Gron, 2009); (SKAL, 2013). This view seems to be supported by the drivers interviewed for this study: out of the 22 responding drivers engaged in the freight transport sector, 15 (or almost 70%) stated that inflexibility in the rules (e.g. to account for specific traffic conditions) was a cause of non-compliance. A further issue highlighted is that drivers may be forced to spend rest periods away from home even if they are only a short distance away, which is undesirable in terms of stress and job attractiveness (Gron, 2009); (SKAL, 2013).

A survey of German drivers (ZF Friedrichshafen, 2014) suggests that views of drivers diverge according to the type of work they carry out. The study (based on more than 2,000 interviews, mainly with German drivers) finds that short-distance and regional transport drivers are much more satisfied with the provisions of Regulation (EC) No 561/2006 than their colleagues from the long-distance transport segment. As a result, while long-distance transport drivers would like to see more flexibility for driving times and rest periods (provided that the total fortnightly driving time is not exceeded), short-distance and regional transport drivers rather disagree that such increased flexibility is desirable. On the basis of 30 expert interviews (with a diverse range of stakeholders) the same study reports that many experts propose greater flexibility with the structuring of driving and rest times and that particular criticism is levelled at the long rest times amounting to eleven hours during on-the-road deployments. Individual experts therefore specifically proposed to set up a flexibility framework for rest periods between eight and eleven hours, without increasing the weekly driving times.

However, the above-cited study also stresses that not all experts shared this view. Among **enforcers**, there is a particular concern that employers will exploit the flexibility in the framework to their own ends. These views are also reflected in the response of enforcers to this study's survey: Only 4 out of 17 (or 20%) enforcement authorities responding to this study's respective questionnaire think additional flexibilities should be introduced.

In line with this view, only around 20% of enforcement authorities responding to the survey conducted for this study have the view that a lack of flexibility in the rules gives rise to non-compliance. A similar percentage (around 25%) is found among **responding trade unions**. The key concern is that increased levels of flexibility could be abused for the purpose of extending driving times under 'normal' (expected) circumstances. Flexibilities introduced for either unforeseen circumstances or specific operational schedules could become the norm for the whole sector. Views expressed by trade unions in their joint response to the survey also emphasised the need for the rules to apply to the entire road

Article 6(1) - allowing the daily driving time to be extended to 10 hours (if certain conditions are met) - or Article 8(2) - allowing for reduced daily and weekly rest periods (if certain conditions are met).

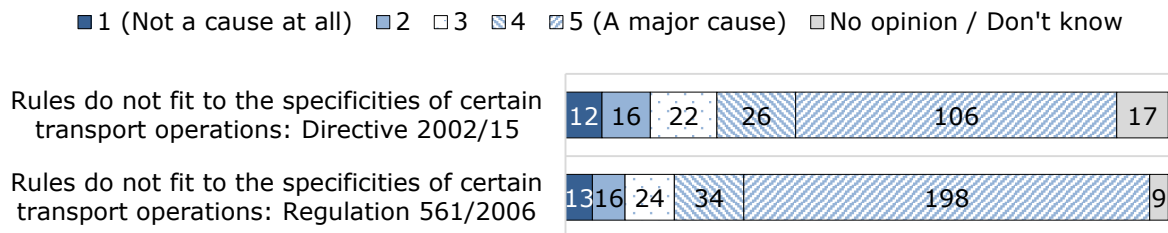
transport sector, since exclusion of any types of transport operations or undertakings would lead to more unfair competition.

Considering the specific needs of the freight sector as suggested by the above general review, Annex B, Section 10.1.1 provides more details on a set of different sectors that have explicitly requested increased flexibility. The main argument put forward is on the grounds of a need for increased flexibility to cope with seasonality in demands – for example, during seasonally longer working days in the building sector. For most sectors, little evidence could be found in the literature to substantiate the concerns, and although industry associations were contacted in several instances (see the Annex for full details), they were generally unaware of the issues with regard to the social legislation. The only additional view gathered via interviews concerned the supply of fuel, where industry representatives explained the problem in detail: although the representative stated that in general there were no problems in complying with the road social rules, during seasonal peaks periods the weekly rest period provisions in particular could become problematic for the sector. This concerns the winter period when oil deliveries are most needed, but delivery operations are affected by fuel shortages (through the supply chain), bad weather conditions and short days (deliveries can only be carried out safely during daytime).

6.3.2 Responsiveness to the needs of the passenger sector

Regarding the passenger sector, the responses received via the undertakings survey were similar compared to the freight sector with respect to the main problems that contribute to non-compliance. The large majority of respondents (75% for Regulation (EC) No 561/2006 and 65% for Directive 2002/15/EC, see Figure 6-4) consider that current social provisions do not fit the specificities of certain transport operations.

Figure 6-4: Views of passenger transport operators on whether the suitability of the existing rules leads to difficulties in compliance

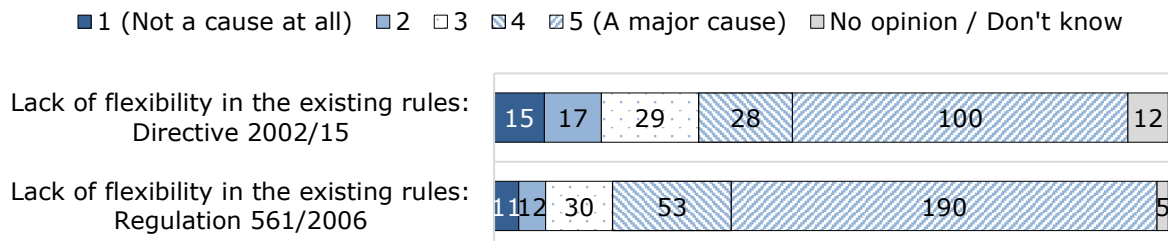


Survey among passenger transport operators conducted for this study.

Notes: n=294 for Regulation (EC) No 561/2006; n=199 for Directive 2002/15/EC

Similarly, the lack of flexibility in the legislation was reported as a major cause of non-compliance by 80% of respondents for Regulation (EC) No 561/2006 and 60% for Directive 2002/15 (see Figure 6-5).

Figure 6-5: Views of passenger transport operators on whether a lack of flexibility in the existing rules leads to difficulties in compliance



Survey among passenger transport operators conducted for this study.

Notes: n=301 for Regulation (EC) No 561/2006; n=201 for Directive 2002/15/EC

A key argument put forward by industry for amending the rules to accommodate the passenger transport sector is based on the grounds that the rules were never designed

with the passenger sector in mind. Comments received from the survey respondents elaborated on the key challenges of scheduling passenger transport in compliance with the rules, such as: getting passengers to understand why their driver needs to rest (Sweden, Belgium), difficulties in accommodating passenger needs (Austria, Germany) and waiting times for passengers (e.g. due to late arrival, delays) (Austria, Germany and Sweden).

These general comments are supported by the view put forward by several EU-level industry associations, who submitted the same comment: that it is necessary to keep in mind different character of passenger road transport (seasonality, ad hoc trip scenarios etc.). Several industry associations emphasised that the daily distance travelled is typically short, but the drivers have longer duty periods with periods not involving driving tasks, as time must be allowed for various activities (e.g. sightseeing, photo stops, visits and meals) (Ireland, Austria).

A number of national and European-wide passenger transport industry associations have called for sector-specific driving and rest time rules in order to better accommodate the needs of passenger transport, particularly for long distance bus and coach trips (BDO, 2012), (KNV, 2014), (SVBF, 2015), (IRU, 2012). Annex B, Section 10.1.1 provides more details on specific requests for increased flexibility arising from the passenger sector to better fit their operational requirements - the main argument being that drivers need to be able to better accommodate customers' (often unforeseen) desires in order to provide satisfactory services and reduce the stress for drivers. For instance, passengers require fixed times for departure, arrival and for visits and meals - if there are changes in the route, they require compensation.

6.3.3 Summary and conclusions

This Evaluation Question has looked at whether EU social rules are still relevant and adequately satisfy the needs of the freight and passenger road transport segments.

Concerning the **freight sector**, the above analysis shows that the problems and needs of the sector have not substantially changed; however the underlying issues that make compliance with prescriptive driving and working time rules more difficult have become more pervasive. This particularly concerns the increasing risk of delays due to congestion and other factors, as well as growing client pressure - which has led to concerns voiced by industry. The mechanisms built into the rules that aimed to alleviate these issues (respectively flexibilities and co-liability) are not enforced uniformly or not enforced at all in practice. In summary, the main issues appear to be around the manner in which the legislation is applied and enforced across Member States.

As such, industry representatives have argued for more flexibility in the rules, supported to a certain extent by drivers (although this appears to depend on the type of work the drivers are engaged in). The counterpoint to these views are concerns of enforcers and trade unions over employers potentially abusing additional flexibilities for the purpose of extending driving times.

For the **passenger transport sector**, there are distinct service needs that are not seen in freight transport, including regular stops for activities that do not require driving and the need to accommodate passenger requests for flexibility (e.g. regarding additional stops, changes of route, changes in departure times etc.). Industry representatives argue that the lack of flexibility in the current road social legislation makes it more difficult to comply and have advocated for a more specific consideration of the passenger transport sector.

6.3.4 Recommendations

For the freight sector, improving the clarity and uniformity of enforcement would contribute to greater certainty about the rules. Requests for increased flexibility have been made by industries, due to their specific operational needs/demands. The potential impact of incorporating additional flexibilities into the rules needs to be assessed on a case-by-case basis. A key issue is that any flexibilities provided in the rules in order to better permit operators to meet exceptional or unexpected circumstances can become the norm. As a

result, there is the concern that an increase in flexibilities may have adverse effects on the working conditions, health and safety of drivers.

The highlighted differences between passenger and goods transport suggest that consideration of sector-specific regulations for the passenger sector would be justified. A number of specific requests have been put forward that would need to be analysed in more detail in the context of an Impact Assessment, with a view to obtaining an appropriate balance between flexibility on the one hand, and protection of drivers' working conditions and road safety on the other.

6.4. Effectiveness: To what extent has the clarification of the provisions on driving times, rest periods and organisation of working time of drivers helped to improve the legal certainty of the rules and their uniform application? To what extent has it resulted in increased compliance with the social legislation in the road transport?

To what extent has the clarification of the provisions on driving times, rest periods and organisation of working time of drivers helped to improve the legal certainty of the rules and their uniform application? To what extent has it resulted in increased compliance with the social legislation in the road transport?

This evaluation question reviews the clarification of provisions under each of the legislative acts of the social legislation in terms of whether the legislation provides legal certainty. As such, the analysis focuses on new or modified definitions and provisions that aimed to enhance the clarity of rules and thereby ensure uniform implementation. For each of these new or modified definitions, it is assessed whether these objectives have been met (whether they were 'successful') or whether uncertainties remain.

Since the "clarity" of provisions is a rather subjective concept, there are no direct indicators that can be used to judge whether or not the rules are clear. Instead, this section relies on several indirect indicators that, if they exist for a certain provision, suggest a lack of certainty:

- Firstly, **whether there were subsequent efforts to clarify the same provisions**, for example through issuance of clarification or guidance notes, or Commission Decisions. It is assumed that such actions would not be required if the provisions were in fact clear, and would only be developed if uncertainties remained.
- Secondly, **whether the provisions gave rise to any petitions, court cases or complaints**. The existence of such complaints suggests a lack of certainty. The study team searched for relevant complaints in the literature, EU parliamentary questions, and used direct input from the Commission regarding complaints brought before them.
- Finally, **whether any of the stakeholders consulted for this study (via interviews and surveys) mentioned remaining uncertainties**. This final indicator aimed to capture any uncertainties that may not have been highlighted through the two previous indicators.

Where further clarification efforts were undertaken, it is also assessed whether these were successful in bringing clarity, or if uncertainties still remain.

Conversely, if none of the above indicators were found for a certain provision, it was assumed that the provision was indeed successful in improving the clarity of the rules, since the indicators between them cover a fairly comprehensive range of sources. Naturally, since the stakeholder consultation could not include all stakeholders concerned, it is possible that there are other uncertainties that were not mentioned, but the most important and widespread issues will be covered.

Since the scope of this study is the implementation of the road transport social legislation in years 2007-2014, the extent of uncertainties prevailing *before* the coming into force of Regulation (EC) No 561/2006, Directive 2002/15/EC and Directive 2006/22/EC (and consequently the reasons for the initial clarification efforts) are not analysed in detail. Rather, the analysis focuses on identifying and assessing the uncertainties that continue to exist or have newly arisen since the three pieces of legislation came into force.

The following sections are organised by each piece of legislation. The last section then provides an analysis of the impact of the clarification efforts as a whole on the compliance with the rules.

6.4.1. Regulation (EC) No 561/2006

This section focusses on the clarification efforts in Regulation (EC) No 561/2006 pertaining to the legal definitions contained in Article 4. Uncertainties related to the definition of exemptions (Article 3) and derogations (Article 13) are discussed in Evaluation Question 5 (see Section 0).

6.4.1.1. Clarification efforts regarding legal definitions

Regulation (EC) No 561/2006 introduced in its Article 4 a total of 23 amendments or additions to the legal definitions compared to Regulation (EEC) No 3820/85. These changes were made in order to clarify the scope of the legislation regarding the types of vehicles and operations covered, and to more precisely define the terms used in the Regulation relating to rest periods, breaks and driving times. The reason for these amendments, as outlined in the text of the Regulation itself, was to provide *'full definitions of all key terms [...] in order to render interpretation easier and ensure that this Regulation is applied in a uniform manner'*.

Annex B (Section 10.2.1) provides a comprehensive list of all of the changes compared to Regulation (EEC) No 3820/85.

The following sections discuss which of these 23 amendments or additions were successful or not, according to the indicators outlined above.

Successful clarification of legal definitions in Regulation (EC) No 561/2006

For 17 of the total 23 (74%) amendments/additions to the legal definitions, no relevant uncertainties were identified according to the indicators described above. As a result, it can be assumed that these 17 amendments to the legal definitions in Article 4 have been successful in bringing more clarity to the rules.

More precisely, seven out of nine *amended* definitions (i.e. the seven definitions provided in Articles 4(b), 4(f), 4(i), 4(m), 4(n)), and ten out of 14 *new* definitions (i.e. the ten definitions provided in Articles 4(g), 4(h), 4(j), 4(p) and 4(q)) can be regarded to have been successful.

Unsuccessful clarification of legal definitions in Regulation (EC) No 561/2006

Five definitions in Article 4 remain contested or still lead to non-uniform application of the rules, as outlined in the following sections. The discussion is split according to the different types of issues at stake, i.e.:

1. **Problems experienced in interpretation of specific definitions:** Refers to any remaining lack of clarity or non-uniform application of a single definition. These problems arise in the context of Article 4(a) and Article 4(c) described below.
2. **Problems experienced in interpretation of combinations of definitions:** While the single definitions may be clear, problems arise when they are read in combination with other articles. These problems affect Article 4(d),(k) and (o).

As further described in the later Section 6.4.2 (on uncertainties regarding Directive 2002/15/EC), there is also an uncertainty regarding the interaction between the definition of 'other work' - as provided in Article 4(e) of Regulation (EC) No 561/2006 - and the definition of 'periods of availability' - as provided in Article 3(b) of Directive 2002/15/EC. This issue is therefore classified as an uncertainty in the context of Directive 2002/15/EC for the purpose of this Evaluation Question.

Table 6-1 provides an overview of the amended or newly introduced definitions in Article 4 of Regulation (EC) No 561/2006 that are considered not to have been successful. The Table gives a brief overview of these uncertainties and also shows which further clarification efforts have been undertaken (if any) to address these. The last column shows whether these further efforts have been successful or whether uncertainties still remain despite these additional clarifications. The description below the table provides a more detailed assessment of the uncovered uncertainties and their sources for each of the legal definitions addressed in Table 6-1.

Table 6-1: Summary of new/revised legal definitions in Regulation (EC) No 561/2006 that caused uncertainties and further clarification efforts

Legal definition	Identified uncertainties following adoption of Reg (EC) No 561/2006	Further clarification efforts undertaken	Outcomes of further efforts / current status regarding uncertainties
'Carriage by road' (I) (Art 4(a))	Scope of covered transport operations	Clarification Note 2; Response to parl. question	Success - No further uncertainty uncovered
'Break' (Art 4(d)) in the context of 'Multi-manning' (Art 4(o))	Uncertainty whether the second driver may take a 'break' in the moving vehicle	Guidance Note 2	Lack of uniform application remains (however, clarity achieved that second driver may take break under specific conditions)
'Driver' (Art 4(c))	Uncertainty as to whether only professional drivers are within the scope of the Regulation	ECJ ruling (Case C-317/12); Clarification Note 2	Lack of uniform application remains (however, clarity achieved that Regulation applies to professional drivers)
'Daily driving time' (Art 4(k))	Uncertainty regarding when a 'day' commences after a non-compliant rest	Commission Decision C(2011) 3759; Guidance Note 7 (as of 6/2015)	No success - Decision did not resolve issue; Impact of Guidance Note 7 remains to be assessed
'Carriage by road' (II) (Art 4(a))	Uncertainty whether definition should be linked to 'vehicles' or 'drivers' in case of mixed activities	No specific clarification efforts undertaken	n/a (uncertainty remains)

Article 4(a) - "carriage by road"

The definition of "carriage by road" in Article 4(a) was revised compared to the text in the previous Regulation to add the phrase in emphasis: "carriage by road means any journey made **entirely or in part** on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods".

For this Article, even though the definition's notion of "a vehicle [...] used for the carriage of passengers or goods" was not changed compared to the previous version in Regulation (EEC) No 3820/85, uncertainties were raised in the form of parliamentary questions following the adoption of Regulation (EC) No 561/2006.

These related to whether specific types of journeys (and the associated drivers) would therefore be outside of the scope since their purpose is not actual carriage of goods or passengers. Potential examples of such journeys included:

- In-house journeys of car rental firms³⁷
- Transport of second-hand vehicles from a seller to a buyer, and
- Vehicles being driven for repair, washing or maintenance purposes.

The fact that clarification on these items was required indicates that the definition of 'carriage by road' caused difficulties for some industries/enforcers in understanding the application of the definition to certain specific types of transport operations as listed above. This indicates in turn that the definition has not been entirely effective in ensuring legal certainty and uniform application of the rules in all situations.

³⁷ i.e. journeys to garages, to car wash facilities, for refuelling, between locations, and to drop off vehicles, and pick them up from customers

The Commission responded to the clarification requests in form of responses to the parliamentary questions (^{38,39}) and, in the specific case of vehicles being driven for repair, washing or maintenance purposes, in the form of Clarification Note 2. No further issues on these specific issues were raised by stakeholders consulted for this study, nor did the literature highlight any lingering issues. On this basis, it appears that the clarification efforts, including the Clarification Note 2, addressed effectively the specific issues raised. The reading of the outcomes of these cases should also make the interpretation of similar queries more straightforward.

However, a recent study conducted by the Swedish enforcement authority (Transportstyrelsen, 2015) shows that there are other differences in the interpretation of "carriage by road" that have not been addressed yet. Specifically, this concerns differing interpretations of how to treat drivers/vehicles that use both public and non-public roads.

- Some Member States (e.g. Netherlands) interpret the rules as being linked to the **vehicle**, i.e. all driving with a vehicle is in scope on a day on which the vehicle has been used on a public road (regardless of who the driver(s) of that vehicle are on that day).
- Others (e.g. Sweden) interpret the rules as being linked to the **driver**, i.e. if a driver drives on roads open to the public, and later drives on roads not open for the public, all driving is considered in scope (regardless of whether the driver changes vehicles).

The above examples show that there is not a uniform interpretation of the rules when considering the term "carriage by road".

Article 4(c) - "driver"

The definition of the "driver" was only slightly revised compared to the text in the previous Regulation, to add the phrase in emphasis: "a driver means any person who drives the vehicle even for a short period, or who is carried in a vehicle *as **part of his duties*** to be available for driving if necessary".

The addition of this phrase has led to the possible interpretation that private persons are not in the scope of the Regulation. Clarification Note 2 addresses this issue, thereby confirming the lack of clarity in the definition. It makes explicit that "*nothing prevents Member States from applying the rules set out in the Regulation also to other transport operations or vehicles or drivers that are not explicitly covered by the Regulation*". However, ECJ ruling of Case C-317/12 of October 2013 also refers to the same issue, showing that the uncertainty revolving around the definition of the driver had not been resolved by Clarification Note 2. The ECJ ruling states that "*the provisions of Regulation (EC) No 561/2006 apply essentially to professional drivers and not to individuals driving for private purposes*".

However, the interpretation of the ECJ ruling is not supported by all stakeholders – for instance, the UK Ministry takes the interpretation that the Regulation's wording is aimed at the *type of vehicle* being driven, and the type of journey being undertaken, rather than at the 'professional' or 'non-professional' status of the driver. As such, the scope of the Regulation still differs across Member States depending on their national interpretation – i.e. according to the relevant national authorities consulted for this study, the Regulation applies only to "professional drivers" in Austria and Hungary. Even within the same country, interpretations may differ between authorities: for example, the Czech enforcement authority stated that only professional drivers are in-scope, while the Czech Ministry of Transport reported that all drivers are covered.

³⁸ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2007-4810&language=LV>

³⁹ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-012656&language=EN>

One may conclude that the ECJ ruling and the Clarification Note 2 together provide that it is acceptable either to apply the rules to *all* drivers or only to *professional* drivers, and in this sense there is clarity on the possible scope. However, achieving *clarity* in this case does not necessarily mean that *uniform application* is also achieved. There remains some disagreement as to which is the “correct” interpretation, when considering how to achieve the objectives of the social legislation – for instance, the UK applies the rules to all drivers and has urged the Commission to follow their interpretation. Their view is that in order to uphold road safety, all drivers need to be included. Conversely, the ECJ places emphasis on the fact that the Regulation aims to improve the *working conditions of employees* and on the objectives to harmonise *competition* in the road transport sector – meaning that a focus on professional drivers only would be adequate to achieve the objectives.

Article 4(d) – “break” in the context of Article 4(o) - “multi-manning”

Regulation (EC) No 561/2006 introduced in its Article 4(d) a new definition to clarify the notion of a ‘break’ as “*any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation*”. The previous Regulation (EEC) 3280/85 had indirectly defined this term in the break provisions (Article 7).

Regulation (EC) No 561/2006 also introduced a new definition of multi-manning – the intention was to avoid ambiguity and to cover instances where more than two drivers would be present in the vehicle.

The definitions of ‘break’ and ‘multi-manning’ do not appear to cause problems in interpretation on their own. It is rather the interaction of the concepts that appears to cause concern. Specifically, IRU (2007) highlight that the requirement that breaks should be ‘*used exclusively for recuperation*’ has called into question whether the second crew member in a multi-manning operation can take a “break” in the strict sense, while he is inactive but the vehicle is moving.

This uncertainty was addressed in Guidance Note 2, which was developed in response to requests to the Commission for further clarity and guidance as regards uniform enforcement. This guidance was accepted by all Member States; however not all hauliers/drivers/sectoral organisations have been made aware of this common approach. In addition, the TRACE explanatory text clarifies the provisions in a similar vein, emphasising that a break may be taken in a moving vehicle (multi-manning) *provided the driver is inactive and the period is used exclusively for recuperation*.

However, despite these further clarification efforts, another question was submitted to the Commission in 2014, considering again that the second crew member cannot “*freely dispose of their time*” (although this concept is related to the definition of rest). The Commission’s response⁴⁰ refers to the clarification in Guidance Note 2.

In conclusion, it can be said that the uncertainties regarding how to calculate breaks during multi-manning operations were raised and attempts to address these issues have been made in Guidance Note 2 and TRACE. However, a common approach in enforcement and application has still not been achieved since not all stakeholders are aware of the common approach set out in Guidance Note 2.

Article 4(k) - “daily driving time” in the context of non-compliant rest periods

The definition of ‘daily driving time’ was newly introduced in Regulation (EC) No 561/2006 in its Article 4(k) as “*the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period*”.

However, the Article does not make it explicit when driving time commences in cases where insufficient rest has been taken previously. Given the definition of daily driving, not

⁴⁰ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-010068&language=EN>

counting the non-compliant rest period can result in practice in large daily driving times in case of driving over the respective two consecutive days (or more).

In recognition of the fact that enforcement authorities applied different rules as to how to count (or not) non-compliant rest periods for defining daily driving times, Commission Implementing Decision C(2011) 3759 was adopted in accordance with Article 25 of Regulation (EC) No 561/2006, hereby implicitly recognising the ambiguity in the legal text. This aimed to provide for a common approach to calculating driving times in cases where insufficient rest has been taken – in order to promote more uniform decisions by enforcement authorities across the Union. However, this Decision does not seem to have resolved the issues in practice. For example, the Belgian enforcement authorities consulted for this study explained that officers see the 7h period as an arbitrary threshold and are still left to judge of how to proceed with the calculation of the driving time when they discover an infringement of the rest period, resulting in different approaches across the Member States or even within a Member State.

As a result of the remaining uncertainties, Guidance Note 7 was endorsed by the Committee on Road Transport in June 2015. It provides enforcement authorities with guidance on how to define a 24h period (a notion used in Article 8(2)) in cases where rest requirements have been infringed. This then allows defining the daily driving time in such infringement cases. Clear examples, supported by diagrams, of how to calculate infringements based on a 24-hour period are given, which suggests that for these examples the approach should be clarified. However, due to the recent release of the Guidance Note, the impact of the Note in practice cannot yet be assessed.

6.4.1.2. Other unsuccessful amendments or additions to the provisions

Further to the above discussed uncertainties regarding the clarification efforts of legal definitions (as provided in Article 4 of Regulation (EC) No 561/2006), there are other uncertainties that pertain to other provisions that had been revised or added compared to Regulation (EEC) No 3820/85. These are summarised in Table 6-2 and further described below.

Table 6-2: New/revised other provisions of Regulation (EC) No 561/2006 that caused uncertainties and further clarification efforts

Provision	Identified uncertainty	Further clarification efforts undertaken	Outcomes of further efforts
Recording of 'other work' (Art 6(5) (I) – newly introduced	Recording of mixed "in" and "out" of scope activities unclear	Clarification Note 2	Success - No further uncertainty uncovered
Recording of 'other work' (Art 6(5) (II) – newly introduced	Further uncertainty wrt recording of travelling to an unusual place for taking charge of vehicle	Clarification Note 5	Success - No further uncertainty uncovered
Place of regular weekly rest (Art 8(8)) – revised provision	Uncertainty as to whether regular weekly rest is permitted in the vehicle	Response to parliamentary question; Guidance Note 3	Pertaining differing interpretations, lack of uniform application
Ferry/ train crossings (Art 9(1)) – revised provision	Uncertainty as to whether rest may be taken on ferry/train crossing	Guidance Note 6	Lack of uniform application
Suitable stopping place (Art 12) – newly introduced	Unclear conditions under which deviation to the rules is acceptable and what constitutes a suitable stopping place	Guidance Note 1	Uncertainty remains, lack of uniform application
Keeping of records (Art 6(5) (III) – newly introduced	Further uncertainty wrt time period for which records must be kept	No specific clarification efforts undertaken	n/a (uncertainty and lack of uniform application remains)

Provision	Identified uncertainty	Further clarification efforts undertaken	Outcomes of further efforts
Payment regimes (Art 10(1)) - revised provision	Uncertainty as to what is, and how to prove, an unacceptable payment	No specific clarification efforts undertaken	n/a (uncertainty remains)

Provisions on recording requirements for "other work" (Article 6(5))

The newly introduced Article 6(5) of Regulation (EC) No 561/2006 aimed at clarifying the recording requirements of "other work" that were previously not specified.

The Article does however not specify how other work is to be recorded in case drivers carry out in- and out-of-scope (mixed) driving activities. Resulting uncertainties with regards to the recording of such mixed activities (especially where out-of-scope driving is dominant) were addressed in Clarification Note 5. The Note sets out that drivers that carry out mixed activities must use tachograph records regardless of which driving activity, i.e. out of scope or within the scope of the Regulation, is predominant.

In a similar vein, the Article does not specify how the travelling time of a driver to a location that is not the usual place for taking charge or relinquishing of a vehicle in the scope of Regulation (EC) No 561/2006 is to be recorded. The resulting uncertainty as to whether this time can be recorded as rest or break was dealt with in Guidance Note 2. No further uncertainties following this Guidance Note were mentioned by the stakeholders consulted for this study – suggesting that the Note has made the application of the provision in the specific respect of travelling time to/from a location that is not the usual place for taking charge or relinquishing of a vehicle clear.

Ministries and enforcers consulted for this study were asked whether there were any remaining uncertainties regarding the Clarification Notes. Although none identified *uncertainties* regarding Clarification Note 5 as such, the Belgian Ministry felt that its interpretation undermined the objectives of exemptions or derogations (by enlarging the effective scope of the Regulation), as well as being confusing for drivers.

The Belgian ministry also noted a further issue with Article 6(5) that has become of increasing relevance since the coming into force of Article 36(1) of Regulation (EC) No 165/2014. This latter article states that drivers shall be able to produce record sheets "for the current day and the previous 28 days". Article 6(5) of Regulation (EC) No 561/2006 states that a driver shall record other work and any periods of availability "since his last daily or weekly rest period". This apparent inconsistency also appears to be reflected in enforcers' responses to the question on how long drivers were required to keep records for 'other' work, 'periods of availability' and out-of-scope transport operations. Responses ranged from the "current day" to "3 years": while most authorities stated 28 days, the UK and Sweden stated that record keeping is necessary for the period since the driver's last daily or weekly rest. Many other authorities stated the period to cover one year (e.g. Portugal, Estonia, Hungary, and Cyprus), two years (Austria) or even three years (Croatia, Switzerland). This issue is especially relevant for drivers who only partly (e.g. only on specific days) carry out "in-scope" transport operations. Such drivers would have to retrospectively record their activities for days when no "in-scope" operations were carried out, if recording was required for periods longer than since the last daily/weekly rest.

Concluding, it can be said that Article 6(5) was not considered to be sufficiently clear – as evidenced by the need for associated Clarification Note 5 and Guidance Note 2. Although these Notes appear to have resolved the uncertainty concerned with recording travelling time and mixed activities, the above discussion shows that there are still differences in interpretation with regards to the number of days for which records are required across the Member States.

Provisions concerning where weekly rest can be taken (Article 8(8))

Article 8 provides the provisions on rest periods. A recurring point of contention regards **Article 8 (8)** which states that *daily* rest and *reduced* weekly rest may be taken in a vehicle “as long as it has suitable sleeping facilities for each driver and the vehicle is stationary”. Previously, Regulation (EEC) No 3820/85 mentioned the option of in-vehicle rest periods only for *daily* rest periods.

While the revised provision makes clear that daily and reduced weekly rest periods can be taken in the vehicle under specific circumstances, the location of where *regular* weekly rest can be taken is not further defined. The lack of clarity in the legal text is also reflected in TRACE, which notes that: “By specifically allowing a reduced weekly rest period (24 hours) to be taken in a suitably equipped vehicle, the Regulation appears to be excluding the possibility of taking regular weekly rests in a vehicle.” But further notes that in reality this is rarely enforced given that the Regulation also does not exclude from this concession, rest periods that comprise a reduced weekly rest plus compensation for previously reduced weekly rest.

This lack of clarity has however led to two main issues – firstly, a lack of uniform application of the rules, and secondly, concerns over the treatment of drivers.

During a CORTE enforcement meeting held in March 2015 that was attended by the study team, national authorities thoroughly discussed this issue, revealing two main positions:

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

The Commission has clarified⁴¹ that it is in the spirit of the Regulation that a driver should not be *forced* by his employer to spend his regular weekly rest in the vehicle, citing again the notion that drivers should be able to “freely dispose of his time”. Guidance Note 3 also states that “generally, during a daily or weekly rest a driver should be able to dispose freely of his/her time and **should therefore not be obliged to stay in reach of his/her vehicle.**”. These clarifications support the notion that drivers should be allowed (voluntarily) to spend their rest wherever they choose, including in the vehicle.

Concerns over the treatment of drivers are motivated by the wider aims to ensure adequate working conditions. For example, the Belgian and Dutch ministry more specifically interpret Article 8(8) as having the aim to improve the social circumstances of drivers by suggesting that regular weekly rest should be taken at home, although this is not explicitly stated in the Regulation. Further, discussions led among the enforcement authorities present at the CORTE working group meeting in March 2015 emphasised that there are uncertain consequences of not permitting the driver to stay in the vehicle, given that alternative accommodation which offers drivers to securely leave their vehicles is not necessarily of higher quality (if at all available). This is indeed a concern, although the availability of parking and service areas that enables drivers to comply with their obligations under Community legislation is the responsibility of the competent authorities in each Member State⁴².

Trade unions consulted for this study highlighted (via questionnaire responses and during the ETF workshop) a similar argument based on the notion that drivers frequently cannot freely dispose of their time, since they are obliged to rest in their vehicles to secure the

⁴¹ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-005884&language=EN>

⁴² *ibid*

cargo during the night, which furthermore leads to interruptions of the rest period. In line with the trade unions' argument, Guidance Note 3 clearly states that drivers should not be obliged to stay within reach of their vehicle during a daily or weekly rest. The Note clarifies that Member States enforcers must grant some tolerance following an individual situation assessment. However, this does not seem to include the possibility of drivers being obliged to rest in their vehicles in order to secure cargo.

Concluding it can be said that differing approaches concerning whether or not drivers may be allowed to spend their regular weekly rest remain possible because the Regulation does not contain provisions on this aspect. The modified provision compared to Regulation (EEC) No 3820/85 is therefore considered to have been unsuccessful in ensuring a uniform application of the rules. The lack of uniform application was shown in Section 5.2 (and its Annex A, Section 9.1.1), which outlined for example that France and Belgium prohibit drivers from spending *regular* weekly rest in vehicles, while other Member States (such as Bulgaria, Lithuania and Luxembourg) do not.

Provisions on recording requirements in the context of ferry and train crossings (Article 9(1))

Article 9(1) sets out that in cases where a driver who "*accompanies a vehicle which is transported by ferry or train, and takes a **regular daily rest period**, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest period the driver shall have access to a bunk or couchette.*" Compared to the respective Article in Regulation (EEC) 3820/85, Article 9(1) is simpler as it does not set conditions regarding the part of the daily rest period spent on land or the timing of the interruptions. Furthermore, the word 'regular' was introduced and the number of interruptions was increased from 'once' to 'twice'.

IRU (2007) however highlights that taking a daily rest period is in conflict with Article 3(b) of the Working Time Directive, which states that "*periods during which the mobile worker is accompanying a vehicle being transported by ferryboat or by train*" are to be counted as "*periods of availability*".

In response to this uncertainty of whether taking a regular daily rest period in the context of ferry and train crossing can be counted as rest, Guidance Note 6 clarifies that a driver is entitled to take his/her *break or rest, daily or weekly*, when he/she is travelling by ferry or train, **provided that he/she has access to a bunk or couchette**. The guidance in TRACE also clearly states that a journey on a ferry/train could be recorded as either a break or rest (provided the driver has access to a bunk/couchette).

Very few respondents to the survey of ministries conducted for this study (three⁴³ out of 15) felt that there were remaining uncertainties. The Swedish Ministry stated to have found different interpretations of this provision across Member States. This comment also seems to be supported by the literature – where a UK stakeholder working group (DfT, 2014) reported that there is generally a good understanding of Article 9(1) nationally, but this understanding is not uniform across the Union. Examples were reported of coach drivers being issued with penalties in France because French authorities believed that the crossing should have been registered as a period of availability.

Overall it therefore appears that Guidance Note 6 has not resolved all uncertainties in relation to Article 9(1), since there is still a non-uniform application of the rules across countries regarding whether or not time spent on a ferry can be counted as rest.

Provision regarding payment regimes (Article 10(1))

Article 10(1) of Regulation (EC) No 561/2006 sets out that undertakings shall not pay drivers "*even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation*". Article 10 of Regulation (EEC) No 3820/85 provided a very similar provision, although stated slightly differently by using

⁴³ Estonia, Sweden and Denmark

the terminology *“even in the form of bonuses [...] unless these payments are of such a kind as not to endanger road safety.”*

According to trade unions consulted for this study, the “if-clause” makes it impossible for enforcement authorities (or undertakings) to prove whether a specific payment has endangered road safety.

As noted in TRACE, offences of this nature cannot realistically be investigated during a roadside check where information on drivers’ payment regimes and overall duties over the concerned payment period are not available. However, even for checks at the premises, there appear to be practical problems confirmed by enforcers that support the view put forward by Trade Unions. The survey responses from the Dutch and Swedish enforcers note that such payment regimes are extremely hard to prove. The Swedish enforcers further state that this is mainly because it is hard to define when a payment is of such a kind as to endanger road safety. Furthermore, in the context of a study visit conducted by the study team, Belgian enforcement authorities confirmed similar issues, stating that the vagueness of Article 10(1) did not allow them to verify whether payment systems were in contravention with the rules (even though it has been observed that Belgian companies deploy bonus payment systems).

In conclusion, Article 10(1) lacks clarity as to what constitutes an unacceptable payment regime.

Provisions concerning a suitable stopping place (Article 12)

Article 12 of Regulation (EC) No 561/2006 states that *“[...] to enable the vehicle to reach a suitable stopping place, the driver may depart from [the driving and rest time provisions] to the extent necessary to ensure the safety of persons, of the vehicle or its load”*. Compared to Regulation (EEC) No 3820/85, the new Article 12 also makes it clear when such divergence to the rules is to be manually recorded, i.e. *“at the latest on arrival at the suitable stopping place”*.

In practice, this definition leaves room for interpretation concerning the conditions under which deviation to the rules is acceptable. In response to this uncertainty, Guidance Note 1 was established, which made it explicit that the article *“does not authorise a driver to derogate from the Regulation for reasons known before the journey commenced”*. Furthermore, the Guidance Note defines the specific obligations of transport undertakings, drivers and enforcers in such situations, and is referred to in TRACE as a reference for control officers.

The survey of enforcers conducted for this study suggested that the majority of respondents (12 out of 14) felt the provisions were clear. The Swedish and Danish ministries expressed however ongoing concerns, even explicitly in the context of Guidance Note 1. Furthermore, a UK stakeholder working group discussed that Article 12 was not a problem in the UK, as the national enforcer would be aware of any exceptional circumstances (such as adverse weather conditions) (DfT, 2014). However, the article reportedly causes problems when travelling abroad, as historic situations found on tachograph records by enforcers were reported to have been used against drivers (DfT, 2014). As shown in the case study analysis for Poland, Polish authorities regard Article 12 as a loophole to relax the general standards of working time as drivers use it with a lot of “enthusiasm” (Smoreda, 2014). The underlying issue was here identified to be a missing definition of an “adequate stopping place” (Smoreda, 2014).

In conclusion, the applicability of Article 12 allows enforcers flexibility in assessing the legitimacy of the deviation on the basis of Article 12. However, problems are still reported, (e.g. by Polish authorities or the UK stakeholder working group, as shown above) regarding how to determine extraordinary circumstances and suitability of a stopping place as well as with the non-uniform application of the rules across countries.

6.4.2. Directive 2002/15/EC

One of the objectives of Directive 2002/15/EC was to lay down “*more specific provisions concerning the hours of work in road transport*”. As such, Article 3 provides in total nine legal definitions that aim to reflect the specificities of the transport sector (compared to the six legal definitions provided in the general working time rules as provided in Directive 93/104/EC (and amended by Directive 2000/34/EC).

For 8⁴⁴ of the total 9 legal definitions (89%), there do not appear to be any relevant uncertainties raised either by stakeholders or in the literature. It can therefore be assumed that these definitions achieved their aim of providing clear rules specifically for the transport sector.

The only uncovered uncertainty that refers to a specific legal definition refers to “periods of availability”, discussed in the following section.

Article 3(b) - “periods of availability”

In Article 3(b) “periods of availability” (POA) are defined as “*periods other than those relating to break times and rest times during which the mobile worker is not required to remain at his workstation, but must be available [...]. These periods and their foreseeable duration shall be **known in advance** by the mobile worker [...]*”.

A UK stakeholder working group (DfT, 2014) emphasises the uncertainty involving the definition of periods of availability. This uncertainty stems from the notion “known in advance”, which leaves room for interpretation, and both operators and drivers have an incentive to consider certain activities as POA, when it could be argued that they were ‘other work’ (for example drivers unloading his vehicle could be under pressure to misuse POA to ensure deliveries are made on time). The same report highlights that enforcers find it difficult to verify/enforce POA since documentation that could prove lawful POA is not always available (DfT, 2014). British Trade Unions see the misuse of periods of availability as the reason for the high number of drivers’ working hours (DfT, 2014).

These uncertainties identified in the literature were also confirmed by national enforcement authorities via their responses to this study’s consultation. 12 out of 16 national enforcement authorities that expressed an opinion report that the difficulty of distinguishing and proving periods of ‘work’, ‘other work’ and ‘periods of availability’ cause (some or major) difficulties in enforcement (the remaining four authorities ticked the answer option ‘don’t know’). During a CORTE enforcement meeting (attended by the study team) enforcers from the Netherlands and Ireland highlighted the ambiguity of POA and the difficulty of proving and verifying whether POA have been known in advance. As a result, these representatives claimed that the Directive is unenforceable.

It can be concluded that there are still uncertainties with regards to the definition of periods of availability and its recording. These lead to difficulties in enforcement as to how to prove/verify POA (and to the entire non-enforcement of the rules in the frame of roadside checks, as in the Netherlands), as well as the excessive recording of time as POA by drivers under pressure to keep to schedules.

Other uncertainties with the provisions of Directive 2002/15/EC were not uncovered and are therefore assumed to be clear.

6.4.3. Directive 2006/22/EC

This section explores the one uncertainty that could be identified in relation to the provisions of Directive 2006/22/EC. It concerns the use of the so-called forms of attestations. For all other provisions, no relevant uncertainties could be identified. However, this does not mean that these enforcement provisions were uniformly applied

⁴⁴ More specifically, the definitions provided in Article 3(a), (c) – (i)

across the Union - see Evaluation Question 8 (see Section 6.8) that discusses the uniform application of the enforcement measures for the relevant discussion.

Use of attestation forms (Article 11(3))

According to Article 11(3) of the Directive, *"an electronic and printable form [is to] be used when a driver has been on sick leave or on annual leave, or when the driver has driven another vehicle exempted from the scope of [Regulation (EC) No 561/2006] [...]."* The content of the most recent version of this form was set out in Commission Decision 2009/9895/EC of 14 December 2009.

Enforcement authorities did however not take a uniform approach as to how the attestation form was to be used. In response to these different approaches, Guidance Note 5 was established, which clarified the approach that is to be followed concerning the usage of the attestation form. However, in 2013, IRU expressed in a communication to the Commission⁴⁵ to have observed pertaining differences in the use of the form across Member States, despite Guidance Note 5. The Commission's response emphasises that the Guidance Note is not legally binding and that it is up to the Member States' authorities to apply the guidance with a view to creating a uniform enforcement space throughout the EU.

The lack of uniform application stems from the fact that the use of the attestation form is not mandatory - Member States are not obliged to require the use of the form. This lack of harmonisation has been further compounded by Article 34 of Regulation (EC) No 165/2014, which states that *"Member States shall not impose on drivers a requirement to present forms attesting to their activities while away from the vehicle."* This Article has not provided any clarification as to the use of the attestation form. In addition it caused further uncertainties on how to record and control activities of a driver when a driver was away from a vehicle. For example, the Austrian Ministry of Transport stated that the form was still required *if* retrospective entries for such activities on the tachograph were not possible. Other Member States, such as Finland and Latvia state that the use of the form is allowed (but also other proof can be provided), while still other Member States, such as France and Greece disregard such forms (and other proof for such activities is required).

It can be concluded that the attempts made to harmonise the use of the attestation forms across the Union have been unsuccessful. Prevailing different approaches to the use of these forms cause uncertainties among drivers and undertakings, especially when engaged in international transport operations.

6.4.4. Impact on compliance

Literature on the specific impact of the different types of clarification is limited. Reports such as TRT (2012) or AECOM (2014b) generally point to problems in enforcement and especially its harmonisation across Member States, but they do not set out the specific provisions that were and/or are still problematic in terms of clarity in practice. It is therefore necessary to revert to more specific sources and check whether these issues concern provisions that have been subject to clarification.

The impact of the specific clarifications and remaining uncertainties on compliance is difficult to establish quantitatively because typically offences are only reported by broad category of infringement; the explicit provision that was subject of an infringement cannot be retraced.

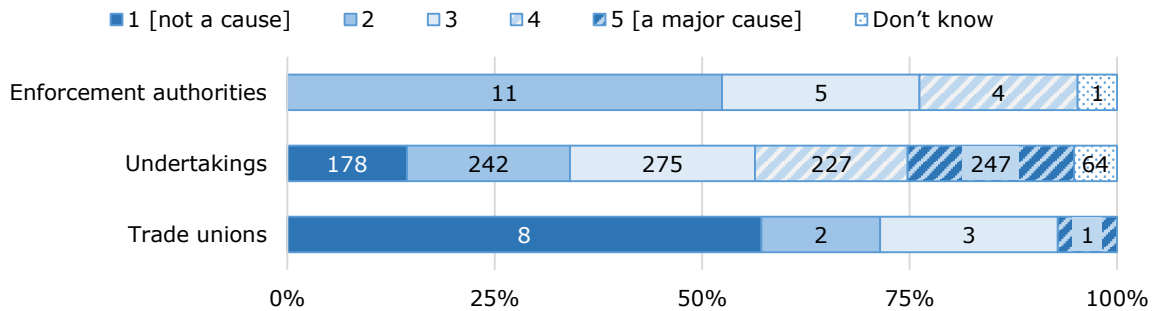
Reviewed literature does not give any indication on the explicit impact of clarification on compliance rates. Given these limitations, we have to revert to stakeholder inputs received for this study. Enforcement authorities, undertakings and trade unions were asked about what factors contributed to difficulties in compliance (if anything) and listed possible

45

[http://www.europarl.europa.eu/RegData/questions/reponses_qe/2013/000058/P7_RE\(2013\)00058_EN.pdf](http://www.europarl.europa.eu/RegData/questions/reponses_qe/2013/000058/P7_RE(2013)00058_EN.pdf)

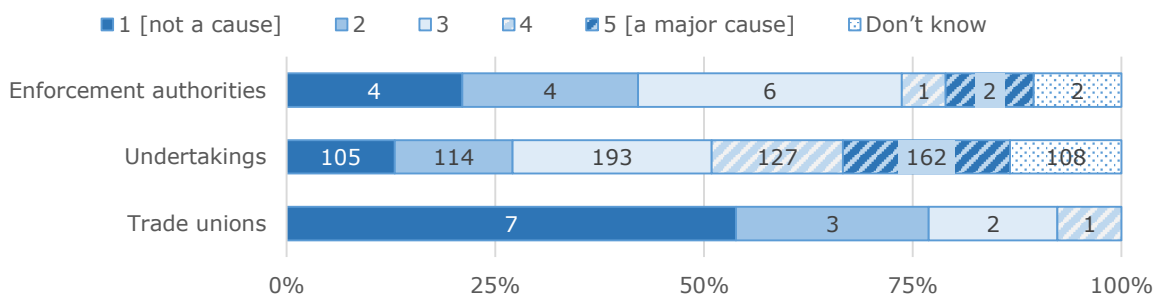
answer options that the respondents were to rate from 1 (not a cause at all) to 5 (a major cause). Figure 6-6 and Figure 6-7 show the responses related to Regulation (EC) No 561/2006 and Directive 2002/15/EC respectively for the item "Lack of clarity/coherence in existing rules and guidelines".

Figure 6-6: Response from different stakeholder groups to the question related to Regulation (EC) No 561/2006: "In your opinion, what makes compliance more difficult?" to the item "Lack of clarity/coherence in existing rules and guidelines"



Notes: Numbers represent the number of respondents per rating; the seven trade unions that submitted the same questionnaire responses are here counted separately, i.e. as seven responses stating 'not a cause at all'. Source: Stakeholders surveys of this study

Figure 6-7: Response from different stakeholder groups to the question related to Directive 2002/15/EC: "In your opinion, what makes compliance more difficult?" to the item "Lack of clarity/coherence in existing rules and guidelines"



Notes: Numbers represent the number of respondents per rating; the seven trade unions that submitted the same questionnaire responses are here counted separately, i.e. as seven responses stating 'not a cause at all'; Source: Stakeholders surveys of this study

The Figures show that enforcers and trade unions do not appear to be very concerned by the clarity of the rules as a potential cause of non-compliance. The responses from undertakings were more mixed, with slightly more rating a lack of clarity as a (major or minor) cause of non-compliance versus those who rated it as not a cause. It should be noted that undertakings generally rated options more highly as potential problems compared to other stakeholders – which may bias the comparison. Using a ranking of the possible factors shows that undertakings do not rank a lack of clarity particularly highly in comparison to other potential issues - out of 17 different answer options for Regulation (EC) No 561/2006, the item of 'lack of clarity/coherence' ranked 10th (see the summaries of questionnaires in Annex E, Section 13, for more details). By way of comparison this is still somewhat higher than for the other groups - trade unions rank 'lack of clarity/coherence' last out of all (12) answer options and enforcers rank it as 13th out of 16 answer options.

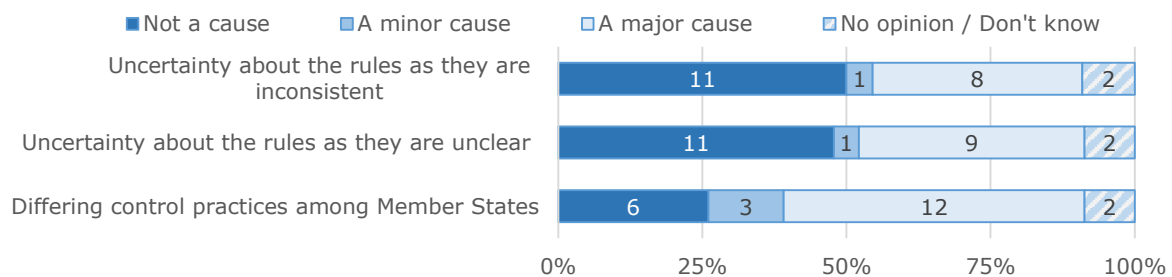
A breakdown of responses from undertakings by those that mainly carry out international versus domestic operations does not reveal any major differences in the distribution of answers, suggesting that undertakings are affected both by a lack of clarity in domestic legislation as well as differences between Member States.

More generally, the Guidance and Clarification Notes have been well-received by enforcement authorities: 84% of national or regional enforcement authorities responding to the survey agreed that the Guidance and Clarification Notes have been useful. Discussions led among enforcement authorities during a CORTE enforcement workshop held in March 2015 confirmed that existing Clarification and Guidance Notes were generally appreciated and provided a useful basis for aligning enforcement practices. However, a concern was raised during the meeting that they were not legally binding – a view also held by the Dutch enforcers and the Austrian Federal Economic Chamber (WKO, 2015).

The Belgian Ministry emphasised in their response to this study’s stakeholder questionnaire that the possibility for Guidance and Clarification Notes should not be overused: for Member States it might be helpful to have these common interpretations, however, in practice the actors ‘on the ground’ need to understand and follow the provisions. The Ministry argued that it cannot be expected that these stakeholders must read more than 10 different texts to know how to correctly apply the rules.

Figure 6-6 shows that drivers are, on average, similarly concerned by uncertainties as the undertakings. The items ‘uncertainty about the rules as they are inconsistent’ and ‘uncertainty about the rules as they are unclear’ rank 6th and 8th out of 11 items; around 40% of interviewed drivers state that these uncertainties are a major cause for difficulties in complying with the rules. Drivers specifically rate the item ‘Differing control practices among Member States’ very highly, i.e. more than 50% rate this item to be a major cause for difficulties.

Figure 6-8: Response from drivers to the question: “In your opinion, what are the main reasons (if any) that contribute to difficulties in complying with the provisions” to the three listed items



Source: Interviews with drivers conducted for this study

The above shows that drivers and undertakings, consider a lack of clarity in the rules as a more important contributing factor to non-compliance than other stakeholders. This might reflect that they are more aware of (and affected by) the practical difficulties of correctly interpreting and applying the rules. This suggests that clearer rules could indeed have a positive effect on compliance. The extent to which this has already been the case thanks to past clarification efforts can however not be assessed due to the data limitations described above.

6.4.5. Summary and conclusions

Concerning Regulation (EC) No 561/2006, 17 out of the 23 legal definitions appear to have been successful as neither reviewed literature nor consulted stakeholders pointed to any relevant uncertainty. Similarly, concerning Directive 2002/15/EC, 8 out of the 9 newly provided legal definitions appear to have been successful. The respective clarification efforts can therefore be considered to have achieved their objective of ensuring greater clarity and a uniform application of the rules.

However, some uncertainties with regards to the legal definitions have pertained after the coming into force of Regulation (EC) No 561/2006, Directive 2002/15/EC and Directive 2006/22/EC - as have uncertainties with other provisions. Table 6-3 provides an overview of the concerned provisions, summarises the identified uncertainties and shows whether these uncertainties have been subject to further clarification efforts (as well as whether

these further efforts have been successful in achieving clarity and a uniform application of the rules).

Table 6-3: New/revised provisions that caused uncertainties per piece of legislation and further clarification efforts*

Provision	Identified uncertainties	Further clarification efforts undertaken	Outcomes of further efforts
Regulation (EC) No 561/2006			
'Carriage by road' (Art 4(a) (I))	Scope of covered transport operations	Clarification Note 2; Response to parl. question	No further uncertainty uncovered
Recording of 'other work' (Art 6(5) (I))	Recording of mixed "in" and "out" of scope activities unclear	Clarification Note 2	No further uncertainty uncovered
Recording of 'other work' (Art 6(5) (II))	Further uncertainty wrt recording of travelling to an unusual place for taking charge of vehicle	Clarification Note 5	No further uncertainty uncovered
'break' (Art 4(d)) in the context of 'multi-manning' (Art 4(o))	Uncertainty whether the second driver may take a 'break' in the moving vehicle	Guidance Note 2	Lack of uniform application remains (however, clarity achieved that second driver may take break under specific conditions)
'Daily driving time' (Art 4(k))	Uncertainty regarding when a 'day' commences after a non-compliant rest	Commission Decision C(2011) 3759; Guidance Note 7 (as of 6/2015)	Decision did not resolve issue; Guidance Note 7 remains to be assessed
'Driver' (Art 4(c))	Uncertainty as to whether only professional drivers are within the scope of the Regulation	ECJ ruling (Case C-317/12); Clarification Note 2	Clarity achieved that Regulation applies to professional drivers; however, lack of uniform application remains
Place of regular weekly rest (Art 8(8))	Uncertainty as to whether regular weekly rest is permitted in the vehicle	Response to parliamentary question; Guidance Note 3	Differing interpretations, lack of uniform application
Ferry/ train crossings (Art 9(1))	Uncertainty as to whether rest may be taken on ferry/train crossing	Guidance Note 6	Lack of uniform application
Suitable stopping place (Art 12)	Unclear conditions under which deviation to the rules is acceptable and what constitutes a suitable stopping place	Guidance Note 1	Uncertainty remains, lack of uniform application
'Carriage by road' (II) (Art 4(a))	Further uncertainty whether definition should be linked to 'vehicles' or 'drivers' in case of mixed activities	No specific clarification efforts undertaken	n/a (uncertainty remains)
Keeping of records (Art 6(5)) (III)	Further uncertainty wrt time period for which records must be kept	No specific clarification efforts undertaken	n/a (uncertainty remains)
Payment regimes (Art 10(1))	Uncertainty as to what is, and how to prove, an unacceptable payment	No specific clarification efforts undertaken	n/a (uncertainty remains)
Directive 2002/15/EC			
'Periods of availability' (Art 3(b)) (in relation to	Uncertainty concerning the notion "known in advance" and its enforcement	No specific clarification efforts undertaken	n/a (uncertainty remains)

Provision	Identified uncertainties	Further clarification efforts undertaken	Outcomes of further efforts
Art 4(d) 'other work' of Reg 561)			
Directive 2006/22/EC			
Use of attestation forms (Art 11(3))	Uncertainty as to under which circumstances attestation forms are to be used	Guidance Note 5; Response to parliamentary question; Art 34 (Reg 165/2014)	Uncertainty persists, lack of uniform application

*Note: Uncertainties regarding exemptions and derogations are discussed in the context of Evaluation Question 5 and are therefore excluded from the above analysis/table.

The table shows that:

- Firstly that there is a lack of clarity in several of the legal provisions, as evidenced by the need to take actions to issue further guidance, for example in the form of Clarification/Guidance Notes, as well as the Decision and various ECJ rulings.
- In several cases, the additional clarification efforts have resolved legal uncertainties, but a lack of uniform application stills remain because of the non-binding nature of the clarifications (in particular relating to Articles 4(c), and Article 8(8)).
- However, in other cases, also further clarification efforts still have not resolved all legal uncertainties.

Nevertheless, consultation with enforcers via surveys and attendance at the CORTE meeting confirmed that clarification efforts have in general been appreciated.

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

6.4.6. Recommendations

A key issue is that, even if subsequent clarifications make the intended interpretation of the rules clear, they are not legally binding and hence there are still differing interpretations. This strongly suggests that further clarification on aspects that have already been the subject of Clarification/Guidance Notes is unlikely to be successful in achieving further harmonisation. Hence, for the remaining uncertainties where a lack of uniform application is the key issue, it may be considered that a legally-binding approach would be more effective. This approach is supported by some stakeholders, for example, the Hungarian national transport authority states that Clarification and Guidance Notes should be part of the binding legislation, which would guarantee a uniform application of law.

For uncertainties where non-binding clarifications have not been attempted, it seems proportionate to address these in the first instance with guidance, given that this can be successful and is generally well-received. Several stakeholders consulted for this study would therefore support the development of further Clarification and/or Guidance Notes (i.e. the Swedish enforcement authorities, the Czech Ministry of Transport, Polish enforcement authorities, the French Ministry of Transport). However, if there is to be a review of the legislation, it would streamline the process if these remaining uncertainties were also clarified in the legal text as part of the wider process of clarifying the rules, in order to avoid persisting differences in application.

6.5. Effectiveness: To what extent is the current system of exemptions and national derogations contributing to or hindering the achievement of specific objectives?

To what extent is the current system of exemptions and national derogations contributing or hindering the achievement of specific objectives? What differences exist in the implementation by Member States and how do these differences affect the achievement of common objectives, in particular as regards level playing field?

This question focusses on the degree of harmonisation in the application of exemptions and derogations when assessing in particular the **impact on a level playing field**. It also assesses the impact of exemptions and derogations on the achievement of other common objectives, namely road safety and working conditions. This question does not deal with the general scope of road social legislation (aside from the issue of exemptions and derogations) – the discussion of these aspects is provided in Evaluation Question 2, see Section 6.2.

6.5.1. Exemptions from Regulation (EC) No 561/2006 (Article 3)

Regulation (EC) No 561/2006 contains specific **exemptions** (in Article 3) – this defines nine types of vehicles/ their types of uses for which the Regulation does not apply. There were only minor changes compared to the previous rules under Regulation (EEC) No 3820/85 (see Annex A, Section 9.1.4 for a full list of exemptions and changes compared to the previous rules). The main objective of the adjustments was to ensure that exemptions were justified only on account of their light weight or size, short distance travelled, or public interest (more specific details are discussed below).

The list of exemptions in Article 3 do not provide any flexibility for Member States in terms of their application, which ensures uniform application and a level playing field within the concerned vehicle/operation types.

A further issue is whether the exemptions could create any market distortion with other vehicles that are still covered by the rules. This can only occur to the extent that substitution is possible – e.g. if vehicles exempted could be used to carry out operations normally conducted by vehicles in-scope. In practice, the potential for this type of distortion seems extremely limited for most exemptions because the vehicles concerned are:

- **Representing a very small market shares due to their specialist nature**, e.g. vehicles with a maximum authorised speed of less than 40 km/hr (Article 3(b)), vehicles with a historic status (Article 3(i)). Both types of vehicles are typically very rare (see for example RSA (2009)).
- **In the public interest**, e.g. emergency services or fire services (Article 3(c)), in emergencies or rescue operations (Article 3(d)), specialist vehicles used for medical purposes (Article 3(e)). Such exemptions are justified on the grounds that these vehicles provide a vital service in a non-competitive environment (European Commission, 2001a). Obliging such vehicles/ types of services to obey the road social legislation could severely interfere with their functioning and would be against the interest of public health.

For the five above-mentioned exemptions, the provisions of Article 3 are unlikely to present general problems in ensuring a level playing field in terms of the market competition of vehicles concerned because they represent comparatively small market shares⁴⁶ and/or are used in highly specific circumstances in the public interest. In addition, the exempted drivers, where they are not self-employed, are still subject to the general working time rules, as set out in the Working Time Directive (2003/88/EC). For the same reasons, there

⁴⁶ The actual market shares of these vehicles (which is likely to vary across the Member States) could not be comprehensively identified in the scope of this study. On the basis of available data and as suggested in RSA (2009), they are “typically very rare”, which indicates a market share that is insignificant.

are negligible impacts on the achievement of other objectives (safety, working conditions). Conversely, if these vehicle types were not exempted, it would increase the administrative and compliance burdens for authorities and operators without any tangible benefits – or in the case of emergency/medical vehicles, be in contravention with the objectives of the rules as they could hinder the effective handling of urgent, short-term emergencies at the cost of health and safety of casualties. Hence, no disagreement that these exemptions are appropriate could be identified, either from stakeholders consulted for this study, or in the reviewed literature.

Other exemptions are justified on the basis of the **short distances travelled or the restricted sectors** in which the vehicles operate. Certain issues have been identified concerning these types of exemptions, as discussed in the subsections below. Also, similarly to the previous exceptions, the drivers exempted from the driving time regulation under Article 3 would still be subject to the working time rules, as set out in the Working Time Directive (2003/88/EC), unless they are self-employed.

6.5.1.1. Article 3(a) – Regular passenger transport under 50km

The exclusion of regular passenger transport under 50km (Article 3(a)) was justified on the basis that only short distances are travelled, as well as the cost and disruption to services that might arise from their inclusion in the Regulation (European Commission, 2001a). Examples include services for the general public or school-bus services (RSA, 2009). The wording is unchanged compared to the previous rules – i.e. in recognition of the local nature of such services, the principle of subsidiarity should apply. At the same time, the Commission recognised that this sector had been deregulated in several Member States, potentially creating a risk that road safety concerns and working conditions may be compromised for profit (European Commission, 2001a). As such, Article 15 was introduced, which obliges Member States to “*ensure that drivers of [these] vehicles are governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods*”. As a result of Article 15, Germany, for example applies the same rules to these operations as for the non-exempted operations (see the case study on Germany, Annex F, Section 14.3). Consequently, as long as Member States adhere to Article 15, there are no significant impacts on road safety or adverse effects on working conditions as a result of the exemption. In addition, as shown in Evaluation Question 11 (see Section 6.11), data from Germany suggests that drivers providing short-distance local services tend to have shorter working and driving times on average compared to longer-distance transport, which implies that the sector has not been adversely affected by such exemptions.

Nevertheless, as evidenced by ECJ case C-245/15, there is potential uncertainty with regards to the scope of Article 3(a). The case (for which a ruling is yet to be made) is to clarify whether the scope of the exemption includes a company’s own-account transport services provided for workers in connection with their travel to and from the workplace. This uncertainty may have led to an incoherent application of the exemption, and hence an unlevelled playing field among passenger transport operators across the Union. Information on the extent of such potential different interpretations is however not available. Stakeholder consultation carried out for this study has not led to further insight other than that the Belgian authority pointed to ambiguity with regards to the definition of a ‘route’⁴⁷, which is not provided in the legislation and which can be understood differently. From further examination of the issue it appears that this lack of precision of the term ‘route’ leads to situations where some operators split the regular service route, which is more than 50 km in length, into in two or more shorter than 50 km connecting stages, in order to avoid applying the EU rules on driving times and rest periods. This obviously puts fair competition at risk and deprives drivers from benefiting from the full protection as provided in the EU regulation..

⁴⁷ Article 3(a): “vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres”

6.5.1.2. Article 3(f) – Specialised breakdown vehicles

Specifically concerning the exemption of specialised breakdown vehicles (Article 3(f)), the definition was updated to include a maximum radius of 100km from base (previously no radius had been defined). The 100km radius was introduced because it was found that breakdown vehicles were actually being used in other ways and the previous provisions were widely abused - commercial breakdown services regularly travelled long distances, nationally and internationally (European Commission, 2001a).

Even with the restricted radius, authorities from Denmark and Belgium⁴⁸ have expressed concerns that specialised breakdown vehicles can be acquired and used for other means of transport. The Danish police report cases of this occurring although the full extent of this practice is not known.

Clearly, these practices mean that the objectives of ensuring working conditions and safety in accordance with the Regulations are not achieved for the drivers concerned. The problem here is that breakdown vehicles (as long as their construction/fitments are such that they are intended mainly for vehicle recovery operations), are exempt regardless of their actual use⁴⁹, and hence undertakings acquiring such vehicles for other purposes are able to circumvent the rules.

6.5.1.3. Article 3(g) - Vehicles undergoing road tests for technical development, repair or maintenance purposes

Article 3(g) exempts vehicles undergoing road tests for technical development, repair or maintenance purposes. The wording is unchanged from the previous rules. Vehicles concerned by this derogation are very likely to operate under very specific circumstances only, within a limited radius and representing only a minor share of overall traffic.

According to Swedish enforcers, Article 3(g) (along with Article 3(h)) is the most common ground for claimed exemptions during company checks – although it is not clear whether this constitutes an overall significant share of working days or traffic. The exemptions are verified on the basis of workshop certificates, work schedules, receipts, invoices or other agreements (Transportstyrelsen, 2015). However, there is no specific documentation required in national legislation in Sweden, nor in several other countries (e.g. Finland, UK, Netherlands), which in practice leads to different documentation being required across Member States (Transportstyrelsen, 2015). As such, the practical enforcement of such exemptions may vary, since enforcement is the competence of Member States – the Swedish ministry also implied in their survey response that there are differing interpretations between Member States. The extent to which the above issues highlighted by Sweden are problematic in terms of their impact on level playing field or drivers' working conditions is not clear – although no other specific complaints in this regard were received from any stakeholder group during the consultation activities, which seems to imply that it is not a major concern.

6.5.1.4. Article 3(h) - Vehicles or combinations of vehicles used for the non-commercial carriage of goods

The exemption of **vehicles or combinations of vehicles used for the non-commercial carriage of goods** (Article 3(h)) was amended to restrict the exemptions to the use of smaller vehicles – i.e. with a maximum permissible mass not exceeding 7.5t. The reason for reducing the weight restriction for vehicles qualifying for the exemption to 7.5t was that a vocational licence is required by drivers of larger vehicles, which should comply with the Regulation. The deletion of the term "for personal use" that had previously been included was due to difficulties experienced in its interpretation, e.g. where charitable relief aid is concerned (European Commission, 2001a).

The scope of 'non-commercial' transport appears to have left some uncertainty that was subject ECJ case C-317/12. In this case the question was raised as to whether 'non-

⁴⁸ respectively via their survey response and during a study visit

⁴⁹ ECJ ruling C-79/86

commercial' transport services may be interpreted as covering carriage of goods by a private individual as part of their hobby which is in part financed by financial contributions from external persons or undertaking. The ruling clarified that the "non-commercial carriage of goods", occurs where there is no link with a professional or commercial activity. The court ruled that such transport operations would fall into the definition of 'non-commercial' transport and would hence be exempted from the rules (since no payments were made for that transport operation per se), the purpose of that exemption being "to exclude from the scope of the regulation the carriage of goods by private individuals outside any professional or commercial activity".

The ruling does not appear to have resolved all uncertainties though – in particular in relation to the reduced weight restriction. The ruling noted in its explanations that the scope of the Regulation is intended to cover *professional drivers* only and exempting the type of transport concerned would not have significant negative impacts on road safety due to its infrequent nature. By justifying the exemption on this basis, the Norwegian authorities responded to the consultation for this study that the ruling has actually reduced the clarity of the Article – nevertheless, in their view vehicles exceeding 7.5t should not be exempt⁵⁰.

National authorities responding to the survey indicated different interpretations on the weight restrictions: Four⁵¹ stated that vehicles with a maximum weight above 7.5t were also exempt from the rule (whereas the remainder stated that this was not the case). This suggests that there could be a potential unlevelled playing field in respect of this Article.

However, the lack of uniform application could only have a significant adverse impact if the transport activity involved is also significant. There is no comprehensive information on the extent of such activities, yet comments from the enforcers in Germany and Luxembourg indicated that non-commercial transport with vehicles over 7.5t is typically rare. Overall therefore, in light of the small size of the transport activity concerned, these different interpretations do not appear to have any significant adverse impacts.

6.5.2. Derogations from Regulation (EC) No 561/2006 (Article 13)

Article 13 permits derogations to be used on a voluntary basis by Member States – Member States have the power to apply derogations to 17⁵² pre-defined categories of vehicles and drivers while on journeys within their own territories, or, with the agreement of the States concerned, on the territory of another Member State, provided the objectives set out in Article 1⁵³ are not prejudiced. There were several changes compared to the previous rules under Regulation (EEC) No 3820/85 (see Annex A, Section 9.1.4 of this report for a full list of derogations and changes compared to Regulation (EEC) No 3820/85).

As a result of the permitted flexibility, the application of the derogations varies greatly between Member States that have not adopted any of the derogations (Finland and Greece) to those that have adopted the majority of the derogations (i.e. 16⁵⁴ Member States have decided to adopt 15 derogations or more out of the 17 available; Annex A, Section 9.1.5 provides a detailed overview of the adoption of derogations by Member State).

⁵⁰ Vehicles "not exceeding 7.5 tonnes" are explicitly exempt, therefore by necessary implication vehicles above are not

⁵¹ The national enforcement authorities from Switzerland, Croatia, Hungary, Slovakia.

⁵² Counting the two sub-elements provided in Article 13(d) separately, as some Member States have adopted only either one of these.

⁵³ i.e. the objective to lay down rules on driving times, breaks and rest periods for drivers in order to harmonise the conditions of competition in the road sector, and to improve working conditions and safety.

⁵⁴ Belgium, Croatia, Cyprus, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, UK

A lack of uniform application has therefore resulted from the flexibility allowed to Member States in applying relevant derogations. Belgian authorities highlighted that this freedom in adoption is problematic in practice, since it causes uncertainties for drivers and undertakings about how to handle (i.e. record) international operations that are derogated only in some Member States, and similarly causes uncertainties or difficulties in enforcement. However, given that derogations, per definition, mostly refer to operations confined to local areas and/or do not represent a significant share of transport (see Evaluation Question 2, Section 6.2), the extent of this problem and its impact on the achievement of the objectives of the social legislation is likely to be limited. No other consulted stakeholder raised this specific issue.

Some derogations however appear to have resulted in uncertainty over precisely which activities are included or not, which can have implication on the achieving the specific objectives of the road social legislation – as discussed below.

The main concerns voiced by stakeholders (i.e. Belgian, French and UK authorities as well as UK industry groups – either consulted for this study or as identified in literature (see full details in Annex B (Section 10.3.1)), relate to the possibility of an overly broad interpretation of the derogations such that sectors involved in competitive activities could be excluded from the rules. In summary, these relate to the scope of “horticultural” vehicles (**Article 13(b)**), the definition of “material” (**Article 13(d)**), the scope of the term “non-commercial” in **Article 13(i)** (in line with the ambiguity of this term in context of Article 3(h)), and the type of animal products referred to in **Article 13(n)**. The issues raised regarding these Articles were typically rather theoretical and expressed only by one stakeholder in each case. Nor could further evidence be found in the literature to substantiate the comments from stakeholders, which implies that the practical implications on the achievement of the specific objectives of road social legislation are not significant across the Union.

More significant however is the derogation under **Article 13(h)**, applying to vehicles “*used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers.*” Previously this derogation was an exemption, since most of the utilities had been state-controlled. Many of such activities had however been privatised and, as a result, considerable abuse had previously been found, as evidenced by the frequency with which the European Court was asked to make a judgement on matters arising from this particular exemption (European Commission, 2001a). Consequently, it was changed to a derogation and its scope was reduced, which, however, does not appear to have resulted in a clear understanding of and coherent application of the derogation across the Union, as described in the following.

As discussed in Evaluation Question 2 (on the relevance of the scope of the legislation and its derogations), the current version of the derogation still potentially includes many activities that have been subject to liberalisation. The key issue here is that the wording of Article 13(h) does not explicitly state that only public services carried out by public authorities are covered. Consequently, privately-run services could also be considered to be in the scope of the derogation. In cases where the driving itself is not subject to competitive pressures (as it constitutes an ancillary activity only), this would be in line with the general purpose of the derogations. However, the remaining uncertainty has led to different interpretations and the need for further guidance in order to achieve a uniform application of the rules. For example, in the UK, specific national guidance has been issued to clarify the scope of vehicles used in connection with ‘door-to-door household refuse collection and disposal’ (FTA, 2007) and vehicles involved in ‘maintenance’ (Fleet, 2014). Also on the EU level, remaining uncertainty was addressed by ECJ case C-222/12 of March 2014, which clarified whether transporting material to a “road maintenance works” site was covered by the derogation. The ruling concluded that this was the case “provided that the transport is wholly and exclusively connected with those works and constitutes an ancillary activity to them”. However, several ministries (Belgium, Czech Republic, and France) consulted for this study felt that the wording still lacked clarity; existing court

rulings have not resolved uncertainties. The resulting uniform application of the rules hampers the development of a level playing for the concerned undertakings.

6.5.3. Exceptions from Regulation (EC) No 561/2006 according to Article 14)

Article 14 (1) provides Member States the possibility to grant, after authorisation by the Commission, exceptions to transport operations carried out in *exceptional circumstances*. The total number of such exceptions granted in the period from 2007 to 2014 amounted to eight, of which four were temporary. The impact of these exceptions in terms of reducing the effectiveness of the Regulation can be considered negligible because of the Commission's authorisation that is required before they can be granted. Hence, the relevant authorities can verify that the objectives set out in Article 1 are not prejudiced. Furthermore, any potential relaxation in driving times still has to be in line with the provisions of the Working Time Directive for mobile workers (Directive 2002/15/EC), which further limits any possible impact on the achievement of the specific objectives.

Article 14 (2) stipulates that *in urgent cases* Member States may grant exceptions from the application of Articles 6 to 9 up to a maximum of 30 days to transport operations – exceptions that shall be notified immediately to the Commission. The effect of these temporary exceptions is negligible because they apply for a very limited period of time only, and are approved for specific transport operations carried out in specific urgent and problematic circumstances only. Consequently, only a very limited share of traffic is concerned, for a short period of time. This argued negligible impact of temporary exceptions is further shown by the total number of granted exceptions (as notified to the Commission): In the period from 2007 to 2014, altogether 36 temporary exceptions were granted, of which 32 were due to extreme/unusual weather conditions. In such latter conditions, exceptions allow to ensure the functioning of specific types of services that remain or become specifically relevant under the prevailing conditions. Related exceptions are therefore in the public interest, especially when the delivery of essential goods or the provision of medical services is concerned. In these cases, not exempting the concerned vehicles could even be in contravention with the objectives of the rules.

Also, none of our stakeholder engagement activities uncovered any concern or uncertainty with regards to the exceptions provided in Article 14 and their impact on the objectives of the rules. Exceptions under Article 14 are therefore seen to be well-aligned with the overall objectives of the rules.

6.5.4. Derogations from Directive 2002/15/EC (Article 8)

Article 8 of Directive 2002/15/EC allows derogations from Article 4 (defining the maximum average weekly working time to be 48h over a 4-month period) and 7 (providing rules in case of night work) "by laws, regulations or administrative provisions provided there is consultation of the representatives of the employers and workers" or by "means of collective agreements". Such derogations provide a certain degree of flexibility in the national rules to be applied. Derogations are, according to Article 8(2) only possible within specific constraints, which limits the freedom of how these derogations can be defined and also the variability across, or within, Member States (i.e. derogations from Article 4 may not result in a reference period exceeding six months). Since, per definition, they can only be set in consultation with both sides of the industry, negative impacts on working conditions, health and safety of drivers are unlikely.

As shown in Section 5.3 on the implementation of Directive 2002/15/EC, several authorities have opted for national-level derogations from Article 4, and Article 7 in order to provide more flexibility. However, the freedom of application is still in contrast with establishing a level playing field – even within a single country, different agreements can apply to different workers. For example, in countries such as Latvia, Ireland and the UK, company-level agreements regulate working time and related aspects, and in Cyprus, agreements at company level in the road transport sector contain more favourable provisions than those provided for by the country's national implementing legislation on working time

(Broughton, 2007). This means also that not all workers are subject to any agreed derogations – for instance, the Swiss authority responding to the survey estimated that 12% of registered transport undertakings have adopted collective agreements. Many others explicitly stated that such an estimation was not possible. A Swedish industry association estimated that “most” Swedish undertakings were subject to collective arrangements as an estimated 70% of drivers were unionised. Older estimates for Denmark from the literature suggest that 85% of the workforce is covered, with the national implementing legislation applying to those who are not covered by a collective agreement (Broughton, 2007).

During the consultation activities for this study, stakeholders were asked to identify any issues regarding the possibility of derogations to the Working Time Directive. No such issues were raised by any members of any consulted group. While this does not conclusively prove that there are no problems, a broad range of stakeholders were consulted and the same stakeholders freely raised other issues discussed elsewhere in this Section – this therefore seems to suggest that there are no significant problems.

6.5.5. Summary and conclusions

With regard to **exemptions** from Regulation (EC) No 561/2006, there are no problems reported with those that have been justified on either the basis that the vehicles represent very small market shares (e.g. with a maximum speed of less than 40 km/hr or with a historic status) or are used for specific purposes in the public interest (e.g. vehicles used for emergency or medical purposes). Allowing such exemptions in the Regulation ensures that the costs of enforcement and compliance are reduced without impacting on the achievement of the objectives of the Regulation in terms of ensuring road safety and adequate working conditions, by nature of the small scale of activities concerned and the coverage of such activities by the general working time rules, as set out in Directive 2003/88/EC. Conversely, specific issues have been uncovered with the remaining four exemptions that were justified on the basis of the short distances travelled. These problems mainly concern whether the definitions are precise and clear enough to avoid possible loopholes that enable the rules to be circumvented (e.g. in the case of breakdown vehicles), as well as an unlevelled playing field in the interpretation and application of such exemptions.

Derogations from Regulation (EC) No 561/2006 are justified on the basis that underlying activities are not subject to competitive pressures or do not represent a significant share of national transport – conditions that might vary across Member States. Consequently, although the freedom for Member States to freely adopt pre-defined derogations appears to be appropriate, this may cause uncertainties for drivers, undertakings and enforcement authorities about how to handle international operations that are derogated only in some Member States. This issue was only raised explicitly by one stakeholder and therefore does not appear to be a major concern.

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

Some derogations however appear to have resulted in uncertainty over precisely which activities are included or not. The concerns generally relate to the possibility of an overly broad interpretation of the derogations such that sectors involved in competitive activities could be excluded from the rules. A particular concern is Article 13(h) that is intended to apply to public services carried out by public authorities, but may be interpreted to include privately-run services. Different interpretations exist which cause a non-uniform application of the rules and an unlevelled playing field for the concerned businesses.

Temporary exemptions as provided in Article 14 are not found to cause any adverse effects on the objectives of the Regulation. Rather, they appear to be an appropriate tool to deal with exceptional and urgent circumstances when the suspension of relevant transport operations would not be appropriate.

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

6.5.6. Recommendations

Given the overall assessment that adverse impact of exemptions and derogations on the common objectives of road social legislation is limited, the consultants do not recommend changes to the functioning of these provisions.

However, the clarity of some specific exceptions and derogations of Regulation (EC) No 561/2006 could be improved in order to rule out interpretations that can result in transport operations being unjustly exempt or derogated from the rules. The most significant issues here appear to pertain to Article 3(f) (specialised breakdown vehicles) and Article 13(h) (exempting vehicles used in connection with specific (and, at least previously, public) services). Further clarification efforts are recommended. Other uncovered issues related to other exceptions or derogations appear to have much less significant impact on achieving the objectives of the rules and are therefore recommended not to be tackled as a priority.

Section **Error! Reference source not found.** on Evaluation Question 4 provided recommendations on the approach to clarifications – the same recommendations apply to the clarification of exemptions/derogations

6.6. Effectiveness: To what extent has the package of enforcement measures contributed to improving the application of the social rules in road transport in a uniform manner throughout the EU and to increasing compliance with these rules?

How do the results compare between different EU Member States? How do results compare for provisions under Driving Time Regulation and Road Transport Working Time Directive? How do the results compare with the state of play prior to the adoption of the Enforcement Directive? What are the main drivers and hindrances to the effectiveness of enforcement?

This section examines first the impact of enforcement measures that are prescribed in the social legislation, such as the minimum requirements for checks. It then considered factors that are not directly regulated but may still impact the overall functioning of the enforcement system. Finally, the effectiveness of enforcement is examined.

6.6.1. Regulation (EC) No 561/2006 and Directive 2006/22/EC

A range of enforcement measures were introduced to ensure harmonised application and more effective enforcement of the driving time rules across Member States, as follows:

- Minimum thresholds for the number and distribution of checks.
- Risk rating systems, as required by Article 9 of Directive 2006/22/EC.
- Penalties for infringements of the rules.
- Forms for attestation of driver activities.

The impact of each of these measures is examined firstly in terms of their contribution to the uniform application of the rules. The provisions regarding **administrative cooperation** are assessed in Evaluation Question 8 (see Section 6.8). Issues regarding the **interpretation of the rules** are dealt with in Evaluation Question 4 (Section **Error! Reference source not found.**).

6.6.1.1. Number and distribution of checks

In terms of the **number of checks**, the Enforcement Directive has had positive impacts in terms of raising the minimum standards across Member States. This is evidenced by the fact that in 17⁵⁵ Member States the percentage of working days checked showed an increase between 2005-2006 (before the Directive was adopted) and 2007-2008⁵⁶. By 2011-2012, the percentage of working days checked had increased in all but one Member State (Poland) for which data are available.

The actual number of checks still varies substantially (with some Member States⁵⁷ reporting shares that are 3 to 5 times higher than the minimum requirements); however, the purpose of the Directive is to harmonise the *minimum* standards rather than prescribing a precise number. In this sense, the Directive can be considered to have been largely successful in ensuring common minimum standards: in 2011-2012, all Member States except Denmark, Greece, Italy, Latvia and the Netherland exceeded the minimum target of 3%.

Regarding the **distribution of checks**, there is still an imbalance between working days checked at the roadside and at the premises: most Member States have failed to meet the

⁵⁵ Austria, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Romania, Slovakia, Sweden - around 80% of the 21 Member States for which data are available

⁵⁶ Directive 2006/22/EC increased the minimum requirement for working days checked, from 1% before the introduction of the Directive to at least 2% of all working days from 1 January 2008

⁵⁷ AT, BG, FR, DE, RO

requirements on how their checks should be distributed⁵⁸ (NB: reasons underlying the difficulties in meeting the requirements in some Member States are examined in Section 6.6.2). This shows that the harmonisation in terms of the distribution of checks is incomplete. Even so, there has been improvement in the distribution in the last reporting period (an increase from 18% on average of checks at the premises in 2009-2010 to 20% in 2011-2012), showing that trends are moving in the right direction. Also, many countries conduct roadside checks in excess of the minimum requirements – if these excess checks were removed, the proportion of working days checked at the premises would be much closer to the requirement (although still below it at an average of 45% compared to the requirement of 50%⁵⁹).

6.6.1.2. Implementation of risk rating systems

The risk rating systems have an important bearing on the targeting of checks. While the legislation lays down that Member States must adopt such a system, the details of its functioning and application are largely left to Member States and hence this becomes a source of discrepancies.

However, progress towards targeted enforcement (more frequent controls for frequent offenders) has not been uniform across Member States. Firstly, in terms of the **actual usage of risk-rating systems**, the review of implementation already provided in Section 5.4 showed that this is determined at the level of single enforcement authorities. While there might be a risk rating system in place in a certain Member State, this does not necessarily mean that all relevant enforcement authorities contribute and/or make use of the system.

Implementation in terms of **how the risk-rating is applied / calculated** also varies widely. To illustrate these differences, several examples are elaborated in Box 6-1.

Box 6-1: Detailed overview of the functioning of risk-rating systems in selected Member States

Romania: The Romanian risk-rating system is mainly used by the Road Transport Inspectorate (information mainly stems from the Labour Inspectorate but also from the Police). It is based on a mathematical model that assigns risk levels to a company. The system also identifies the type of infringement the enforcers should focus on (which can be any infringements concerning commercial road transport). Entries are not deleted from the system but the risk rate for a certain company can become zero if no infringement has been detected in three consecutive years. A time coefficient reduces the risk rate of a company by a third in case no infringement has been detected within a year. The severity levels of the infringements are in line with the Commission's guidelines.

Sweden: The Swedish risk-rating system is built around a score point system according to the severity of infringement divided by the number of vehicles checked. The severity of infringements is in line with Directive 2009/5 and entries are deleted after 3 years. The risk-rating system is not used by the police that conducts roadside checks in order to keep these checks random.

UK: The UK authorities reported that the risk rating system that they are using, UK Operator Compliance Risk Score (OCRS) is one of a number of tools that the UK enforcement authorities use. It has been in place since 2006 and the representative of the UK authority considered that in particular the part of the OCRS that assesses the risk of the technical condition of the vehicle works very well. This is due to the high amount of data available to support this risk rating. Risk scores and data are also made available to companies via a web portal. Companies use the OCRS data to help them manage their levels of compliance. The UK enforcement authorities are currently working towards using additional data. The system is used by DVSA who carry out the majority of roadside and premises inspections and used both at roadside and as a part of the consideration for the conduct of company checks. However, concerning company checks also more detailed analysis of the company data is used to determine which checks should be carried out. The

⁵⁸ Directive 2006/22/EC sets out the ratio between checks at the roadside and at the premises, which should amount to at least 30% and 50% respectively. Only six Member States met both requirements: Cyprus, Greece, Ireland, Lithuania, Netherlands and Slovenia

⁵⁹ Only Greece, Sweden, the Netherlands and Denmark would still be very far from the threshold set for checks at the premises.

severity grades of the infringements are based on the UK definitions. OCRS recalculates the risk scores weekly and always uses the data of the previous three years'. Most recent infringements count more towards the risk grade of an undertaking.

Source: Interviews with enforcement authorities and ministries

The above examples of risk-rating systems has shown that there is a lack of harmonisation in terms of:

- Implementation of the risk rating system and its penetration across all relevant enforcement authorities (as the national system may not be used by all of the national enforcement authorities involved in the monitoring of the social legislation);
- The extent to which the national system is fed with data from other authorities within the same Member States and/or information from other Member States;
- The calculation methods used in the system itself.

Although the Commission (together with Member States) prepared a recommended formula to calculate risk ratings, again it was not legally binding and hence not taken up by all Member States. Furthermore, in 2013 the Commission surveyed Member States to determine whether there was demand for harmonisation of the formula, which would allow for compatibility of national risk rating systems. However, the survey indicated that there was a low level interest in pursuing this approach.

In summary, national differences have emerged in the detailed implementation of risk-rating systems. This is because no specific calculation methods have been laid down in any binding legislation, and there appears to be little interest from Member States in voluntarily aligning their calculation methods

6.6.1.3. Definition of penalties

It is widely reported that the lack of a harmonised approach towards the categorisation of infringements and levels of fines imposed is a major cause of legal uncertainty and a potential source of unfair competition within the internal market (e.g. (AECOM, 2014a); (Bayliss, 2012); (TRT, 2013)). In 2009, a European Commission study found that national systems of penalties for infringements of Regulations in the road haulage sector differed significantly between Member States. The same finding is evidenced in the literature, (e.g. (European Parliament, 2010), (TRT, 2013) and (Broughton et al., 2015)), as well as in the updated review conducted for this study in Section 5.1, which showed significant variation in the level of fines that cannot be explained by socio-economic differences. In addition, the types of other sanctions that could be imposed vary greatly across Member States (e.g. the potential immobilisation of the vehicle).

One of the steps taken to (indirectly) improve the harmonisation of sanctions was the introduction of Commission Directive 2009/5/EC¹⁸ on the common classification of the level of seriousness of infringements. This proposed that infringements be classified into three categories according to their degree of seriousness, and specifies reference thresholds for infringements relating to quantitative variables. However, since the level of sanctions is a competence of Member States (due to the subsidiarity principle), no indicative value in terms of sanctions to be imposed has been assigned to each of these categories. Furthermore, out of the Member States that reported on their penalties systems in their biennial reports, only the Netherlands and Romania notified that they aligned their categories of penalties with the above-mentioned categorisation of infringements.

Overall it is clear that there is a continued lack of a harmonised approach towards the categorisation of seriousness of infringements, the levels of fines imposed and the type of sanctions applied. The lack of harmonisation has arisen because Member States have competence in this area – furthermore there is no guidance that establishes an appropriate level of fines. The Regulation does not establish any criterion for the assessment of proportionality of penalties – hence, Member States are empowered to choose the penalties which seem to them to be appropriate.

6.6.1.4. Form for attestation of driver activities

The implementation of the form for attestation of driver activities was reviewed in Section 5.4, which showed the wide range of approaches taken and indicated a lack of harmonisation in terms of what a driver can or must do to prove activity and inactivity periods for which gaps in tachograph records exist.

The purpose of the form is to provide a uniform document attesting for driver's activities when away from a vehicle and when it was not possible to record these activities or inactivity periods by the tachograph. However, there are reportedly problems with the use of the form. According to its monitoring submission, Lithuania has reported problems of economic operators use the form attesting to periods of driver activity to conceal actual drivers' activities (European Commission, 2014). According to the report "*Drivers arriving to Lithuania from other Member States often submit a form stating the purpose of the visit as holidays or recreational. These practices render verification whether a driver residing in another country has submitted a form attesting to actual driver activity very complicated*".

To cross check this report from Lithuania, all enforcers and ministries responding to the surveys were asked about possible issues with the forms. The highlighted issues fall into three main categories:

- **Falsification of information** (Belgium, Netherlands, Hungary, Czech Republic, Germany, Sweden, France);
- **The requirement is very time-consuming** (Netherlands, Austria – labour ministry).
- **The approach across Member States is inconsistent** (Belgium, Czech Republic)

The Belgian authorities gave specific examples of falsification: Drivers that are brought with a van to the parking where the truck is stationed may use an attestation until the moment they leave with the truck (i.e. the time needed to travel to the parking space to take over the truck is almost never registered).

The problems related to attestation forms were also confirmed in the discussions during the study visit to the CORTE working group, where it was clear that there is no uniform approach on the issue (for instance, in France a driver would be fined if they do not have a form, whereas in other countries the forms are not considered relevant as there is no proof of the underlying activity (e.g. Netherlands). The problems of lack of harmonisation were also found during the enforcement study visit, where the Belgian enforcers explained they did not want to sanction a Dutch driver for not carrying attestation forms (as required under their law) because they know that such attestation forms are not used in the Netherlands anymore (although they are required in Belgium). The enforcers confirmed the above-listed issues relating to falsification and the time taken to fill in the information.

Overall there appear to be several issues: aside from the inconsistent approach, there are also issues of potentially unreliable information on the forms, as well as the time-consuming nature of the requirement.

6.6.1.5. The Working Time Directive 2002/15/EC

By contrast with Regulation (EC) No 561/2006, there is no explicit legal requirement for Member States to submit quantitative information on enforcement of, and compliance with, the Working Time Directive. Some Member States have provided quantitative information to the Commission in their biennial reports anyway, but the number of Member States doing so is insufficient to allow EU-wide conclusions to be drawn (European Commission, 2014).

Various approaches are taken to enforcing the Directive. Information gathered from the study visit to the CORTE enforcement meeting revealed that some enforcers (e.g. Netherlands) consider it is only possible to enforce working time via checks at the premises, whereas others (e.g. Germany) consider it is possible to check at the roadside although verification of "periods of availability" can be ambiguous. The official monitoring reports also confirm that some enforcers find coordinating checks at the roadside to be impractical

– for instance, the UK reported that working time records are not checked at the roadside due to the fact that 17 weeks of records are not required to be held in the cab, and the Czech Republic indicated that checks of working time are not possible at the roadside but only at premises where additional proof is made available (European Commission, 2014). Other examples were gathered via interviews conducted for this study: in Poland checks on drivers' working time can be performed at the premises by the National Labour Inspectorate, and checks of the driving time, compulsory breaks and rest periods of drivers may be performed at the roadside by the Road Transport Inspectorate, the Police, the Customs Service and the Border Guard. In the UK the enforcers report that they carry out checks of working time checks when an operator visit is made for the purposes of the EU drivers' hours rules, general follow ups and new operator visits. In addition, as part of obtaining their operator licence, operators must demonstrate to the Traffic Commissioners that they have adequate systems in place to make sure they and their staff obey both the EU drivers' hours and working time rules.

Member States' reports to the Commission have revealed that in some cases, collective agreements between employees and employers have contributed to the arrangements for monitoring the working time rules. This is reported to be the case in Sweden⁶⁰, where collective agreements (covering approximately 70% of firms) impose fines on operators whose employees exceed a certain weekly limit on working hours, and trade unions enforce these agreements in the first instance. In Italy, trade unions conduct checks on companies to establish whether they have exceeded weekly limits on working hours (European Commission, 2014).

The importance of collective agreements in the Member States varies greatly; in Malta there are none, and in other Member States employees and employers have agreed terms to derogate from the maximum weekly working time limit (European Commission 2014c). The UK Department for Transport indicated that they are generally unaware of the extent of collective agreements as these are a matter for individual operators to address through contracts with their employees, and will not come to light until the operator reveals the contract.

Overall the analysis suggests that the enforcement practices for the Working Time Directive vary significantly across Member States and that no harmonised approach for enforcing this Directive exists. Due to the lack of information on infringements/compliance, it is not possible to say with great certainty whether certain approaches are more effective than others. As will be shown in Evaluation Question 10 (which assesses compliance with the Working Time Directive), there is evidence of low compliance with working time provisions across the EU, due to the low priority given to enforcement of the Working Time Directive.

Hence, in conclusion, although there are varying practices across Member States with regards to the specific enforcement of the Working Time Directive, this variation seems to take a secondary role behind the fact that the Directive is generally given a low level of priority in enforcement. Overall, since there is evidence of low compliance, current enforcement cannot be considered effective.

6.6.2. Factors that are not directly regulated under the social legislation

The main factors that are not directly regulated under the social legislation, but which influence the effectiveness of enforcement, were identified as issues of budget and enforcement capability. These are analysed in more detail below.

6.6.2.1. Budget for enforcement

Several Member States reported to the Commission in their monitoring reports that the main reason they could not comply with the provisions for enforcement measures were **budget constraints**. In particular, Greece, Italy and Latvia pointed out that the financial crisis has limited the resources in terms of staff and/or new equipment (European Commission, 2014).

⁶⁰ Based on an interview with a Swedish transport operator association

Responses to the survey of national authorities conducted for this study also confirm that financial constraints are widely considered a problem: 60% of respondents to the enforcers survey felt that a lack of budget made a contribution to difficulties in enforcement. This issue was reported by respondents across the EU, although this was slightly more apparent among the EU-13 Member States (69% of respondents) compared to EU-15 (50%). More broadly, employer-side organisations have also urged Member States to invest more in enforcement controls in response to a perceived lack of funding (Broughton et al, 2015).

6.6.2.2. Enforcement capability

It is also worth noting that the enforcement capacity of Member States in terms of the number and training of enforcement officers, has an important bearing on the effectiveness of enforcement. However, it is not directly regulated under the social legislation, as Member States have competence to recruit and train their own staff.

It is rather difficult to compare the enforcement capability of Member States in quantitative terms for two reasons: firstly, the standards of reporting are not consistent across Member States (and even in the same Member States over time), and secondly, the quality of training is not possible to directly compare⁶¹.

Instead, the underlying reasons for changes in the number of enforcement officers were explored in detail for the case study countries via interviews: In countries where the number of enforcers were reported to have **increased**: e.g. Belgium, Romania, UK and Sweden, all of the respondents felt that the increase figures were inaccurate due to inconsistent reporting. Interviewees felt that the enforcement capacity had actually remained relatively constant (Belgium) or even decreased (Romania). The UK interviewee explained that the 2011-12 report included all enforcement offices rather than just Traffic Examiners, whereas there had been a major reorganisation of enforcement in Sweden. Interviewees in the other case study countries (e.g. Germany) were not able to explain the trends.

The information obtained from these interviews suggests that the fluctuations in enforcement capacity, whether increases or decreases, appear largely to be the result of reporting inconsistencies rather than any underlying change in enforcement capability. The limitations of the reporting (examined in more detail in Section 6.10) preclude a more specific analysis – further compounded by the fact that interviewees across the case study countries could not provide more accurate estimates.

A certain degree of harmonisation in terms of **enforcement officer training** at both national and international level is necessary in order to contribute to a uniform application of the rules, yet this does not appear to be the case: in 2009, only 20 out of 29 National authorities had completed the training of their enforcement officers (European Commission, 2011). The 2011 Commission impact assessment on changes to the tachograph Regulation identified the non-standardised training of enforcement officers responsible for monitoring social legislation at roadside checks as a particularly problematic area, as the standards and thoroughness of training differ widely between Member States (European Commission, 2011). Updated investigations conducted for this study confirmed that there is still a difference in training approaches.

The widespread issues related to a lack of budget and manpower mean that it is worth looking at innovating practices in the Netherlands. A logical consequence of an over-emphasis on meeting the minimum number of checks without also considering their quality is that this may jeopardise the effectiveness of enforcement – hence, making the most of

⁶¹ In terms of the number of enforcement officers, the monitoring report from 2011-2012 showed that in aggregate the number of enforcement officers had fallen by around three-quarters compared to 2009-2010. On closer inspection, it appears that a reduction in Italy is driving most of this – with an enormous reduction of more than 281,000 officers (indeed, by taking out the figures for Italy, there was actually an overall increase in the number of officers for the remaining countries).

scarce budget is important. The Dutch approach was developed to overcome the issue of budget cuts and consequent decreases in numbers of enforcement officers (see Box 6-2).

Box 6-2: Overview of the trust-based enforcement system in the Netherlands

The Dutch authorities explained during an interview for this study that they have introduced an enforcement agreement with road transport undertakings which could be considered as a supplementing measure for checks. This monitoring based on trust has been introduced in 2009 and up to this point 23 road transport undertakings had joined the scheme.

Enforcers work with companies to help them achieve a high level of compliance, thereby reducing the need to target them in random checking and achieving good results in terms of compliance levels (ETSC, 2011a). The audit process consists of three stages: self-assessment, inspection and monitoring. If a company achieves good results in an audit and demonstrates above-average compliance, a covenant or enforcement agreement may be signed between the companies and the inspectorate. In this covenant, the company will agree to follow specified management principles to ensure continuing high performance, and in return the inspectorate will agree to conduct the minimum possible surveillance to verify the activities of the company, instead of the normal checking procedures.

This system indirectly provides for an additional one million of driver working days checked. If added to traditional checks, the Netherlands would meet the minimum checks threshold (European Commission, 2014).

It has also been suggested that the **quality of training** may in fact be a more important factor than the overall number of enforcers. Fewer officers with more effective training and equipment (such as in the case of the UK) can be more effective in enforcing the Regulations than a greater number of officers with less effective preparation (European Commission, 2011).

Finally, the existence of “letterbox” companies has an important bearing on the effectiveness of the social legislation, due to the difficulty of monitoring the activities of such companies, which increases the risk that they can infringe the rules. The extent to which this occurs in practice is not possible to determine, although there are many individual case studies that demonstrate this effect. For example, there have been cases reported of companies employed by Dutch hauliers, but recruited through their foreign branches in Poland and Hungary. These subsidiaries have been reported as “fictitious”, and the companies involved are associated with allegations of paying low wages, providing poor working conditions and encouraging drivers to work long hours (TRT, 2013).

6.6.3. Impact of enforcement measures on compliance of undertakings

The one quantitative indicator available as a tool to analyse the level of compliance is the **infringement detection rate** (*referred to as the detection rate further in the text*), i.e. the number of offences detected for every 100 working days checked. An important caveat is that the detection rate does not give a direct indication of compliance with social rules, since actual compliance cannot be observed and moreover the detection rate is also influenced by factors that affect enforcement practices (meaning changes in infringement rates may occur even if compliance is constant). Trends in the detection rates seen over time are also highly context-specific and vary widely between countries, with no coherent quantitative trends.

The main issue that prevents cross-country comparisons is the wide variation in enforcement, recording and reporting conventions that affect the reported detection rate for instance:

1. **The use of general tolerances:** some countries do not permit any tolerance in recording infringements (NL, LV, ES, DE), whereas other (FI, UK, RO, DK, SE) allow some leeway (e.g. Denmark allows a tolerance level of 5% in its assessment and SE allows 2-3 minutes tolerance to compensate for tachograph deficiencies in certain cases) (STA, 2015).

2. **The approach to sanctioning isolated minor infringements:** Some countries issue a warning if there are only isolated or minor infringements (SE, UK, NL, FI, DK, DE). For example, in the Netherlands, minor infringements are not controlled until the third company check, meaning that infringements before this point are not controlled. In other countries (e.g. ES, RO, LV), sanctions are typically still imposed for minor infringements. Several countries assess infringements dependant on their context and, if these are systematic, then they can be sanctioned, but they are disregarded if they are few in number or considered to be random occurrences (STA, 2015).

Reporting practices may also vary within the *same country over time*, meaning that even looking at trends within the same country is not possible (this is elaborated further in Evaluation Question 10 – briefly, it is clear that definitions and reporting practices vary in the same countries from year to year, meaning that reported data are not comparable and do not necessarily reflect well the actual trends).

All of the above means that even with the understanding that detection rates are an imperfect indicator of compliance, their interpretation does not give any sensible results since the fluctuations between and within countries are largely due to changes in factors other than the underlying behaviour of undertakings/drivers. Hence, in the analysis below, a more qualitative approach was used to explore the different outcomes in different Member States. This more qualitative analysis demonstrates again that the driving factors behind the trends in different countries are highly context specific.

6.6.3.1. Countries in which reductions in the infringement rates have been seen:

In **Germany**, a decrease of almost 30% in the total infringement rate has been seen in the latest reporting period, with reductions in the infringement rate for both roadside and premises checks (respectively 28% and 34%). The German enforcers interviewed for this study felt that the number of infringements has clearly decreased, partly due to the number of controls and partly due to the additional functionality of new tachographs introduced from 2011.

The views of the enforcer that controls have intensified seem to match the data at the aggregate level: Germany shows a relatively intense and increasing approach to controls. Overall, more than 16% of all working days in 2011-2012 were checked (a higher share than all other countries except France), well above the minimum threshold of 3%. The number of checks also shows a significant increase of 10% for checks at the premises between 2009-2010 and 2011-2012, and by 15% for roadside checks.

Further qualitative support to the view of the enforcers is given by comments from a German undertaking interviewed for this study, who stated that "*the risk of being detected in Germany is very high*". Conversely, a second German undertaking interviewed cited their heavy investment in training – now they report that their infringement rate is close to zero, yet at the same time they feel that controls have decreased. This apparent contradiction to the reporting data (which shows an increase in controls) may be an artefact of the risk-targeting approach used by the German authorities – companies that have the highest infringement rates are logged and visited annually at site, while other companies are visited every 3 – 5 years.

Interviews were conducted with national authorities in other countries with reported reductions in the infringement rates (e.g. Poland, France, Spain, and the UK) and interviewees were asked specifically about these trends. However, the interviewees were not able to shed much further light on the likely reasons for the developments.

The example above shows that in Germany, improved compliance levels are thought to be contributing to the lower infringement rates – improvements are thought to be driven also by increasing the number of controls (increasing the risk of being caught), as well as the additional functionality of new digital tachographs

6.6.3.2. Countries in which increases in the infringement rates have been seen:

In **Belgium**, the detected infringement rate increased by almost 20% between 2009-2010 and 2011-2012. This total increase is partly the result of a shift toward a higher proportion of checks at the premises, but also due to an increase in infringement rates for both roadside and premises checks (respectively of 26% and 12%).

Two Belgian enforcers were asked during the case study interviews about the most important factors that contributed to this increase. They explained that the increase was mainly due to the improved training of controllers (see previous section on enforcement capability for more details) and an increased awareness of the legislation among relevant authorities, rather than any underlying change in compliance behaviour. In terms of the increased knowledge of the legislation, more details on the specific actions were sought: examples were given of:

- Internal collaboration between various working groups.
- Hosting seminars and meetings with police officers, mobility inspectors and social inspectors.
- Giving continuous feedback and training on certain practices.
- Exchange of information on the systems used to commit fraud.

Other possible explanations do not appear to be backed up in the data – for example, there have not been substantial changes to the penalties. A study visit to a Belgian enforcer did not reveal any other factors aside from those outlined above: there is reportedly no formal risk-rating system available to the inspectors of the Ministry of Transport (although the Labour Inspectorate reported in their survey response that they use one) – however, undertakings are targeted for checks at the premises if they are implicated in a court case or they have a history that suggests they might be more likely to be non-compliant. Roadside checks are conducted at random. The enforcers also confirmed that the number of staff has remained constant.

Views from industry also appear to support the suggestion that the changes in infringement rate are not particularly driven by negative trends compliance behaviour, but rather by the enforcement practices. A Belgian industry association and a Belgian undertaking interviewed for this study both claimed that compliance has in fact improved and is mainly now due to unintentional infringements – this was thought to be partly because of the digital tachographs and modernisation of business methods (including computer systems that make organisation and tracking of driver schedules easier). Another Belgian association suggested that remaining problems of non-compliance tend to be concentrated in certain (highly competitive) sectors. Although there is likely to be some selection bias in the interviews with industry (i.e. highly compliant stakeholders are more likely to agree to be interviewed), this seems to support the view that changes in infringement rate are not due to reductions in compliance.

Cross-checking the view of the interviewees in the data suggests that the increase in detected infringement rate reflects a real underlying change in the effectiveness of enforcement – looking at the infringement rates separately for all combinations of location and sector⁶² indicates that infringement rates have increased for all types, yet there has been an overall reduction in the number of working days checked – suggesting that the fewer checks (being conducted by the same number of officers) are more effective.

In the **Netherlands**, the previously-mentioned trust-based enforcement system was implemented in 2009. Since it was introduced, the overall (absolute) number of infringements detected has actually increased by around 23%, despite a reduction in working days checked (the percentage infringement rate has also increased by 44%). This suggests that the system may be helping the enforcers to concentrate better on high risk companies – a view supported by the national authority.

In **Sweden**, data for the 2011-2012 reporting period showed that the overall infringement rate was 2.46 (per 100 working days checked), a dramatic increase from 0.69 in 2007-

⁶² i.e. roadside checks of passenger sector, roadside-freight, premises-passenger, premises-freight

2008. The Swedish enforcer explained that the enforcement capacity in Sweden is currently still being built up and almost all checks were conducted at the roadside. The large changes in infringement rate therefore appear to be the result of reorganisations and build-up of enforcement capacity.

Two Swedish undertakers interviewed for this study expressed their views that the compliance in Sweden was high – one further elaborated that this was due to the problem of driver shortages: there is scarce supply of drivers, so companies will ensure they comply with the legislation so as not to lose them. However, the enforcers expect that compliance in reality is much lower than the infringement data would suggest. Preliminary reporting data for the years 2013-2014 show an infringement rate of 5.01, which supports this view but is at odds with the industry responses. It is difficult to conclude what the underlying compliance trend may be because of the significant changes in the organisation of enforcement capacity in Sweden, which are likely to be the major driver behind the changes in infringement rate reported. For instance, the increase in infringement rates is likely to be partly due to the rebalancing of checks towards more checks at the premises, as well as the introduction of a risk-rating system. The enforcer reports that the risk-rating system has increased effectiveness of company checks because companies with a higher risk profile can now be targeted more effectively (previously they were conducted randomly), whereas roadside checks are still conducted randomly.

The example of Belgium shows that in some cases, the increase in infringement rates can be because the effectiveness of enforcement has improved (due to better training of enforcement officers, improved cooperation etc.). Hence, increases in the detected infringement rates are not necessarily because underlying compliance levels have decreased (and indeed, may occur despite *increased* compliance if the effectiveness of enforcement increases sufficiently).

In the Netherlands, a trust-based reporting system appears to have allowed enforcers to focus their capacity on higher risk companies, since the detected infringement rate has increased since its introduction.

In Sweden, the changes are due to reorganisation of the forces responsible for enforcement (more checks at the premises, introduction of risk-rating, building up of enforcement capacity), leading to large changes in infringement rate that do not necessarily reflect the underlying compliance trend.

6.6.3.3. Countries with consistently low infringement rates:

Romania, has demonstrated a consistently low infringement rate (0.35-0.46 infringements per 100 working days checked). A Romanian enforcer explained during an interview that they felt the actual compliance rate was lower than that suggested by the official statistics.

For roadside checks, the enforcers emphasised that the low infringement rate (0.42) was not because the checks themselves are not effective, but rather that undertakings are capable of avoiding check points on the road.

Checks at the premises are targeted using the risk rating system, thus the interviewee was of the view that the detection rate is typically higher compared to roadside checks (which are carried out at random). However, the official reported infringement rates still show very low detection rates for checks at the premises (0.23) – lower than for roadside checks. The enforcers explained that this is because they check each new company in the first three months in order to verify the compliance with the access to the market legal requirements. In those cases, the detection rate is very low because the companies are only at the beginning of their activity. Because both kinds of checks are reported, the detected infringement rate for checks at premises appears to be lower than the average in Europe. Interviews with authorities in other Member States indicated diverse recording practices: for instance, Germany and Poland report all checks, whereas Belgium reports only infringements, and the UK takes a mixed approach to roadside checks: full checks are recorded whether there are infringements or not. However if enforcement officers do a cursory check and nothing appears to be wrong, then the vehicle is sent on its way because

they do not want to place an additional burden on compliant operators. This type of check is not recorded. (NB: the difference in recording practices is more relevant for cross-country comparisons, and should not affect the identification of positive or negative trends in infringement rates discussed above).

Other possible reasons for the lower infringement rate in Romania were reviewed, which shows that the country is not particularly unusual in its enforcement practices⁶³.

The example of Romania shows that a low detection rate does not necessarily reflect high compliance, but rather may indicate that roadside checks are not effective in reaching offenders (even if the checks themselves may be effective), or that the reporting methods are different (e.g. mandatory checks of new companies are included).

The above examples also clearly highlight the limitations of the data reporting, with considerable inconsistencies between Member States (and over time in the same Member States) with regard to key contextual information such as the number of enforcement officers and the number of working days checked.

Note that only a limited number of Member States could be analysed – although it was attempted to conduct the above qualitative analysis at least for all nine of the case study countries, in practice the information availability and knowledge of national stakeholders was insufficient to conduct even a qualitative analysis. This was despite multiple efforts (as described in Section 4.2) to contact stakeholders in each country and reviews of national literature.

6.6.4. Summary and conclusions

The enforcement Directive has had positive impacts in terms of reaching thresholds for number of controls and moving toward more checks at the premises, which contributes to a more uniform application of the rules across the EU. For instance, Member States typically exceed the minimum threshold for 3% of working days checked. The distribution of checks is still not uniform across the EU and overall too few are conducted at the premises, but trends are showing gradually increasing harmonisation.

Concerning the elements of the risk rating system and penalty systems, there is considerable divergence in the application of the rules (due to the flexibility allowed to Member States in defining national provisions). There is variation in the implementation of a national **risk rating system**, the extent to which the national system is fed with data from other Member States and the technical specifications of the system itself vary across countries. The same applies for the **definition of the level of fines** and the **type of sanctions**, which vary significantly across Europe.

Concerning the **form for attestation of driver activities**, there is an inconsistent approach as to whether or not it is required/accepted as proof of driver activities. There are also issues of potentially unreliable information on the form, as well as the time-consuming nature of the requirement. In combination, these factors mean that drivers may take a long time filling out the form and will not even find it is accepted in all countries, whereas enforcers do not feel they can necessarily trust the information.

For the Working Time Directive no quantitative data is available to assess the harmonisation of its application across Europe or the effects on compliance/detection rates (mainly due to the fact that quantitative reporting is not required under the Directive). A qualitative assessment suggests that the enforcement practices for the Working Time Directive vary significantly across Member States. There is evidence (discussed in Evaluation Question 10) that suggests a low level of compliance with the Directive across

⁶³ For example, the control period is generally 28 days for checks at the premises in Romania, which is lower than some countries (generally 3 months in FI, LV, DE) but similar to others (NL, DK) (Transportstyrelsen, 2015). Romanian authorities typically check the whole company (similar to the UK, SE, DK) rather than only parts of it, and sanction every infringement separately (similar to SE, DK, DE) rather than making an overall assessment.

the EU, which seems to indicate that enforcement in general is not effective – which in turn is due to the low priority given to enforcement of the Directive.

There are widespread issues reported concerning a **lack of budget and manpower**. The monitoring data covering enforcement capacity is very inconsistent (both between countries and across years in the same country), making quantitative analysis of enforcement capacity impossible. Based on the literature and an assessment of survey responses from enforcers, there appear to be issues around the following areas:

- The standards and thoroughness of training of control officers differ across Member States, as well as the uptake of TRACE.
- There is a gap in capacity in terms of the interpretation of digital tachograph data, assessed according to survey responses from enforcers.

It is difficult to quantitatively link any specific indicators to the actual compliance with the social rules for several reasons. Firstly, because the reported detection rates do not necessarily reflect the actual underlying compliance levels (for which there is no direct indicator). Secondly, and more importantly, the data on detection rates are rather unreliable. For instance, the variation reported detection rates and other variables from year to year can be very large, and this is often due to changes in reporting practices. Differences in reporting practices between countries similarly preclude any meaningful cross-country comparisons using cross-sectional data. These measurement issues cannot be disentangled from any underlying changes in compliance or effectiveness of enforcement and obscure any underlying trends.

In an attempt to circumvent the problems with the data and qualitatively examine the effectiveness of the package of enforcement measures, key examples were explored to the extent that information was available, which revealed several different national situations:

- Reductions in detection rates due to improved compliance (Germany), as well as increasing the number of checks and taking advantage of the new digital tachograph
- Increases in detection rates due to:
 - Improved effectiveness of enforcement due to better training and improved cooperation, not because compliance levels decreased (Belgium)
 - Due to rapid developments in enforcement capability, with a switch towards more checks at the premises (which are typically more effective in detecting infringements), better risk-targeting and more highly trained enforcers (Sweden)
- Consistently low detection rates due to checks that are not effective in reaching offenders (even if the checks themselves may be effective), or that the reporting methods are different (e.g. mandatory checks of new companies are included). Low infringement rates do not in this case indicate a high level of compliance (Romania).

However, these examples show that developments in infringement rates can be influenced by a variety of factors, and it is not possible to develop general conclusions for the EU with any great confidence.

Overall, we have only found weak evidence of a positive effect of the package of enforcement measures in a few countries, as outlined above. The available information (largely anecdotal) suggests that developments toward a best practice implementation of the enforcement measures can result in either improvements in compliance and/or higher detection rates. Examples of what “best practice” specifically means include: higher quality training of enforcers and better risk-targeting.

However, it must be noted that the available evidence is either anecdotal or indirect and influenced by a vast number of other factors (especially differing reporting practices and changing enforcement practices). These other influences lead to far greater fluctuations in the data than anything that could be expected if the trends were being driven by gradual improvements in compliance behaviour over time. All of this means that we cannot concretely say whether the package of enforcement measures has had any impact or not – the available evidence provides some indication that certain implementation practices are better than others based on the experience of a few countries, but generalised

conclusions are not feasible. Rather, what the analysis strongly points to is a need to improve the consistency of reporting practices (assessed further in Evaluation Question 10, Section 6.10), before any reliable conclusions on the effectiveness of enforcement can be drawn.

6.6.5. Recommendations

The application of the social rules is not uniform, yet this is a crucial objective in order to ensure a level playing field in terms of working and business conditions. Further harmonisation should therefore be encouraged, firstly by ensuring compliance with the minimum requirements set out in the legislation. On the issue of penalties, harmonisation of the sanctions is a difficult area given the principle of subsidiarity, as well as due to differing national administrative and cultural practices. Introducing additional guidance may be helpful in this regard, although it does not carry any legal force.

Concerning the form for attestation of driver activities, the above-mentioned issues call into question its usefulness, and hence the consultants recommend that the provision of the form be reviewed: potentially with a view to replacing it with another (less easily falsified) method of proof, or with a view to streamlining and harmonising the requirements for it.

The quality of training for enforcement officers is crucial for effective enforcement. As such, EU wide guidelines on training of enforcement officers (such as TRACE) should be further supported to improve enforcement capacity. Harmonisation of training is widely recommended in the literature (e.g. (Bayliss, 2012); (TRT et al, 2013)) and evidenced by the attempts to supply a common curriculum under TRACE. Yet, enforcers responding to the survey indicated that training accounted for the most costly part of investment costs, indicating that the problem is probably also linked to the aforementioned budget restrictions. It therefore seems important to emphasise and raise awareness among Member States of the importance of high quality training, especially where this can enable a better effectiveness of enforcement – potentially with fewer officers overall. The case of the UK may be used as an example of good practice in this respect.

It is also clear that budgetary issues place a key limitation on enforcement activities (especially in terms of conducting a higher share of checks at the premises, since these are more extensive and time-consuming), and this restriction may increase following the financial crisis. As such, innovative enforcement practices that make the most of scarce resources should be further investigated and encouraged. The example of the Netherlands provides an interesting case study, where checks carried out by enforcement authorities are complemented by checks carried out by transport undertakings on a trust basis. If such systems are found to be acceptable on a wider scale, it should also be considered that these trust-based checks should be reflected in the contribution toward the minimum threshold of working days checked. Analysis of the data provided by the Netherlands suggests that the trust-based reporting system has allowed enforcers to focus their capacity on higher risk companies, since the overall detected infringement rate has increased since its introduction (despite fewer “normal” checks overall). However, the robustness of these findings over the longer-term should be assessed.

6.7. Effectiveness: To what extent the introduction of the principle of co-liability for infringements has contributed to the achievement of specific objectives?

To what extent the introduction of the principle of co-liability for infringements has contributed to the achievement of specific objectives?

6.7.1. Implementation of the principle of co-liability in national legislation

The co-liability principle is intended to counteract the commercial pressures of just in time management and the knock-on effects on driver fatigue. Firstly, undertakings have clear requirements concerning how to set out driving time for their employees in compliance with EU legislation. Secondly, extending co-liability for infringements to the whole transport chain⁶⁴ was intended to facilitate clear and effective enforcement, and reduce the commercial pressure on hauliers to break the law if their customers make unreasonable demands.

Section 0 on Implementation reviewed in detail whether and to what extent the co-liability provisions have been implemented in Member States. This showed that there is not a level playing field with regard to the liability of different parties for infringements of Regulation (EC) No 561/2006 and Directive 2002/15/EC. For example, in some Member States the undertaking is solely held accountable for an infringement (Denmark and Czech Republic), whereas in all other reporting Member States, the driver could be held accountable for the same infringement if the undertaking could prove it was not liable.

This demonstrates that in the case of an infringement, the same facts could in practice lead to different parties being held liable depending on the Member State. This variation is permissible within the allowed flexibility of the legislation, Regulation (EC) No 561/2006 permits Member States to soften the principle of strict liability of undertakings (established earlier in Article 10(3)) by considering any evidence that the transport undertaking cannot reasonably be held responsible.

In the case of the liability of other actors in the transport chain, Section 0 shows that the principles of co-liability are not reflected in the national legislation of all Member States – for instance, in several Member States (e.g. Portugal, Czech Republic and Romania) other parties cannot be held liable for infringements of the rules in any circumstances.

In the case of the Working Time Directive, there is again not a level playing field with regard to the liability of different parties for infringements. Most Member States provide for the primary responsibility of transport operators, whereas six Member States also consider that drivers could have primary responsibility. Another six Member States provide for co-liability of drivers whereas five do not consider the driver to be liable in any case. Only France and the UK consider co-liability of the transport chain

Taken overall, the principle of co-liability has not contributed to the specific objective of uniform enforcement because the variation in implementation regarding the strict liability of undertakings – although in line with the flexibility permitted in the legislation – leads in practice to situations where the same facts could make different parties being liable depending on the Member State. Furthermore, in the case of liability of other actors in the transport chain, some Member States do not allow for third parties to be held liable under any circumstances, which reflects an incomplete implementation of the principles of co-liability in national legislation.

6.7.2. Enforcement of the co-liability principle

The second stage is to review whether the provisions have been enforced in practice, to identify the share of infringements that are attributed to different parts of the transport

⁶⁴ Undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies

chain. This provides an indication of how enforcement functions on the ground, as well as the possible dissuasive effect of co-liability.

6.7.2.1. Co-liability of drivers

Quantitative data on co-liability enforcement is not publically available, nor required to be reported in biennial reports. To address this data gap, all enforcers were asked via the surveys for specific data to support this analysis.

The responses received are shown in Table 6-4, which also indicates that most Member States do not collect this information. The partial data obtained shows that the incidence of infringements attributed to drivers (versus undertakings) varies substantially across countries, from 80% in Lithuania to 2% in Finland. Out of the countries identified in Table 6-4, it is possible in theory for other parties in the transport chain to be held liable in the Netherlands, Finland, Sweden, Cyprus, Croatia and Poland – however, as the data shows, it is almost never achieved in practice (the reasons for this are discussed further below).

Table 6-4: Infringements of Regulation (EC) No 561/2006 applied to different parties

Member State	Drivers share of infringements (remainder attributable to undertaking only)	Circumstances under which drivers are responsible	Other parties in the transport chain share of infringements
Bulgaria	60%	Driving and resting time, technical condition of the vehicle and etc.	N/A
Croatia	60%	Drivers are responsible for non-compliance with the provisions on driving and rest time	0%
Cyprus	50%	Drivers can be held responsible for inaccurate recordings, not carrying required documents, not providing sufficient information for his employment at any or all undertakings	0%
Finland	Max 2%	Driver can be hold responsible in cases of counterfeiting driving data	Max 1%
Latvia	80% both driver and company (20% undertaking only)	Latvian Administrative code foresee sanctions/fines for both	Unknown
Lithuania	80%	Both undertakings and drivers can be found liable	N/A
Luxembourg	60%	Normally the undertaking and the driver are responsible	N/A
Netherlands	10%	The driver is only responsible when the transport operator can demonstrate that they are not	0%
Poland	38%	The driver is responsible for infringements for which he/she has a direct impact	<1% (312 cases)
Sweden	Unknown	Drivers are responsible for all infringement they commit	Never imposed so far

Source: Survey of enforcement authorities

The variation in the driver share of infringements of Regulation (EC) No 561/2006 shown above is likely because the situations under which drivers can be found liable are quite different. An extreme example of variability is given in Germany, from less than 5% of detected infringements to around 70% or even 95% in their regions. The responses from enforcers indicated that this share will very much depend on whether the infringement was

detected at a roadside check or during a check at the premises (i.e. drivers are likely to be held responsible during roadside checks and companies during premises checks).

6.7.2.2. Co-liability of other parties in the transport chain

Similar problems of data availability apply to the issue of co-liability of other parties in the transport chain, and similarly the enforcement authorities responding to the survey were the main possible source of information.

Table 6-5 shows all of the quantitative and qualitative responses received. It is possible for other parties in the transport chain to be held liable under the national legislation for all of the countries listed in Table 6-5 – however, as the data shows, it is almost never achieved in practice.

Table 6-5: Infringements of Regulation (EC) No 561/2006 applied to different parties

Other parties in the transport chain share of infringements	Member States
None	Netherlands, Cyprus, Croatia, UK, Sweden, Belgium
< 1%	Finland, Poland
“very rare”	Norway

Source: Survey of enforcement authorities and (VOSA, 2010) for the UK

A search of the literature for quantitative data on the enforcement of co-liability for other parties in the transport chain did not return any further information. Enforcers were also asked to identify what share of infringements were applied to co-liable parties under the **Working Time Directive**. Only the respondent from Cyprus could give an estimate: they estimated that 50% of the infringements were directed at drivers and the remainder at undertakings (it is not possible in Cyprus for other parties to be held liable under the Working Time Directive). All other respondents did not know, hence no quantitative evidence of the co-liability principle under the Working Time Directive could be found.

Qualitative responses from the surveys of enforcement authorities indicate that several consider co-liability of the transport chain to be very difficult to enforce (the Netherlands, Germany, Finland, France and Belgium). At the same time, enforcers identified the fact that parties in the transport chain such as freight forwarders are not held sufficiently liable for infringements as being one of the top three major contributing factors to non-compliance with the social legislation.

The practical issues of enforcement have also been reflected in the literature – due to difficulties in clearly identifying who is responsible (ETSC, 2011a); (Broughton et al., 2015), as well as due to complex subcontracting arrangements (Barbarino et al, 2014). According to the research conducted for the case study on Belgium, the laws were revised in 2013 to strengthen the liability of third parties – yet although this change was welcomed by representatives of industry and workers, its impacts are not clear since no cases of co-liability were established over the last three years.

This challenges also appear to be reflected in the TRACE explanatory text, which notes that the offences detailed in Article 10 cannot realistically be detected in the course of normal roadside checks and are best investigated during checks at the premises. It is further noted that “where a wider culpability in respect of cross-border transport operations is suspected, it is good practice to forward any intelligence collated to the enforcement authorities of the ‘home’ Member State”. The TRACE explanatory explains that, in the case of infringements committed in another Member State or third country “it is likely that national law imposes practical limitations on the ability of an enforcement body to pursue a foreign entity for these types of regulatory offence.”

Another difficulty is to do with the business realities. On the one hand, contractors may not be aware of the rules at all. For example, several undertakings (from Belgium, Poland, the UK) explained that low awareness among clients (particularly smaller firms) is

sometimes a problem. In these cases it is usually considered the responsibility of the undertaking to inform their contractors and change the schedule. However, firms may lack the bargaining power to ensure prices and delivery times that allow for compliance with the rules (most particularly SMEs or other firms in the subcontracting chain). This issue was raised by two Italian industry associations during interviews, as well as more generally in the literature (e.g. (Barbarino et al, 2014)). Finally, two Belgian representatives explained that in the tourist industry there is a lot of pressure, especially from non-EU customers, and passengers often do not understand the need for breaks.

6.7.2.3. Practical enforcement aspects

More detailed elaborations on the practices in Italy, the Netherlands, Ireland and the UK are provided in Annex B (see Section 10.4) in order to shed some more light on how checks are conducted in practice and what actions are required from different parties.

This showed that parties in the transport chain can typically protect themselves from liability if they ensure that the services they procure are in compliance with the rules. The precise actions required differ slightly (i.e. there is a separate document of instructions to be carried by the driver in Italy, whereas in the UK compliance is normally achieved through including a clause in the contract). Transport operators may also be able to demonstrate that they are not liable but the requirements are much more extensive, including organising work schedules in compliance with the rules and taking into account factors such as traffic conditions and driver experience, instructing the drivers, carrying out regular checks etc.

6.7.3. Impacts of the co-liability principle on improving compliance

Since the actual rate of infringements attributed to other parties in the contracting chain appears to be extremely low (see Table 6-5), showing that the practical enforcement of co-liability of the transport chain has not been successful. On this basis, it seems that the direct impacts of the principle of co-liability are rather minimal if there is not a real risk to third parties of actually being held liable. The discussion of the difficulties in practical enforcement suggest that the low rate of infringements seen attributed to third parties is because of difficulties in proving their responsibility, rather than because they are believed not to have contributed to infringements.

Nevertheless, this still leaves open the possibility of positive impacts by other mechanisms. Firstly, since third parties know they can in principle be held liable, they are more likely to comply with their obligations to ensure schedules are in compliance, which will help to reduce pressure on undertakings. Secondly, since some national legislation places obligations on third parties to conduct checks or ensure that schedules are compliant with the social legislation (as described above), this means that there is an indirect role in raising awareness among customers of the rules, which in turn may help to reduce pressure on undertakings and drivers.

Although it is difficult to corroborate such effects in the empirical evidence since the effects are indirect, interviews with undertakings revealed support for these benefits. For example, transport undertakings from Sweden, Poland, the UK and Italy noted that some clients are increasingly aware of drivers' hours rules and look for companies that fully comply with them – they noted that these positive trends should be seen in a longer-term perspective. Conversely, several undertakings (from Italy and Belgium) felt that co-liability had not led to any improvements, although both mentioned the main reason as being a lack of awareness among clients, in addition to the weak bargaining position of transport operators. Two German undertakings warned of the issue of contractors simply passing the responsibility on to the transport operators through contract clauses. The UK operator noted that practices vary from client to client – for example, some simply require a signed form, others carry out audits.

Comments from transport operators therefore suggest that the benefits of co-liability (where applicable) are primarily due to increasing awareness among clients, and that these benefits are slowly increasing and will become more apparent in the longer term. At the same time, these benefits might not arise if clients remain unaware of the rules and/or

pass on responsibility via contract clauses without engaging with the operators on how to ensure compliance.

There also seems to be a general and high level of support for the principle of co-liability in the literature and among stakeholders which is supportive of these positive impacts (discussed below).

In general, the literature provides very positive views on the impacts of co-liability of the ***transport chain*** in terms of enhancing compliance, although mostly from a theoretical perspective. For example, the High Level Group report on the Development of the Road Haulage Market identifies joint liability as an important instrument to “*encourage compliance and at the same time encourage more meaningful co-operation and dialogue between parties thereby stimulating efficiency gains*”, and recommends this practice be extended (Bayliss, 2012). This is of particular concern given the growing complexity of logistics chains - regimes involving freight forwarders and shippers are thought to encourage compliance throughout the logistics chain (Bayliss, 2012). According to Broughton et al. (2015), there is a high degree of consensus among the social partners regarding the use of joint liability to combat social dumping. The report notes that “*in many cases, operators breach driving time regulations when following instructions of their employer or of the freight forwarders. However, in those cases where legislation does not provide for the criminal liability of companies in general but only of drivers, this can expose drivers to a situation of great legal vulnerability.*”

In an attempt to cross-check the findings in a different way, a literature search was conducted. While the information specific to the social legislation has already been reported above, experience in other sectors can provide a useful parallel. In this regard, the pan-European labour market has seen some important changes in the past years, characterised by growing flexibility, more fragmentation and increased outsourcing and subcontracting. This presents similar challenges to those experienced in the road transport sector – the extensive chains of subcontractors with different structures and systems has reportedly led to a proliferation of “bogus” self-employment and circumvention of legal provisions (Ghent University, 2012). To this end, a report from Ghent University has investigated joint liability in the area of posting of workers, and finds almost identical issues:

- Cases dealing with co-liability are often rare. This is thought to be due to a lack of willingness to start proceedings, because “*in subcontracting chains, subcontractors’ employees often prefer maintaining good relations with their employer to the enforcement of mandatory rules in their favour, which is much the same as with an SME subcontractor towards his client.*”
- The study reflects similar arguments in favour of joint liability systems, which mainly relate to the fact that they make contractor more diligent in choosing subcontractors and has a significant preventive effect in this respect. However, they encountered similar problems in that this effect is not easy to verify – i.e. “*empirically, it is not easy to measure the impact of a joint and several liability system, as the effects are very indirect in nature. The problem is also that quantifiable figures about the effectiveness of national systems of joint and several liability are very rare.*” (Ghent University, 2012).

The study concludes that the effectiveness of application in a national context is not clear, and that “*no report is able to describe the impact of liability mechanisms in the cross-border context.*”

In terms of possible disproportionate effects, it is always worth remembering that SMEs have less financial, administrative and legal capacity than large companies, they would be particularly affected by high levels of bureaucracy – and the administrative and financial burden of the chain liability system is considerable (Ghent University, 2012). At the same time, it is also believed that liability systems can be beneficial for SMEs, since power asymmetries in the client-supplier relationship make them vulnerable to unfair competition (Ghent University, 2012). Affirming this, according to UEAPME, the European Association representing SMEs, the co-liability principle is one of the most important issue for SMEs in the road transport sector, since many undertakings are strongly pressed by the contractors

(UEAPME, 2012). According to their position paper, it is becoming increasingly common for contractors to impose conditions that oblige the haulier to choose between carrying out their economic activity and complying with the regulations (UEAPME, 2012).

Overall it appears that the difficulty of practical enforcement of the co-liability of the transport chain may hamper its effectiveness in terms of improving compliance. Nevertheless, there is strong support for inclusion of co-liability among stakeholders.

6.7.4. Summary and conclusions

Taken overall, the principle of co-liability has not contributed to the specific objective of uniform enforcement because the variation in implementation regarding the strict liability of undertakings in Regulation (EC) No 561/2006 – although in line with the flexibility permitted in the legislation – leads in practice to situations where the same facts could make different parties being held liable depending on the Member State. Furthermore, in the case of liability of other actors in the transport chain, some Member States do not allow for third parties to be held liable under any circumstances, which reflects an incomplete implementation of the principles of co-liability in national legislation.

In terms of the practical compliance aspects, parties in the transport chain can typically protect themselves from liability if they ensure that the services they procure are in compliance with the rules. The precise actions required differ slightly between countries (i.e. there is a separate document of instructions to be carried by the driver in Italy, whereas in the UK compliance is normally achieved through including a clause in the contract).

Considering **liability of drivers versus undertakings**, the driver share of infringements of Regulation (EC) No 561/2006 shows a lot of variation between countries. This appears to be partly due to the different scope of infringements that drivers could be considered liable for in different Member States, as well as the different burden of proof (e.g. if drivers are considered liable automatically, or only in cases where the undertaking proves they are not liable).

In terms of the overall impacts of the co-liability provisions on improving compliance, there is something of a discrepancy between the way the co-liability of the transport chain is perceived, and how it seems to operate in practice. On the one hand, the literature identifies a range of positive impacts in terms of improving compliance with the social rules, improving road safety, efficiency gains and reducing pressure on transport operators – as well as a host of other benefits. On the other hand, quantitative evidence from enforcement authorities show that other parties in the transport chain are almost never held liable in practice. It therefore seems that the *direct* impacts of the principle of co-liability on improving compliance must be rather minimal if there is not a real risk to third parties of actually being held liable in practice (although this was not possible to determine empirically due to a lack of data availability).

Comments from transport operators suggest overall that the benefits of co-liability (where applicable) are primarily due to increasing awareness among clients, and that these benefits are slowly increasing and will become more apparent in the longer term. At the same time, these benefits might not arise if clients remain unaware of the rules and/or pass on responsibility via contract clauses without engaging with the operators on how to ensure compliance.

Difficulties in enforcement are typically due to the challenges of identifying who is really responsible for any infringements detected, especially in combination with extensive subcontracting chains.

6.7.5. Recommendations

The enforcement of co-liability is challenging, and the way forward is not necessarily clear – as evidenced by a lack of suggestions from all stakeholder groups that were surveyed and interviewed when asked how enforcement could be improved. The study team have therefore developed recommendations on the basis that the main issue appeared to be the difficulty of proving the role of liable parties. To ensure a level playing field and to assist

Member States in applying the rules of co-liability, the study team therefore recommend that guidance (or clarifications) are issued at a European level, which define the duties, roles and responsibilities of different parties in the subcontracting chain. This will provide a reference for all parties to check their actions are in compliance, as well as providing a list against which enforcers can verify co-liability or not. These steps will also be supported by recommendations on best practice to raise awareness of the road social rules among the clients of transport operators (possible examples are elaborated below).

To address the lack of harmonisation/uniform rules, steps to introduce more specific provisions could be considered to improve the consistency of rules under Regulation (EC) No 561/2006, alongside encouraging discussion in Working Groups. One suggestion from a UK stakeholder was to introduce mandatory co-liability. The consultants consider that this might be an option to consider in the context of an Impact Assessment, since the implications (e.g. administrative burdens and expected benefits) need to be considered in more detail. For the current study, the consultants can only note that this is a legal tool already in use for operators for certain legislation and hence could be further investigated. For example, operators are automatically held liable for overloading vehicles, even when it is the driver that performs the overloading.

Introducing co-liability provisions into the Working Time Directive (which currently does not have any), would also help to improve harmonisation and clarify responsibility.

An example of good practices that could be promoted is of TNT Express, who explain that they have a responsibility to ensure that subcontractors carry out their duties responsibly and safely, and hence they involve subcontractors wherever legally possible in their road safety programmes and engagement to ensure they fully understand the standards expected while operating on behalf of TNT Express (ETSC, 2011b). An industry association interviewed for this study commented that they had taken steps to raise awareness among customers of undertakings to help decrease pressure to break the rules – this is done either by training the customers directly or by sending them layman versions of the rules. The study team recommend that such best practices are disseminated and promoted.

Finally, the longer and more complex the subcontracting chains, the more monitoring and information exchange is needed. Therefore, the recommendations developed in Evaluation Question 8 (see Section 6.8) concerning methods to improve cooperation and information exchange are also relevant here.

6.8. Effectiveness: To what extent the measures on administrative cooperation between Member States' national authorities are sufficient and effective in ensuring uniform application and enforcement?

To what extent the measures on administrative cooperation between Member States' national authorities (e.g.: body for intercommunity liaison, obligation of exchange of data and experience, concerted checks, joint training programmes) are sufficient and effective in ensuring uniform application and enforcement? If not, how could it be improved?

6.8.1. Overview of cooperative measures ensuring uniform application and enforcement of the rules

A range of administrative cooperation measures are set out in the social legislation. These were intended to contribute to harmonised implementation and enhanced enforcement of the social rules. The individual measures are analysed below, as well as the impacts of the overall package.

In terms of the compliance with the requirements, Table 6-6 shows that all Member States have met their obligation to formally set up an intracommunity liaison body. Information on compliance with the other requirements is patchy; however, for the Member States for which data are available the rate of compliance with the requirements is generally high.

Table 6-6: Overview of compliance of Member States with the provisions on enforcement

Administrative cooperation measure	Reference year	MS that comply	MS that don't comply	MS for which data are not available
Body for intracommunity liaison (set up)	2014	All	-	-
Exchange of information (every 6 months)	2014	All (varying extent)*	-	-
Minimum number of concerted checks (6 minimum p.a.)	2011 - 2012	AT, BG, CZ, DE, ES, FR, HU, IE, LT, LV, NL, PL, RO, SI, SK, UK	EE, MT	BE, CY, DK, EL, FI, HR, IT, LU, PT, SE
Minimum number of exchanges of enforcement officers (1 p.a.)	2011 - 2012	AT, CZ, DE, ES, PL, RO, UK	-	BE, BG, CY, DK, EE, EL, FI, FR, HR, HU, IT, IE, LT, LU, LV, MT, NL, PT, SE, SI, SK,

* Based on responses from Bulgaria, Sweden and the Netherlands that indicate exchanges across all MS that are not necessarily reported by all involved

6.8.2. Body for intracommunity liaison

All enforcement authorities were asked in the online survey if the **designation of an intracommunity body** had increased or decreased their organisation's ability to detect non-compliance with the social rules in road transport. Their responses suggest that the direct impact of these bodies on the effectiveness of enforcement is neutral: Most respondents indicated that the impact was neutral (29%, 13 respondents out of 45) or that they did not know (44%, 16 respondents)⁶⁵.

⁶⁵ Although 4% (2 out of 45 respondents) felt that it resulted in a significant increase, 20% (9 respondents) observed a slight increase, and none reported decreases.

The designation of the intracommunity body is clearly only effective if the bodies are active - their official responsibilities are to: ensure coordination with equivalent bodies in other Member States with regards to concerted checks and promote the exchange of data, of experience and of intelligence between Member States. However, detailed information on the conduct of the body for intracommunity liaison is not available (e.g. on the contacts they had with other bodies nor the extent of assistance provided to the competent authorities of other Member States in cases of unclear infringement situations during roadside checks due to the lack of data). The only task of intracommunity body for which data are available as a proxy indicator is the number of concerted checks. Reviewing the trends over time (see Annex A, Section 9.3.1 for full details) shows that the number of concerted checks has generally increased over the years and that most Member States for which data are available have met the legally required minimum number of checks. This suggests that at least for the completion of this task, the intracommunity bodies are performing effectively, although (as discussed below) these checks are also arranged by other bodies such as ECR and TISPOL.

6.8.3. Exchange of information between Member States, including electronic exchange of data

The available data on the exchange of information between Member States is rather sparse, due to the unclear provisions in the reporting template (i.e. Member States are asked to comment on "Exchange of experience, data, staff" together in one text field) – meaning that it is not clear whether the lack of data provided indicates that no exchanges were carried out, or merely reflects a different interpretation of the requirement. As a result, only Bulgaria and Finland have reported separately on the exchange of data between Member States⁶⁶. To supplement this information, further details were sought via surveys and interviews. The Dutch enforcers reported in their survey response that they exchanged information with all other Member States. A Swedish enforcement authority explained that when non-Swedish vehicles are detected with an infringement, their national enforcement authorities are informed.

The overall picture is therefore quite incomplete, but the reports from Bulgaria, Sweden and the Netherlands suggest that information is being exchanged between all Member States, but it is not being reported by all involved. Comments made during interviews with authorities from Poland and Italy indicated that data is often exchanged every 3 months between countries that are members of ECR (Euro Contrôle Route), which may explain why it is not always formally reported. These countries also indicated that exchange of data between ECR and non-ECR countries is not as frequent. The study visit to the Belgian enforcers also confirmed the exchange of information between ECR members - reports on detected infringements in the field against an undertaking of another Member State are regularly sent out. However, the system is not automatic or systematic (e.g. separate pdf files/word files/Excel files are sent).

This suggests that compliance with the requirement to exchange information is actually rather high, and agrees well with the responses to the survey of enforcers regarding how this requirement impacts on their ability to detect infringements: most (80%) respondents stated that the requirement to exchange data every 6 months has increased their ability to detect non-compliance⁶⁷. In terms of how the system could be improved, two Member States (Poland, Netherlands) commented that information was exchanged with all Member States only when an infringement was detected (not for clear checks) – which means that this information cannot be used to complete the data in their risk-rating systems.

⁶⁶ Bulgaria reported on that information had been exchanged on detected infringements committed by Bulgarian drivers in Germany, Hungary, Austria, Spain, UK, Italy, Latvia, Romania and Slovenia. Finland reported that it receives regular information from Sweden and Norway concerning Finnish drivers/undertakings that have committed offenses.

⁶⁷ 40% of the 25 enforcement authorities that responded reported that it had "significantly" increased their ability to detect non-compliance, and 40% reported it had "slightly" increased.

Information was also sought from surveys to supplement the monitoring reports, although the responses were mainly qualitative.

Concerning the electronic exchange of data via TACHOnet, it is difficult to assess the overall effectiveness of this measure as according to CORTE (2014), in several countries TACHOnet is not accessible to enforcers (e.g. Belgium, Cyprus, Denmark, Estonia, Malta, and is not available for roadside checks in Germany, Greece and Poland. This opinion corresponds with the fact that a large share of respondents in answers to enforcer survey (10 out of 26) stated "not applicable or do not know" when asked about its impact on the effectiveness of enforcement. For the remaining responses, the positive answers balanced out the negative ones⁶⁸, suggesting that the overall effect of this type of the data exchange is limited or slightly positive.

This qualitative responses from enforcers suggests that there is generally some level of information exchange that appears to occur between most Member States, both formally and informally (via ECR). The exchange of data between Member States is thought to have a positive effect on the ability to detect non-compliance; however, the current level of exchange of data between Member States is not seen as sufficient. In particular, this concerns:

- The exchange of data between ECR and non-ECR Member States.
- Inclusion of data regarding clear checks (where no infringements are found) to facilitate the improvement of national risk-rating systems.

6.8.4. Concerted checks

The concept of a **concerted check**, as referred to in the Enforcement Directive, is a check "undertaken at the same time by the enforcement authorities of two or more Member States, each operating in its own territory". These aim at sharing experiences, knowledge on performing checks as well as reviewing and harmonising positions on the interpretation of particular provisions in relation to road transport.

Some Member States⁶⁹ are assisted in coordinating checks by Euro Contrôle Route (ECR) and the European Traffic Police Network (TISPOL), who clearly play an important role in coordinating concerted checks. Out of the 18 Member States that reported data, a significant share have coordinated their concerted checks through ECR (7), TISPOL (1) or both ECR and TISPOL (2) in the latest reporting period⁷⁰. However, these are voluntary initiatives that not all Member States are part of.

Compared to the previous situation, the Enforcement Directive 2006/22/EC increased the requirements for concerted checks to six per year with effect from 2007 onwards, compared to two checks a year under the prior rules (European Commission, 2009b). However, information on the situation prior to the Enforcement Directive is very scarce, so it is difficult to determine the precise trends over time. In 2005 and 2006, immediately before the introduction of the Enforcement Directive, only Austria explicitly reported that it had taken part in cross-border checks (European Commission, 2009b). As an indicator of positive trends, the monitoring data shows that there has been a general increase in the number of concerted checks over time, from around 210 checks in 2007-2008 to around 318 checks in 2011-2012, which suggests that the Enforcement Directive has had a positive impact on enhancing administrative cooperation.

Concerted checks are intended to help harmonise enforcement by "*sharing experiences [and] knowledge on performing checks as well as reviewing and harmonising positions on the interpretation of particular provisions in relation to road transport*". The biennial

⁶⁸ 4 "significant increase", 6 "slight increase", 1 "slight decrease" 1 "significant decrease" and 4 "neutral"

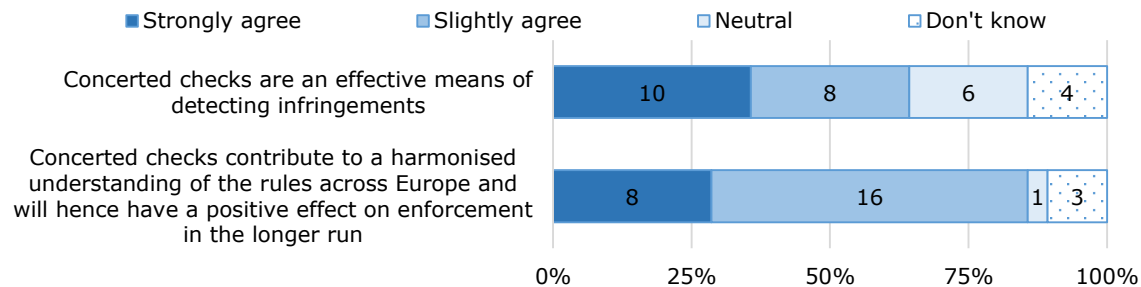
⁶⁹ Austria, Belgium Bulgaria, France, Germany, Hungary, Lithuania, Luxembourg, The Netherlands, Poland, Spain

⁷⁰ As the reporting template for the biennial reports doesn't ask the Member States to specify the organisation that the concerted checks are organised through it is not clear if the Member States that didn't mention ECR or TISPOL have organised their concerted checks through them or not

country reports for 2011-2012 indicated that the most beneficial initiatives concerned issues such as: tampering with recording equipment, transport of dangerous goods and social rules (European Commission, 2014c).

Enforcement authorities were asked in the survey about the extent to which concerted checks are effective means of detecting infringements. The majority of the national level enforcement authorities indicated that they saw concerted checks as an effective means of detecting infringements, and agreed that they contribute to a harmonised understanding of the rules (Figure 6-9).

Figure 6-9: Levels of agreement of national-level enforcement authorities with statements about the effectiveness of concerted checks



Source: Survey of enforcers.

Comments received via the survey and interviews indicated the following positive aspects:

- Facilitate knowledge sharing, exchange of experiences and best practices (Italy, Poland, Belgium, Romania, Sweden, Luxembourg).
- Enhances harmonisation (Poland, Romania).
- Concerted checks tend to be effective because they are well-organised and well-resourced (Latvia and Luxembourg).
- Concerted checks for a large variety of infringements provide a good way of discovering which types of infringements were on the increase, and allowed enforcers to keep a closer check on these types of infringements in subsequent weeks (Romania).
- Positive impact on road safety (Poland).

Overall, concerted checks work by improving enforcement capacity (in terms of knowledge and best practices) over a longer period of time through the exchange of experience between enforcement officers and establishing common approach to enforcement. It is not possible to determine quantitatively what the effect has been, but qualitative views from enforcers suggest that they particularly view concerted checks positively as a means to improve the harmonisation of the application of the rules (more than 80% of respondents significantly or slightly agree). Concerted checks are also viewed positively as a means to improve the detection of infringements (more than 60% of respondents significantly or slightly agree).

6.8.5. Joint training programmes and exchanges of enforcement officers

Article 11 of Directive 2006/22/EC specifies that Member States shall establish **joint training programmes** on best practice to be held at least once per year and shall facilitate **exchanges**, at least once per year, **of staff** of their respective bodies for intracommunity liaison with their counterparts in other Member States. As discussed in previously, the data on joint training programmes and exchanges of enforcement officers is patchy and often only qualitative as a result of the reporting provisions being unclear⁷¹. As shown in Table

⁷¹ Member States are asked to comment on "Exchange of experience, data, staff" together in one text field, joint training programmes are not asked for specifically.

6-6, quantitative data on exchanges of enforcement officers is only available for 7⁷² Member States in the latest reporting period, all of which comply with the minimum requirement. An indication of involvement in exchanges in the last reporting period (without specifying the number) has also been given by 5⁷³ Member States. Furthermore, in 2011, the ECR reported that it organised six multilateral exchanges (Romania, France, UK, Hungary, Spain and the Netherlands), 13 bilateral exchanges in France, Spain, Germany, the Netherlands, Hungary, Poland, the Czech Republic and Slovakia and exchange of best practices and expertise in Germany, Austria, Bulgaria, Romania, Hungary, Luxemburg, France, Slovakia, Czech Republic and Belgium (ECR, 2011). Since several of these countries listed in the ECR report did not provide information in their national reports (e.g. Belgium, Bulgaria, Slovakia), this suggests that the actual level of joint training is higher than the data in the biennial reports suggests.

Overall this indicates that most Member States are active in some way, and most likely the Member States that report activity do comply (since only 2 exchanges are required in the two-year reporting period). However, a clear link between the efforts undertaken and the impact on uniform application of the rules and uniformity of enforcement cannot be determined.

Qualitative views on the role of joint trainings were gathered from the consultation. In the survey carried out with enforcement authorities, one Norwegian authority mentioned that cross-border secondments and exchanges will have a considerable effect on the quality of their enforcement work and their ability to detect non-compliance, but that the current level of cross-border measures need to be strengthened further. The Belgian ministry positively mentioned in their interview a high level of international collaboration regarding the training of officers and best practice for checks. Hence, the few comments received seem to emphasise the role of joint trainings as a mechanism to exchange best practice (in line with its position in the text of the Directive under Article 11 – “Best Practice”), rather than a direct method to improve uniform application and uniform enforcement. However, there is likely to be an indirect supporting role toward more uniform application of the rules for Member States involved in joint trainings/exchanges, purely because the adoption of best practices will encourage alignment between participating Member States.

6.8.6. Common training curriculums

In view of clarifying and promoting a common approach, the Commission has undertaken some actions, including co-financing a project between 2010 and 2012 known as TRACE (Transport Regulators Align Control Enforcement). Additionally, the Commission has aimed to encourage more uniform application of the rules through the establishment of guidance notes, which involved cooperation with Member States in the framework of working groups and the Committee to establish a common approach to enforcement of certain problematic issues (these are examined in Evaluation Question 4).

The TRACE project aimed to develop a European harmonised training format for enforcers controlling the respect of the Drivers' Hours' Rules Regulation (TRACE, 2015). The TRACE curriculum has achieved relatively widespread implementation, as previously discussed in Section 5.2. The responses from the enforcement survey show that the enforcement authorities have taken it up consider it has had positive impacts on the effectiveness of enforcement: 78% of respondents felt that it had improved effectiveness. Comments received from various national enforcement authorities indicated that TRACE was considered to be helpful in terms of both harmonising and improving enforcement practices (Latvia, Romania, Cyprus, Sweden, UK, Poland).

The fact that TRACE is not mandatory means that Member States are free to adopt their own curriculum or only partially take up TRACE. This may be in contrast to the achievement of a more uniform application of the rules. Even so, compared to the counterfactual the introduction of TRACE has likely reduced the number of different interpretations across the EU (and especially among adopting countries), and hence it has contributed to a more

⁷² AT, CZ, DE, PL, RO, ES, UK

⁷³FR, HU, IE, LV, NL

uniform application. Reasons for not taking up the TRACE curriculum were also explored in the interviews with the enforcement authorities in different Member States. The UK enforcement authority suggested that this was either due to a lack of historic engagement with international efforts such as this or due to disagreement with the specific interpretations of the social rules propounded by the curriculum. Authorities from Germany and Italy explained that they already had internal systems that appeared to be working and were similar, so no changes were required.

Overall the TRACE project has been received positively by many countries. Nevertheless, it has been recognised that the TRACE curriculum is not comprehensive – hence, in order to cover outstanding issues, a continuation of the TRACE project was considered useful. Consequently, another project was initiated, known as CLOSER (Combined Learning Objectives for Safer Roads). This ongoing project aims to complement the results of TRACE in order to achieve harmonised enforcement practices. The project relies on input from all the stakeholders in the logistic chain (drivers, operators, enforcers) and will produce training elements and learning material in the areas of cabotage enforcement, cargo securing and extension of the TRACE results to drivers and operators as well as focus on company checks.

6.8.7. Summary and conclusions

A wide range of administrative cooperation measures have been introduced by the social legislation, and for the Member States for which data are available the rate of compliance with the requirements is generally high across all requirements (concerted checks, information exchange, exchange of staff etc.).

However, there is extremely limited data available from Member States that could be used to assess their effectiveness in terms of ensuring uniform application of the rules and more uniform enforcement. Although it is not possible to determine quantitatively what the effect has been, qualitative views from enforcers suggest that concerted checks in particular are viewed positively as a means to improve the harmonisation of the application of the rules (more than 80% of respondents significantly or slightly agree). There is likely to be an indirect supporting role toward more uniform application of the rules for Member States involved in joint trainings/information exchanges, purely because the exchange of information and adoption of best practices will encourage alignment between participating Member States. As regards the common training curriculum under TRACE, the project has been received positively by many countries and has likely contributed to more harmonised enforcement, although it has been recognised that the TRACE curriculum is not comprehensive (an aspect that is intended to be addressed under the ongoing CLOSER project).

In general therefore, the analysis points to a supporting role for the measures on administrative cooperation in terms of encouraging a more uniform application of the rules. However, as discussed in other evaluation questions (see for example, Evaluation Question 4), cooperative measures have not been sufficient to overcome the diversity of national applications. This appears to be largely due to the non-binding nature of the instruments, wherein alignment is encouraged but not required through information and best practice exchange and/or common training.

6.8.8. Recommendations

Our suggestions are two-fold, and relate first to improving the monitoring information available, and secondly to improving the level of administrative cooperation.

The difficulties with obtaining accurate data regarding the implementation of certain measures (in particular, participation in joint training, exchanges of staff, exchanges of data) have been outlined in the previous sections. More specifically, although Member States do report information on these issues in their biennial reports, they do so inconsistently because the definitions are not clear. In these cases, in order to improve the understanding of the current situation, the consultants therefore recommend inserting some **guidance** into the template on the data expected under "Exchange of experience, data, staff", to help the reporting bodies to distinguish between different measures.

Suggestions received from enforcement authorities as to how to improve administrative cooperation typically concerned methods to increase the level of the existing cooperative measures, rather than suggesting additional measures. These comments suggest that the list of administrative cooperation measures is considered sufficient; however, the level of actual cooperation for these measures could be improved. In particular, this regards:

- Improving the exchange of data between countries members of ECR network and other Member States not participating in ECR.
- The standardisation of the format of information exchange regarding detected infringements in filed against an undertaking of another Member State.
- Inclusion of data regarding clear checks (where no infringements are found) to facilitate the improvement of national risk-rating systems.

Given the positive impacts of concerted checks, it may be that the requirement of six concerted checks could be increased. This aspect could be assessed in an Impact Assessment. It can be seen from the analysis of trends in concerted checks over time that many Member States already exceed the minimum requirements – in particular, the organisation of checks via ECR seems beneficial in ensuring the requirement is met or exceeded (see Annex A, Section 9.3.1).

As highlighted in the analysis above, administrative cooperation through EU-wide networks seem to be an efficient way of organising cross-border cooperation. In particular the activities of ECR seem to be very effective as they cover a range of cooperation activities such as concerted checks, joint training programmes, exchanges of enforcement officers. As such, the study team consider that further participation on collaborative networks should be encouraged.

6.9. Effectiveness: Are the minimum requirements for enforcement relevant and sufficient to address a risk of low compliance?

Are the minimum requirements for enforcement accompanied by other measures undertaken to enhance and harmonise enforcement (such as risk rating system, guidelines for enforcers, co-liability, concerted checks, etc.) relevant and sufficient to address a risk of low compliance with the existing social rules in road transport?

To identify the risks of low compliance it is first necessary to determine the possible reasons why undertakings and/or drivers might be non-compliant. Reasons can be categorised into those that are external to (outside the scope of) the social legislation, and those that are internal:

- **External factors** are not related to the functioning of road social legislation. They refer to market developments that incite undertakings or drivers to infringe the rules.
- **Internal factors** refer to the set-up and functioning of road social legislation and its enforcement. The purpose of the enforcement systems in place is to mitigate external risks by providing a framework that ensures that the benefits of non-compliance do not outweigh the potential detriments of non-compliance for undertakings or their drivers.

In case external factors increasingly incite non-compliance, internal factors have to be increasingly stringent (i.e. defined by an increased frequency of checks or more severe penalties) to keep the overall risk of non-compliance in balance.

A further distinction is to be made between the risks of intentional and unintentional non-compliance. The legislative framework in place should address both. In the following section the factors contributing to intentional non-compliance are discussed first, followed by a discussion of unintentional non-compliance.

6.9.1. External factors inciting intentional non-compliance

There are various external factors that have very important impacts on the risk of intentional non-compliance of drivers or undertakings. These factors were reviewed in Section 5.1 and are further elaborated below.

6.9.1.1. Undertakings

In the specific context of factors that can incite non-compliance among undertakings, a highly important development is the **increasing competition in the industry**. The enlargement of the EU and continuing cost differentials (particularly labour costs) between countries have created greater pressure to cut costs. The economic crisis also compounded these issues due to the contraction of profit margins within the sector (KombiConsult, 2015).

The intense competitive pressure may also lead to operators seeking to gain further market advantage by sometimes illegal means (AECOM, 2014a), such as breaking the rules of the road social legislation. This might take the form of increasing the working and/or driving times of their drivers, the reduction of rest times, avoidance of breaks, falsification of records on working and resting periods, etc. Such infringements 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).

This picture given by the literature was also confirmed by respondents to the survey conducted for this study.

- Almost 60% of **freight transport** undertakings stated that "*Strong competition in the market that puts pressure on companies to break the rules*" is a major cause⁷⁴ for difficulties with compliance with the rules".

⁷⁴ These undertakings gave the rating 4 or 5 on a 1-5 scale, 5 being "a major cause"

- Around 40% of **passenger transport** undertakings responding to the survey identified that strong competition puts pressure on companies to break the rules.

Also a majority of trade unions consulted for this study (13 out of the 14 responding to the relevant question) rated strong competition as a 'major cause' for difficulties in compliance. Also 56% (or 14) of consulted national enforcement authorities shared this view.

6.9.1.2. Drivers

Competitive pressures facing drivers relate to two main underlying factors, which in part also stem from the above discussion on general market competition issues. Firstly, employment of drivers from lower cost countries in higher cost countries has become a known way of decreasing operation costs in the road freight transport market (AECOM, 2014a). Considering also the pressures on transport undertakings to reduce costs, drivers are under **increasing pressure to maintain their employment**. This places them in a potentially weaker position when under pressure to break the rules.

The second factor relates to the conditions and demands of the specific sector. Broadly speaking these can be summarised as follows:

- In the **freight sector**, drivers are under considerable pressure to deliver goods on time (AECOM, 2014a).
- Specifically in the **passenger sector**, the drivers are under similar pressure to keep to schedules, but additional factors that could increase the risk of non-compliance appear to stem from the passengers themselves, who unaware of driver's obligations on driving times, breaks and rest periods may insist on drivers to continue driving or shorten breaks or carry out extra travelling in the evenings (SVBF, 2015).

Such issues can potentially contribute to non-compliance among drivers.

Enforcement authorities from Belgium suggested that pressure on drivers is increasing, as drivers increasingly report themselves due to excessive levels of fatigue. Trade unions (responding in the context of a study visit to an ETF meeting) have reported that drivers are under pressure to carry out operations that are non-compliant with road transport legislation.

In addition to the pressure from undertakings and/or clients (whether in the freight or passenger transport sector), drivers might also be incited by performance-based payments to break the rules – a payment method that still appears to be used in the sector (see Evaluation Question 11, Section 6.11, for more details).

6.9.2. The ability of internal enforcement factors to mitigate the risk of intentional non-compliance

Section 0 on implementation provides information on how the enforcement mechanisms foreseen in the road social legislation were implemented in the different Member States, while the effectiveness of these measures is assessed in Evaluation Questions 6-8 (see Section 6.6-6.8).

When considering whether enforcement measures offer enough deterrence from non-compliance, it is first necessary to understand and quantify i) the reward of non-compliance for undertakings (or other parties in the transport chain) on the one hand and, ii) the cost of the risk of being detected to those parties on the other hand. Only if the harm of possible detection outweighs the rewards of non-compliance, the enforcement system can be seen to be sufficient to mitigate the risk of non-compliance.

The **reward due to non-compliance** depends on the type of transport operation that is carried out, the underlying contract and terms that have been agreed with the contractor, the type of infringement that is committed as well as its extent. In practice, this benefit will vary with each transport operation and the severity of the violation.

The **risk to undertakings/drivers of infringing the rules** in principle depends on the following three factors that are determined by road social legislation:

- i) The *probability of being checked* (which correlates with the minimum requirements of enforcements and the compliance with these minimum requirements of the Member States) - The actual probability of being checked will furthermore depend on factors such as the risk rating systems that are in place, the geographic location of the transport operation being carried out (e.g. areas around popular rest areas might be more frequently checked than mountain crossings) and specific enforcement strategies that might be in place.
- ii) The *probability of detection of an infringement* during a check - The probability of detection depends on the equipment available to enforcement officers, the type of infringement, the efforts made to potentially hide the infringement, the skills and experience of the specific enforcement officer(s) as well as on the thoroughness of the check that is carried out.
- iii) The expected '*cost*' of the infringement - The costs include potential fines, criminal or administrative proceedings, loss of earnings (opportunity cost) etc. It will vary with the severity of the infringement and depend on the penalty system that is in place in the respective Member State.

Given the multiple parameters that would influence a 'risk-reward' calculation of non-compliance, meaningful estimations that could provide insights in the general deterrence factor of road social legislation across the Union are impossible⁷⁵. This was further confirmed by stakeholders (see below Table 6-7 for the type of stakeholders) when asked to illustrate quantitative examples of non-compliance "paying off". Comments indicated that such calculations would not be feasible. As such, only qualitative answers could be obtained.

Table 6-7 shows whether stakeholders thought that intentional non-compliance could potentially be interesting for undertakings. Stakeholders had very diverging views: Stakeholders from the same Member State gave contrasting answers, and so did many stakeholders from the same group. Contrasting answers might also be due to the different types or origins of undertakings. However, most undertakings or industry representatives (14 out of 19) reported that in their view intentional non-compliance does not pay off and is consequently not interesting for undertakings and not a practice in place. All enforcement authorities that provided a response (3) stated that, in their view, intentional non-compliance must be interesting for at least some undertakings, otherwise intentions of fraud would not be detected. Also all responding trade unions (2) had the view that intentional non-compliance exists and must therefore be financially interesting to undertakings.

Table 6-7: Assessment of responses to the question: In your view, would intentional non-compliance pay-off / be interesting for undertakings?

	Intentional non-compliance IS interesting	Intentional non-compliance IS NOT interesting
Responding stakeholder by type and Member State	BE (Enforcers (x 2), Ministry, Industry, Union) RO (Enforcers)	BE (Undertaking, Industry) RO (Ministry, Industry)

⁷⁵ The only literature source that makes an attempt in quantifying the potential reward of infringing the rules that could be identified stems from 2003 (Prognos, 2003); it is therefore not relevant for the context of this study. However, the findings can give an impression of the magnitude of potential productivity gains: The study is based on four specific case study shipments (with different cargo types and different origins/destinations in Europe) and concludes that infringing the social rules can lead to cost reductions of up to 6%. However, this 'reward' calculation is not contrasted with any costs, i.e. an assessment of the risk and costs when being detected is not accounted for.

	Intentional non-compliance IS interesting	Intentional non-compliance IS NOT interesting
(NB: "2" indicates that two stakeholders of the respective type were interviewed and gave this response)	IT (Undertaking, Industry) FR (Undertaking (x 2), Industry) SI (Union)	IT (Undertaking, Industry (x 2)) CZ (Industry) DE (Undertaking (x 2)) PL (Undertaking (x 2)) SE (Undertaking (x 2)) AT (Industry)
Total	12	15

Notes: "Industry" refers to an industry association representing road transport undertakings; "Union" refers to a trade union representing drivers

Source: Stakeholder interviews carried out for this study

Explanations given for the respective answers were largely coherent across the different stakeholder groups. They are presented in Table 6-8. The most frequently stated reasons were 'cost pressure' and 'insufficient enforcement'. This shows that these stakeholders think that the external risk of 'cost pressure' cannot be mitigated by enforcement systems and practices currently in place. A French undertaking furthermore pointed to the pressure on drivers and undertakings that exists especially in France where the 35h working week makes compliance extremely difficult while trying to meet customer demands. These reasons for potential intentional non-compliance raised during interviews are largely in line with findings from the survey for enforcement authorities. In these surveys the following factors were stated to be the main contributors to difficulties in compliance: i) "penalties are not strong enough" (an internal factor), ii) "strong competition in the market that puts pressure on the companies" (an external factor", iii) "co-liable parties are not held sufficiently liable" and iv) "checks cannot be carried out frequently enough" (an internal factor) (see Annex E, Section 13.3 for more details on the responses obtained from enforcement authorities).

Frequently-stated reasons for why intentional non-compliance is not interesting for undertakings were 'high penalties' and 'Increasing risk of being detected', indicating that many undertakings perceive enforcement measures to be sufficiently effective to avoid any intentional non-compliance.

Table 6-8: Most frequently stated reasons for why, in the respondent's view, intentional non-compliance is (not) interesting for undertakings

	Is intentional non-compliance interesting for undertakings?	
	Yes	No
External factors	<ul style="list-style-type: none"> • Cost pressure • Pressure from clients • Pressure on drivers from undertakings 	N/A
Internal factors (defined by road social legislation)	<ul style="list-style-type: none"> • Insufficient enforcement • Insufficient penalties • Performance-based payments • Lack of co-liability of clients 	<ul style="list-style-type: none"> • High penalties • (Increasing) risk of being detected • Introduction of digital tachographs / Modernisation of methods • Improvements in enforcement (e.g. risk rating system)

Notes: "Industry" refers to an industry association representing road transport undertakings; "Union" refers to a trade union representing drivers

Source: Stakeholder interviews carried out for this study

The above shows that there is no common view on whether the enforcement systems in place sufficiently mitigate the risk of non-compliance. Reasons for potential intentional non-compliance vary but it becomes obvious that external factors, factors that are outside the scope of road social legislation, are an important element. Internal factors mitigating the risk that such external factors lead to actual intentional non-compliance are not sufficient.

Most interview respondents that stated that intentional non-compliance does not pay-off were industry representatives or undertakings. Respondents that had the view that non-compliance pays off were more diverse but also include respondents from industry associations and undertakings. This diverse view as well as the number and variety of respondents that think that non-compliance pays off suggests that the risk of intentional non-compliance is, overall, not sufficiently mitigated by enforcement measures. Quantitative evidence for this finding is not available although interview respondents were specifically asked to provide such. Such a general conclusion does however not do justice to the enforcement systems and specific situations in all Member States. In some Member States current conditions of the road transport market and enforcement measures might mitigate the risk of non-compliance more than in other Member States.

6.9.3. Factors contributing to unintentional non-compliance

Unintentional non-compliance refers to non-compliance that was not intended by either the driver or the undertaking. Such factors can be due to either uncertainty about the rules, lack of awareness of the rules or unforeseen circumstances, as discussed below.

Uncertainty about the rules. Lack of clarity in the rules can lead to uncertainty/unintentional non-compliance due to differing national interpretations. Evaluation Question 4 (see Section **Error! Reference source not found.**) showed that there is indeed a certain lack of clarity in some of the provisions, resulting in differences in interpretation and enforcement. Evaluation Question 17 (see Section 6.17) furthermore discusses the coherence of the rules. The analysis provided shows that although there is no incoherence within the legislative framework in a strict legal sense, the complicated reading of the rules to account for all interactions can lead to practice difficulties or confusion. These types of uncertainty appear to occur in practice, as evidenced by discussions at a UK stakeholder working group that noted confusion between the interaction of working time and driving time breaks. The group believed it is difficult to look at both sets of rules simultaneously, so some people inadvertently break the rules (DfT, 2014). Consequently, there is the risk that drivers and/or undertakings incorrectly interpret the rules and commit unintentional infringements.

Lack of awareness. Another reason for unintentional non-compliance could be a lack of awareness of (the full extent) of the rules on the side of the drivers (or the undertakings).

In terms of having a basic knowledge, separate legislation requires both drivers and undertakings to be aware of the rules: In this respect, Directive 2003/59/EC on the initial qualification and periodic training of drivers aims to ensure that drivers have awareness and understanding of the rules, including the "*principles, application and consequences of [road social legislation]; penalties for failure to use, improper use of and tampering with the tachograph [...]*"⁷⁶. Transport operators are required under Regulation (EC) No 1071/2009 to be familiar with road social legislation in order to obtain an operators' licence. As such, it appears that - at least in theory - relevant stakeholders should be aware of the

⁷⁶ A review of Directive 2003/59/EC is however out of the scope of this evaluation study - an ex-post evaluation was recently conducted. Readers are referred to Panteia (2014) for more information.

rules. In addition, Article 10(2) of Regulation (EC) No 561/2006 sets out that undertakings “shall properly instruct the driver and shall make regular checks to ensure that [the rules] are complied with”. Interviews with drivers suggest that this provision seems to be implemented, as 76% of drivers (26 out of 34) that were interviewed for this study stated that they were (sometimes or frequently) subject to checks from the side of their undertaking.

However, operating according to the rules on a day-to-day basis requires a high level of knowledge that may not be achieved in practice. In addition to the possibility of confusion caused by uncertainties as discussed above, around 90% of consulted enforcers stated that a ‘lack of awareness/understanding among transport undertakings’ and ‘lack of awareness/understanding among drivers’ cause difficulties in compliance⁷⁷. These items were the highest-ranked items among 16 different answer options, indicating that, at least from the enforcers’ perspective, they view unintentional non-compliance due to lack of awareness as a major contributor to detected infringements. Conversely, trade unions did not identify a lack of awareness/understanding as a major cause for non-compliance.

In summary, there are mechanisms within the social legislation (in the form of requirements on undertakings to check drivers and schedule trips in accordance with the rules), as well as under broader EU legislation (such as requirements on training) that clearly address this risk. Nevertheless, stakeholders appear divided as to how effective these interventions have been – for instance, enforcers still perceive a lack of awareness/understanding as a major contributor to non-compliance, whereas trade unions do not consider it an issue.

Unforeseen circumstances. Road social legislation obliges undertakings to schedule trips in line with the provisions while considering *foreseeable* delays and the availability of stopping places. Unforeseen circumstances, such as congestion due to accidents (in contrast to expected congestion levels) or unforeseen weather conditions, can however not reasonably be taken into account. Unexpected delays in (un)loading activities can be considered as circumstances that cannot be accounted for in trip planning.

In addition, overcrowding of stopping places due to a lack thereof is reported to be a significant problem on the European road network (European Commission, 2011e). For example, in Germany a severe lack of stopping places has been continuously reported in recent years (MZ, 2011) (TLZ, 2012) (VEDA, 2014) and was estimated to amount to 21,000 places in 2015 (Eurotransport, 2012). As a consequence, drivers might be obliged to either stop at inadequate places (e.g. unsecured areas without adequate sanitary facilities) or to break the rules in order to find a suitable place. Although Article 12 of Regulation (EC) No 561/2006 explicitly allows drivers to deviate from the rules to enable the vehicle to reach a suitable stopping place, “*provided that road safety is not thereby jeopardised*” and “*to the extent necessary to ensure the safety of persons, of the vehicle or its load*”, there is still uncertainty over the circumstances under which the Article applies (as discussed in Evaluation Question 4, see Section **Error! Reference source not found.**).

Stakeholder consultation for this study indeed shows that unforeseen delays due to congestion and the lack of stopping places are frequently seen as a cause for non-compliance (i.e. more than 60% of enforcers, trade unions and undertakings rated these issues to be a cause for non-compliance). In the case of trade unions (of which 100% were supportive), the specific question implied the view that compliance issues due to congestion are the result of inadequate trip scheduling.

Although the above discussion shows that unforeseen circumstances could be a factor in non-compliance, it is worth also considering that the rules provide for a certain degree of flexibility which can help accommodate unforeseen circumstances (see Evaluation Question 3, Section 6.3).

⁷⁷ I.e. 90% rated these items at 3, 4 or 5 on a scale from 1 (no cause) to 5 (major cause).

6.9.4. Best practice examples for avoiding non-compliance

The above discussion might suggest that intentional non-compliance is a general cost-saving practice of undertakings. While some undertakings might indeed revert to such measures, it is important to highlight that there are also undertakings that make every possible effort to be compliant with the rules.

Many undertakings make efforts that go beyond their minimum obligations. Again, relevant questions were raised in the interviews for this study. Box 6-3 in the following provides examples of best practice measures that could be identified during these interviews in terms of checks that are carried out on drivers.

Box 6-3: Best practice measures to avoid non-compliance with road social legislation

Training measures

- A Belgian industry association reported that they proposed specific training modules such as "stress management", "criminality" and "nutrition". A specificity of the Belgian system was to **share the burden of costs of the basic training**: basic training (35h training) is reimbursed almost completely by the National Institute of Social Security (ONSS). The positive impact of these trainings is seen to be enormous; it has triggered considerable interest and enthusiasm among drivers who increasingly demand such training.
- A Belgian undertaking in the passenger transport sector reported to conduct **continuous vocational training** and to make many efforts to explain the legislation in simple terms to the drivers.
- A German undertaking reported that trainings for drivers were already in place before the introduction of the requirements. The company ensures to offer high quality training often combined with **team building events**, which has significantly decreased the number of staff leaving the company and makes (according to the company) sense from a financial point of view.

Reward systems

- A German undertaking reported that analysis of data from the tachograph happens on a weekly basis. In addition, the company carries out random checks and has an internal **bonus system** where compliant drivers get rewarded. The drivers are therefore seen to have a high incentive to comply with the rules. The undertaking further reported that as a result, in the last 10 years only one case of an infringement with a 50 Euro fine was detected.

Use of IT Systems

- A Belgian undertaking visited in the context of a study visit for this study presented their **real time transport management system** which is available 24/7. It is a comprehensive track and trace communication system that, among others, tracks down and navigates trucks, receives orders from clients, plans time-schedules for drivers, and records the driving time of trucks. When problems arise, the IT team can be contacted and truck drivers are advised what to do by consulting the IT system. New time schedules can be proposed via the computer and drivers can accept them online. The company furthermore invests into training. When a driver infringes the legislation several times, he is required to take an additional training.
- A French undertaking visited in the context of a study visit presented their use of a software, which displays, minute by minute, all operations carried out by the driver, including any information relating to breaks, rest periods as well as loading and unloading operations. Employers have access to all data and can check the exact amount of time spent by the employee driving, resting and working. This monitoring system is a way to ensure the smooth implementation of the legislation, which, if not respected, will automatically display on the screen the sanction corresponding to any potential breach of the law.

Frequency of internal checks

- A Polish undertaking reported that compliance is **checked after each completed trip**.

- A Swedish undertaking reported that compliance of drivers is checked every week and emphasis is also given on **self-control** (through driver training). Also clients are asked for feedback on the drivers.

Awareness raising

- A Belgian industry association reported that many businesses engage in activities to inform the client about the rules, to raise their awareness. This helps avoiding client demands for transport operations that would not be in line with the road social provisions. Another Belgian industry association reported that thanks to increasing awareness of contractors, pressure has already slightly decreased for hauliers and drivers.

Other organisational measures

- A Swedish undertaking reported that they in general deploy **two drivers per truck** to allow each driver to stay at home a period of time that equals the time they have spent before on driving. This way rest periods frequently surpass the minimum requirements on their duration. This system may imply costs but also results in gains in the performance of drivers. This has been confirmed by feedback from clients. In parallel, this measure allowed to increase the utilisation rates of the vehicles.
- A French undertaking reported that they make an effort to immediately raise awareness when an infringement is detected by immediately sending a letter to the concerned driver. In-house training is given to drivers who are often found to commit infringements.

Source: Interviews with industry associations and undertakings; Study visits to undertakings

6.9.5. Summary and conclusions

The above analysis shows that enforcement measures are only partially effective in addressing the risk of non-compliance. While the enforcement measures mitigate the risk of non-compliance, the risks of being detected and its consequences do not outweigh the potential rewards of infringing the rules for all undertakings and/or drivers. The extent to which this applies varies across Member States and their specific enforcement systems in place, as well as the type of transport operation being carried out and cannot be realistically quantified.

According to inputs obtained during interviews with stakeholders and via stakeholder questionnaires, the combination of external pressures, alongside insufficient enforcement, can make intentional non-compliance more likely. Views on what factors characterise insufficient enforcement vary significantly, yet the factors that were frequently identified during the consultation activities for this study were:

- Low probability of being detected (too few checks or poor risk-targeting);
- Low penalties (lack of deterrent effect);
- Lack of enforcement of co-liability of clients;
- Allowing the continuing use of performance-based payments.

There is also the risk of unintentional non-compliance that is not addressed by the enforcement measures. It can be due to uncertainty about the rules, lack of awareness of the rules, or unforeseen circumstances. The legislative framework addresses these only insufficiently: Evaluation Questions 4 and 17 (see Section **Error! Reference source not found.** and 6.17) have shown that uncertainties about the rules continue to exist; a certain lack of awareness of the rules appears to persist despite the mechanisms provided within the social legislation and wider EU legislation on driver training and professional competence. The risk of unintentional non-compliance due to unforeseen circumstances is addressed by Article 12 permitting flexibility to deviate from the rules. However, uncertainty with regards to the application of this Article may hinder its effectiveness (as discussed in Evaluation Question 4, see Section **Error! Reference source not found.**).

Also further flexibilities within the rules exist. These address the risk of non-compliance due to specific operational schedules.

It is also important to highlight that there are undertakings and drivers who strive to be compliant with the rules and even take measures that go beyond the legal obligations to ensure compliance of their operations. Good practices were, for example, identified in terms of:

- Providing extensive training for their drivers (e.g. continuous vocational training or team building events)
- Implementing reward systems for drivers that ensure they are in compliance with the rules (e.g. a bonus system in case of continuous compliance with the rules)
- Use of ICT systems to monitor compliance (e.g. real time transport management software and back-office support systems)
- Awareness-raising (among all involved in the transport chain).

6.9.6. Recommendations

Specific recommendations regarding enforcement measures and co-liability are provided in Evaluation Questions 6-8, which will address the identified problems that are internal to the social legislation and that can mitigate intentional non-compliance.

Recommendations that will help to target the risk of unintentional non-compliance, were provided in Evaluation Question 4 (Section **Error! Reference source not found.**) and Evaluation Question 17 (Section 6.17) to improve the clarity and coherence of the rules. To reduce the risk of non-compliance due to specific operational schedules, the consultants recommend to carry out impact assessments on a case-by-case basis for the sectors that bring forward specific requests for additional flexibilities in the rules.

It should also be considered to disseminate best practice among undertakings in order to promote better compliance, highlighting the benefits to undertakings and drivers in terms of, for example, lower fines and better driver retention. The dissemination itself may be better achieved via national channels, such as associations and trade unions, who have the necessary links with undertakings and drivers, yet the information-gathering stages could benefit from an EU-level perspective to ensure that best practices are shared fully across countries.

6.10. Effectiveness: Do the monitoring and reporting arrangements in place allow for adequate checking and follow-up of the legislation?

Do the monitoring and reporting arrangements in place allow for adequate checking and follow-up of the legislation? If not how could it be improved?

6.10.1. Driving time and Enforcement Directive

The legislation requires Member States to submit biennial reports on the driving time rules according to a standard template (see Annex B, Section 10.5 for a complete overview of the current requirements and changes relative to the previous reporting requirements). The following sections assess the adequacy of the requirements for the purposes of monitoring and follow-up of the legislation in terms of:

- Completeness of the data.
- Consistency of the data.
- Adequacy in terms of allowing for checking and follow-up of the legislation.
- Potential to reduce reporting requirements.

In each case, the factors that contribute to any identified problems in the data are reviewed.

6.10.1.1. Completeness of the data

The effectiveness of the reporting requirements is strongly determined by the reporting practices of the Member States. Overall, the **timeliness of submissions** has improved each year, although the number of Member States that fail to submit their reports on time is still significant: in 2011-2012, there were still seven⁷⁸ Member States who failed to submit their reports on time (European Commission, 2014c).

It is also clear that gathering **complete data** for the current reporting template is still an issue, but again this has been improving. In part, the introduction of the electronic reporting tool seems to have been successful in encouraging a higher response rate and making the reporting easier (European Commission, 2012).

Nevertheless, particular difficulties still concern the provision of data around certain indicators, such as the number of vehicles fitted with a digital tachograph or the number and type of offences detected at premises and roadside. In several cases the Member States are not able to collect the data at the level of detail that is requested by the Commission – for instance, six Member States⁷⁹ reported that inconsistent or missing data was due to **technical constraints** during the data collection process and four Member States⁸⁰ indicated that they were **not collecting data in a disaggregated enough way** or in the right format to fit the reporting tables (European Commission, 2014b). Without provision of information from all Member States, the monitoring and reporting on the legislation is incomplete and cannot allow for a comprehensive assessment of all Member States.

6.10.1.2. Consistency of the data

The reporting period 2007-2008 suffered from important inconsistencies in the data (for example, Member States provided contradictory information on the total number of working days checked). These issues have partly been resolved with the introduction of elementary data checks in the electronic template (European Commission, 2014c).

⁷⁸ Belgium, Cyprus, France, Germany, Greece, Luxembourg, Malta, the Netherlands

⁷⁹ Finland, Denmark, Italy, Estonia, France and Sweden

⁸¹ Slovakia and Hungary

Other inconsistencies in the data remain, which limit the ability to gain proper insight into the functioning of the social legislation. As reviewed in Evaluation Question 6 (see Section 6.6), reported information is inconsistent due to different interpretations of what should be recorded in each field. Key examples include:

- **Number of infringements:** As detailed in Evaluation Question 6, Member States differ in their recording of the number of infringements, e.g. by applying general tolerances or not, and whether sanctions are applied for minor infringements or first offences.
- **Number of checks carried out:** Some Member States (e.g. Germany and Poland report all checks), whereas others (e.g. Belgium) report only checks where infringements were found. The UK records all full checks, but these are only carried out if something appears to be wrong after an initial inspection.
- **Enforcement capacity/number of enforcement officers** is inconsistent between Member States and in the same Member States over time (e.g. different approaches to including officers who are involved in the enforcement of social legislation but it is not their primary responsibility). For example, the Belgian figures for the number of enforcement officers in 2011-2012 include staff at the Ministry and in the Police (370 officers), whereas the previous reporting period included only the Ministry (57 officers).

6.10.1.3. Adequacy in terms of checking and follow-up of the legislation

Bearing in mind the above discussion of the reporting completeness/consistency/limitations, we now consider the adequacy of the reporting in terms of allowing the checking and follow-up of the legislation in terms of the following key issues:

- Monitoring of implementation and compliance with the requirements of the legislation;
- Monitoring of national enforcement capacity and quality of enforcement;
- Monitoring of infringement rates.

In terms of **implementation and compliance with the requirements of the legislation**, the current reporting requirements do allow for the Commission to monitor the compliance with Regulation 561/2006 and Directive 2006/22 through an assessment of the number and type of controls carried out and number and types of offences detected. These numbers cover the core requirements of the driving time and rest period legislation. The above analysis has shown that the quality and consistency of the data has improved over time, especially following the introduction of the electronic reporting template. There remains some question as to the consistency of the reported number of checks - as outlined above, some Member States report only checks where infringements were found. However, such reporting practices would tend to bias the number of checks downward because the "empty" checks are not reported. Hence, in terms of evaluating whether the Member States have met the *minimum* requirements, the current reporting can be considered adequate.

In terms of assessing the **quality of national enforcement**, the reporting also allows for an assessment of national enforcement capacity based on indicators such as the number of control officers involved in checks (subject to the inconsistencies described above) and the number of officers trained to analyse digital tachograph data. These indicators could provide useful insights into the development of enforcement capabilities within and across countries in terms of the resources available, and are certainly better than having no information at all. However, it is not possible (even if the data were consistent) to assess other important factors that have a bearing on the overall quality of enforcement - such as the level/quality of training given to the enforcers, among others discussed above - since these aspects are not required to be reported.

Regarding the **reported detected infringement rates**, the analysis points to a large degree of inconsistency regarding the reporting practices - both between different countries and within the same country over time (see Evaluation Question 6, Section 6.6),

meaning that a naïve reading of the data will result in misleading conclusions on the trends (as discussed previously in Evaluation Question 6).

One important current limitation is that there is interest in using the reported detected infringement rates as an indicator of underlying trends in compliance (as attempted in Evaluation Question 6). However, as discussed previously, there is a strong effect of inconsistent national reporting practices. These lead to large fluctuations in reported detection rates that are quite apart from the functioning of the social legislation. More consistent reporting practices would remedy this first issue.

Secondly, even if national reporting was entirely consistent, the infringement rates are influenced by national enforcement practices in two ways:

- Through changing the effectiveness of checks (the probability that a check will detect an infringement)
- Through changing the targeting of checks (the probability that a check will be targeted at an undertaking/driver that has committed an infringement)

These enforcement-related factors mean that even if the underlying compliance rate is the same in two countries, the recorded infringement rate could be very different. For example, the targeting of checks can be changed through the way that enforcement is organised (for example, whether it is carried out on certain roads or certain days). Another important factor affecting detection rates is the use of risk-rating systems or other informal methods of targeting checks (for example, the Italian authorities commented during interview that enforcers can recognise risk factors without the use of a formal system). In these cases, the detection rates are likely to be upward biased and not representative of general compliance levels in the whole fleet because the checks are targeted at vehicles/companies that are deemed to be at higher risk of non-compliance. Since each country has its own risk-rating system (using different inputs and calculation methods – see Section 6.6 for more details), the comparability between countries is limited.

Overall therefore, it is impossible to tell from the reporting data alone whether compliance rates are improving in line with reductions in detected infringements, or whether this could be due to the functioning of the risk-rating system (or other measures to improve targeting of enforcement), or is in relation to changes in enforcement practices (more or less effective checks). This means that qualitative information on the factors of enforcement (as described above) is also needed in order to disentangle trends in enforcement practices from any underlying compliance trends.

Another aspect that is not reflected in the current reporting is the enforcement of the **co-liability principle**, which forms an important part of the efforts to reduce pressure on undertakings and drivers to break the rules (see also Evaluation Question 7, Section 6.6).

6.10.1.4. Potential to reduce reporting requirements

A final point of interest is whether there are any redundant requirements for reporting. Aside from the monitoring of the core requirements of the legislation (around checks and infringements), which are necessary to understand implementation, there are a number of other fields that are required.

There may also not be an urgent need to substantially reduce the reporting requirements – a large share of enforcers or ministries responding to the survey did not identify that there were significant costs involved in order to meet the reporting requirements (respectively 38% and 40% of respondents were neutral on this). The respondent from Slovenia estimated that the total cost of meeting the reporting requirements was €25,000 per year (no other respondents could give numerical estimates), or less than 1% of the total enforcement costs (see Evaluation Question 13, Section 6.13).

Overall, the reporting requirements are viewed positively by ministries: in the survey carried out for this study, respondents were asked whether the reporting requirements have led to improvements of the enforcement system. 46% reported a slight or strong improvement in enforcement due to the reporting system, compared to only 13% who disagreed (40% were neutral). Romanian enforcement authority and ministry explained

that they used the feedback and information received through the reporting to modify their enforcement approach. The comparison with other Member States is said to put pressure on the national authorities to comply with the requirements.

Even so, the main difficulties explained earlier regarding the adequate disaggregation of data are potentially an area for simplification. As mentioned previously, the provisions of qualitative data regarding enforcement systems (e.g. risk-rating systems, training of officers) could provide more useful insights compared to incomplete and inconsistent disaggregation of the infringement data. One provision that could be removed in future is the provision of data on the proportion of vehicles stopped with a digital tachograph. As the share of digital tachographs increases over time, the need for this reporting field will diminish.

6.10.2. Working time (Directive 2002/15/EC)

Directive 2002/15/EC requires that Member States report to the Commission every two years on the implementation of this Directive's provisions, "indicating the views of the two sides of industry". For reporting periods 2007-2008 onwards the Commission introduced a new reporting form covering both the Driving Time Regulation and the Working Time Directive. The majority (78%) of enforcement authorities that completed the survey for this study strongly or slightly agreed that the combination of reporting requirements in this way has made reporting more efficient.

In contrast with the Driving Time Regulation, there is no explicit legal obligation for Member States to include quantitative information in their reports. Although the Commission has repeatedly encouraged the submission of quantitative data in order to allow for higher quality analysis of enforcement and compliance, it is still greatly lacking: the number of Member States that provided such data had increased from two⁸¹ in 2005-2006 up to seven⁸² in the last reporting period. Even so, this does not provide sufficient data to monitor the functioning of the Directive.

Article 13 of the Directive requires the Member States to provide in their reports "the views of the two sides of the industry". For the 2011-2012 period, 16 Member States⁸³ confirmed that stakeholders had been consulted when compiling the report (European Commission, 2014b) In 2007-2008, only nine⁸⁴ had done so (European Commission, 2011).

In general the quality of reports has also been found to vary, and the number of Member States providing inadmissible reports has remained between six⁸⁵ in 2007-2008 and seven⁸⁶ in 2011-2012.

Overall therefore it is clear that there is little data available from the monitoring requirements related to Directive 2002/15/EC, largely due to the lack of requirements for quantitative data.

6.10.3. Summary and conclusions

Driving times and rest periods (Regulation (EC) No 561/2006 and Directive 2006/22)

The set of indicators available in the Member States' reports allows for adequate monitoring and follow-up of the legislation in terms of the implementation of its core requirements, such as the number of checks. It also allows for a basic assessment of national enforcement capacity and the reported detected infringement rates. The timeliness, completeness and

⁸¹ Slovakia and Hungary

⁸² Austria, Bulgaria, Cyprus, Czech Republic, Greece, Poland, Spain

⁸³ Bulgaria, Czech Republic, Germany, Denmark, Estonia, Greece, Spain Finland, France, Ireland, Lithuania, Malta, Poland, Slovakia, Slovenia, United Kingdom

⁸⁴ Belgium, Czech Republic, France, Germany, Ireland, Slovakia, Slovenia, Poland, United Kingdom

⁸⁵ Belgium, Greece, Hungary, Italy, Latvia, Malta

⁸⁶ Belgium, Cyprus, Hungary, Latvia, the Netherlands, Romania and Sweden

consistency of the monitoring data submitted has increased over time. In part, the introduction of the electronic reporting tool seems to have been successful in encouraging a higher response rate.

Nevertheless, continuing difficulties concern the provision of data around certain indicators where Member States are not able to collect the data at the level of detail that is requested by the Commission, such as the number of vehicles fitted with a digital tachograph or the number and type of offences detected at premises and roadside.

Overall, the key limitations of current reporting requirements (aside from incomplete data) include:

- **Inconsistencies:** Differences in interpretation / definition of some indicators, leading to non-comparable results for several key indicators (e.g. enforcement capacity, reported number of checks, reported number of infringements);
- **Reported infringement rates do not directly represent the compliance rates** due to the presence of other factors that influence the detection rate (e.g. different risk-rating systems);
- **A lack of qualitative information to support the quantitative data** (e.g. training of officers). Although qualitative information is difficult to capture using a standard form, it is still important to provide the context needed to interpret the numbers.

Working time (Directive 2002/15/EC)

The availability of data with respect to enforcement of, and compliance with, the Working Time Directive is very limited, mainly due to the fact that Member States are only required to provide qualitative data (quantitative data is only provided on a voluntary basis).

As a result, there is insufficient quantitative data to evaluate the implementation and effectiveness of the Directive. The current biennial reporting is still fragmentary and in its current state not adequate for a comprehensive checking and follow up of the legislation.

6.10.4. Recommendations

First and foremost, the lack of consistency in reporting must be addressed in order to improve the comparability of data and enable the analysis of implementation of the social rules. In the short term, the consultants recommend that Member States are asked to clarify more precisely the definitions that they currently use. This would be a low-cost measure that would greatly improve the ability to use the currently available information from past reporting periods.

For subsequent reporting periods, the study team recommend that guidance on interpretations of key inputs should be developed and disseminated, so as to improve the harmonisation of the reporting. The consultants recommend that this be done through amendment of the current reporting template, given that the electronic format is already used by the Member States and has already contributed to improved completeness and quality of data in recent years.

Concerning what indicators could be used to track compliance levels more precisely, there is no clear indicator that could represent the actual infringement rate due to the confounding factors described above (i.e. targeting and effectiveness of checks).

Regarding how to assess infringement rates in presence of risk-rating systems in particular, one approach could be to conduct checks entirely at random and report the infringement rate for these separately; however, this would partially negate the benefits of the risk-rating system. Instead the study team recommends that countries report on the functioning of their risk-rating systems in more detail – for example, what information is fed into the systems and what is the rating criteria applied (see below). This would still allow for a better understanding of the effectiveness and comparability of enforcement data between countries.

There is a wide a range of other possible indicators that would allow for a more thorough assessment of the legislation including:

- Penalty systems: (Range of) fines to be paid for different types of infringements:
 - o By the undertaking
 - o By the drivers
 - o By other parties in the transport chain
- Enforcement capacity:
 - o Amount of initial training (hours) per officer
 - o Amount of periodic training (hours) per officer, and frequency (number of years between retraining)
- Risk-rating systems:
 - o Number of checks conducted as a result of the risk-rating system
 - o What is the infringement rates for these checks compared to overall checks (or random checks)
 - o What information is fed into the systems and the rating criteria applied
- Enforcement activities:
 - o Cost of enforcement
 - o Content of tools used (software, hardware)
 - o Average time that enforcement officers take to carry out a check at the premises/roadside when there is an infringement / no infringement
 - o When and where checks occur (e.g. Mon-Fri working hours)
- Infringement data:
 - o Cases of infringements detected due to concerted checks
 - o Cases of infringements applied to co-liable parties
 - o Cases of infringements due to non-compliance performance-based payment schemes

The list above, while probably not exhaustive, gives an overview of the range of possible indicators that could be required. However, their introduction should require a careful assessment of the additional costs to Member States, the likelihood that this type of information could be obtained, and the possible benefits. While it would be desirable to obtain data on the above-mentioned indicators, it would involve additional time/effort for national authorities to collect such data (see also Evaluation Question 10, Section 6.10). Even in the most recent reporting period there is still gaps in the reporting especially when it comes to very disaggregated data and the data provided is sometimes still of low quality.

Considering that there are still gaps in the current reporting, and that the questionnaire is already rather extensive, the **study team therefore consider that it would be counterproductive to expand the questionnaire further at this point**. Rather, the main focus should be set on making sure that the quality and completeness of the responses to the current template are improved before considering further expansion. If necessary some additional guidance could be developed to specify the exact nature of the data that is expected and possible ways to collect such information. Potential areas for simplification/reduction of the reporting requirements should also be examined, in particular considering the need for detailed disaggregation (considering the cost/benefit and that several Member States still lack the technical capacity to report on these fields), as well as the future relevance of the requirement to report on the share of vehicles with digital tachographs.

One European operators' association interviewed for this study expressed concern that since the data from the Member States is not audited by the Commission or an independent party, it may not be entirely reliable. The consultants considered this comment and cross-checked it via interviews with authorities: It appears that some Member States already have internal validation procedures, although these may not be 100% successful due to a need to build up capacity. For instance:

- In the UK the enforcers (DVSA and the DfT) liaise to make sure that the data and figures provided look correct – any anomalies are sent back to their statistics team to address if necessary. They note that it is very time consuming to interrogate the figures, but were not able to estimate the cost.
- In Romania, the enforcers explained that there are 8 regions, each of which receive indications on how they should organise their activity to reach the target on checks. However, in the last reporting period it was discovered too late that instructions were not followed.

On the basis of the above findings, it appears that some additional verification procedures are probably needed to ensure accuracy (the Commission also conducts verification with Member States on a small portion of data) and best practices in this regard should be sought and disseminated in order to assist Member States in their reporting. The incidence of any additional obligations for verification should also be assessed as part of an Impact Assessment (i.e. whether this should be the responsibility of the Member States).

Working time (Directive 2002/15/EC)

The current reporting is fragmented and its effectiveness is rather limited. The main gap in the data that was identified is quantitative data on the number of offences against working time rules. The solution would be to introduce requirements for quantitative data. However, this action did not receive wide support when enforcement authorities were asked whether this would be beneficial for monitoring and enforcement purposes: only 1 out of 14 authorities thought it would be beneficial. All other respondents thought the current provisions were sufficient. Additional reporting requirements would only increase the effort (i.e. cost) but would not have a positive impact on enforcement activities.

In the shorter term, considering that the Member States still struggle to provide complete and good quality data, an expansion of the reporting requirements is not recommended. The main focus should lie on improving the data submissions that are required in the current reporting, based on qualitative information (that still provides useful insights for the Member States that provide information).

6.11. Effectiveness: Has the EU legislative framework on social rules in road transport resulted in improved working conditions of drivers (in particular in relation to their health and safety), increased road safety levels and contributed to a level playing field?

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

This evaluation question assesses the effectiveness of the legislation in terms of contributing to the following common objectives: to improve working conditions and to increase road safety and contribute to a level playing field.

6.11.1. Impact of road social legislation on working conditions of drivers

6.11.1.1. Overview

One of the common objectives of the road social legislation is improvement of working conditions for road transport workers. Although the term “working conditions” is used in the recitals of Regulation (EC) No 561/2006 and Directive 2006/22/EC, the exact meaning and intended scope is not defined.

Table 6-9 summarises the different aspects of working conditions and their links with the social legislation. The *direct links* with the road social legislation are via elements of **fatigue** and **stress**, although these multi-dimensional issues have complex interrelations with other factors. For instance, fatigue and stress can contribute to other problems, such as accidents in cargo handling and on the road. They can also cause alcohol or drug abuse. Stress can lead to sleeping disorders, which, in turn, will affect drivers’ fatigue.

Table 6-9: Overview of risks to drivers’ health, safety and overall working conditions, their factors and links to road social legislation

Type of link	Fatigue-related issues	Stress-related issues
Direct link <i>(targeted explicitly in the legislation)</i>	Long working/driving hours	<ul style="list-style-type: none"> - Long working/driving hours - Performance-based payment - Legislative requirements and roadside checks
Indirect link <i>(not dealt with explicitly in the legislation but there are indirect impacts)</i>	Work-related sleeping disorders <i>(also related to stress)</i>	<ul style="list-style-type: none"> - Long periods away from home - Time pressure to meet schedules - Unsafe working conditions (accidents)
No link	<ul style="list-style-type: none"> Shift work and irregular schedules Inadequate resting and hygiene facilities at parking areas 	<ul style="list-style-type: none"> Various, e.g. - Long waits before (un)loading - Disrespectful treatment - High traffic volumes - Poor road and weather conditions

Source: Adapted from (EU-OSHA, 2010), (ILO, 2015), and (TRT, 2013)

Other factors have been identified in a comprehensive overview of all factors that are concerned when discussing working conditions, which is provided in Annex B (Section 10.7.1). This shows that the other elements of working conditions are only linked to the social legislation to the extent that they have an interdependency with the factors identified under fatigue and stress (e.g. fatigue may contribute to illness).

Road social legislation can therefore be seen as a means to contribute to improving the working conditions of drivers in several specific and important areas, but it still needs to

work in concert with other legislation to ensure the adequate coverage of all dimensions of working conditions.

The following sections examine the impact of the road social legislation on the main factors through which they directly impact working conditions (fatigue and stress), as outlined above.

6.11.1.2. Fatigue

The focus of this section is on working and driving hours, which have a direct impact on the fatigue of drivers. As shown in Table 6-9, sleeping disorders also impact fatigue; however, according to EU-OSHA (2010), the main reasons for work-related sleeping disorders is stress, which will be discussed in Section 6.11.1.3.

Working hours and Directive 2002/15/EC

Directive 2002/15/EC lays down a maximum average weekly working time of 48h, including driving and non-driving activities such as loading and unloading and other activities as listed in Article 3(a). The first step to understanding what the possible impact of the Working Time Directive on working times may have been is to review what rules were in place prior to its adoption and how these have changed.

Prior to Directive 2002/15/EC, the working time of transport workers was governed by Directive 2000/34/EC (amending Directive 93/104/EC). This had already limited the average weekly working time to 48h, which is the same as the current limit. Since the overall working time limits for drivers has not substantially changed compared to the previous situation, this suggests that Directive 2002/15/EC did not revise working time limits to an extent that would have significant effect on the overall drivers' working hours and therefore on the working conditions of drivers.

However, other developments are likely to have had an impact on average working hours of drivers, as follows:

- i. The inclusion of self-employed drivers in the scope of Directive 2002/15/EC since 2009;
- ii. Changes in the levels of compliance with the working time rules; and
- iii. Introduction of definitions of working time, night work and periods of availability.

Self-employed drivers have been included in the scope of Directive 2002/15/EC since March 2009. Data or literature on the compliance of self-employed drivers with working times could not be identified from the literature, nor from stakeholders. The extent to which such working times decreased in practice can therefore not be established specifically for self-employed drivers, although general compliance levels of all drivers are discussed further below.

Concerning the second point on whether changes in the compliance with the working time rules may have had an effect, a direct quantitative analysis is hindered by a lack of data. Member States are not required to report to the Commission on working time checks and infringement detection rates. It is therefore necessary to revert to driver surveys that have been either conducted at the EU or national level.

A relevant EU-level source is the **European Working Conditions survey (EWCS)** (Eurofound, 2015). It provides some insight in developments of working times affecting transport workers. However, there are important limitations: it is not possible to isolate HGV drivers and bus/coach drivers from other transport workers. Furthermore, the data are only collected in five-year intervals, and the entry into force of the legislative acts falls in the middle of these intervals. Consequently, only some general observations can be made - direct insights into trends of working conditions of drivers and moreover the impact that the Working Time Directive has had were not possible to locate (please refer to Annex B, Section 10.7.2 for more information on the limitations of the dataset and its analysis.)

Nevertheless, the data collected in the EWCS suggests that general compliance with Directive 2002/15/EC is low. The results show that in 2010, 27% and 37% of the group of

professional drivers and *professional drivers (land transport)*⁸⁷ respectively, stated that they typically work more than 48 hours per week. The shares of workers reporting hours in excess of the working time limits were largely stable over the period 2005-2010, indicating that there have not been substantial improvements over time. Compared to other sectors, workers in transport and storage on average work 5 hours more per week in the EU-28 (Tassinari et al, 2012). The survey responses do not indicate what share of responses are from self-employed drivers - while workers in firms with fewer employees (1-9) tend to report the longest hours on average, this may reflect difficulties in redistributing work among small firms rather than highlighting particular problems with self-employed (Tassinari et al, 2012).

Data at the national level on the specific issue of drivers' working hours is also scarce, but the few available examples from Germany seem to support the findings at the EU level derived from EWCS. In HS Furtwangen (2012), over 1,000 drivers in Germany were consulted in 2011. This study found that 56% of the consulted drivers reported weekly working times of more than 59 hours – overall suggesting a low compliance rate with the working time rules.

These findings were validated by another German study (ZF Friedrichshafen, 2014) for which 2,196 professional German drivers were consulted in 2014. Table 6-10 shows that only drivers operating in the local transport segment (<50km) report weekly work hours below 48h. Drivers engaged in all other transport segments report average working times above 48h.

Table 6-10: Reported weekly working times of professional drivers in Germany in 2014 (in 2012 in brackets where available)

Type of transport operations	Share of drivers	Average weekly working time (in h)
Local (<50 km)	9.9%	44.4 (47.3)
Regional (<150 km)	30.3%	49.1 (52.2)
National long-distance	32.6%	57.1 (60.0)
Intern. long-distance	27.2%	59.3 (62.9)
Total	100.0%	54.0 (56.7)

Source: ZF Friedrichshafen (2014) (and (2012) where numbers are available)

The findings from Germany suggest that compliance among long-distance transport is comparatively low. It is not clear whether this is also the case in other countries – no quantitative data was obtained to illuminate this point. Commentary in Gron (2009) reveals complaints from drivers that the Regulations were designed more to deal with long-distance transport, whereas for short-distance transport that involves more “other work” such as loading and unloading, it is more difficult to comply.

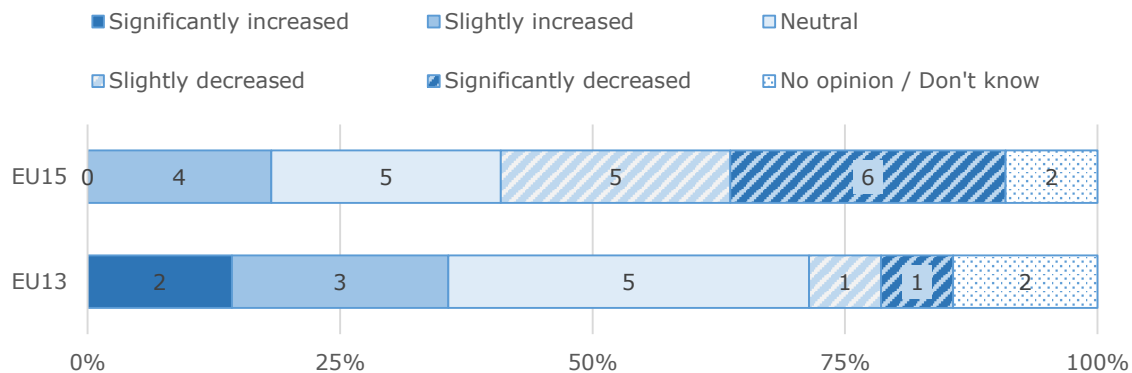
Although Table 6-10 shows that compliance with weekly working times is low, it also shows that average weekly working times have at least slightly improved in the period from 2012 to 2014 for German drivers, suggesting some improvements in compliance. Looking at the EWCS, reductions in hours worked between 2005 and 2010 have been more common in the transport and storage sector than in the EU-28 as a whole, and at the same time increases in hours have been as frequent in this sector as in the EU-28 (Tassinari et al, 2012). Around 18-20% of transport workers report increases in working time, compared to 11-18% reporting reductions (typically mid-sized firms with 10-249 employees show the lowest number of reductions) (Tassinari et al, 2012). This shows that progress has been rather uneven – overall, transport workers have seen more reductions in working hours compared to the economy as a whole but there is still a substantial share reporting increases. The results of the survey of undertakings conducted for this study also show a

⁸⁷ NB: Also this more restricted group still includes drivers irrelevant to road social legislation, such as taxi drivers or railway drivers.

broad agreement with these findings, with around half of respondents reporting neutral effects of the Directive on drivers' fatigue and equal shares (20% each) reporting increases and decreases in fatigue.

To validate the findings in the literature, interviews with drivers were carried out for this study. Their responses (shown in Figure 6-10) suggest that average working times have improved for EU-15 drivers, but remained stable or deteriorated for EU-13 drivers over the past 10 years.

Figure 6-10: Response of drivers to the question: Have your overall average working hours (driving and other work) increased or decreased over the last 10 years?



Source: Survey of drivers conducted for this study

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

Summarising, the objectives of the Working Time Directive to limit working time to 48h per week and hence reduce fatigue have not been fully achieved. Since enforcement statistics for the Working Time Directive are generally not available, the main source of information on compliance levels is from direct reports from drivers. On the basis of published surveys, there is evidence of low compliance with working time provisions across the EU, with between 40% (Europe) and 90% (Germany) of drivers reporting that they typically work more than 48h per week. This general picture of low compliance was also verified by interviews with drivers conducted by the study team. Although compliance among short-distance (<50km) transport operations appeared to be higher (according to a German survey), it is not clear whether this is actually due to the Directive or simply the nature of the operations that mean the schedules tend to involve shorter weekly working hours. Nor is it clear whether this is a general conclusion applicable to the EU or if the finding is specific to Germany.

This raises the question therefore of why the compliance levels are so low. Examination of the trends over time suggests that compliance has been stagnant for the most part, with uneven impacts on different groups – i.e., there are indications that EU-13 drivers may be more likely to have seen increases in working time whereas EU-15 drivers have seen decreases. Again, the extent to which this is linked with the Directive (as opposed to other factors such as conditions of competition) is not verifiable. Evidence related to trends in enforcement practices and compliance are assessed in Evaluation Question 6 (see Section 6.6), which finds that a low priority is given to the Working Time Directive.

It is worth also briefly considering the impact of new definitions introduced in the Working Time Directive. The new definition of working time set out in Directive 2002/15/EC specified the activities that constitute working time. In theory, this would help mobile workers to know exactly which periods devoted to road transport activities constitute working time and comply with the maximum limits. However, as seen above, compliance with the overall limits seems rather low and this renders the definition ineffective. In addition, uncertainties regarding the definition of some terms still remain (see Evaluation Question 4, Section **Error! Reference source not found.**).

Other definitions implemented in the Working Time Directive were also intended to help reduce fatigue – for example, the provisions on night work, since working at night can be considered as a risk for health and safety. A study conducted on the impact of the provisions on night work in 2006 found that there was not a large debate on the issue (TNO, 2006). A large percentage (44%) of respondents in the TNO study's survey estimated no impact – likely because the rules were not new to many countries (TNO, 2006).

The definition of “periods of availability” was intended to clarify the exact nature of the activities covered (see also Evaluation Question 4, Section **Error! Reference source not found.**). In some countries, the implementation of the Directive resulted in new national definitions – for example, in Germany, time spent in the cab was previously classified as working time (Broughton, 2007). In some countries this definition also led to renegotiations of collective bargaining agreements - for example, in Belgium, the social partners agreed a schedule for increasing remuneration related to the compensation of these new time periods or calculations (Broughton, 2007).

Nevertheless, the overall impact of the whole Directive does not appear to have been significant due to the low priority given to enforcement and/or the similarity to previous rules in place, and hence the impact of individual parts of it are also not significant. In some cases, the changes to definitions laid down in the Directive (i.e. concerning working time and periods of availability) led to subsequent alignment of national laws/collective agreements, but given the lack of enforcement it is difficult to conclude that there have been any substantial improvements for workers concerned.

Driving hours

Driving hours are governed by Regulation (EC) No 561/2006. To understand what the possible effects on driving hours of the new rules under Regulation (EC) No 561/2006 could have been, it is first necessary to review what changes were made compared to the prior legislation.

When EU social legislation was devised, it was identified that the pressure to save costs could incite the transport industry to impose on drivers excessive working and driving hours and, therefore, create working conditions that could have resulted in excessive strain on drivers and consequently endangering road safety. This statement has been cross-checked with feedback obtained by all stakeholders' groups, most of which support this qualitative assessment (see Table 6-X, where scores are based on the same methodology introduced previously) and considered in view of the literature.

Table 6-110: Contribution of Regulation 561/2006 to drivers' fatigue and road safety (ratio on max. potential value)

Nature of impact	View of enforcers	View of high-level stakeholders	View of labour unions	View of undertakings	View of Ministries
Drivers' fatigue and health	<i>Significant improvement (0.62)*</i>	Significant improvement (0.46)	Significant improvement (0.79)	Basically ineffective (-0.01)	<i>Moderate improvement (0.57)*</i>
Road safety		Significant improvement (0.52)	Significant improvement (0.82)	Basically ineffective (0.05)	

* *Enforcers and Ministries provided a unique response covering fatigue and road safety*
 Source: Survey of enforcement authorities, high-level stakeholders, labour unions and undertakings.

Regulation (EEC) No 3820/85 had previously limited daily driving time to 9 hours (which may be extended to 10 hours), and the maximum total accumulated driving time of 90 hours had already been defined in Regulation (EEC) No 3820/85. Regulation (EC) No

561/2006 also sets out a maximal weekly driving time limit (56 hours), thereby reducing the flexibility of how the two-weekly driving time limits of 90 hours might be attained compared to Regulation (EEC) No 3820/85.

Hence, the main changes did not concern the driving hours themselves, but rather the flexibility with which they could be met (analysed further in the consideration of time pressure below). It is therefore unlikely that changes in Regulation (EC) No 561/2006 compared to its predecessor Regulation had any significant effect on the overall driving times.

Even though the limits in the Regulation itself might not have had significant impact on overall driving hours, changes in compliance levels may have occurred due to the implementation of stricter enforcement under Directive 2006/22/EC. Data on checks and infringement detection rates are reported to the Commission, which do not show any consistent trends – detected infringement rates at the roadside have increased in 11 out of 26 countries (42%) for which data are available, and 17 out of 25 (68%) Member States for checks at the premises. However, direct insights into the development of the actual underlying compliance with the driving time rules are not possible since the reported infringement rates are influenced by many other factors such as the effectiveness of enforcement and monitoring/reporting practices (see Evaluation Question 6, Section 6.6, and 10, Section 6.10).

It is therefore worth reviewing available survey data to better understand trends in compliance. EU-level literature on the development of driving times could not be identified. A relevant national-level source that could be identified was ZF Friedrichshafen (2014). Table 6-12 shows that driving times were reported to be well below the weekly driving time limit of 56h for all types of transport operations. They do not seem to cause problems concerning the bi-weekly limit of 90h.

Table 6-12: Reported weekly average driving time of professional drivers in Germany in 2014

Type of transport operations	Share of drivers	Average weekly driving time (in h)
Local (<50 km)	9.9%	22.6
Regional (<150 km)	30.3%	30.0
National long-distance	32.6%	38.6
Intern. long-distance	27.2%	41.5
Total	100.0%	35.5

Source: ZF Friedrichshafen (2014)

Notes: Based on interviews with 2,916 professional drivers in Germany

Comparisons over time are not possible, since driving times were not investigated separately in earlier analyses. Only an indirect indicator is available from HS Furtwangen (2012), where 64% of consulted drivers stated that they could comply with driving and rest times “always” or “most of the time”, yet a significant minority (28%) stated that they could only “sometimes” or “rarely” comply.

To help triangulate findings, undertakings consulted for this study were asked about possible difficulties in respecting the driving time limits. Of the 1,242 respondents to the survey, 57% reported that there were (almost) never difficulties in respecting the driving time limits, indicating that compliance may be high. Conversely, around 23% reported that there were (almost) always difficulties.

Concerning the general impact of Regulation (EC) No 561/2006 on drivers’ fatigue and health, around 45% of respondents to the survey of undertakings felt that the impacts had been neutral and equal numbers of respondents rating it positively and negatively – consistent with the above discussion that the Regulation did not significantly change the

driving time limits. A higher share of respondents from EU-13 countries responded positively compared to those from the EU-15. Very similar responses were received via the interviews with drivers conducted for this study – 45% of respondents felt there was no change in their fatigue over the past 10 years, whereas 32% felt it had worsened and 19% felt it had improved.

The results above are in agreement with other surveys that find fatigue is still a problem in the sector – for instance, a survey conducted by ETF found a very high proportion of non-resident drivers (80%) reporting fatigue as a problem (ETF, 2012), while another survey of drivers found that 46% of respondents reported that fatigue was a “substantial” or “major” problem for them (TRT, 2013). More generally, the EWCS shows that drivers more frequently reported to suffer from fatigue as a general health problem over the previous 12 months than most other types of workers in 2010, with a higher proportion of drivers surveyed from the EU-13 (21%) reporting work-related fatigue compared to the EU-15 (14%). The share of workers that reported fatigue-related health problems decreased more for the group of ‘professional drivers (land transport)’⁸⁸ than for the larger group of ‘professional drivers’⁸⁹ in the period from 2005 to 2010 (by 6% and 2% respectively). However, this data sheds no light on whether this decrease is related to the introduction and enforcement of Regulation (EC) No 561/2006. As such, it is only possible to state that in general, it appears that the problem of fatigue in the professional driver occupation has reduced between 2005 and 2010, while still affecting 17% of professional drivers in the overall land transport segment in 2010.

Summarising, it can be said that there is no evidence of a significant impact of Regulation (EC) No 561/2006 on reducing average driving times, nor of any direct impacts on reducing fatigue – as evidenced by the responses from undertakings and drivers to the consultations carried out for this study. The lack of changes in driving times does not appear to be related to any difficulties in compliance with the rules, but rather it seems to be due to the similarity of the rules to previously existing provisions. Importantly, a lack of change is not the same as there having been no benefit: one could regard the apparent stability of the situation as a success in light of the development of increased competition and other pressures in the sector (see Section 5.1), which in the absence of such rules should have led to increased driving and working times. In general, although it is not possible to link changes to the social legislation as distinct from other influencing factors, reported fatigue among drivers appears to have decreased (although it is still a problem in the sector).

6.11.1.3. Stress

As shown in Table 6-9, the main factors that cause stress and have direct or indirect links to road social legislation are long working/driving hours (as discussed in the above section on fatigue), performance-based payments, legislative requirements and long periods away from home. Each factor is discussed in turn below.

Performance-based payments

Article 10(1) of Regulation (EC) No 561/2006 sets out that undertakings shall not pay drivers “*even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried...if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation*”. Similarly, Article 10 of the earlier Regulation (EEC) No 3820/85 prohibited payments related to distances travelled and/or the amount of goods carried “*unless these payments are of such a kind as not to endanger road safety*”.

Hence, the regulation of performance-based payments goes back to the earlier version of the Regulation on driving times. This means that impacts specifically due to the provisions

⁸⁸ Bus, truck, taxi and railway drivers

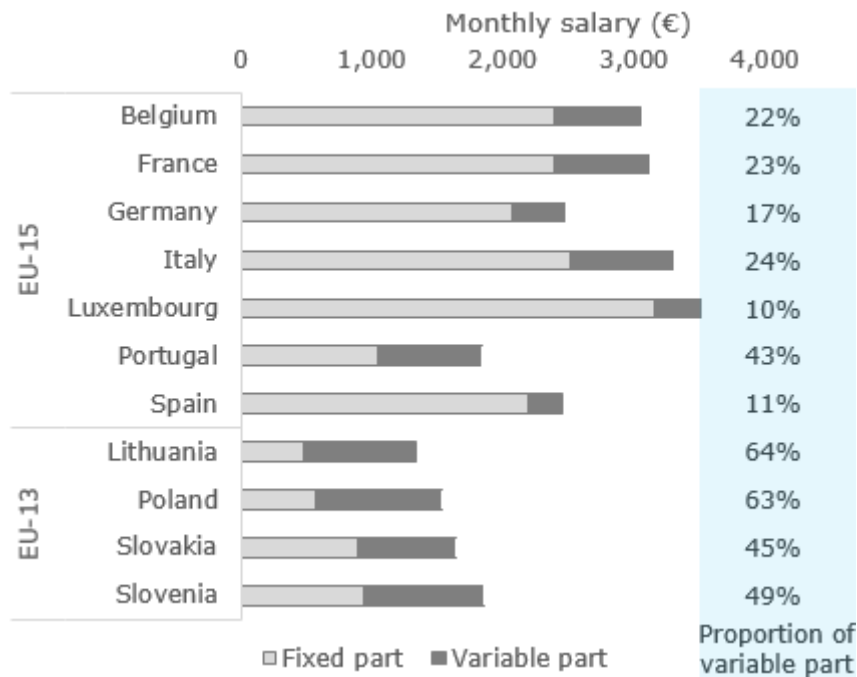
⁸⁹ Including bus, truck, taxi and car drivers, as well as railway drivers and ship deck crews

of Regulation (EC) No 561/2006 cannot be expected – only changes in compliance may have had an effect.

The literature evidence suggests that performance-based payments can make up a large part of overall remuneration. The case study research and further literature review revealed that on average EU-13 drivers are paid less than EU-15 drivers, yet have a higher proportion of their salary that is variable (55% on average compared to 21%). Moreover, the variable part of the salary is typically displayed on payslips as “travel expenses” (although it is often linked to the travelled mileage) and not subject to charges including taxes and social contributions⁹⁰ etc. (CNR, 2013a).

For example, according to analysis of driver payslips carried out by CNR, the variable part is €0.09/km in Poland, €0.06-0.10/km in Lithuania and €0.14/km in Slovenia. In Portugal, the rather high proportion of variable salary as compared to other EU-15 countries is due to mandatory bonuses set out in the collective agreements, related to things such as long-service, weekends spent away from home, driving abroad etc. The payment of a part of the remuneration through variable fees and expenses can in turn also have an impact on stress as well as on the drivers' health and safety. Indeed, the drivers' contributions to the social security systems and to the unemployment benefits and pensions schemes will be lower and this will have an impact on the drivers' situation in longer term.

Figure 6-11: Comparison of driver pay for a selection of Member States



Source: (CNR, 2014a), (CNR, 2014b), (CNR, 2014c), (CNR, 2014d), (CNR, 2013a), (CNR, 2012a), (CNR, 2015), case study analysis.

The above picture is supported by a survey carried out by ETF among more than 1,000 non-resident drivers, around 60% of drivers still receive performance-based payment (ETF, 2012). According to trade unions consulted for this study, distance- or load-based payments account for a relatively low estimated share of drivers in the UK (5%) and Italy (10%), whereas the estimates for other countries were higher, including Spain (50%), Poland (50%) and Lithuania (77%). Out of the 14 trade unions responding to the relevant question, 8⁹¹ think that these shares have increased since 2006 and 4⁹² think that these

⁹⁰ as long as they do not exceed the ceilings of the tax administration

⁹¹ Trade unions from Austria, Belgium, Germany, Lithuania, Poland, Romania, Spain, and UK

⁹² 1 trade union from Cyprus and 3 from Italy

shares have decreased since 2006. Estimations on the extent of increases were given by three respondents and range from 10-20%.

To examine a different view, out of 36 drivers interviewed for this study, 8⁹³ drivers stated that a major part of their salaries was performance-based. When looking at EU-13 versus EU-15 drivers separately, it can be seen that performance-based remuneration is clearly a more frequently reported situation in the EU-13 Member States: 7 out of the 14 drivers from EU-13 Member States stated that a major part of their salary was performance-based, while only one Italian driver (out of 22 responding EU-15 drivers) stated that this was the case.

However, since there are no clearly defined terms to distinguish schemes that may endanger road safety (as previously discussed in Evaluation Question 4, see Section **Error! Reference source not found.**), it is not possible to determine whether or not the payment schemes discussed above are in compliance with the legislation or not. National authorities surveyed and interviewed for this study were explicitly asked to provide information on the level of compliance with the provisions on payments, but as noted previously in Evaluation Question 4 (see Section **Error! Reference source not found.**), proving that such payment schemes endanger road safety is widely found to be difficult. 65% of respondents to the survey of enforcers reported difficulties with enforcement of payment provisions – a higher share than for any other provision of Regulation (EC) No 561/2006.

Even so, drivers perceive a possible link between performance-based payment and an increased risk of non-compliance with the rules, which in turn contributes to fatigue and stress if adequate rest is not ensured. When asked whether they felt if such payment regimes contributed to non-compliance with the rules, 36% of the drivers felt it was a major cause. .

The evidence therefore suggests that performance-based payments persist across the Union, and are particularly endemic among drivers from the EU-13 Member States. Estimates of the share of affected drivers in EU-13 countries range from 50-77%, with the variable portion of salary being on average 57%. Literature on the evolution of such payments could not be identified, although the majority of trade unions responding to the survey felt that the prevalence of such payments had increased since 2006 – potentially by 10-20%. According to the majority of drivers interviewed for this study, such payment schemes are a contributor to non-compliance with the rules, which in turn contributes to fatigue and stress.

Legal requirements and roadside checks

According to EU-OSHA (2010) legal requirements that drivers have to comply with can contribute to stress. The legal requirements that drivers have to be aware of are numerous and extend far beyond the social legislation. For example, such requirements concern national traffic legislation, regulations of the access to the profession or market, legislation on the transport of hazardous goods. Road social legislation specifically is comprehensive and demands a lot from drivers in terms of understanding and properly recording their activities. Stress related to these requirements is therefore likely to be higher among drivers that participate in international operations, since these drivers have to be aware of potentially varying applications or interpretations of the legislation across the Member States.

The stress due to roadside checks is likely to be intensified by the risk that drivers will be held responsible for the actual payment of on-the-spot fines when an infringement is detected at roadside. Out of 36 drivers, 26 (72%) drivers responded that they would pay the fine from their own money in case they were issued a fine for an infringement at the roadside. Enforcement authorities at the roadside do not have control over who ultimately

⁹³ 4 drivers from Poland, 2 from Romania, 1 from each Italy and Hungary

pays an on-the-spot fine, irrespective of whether an infringement falls into the undertaking's or the driver's responsibility.

This, in combination with checks that are perceived as being rather strict, can lead to additional stresses – for instance, 55% of drivers interviewed for this study felt that controls are too rigid and this is a major cause of infringements (the highest share of any identified cause of possible non-compliance). The Swedish Bus and Coach Federation reports that drivers and undertakings in the sector feel “persecuted” (Sveriges Bussföretag, 2015). Conversely, according to the study from ZF Friedrichshafen (2014), in Germany only international long-distance transport drivers feel that they are subject to excessive checks, which indicates that some types of transport operation may be more affected than others (considering all sectors on average, drivers did not feel excessively checked).

The activities involved in time recording to demonstrate compliance have also been suggested as a stress factor, since accidental incorrect recording can lead to fines. According to the Swedish Bus and Coach Federation, drivers that carry out mixed activities (and have therefore not established a routine of recording activities) are specifically affected by this (Sveriges Bussföretag, 2015). As discussed previously in Evaluation Question 6 (Section 6.6), the form for attestation of driver activities is time-consuming to fill in, and is inconsistently used across the Union, which undermines the intended positive effect of harmonising its format.

Summarising, it can be said that roadside checks are likely to have had a negative impact on the stress levels of drivers due to:

- i. The extensiveness and complexity of road social legislation, including the activities involved in time-recording to demonstrate compliance.
- ii. Increasing enforcement requirements under Directive 2006/22/EC, which have led to growing numbers of roadside checks.
- iii. On-the-spot fines that are frequently paid by the drivers.

These stresses must of course be balanced against the need to ensure adequate enforcement. The relatively high emphasis seen in most countries on roadside checks is in contradiction to the requirement of the enforcement Directive, which set a limit of the share of checks at the roadside to 50%. Conversely, more than 75%-80% of checks have been carried out at the roadside in the reporting period 2011-2012.

It can therefore be concluded that, although roadside checks may increase stress levels for the drivers involved, a minimum level of checks are necessary to ensure their protection. To the extent that roadside checks increase stress for drivers, this has been intensified beyond what was intended by the over-emphasis on roadside checks in the majority of Member States compared to the requirements of the Enforcement Directive. Increases in stress levels due to checks at the roadside are therefore rather linked to the national implementation of the Enforcement Directive than the minimum requirements of the Directive itself.

Long periods away from home and work-related sleeping disorders

EU-OSHA (2010) reports that long periods away from home increase drivers' stress. Such periods can also influence fatigue and can be related to additional adverse impacts in case of inadequate rest and lack of access to sanitary facilities. Long periods away from home may also have adverse effects on drivers' health in case of inadequate access to proper nutrition, which is frequently the case for drivers being away from their home base, as well as poor quality sleep and work-related sleeping disorders. Available literature on the topic, such as the studies carried out by TRT (2013) and Broughton et al. (2015) argue that these periods away from home have significantly increased over the last decade due to the liberalisation and consequent internationalisation of the transport market. However, the causal links are said to be difficult to identify, as is a quantification of the extent of the problem.

The road social legislation does not limit the time of drivers that they can spend away from their home base. Nevertheless, it is seen to have impacts due to its provisions on rest times and on where these rest times are allowed to be taken.

Under the previous rules, Regulation (EEC) No 3820/85 stated in its Article 7(7) that "*The daily rest period may be taken in a vehicle*". The lack of specification that regular or reduced weekly rest could be taken in vehicles meant that it could be interpreted that this was not allowed and drivers were supposed to return to their home basis during that time. Article 8(8) of Regulation (EC) No 561/2006 goes further and states that "*daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle*", while again not making any statement regarding where *regular* weekly rests may be taken. Analysis provided in Section 5.2 has shown that this has indeed led to the interpretation of Member States that these regular weekly rest periods may not be taken in the vehicle. As also shown, a more limited number of Member States actually enforce this ban. Whether drivers actually return to their home basis during such regular weekly rest periods can however not be controlled given the lack of a legal basis for this requirement, and it is currently outside of the scope of the road social legislation.

Given that some national authorities responding to this study (i.e. the national authorities from Bulgaria, Lithuania, Luxembourg, Latvia,) do not interpret the respective Article to forbid regular weekly rests in vehicles (see Section 5.2 and its Annex A), it is unlikely that the introduction of the reference to *reduced* weekly rest periods in Article 8(8) of Regulation (EC) No 561/2006 (compared to Regulation (EEC) No 3820/85) had any significant impact in practice.

To gauge the extent to which drivers are spending long periods away from home, the drivers interviewed for this study were asked where they usually spend their regular weekly rest periods. It was found that out of the 25 responding drivers engaged in international transport operations, 7 (or 28%) typically spend their *regular* weekly rest on-board the vehicle (all engaged in freight transport), 3 spend it in an accommodation provided by an employer (all engaged in passenger transport). While these insights from the interviews do not provide information on the actual lengths that these drivers spend away from home, this small sample does suggest that regular weekly rests on board the vehicle are a common practice. At these occasions, the periods away from home are likely to surpass one week or two weeks in case the regular weekly rest periods is followed by or follows reduced weekly rest periods (as allowed under Article 8(6) of Regulation (EC) No 561/2006).

The views of drivers were supported by responses from trade unions consulted for this study, who were asked about the trends in the lengths of periods away from home. The Lithuanian trade union estimated that these periods have increased from around 5-10 days to 5-60 days in freight transport and to 5-90 days in passenger transport over the past ten years. Overall, out of the 11 responding trade unions, six⁹⁴ stated that periods away from home for international journeys have increased over that timeframe, one respondent (from Italy) stated that they have decreased, one (from Italy) stated that there was no material impact, and three⁹⁵ did not have an opinion.

Research from the case studies revealed that 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. 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 "generally do not stay away from home for more than one consecutive week". A larger sample was obtained in Germany, where a roadside survey among 1,800 drivers suggests that EU-13 drivers spend more of their rest periods in their vehicle or away from home. While 72% of all drivers interviewed spend their mandated daily rest periods in/by their vehicle, 43% of EU-13 compared with 11% of EU-15 drivers also spend their weekly rest period in/by their vehicle (Broughton et

⁹⁴ Trade unions from Austria, Germany, Italy, Lithuania, Poland, and UK

⁹⁵ Trade unions from Denmark, Cyprus and Slovenia

al, 2015). The ETF survey on non-resident drivers reported that 95% of non-resident drivers spend their rest time on board their vehicles (ETF, 2012).

Related to this are other factors external to the scope of the social legislation that concern the quality and availability of facilities. Various projects such as STEPOS and LABEL have found that secured and high quality parking facilities are lacking in several countries, and anecdotally the interviews with drivers conducted for this study suggest that parking areas are considered to be poorly available and lacking adequate facilities. Since the availability and quality of stopping places and rest areas is outside the scope of social legislation, these issues are not discussed further.

Overall, it appears that the social legislation may have indirectly contributed to the stress factor of long periods away from home due to its provisions on rest times and on where these rest times are allowed to be taken. This affects drivers across the EU, although some evidence suggests that EU-13 drivers are more affected. Various surveys have reported that it is frequent practice for drivers to spend their regular weekly rests in vehicles. These drivers are likely to spend at least 1-2 weeks away from their home basis. Responses from trade unions furthermore suggest that the periods away from home of (at least international) drivers have increased over the past decade.

Time pressure and unforeseen circumstances

Time pressure is reported to be an increasing cause of stress for drivers, as well as imposing an increased risk of non-compliance with the road social legislation. As a means to help shield drivers from pressure to break the rules, concerning passenger transport, drivers are frequently asked to keep buses on time despite of traffic situations that might not allow to adhere initially planned arrival times. If not meeting planned arrival times such drivers in the passenger transport sector might fear the risk of dissatisfied customers which can lead to aggressions against the drivers and consequently to increased stress levels.

Article 10(2) of the Regulation sets out that transport undertakings must organise the work of their drivers in such a way that they can comply with driving time rules.

While Article 10(2) of Regulation (EC) No 561/2006 has an impact on the organisation of the time of drivers and therefore on the time pressure that they are experiencing, unforeseen conditions cannot necessarily be taken into account in the trip scheduling stage. Whether trips have actually been scheduled with the best possible foresight of traffic and/or weather conditions or not is furthermore difficult to prove, since it cannot be expected that absolute worst-case scenarios are assumed for all trip planning. Moreover, 'generous' trip planning does not necessarily decrease stress levels of drivers – for instance, EU-OSHA (2010) shows that potentially resulting long waits before loading and/or unloading activities are also a stress factor rated similarly negative as time pressure. Gron (2009) reports that the Regulation leaves limited room for planning ahead, since generally a driver's work is unpredictable – hence, drivers cannot necessarily rely on others to foresee the problems they might be confronted with.

The lack of independence to conduct individual planning was cited in Gron (2009) as a downside, since this is what makes the job interesting for many drivers. Munduteguy (2014) also highlights that increasing market pressures and increased monitoring of drivers to maintain schedules have reduced driver autonomy, which in turn has increased work pressures and stress levels. The development of market factors and the relationship to time pressures / incentives for non-compliance are discussed further in Evaluation Question 9 (see Section 6.9).

The current formulation of Article 10(2) of Regulation (EC) No 561/2006 can help to ensure drivers are given schedules that enable them to comply with the rules; however, the potential to mitigate the associated stress caused by market conditions and unforeseen circumstances appears to be limited, even if the provisions are respected, since other factors outside of the scope of the social legislation (market developments, unforeseen circumstances) can contribute to increased stress.

6.11.1.4. Overall impact of road social legislation on working conditions

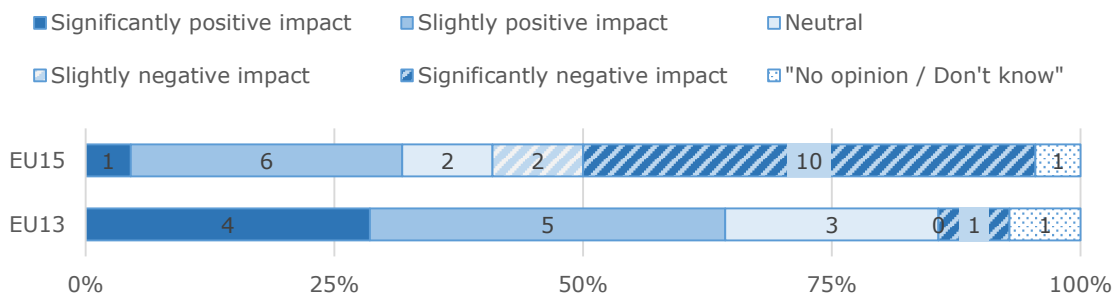
A firm analysis of the contribution of the social legislation to changes in overall working conditions is very difficult due to the severe limitations on the available data. This is evidenced by previous studies, which have found it difficult or impossible to conclude on any causal relationships between factors that contribute to different aspects of working conditions (such as (European Parliament, 2015), (ETF, 2012), (TRT, 2013) or (OSHA, 2010)). In particular, determining the impact of social legislation as distinct from other developments in the past decade is not possible (such as frequently cited increasing competitive pressures resulting from a liberalisation of the market, see for example (TRT, 2013) or (European Parliament, 2015)).

Due to the subjective nature of the impacts, quantitative data is naturally lacking. This means that typically, the findings in the literature are based on anecdotal evidence or surveys/interviews with drivers. However, any conclusions based solely on survey inputs must be treated with appropriate caution, especially where it is based on quite a limited number of case studies or driver interviews. Furthermore, the available literature provides only a snapshot of working conditions at a specific point in time, making it impossible to track what the developments in response to the social legislation have been.

For these reasons, the study team attempted to substantiate the literature evidence with direct interviews with drivers to confirm or verify the general findings. Nevertheless, within the timescales and budget for the study, and considering the difficulty in finding and approaching drivers willing to participate in the study, only a very small sample could be obtained.

During the interviews conducted for this study, drivers were asked to provide their perception of the impact of road social legislation on working conditions in general. Figure 6-12 shows that especially drivers from the EU-13 Member States have the opinion that road social legislation has had a positive impact on their working conditions. The view of EU-15 is more diversified: 10 out of the 22 interviewed drivers expressed the opinion that the legislation’s impact on working conditions was (slightly or significantly) negative. The rationale for these diverging views cannot be simply deduced from the consultation process.

Figure 6-12: Response of drivers to the question: What has been the impact of EU social rules (provisions on driving and rest times as well as working time) on your working conditions in general?

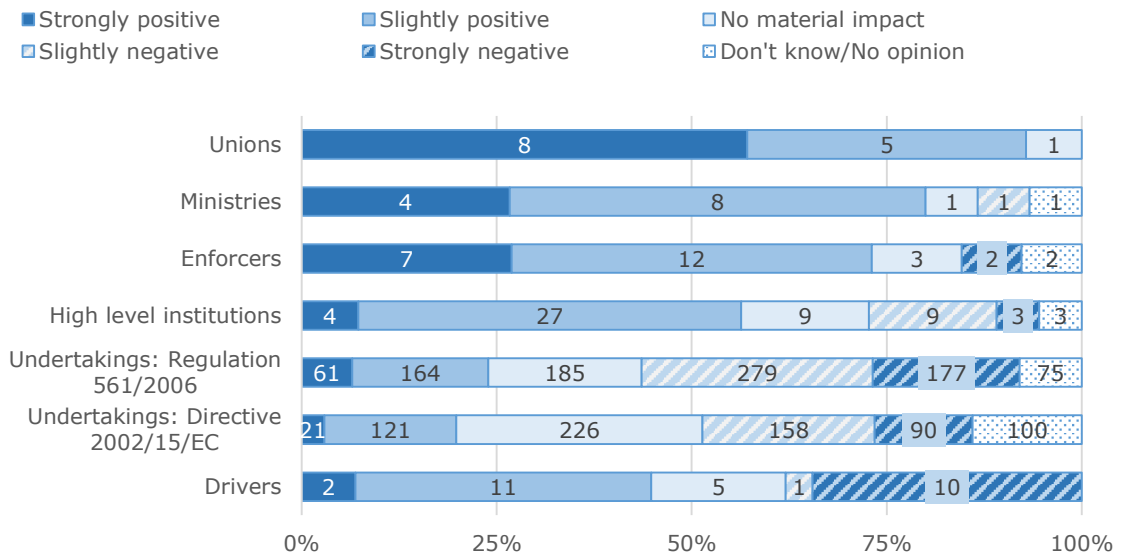


Notes: n=36; of which 22 from EU15 and 14 from EU-13; of which 27 engage in international transport operations

Source: Survey among drivers conducted for this study

Figure 6-13 shows that the view of other stakeholder groups consulted for this study on the impact of road social legislation on working conditions of drivers was generally more positive compared to the views of drivers. Indeed, the figure shows that only undertakings had a more reserved view on the impact of road social legislation on working conditions. All other stakeholders expressed a majority view that road social rules have had a strong or slight positive impact on drivers’ working conditions. Notably the trade unions held by far the most positive overall views.

Figure 6-13: Response of different stakeholder groups to the question: What was the impact of road social legislation on working conditions of drivers?



Source: Stakeholder surveys conducted for this study

The comparatively negative views expressed by both drivers and undertakings deserve some further attention. Comments provided by undertakings in response to this question shed some light on why the industry position is less positive compared to other stakeholder groups – responses voiced by those expressing negative opinions highlighted various frustrations with regard to the complexity of the rules, a lack of flexibility and high penalties (especially in connection with what are perceived as trivial offences or circumstances outside of their control). These factors are examined further in Evaluation Question 9.

The results indicate that trade unions, high level institutions (associations), ministries and enforcers consulted for this study generally consider that the road social legislation has had a positive impact on working conditions. Conversely, drivers and undertakings express a much more mixed view (though not overwhelmingly positive or negative) – potentially because the perceived downsides of the Regulations (e.g. lack of flexibility and high fines) are considered by some to negate the intended benefits on working conditions when confronted with day-to-day demands of driving.

6.11.2. Impact of road social legislation on road safety

Fatigue and stress are major factors contributing to the risk of road accidents. The links are well-established in the literature: Fatigue impairs the driver’s cognitive and motor performance by slowing reaction times, reducing attention to the external environment and disrupting steering skills (TRL, 2009) and can ultimately lead to falling asleep while driving. Stress contributes to the risk of non-compliant driving speeds, or speeds that are inadequate given prevailing traffic, weather or road conditions.

With respect to the review of the literature (as described in Annex B to Evaluation Question 11 (see Section 10.7.3.1)) it emerged that a strong reduction in road fatalities involving heavy goods vehicles in scope of Regulation (EC) No 561/2006 has been achieved during the 8-year period 2005-2013 (CARE, 2015). A similar downward trend has been observed also for coach and bus fatalities (CARE, 2015).

It is not known, though, to what extent the decrease in the proportion of fatalities in the past years is due only to compliance with EU social legislation, amongst all possible factors. The ETAC study conducted by IRU and EC in 2007, showed that 85.2% of the collisions were linked to human error, as opposed to technical or infrastructure related problems. When the collision is caused by human error only 25% of the collisions are caused by the truck driver. The main causes for collisions between a truck and other road user were

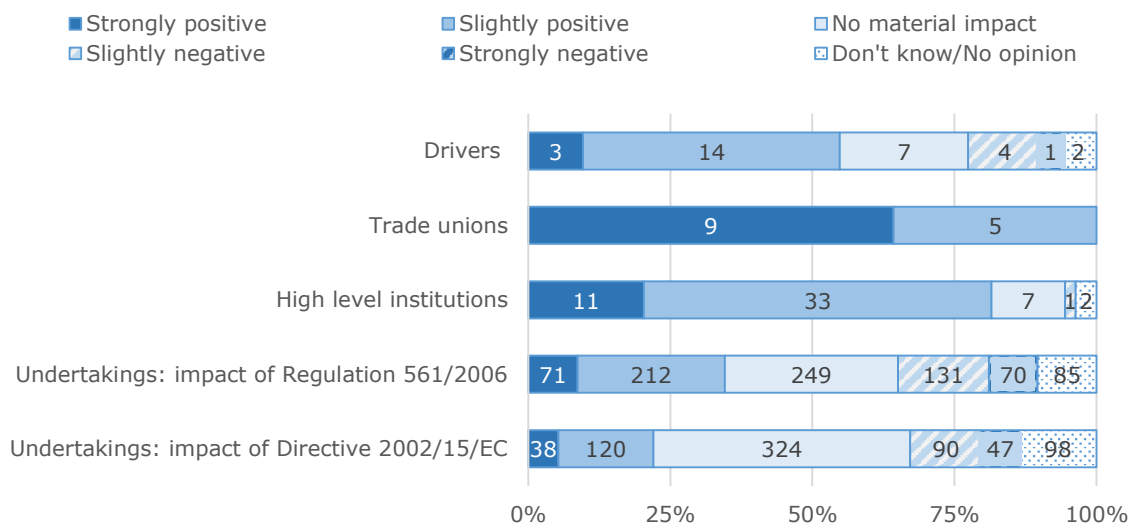
identified with: non-adapted speed, failure to observe intersection rules and improper manoeuvre when changing lanes. Fatigue/falling asleep is also a causation factor in wrong manoeuvres involving overtaking and changing lanes. These three main causes only show a tendency and the main cause of a collision varies according to the collision configuration.

For commercial vehicle drivers fatigue is closely linked to accident risk (ETSC, 2011), (SWOV, 2011). Reported causes of fatigue are: sleep loss, time awake, circadian phase and time on task (i.e., workload). The researchers report that a person who drives after being awake for 17 hours has a risk of crashing equivalent to being at the 0.5 g/l blood alcohol level (i.e. twice the normal risk). The increased risk and hence impact on driving is influenced also by a combination of a number of other factors, like for example: characteristics of the infrastructure (e.g., monotonous roads), biological (e.g., night work instead of typical "9 to 5" working hours), sedentary lifestyle (e.g., obesity and poor eating habits), and work-related (e.g., working under client pressure, or distracting activities).

At the same time, many other factors outside of the scope of the road social legislation also contribute to the risk of road accidents, such as vehicle maintenance issues / technical failure of the vehicle, inadequate driving behaviour of, or accidents caused by, other traffic participants, and poor/unsafe road infrastructure. This means that general accident trends are not very illuminating when trying to understand the impact of the road social legislation – rather, the trends in fatigue-related incidents of vehicles within the scope of the legislation is needed. However, information on the causes of accidents (including fatigue) is in general not available (see Annex B, Section 10.7.3). Hence, while the available statistics show that accident rates have fallen, the underlying reasons cannot be determined.

Qualitatively, Figure 6-14 shows many of the stakeholders consulted believe that the impact of road social legislation on road safety was positive. However, views diverge across stakeholder groups, with trade unions being significantly more positive than other stakeholder groups. Undertakings were the least positive overall, but still reported a neutral or slightly net positive overall result.

Figure 6-14: Response of different stakeholder groups to the question: What was the impact of road social legislation on road safety?



Source: Stakeholder surveys conducted for this study

In summary, putting limits on driving time by requiring drivers to take minimum breaks and rest periods, EU social rules contribute to secure safe transport operations and to avoid situations where fatigue, stress, sleepiness and mental overload of drivers may be contributory factors to road accidents involving commercial vehicles. However, data sources do not provide sufficient information on the root causes of accidents and many other road safety measures have been introduced across the Union since coming into force of the legal acts analysed in this study (e.g. revised speed limits, the implementation of

Directive 2003/59/EC on the qualification and training of drivers etc.). Isolating the impacts of the road social legislation from these other factors is not possible. Nevertheless, stakeholders generally perceive the impact of road social legislation on road safety to have been positive.

6.11.3. Impact of road social legislation on a level playing field

The impact on a level playing field of other aspects of the social legislation are discussed in other Evaluation Questions. Specifically, the impact on a level playing field of exemptions/derogations is discussed in Evaluation Question 5; differences in interpretation of the rules is discussed in Evaluation Question 4 on clarification; differences in enforcement practices and penalties are discussed in Evaluation Question 6.

In each of the above cases, it was shown that there are variations in the application of the rules across the Union, and consequently, this hinders the development of a level playing field. This is partly due to *intended* flexibilities that are provided for within the legislative acts and the fact that the responsibility for setting up sanction systems remains with national governments. On the other hand, *unintended* factors that hinder the development of a level playing field include: differences in interpretation of the rules and different implementation of enforcement systems (in line with Directive 2006/22/EC) across the Member States. These persisting differences show that a level playing field has not been achieved.

6.11.4. Summary and conclusions

Concerning the **fatigue** of drivers, it appears that the social legislation has not had significant impacts on either **working or driving times**, which have not shown any substantial changes. This is in part due to the similarity of the rules to previously existing provisions. Additionally, for the Working Time Directive there is a low priority given to enforcement and concurrent evidence of low compliance with working time provisions across the EU, with between 40% (Europe) and 90% (Germany) of drivers reporting that they typically work more than 48h per week. Trends over time suggest that there have been uneven impacts on different groups – i.e., there are indications that EU-13 drivers may be more likely to have seen increases in working time whereas EU-15 drivers have seen decreases, but the extent to which this is related to the legislation versus other factors (such as competition in the market) cannot be determined.

Importantly, a *lack of change* is not the same as there having been no benefit: one could regard the apparent stability of the situation as a success in light of the development of increased competition and other pressures in the sector, which in the absence of such rules should have led to increased driving and working times. In general, although it is not possible to link changes to the social legislation as distinct from other influencing factors, reported fatigue among drivers appears to have decreased (although it is still a problem in the sector).

Various factors that contribute to **stress** were assessed, as follows:

- **Performance-based payments.** There is evidence that such payments persist across the Union, particularly among drivers from the EU-13 Member States with with 50-77% of affected drivers in EU-13 countries and the variable portion of salary being on average 57%. According to the majority of drivers interviewed for this study, such payment schemes are a contributor to non-compliance with the rules, which in turn contributes to fatigue and stress.
- **Roadside checks.** The complexity of the legislation, combined with increased numbers of roadside checks and on-the-spot fines that are often paid by the drivers can contribute to greater stress. This must be balanced against the need to ensure adequate enforcement in order to protect workers. The relatively high emphasis on roadside checks seen in most countries (typically more than 75%-80% in 2011-

2012) is in contradiction to the requirement of the enforcement Directive, which set a limit of the share of checks at the roadside to 50%.

- **Long periods away from home.** Various surveys have reported that it is frequent practice for drivers to spend their regular weekly rests in vehicles. These drivers are likely to spend at least 1-2 weeks away from their home base. A legal basis for enforcing returns to a home base does not exist. In countries where regular weekly rest periods in vehicles are not permitted according to the national interpretation, it cannot be guaranteed that suitable places of rests are available. This can lead to drivers spending regular weekly rest periods in inadequate and/or unsafe places, which has knock-on effects on the health and safety of drivers.
- **Time pressure** has increased over the past decade due to market developments. The associated stress is amplified in case of unforeseen circumstances (such as congestion or weather conditions). Road social legislation does not have a direct impact on these working conditions factors, but rather requires that schedules are set in a way that allows compliance.

The results indicate that trade unions, high level institutions (associations), ministries and enforcers consulted for this study generally consider that the road social legislation has had a positive impact on working conditions. Conversely, drivers and undertakings express a much more mixed view (though not overwhelmingly positive or negative) – potentially because the perceived downsides of the Regulations (e.g. lack of flexibility and high fines) are considered by some to negate the intended benefits on working conditions when confronted with day-to-day demands of driving.

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

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

6.11.5. Recommendations

It has proven difficult in practice to show whether a specific **payment scheme** has endangered road safety and/or encouraged infringements (in contravention to Article 10(1)). Hence, a first course of action would be to introduce guidelines and test procedures that would allow for a differentiation of what precisely constitutes a performance-based payment scheme that would not be considered to cause a "risk to road safety". An abolition of the if-clause (meaning that all performance-based payments are strictly prohibited regardless of whether there is a link to road safety) would allow a legal basis to prosecute undertakings who still provide performance-based payments. However, as shown above, variable payments make up important parts of drivers' salaries in some countries and moreover are often set in agreement with social partners to compensate drivers for work abroad and travel. An impact assessment should therefore be conducted in order to shed light on the benefits and drawbacks of such an action.

Ensuring compliance with the requirements set under Directive 2006/22/EC concerning the distribution of checks at the roadside and at the premises would help to rebalance checks away from drivers and towards undertakings. While recent reporting

suggests that the share of checks at the premises is increasing, it is still below the requirements.

The current scope of the road social legislation does not address increasing problems in the industry of long periods away from home and a lack of suitable parking, rest and sanitary facilities. The current lack of infrastructure availability coupled with interpretations in some Member States that drivers are not allowed to spend weekly rest in vehicles might result in either disproportionate costs to undertakings or inappropriate and/or unsafe rest conditions for the driver as long as there is no clear requirement on what the alternative accommodation for a driver is supposed to be for such regular weekly rests. It may be considered whether the legislation can be amended to address such concerns, or whether other interventions are needed. For instance, it could be considered to address the issue of insufficient infrastructure by defining means that require Member States to provide appropriate infrastructure – although this may be better achieved via national initiatives, or European initiatives outside of the social legislation.

It may also be considered whether undertakings should be required to plan schedules in a way such that drivers can return to their home base regularly, in order to avoid long periods away from home. The practicalities and desirability of such a measure would have to be carefully considered. For example, the definition of the term 'home base' would have to be cautiously defined and should involve considerations of current and possible resulting future employment practices in order to avoid drivers returning regularly to an artificial base (e.g. the undertakings' premises) which cannot be considered the drivers' home. It would also have to be assessed whether some types of transport operations might rely on drivers spending long periods away from home – in these cases adequate remuneration and/or derogations might need to be ensured. Furthermore, distributional impacts could occur (for example, affecting drivers from peripheral countries).

These complexities mean that it is not necessarily appropriate to address such issues in the context of road social legislation. Indeed, since long periods away from home are a well-known concern contributing to the poor image/attractiveness of the profession, there has already been much discussion in the industry about how to improve matters through general management practice, coordination with clients and innovative organisations schemes such as stage coach relays (Bayliss, 2012).

6.12. Effectiveness: To what extent has legislative framework created unintended negative/positive effects (both in terms of impacts and results)? If so, which stakeholders groups are affected the most?

To what extent has the legislative framework created unintended negative/positive effects (both in terms of impacts and results)? If so, which stakeholders groups are affected the most?

This Evaluation Question covers the following possible unintended positive and negative effects:

- Impacts on driver shortages;
- Impacts on employment structures;
- Impacts on bus services; and
- Switching to lighter vehicles.

6.12.1. Impacts on driver shortages

As described in Section 5.1, there have been concerns over driver shortages across the EU for many years and is expected to grow. The issues that contribute to driver shortages have been extensively studied and a multitude of causes have been identified, including socio-economic factors, demographics, work attractiveness, qualification and skill requirements (AECOM, 2014a). Hence, many of these factors are external to the framework of the social legislation – an overview is listed below:

- **Internal to the social legislation:**
 - Regulatory factors – working hours legislation;
 - Social change – sector attractiveness (partially internal, to the extent that working hours affect the attractiveness of the profession).
- **External to the social legislation:**
 - Regulatory factors – abolition of obligatory military services in some Member States resulting in fewer persons obtaining a HGV driving license; driver competence;
 - Skills factors – employee/employer skills gap; employee upskilling;
 - Social change – type of work; increase of the average age of drivers; sector attractiveness.

There is a high degree of disagreement in the literature regarding the causal relationships between, and the relative weight of, the different factors in accounting for the development of employment conditions in the sector (i.e. liberalisation, EU enlargement, the economic downturn and changes in the organisation of haulage activities) (Broughton et al, 2015).

To assess the possible impact of the legislation on driver shortages, we must examine two and opposing main mechanisms of action:

- **Contributing to increasing the problem of driver shortages:** The tendency to increase the need to hire more drivers due to the limitations of the amount of driving that can be performed by individuals
- **Contributing to reducing the problem of driver shortages:** The potential to attract more drivers into the profession due to ensuring better working conditions.

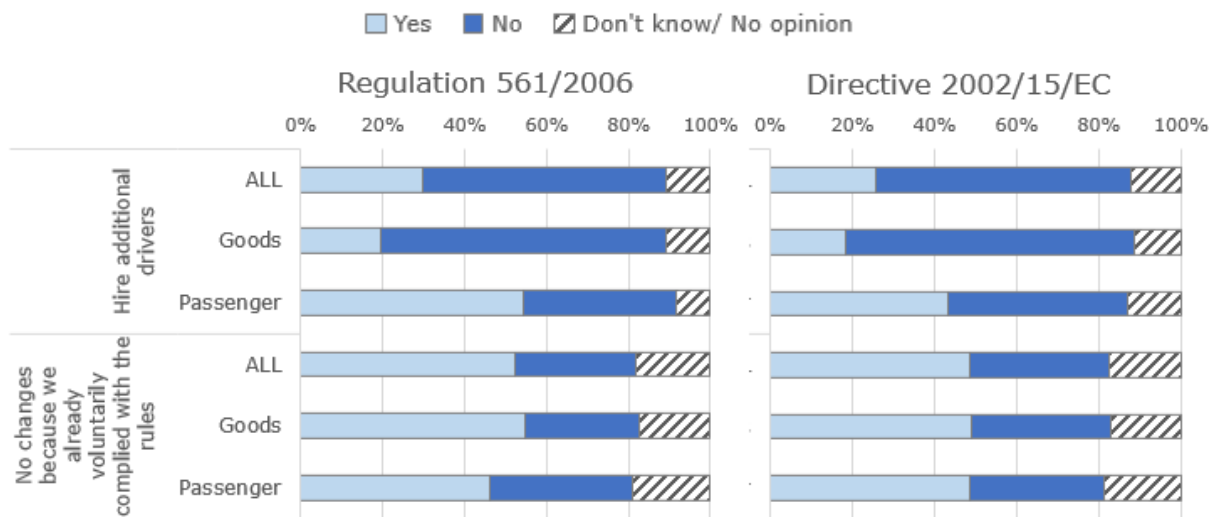
6.12.1.1. Labour demand effects (increasing driver shortages)

Considering the first effect, the social legislation influences *labour demand* for drivers by limiting the maximum number of driving/working hours. As such, according to AECOM (2014a), the industry considers the social legislation to be a contributory factor towards driver shortages because restricting the number of hours a driver could work can limit overtime and productivity, and has led to the need to employ more drivers.

The industry view was explored further in the survey of undertakings carried out for this study, which asked about the impact of the provisions of the legislation in terms of whether additional workers had to be hired given the restrictions in driving/working time (Figure 6-15). The results showed that around 30% of respondents report that they had to hire additional drivers in order to maintain their level of turnover before Regulation (EC) No 561/2006 and in particular the enforcement regime established by Directive 2006/22/EC came into force, which supports the view that the legislation may have contributed to additional labour demand. Conversely, 60% of undertakings reported that they did not have to hire additional drivers, and over half reported that they made no changes at all since they already complied with the rules. This implies that labour demand was not increased for all organisations, as many had complied with the driving time rules prior to the introduction of the strict enforcement regime

Splitting the results by goods and passenger transport shows that the passenger transport sector was likely more affected, since around 55% reported a need to hire additional drivers as compared to 20% of respondents working primarily in goods transport (Figure 6-15, left-hand side). The distribution of responses concerning the Working Time Directive was very similar, with around half of all respondents claiming that they already complied and 26% reporting that they had to hire additional drivers (Figure 6-15, right-hand side).

Figure 6-15: Responses to the question: In order to maintain your level of turnover when the social legislation came into force, did you need to do any of the following?



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

It is possible that some of the additional labour demand could be met by increasing the hours for existing drivers who previously worked part time (or otherwise at a level below the limits). This effect was expected in the UK following the inclusion of self-employed drivers in the scope of the Working Time Directive. The distribution of working hours per week of self-employed drivers in the UK was assessed, and this showed that the total excess hours worked by drivers (if capped at 48 hours per week) was less than the additional hours that other drivers could take up to 48 hours (DfT, 2011). This means that the distribution of hours *between* drivers could change, and overall no additional drivers would be needed. The DfT also reported that the Directive could reduce the incentive for new/starter self-employed driver businesses, since limits on their working time will limit their income, although this effect could not be quantified (DfT, 2011).

6.12.1.2. Labour supply effects (reducing driver shortages)

Additional labour demand, without considering impacts on labour supply, would indeed contribute to greater shortages. However, at the same time, the social legislation may have increased labour supply by improving working conditions (which has the opposite effect by helping to mitigate driver shortages).

According to AECOM (2014a), the social legislation is considered to have increased costs within the industry, but has also offered greatly improved conditions for drivers. This view is supported by the most recent monitoring report, which also confirms a consensus among employers and employees that Directive 2002/15/EC contributed to health and safety protection of drivers (European Commission, 2014). The magnitude of this effect is not possible to quantify due to the multiple other factors affecting labour market dynamics such as increased competition, periods spent away from home, physical demands of the jobs etc. These and other factors affecting working conditions are analysed in Evaluation Question 11 (see Section 6.11), which found that the general view among stakeholders consulted for this study (trade unions, drivers, undertakings, ministries and enforcers) is that the social legislation has had a positive impact on working conditions.

It is also worth noting that the enforcement of the legislation is crucial to ensure that it effectively safeguards working conditions (as analysed in Evaluation Question 11, see Section 6.11). At the same time, enforcement may also affect the attractiveness of the sector, where according to interviews carried out by the Swedish Bus and Coach Federation (2015), companies and their employees say that they feel "persecuted" with respect to the enforcement of the driving time rules and are afraid that this is having a negative impact on recruiting bus drivers. The report emphasised that while it is necessary for there to be a set of regulations for driving and rest times, more flexibility is needed. Views from interviews conducted for this study also indicate that industry associations (Austria, Belgium, Czech Republic) consider that the added stress of following the complicated rules, and the imposition of penalties, may reduce the attractiveness of the sector.

6.12.1.3. Overall effect on driver shortages

In summary, there are two opposing effects of the social legislation on driver shortages: firstly, the legislation could contribute to worsening shortages due to restricting the driving/working hours of those in the profession and leading to greater labour demand. Evidence from literature and the survey of undertakings indicates that the effect could have impacted some organisations (particularly those in the passenger sector), but many already voluntarily complied with the limits. Part of the increase in demand could also be met by drivers who worked part time or otherwise below the limits set by the legislation.

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

6.12.2. Impacts on employment structures

The increase in subcontracting seen in the industry over recent years (see Section 5.1) has reportedly been linked to a "proliferation of employment practices that undermine the working conditions of drivers, notably **bogus self-employment** and the employment of non-resident drivers via so-called **letterbox companies**" (Broughton et al, 2015). Both practices have reportedly gained popularity in the period since liberalisation, although a representative of the IRU interviewed in Broughton et al (2015) stressed that the practices are "relatively rare and should not be seen as representative".

"**Bogus**" self-employment is a form of dependent employment disguised as self-employment, which enables employers to circumvent collective agreements, labour laws, payroll tax and other employer duties. While genuine self-employment is an important part of the economy, bogus self-employment creates problems in that the workers are still economically dependent on a single employer without receiving basic worker rights or social protection. Drivers involved in this practice may suffer from reduced income security, and a lack of access to employment benefits and social security (Broughton et al, 2015). As shown in the market overview (Section 5.1.4), bogus self-employment is not thought

to be a problem in all countries, but may be increasing in countries with weak trade unions and strong neoliberal trends..

Indications from literature suggest that the problem of bogus self-employment is driven mainly by competition in the sector. For example, analysis of the situation in Sweden⁹⁶ suggests that recourse to false self-employment is mainly driven by the increasing low-cost competition in the sector and consequent pressure to reduce labour costs, and to illegal cabotage (REMESO, 2013). Broughton et al (2015) reports that the practice is largely in response to the competitive pressures of market integration. Similarly, TRT (2013) suggests that EU-15 drivers have been pressured to agree to bogus self-employment in order to retain their work in recent years, as a result of the increased competitive pressure on their employers. As such, the social legislation may have contributed to the problem insofar as it enables cost-cutting (to the extent that costs can be reduced by circumventing the rules), but it is not the primary driver.

In summary, the causal effect appears to run as follows: increasing competitive pressure in the industry has led to a greater need to cut costs. This creates a stronger incentive to breach social legislation on working time and driving and rest periods, in order to maintain competitiveness (AECOM, 2014a); (Broughton et al, 2015). Hence, a connection between the social legislation and practices of false self-employment can be seen, although it is competition in the industry that provides the primary incentive. More specifically, falsely self-employed drivers are especially likely to be in breach of working time legislation, and drivers from the EU-13 who are active internationally are particularly vulnerable to pressures to extend their driving and working times (Broughton et al, 2015); (REMESO, 2013), whereas in countries with a culture of reliance on employees and a low share of self-employed do not appear to suffer from false self-employment to a large extent.

6.12.2.1. Letterbox companies

“**Letterbox**” companies refers to companies that are "established" in a Member State where they do not carry out their administrative functions or commercial activities. Multiple sources cite the problem of letterbox companies – for example, ETF (2012) claims that letterbox employment schemes “proliferate” and the European Trade Union Institute (ETUI) has collated several reports from court cases against alleged letterbox companies (ETUI, 2014). The extent of the problem of letterbox companies in Europe was examined extensively in the parallel ex-post evaluation study on Regulations (EC) No 1071/2009 and (EC) No 1072/2009 on the basis of enforcement statistics, stakeholder views and literature review - overall, the evidence indicates that there are indeed letterbox companies operating in Europe but the extent of the problem could not be quantified (Ricardo Energy & Environment et al, 2015).

Looking at whether the social legislation could have contributed to the development of letterbox companies, it appears that the social legislation is much less important compared to other factors. The main incentive for setting up letterbox companies is to reduce costs, which is primarily achieved due to lower wages of drivers (the major factor), followed by taxes and social contributions (Ricardo Energy & Environment et al, 2015). That is, the main drivers for the establishment of letterbox companies are the differentials in labour costs and taxes between countries, whereas gains from avoiding compliance with other legislation are a secondary factor.

In summary, the social legislation is unlikely to be the primary driving factor for any increases in undesirable employment practices such as false self-employment and letterbox companies. The most important factor contributing to both of these practices is the need to lower costs in light of increased competitive pressure in the industry. Nevertheless, avoidance of the social legislation is likely to be a secondary contributing factor to the extent that it allows companies to reduce costs. As such, effective enforcement is needed.

⁹⁶ i.e. reported increases in false self-employment in long-distance goods transport (REMESO, 2013)

6.12.3. *Unintended impacts on bus services*

After Regulation (EC) No 561/2006 was brought into force, there were reportedly unintended effects in the UK arising from the impact of the digital tachograph requirements on bus services, especially in rural areas. There were several examples of bus service cuts across the country, with operators claiming that the new requirements had made it impractical or uneconomical to operate buses on routes over 50 km in length (First Delegated Legislation Committee, 2007). To understand the current situation and how the problem has developed, the UK ministry and enforcers were asked about this issue during interviews for this study – it was indicated that this particular issue was no longer considered a problem and no further information on the issue could be offered. This issue was not mentioned during interviews with industry representatives from the UK. On the basis that the government had previously been aware of the potential for impacts in this area in 2007, yet currently believe it is not an issue, this seems to suggest that the impacts did not materialise in practice.

Conversely, in Sweden it is reported that certain bus companies have chosen to install tachographs in all buses, although they operate a large proportion of services that are not subject to tachograph usage, and the drivers always use their driver cards regardless of the type of operation (The Swedish Bus and Coach Federation, 2015). This is because it allows drivers to use the same device and routines for recording their activities (thereby reducing unintentional errors due to unfamiliarity with the equipment), and facilitates reporting during mixed services because it is simple to also report runs that are exempted (The Swedish Bus and Coach Federation, 2015).

Overall therefore, it appears that the initial concerns over the possible impacts on bus services regarding installation of tachographs have not developed into systematic issues. The example from Sweden shows that some companies have installed tachographs in all buses, even if there is a large proportion exempted, because having the same recording routines across all activities can reduce the scope for manual errors.

6.12.4. *Switching to lighter vehicles*

In European legislation, there is no limitation on the driving hours for drivers of vehicles <3.5t. This raises a question of whether there could be a trend toward more frequent use of vehicles under 3.5t in order to avoid the rules. If this is indeed happening, this clearly has the consequence of reducing the effectiveness of the social rules by allowing organisations to exploit the possibilities of using vehicles below 3.5t threshold.

It is generally the case that there has been a trend toward a higher number of vans on the roads (ETSC, 2014). However, this on its own does not indicate whether they are simply growing to meet specific demand, or if they are actually taking market share away from HGVs (“switching”) as a means to avoid legislation. The trend toward lighter vehicles is particularly due to the rise in home deliveries and developments in urban freight logistics (ETSC, 2014). These types of service are best-suited to vans rather than trucks (due to the fact that smaller vehicles are more efficient when making “last mile” deliveries from centralised distribution hubs, as well as due to access restrictions on heavier vehicles in urban areas). This suggests that shifting is due to the nature of the business demand, rather than an explicit motivation to avoid legislation.

In practice there is very little concrete data on the extent of any actual “switching” to lighter vehicles in practice. The marginal benefits of doing so are questionable given that Member States have typically implemented their own national drivers’ hours restrictions for vehicles <3.5t (as referred to previously in Section **Error! Reference source not found.**). This means that the benefits of switching are lower compared to a situation where such vehicles were not subject to any regulation.

There is also a question of whether cost differentials would give any advantage to operators from switching for the types of transit traditionally served by HGVs. Comparing the cost differentials between different types of vehicles in Europe shows that HGVs have a considerable advantage over LGVs in all regions. As shown in Table 6-13, the cost of transport per ton by HGV (25t, 80m³) is only around 16% of the cost to transport a ton by LGV (1.65t, 20m³). By volume, the cost of transport by HGV is around 60% of the cost of

transport by LGV. An increase of more than 25% in the freight transport cost price for HGVs (against a static LGV rate) would be needed for competition to occur (NEA, 2010).

Table 6-13: Cost of transport by HGV relative to LGVs

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

Source: (NEA, 2010)

Overall, the main conclusion from the analysis above is that the social legislation is unlikely to be the main cause of the recent increases in vans seen on the roads. Even with the combined regulatory burden from relevant road legislation (for which the cut-off point is usually 3.5t, e.g. tolls, Road Transport Package, driver training etc.) it appears unlikely that there is substantial unfair competition between light goods vehicles and heavier freight vehicles in international commercial road freight transport (NEA, 2010). The main drivers of increased van usage are thought to be due to shifting demand patterns (increasing home deliveries, for which vans are the most suitable vehicle), rather than explicit efforts to avoid legislation.

6.12.5. Other impacts

All stakeholder groups consulted for this study were asked whether they could identify any other positive or negative impacts of the social legislation that had not been covered. The other positive effects mentioned were that the social legislation had:

- Contributed to better awareness among drivers and their employers of the rules and their role in ensuring the wellbeing of the driver (a trade union, the Romanian enforcers, Austrian ministry and Austrian enforcers).
- Improved fleet management in general (Cypriot ministry).

However, none of these positive effects could be quantitatively assessed.

Concerning possible negative impacts, comments received indicated that the lack of harmonisation in the interpretation of the legislation was a major problem (as discussed further in Evaluation Question 20, Section 6.20).

6.12.6. Summary and conclusions

There are two opposing effects of the social legislation on **driver shortages**: firstly, the legislation could contribute to worsening shortages due to restricting the driving/working hours of those in the profession and thereby leading to greater labour demand. Evidence from literature and the survey of undertakings indicates that this may have occurred for some organisations (particularly those in the passenger sector), but many already complied with the limits and hence their demand for labour was unaffected. Part of the increase in demand could also be met by drivers who worked part time or otherwise below the limits set by the legislation.

The second effect of the social legislation possibly works to mitigate driver shortages by improving the attractiveness of the profession and thus increasing labour supply. Views from industry gathered from literature and monitoring reports indicate a consensus that the legislation has contributed to improving the working conditions of drivers. The net effect cannot be determined due to the multitude of other factors influencing labour market dynamics.

The social legislation is unlikely to be the primary driving factor for increases in **undesirable employment practices** (e.g. bogus self-employment and letterbox companies). The most important factor contributing to both of these practices is the need to lower costs in light of increased competitive pressure in the industry. Nevertheless, avoidance of the social legislation is likely to be a secondary contributing factor to the extent that it allows companies to reduce costs. As such, effective enforcement is needed to mitigate this potential effect.

It appears that the initial concerns in the UK over the possible impacts on bus services regarding installation of tachographs have not developed into systematic issues.

It appears unlikely that social legislation would have a significant contribution on its own to trends in switching to vehicles <3.5t. The main driver of increasing use of vans appears to be the growth in segments for which they are the most suitable vehicle (for example due to higher shares of home deliveries requiring "last mile" distribution from freight centres), rather than attempts to avoid the social legislation *per se*. Even with the combined regulatory burden from relevant legislation (including tolls, Road Transport Package, driver training etc.), it appears unlikely that there is substantial unfair competition between light goods vehicles and heavier freight vehicles in international commercial road freight transport for which HGVs are traditionally used (NEA, 2010).

6.13. Efficiency: To what extent has the legislation been efficient in its objective of enabling effective and uniform enforcement of the existing rules?

To what extent has the legislation been efficient in its objective of enabling effective and uniform enforcement of the existing rules? What are the enforcement costs of the road transport social rules (both for the Driving Time Regulation and for the Road Transport Working Time Directive)? Are these costs proportionate to the benefits linked to the better compliance with the rules, such as improved working conditions, improved road safety and reduced distortion of competition?

This evaluation question assesses the implementation costs to national authorities in relation to Regulation (EC) No 561/2006, Directive 2006/22/EC and Directive 2002/15/EC.

The following aspects are analysed in order to answer this question: (i) enforcement costs incurred by national authorities, (ii) cost-effectiveness of enforcement and (iii) benefits (quantitative and qualitative) associated with better compliance with social rules.

6.13.1. The enforcement costs of the road transport social rules

Data on enforcement costs is difficult to identify, either from literature or through the surveys and interviews carried out as part of this study, and therefore the estimates should be interpreted with caution. The costs have been estimated for the following aspects, which constitute the main cost categories identified:

- **Staff costs**, which represent the largest proportion of enforcement costs. These costs are calculated on the basis of the personnel employed in checks and monitoring activities. This is estimated as a *yearly cost*.
- Costs for the **software and hardware equipment** used by enforcement authorities to download data stored in the tachograph. This is estimated as a *one-off cost*.
- Costs for the **setting up and interconnection of TACHOnet**. This is estimated both as a *one-off cost* and as an *ongoing cost* due to maintenance of the TACHOnet system.
- Cost of **training enforcement officers**. This cost consists of *one-off cost* for setting up the initial training and of an *ongoing cost* for regular training of staff.

Annex B, Section 10.8, provides specific details for the calculations made on specific cost items.

6.13.1.1. Staff costs

Costs for the enforcement staff have been calculated on the basis of top-down and bottom-up methods.

- Top-down: The number of officers involved in checks has been multiplied by an average yearly wage extracted from the Eurostat database⁹⁷.
- Bottom-up: The total cost was estimated on the basis of the time spent per check, multiplied by the number of checks carried out and converting this to a cost using wage levels.

Since enforcement staff may not be fully dedicated to checks of the social legislation, the top-down estimates provide an upper-bound limit, whereas the bottom-up estimates provide a lower-bound limit.

Top down estimates: The data in many Member States concerning the numbers of inspectors is rather unreliable given the different interpretations of the term. The

⁹⁷ The source of the data is the European survey on the structure of earnings. The relevant table is `earn_ses_annual` under Population and social conditions\Labour market\Earnings. Wages of the service sectors have been considered.

calculations have been based on 17 Member States for which data was considered reliable and complete⁹⁸ and result in a restricted total of some €180 million/year in the period 2011-2012. This estimate was scaled to the EU-27 level on the basis that the 17 countries represent 36% of the total number of drivers checked in the EU-27. Taking into account that the average wage of the 17 EU countries is comparable to that of the EU-27, it has been possible to scale up the total enforcement cost to the total of EU-27 countries. Overall this gives an EU-27 enforcement staff cost of **€500 million/year**, representing the most important component of the enforcement costs.

Bottom-up estimates: During the two years 2011-2012, a total of 8.6 million vehicles have been checked at roadside and 146 thousand enterprises have been checked at the premises. To estimate the overall time spent for conducting checks and for the enforcement of the social legislation the following assumptions were made:

Roadside checks:

- On average, two persons are deployed for carrying out a roadside check;
- On average, a team of two persons carries out five checks at the roadside per day (including checks of compliant and non-compliant vehicles and considering the time that is spent by the enforcers for reporting activities in the office and for travelling to/from the roadside where the checks are being carried out)⁹⁹

Checks at premises / Company checks:

- On average, a check at premises investigating compliance with road social legislation takes three working days (including the time spent at the premises and/or in the enforcer's office to obtain and analyse the data and supplementary information, and to determine the sanctions in case of infringements; in practice the time needed for a company check will (among others) be heavily dependent on the size of the undertaking, its number of drivers and vehicles deployed, as well as on the thoroughness of the check being carried out (which, for example, may depend on the company's previous infringement history) and the location of the company (in case the enforcer has to travel to/from the company's premises)).

Under the assumptions above, and assuming an average wage rate of workers in public administration of €20.5/hr (as well as an average working day of 7.5hours) results in a bottom-up estimate of annual enforcement staff costs of around €300m/year. However, this is a net cost, not including any overheads or other additional expenses that may occur.

As a result, the values obtained from the top-down and bottom-up assessments are comparable. For the summary of staff costs, the average of top-down and bottom-up estimates are used – i.e. €400m/year.

6.13.1.2. Costs for equipping enforcement officers to analyse tachographs

National enforcement authorities equip their inspecting staff with hardware and software to download, read and analyse the data stored in the digital tachograph.

Based on the value reported by PWC (2009), a cost of €4,000 per device has been considered. On the basis of the number of devices reported as available in 2011-2012 (i.e. almost 12,000), the total EU-27 one-off cost amounts to **€45-50m**. It is not possible to provide a breakdown of this cost item between the different years. However, it is deemed that the larger proportion of this cost has been spent in the years 2007-2008.

6.13.1.3. Cost of setting up and interconnecting TACHOnet

Operational since 2005, TACHOnet interconnects national electronic registers of driver cards for the digital tachograph in order to enable an automatic exchange of information. TACHOnet acts therefore as a central hub (hosted by the European Commission) allowing national issuing authorities to keep a record of issued, valid and invalid cards and exchange data through this system. The *rationale* of the TACHOnet system is the capacity to

⁹⁸ Austria, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovakia, Slovenia, United Kingdom.

⁹⁹ assumption based on estimates that were provided by enforcement officers that were consulted during a study visit carried out for this project

guarantee that each driver holds only one driver card, which enables to monitor the driver's compliance with the road transport social legislation.

According to the 2011 Impact Assessment to the tachograph Regulations, only two Member States are not connected to TACHOnet (PT and DK) – hence, for the purposes of this study, it is assumed that there are 26 Member States out of 28 connected (based on CORTE (2014), Croatia is connected). More recent data from CORTE (2014) did not suggest that DK or PT have become connected by 2014, nor did the survey results shed further light on the situation.

Within the survey conducted, data on set-up and interconnection costs for TACHOnet systems was not provided by Member States. The only information available was given by Switzerland where, in absolute terms, set up and interconnection costs were respectively quantified at approximately €2.8 million and €113,000. These costs were used to estimate set up and interconnection cost for all Member States. In particular, the set up and maintenance costs for each Member State have been estimated by applying the ratio between the Member State income (estimations based on Eurostat data for the year 2010, (Eurostat, 2015)) and the average income from Switzerland.

Scaling up to the EU-27 level and excluding the two Member States that are not connected, the set up costs amount to **€42-43 million**. Corresponding yearly maintenance costs are **€1.7 million**.

6.13.1.4. Cost of training enforcement officers

Training is a key component of the enforcement of the social legislation and its importance has been growing over time subsequently to the introduction of the digital tachograph and its technological developments.

Training costs can be split in two major components:

- The initial costs borne to implement training material, training procedure, and to train for the first time enforcers, which can be considered as one-off costs;
- The annual ongoing costs, spent to carry out the planned training and updates, and to train the new enforcers.

The survey among enforcers has returned very little information on this matter: clear figures for initial and ongoing training costs were provided only by the Austrian ministry, which stated that initial cost was €960,000 (corresponding to €1,200/officer) while annual costs are around €250,000 (corresponding to €300/officer per year). This value cannot, however, be considered to cover all relevant training costs, because additional enforcement staff in Austria are employed by the Ministry of Labour as well as the Ministry of Internal Affairs. None the less, to put these figures into context, the initial costs account for around 5% of the total annual staff costs estimated earlier, and the annual costs are around 1% of the total staff costs.

Other information on consistency of training were collected from Belgium and Germany:

- In Belgium the initial vocational training of the highway police takes 40 hours (it should be extended to 48 hours from March 2016). This general training is supplemented by specific practical training on driving times, resting times and tachographs of 16 hours. An additional training on tachographs (and tachograph fraud) of 16 hours is also available. The initial cost of training an officer is therefore €738 considering only the parts specific to the social legislation. The continuing training currently set at 16 hours should be increased to 24 hours from 2016 on. On the basis of an average €20.5/hour, the cost of continuing training should amount to €328-492 per officer, comparable with the Austrian value.
- Comparable values have been provided by Germany as well (although not valid for the whole country). The initial training accounts for 5 days spent for general purpose training in all regulations and directives, 3 days for digital tachographs and software and lastly 2 days in understanding digital tachographs and software manipulation. Summing up to 10 days, and applying the same average labour cost, would return

a cost of €1,600/officer for the initial training including the general training, or €800/officer considering only the specific part.

On the basis of the above estimates, the average training cost is estimated to be €912¹⁰⁰/officer for initial training and €355¹⁰¹/officer for ongoing training. These estimates based on data provided by few Member States in the survey agree well with figures in the literature, where for example the tachograph Impact Assessment of 2011 puts the initial cost of training per officer at €900-1,000.

Using the previous estimates of the number of enforcement officers, this gives an initial investment cost of €30m and ongoing costs of €12m for the EU-27 assuming that all enforcement officers undergo training. Although Directive 2006/22/EC indicates that Member States shall ensure that enforcement officers are well trained for the execution of their duties, these estimates are very uncertain given the previously recognised differences in the efforts given to training across the EU.

6.13.2. Cost-benefit analysis

Benefits deriving from the implementation of social legislation may be considered with respect to the objectives of the legislation: (i) reducing competitive distortions, (ii) improving drivers' working conditions and (iii) enhancing of road safety. While the achievements against the first two objectives have been discussed in previous Evaluation Questions under the effectiveness section, the impacts can only be discussed qualitatively and hence cannot feed into a cost-benefit analysis.

Concerning **road safety**, Evaluation Question 11 has shown that isolating the impacts of the road social legislation on the reduction of road fatalities observed over the last decade is not possible due to other developments over the same period that have had effect on road safety. Therefore, it is not possible to precisely quantify the contribution of the social legislation to the reduction of road victims.

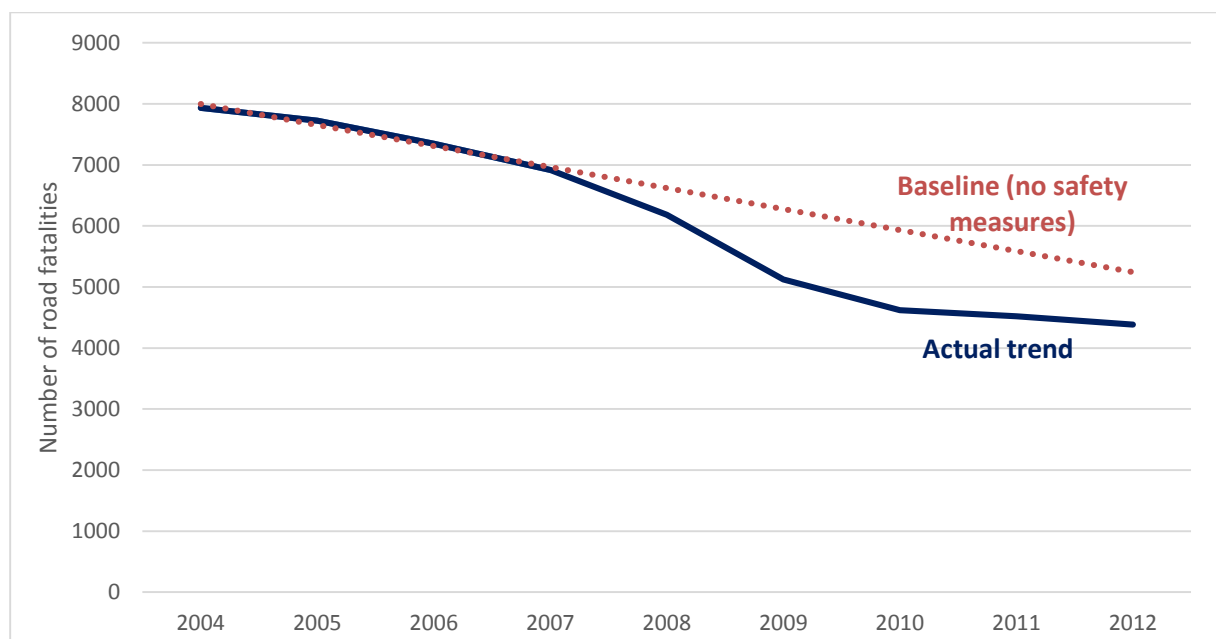
For illustrative purposes, a sensitivity analysis was carried out. This aimed to firstly estimate the total reduction of lives lost in accidents involving vehicles in-scope of the social legislation (the baseline). This was calculated as the difference between the trend in road fatalities estimated for the period 2007-2012¹⁰² and the actual number of road fatalities taken from the available statistics in the CARE database. The baseline therefore estimates the trend in fatalities assuming no additional safety measures were implemented, which includes all safety measures – the EU road social legislation and all others. A total reduction in fatalities over the period 2007-2012 of 6,947 was calculated (Figure 6-16 - full details are provided in the annex).

¹⁰⁰ average of three estimates obtained for this study for initial training costs: €1200 from AT, €738 from BE and €800 from DE

¹⁰¹ average of two estimates obtained for this study for ongoing training cost: €300 from AT and €410 (i.e.: €328-492) from BE

¹⁰² This extrapolates from the previous trend and assumes that there was no implementation of any road safety measures, including the EU rules on drivers' hours

Figure 6-16: Comparison between assumed and actual trend over the period 2004-2012 of road fatalities involving goods and passenger vehicles in-scope of Regulation (EC) No 561/2006



Source: analysis based on CARE database

Since it cannot be known what proportion of this total reduction was due to the enforcement of the social rules versus other measures, a sensitivity analysis has been carried out to work out what share of these reductions would need to be attributed to the effects of the road social legislation in order to create a positive net present value (NPV).

Net present value calculations were carried out using a timescale of 6 years and a discount factor of 4%. In the low scenario, the costs included only the enforcement costs that have occurred specifically after Regulation (EC) No 561/2006 was brought into force and that were intended to secure compliance with the new (compared to the pre-existing legislative settings) social rules (i.e. excluding staff costs, which occurred before the adoption of the rules). The analysis shows that if the share of the total fatalities reduced in 2007-2012 *due to the social legislation* is **~1.7% of the overall reduction or higher**, this would result in positive net benefit calculations.

However, this considers only the incremental cost. If all of the enforcement costs are included (in particular all the staff costs, which are approximately €375m p.a. as seen above) it would be necessary to increase the share of fatalities reduced due to the social legislation to **~19.3% of the overall reduction or higher** in order to conclude that there is a positive NPV.

Considering whether these shares could be reasonable, it is worth noting that the contribution of fatigue to road crashes has been extensively researched, but the magnitude of this remains uncertain and difficult to quantify (Amundsen and Sagberg, 2003). The IRU in its ETAC study (IRU, 2007) cites a proportion of fatigue-related accidents of 6%, a value reported also in (ETSC, 2011). In a study conducted in 2011, the Dutch road safety institute SWOV 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). Furthermore, the previous evaluation questions found that the impact of the social rules on *reduction* of fatigue seems marginal – rather, the benefits are in terms of maintaining compliance with the driving time limits (which are similar to the previous rules) in spite of the increasing competitive pressure in the market.

Clearly, the calculation of CBA is highly sensitive to the underlying assumptions made about the reduction in fatalities, which is subject to a large amount of uncertainty. The calculations consider only the enforcement costs (incremental and total), and do not include any consideration of costs and benefits to operators of non-compliance, which, as discussed in Evaluation Question 9 (see Section 6.9) are not possible to calculate quantitatively.

Given the uncertainty over the quantitative estimates and the high sensitivity to underlying assumptions about the impact on fatalities, the numerical CBA is not considered to be a robust basis on which to draw conclusions. As such, a qualitative assessment was also carried out on the basis of survey responses from enforcers. The results show that 43% of respondents felt that the requirements under Directive 2006/22/EC have led to higher enforcement costs while at the same time the effectiveness in terms of compliance with the rules has also improved. Even more positively, a further 14% of respondents felt that there were no material impacts on costs while at the same time the effectiveness had improved, and even 5% estimated a reduction in costs while also seeing improvements. No respondents reported increased costs and lower or unchanged effectiveness. Although only based on qualitative estimates, this seems to suggest that any increased costs have been accompanied by benefits in terms of compliance.

6.13.3. Summary and conclusions

This Evaluation Question has looked at the implementation costs for enforcement authorities due to the requirements laid down in the EU social legislation. Nonetheless, the limited availability of the underlying data requires that the estimated results should be interpreted with caution. Table 6-14 summarises the estimated costs.

Table 6-14: Implementation costs for enforcement authorities (total for EU-27)

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

* Software and maintenance costs are not considered.

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

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

All of the cost estimates are subject to significant uncertainty due to the limited data reported in the surveys on cost items, and the issues with comparability of reported figures in national monitoring reports. That said, what the analysis suggests overall is that the largest share of the overall enforcement cost is represented by ongoing staff costs required to maintain the enforcement capacity.

The benefits of the road social legislation in terms of a level playing field and on working conditions cannot be quantified by any means for use in a cost-benefit assessment. Benefits in terms of improvements in road safety may be quantified, but are subject to such high uncertainty that no robust conclusions on their basis can be drawn.

As an alternative indicator, qualitative assessments provided by enforcers responding to the survey suggest that the requirements under Directive 2006/22/EC have led to higher costs while at the same time contributing to higher effectiveness in terms of improved compliance. No respondents reported increased costs and lower or unchanged effectiveness. Although only based on qualitative estimates, this seems to suggest that any increased costs have been accompanied by benefits in terms of compliance.

6.14. Efficiency: Have the enforcement measures put in place by Member States created any additional savings or costs for national authorities and for transport operators?

Have the enforcement measures put in place by Member States created any additional savings or costs for national authorities and for transport operators? Would it be possible to achieve the same level of compliance more efficiently by other means?

6.14.1. Additional costs or savings for national authorities

The main additional significant cost category (in addition to those already considered in the previous question) identified through the consultation process with national authorities was related to the risk-rating system – both in terms of setting up and maintaining it. Around 47% of responding authorities felt that the set-up of the risk-rating system had made a contribution (significant or slight) to investment costs, and 30% identified it as making a contribution to ongoing costs. However, no authorities were able to provide more precise information as to the magnitude of these costs. At the same time, the risk-rating system is generally perceived to bring about benefits in terms of improving the effectiveness of enforcement – almost three-quarters of responding enforcers agreed that the system had improved their ability to detect non-compliance (out of those for which the question was applicable). As a further point, several enforcers mentioned (un-prompted) that the risk-rating system had improved the cost-efficiency of their activities (DE, CY, NO, LT). This seems to indicate that, despite the additional costs, the benefits of the risk-rating systems are also significant.

Other potential additional costs areas were explored with enforcers, but again, no specific estimates were received and they were not considered significant overall (see Annex B for a summary of responses).

The TRACE common curriculum was reported to have had a positive (weak or strong) effect on efficiency by 38% of respondents to this question in the enforcers survey, with the remaining respondents stating that it had no effect or that they did not know (i.e. no respondent felt there was a negative effect).

Comments received from enforcers via the survey identified a few common areas that have contributed to greater efficiency in practice:

- Improved software and greater use of electronic documents (SE, NO, DE, ES, AT, RO, CY, NL);
- More cross-border cooperation / exchange of information (NL, SE, CZ, RO, DE)

There are two main advantages of a higher degree of digitalising enforcement systems: (i) easier compilation of reports and (ii) access to real-time information on vehicle's and driver's status concerning transport license documents, tachograph cards, history (type and frequency) of infringements committed, etc. As commented by the enforcement authorities of Norway, where this experience has developed, having a more digitalised enforcement system is considered to be costly in the short term, but in the longer run it positively changes the way in which enforcement officers work. This can lead to gains in efficiency and cost savings. In this respect, cost savings are assumed to appear not only for the enforcement authorities when conducting checks, but also for the operators since time during which vehicles and drivers are checked is minimised. The respondent from Sweden noted that investments in analysis software that integrates with their case management system is very time-saving.

The respondent from the Netherlands recommended more approaches based on the trust-based system adopted in their country, which (as discussed in Evaluation Question 6, see see Section 6.6.2) seems to be a promising approach.

6.14.2. Additional costs or savings for transport operators

The main **additional costs** on the industry due to the specific enforcement arrangements in place in Member States were explored via the survey and in interviews. These additional costs refer to those due to the enforcement practices, as distinct from more general compliance costs that are explored in the next section.

Importantly, operators (both passenger and goods) expressed their concerns over costs that could not be quantified in a straightforward way and hence were not generally included in their estimates of increased cost burdens (that are discussed in the next evaluation question). These included:

- Opportunity costs / loss of revenue: due to, for example, certain routes becoming impossible (in the passenger sector) or a reduction in annual mileage per truck (goods).
- Sanctions, which are felt in some cases to be excessively high for minor infringements.

There were **no additional benefits or savings** identified as being significant by undertakings participating in the survey and this irrespective of their business segment (freight or passenger).

Feedback from the operators suggests two main directions along which efforts should be streamlined to obtain efficiency gains:

1. Greater amount of flexibility in the way in which rules are interpreted and applied.
2. Use of modern information technologies.

Regarding the use of modern technologies, operators believe that they should make possible a direct transfer of information to enforcement authorities when data are downloaded from the tachograph. This would also mean an increased possibility to carry out checks on a remote basis so that vehicles are not held up in roadside checks.

6.14.3. Summary and conclusions

This Evaluation Question has looked at the additional cost impacts or savings generated by enforcement measures on national authorities and transport operators.

Regarding **national authorities**, the main additional cost category identified was related to the risk-rating systems, although this could not be quantified. At the same time, the risk-rating systems are considered in general to have led to efficiency and effectiveness improvements, and is one of the key areas recommended to focus on as a means to further improve the efficiency of checks. No other additional costs impacts were identified as being significant.

In terms of benefits, the TRACE common curriculum is generally considered positively, and the potential for greater digitalisation of enforcement systems appears to be strong. In particular, a higher degree of digitalising enforcement systems could lead to (i) easier compilations of reports and (ii) access to real-time information on vehicle's and driver's status, leading to cost-savings.

For **transport operators** there are concerns over unquantifiable costs due to lost revenue and (disproportionate) sanctions. At the same time, there were no additional benefits or savings identified. In order to mitigate these issues, operators call for additional flexibilities and potentially the use of more modern equipment.

6.15. Efficiency: Are there substantial costs involved in compliance with the road social legislation (both for transport undertakings and drivers)?

Are there substantial costs involved in compliance with the road social legislation (both for transport undertakings and drivers)? To what extent are they reasonable and proportionate to the benefits of better compliance (if any) with the rules, such as enhanced working conditions and level playing field? Would it be possible to achieve the same level of compliance more efficiently by other means?

6.15.1. Compliance costs for transport operators

In total, 122 respondents gave quantitative estimates of the cost increases that they faced overall due to road social legislation since 2007 – these are summarised as the total additional cost for all items, since the estimates covered a range of different cost items depending on the individual firm responding (the individual components are assessed in more detail below).

Table 6-15 shows that, on the whole, cost increases (in % of the firms' transport-related annual turnover) have been estimated to be around 1-3% for operators. Similar cost increases (1.3%) are reported for goods and passenger transport operators in the larger firm size bracket (>€5 m). The figures highlight a possible disproportionate effect on smaller firms, who appear to incur a larger cost relative to their size compared to large companies – as is often the case with legislation involving administrative burdens. However, the sample size of respondents for the smaller companies was rather low (only 29 companies below €500,000), which makes it difficult to draw any concrete conclusions.

Table 6-15: Estimated increase in costs due to road social legislation to undertakings as a % of transport-related revenue since 2007

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

Source: Survey of undertakings

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

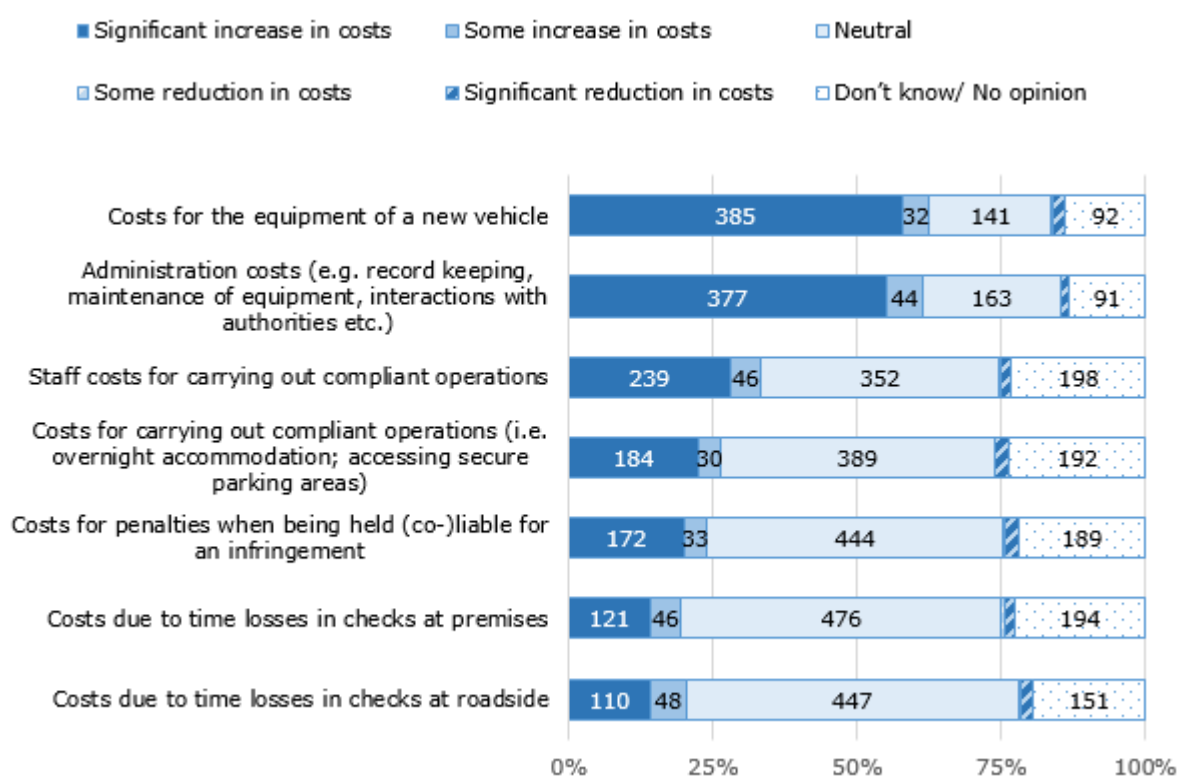
The items included in the quantitative estimates were not always identified, but seemed most commonly to refer to:

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

It should also be noted that there are relatively large ranges reported with some firms indicating cost increases of as high as 20-25%, which indicates that firms are not equally affected and there are likely to be varying individual effects.

The above-mentioned cost categories were further confirmed in the qualitative estimates sought via the survey, which showed a range of cost areas that significantly or somewhat affected between around 20-60% of respondents (see Figure 6-17). Again, the results show that the incidence of costs is not uniform for all companies, and that the main cost categories relate to vehicle equipment, administrative effort and staff costs.

Figure 6-17: Responses to question "Has the introduction of Regulation (EC) No 561/2006 had any impact on the following costs of your business?" (n=788 on average)



Looking in more detail at the most substantial cost identified (i.e. costs for the equipment of new vehicles), estimates of the investment required were carried out. A summary of the calculations is provided in Table 6-16, which shows the estimated total cost for industry of equipping vehicles of €853.5 million. Full details of the calculations are provided in Annex B (see Section 10.9).

Table 6-16: Estimation of costs associated with equipping vehicles

Item	Average unit cost (€)	Number of units	Total cost (€ millions)
Tachograph company card	79 per company	930,000 (number of freight & passenger undertakings affected)	73.5
Downloading equipment, e.g. a dedicated "memory stick"	200 per company	930,000	186

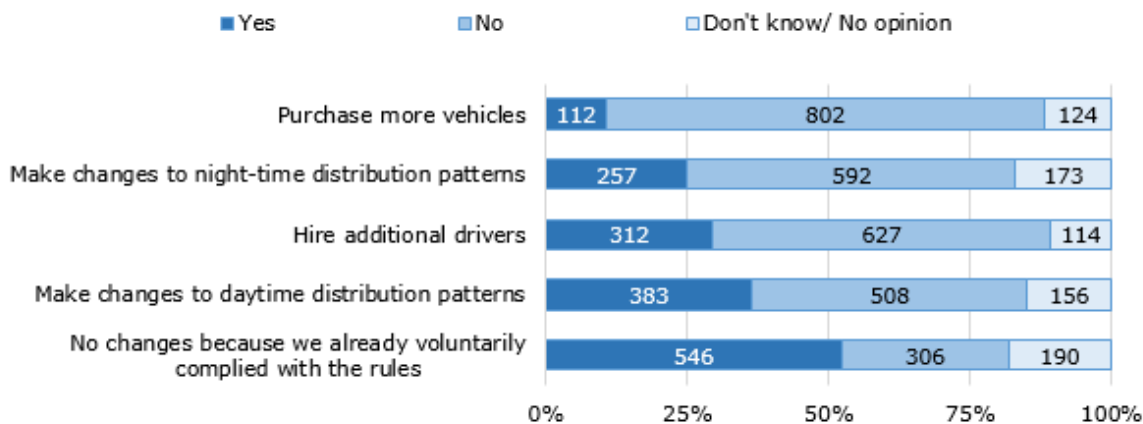
Item	Average unit cost (€)	Number of units	Total cost (€ millions)
Dedicated software to read and analyse the downloaded data	600 per company	930,000	558
Training on the use of recording equipment	350 per driver	3.6 million drivers, of which 10% are trained each year	126
Total			943.5

Sources: interview with a tachograph manufacturer; publicly available price releases (ShopFTA¹⁰³, TachoMaster¹⁰⁴, SmartCompliance¹⁰⁵); (ACEA, s.d.); (CORTE, 2015); (Panteia et al, 2014).

The second-most important costs identified were the administrative costs of monitoring and reporting, which are subject of the next evaluation question.

In order to further explore the additional cost due to the implementation of the social legislation (i.e. one-off costs), undertakings were asked to identify any actions needed to maintain their turnover at the pre-2006 levels. Figure 6-18 shows that around half (52%) of all undertakings responding to the survey (both freight and passenger segments) have declared that no changes were needed to maintain the same pre-2006 level of turnover following compliance with Regulation (EC) No 561/2006 (whereas 18% did not know). This is in large part due to the similarity with the previous rules in place, although several respondents noted that the reduction in flexibility had contributed to the need for such changes. When changes occurred, these were mainly needed to adapt daytime distribution patterns (35%) and hire additional drivers (29%).

Figure 6-18: Actions required to maintain pre-2006 level of turnover



Source: Survey of undertakings. N=1107 (freight = 623 and passenger = 276), multiple answers possible for actions taken

More specific details on the number of additional vehicles and drivers required were given:

- 29% of operators identified a need to hire more drivers. The estimates ranged from 1 to 120 (although not all of the drivers were full time), with the median being 2 additional drivers.
- 11% of operators identified a need to purchase additional vehicles (also for the purpose of substituting old vehicles with new ones fitted with digital tachograph). The increase ranges between 1 and 30 new vehicles, with the median being 2

¹⁰³ <https://www.shop.fta.co.uk/c-17-solutions.aspx>. Last visit: 31st December 2015.

¹⁰⁴ <http://www.tachomaster.co.uk/supplies/>. Last visit: 31st December 2015.

¹⁰⁵ <https://smartcompliance.descartes.com/shop/tachograph-hardware/digital-tachograph-download-devices/>. Last visit: 31st December 2015.

additional vehicles. Also, some operators indicated that their fleet reduced since it was not worthwhile to invest in new vehicles.

Comparing the freight and passenger sectors, the majority (53%) of freight operators reported that no changes were needed to comply with the new requirements introduced by the social legislation, while this was the case for a lower share (46%) of passenger operators. Passenger operators reported more changes to daytime distribution patterns (57% for passenger operators, compared to 29% for goods transport) and to staff levels (55% for passenger operators, compared to 20%).

6.15.2. Costs for drivers

The only direct cost category identified for drivers in relation to compliance with the social regulation is represented by the cost of obtaining the tachograph driver card. Although it is not infrequent that the cost for the driver card is borne by the employer, as feedback from interviewed drivers has suggested, drivers may typically sustain this cost simply because the driver card is personal and remains to them when they are hired by another employer or become self-employed drivers.

On average, the €²⁰¹⁴ PPP adjusted cost for obtaining a tachograph driver card is €68 (range between €20 reported for Hungary and €192 reported for Luxembourg) (CORTE, 2015). To scale up to the EU level, we assumed that, based on (Panteia et al, 2014), just above than 2.2 million drivers¹⁰⁶ are required to apply for a digital tachograph driver card. This results in a total compliance cost for them to apply and obtain a tachograph driver card of €152 million.

In addition, although it could not be quantified, an area of concern that was previously identified (see Evaluation Question 11, Section 6.11.1.3) is that drivers may incur additional costs due to payment of fines that may not be reimbursed by the company.

6.15.3. Benefits

It is not possible to conduct a full CBA to compare the costs to the benefits, for the reasons discussed in the previous evaluation questions. The benefits (if any) are impossible to quantify because they relate to subjective issues of “working conditions” or broader issues such as fair competition. The impact on safety/road fatalities is similarly impossible to determine given the host of other developments that affect accident rates. Moreover, neither the stakeholder survey nor the interviews could provide any factual evidence that would have allowed a quantification of benefits and their comparison with the costs sustained. Nor were any ex-ante estimates developed against which the costs or benefits could be benchmarked.

6.15.4. Summary and conclusions

Overall, ongoing cost increases have been estimated to be around 1-3% of the annual transport-related turnover for operators in order to comply with the social legislation. This covers costs related to the following main items:

- Hardware (e.g. tools to download digital tachograph data)
- Administrative effort and monitoring e.g. the cost of understanding complex rules, inspection of data, scheduling etc.
- Staff costs and training.

¹⁰⁶ The number of drivers required to apply for a tachograph driver card used with a digital tachograph has been calculated as a proportion of the numbers of active drivers holding a C and or D license (Panteia et al, 2014). This proportion amounting at 62% has been estimated by considering the number of vehicles fitted with a digital tachograph and registered in 2014 out of the total number of vehicles registered in that year and equipped with tachographs, as it results from own elaboration of ACEA statistics. Once determined, this proportion has been applied to the total number of in-scope drivers as found in (Panteia et al, 2014).

- IT/software.

It should also be noted that there are relatively large ranges reported with some firms indicating cost increases of as high as 20-25%, which indicates that firms are not equally affected and there are likely to be varying individual effects.

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

- 35% of operators identified a need to make changes to daytime distribution schedules, and 25% said that night-time distribution patterns had to be adapted.
- 29% of operators identified a need to hire more drivers,
- 11% of operators identified a need to purchase additional vehicles.

In addition, drivers may have sustained compliance costs in order to purchase their personal driver tachograph card. The ex-post cost estimate for this requirement is €152 million.

It is not possible to weigh these additional costs against the magnitude of benefits (if any) since these relate to subjective or diffuse issues that are impossible to quantify.

6.16. Efficiency: What are the related administrative costs of monitoring and reporting arrangements both for the national authorities and operators/drivers?

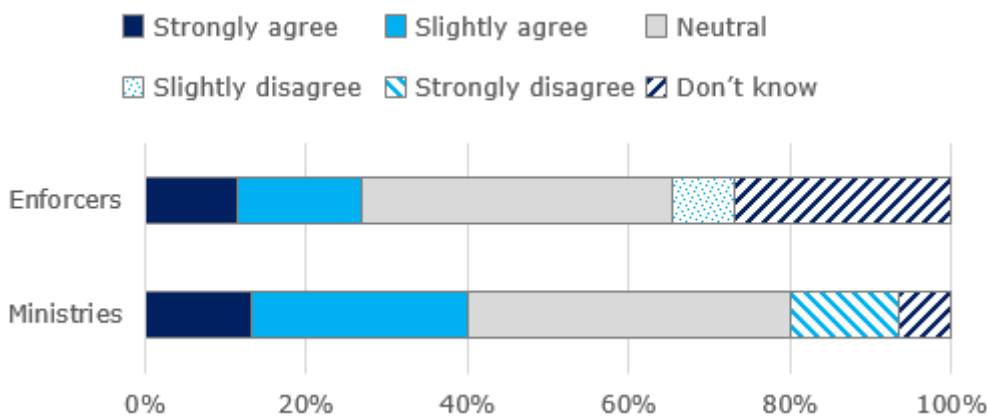
What are the related administrative costs of monitoring and reporting arrangements both for the national authorities and operators/drivers? Would they be proportionate to related benefits? If not, to what extent can current arrangements be streamlined so that the costs to authorities and operators/drivers are reduced?

6.16.1. Quantitative analysis of identified monitoring and reporting costs for national authorities

Article 17 of Regulation (EC) No 561/2006 has introduced the obligation for Member States to report every two years on the application of the driving and rest times rules.

Feedback from the survey of ministries and enforcers shows fairly similar responses, in that the majority of respondents do not view reporting costs as being significant (responding either neutral, disagreement or don't know; see Figure 6-16). Two ministries (Denmark and Slovenia) indicated significant costs, as well as three of the responding enforcers (Austria, Lithuania and Switzerland).

Figure 6-19: Survey responses to the question: "to what extent do you agree that there are significant costs involved to meet reporting requirements"



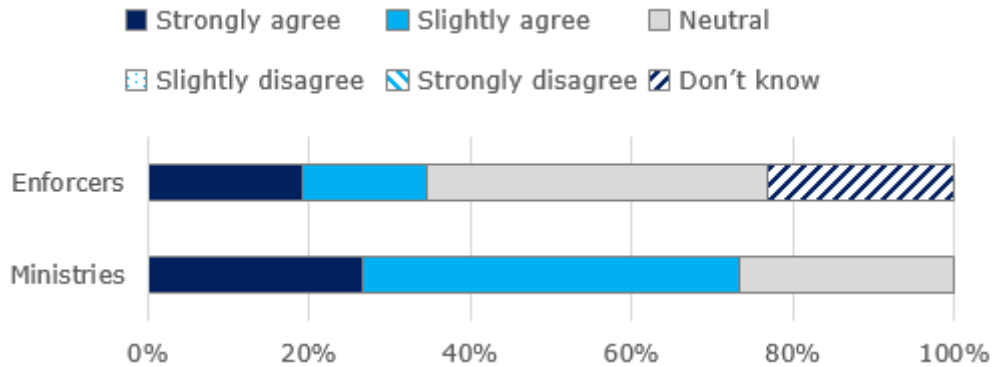
Source: Survey of ministries and national enforcers

The only ministry able to provide a quantitative estimate of the reporting costs was Slovenia, who estimated it to be €25,000. No other ministries or enforcers were able to provide quantitative estimates, making extrapolation of the single data point subject to rather high uncertainty. Assuming that the cost reported by Slovenia is fairly representative once considered in PPP terms and scaled to a unit cost per check, the costs for monitoring and reporting have been calculated for the EU. The unit cost has been deflated using the consumer price index from Eurostat. The overall cost is calculated by multiplying the unit cost per check by the number of checks performed.

The total for the years 2011-2012 is **7-8 million €/year**, although, given the very poor availability of information, this value is affected by high uncertainty.

Regarding suggestions from national enforcers and ministries, the combined reporting of Regulation (EC) No 561/2006 and Directive 2002/15/EC is seen as a positive development that has contributed to reducing costs. There were no negative responses from either ministries or enforcers on this point (see Figure 6-20).

Figure 6-20: Answers to the question: “To what extent do you agree that combining the reporting requirements has made reporting more efficient?”



Source: Survey of ministries and national enforcers

6.16.2. Quantitative analysis of identified monitoring and reporting costs for operators and drivers

Administrative costs borne by operators and drivers to report on the compliance with the social legislation are associated with the downloading process of the data stored in the tachographs and with the requirement of returning records.

It should be noted that, these costs of monitoring are included in the overall costs of compliance presented in the previous question. They were calculated separately for the purposes of this evaluation question in order to estimate (bottom-up) the extent of monitoring burdens on the industry, as required in the evaluation question. Details on the calculations are given in Annex B, Section 0.

Transport operators and drivers have a responsibility to make data available and accessible to enforcers in order to demonstrate their compliance with drivers’ hours rules. This means that operators and drivers are required to download data from the vehicles equipped with digital tachographs¹⁰⁷ and this involves costs, which also depend on the frequency of downloading (which may depend upon the nature of the operations carried out or on specific circumstances, e.g. if an operator discovers that the card is malfunctioning).

It was estimated that it takes a driver 1 minute to download his/her driver card data on the downloading device plus an extra 1 minute of administrative resource to process the data with the dedicated software. Analogously, it was estimated that it takes approximately 12.5 minutes to download driver’s data from the entire vehicle unit (UK Department for Transport, 2008).

On the basis of the above times and the assumptions that the weighted hourly rate for a driver in the EU is € 17.1¹⁰⁸ (actualised to €²⁰¹⁴ prices) the unit cost of downloading a driver card was estimated at €0.57 and the unit cost of downloading a vehicle unit €3.56. Assuming a downloading frequency of 13 times per year, this would equate to an annual

¹⁰⁷ Commission Regulation (EU) No 581/2010 establishes the maximum periods for the downloading of relevant data from vehicle units and from driver cards. The maximum period within which the relevant data are downloaded shall not exceed 28 days for data from the driver card and 90 days for data from the vehicle unit.

¹⁰⁸ Hourly wages based on standardised Eurostat data (the four-yearly Labour Cost Survey and the annual updates of labour cost (ALC) statistics) used by the Commission for large scale measurement of administrative burdens (2008-2009).

cost of €7.4¹⁰⁹ per driver using vehicles equipped with digital tachographs and an annual cost of €14¹¹⁰ for each vehicle equipped with a digital tachograph.

Using these unit costs and considering that, at the year 2014 and based on (Panteia et al, 2014), just above 2.2 million drivers¹¹¹ were driving around 3.1 million vehicles equipped with digital tachographs. This has produced an annual cost to industry of around €61 million.

A similar estimation has been made for registering data on driving and rest times with analogue tachographs. Based on the feedback provided by a driver during a study visits, it takes approximately 10 minutes to a driver to register this data. Assuming the same weighted hourly rate for a driver of € 17.1 (actualised to €²⁰¹⁴ prices) the unitary cost of registering data on driving and rest times was estimated at €2.85¹¹². Assuming the same frequency for archiving data as for the digital tachograph (i.e. 13 times per year) provides an annual unitary cost estimate of €37.1 per driver using vehicles equipped with analogue tachographs. Using these unit costs and considering that, at the year 2014, approximately 1.4 million drivers¹¹³ were driving just less than 1.9 million vehicles equipped with analogue tachographs, this has produced an annual cost to industry of around €51 million. However, as previously mentioned, these costs overlap with the overall cost increases in the previous evaluation question and do not include broader costs around ensuring compliance.

6.16.3. Summary and conclusions

National authorities and ministries typically do not consider that there are significant costs involved to meet reporting requirements. An estimate has been calculated in order to gauge the possible level of costs, starting from the value reported by Slovenia. Overall, the cost for reporting and monitoring has been estimated at €7-8 million/year for the period 2011-2012.

For operators and drivers, administrative costs for reporting activities with digital tachographs have been estimated at €61 million on a yearly basis. For analogue tachographs, this cost has been estimated at €51 million on a yearly basis. The higher total annual costs for digital tachographs compared with analogue tachographs result from the higher number of drivers using digital tachographs and vehicles equipped with such. The unitary annual cost of using digital tachograph is five times lower than the cost of using analogue tachograph.

¹⁰⁹ This value considers an average frequency of downloading data from the driver card of 13 times a year (every 28 days) (UK Department for Transport, 2008).

¹¹⁰ This value considers an average frequency of downloading the vehicle's VU 4 times a year (every 90 days) (UK Department for Transport, 2008).

¹¹¹ The number of drivers driving vehicles fitted with a digital tachograph has been calculated as a proportion of the numbers of active drivers holding a C and or D license (Panteia et al, 2014). This proportion amounting to 62% has been estimated by considering the number of vehicles fitted with a digital tachograph and registered in 2014 out of the total number of vehicles registered in that year and equipped with tachographs, as it results from own elaboration of ACEA statistics. Once determined, this proportion has been applied to the total number of in-scope drivers as found in (Panteia et al, 2014).

¹¹² This value considers an average frequency of downloading driver card of 28 days (e.g. 13 times a year) (UK Department for Transport, 2008) which is multiplied by the unitary cost for driver data registering (=€ 17.1/(60/10)). This totals € 50,957,914. Being analogue tachographs, costs for downloading driver data from vehicles units were not considered.

¹¹³ See footnote 16. For drivers driving vehicles fitted with an analogue tachograph a proportion of 38% of vehicles with an analogue tachograph has been calculated for the year 2014 based on ACEA statistics.

6.17. Coherence: Are the provisions and definitions related to the organisation of the working time of drivers (Directive 2002/15/EC) consistent with those on driving times, breaks and rest periods (Regulation (EC) No 561/2006)?

Are the provisions (including the scope of applications and exemptions) and definitions related to the organisation of the working time of drivers (Directive 2002/15/EC) consistent with those on driving times, breaks and rest periods (Regulation (EC) No 561/2006)? If not entirely, what are the differences, overlaps or inconsistencies? How do these shortcomings impact the compliance level?

This question relates to the 'internal coherence' of Directive 2002/15/EC and Regulation (EC) No 561/2006.

6.17.1. Coherence of the objectives between Directive 2002/15/EC and Regulation (EC) No 561/2006

According to its Article 1, the objective of Regulation (EC) No 561/2006 is to lay down rules in order to '**harmonise the conditions of competition** between modes of inland transport, especially with regard to the road sector, and to **improve working conditions and road safety**'. By comparison, the purpose of Directive 2002/15/EC is 'to improve the **health and safety protection** of persons performing mobile road transport activities and to **improve road safety and align conditions of competition**'.

The *objectives* of the two legislative acts are therefore closely and coherently aligned in order to promote health and safety of drivers and road safety and to avoid distortion of competition.

6.17.2. Coherence across similar types of provisions (exemptions, definitions, working time, breaks)

Specific instances of overlaps and uncertainties have been observed during the legal analysis.

Scope, exceptions and exemptions

On one hand, while both the Regulation and the Directive regulate the working conditions of drivers and persons performing mobile road transport activities, their requirements cover different types of obligations. Regulation (EC) No 561/2006 establishes a limited set of directly binding rules on maximum daily and fortnightly driving times; and daily and weekly minimum rest periods. Other aspects of working time in the road transport sector are not covered by the Regulation, as stated in Article 1 of the Regulation. The purpose of Directive 2002/15/EC is then to set minimum requirements on working time in the areas not covered by the Regulation. Article 2(4) Directive 2002/15/EC is particularly important to understand the articulation between the two acts, as it specifies that the Directive supplements the Regulation and that, where necessary, the Regulation takes precedence over the Directive. Article 2(1) of the Directive states that 'the Directive shall apply to mobile workers [...] participating in road transport activities covered by Regulation (EEC) No 3820/85 [...] as well as to 'self-employed drivers'¹¹⁴. This cross-reference establishes a link in the scope of the two acts, which may thus apply in parallel. The category of workers that is not subjected to Regulation (EC) No 561/2006 or Directive 2002/15/EC, namely self-employed travelling staff, is therefore not covered by EU social legislation. As shown in the figure below, the scopes of the two acts are complementary, with some overlaps (for drivers) and some workers out-of-scope (self-employed travelling staff). The scope of the two acts is therefore consistent in this regard. In terms of activities, whereas the Regulation covers only driving, the Directive covers also other transport activities in addition to driving (as per Article 3(a) of the Directive).

¹¹⁴ Before 23 March 2009, Directive 2002/15/EC excluded self-employed drivers from its scope.

Figure 6-21 – Scope of application of Regulation (EC) No 561/2006 and Directive 2002/15/EC

Application of Regulation (EC) No 561/2006	"Drivers"	"Self-employed drivers"		Application of Directive 2002/15/EC
		Employed drivers	"Mobile workers"	
	Non-drivers	Employed travelling staff		
		Self-employed travelling staff		

The scope of Directive 2002/15/EC is directly and explicitly linked to the one of the Regulation: Article 2(1) of the Directive specifies that the Directive applies to 'mobile workers **participating in road transport activities covered by Regulation (EC) No 561/2006**' (emphasis added). Therefore, activities that do not fall under the scope of the Regulation are not covered by the Directive either. In other words, the drivers of vehicles exempted from the Regulation according to its Article 3¹¹⁵ are also not within the scope of Directive 2002/15/EC. Where neither of these acts apply, Directive 2003/88/EC (on general working time) applies (excluding self-employed drivers).

A less clear articulation between the two instruments exists with regard to the exemptions (derogations) granted under the Regulation in its Article 13. This Article offers Member States the possibility to generally exempt through their national legislation additional categories of vehicles from the obligations on crews, driving times, breaks and rest periods. In these instances only national rules shall apply – if any specific rules were adopted at the national level. Given the specific focus of Directive 2002/15/EC on working times the Directive stays nonetheless applicable to these categories of vehicles exempted from the Regulation. The specific provisions on working times and breaks laid down by the Directive therefore apply to all activities falling under the general scope of the Regulation notwithstanding the existence of exemptions to the requirements on driving times and breaks.

The situation is more complicated with regard to rest periods. In that instance, the Directive does not provide specific obligations; rather it exclusively refers to the applicable provisions of the Regulation. Accordingly, the only rules that apply in relation to rest periods are those of the Regulation. Therefore, if a vehicle is not covered by the Regulation, whether pursuant to Article 3, Article 13 or Article 14, the vehicle is not covered by any EU rules on rest periods. This seems in line with the purpose of such exclusions, exemptions and exceptions. Besides, since the exceptions granted under Article 13 are 'subject to individual conditions on its own territory or on the territory of another Member State,' these elements may be regulated at national level instead of at EU level.

As a conclusion, although there is no inconsistency in the texts, the relationships between the exemptions granted under the Regulation and the obligations of the Directive remain a complex issue, which is not clarified in the wording of the texts. The stakeholders' survey concurs on this point. Five out of 15 respondents from ministries¹¹⁶ reported difficulties or inconsistencies in interpretations of the provisions on exceptions for driving times, break and rest. All of these were related to difficulties in interpretation rather than to inconsistencies, though the Estonian authorities considered that exceptions (i.e. Article 3 of the Regulation) are in general more difficult to use than exemptions (i.e. derogations - Article 13 of the Regulation). The difficulties revealed through the legal analysis, and confirmed with the survey suggest that the texts could benefit from more clarity, for instance through explicit cross-references to make the interaction more obvious.

Definitions in relation to scope

¹¹⁵ which lists vehicles carrying out specific activities that do not fall under the scope of the Regulation

¹¹⁶ namely Belgium, Estonia, France, Czech Republic and Sweden

In relation to definitions, the Regulation provides an explicit definition of the terms 'break' and 'rest', unlike the Directive, although the terminology is used in both acts. In this respect, the Regulation completes the Directive. When regulating on these issues in its Articles 5 and 6, the Directive cross-refers to Regulation (EEC) No 3820/85 [replaced by Regulation (EC) No 561/2006]. Regulation (EC) No 561/2006 explicitly defines break as a period during which a driver does not drive nor carry out 'other work'.

The definition of 'other work' provided in the Regulation avoids inconsistencies in establishing the scope of application of the key requirements of each of the two acts on driving time and working time by making direct reference to the Directive. Article 4(e) defines 'other work' as 'all activities which are defined as working time in Article 3(a) of Directive 2002/15/EC except 'driving', including any work for the same or another employer, within or outside of the transport sector'.

The different definitions of breaks between Regulation (EC) No 561/2006 and Directive 2002/15/EC were reported by the UEAPME (representatives of European SMEs) and the Austrian Chamber of Commerce as instances of inconsistencies. Even though, as explained above, the analysis does not conclude that there is any problem of inconsistency from a legal perspective, the statements of these two stakeholders may indicate a problem of readability of the legislation, which could potentially lead to difficulties in the practical implementation of the legislation.

To address this problem, one Belgian undertaking suggested that Article 5 of Directive 2002/15/EC should be included in the Regulation in order to ensure better application and enforcement of the provisions on breaks. An alternative, and maybe softer, way to increase readability would be to update the references included in Directive 2002/15/EC in order for them to mention Regulation (EC) No 561/2006 instead of the previous Regulation (EEC) No 3820/85.

Driving time and working time

Driving and working times are subject to six distinct but cumulative requirements laid down in the Regulation and Directive as illustrated in the table below. Three thresholds are set by the Regulation: daily maximum, weekly maximum and bi-weekly maximum. The Directive sets maxima under different timeframes: daily (when night work is performed), weekly and over four month periods. Article 6(2) of the Regulation provides a reference to the maximum weekly working time laid down in Article 4 of the Directive in order to avoid inconsistencies. The overlapping requirements do not induce any legal inconsistency. With regards to the practice, the stakeholders' survey highlighted that the legal requirements are considered rather clear¹¹⁷.

Table 6-17 – Overview of the requirements on driving and resting times

	Day	Week	Other
Driving time Regulation (EC) No 561/2006	Maximum 9h Exceptionally 10h up to twice a week Art. 6 (1)	Maximum 56h Must comply with Directive 2002/15/EC Art.6(2)	Maximum 90h over two weeks Art. 6(3)
Working time Directive 2002/15/EC	If night work is performed, maximum 10 hours in each 24h period Art. 7(1)	Maximum 60h Art. 4(a)	Weekly average over four months of maximum 48h Art. 4(a)

Breaks and rest periods

The key requirements of both acts in relation to breaks, break standards are different. To the extent that the Regulation takes precedence over the Directive, in case of conflict, only the rules of the Regulation would apply which will automatically be in line with the ones of the Directive given that the Regulation is more stringent than the Directive. This avoids any ambiguity or problem of inconsistency. The relationships between the two instruments are further clarified by Article 5(1) of the Directive which explicitly states that breaks must

¹¹⁷ For further details, see Section 10.11 in Annex B.

comply with the requirements laid down in the Regulation. The overlapping requirements of the Regulation and Directive are clear and unambiguous from a legal perspective. They however can lead to practical difficulties for undertakings in the management of the drivers' breaks. This situation is reported below under section 6.17.4 on the practical consequences of inconsistencies.

In relation to the rest period requirements, Article 8 of the Regulation and Article 6 of the Directive provide the relevant rules. Article 6 makes a direct reference to the Regulation, which avoids inconsistencies. However, regarding the scope, the formulation of Article 6 of Directive 2002/15/EC only refers to the application of the provisions to 'mobile workers', instead of 'drivers'. It is unclear why this formulation was chosen, since, in effect, self-employed drivers will still be subject to the obligations established by the Regulation, similarly to mobile workers. The majority of stakeholders consider that the provisions on rest periods and breaks are clear¹¹⁸.

Article 9 of the Regulation moreover provides a specific clarification for activities that lead to particular interpretation of the requirements on other work, rest periods and breaks¹¹⁹.

In summary, there do not appear to be legal inconsistencies between the provisions in the Regulation and Directive. This assessment is ultimately confirmed by the limited number of cases brought to the European courts with regard to issues of inconsistencies. After more than eight years of application of the Regulation, three questions of interpretation were brought to the ECJ¹²⁰. In these three cases, the Court underlined the existing coherence between the different provisions and the objectives of the texts.

In addition to these cases, three decisions (C-76/77, C-297/99 and C-235/94) led the Commission to draft guidance notes¹²¹ reflecting the findings of the Court in order to ensure the harmonised application of social rules in road transport pursuant to Article 22 (4) of Regulation (EC) No 561/2006. These cases were related to the previously existing legislation (Regulation (EEC) 3820/85) and their conclusions taken into account for the drafting of Regulation (EC) No 561/2006 and its guidance notes¹²². The existence of guidance and clarifications notes does not reflect the presence of inconsistencies of the Regulation; rather it highlights the need for uniform interpretation across the Member States and for effective implementation of the European requirements at national level.

Overall therefore, the documents identified in the literature review did not contain additional information regarding issues of internal coherence of the legislation. No ECJ cases of EU documents raising issues of internal coherence were identified. At most, the existing case law highlights that further clarification could be useful with regard to Article 3(h) and Article 13 of Regulation (EC) No 561/2006¹²³.

6.17.3. Existence of positive synergies

The analysis of positive synergies is based on a legal review and the findings from the consultation of stakeholders (interviews). The positive impacts of the joint implementation of Directive 2002/15/EC and Regulation (EC) No 561/2006 may be visible through the questions on the impacts of EU road social legislation. This connection is however not clear

¹¹⁸ For further details, see Section 10.11 in Annex B.

¹¹⁹ For further details, see Section 10.11 in Annex B.

¹²⁰ C-317/12 'Lundberg' (Art. 3(h) - Vehicles not exceeding 7.5t used for the non-commercial carriage of goods), C-554/09 'Seeger' (Article 13 (1) (d) - Exemption for vehicles used for carrying materials) and C-222/12 'Karuse' (Article 13 (1) (h) - Exemption for vehicles used fully and wholly for public services).

¹²¹ The guidance notes in question are guidance note 1 on the exceptional deviation to find a suitable stopping place and guidance note 2 on the recording of driver's travelling time.

¹²² COM(2001)573: Proposal for a Regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport.

¹²³ No data could be obtained regarding national case-law where inconsistencies between the Regulation and the legislation transposing the Directive appeared to be the reason for an infringement. It is unclear whether the reason is that no such cases have occurred or because the data is not available in the countries subject to a case-study.

enough to allow the establishment of a causal link between overall impacts of the EU road social legislation and the existence of positive synergies between the Regulation and the Directive.

Positive synergies between Directive 2002/15/EC and Regulation (EC) No 561/2006 rise from the use of in-built mechanisms, such as cross-references, which exist for all key obligations established by the road transport social legislation¹²⁴. Most cross-references establish clear linkages without the need for modifications, and generally the two acts were found in the above analysis to be consistent.

However, as described in section 6.17.2, breaks are defined in the Regulation by reference to its own definition of 'other work' that is defined by reference to the activities listed Article (3) (a) of Directive 2002/15/EC on 'working time'. The lack of an explicit definition of breaks within Directive 2002/15/EC makes for a complicated reading of the legislative texts.

6.17.4. Practical consequence of internal inconsistencies

There are two main practical issues that relate to internal inconsistencies, as follows:

While the **driving and working time** maxima provided under the Regulation and the Directive are compatible from a legal point of view, their combined application leads to practical issues. As pointed out by enforcers at the CORTE Enforcement Meeting of 18 March 2015, only little time is left for other work when the maximum weekly driving time is used to its full extent. Two enforcement authorities also specifically underlined in the survey that the overlaps between the maximum driving times of the Regulation and the working times of the Directive were problematic. Also in the survey, 10 out of 21 enforcement authorities highlighted difficulties related to the definition of working time. Moreover 9 out of 14 labour unions highlighted inadequate organisation of driving (and rest) times by transport undertakings as a major cause of poor compliance with the Regulation. That number rose to 11 out of 14 with regard to poor compliance with the working times and rest requirements under Directive 2002/15/EC. They highlighted that the current legislation does not leave sufficient time for non-driving activities. Three interviewed undertakings also expressed their dissatisfaction with the combination of driving and working times. Finally, two national authorities (Cyprus and Germany) highlighted the overlaps between the maximum driving times of the Regulation and the working times of the Directive as problematic.

In relation to **breaks**, even though the overlapping requirements of the Regulation and Directive do not pose issues in legal terms, they can lead to practical difficulties for undertakings in the management of the drivers' breaks. The British authorities specifically reported that the overlap between the break requirements under Directive 2002/15/EC and Regulation (EC) No 561/2006 can be confusing for occasional drivers or drivers who cover small distances. Two undertakings also pointed that the overlaps between the breaks requirements make it more difficult for undertakings to appropriately plan the work of drivers.

6.17.5. Summary and conclusions

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

Overall, the legal analysis of the two acts confirms that they have been designed with the aim of avoiding inconsistencies and increasing synergies. The absence of infringements

¹²⁴ For an overview of the existing cross-references, see Section 10.11 in Annex B.

cases brought to the ECJ under Regulation (EC) No 561/2006 and Directive 2002/15/EC confirms this conclusion.

Although there are no problems of coherence in a strict legal sense, the analysis did point to several practical problems:

1. A difficulty experienced in combining the two systems of breaks provided by the Directive and the Regulation;
2. Problems in combining the driving and working time requirements.

6.17.6. Recommendations

Although there is not any incoherence in a strict legal sense, in order to simplify the reading of the texts, it is however suggested to:

- Include an explicit definition of "breaks" in Directive 2002/15/EC, coherent with the one provided in Regulation (EC) No 561/2006;
- Update the cross-references included in Directive 2002/15/EC in order to remove the references to the previous Regulation (EEC) No 3820/85, replaced by Regulation (EC) No 561/2006;
- Clarify the relationships between exemptions under Regulation (EC) No 561/2006 and the obligations under Directive 2002/15/EC, through explicit cross-references such as the one of Article 3(2) of Regulation (EU) 165/2014;
- Consider revising the combination of the provisions on working and driving times.

6.18. Coherence: How do different pieces of legislation in road transport interact in terms of road safety, working conditions of drivers and harmonised conditions of competition?

The social legislation in road transport co-exist with different pieces of legislation, such as: tachograph regulation (Regulation (EU) No 165/2014), road package Regulations (Regulation (EC) No 1071/2009 on access to occupation of transport operator, Regulation (EC) No 1072/2009 on access to the road haulage market and Regulation (EC) No 1073/2009 on access to the passengers transport market), Directive on training of drivers (Directive 2003/59/EC) and recently adopted roadworthiness package (Directive 2014/45/EU on periodic roadworthiness tests and Directive 2014/47/EU on technical roadside inspections). How do these legislative acts interact in terms of road safety, working conditions of drivers and harmonised conditions of competition? Can inconsistencies of references and definitions, and overlaps of provisions be identified and remedied?

The second coherence question analyses the 'external coherence' between the road social legislation and other pieces of legislation as listed above. Other relevant acts were analysed as part of literature review and field research only to the extent that they are mentioned as relevant in the context of the coherence analysis.

6.18.1. Synergies among road transport legislation

The analysis in this question considers each piece of legislation in turn, and focusses on in-built mechanisms aiming at ensuring consistency or enhancing synergies between the road social legislation and other acts in relation to their scopes and definitions, as well as for other key requirements. The pieces of legislation listed in the evaluation question all interact with the road social legislation and among each other. Section 10.12 in Annex B provides a comprehensive mapping of cross-references between each of the legal acts. The salient points are discussed below.

6.18.1.1. Interactions between the road social legislation and the Tachograph Regulation

Regarding the definitions of terms used in Regulation (EC) No 561/2006, the key term of 'driving time' is defined with a direct reference to Regulation (EEC) 3821/85 (replaced by Regulation (EU) 165/2014) on tachographs. Overall Regulation (EC) No 561/2006 aims at simplifying and clarifying the rules to allow effective and uniform enforcement as per Regulation (EEC) No 3821/85. Reference is made to the Tachograph Regulation whenever records, checks or monitoring are mentioned. In addition, Regulation (EEC) No 3821/85 was amended by Regulation (EC) No 561/2006 to ensure legal certainty, and penalty procedures under the two Regulations are streamlined.

Regarding Directive 2006/22/EC, the Directive lays down minimum conditions for the implementation of Regulation (EEC) No 3820/85 but also Regulation (EEC) No 3821/85¹²⁵. With regard to the Tachograph Regulation, several articles provide interlinkages between the two Regulations.

Table 6-18: Interactions between the road social legislation and the Tachograph Regulation¹²⁶

Relationship with road social legislation

Scope: Art. 3(1) Tachographs must be used and installed in vehicles used for activities to which Regulation (EC) No 561/2006 applies.

Art. 3(2): MSs may exempt vehicles mentioned in Art. 13(1) and (3) of Regulation (EC) No 561/2006.

Art. 3(3): MSs may exempt vehicles used for transport operations which have been granted an exception in accordance with Article 14(1) and (2) of Regulation (EC) No 561/2006.

¹²⁵ Directive 2002/15/EC, Article 1.

¹²⁶ Regulation (EU) 165/2014 (replaced Regulation (EEC) No 3821/85)

Definitions: Art. 2(1): "For the purposes of this Regulation, the definitions set out in Article 4 of Regulation (EC) No 561/2006 shall apply."

Reference to Art. 3 of Directive 2002/15/EC in relation to the concepts of 'other work' and 'availability'.

In terms of scope, the Tachograph Regulation applies to vehicles registered in a Member State which are used for the carriage of passengers or goods by road and to which Regulation (EC) No 561/2006 applies¹²⁷. This relationship is further clarified through Articles 3(2) and 3(3) of Regulation (EU) No 165/2014, which mirror the exemptions provided in the Driving Time Regulation. The scope of the two Regulations is therefore fully aligned.

Other elements such as the use of the definitions provided by Regulation (EC) No 561/2006 and Directive 2002/15/EC for the purposes of the Tachograph Regulation¹²⁸ highlight the attention given to coherence between the two instruments. Besides, Regulation (EU) 165/2014 complements Regulation (EC) No 561/2006 in relation to specific aspects, such as data protection (Article 7). Finally, it is noteworthy that the coherence problem described in Clarification Note 4 as to Art. 26 of Regulation (EC) No 561/2006 was fully corrected in the Tachograph Regulation through Art. 45 ('Amendment of Regulation (EC) No 561/2006'), which took effect on 2 March 2015.

6.18.1.2. Access to occupation and markets

Specific links are also established by the legislation on access to occupation¹²⁹ and markets (goods and passengers transport¹³⁰) Regulation (EEC) 3821/85, Regulation (EC) No 561/2006, Directive 2002/15/EC, and Directive 2006/22/EC¹³¹.

With regard to access to occupation of transport operator, requirements of professional competence include knowledge about the road transport occupation industry¹³². It includes knowledge about social law and more specifically the rules applicable to driving time, rest periods and working time¹³³. In order to satisfy the requirement of good repute established in Art. 3(1)(b) Member States must consider the conduct of the undertaking and determine the conditions to be met¹³⁴. These conditions must at least include "that the transport manager or the transport undertaking have not in one or more Member States been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating in particular to the driving time and rest periods of drivers, working time and the installation and use of recording equipment". These alignments ensure that understanding and compliance with the legal requirements of the road social legislation is a pre-condition for access to occupation of transport operator throughout the EU. It directly ensures a coherent approach both in geographical terms (i.e. across the different Member States) and in terms of objectives (i.e. road safety, improved working conditions and harmonised competition).

For access to the road haulage market, the exemptions to the obligation of holding a Community licence foreseen under Regulation (EC) No 1072/2009 are drafted to be aligned with the scope of Regulation (EC) No 561/2006. The definition of driver is identical in both Regulations. Moreover definitions of 'international carriage' and 'cabotage operations' provided both in Regulation (EC) No 1072/2009 and Regulation (EC) 1073/2009 match, according to their respective scopes. The definition of 'serious infringement of Community road transport legislation' includes a reference to the concept of 'good repute' in

¹²⁷ Regulation (EC) No 165/2014, Art. 3(1).

¹²⁸ Regulation (EC) No 165/2014, Article 2(1).

¹²⁹ Regulation (EC) 1071/2009 (repealing Directive 96/26/EC)

¹³⁰ Regulation (EC) 1072/2009 (replacing Regulation EEC No 881/92, Regulation EEC No 3118/93 and Directive 2006/94/EC) and Reg. 1073/2009 (replaced Regulation EEC No 684/92 and Regulation EC No 12/98)

¹³¹ For an overview of the interlinkages, see Section 10.12 in Annex B.

¹³² Regulation (EC) 1071/2009, Article 8(1).

¹³³ Regulation (EC) 1071/2009, Annex I (I)(C), no. 4

¹³⁴ Regulation (EC) 1071/2009, Article 6(1).

accordance with Regulation (EC) No 1071/2009. Furthermore, Article 9 Regulation (EC) 1072/2009 and Article 6 Regulation (EC) 1073/2009 require the application of the driving time and rest periods for cabotage as per the national legislation 'save as otherwise provided in Community legislation' thus ensuring the application of the EU road social legislation in case of conflicting provisions¹³⁵. Consistency is thus ensured.

6.18.1.3. The roadworthiness package

Directive 2014/47/EU on roadside inspections directly refers to Directive 2006/22/EC: Articles 7 (risk rating system) and 9 (selection of vehicles for initial technical roadside inspection) feed in and draw upon the risk profiles set under Directive 2006/22/EC. Pursuant to Article 7 of Directive 2014/47/EU information concerning the number and severity of deficiencies shall be introduced into the risk rating system established under Article 9 of Directive 2006/22/EC. Under Article 9, when identifying vehicles to be subject to an initial technical roadside inspection, inspectors may select, as a priority, vehicles operated by undertakings with a high-risk profile as referred to in Directive 2006/22/EC. In-built mechanisms are provided in nearly all pieces of legislation¹³⁶. It also illustrates that different types of mechanisms are used. They may be:

1. Cross-references to specific acts,
2. Cross- references to working time/ driving time or rest periods,
3. Wording that may be assimilated to 'without prejudice clauses' ('save as otherwise provided in Community legislation').

These mechanisms not only aim at avoiding inconsistencies or double-regulation, they also show that the acts are designed in a manner that seeks to ensure an efficient application of the different acts in combination.

The number of in-built mechanisms moreover indicates that the proper application of the European rules requires a holistic approach of the EU road acquis. In theory, however these alignments ensure coherence across the European Union and between the common objectives of these legislations on road safety, improved working conditions and harmonised competition. With regard to practice, the stakeholders' survey was however inconclusive: more than 75% of the total number of respondents could not assess the impacts of EU road social legislation on other EU (transport sector) legislation¹³⁷. The low answer rate to this question can also be interpreted as indicating a low level of awareness of interlinkages, and a fortiori of synergies between the road social legislation and other EU transport legislation, thus suggesting a limited impact of the road social legislation on other transport related legislation.

6.18.2. Overlaps, gaps and inconsistencies

The legal analysis of the provisions of the acts listed in Evaluation Question 18 has uncovered only a limited number of potential issues¹³⁸.

The issues identified mainly refer to differences in definitions and are due to intentional differences in the scope of the different instruments. A few terms are defined differently in two or more acts. The terms that differ in their definition are 'vehicle', 'competent authority', 'cabotage operations', 'international carriage', and 'roadworthiness tests'. For the four latter terms, the differences between the definitions are due to the individual context in which they are used, but the general understanding of the terms is the same. The term 'vehicle' is the only term that is used more inconsistently, as the detailing of the term varies. The differences in the content of this definition are nevertheless only theoretical problems, which do not seem to have an actual impact on coherence. No additional evidence of the impact of these issues on the objectives of road safety, improved

¹³⁵ Regulation (EC) 1071/2009, Article 9(1) "The performance of cabotage operations shall be subject, save as otherwise provided in Community legislation, to the laws, regulations and administrative provisions in force in the host Member State with regard to the following: [...] (d) the driving time and rest periods"

¹³⁶ For further details, see Section 10.12 in Annex B.

¹³⁷ For detailed results, see Section 10.12 in Annex B.

¹³⁸ For the detail of potential inconsistencies, see Section 10.12 in Annex B.

working conditions and harmonised competition were identified in the stakeholders' survey, the literature and interviews.

More problematic is the lack of definitions in the road social legislation (e.g. the lack of definition of non-commercial carriage). This appears with the definition of 'undertakings' which is absent in the road social legislation, even though it is used in Directive 2002/15/EC. A definition is provided in other acts (Article 2(4) of Regulation (EC) 1071/2009, and Article 3(9) of Directive 2014/47/EU - which refers to the definition of Regulation (EC) 1071/2009). The lack of clarity of the concept of undertakings was not mentioned in the survey as an element demanding attention, thus suggesting a limited impact of this omission for the practical implementation of the legislation.

In addition to the legal analysis of the acts covered under Evaluation Question 18, a literature review has highlighted several issues in relation to other acts.

6.18.2.1. Directive 2003/88/EC (General Working Time Directive)

The General Working Time Directive has an overlapping scope with that of Directive 2002/15/EC¹³⁹. The legal texts (as well as the literature¹⁴⁰) show that the articulation between the General Working Time Directive and the road social legislation is quite clear. As per Article 2 of Directive 2002/15/EC, Directive 2002/15/EC is *lex specialis* to Directive 2003/88/EC¹⁴¹, meaning that it takes precedence where more specific requirements apply and the General Working Time Directive applies to the mobile workers that are not covered by Directive 2002/15/EC.¹⁴² This is consistent with Article 14 of Directive 2003/88/EC stating that the 'Directive shall not apply where other Community instruments contain more specific requirements relating to the organisation of the working time for certain occupations and occupational activities', and with Article 20(1) stating that 'Articles 3, 4, 5 and 8 shall not apply to mobile workers'¹⁴³.

Directive 2003/88/EC provides in its Articles 17 and 18 for derogations to the limitation of working time and to the daily and weekly rests set respectively in its Articles 6, 3 and 5. However, the specific sector of road transport has been seen as requiring specific rules to accommodate the specific nature of the work undertaken. A close analysis of the derogations indicates that these are not applicable in the context of road transport of passengers and goods. This is the case for two reasons: firstly, Article 20(1) of Directive 2003/88/EC excludes the application to mobile workers of its Articles 3, 4, 5 and 8. The rules concerning the daily and weekly rest periods applying to drivers are therefore *de facto* not subject to the derogations provided in Directive 2003/88/EC, except for the derogation to resting times in case of force majeure and accidents; secondly, for the remaining derogations, i.e. those concerning Article 6, the only possible derogation foreseen in Article 17(1) of Directive 2003/88/EC (for managing executives, family workers and religious workers) does not seem applicable in the context of road transport.

Besides, the General Working Time Directive covers elements that are not regulated by Directive 2002/15/EC, i.e., annual leave, adequate rest, and certain provisions for night workers¹⁴⁴.

However, in the 26th report on implementation of the road social legislation (European Commission, 2012, p. 3), the British Trade Unions claimed that many requirements of Directive 2002/15/EC are causing confusion among drivers and operators on the authorized working time, and therefore any steps towards simplifying the Directive or fusing the legislation into the general Working Time Directive 'would be more than welcome'. Even

¹³⁹ See Table 10-14 in Annex B for an overview of the working time requirements under Directive 2002/15/EC and Directive 2003/88/EC.

¹⁴⁰ E.g. Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities COM(2008) 650 final, p.3.

¹⁴¹ See Article 2(3) of Directive 2002/15/EC.

¹⁴² See Article 2(2) of Directive 2002/15/EC.

¹⁴³ Defined as 'any worker employed [...] by an undertaking which operates transport services for passengers or goods by road [...] (Article 2(7) of Directive 2003/88/EC)'.
¹⁴⁴ See Recital 8 of Directive 2002/15/EC.

though from a legal point of view; the fact that Directive 2002/15/EC is *lex specialis* to Directive 2003/88/EC avoids overlaps, the similar scope may be the source of that confusion in terms of implementation.

6.18.2.2. European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR)

Article 2(3) of Regulation (EC) No 561/2006 sets up the articulation with the AETR Agreement, ensuring that the provisions of both instruments are aligned. Two problems with regard to the AETR Agreement were mentioned in the TRACE project, and listed as an issue in the TRT Overview Report (TRT, 2012).

The first one is on weekly driving and rest. Article 2 of Regulation (EC) No 561/2006 provides the scope of the Regulation and distinguishes between situations where the Regulation applies (Article 2(2)) and where the AETR applies (Article 2(3)). It was raised as an issue that a driver may be subject subsequently to both Regulations in a single week. This situation raises the question of the enforcement of the requirements in relation to maximum weekly driving time or weekly rest periods when the two Regulations apply concurrently (TRT, 2012)¹⁴⁵.

The second relates to vehicle registration. Article 2(2) of Regulation (EC) No 561/2006 provides that vehicles of any registration are required to adhere to the requirements of the Regulation for journeys that are exclusively undertaken within the EU. Article 2(3) provides that the AETR shall apply to operations taken in part outside the area. On the other hand, Article 3 of Regulation (EEC) 3821/85 requires only EU-registered vehicles, unless otherwise exempt, to be equipped with an appropriate tachograph, and for the drivers of such vehicles (if engaged in an in-scope activity) to operate that tachograph according to the regulations. As mentioned in the TRT Report, 'it appears that while non-EU AETR-registered vehicles may be required to comply with Regulation (EC) No 561/2006 in certain circumstances, there does not appear to be a requirement to comply with Regulation (EEC) No 3821/85 or an equivalent regulation' (TRT, 2012)¹⁴⁶.

The stakeholders' survey and the study visits did not bring additional information with regard to the nature and scale of these problems. More generally, more than 75% of respondents could not assess the impact of EU road social legislation on other EU (road transport sector) legislation. One enforcement authority reported that lack of coherence or overlaps with other pieces of legislation was a cause of difficulty, while nine authorities considered it made some contribution and ten authorities saw that factor as not applicable or as a minor contribution. Besides, the comments from the ministries were of general nature. The Belgian ministry highlighted that it was unfortunate that Regulation (EEC) No 3821/85 (soon to be replaced by Regulation (EC) No 165/2014) and Regulation (EC) No 561/2006 were never updated at the same time, leading to a constant outdating of one or the other piece of legislation. The Swedish authority called for a generally clearer regulation, suggesting repealing Regulation (EC) No 561/2006 and Directive 2002/15/EC in order to use only the AETR Agreement. Overall there is no evidence that the texts are incoherent or hamper the consistent achievement of the objectives of increased road safety, improved working conditions and harmonised competition.

6.18.2.3. Directive 2003/59/EC on the training of drivers

Appropriate and regular trainings are important to achieve the general aim of the EU road transport social regulation in terms of road safety. The links with the social legislation are however tenuous in this area. In the case of Directive 2003/59/EC on the training of drivers, the aim to improve road safety is common with the road social legislation. However, the link is limited, as there is no established legal requirement for drivers subject to the Regulation to hold a certificate of professional competence. Yet, in instances where the scopes of the acts overlap, such correlation will *de facto* apply.

¹⁴⁵ TRT Overview report, Table 9, p.58

¹⁴⁶ Ibid.

Overall, the scope of Directive 2003/59/EC is generally wider than that of the Regulation. It means that drivers falling under the Regulation will be qualified under the Directive, in accordance with the purpose of road safety of the two acts. There are nevertheless some situations where the scope of the Directive is narrower than that of the Regulation. In particular:

- Drivers of vehicles with a maximum authorised speed not exceeding 40km/h are exempted under the Regulation (Article 3(b)), while vehicles are exempted under Directive 2003/59/EC when their maximum authorised speed does not exceed 45km/h (Article 2(a) Directive 2003/59/EC). It implies that no training pursuant to Directive 2003/59/EC is required for drivers of vehicles with a maximum authorised speed between 40 and 45km/h while the requirements of the Regulation will apply to them;
- No training pursuant to Directive 2003/59/EC is required for vehicles used in the course of driving lessons for any person wishing to obtain a driving licence or a CPC although the requirements of the Regulation would apply to these drivers unless a national exception is granted under Article 13 (g) of the Regulation.
- No training pursuant to Directive 2003/59/EC is required for drivers carrying out non-commercial carriage of goods including for vehicles over 7.5t (Article 2 (f) Directive 2003/59/EC), although the requirements of the Regulation would apply to these drivers.
- No training pursuant to Directive 2003/59/EC is required for drivers conducting vehicles carrying material or equipment to be used by the driver in the course of his or her work, provided that driving the vehicle is not the driver's principal activity (Article 2(g) Directive 2003/59/EC), although the requirements of the Regulation would apply to these drivers unless a national exception is granted under Article 13 (d) of the Regulation.

In these instances, the drivers subject to the Driving Time Regulation will not be subject to the requirements of the Directive on the training of drivers, meaning that they will drive without being trained along the requirements of the Directive. Even though, as previously explained, this is not *per se* a legal issue, this is rather counterproductive in achieving the common objective of road safety sought by the two acts. Consequently, the scope of the Directive should be aligned with that of the Regulation so as to ensure a proper training of the drivers subject to the Regulation.

6.18.3. Summary and conclusions

In-built mechanisms are provided in nearly all pieces of legislation analysed in the context of this question. Their presence illustrates that different types of mechanisms are used. They may be:

1. Cross-references to specific acts,
2. Cross- references to working time/ driving time or rest periods,
3. Wording that may be assimilated to 'without prejudice clauses' ('save as otherwise provided in Community legislation').

These mechanisms not only aim at avoiding inconsistencies or double-regulation, they also show that the acts are designed in a manner that seeks to ensure an efficient application of the different acts in combination. The number of in-built mechanisms moreover indicates that the proper application of the European rules requires a holistic approach of the EU road acquis, which may prove to be challenging in practice. The results of the survey and different study visits however did not highlight any issues or examples of synergies with regard to these interactions. On this basis, a causal link between the existing interactions of the analysed texts and improved working conditions of drivers, enhanced road safety, and undistorted competition among companies could not be established.

Only a limited number of potential issues of inconsistencies, overlaps and gaps were identified. All issues related to differences in definitions across the different legislative texts, namely on the definitions of 'vehicle', 'competent authority', 'cabotage operations', 'international carriage', and 'roadworthiness tests'. Another problematic instance is the lack of definitions in the road social legislation. It appears with the definition of 'undertakings'

which is absent in the road social legislation, even though it is used in Directive 2002/15/EC. These discrepancies do not however seem to have a significant impact on the proper application of the road social legislation nor on its objectives of increased road safety, improved working conditions and harmonised competition. Regarding the effectiveness of the existing legislation, this aspect is covered by specific evaluation questions.

With regards to other acts (Directive 2003/88/EC and AETR Agreement), the articulation between those texts and the road social legislation is unambiguous from a legal perspective, even though from a more practical point of view, the similar scope has been raised as a source of confusion in terms of implementation.

6.18.4. Recommendations

The overall analysis on the external coherence of road transport social legislation has not uncovered substantial issues of coherence. Given the lack of substantial issues, the consultants make only two recommendations:

- Include a definition of 'undertaking' in Directive 2002/15/EC or an adequate cross-reference. This would improve the readability and sense of coherence of the texts.
- Align the scopes of Regulation (EC) 561/2006 and Directive 2003/59/EC in particular:
 - Article 3(b) of the Regulation and Article 2 (a) of the Directive;
 - Article 3(h) of the Regulation and Article 2 (f) of the Directive;
 - Articles 3 and 13 (g) of the Regulation and Article 2(e) of the Directive;
 - Articles 3 and 13 (d) of the Regulation and Article 2(g) of the Directive.

6.19. Coherence: How does the social legislation in road transport relate to the goals of EU transport policy, the Charter of Fundamental Rights of the EU and EU Social policy and the wider economic, social or environmental challenges of EU policies?

How does the social legislation in road transport relate to the goals of EU transport policy (as set out in the 2011 White Paper), the Charter of Fundamental Rights of the European Union and EU Social policy and the wider economic, social or environmental challenges of EU policies? Has it contributed (and to what extent) to the general policy objectives?

The third evaluation question on coherence requires an analysis of external coherence in the broader perspective of the EU transport policy and other related EU policies. The main difficulty in tackling this question is therefore its broadness. EU transport policy, and a fortiori EU social policy are vast topics, hence it is necessary to first select the most relevant texts. The analysis covers the following documents:

1. White Paper- Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system (European Commission, 2011);
2. Charter of Fundamental Rights of the European Union (2010/C 83/02);
3. Europe 2020: the European Union strategy for growth and employment (Commission, 2010);
4. Cohesion Policy in support of growth and job – Community Strategic Guidelines, 2007-13 (Commission, 2005);
5. 2007-2012 Health and Safety Strategy (Commission, 2007).

The relevant texts are analysed to answer the overarching question on coherence based on a cross-analysis of the social legislation in road transport and other EU policies for interactions and for contradictions.

6.19.1. The 2011 White Paper

The 2011 White Paper presents an EU vision for a competitive and sustainable transport system, the strategy to implement this vision, and a list of initiatives to implement the strategy.

With regards to access to the market and fair competition, the road transport social legislation establishes explicit links with the EU Regulations on access to market (for further analysis see question 18) and is aligned with the broader EU policy objectives of the White Paper.

Road safety and related increased in the social costs of accidents¹⁴⁷ are other key concerns addressed by the White Paper. One of the ten 'goals for a competitive and resource efficient transport system' provided in the Roadmap is to move close to zero fatalities in road transport by 2050 and to halve the number of road casualties by 2020¹⁴⁸. Several initiatives listed in relation to road safety are also relevant in the context of road transport¹⁴⁹. While the road transport social legislation explicitly aims at improving road safety through requirements on driving and working times¹⁵⁰, the White Paper does not link those two aspects. The road transport social legislation however establishes linkages with the legislation regulating the elements referred to in the White Paper on road worthiness, training, tests and inspections (see analysis under question 18). In this respect, the road transport social legislation is aligned with the broader policy goals of the White Paper.

¹⁴⁷ p.5 §13.

¹⁴⁸ Goal number (9), p.10.

¹⁴⁹ Annex I to the Roadmap, Point 16 - Harmonise and deploy road safety technology as well as - Focus on training and education of all users; promote the use of safety equipment (seatbelts, protective clothes, anti-tampering); Point 24 - Technologies to improve transport security and safety.

¹⁵⁰ Regulation (EC) No 561/2006, Article 1 and Directive 2002/15/EC, Article 1.

The White Paper moreover presents the broader policy objectives related to working conditions¹⁵¹. The Annex to the Roadmap includes an entire section dedicated to initiatives aiming at 'promoting quality jobs and working conditions', which notably includes the adoption of a social code for mobile road transport workers¹⁵². The 2011 White Paper and the road social legislation are fully consistent, as the measures defended and promoted in the Roadmap aim at implementing a.o. the same objectives as those set in the legislation¹⁵³. In particular, the social aspects of the roadmap correspond well to the social objectives of the legislation. On the other hand, the economic and environmental elements, which are a significant part of the roadmap, are not reflected in the road social legislation. Economic measures to enhance efficiency (in particular multimodal operations) and environmental goals both tend towards a reduction of road freight in favour of other modes of transport. This may have an impact in terms of competition and working conditions which are currently not foreseen in the road social legislation.

6.19.2. The Charter of Fundamental Rights of the European Union

Besides the general principles of freedom of movement, Title IV of the Charter is related to solidarity and working conditions. Article 31 of this Title establishes the right to fair and just working conditions. This article grants rights to workers to daily and weekly rest periods as well as a limitation to the maximum working hours. It is therefore of particular relevance and concordance with the road transport social legislation which must be interpreted in light of the relevant provisions of the Charter.

Road social legislation is an illustration of the implementation of the fundamental rights set in the Charter - within the EU *acquis*. Health and safety of workers is one of the key objectives of the legislation. Directive 2002/15/EC and Regulation (EC) No.561/2006 precisely set maximum number of working hours, daily and weekly rest periods and annual period of leave (also applying to drivers) as per Article 31(2) of the Charter¹⁵⁴.

Article 52 of the Charter foresees the possibility to derogate to its rules, including Article 31(2), in specific circumstances (limitations necessary and meeting the objectives of general interests or the need to protect the rights and freedoms of others). Pursuant to this possibility included in the Charter, Article 8 of Directive 2002/15/EC provides for derogations to its rules on the maximum weekly working time (Article 4) and night work (Article 7). In Regulation (EC) No 561/2006, besides the possible exceptions pursuant to Article 13 (see Section 6.17.2), Article 6(1) second indent, Article 9 (1) and (2) as well as Article 8(5) grant derogations to the main requirements in specific circumstances and under particular conditions. To the extent that they are sufficiently justified, derogations provided by the road transport regulation and directive are within the margin allowed by Article 52 of the Charter¹⁵⁵.

6.19.3. Europe 2020: The European Union Strategy for growth and employment

The European Union Strategy (Commission, 2010) puts forward three priorities (smart growth, sustainable growth and inclusive growth), and propose seven 'flagships initiatives to catalyse progress under each priority theme'. Two initiatives are relevant in the context of road transport:

'Resource efficient Europe' and 'An agenda for new skills and jobs' - As part of the first initiative, the Strategy indicates that the Commission will work towards '[modernising and

¹⁵¹ p.11 §37: "Market opening needs to go hand in hand with quality jobs and working conditions, as human resources are a crucial component of any high quality transport system. It is also widely known that labour and skill shortages will become a serious concern for transport in the future. It will be important to align the competitiveness and the social agenda, building on social dialogue, in order to prevent social conflicts, which have proved to cause significant economic losses in a number of sectors, [...]"

¹⁵² Annex I to the Roadmap, Points 8 and 13, p.20

¹⁵³ Regulation (EC) No 561/2006, Article 1 and Directive 2002/15/EC, Article 1.

¹⁵⁴ Regarding the rules and derogations under Directive 2003/88/EC, see Section 6.18.2.

¹⁵⁵ This is nevertheless eventually subject to interpretation before the Court of Justice.

decarbonising] the transport sector. This initiative is the only one dealing expressly with transport related issues, but does it from the perspective of the environmental challenges linked to transport. This aspect is not covered in the road social legislation's objectives. It must however be noted that although links between transport and environment are indubitable, it is not the case for social legislation and environment: there is no evidence of existing synergies or conflict between environmental and social legislation¹⁵⁶.

The second initiative aims at raising employment levels and maintaining the EU social model, which corresponds to a certain extent to the objective of good working conditions provided in the road social legislation. In this view, the initiative indicates that the Commission will work to 'adapt the legislative framework in line with the 'smart' regulation principles, to evolving work patterns (e.g. working time, posting of workers) and new risks for health and safety at work'. As an ex-post evaluation, this project participates in the process of 'adaptation of the legislative framework' foreseen in the strategy. Besides, the adaptation of the work patterns on working time and posting of workers are an obvious reason for the adoption of the road social legislation. From this perspective, the legislation contributes to the objective set in the initiative.

Finally, a well-functioning single market is presented in the Strategy as crucial in the light of the objective of fair competition promoted in the road social legislation. To that extent, the road social legislation contributes to the proper functioning of the single market.

6.19.4. Cohesion Policy in support of growth and job – Community Strategic Guidelines, 2007-13

The Strategic Guidelines (Commission, 2005) were adopted after the enlargement to 25 Member States in 2004 with the aim to reduce disparities and foster convergence of the Member States while supporting economic growth, competitiveness and employment in the EU. The key objective of the Guidelines is to identify EU priorities for support under the cohesion policy.

One of these priorities is to improve the attractiveness of the EU for investments and work. In this context, one objective is to expand and improve the transport infrastructure. The social road legislation is remotely related to this objective, as it aims at contributing to road safety, which is one of the aspects covered by the policy objective. The requirements on breaks and rest periods of the road transport social legislation increase the need for suitable infrastructure (i.e. parking and rest areas). This link is however not made in the road transport social legislation.

6.19.5. Occupational Health and Safety Strategy 2007-2012

A recurring element in the EU strategic policy framework in relation to health and safety has been the achievement of a comprehensive body of EU legislation covering the most significant risks. The Road social legislation perfectly fits in this scheme. The Health and Safety Strategy (Commission, 2007) covers in part the period on which the evaluation focuses under this project (2007-2014). The goal of the Strategy was to reduce the total incidence rate of accidents at work per 100 000 workers by 25% between 2007 and 2012. As the Strategy mentioned transport as one of the most dangerous sectors, health and safety in the transport sector was an important component in the achievement of this goal. The road social legislation was intended from the outset to contribute to the fulfilment of this objective.¹⁵⁷

¹⁵⁶ Only two instances could be identified on a theoretical basis. On the one hand it is possible that the achievement of road safety objectives decreases the risks of heavy road accidents damaging the environment. On the other hand social legislation may increase the pressure on highway infrastructures for parking and rest areas. Higher need may result in higher demand for land-based infrastructure, therefore increasing the pressure on the land.

¹⁵⁷ The new strategy 2014-2020 also mentions best enforcement of OSH legislation by Member States as a key strategic objective. It is however more designed towards the role of labour inspectors, which is less relevant in the context of the road legislation.

6.19.6. Summary and conclusions

In the light of general policy objectives of the European Union, it can be concluded that the road social legislation broadly fits in the EU social policy and contributes to some extent to achieving its goals. This is more particularly the case for the road safety, working conditions, and health and safety components of the EU policies, which are among the main objectives of the road social legislation. With regards to the objectives of access to market and fair competition, the road transport social legislation contains adequate links with other pieces of EU legislation regulating these aspects¹⁵⁸.

Certain key objectives of EU policy are however not reflected in the road transport social legislation, namely the efficient use of resources, environmental and sustainability objectives, adequate infrastructure and employment. These aspects although crucial for the transport - and more particularly for road transport - policy and legislation, have no clear link with social legislation in itself. In the absence of evidence on these points, the absence of express links does not imply that the scope of integration is not fully exploited. One general policy objective with which the link could however be enhanced is the development of infrastructure. More emphasis could be put on the need to develop adequate infrastructure (e.g. parking and rest areas) within the road transport social legislation in order to support the requirements on breaks and rest periods of drivers.

The policies analysed above (i.e. White Paper, Charter of Fundamental Rights, Europe 2020, Cohesion policy, Health and Safety policy) interact with the road transport social legislation either through direct links or indirect links in different spheres¹⁵⁹. As exposed in the paragraph on the coherence of objectives, the lack of links in specific areas (i.e. efficient use of resources, attractive infrastructure, employment and environment) is due to the specific nature of social legislation which complements the objectives of (road) transport policy. Links with environment and efficient use of resources are therefore relevant in the context of transport policy rather than in the context of social legislation. Nonetheless, the lack of links between the road transport social legislation and, on the one hand, development of attractive infrastructure and, on the other hand, employment may be detrimental to the objectives of road transport social legislation. Adequate infrastructure is needed to support the requirements of the road transport social legislation related to breaks and rest periods. Ensuring a workforce sufficiently large to cope with the pressure put on the sector could be linked to the road transport social legislation.

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

6.19.7. Recommendations

The analysis led to two recommendations intended to strengthen the links between the road transport social legislation and broader EU objectives.

- Adequate infrastructure across Europe is needed to support the requirements of the road transport social legislation related to breaks and rest periods. This need could be expressed in the road transport social legislation and, if need be, linked to the Cohesion Policy.
- More emphasis could be given in the road transport social legislation in matters related to employment. Shortages of drivers are reported in several countries, putting additional pressure on drivers' working conditions¹⁶⁰. Actions to ensure a workforce could include, among others, obligations to ensure sufficient trainings are available as

¹⁵⁸ Regulation (EC) No 1071/2009 on access to occupation of transport operator, Regulation (EC) No 1072/2009 on access to the road haulage market and Regulation (EC) No 1073/2009 on access to the passengers transport market. For further analysis of the interlinkages existing between these Regulations and the road transport social legislation, see the analysis carried out under question 18 (external coherence of the road transport social legislation).

¹⁵⁹ Section 10.13 in Annex B illustrates these interactions.

¹⁶⁰ See case studies.

well as obligations to inform the public about existing training and certification schemes for drivers.

6.20. EU Added Value: What is the added value of setting the road social legislation at the EU level?

What is the added value of setting the road social legislation at the EU level? To what extent could a different level of regulation (e.g. at national level, soft-law measures) be more relevant and/or effective and/or efficient than the applicable one to ensure common rules for:

- (a) the adequate organisation of working time of drivers, also in view of their health and safety;
- (b) the effective and efficient enforcement of the legal provisions;
- (c) the clear liabilities of transport operators and of drivers;
- (d) harmonisation of conditions of competition between operators in terms of organisation of driver's work.

The main focus of the first EU Added Value question is on assessment of the merits of setting out road social legislation rules at EU level rather than at alternative (e.g. national) levels. Section 6.20.1 below provides a short description of the current situation and problems, together with a summary of the contribution of EU road social legislation to addressing these problems. Sections 6.20.2 and 6.20.3 analyse the possible alternative approaches to regulating at EU level (by regulating at national level or adopting soft law measures). The issue of subsidiarity is addressed under Section 6.20.2.2.

6.20.1. Current situation

As described under the other evaluation criteria in this report, the current situation can be assessed more or less positively, depending on the objective measured. The current situation has been evaluated in accordance with four main topics:

(a) the adequate organisation of working time of drivers, also in view of their health and safety

Regarding working conditions, the evidence gathered in this study and described in Evaluation Question 11 indicates that the social legislation has likely contributed to ensuring relatively stable working and driving times for drivers all over the EU, despite the increasing risk factors that could contribute to excessive hours such as more intense competition.

At the same time, EU road social legislation does not effectively address such issues as performance-based payments. The evidence gathered (see section **Error! Reference source not found.**) suggests that these types of payments persist across the Union, in particular in EU-13 Member States, and contribute to stress and non-compliance with the rules. Therefore, due to the low effectiveness of the EU rules with this regard the value added is limited.

In legal terms, EU road social legislation has also contributed to better organisation of working time of drivers through setting clearer and more consistent rules across the EU as well as setting stricter enforcement rules (see below), though the opinions of various stakeholders on the practical impact of these rules in practice differ. EU road social rules are believed to have had some positive impact on road safety. At the same time, the effectiveness of some of the measures applied in EU road social legislation to address the identified problems with working conditions turns out to be not satisfactory.

(b) the effective and efficient enforcement of the legal provisions

Evaluation Question 6 showed that the enforcement Directive has had positive impacts on the cooperation between the Member States, in particular on what concerns the concerted checks, information exchange, exchange of staff. This resulted in better reaching thresholds for number of controls and moving toward more more uniform application of the rules across the EU. However, as discussed in other evaluation questions (see for example Evaluation Question 4), cooperative measures have not been sufficient to overcome the diversity of national applications. This appears to be largely due to the non-binding nature of the instruments, wherein alignment is encouraged but not required through information and best practice exchange and/or common training.

In conclusion, it can be stated that EU road social legislation in some areas has contributed to a better enforcement compared to national unilateral actions undertaken by the Member

States – e.g. through raising minimum standards via thresholds on checks and controls. However, the observed level of harmonisation regarding application of the enforcement rules across the EU is still generally low, thus showing the limits of the added value of the EU legislation in terms of effectiveness and efficiency of the enforcement measures.

(c) the clear liabilities of transport operators and of drivers;

According to the evidence described in Evaluation Question 7, the application of the principle of co-liability under Regulation (EC) No 561/2006 and the Working Time Directive varies significantly across Europe, with the resulting situation that the same facts can in practice lead to different parties being held liable depending on the Member State. Furthermore, difficulties in enforcement of the rules occur that are typically due to the challenges of identifying who is really responsible for any infringements detected, especially in combination with extensive subcontracting chains. Therefore, the EU added value of the current provision setting the clear liabilities of transport operators and of drivers appears to be very limited in practice.

(d) harmonisation of conditions of competition between operators in terms of organisation of driver's work.

As discussed above in Evaluation Question 1, road social legislation is only one of the factors contributing to a level playing field and even competition. Other factors, such as wage levels and national taxation, seem to have a heavier impact on a level playing field.

Also, as discussed above, evidence shows that the EU legislation contributed to more harmonised working conditions through: 1) setting clearer and more consistent provisions on organisation of driving time, rest periods, and other work of drivers; 2) improving enforcement of the existing social rules. However, the assessment also shows a number of deficiencies in the achievement of uniform enforcement (discussed under point (b) above) and indicates that a level playing field has not been achieved.

Nevertheless, without an EU-level regulation, incoherent national regimes and lack of coordinated enforcement would likely result in even more distortions. Road transport undertakings operating under varying rules would have an incentive to lower road social standards in a quest to stay competitive. Eventually, this could lead to overall increases in working hours, have adverse effects on drivers' working conditions, and contribute to their fatigue and consequently, impact road safety.

6.20.2. EU level vs national level regulation

The most likely alternatives regarding social protection for road transport professions in case of absence of EU legislation or in case the existing EU legislation was removed would be 1) regulation at national level and 2) soft-law measures at EU or other international level. The sections below compare the situation resulting from EU-level regulation with these two potential alternative approaches.

6.20.2.1. The benefits stemming from harmonisation

One of the key justifications for the adoption of legislation at EU level is to apply a set of common rules across Member States to harmonised legislation. The provisions setting out road social legislation at EU level rather than at national level are based on Article 91 of the TFEU. This states, *inter alia*, that the European Parliament and the Council shall lay down **common rules** applicable to international transport to or from the territory of a Member State, or passing across the territory of one or more Member States, as well as the conditions under which non-resident carriers may operate transport services within a Member State. By definition, national legislation cannot ensure common rules at EU level.

The three legislative acts being evaluated in this report contain similar passages referring to the need for social regulation in the road transport sector at EU level (recital 5 of Directive 2002/15/EC; recital 28 of Regulation (EC) No 561/2006 and recital 14 of Directive 2006/22/EC). All these recitals refer to the need for action at EU level, since the objectives of the road social legislation *cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved at*

*Community level*¹⁶¹. These arguments refer to the effectiveness and efficiency (brought about by the scale of action) of setting the road social regulation at EU level.

The need for regulating road social rules at EU level is predicated on an ever-increasing reality that road transport within the EU is transnational in nature (European Commission, 2011). According to Eurostat, in 2013 international road transport (including cabotage) accounted for over 27% of overall freight transport in EU-28 (in tkm)¹⁶². These arguments point at a higher relevance of EU-level legislation than national legislation in this area.

The internationalisation and liberalisation process of the transport market has not been accompanied by an adequate parallel process of social harmonisation in employment conditions. This has resulted in differences in labour and social market structures and as a consequence, in many cases caused the deterioration of working conditions for drivers due to social dumping practices and an uneven playing field. According to the 'Cost of Non-Europe in the single market in transport and tourism' report (European Parliament, 2014), greater harmonisation of social and employment legislation and enforcement practices, sanctions and penalties across the EU Member States could help reduce differences in social standards.

As pointed out in the section related to relevance (Section 6.1), EU social legislation addresses the risk of uneven level playing field by providing uniform and common limits to working and driving times. At the same time, it is noted that EU road social legislation is effective in addressing the risk of unfair competition only to a limited extent because there are other factors that may be seen as main causes for competitive distortion. These are primarily the persisting differences among Member States concerning tax and wage levels. While these factors (taxes and wages) are not likely to be aligned across the EU with the use of legislative measures¹⁶³, EU road social legislation (if implemented effectively) is capable to align social conditions for drivers which affect the drivers' health and road safety.

Analysis of effectiveness (Section 6.6) provides evidence that the introduction of Directive 2006/22/EC had a positive impact on the intensity of the enforcement practices for Europe as a whole. While full harmonisation across the EU has not yet been achieved, further harmonisation would be needed to ensure a better level-playing field regarding social legislation. One disadvantage of harmonisation at EU level is that it may not address cultural differences among Member States. Introducing additional guidance and training for enforcement officers taking into account the cultural differences may be helpful for achieving a better level of compliance while at the same time ensuring adequate flexibility regarding the specific aspects of the legislation and allowing country-specific approach.

The surveys found wide support among different stakeholder groups: 80% of the responding ministries (i.e. 12 out of 15) agreed that EU social rules in transport have an added value to national level rules, with 40% of them (6 out of 15) strongly agreeing. There were no ministry representatives who disagreed that EU social rules have an added value on top of the national rules. A positive opinion was shared by 58% (i.e. 14 out of 24) of the sample of enforcers. In this group, 8% (i.e. 2 respondents) disagreed with the opinion that EU social rules in transport have an added value as compared to national rules (one disagreed strongly and the other – slightly). In the general survey, 50% of the respondents saw an added value in EU road social legislation while 9% (six respondents) disagreed with such a notion. In the sample of the undertakings, only 10% of the respondents expressed a positive opinion regarding this aspect while 19% expressed a negative opinion. It should be noted, however, that in the sample of the undertakings there was a very high non-response rate (47%, i.e. 604 out of 1287 undertakings surveyed, did not reply to the question on added value). This may indicate a low-level of understanding of this question in this group of stakeholders.

¹⁶¹ Recital 5 of the Directive 2002/15/EC.

¹⁶² http://ec.europa.eu/eurostat/statistics-explained/index.php/File:National,_international_loaded_and_unloaded,_cross-trade_and_cabotage_transport_%28million_tkm%29_2012-2013.png.

¹⁶³ It can only be expected that with increasing economic convergence across the EU, wage levels will gradually become more aligned.

The survey carried out for this study also provided a significant number of detailed opinions/comments on the question of the level of regulation.

In the general survey sample, the respondents who observed EU added value justified their answer by stating that road social legislation at EU level ensures better harmonisation and a level playing field within the EU (among seventeen comments to the positive rating received, nine referred to the need for harmonisation and eight referred to the need for ensuring fair competition/level playing field). Some of those who disagreed with the existence of the added value in this area justified their assessment by pointing out that individual Member States still have the possibility to apply derogations (five stakeholders indicated this) and that two parallel systems (European and national) cause confusion and add to complexity (one stakeholder).

In the group of the undertakings, 15 stakeholders out of 56 who provided comments indicated that individual Member States can apply derogations from the EU rules, which is seen as being in contradiction with the overall harmonisation goal and at times may impact on the level-playing field. Three stakeholders from this group pointed to a lack of sufficient enforcement being a reason for not achieving a satisfactory level of harmonisation that is seen by many of the stakeholders¹⁶⁴ as the main source of the added value. Seven stakeholders from the undertakings' group claimed that the rules are too restrictive and inflexible. A representative of a Danish transport company stated: 'To date, there is an added value only on the part of supervisory bodies: fines can be levied unfortunately quite arbitrarily by drivers from other EU countries without reasonable justification and with complicated appeal mechanism'.

Some of the stakeholders consulted in the survey, in particular those from the group of the undertakings, formulated numerous complaints relating to EU road social legislation. Nevertheless, opinions that a different level of regulation would have been more meaningful were scarce (for more details see Annex B, Section 10.14).

The opinions of the stakeholders generally validate the notion found in the legislation itself and in the literature that the EU level is the most relevant level to provide road social rules. The objectives of harmonisation of the legislation in this area and the creation of a level playing field are generally evaluated positively. However, some issues remain in relation to the effectiveness of reaching these objectives in light of derogations that can be applied by individual Member States and due to weak enforcement.

6.20.2.2. The respect of subsidiarity rules regarding EU road social legislation

Adoption of EU rules should nevertheless be done within the boundaries of subsidiarity. This means that in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. This definition is recalled in the preamble to all the principal pieces of EU road social legislation, including Regulation (EC) No 561/2006 and Directive 2002/15/EC. Both Regulation (EC) No 561/2006 and Directive 2002/15/EC give the Member States some flexibility regarding the implementation of the legal provisions. The Regulation states in recital 5 that more favourable conditions for workers can be provided by collective bargaining or other measures, while both legislative acts introduce a possibility of applying derogations to certain provisions.

The respondents to the survey seem to generally agree that subsidiarity is respected as a rule. Their opinion on the possibility of applying diverging rules at Member State level is prevalently negative. In eighteen out of eighty comments obtained in response to the question concerning the added value (including 15 out of 56 comments obtained from the undertakings and 3 out of 24 comments obtained in response to the general survey) the respondents complained that not all the detailed rules of social road legislation are the same across the different Member States, which according to them results in an uneven level-playing field. Only two respondents (from the general survey sample) indicated a

¹⁶⁴ Eight stakeholders referred in their comments to harmonisation being a positive element of the added value.

positive dimension of these differences that is due to greater flexibility at national level. Several opinions regarding this aspect are summarised in the Annex.

To conclude, it seems that the legislative intention of ensuring subsidiarity by creation of EU-wide rules regarding road social legislation with a possibility of applying, where necessary, country-specific rules has been implemented in practice. However, the majority of the respondents who comment on this aspect see the co-existence of EU social road legislation and national rules as an obstacle to full harmonisation.

6.20.3. EU level legislative measures versus soft-law measures

Legislative instruments are not the only method for ensuring better harmonisation of road social legislation across the EU. Soft-law measures such as guidance, opinions and recommendations may also be used either as stand-alone measures or as complementary measures. These are not legally binding and are often taken forward, informally, through dialogue and negotiation among the Member States, or between the EU institutions and Member States (House of Commons Library, 2010).

According to the 'Cost of Non-Europe in the single market in transport and tourism' report (European Parliament, 2014), strategies which could facilitate the legal framework harmonisation in the area of road social legislation include: the creation of a European register of transport companies; the enhancement of cooperation between Member States and between different authorities; the standardisation of common interpretation of EU legislation; increasing existing cooperation between Member States through the work of European associations (such as CORTE, TISPOL and ECR); and the completion of international research projects Box 6-4 below gives a summary description of CORTE, TISPOL and ECR initiatives.

Box 6-4: International initiatives aimed at improving transport legislation

The Confederation of Organisations in Road Transport Enforcement (**CORTE**) is one of the largest road transport platforms at international level. CORTE is a non-profit organisation established to bring together national transport authorities from EU and non-EU countries. National authorities in CORTE collaborate with transport associations and the transport industry. The objective of the Association is to encourage, promote and assist the development and implementation of policies for road transport, road safety and road security in Europe and at international level.

Activities of the Association include: (1) Provision of expert advice in the area of European road transport, safety and security legislation; (2) Provision of a platform for discussions with international organisations, public authorities, national and international institutions; (3) Support for definition of road policies, outlining priorities defined by the European and international organisations and governmental bodies, preparing roadmaps, action plans, studies etc.; (4) Support for the activities of its members and stakeholders, the European Institutions, the United Nations and other international organisations active in Road Transport, Road Safety and Road Security. (Source: <http://www.corte.be/>)

TISPOL (European Traffic Police Network) has been established by the traffic police forces of Europe in order to improve road safety and law enforcement on the roads of Europe. Main priorities include the reduction of the number of casualties on Europe's roads. The organisation acts as a platform for learning and the exchange of good practice between the traffic police forces of Europe. TISPOL supports education for road users, backed up where necessary by enforcement. TISPOL works with a number of strategic partners as it continues its efforts to make Europe's roads safe and more secure. TISPOL is part-financed by the European Commission. (Source: <https://www.tispol.org/>)

Euro Contrôle Route (**ECR**) is a group of European Transport Inspection Services working together to improve road safety, sustainability, fair competition and labour conditions in road transport by activities related to compliance with existing regulations. ECR's activities are centered around four pillars: (1) Coordinated cross border checks; (2) Education and training; (3) Harmonisation; (4) Consolidated points of view / common interest and influencing decision making process. (Source: <http://www.euro-contrôle-route.eu/site/en/info/>)

These initiatives are complementary with respect to the legislative framework of which the EU framework is an important part. Relying on this type of mechanism alone to bring a higher level of harmonisation in road social legislation does not seem to be justified, especially taking into account that the legislative process undertaken at EU level aimed at the creation of the European Single Transport Area including road social legislation started a few decades ago and is at quite an advanced stage. Reverting to a 'non-EU' system would not seem logical from the procedural and technical point of view and would not be in agreement with the higher objective of the creation of the Single European Transport Area. Soft-law measures are not legally binding and consequently, there are no mechanisms available at EU level to sanction the Member States that do not follow them. Nevertheless, such measures can and have been used with success to improve the effectiveness and efficiency of the existing EU road social legislation and to assist in the process of its improvement by being targeted, for instance, at better enforcement practices.

With eight guidance notes on implementation and enforcement of Regulation (EC) No 561/2006 aiming to improve efficiency, effectiveness and consistency in the enforcement of these rules across the EU, and a further six clarification notes have been published regarding the application and implementation of a number of provisions of Regulation (EC) No 561/2006, it can be concluded that the existing EU road social legislation is already accompanied by extensive guidance (in accordance with Article 22(4) of Regulation (EC) No 561/2006).

6.20.4. Summary and conclusions

The opinions of the stakeholders with respect to added value generally validate the notion found in the legislation itself and in the literature that the EU level is the most relevant level to provide road social rules. The majority of respondents to the surveys agreed (strongly or slightly) that EU social rules in transport have an added value compared to national level rules – i.e. 80% of responding ministries, 58% of enforcers and 50% of respondents to the general survey.

The objectives of harmonisation of the legislation in this area and the creation of a level playing field are, in general, evaluated positively. However, some issues remain in relation to the effectiveness of reaching these objectives in the light of derogations that can be applied by individual Member States and due to weak enforcement.

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

Since the legislative process undertaken at EU level that is aimed at the creation of the European Single Transport Area including road social legislation started a few decades ago and is at quite an advanced stage, choosing an alternative solution now does not seem to be justified both in political and economic terms. Soft-law measures such as CORTE, ECR and TISPOL initiatives can be, and have been, successfully used to complement the existing EU road social legislation.

6.21. EU Added Value: Is there any evidence that in certain cases a different level of regulation (e.g. national regulation, soft-law measures) could have been more relevant and/or effective and/or efficient than the applicable one to achieve the objectives?

Is there any evidence that in certain cases a different level of regulation (e.g. national regulation, soft-law measures) could have been more relevant and/or effective and/or efficient (and to what extent) than the applicable one to achieve the objectives of improving road safety, reducing distortions of competition between operators, enhancing working conditions of drivers and increasing effectiveness of enforcement and a level of compliance?

The second added value question provides additional evidence supporting the legal statements, literature findings and stakeholders' opinions used during the analysis of the first added value question with specific examples showing that a different level of regulation is (or is not) better for achieving the primary objectives of road social legislation than EU level regulation.

6.21.1. Examples of Member States with road social regulations going beyond the EU legislation for which rates of target achievement of the legislation can be verified

As already shown in Section 5.2, none of the ministries responding to this study's stakeholder consultation activities reported that it made use of the possibility to diverge from the rules laid out in Articles 6-9 of the Regulation to provide for more favourable provisions for the protection of drivers (as permitted under Article 11). Concerning Directive 2002/15/EC, Section 5.3 showed that four countries (intended to) use a more strict limit on night time (Belgium, Czech Republic, Germany, Spain); four countries (intended to) follow more strict rules concerning *weekly working time* (Belgium, Czech Republic, France, Spain); three countries (intended to) have more strict rules with regard to the maximum weekly working time (Belgium, Czech Republic, and France). Concerning the *reference period* two countries (intended to) use more strict rules (Luxembourg, France).

This evidence shows that while several Member States used or intended to use various derogations regarding protection of health and safety of drivers¹⁶⁵, their extent does not seem significant. The explicit impact of these slightly more favourable conditions that exist in the selected Member States on the achievement of the main objectives of the road social legislation within the EU, cannot be assessed in quantitative terms due to a lack of evidence of such impacts in literature. The fact that there are only few examples of the rules that exist at national level and are significantly different from EU rules indicates that the Member States and the relevant branch organisations in the majority of countries do not find it necessary to introduce rules which significantly diverge from the rules implicit in EU road social legislation.

6.21.2. Examples showing that a different level of regulation would have been more meaningful to achieve the objectives of the rules more efficiently or effectively

Different countries have developed varying national rules governing the transport of goods and driver regulations. Over time, this has resulted in the establishment of conventions that govern international road freight operations, thereby allowing vehicles to pass between and through countries in carrying out their work. The international community has adopted several international legal instruments that contain provisions intended to assist international road freight operations. For instance, the General Agreement on Trade in Services (GATS) extends the GATT's principles of freer and fairer trade in goods to

¹⁶⁵ Given the fact that the TNO study dates back to 2006 and that the survey conducted within our study does not give a full picture of the number and scope of derogations across the EU, it is not possible to provide the exact number of the Member States which are currently using derogations; information about the scope of these derogations is also not very detailed, however the examples provided do not point at drastic deviations from EU legislation.

services as well, which includes freight companies looking to do business abroad (Woodburn, 2008)). To date, however, the GATS principles are on a high level and do not contain detailed prescriptions concerning road social regulations.

Another example of non-national measures in the area of road social legislation is the AETR. Following the provision of Article 2(3) of Regulation (EC) No 561/2006, the AETR shall apply instead of Regulation (EC) No 561/2006 to international road transport operations undertaken in part outside the areas mentioned in Article 2(2), namely to: (i) vehicles registered in the Community or in countries which are contracting parties of the AETR for the whole journey; (ii) vehicles registered in a third country which is not a contracting party of the AETR, only for the part of the journey within the territory of the Community or of countries which are contracting parties to the AETR. The rules of AETR are the same as the EU rules on drivers' hours. AETR is an additional measure for non-EU countries being parties of this Agreement. The fact that the rules of the AETR are convergent with EU road social legislation only applies to the countries outside of the EU, indicates that EU rules are seen as a relevant and meaningful pattern for harmonisation of social rules aimed at covering an area broader than the EU.

Such a type of agreement as an AETR could probably also exist without EU intervention in this area. There are examples of similar agreements on trade and transport such as GATT or NAFTA. None of them, however, goes into the level of detail regarding social rules for drivers that would be comparable with the level of detail stipulated in EU legislation and none of these instruments achieves an equally high harmonisation level as EU legislation. As already pointed out in section 6.20.3, reverting to this type of soft-law, voluntary agreements after the long political and legislative process of the creation and harmonisation of road social legislation rules at EU level does not seem to be justified on political and economic grounds.

6.21.3. Summary and conclusions

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

6.22. Coordination: To what extent are the three legal measures working together as a framework for the road social legislation?

To what extent are the three legal measures working together as a framework for the road social legislation? What are the main gaps or inconsistencies identified? Is the framework in practice benefiting from economies of scale by minimising the inputs (e.g. enforcement measures) and maximising their joint effects?

The purpose of the “coordination” evaluation question is to assess the extent to which the relevant legislative acts are organised so as to minimise their inputs (including personnel and equipment), without compromising the effectiveness of the legislation. Coordination is considered in terms of the following main areas:

- Coordination of checks of Regulation (EC) No 561/2006 and Directive 2002/15;
- Risk-rating systems; and
- Coordination of compliance activities.

6.22.1. Coordination of checks of Regulation (EC) No 561/2006 and Directive 2002/15/EC

The frequency of crossover between working time and driving time checks provides an indicator of how much the enforcement of these rules is being coordinated. According to the official monitoring reports, checks on working time are typically conducted at the same time as checks on the social rules in most Member States (European Commission, 2014). Precise figures or estimates of the proportion of checks conducted at the same time were not available, but qualitative evidence suggests that the extent to which coordination of checks can be achieved appears to vary depending on the location of the checks: typically, checks at the premises can be easier coordinated, than those at the roadside, where not all of the required working time data are available and not all national roadside controllers have competence to control compliance with the working time provisions (as outlined previously in Section 6.6.1.5).

6.22.2. Risk-rating systems

The manner in which the checks are organised is also a possible area for coordination. More specifically, the risk rating system established under Regulation (EC) No 561/2006 can also allow checks of working time to be targeted using the same system. According to the monitoring reports, some countries declare that they carry out regular targeted checks (although the individual countries were not identified) (European Commission, 2011). This shows that there is scope for greater coordination via the use of targeted checks and risk rating. In general the effectiveness of control measures has been improved by focussing on high-risk operators identified according to risk rating systems – these are analysed in more detail in Evaluation Question 6 (see Section 6.6).

Better coordination with other legislation can be achieved if the information on relevant infringements is fed into the risk-rating system (e.g. access to market, roadworthiness etc.), or with information from other Member States. Good practices in this context have been demonstrated by Sweden, where the authorities reported in their survey response that infringements against other legislation (i.e. Directive 2002/15/EC and Regulation (EC) No 1071/2009) are also fed into their risk-rating system alongside infringements of the driving time rules. The Estonian ministry reported that the risk-rating system uses traffic monitoring information and data from ERRU (the European Register of Road Transport Undertakings, established under Regulation (EC) No 1071/2009).

In the surveys carried out with enforcement authorities across Europe only 5¹⁶⁶ out of 28 national enforcement authorities stated that their risk rating system was fed with information obtained from other Member States, which indicates a greater scope for coordination is possible (Section 5.4 on the implementation of Directive 2006/22/EC

¹⁶⁶ Authorities from Croatia, Lithuania, Netherlands, Romania, Sweden

provides more details). Both the Swedish and Estonian ministries commented in their survey responses that greater use of ERRU by other Member States would contribute to improving the efficiency of enforcement. Other Member States also expressed their support for greater coordination – for instance, the Dutch enforcers call for EU-wide exchange of data so that they would be better able to target companies.

In summary, there are several good practices that have been demonstrated in terms of expanding the risk-rating system of Regulation (EC) No 561/2006 in a way that maximises coordination, including covering other legislation (e.g. Directive 2002/15/EC or Regulation (EC) No 1071/2009), and feeding in information from Member States.

6.22.3. Coordination of compliance activities

At the level of the firms, coordination should aim to minimise the extent to which operators must expend money on separate compliance processes for the driving time and working time rules, since driver schedules much comply with both.

High quality schedule and journey planning and the use of ICT can contribute to ensuring that these obligations are met (ETSC, 2011a). The European Parliament (2010) considered that all available technology should be used to inform drivers in real time about the relevant social rules and the penalties applicable to infringements in the various Member States, for example with the use of GPS.

In this respect, good practices at company level have also been developed that combine awareness-raising and compliance with driving and working times. For example, Tyvi Freight Finland uses an online management system that combines all information needed in the company in real time and therefore allow real-time management through bi-directional communication between the employer and the driver (ETSC, 2011a). The system reportedly enables improved drivers' working hours, allowing the company to plan more "normal" working hours for drivers, i.e. shorter working days and more predictable, regular shifts. The study visits carried out for this study to undertakings (an SME and a large organisation) also found the extensive use of ICT systems to track driver activities in real time and present detailed information on possible infringements and associated penalties.

Looking in more detail at the processes involved in compliance shows that there are broad overlaps in the requirements for driving and working times. For instance, the guidance from the UK (VOSA, 2013) and Ireland (RSA, 2012) seems to indicate that records for both driving and working time should be possible to present – but that in practice, there may be some additional effort. The main challenges are the need to collect and compare the different sets of working time records (analogue and digital tachograph records, manual records and other supporting documents), plus the difficulty of compiling data on the work of drivers who have several employers (European Commission, 2011). These problems have been consistently reported in the biennial national monitoring reports. For example, some Member States suspect that certain employers maintain a system of double recording where only the official (falsified) records are shown to the inspectors (European Commission, 2012).

It is worth also considering possible means to improve coordination between the enforcers and the firms they are monitoring. In this respect, several good practice examples have been found, for example, in **Ireland**, the Road Safety Authority (RSA) works with operators who demonstrate a commitment to addressing compliance issues through education and guidance, while reserving more punitive measures for persistent offenders (ETSC, 2011a). The previously mentioned trust-based system in the **Netherlands** (see Section 6.6.2) also enables the coordination between enforcers and industry in order to reduce the number of "traditional" checks. Enforcers work with companies to help them achieve a high level of compliance, thereby reducing the need to target them in random checking and achieving good results in terms of compliance levels (ETSC, 2011a).

6.22.4. Summary and conclusions

Coordination between checks of Regulation (EC) No 561/2006 and Directive 2002/15/EC is generally high (i.e. checks of both pieces of legislation are carried out at the same time

by enforcement authorities). There appears to be a higher degree of coordination for checks at the premises, since it is not always possible to coordinate checks at the roadside and not all of the required records for working time are held in the vehicle.

There are several good practices that have been demonstrated in terms of maximising the synergies between the risk-rating system of Regulation (EC) No 561/2006 and other activities, as follows:

- Covering Directive 2002/15/EC (e.g. in Sweden).
- Covering other legislation, such as Regulation (EC) No 1071/2009 (Estonia and Sweden).
- Feeding information from Member States into the risk-rating system (Croatia, Lithuania, Netherlands, Romania, Sweden).

At the level of the firms, coordination of the processes for the driving time and working time rules can be achieved through the use of ICT systems. Software packages are available to plan schedules and track driver activities in real time, which can help to minimise the risk of infringements and associated penalties. Nevertheless, the design of the legislation seems to indicate that a level of duplication and complexity in terms of record-keeping cannot be completely avoided.

Coordination efforts between enforcers and firms may also yield positive outcomes, through aiming to support firms in achieving and maintaining high compliance. The trust-based system in the Netherlands is an innovative case that demonstrates how enforcers can work with companies, thereby reducing the need to target them in random checking and achieving good results in terms of compliance levels.

6.22.5. Recommendations

The study team recommend that the good practices highlighted above concerning the coordination of risk-rating systems (using information from other Member States and concerning other legislation) is encouraged further. The mechanism to encourage these practices may considered in more detail in an Impact Assessment, but could include guidance, dissemination or even legislation.

The use of trust-based enforcement is also considered to be highly relevant by the consultants, especially considering that the vast majority of firms are legitimate companies that wish to comply with the rules. Trust-based enforcement therefore appears to be an innovative practice that (in combination with adequate risk-rating) should make the best use of scarce enforcement capacity. Another benefit is that it allows enforcement officers concentrate on checking rouge operators that present a higher risk, while minimising the burdens on law-abiding companies.

7 CONCLUSIONS

On the basis of the analysis presented in Section 6, we present the main conclusions arising in relation to each of the overall evaluation questions.

7.1 *Relevance*

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

Concerning the **scope** of the social legislation, it is concluded that it is still relevant today. This applies to the scope in terms of the type of vehicles covered, the type of drivers covered, and considering the system of derogations and exemptions. Especially considering modern complex employment arrangements, it is found that the scope remains relevant today. Concerned drivers are at a higher risk to infringe the rules with adverse effects on road safety and their working conditions. This is because checking and keeping track of activities across multiple employers and/or (cross-border) subcontracting chains over a period of time has become an increasing challenge for enforcement officers and drivers themselves. This type of employment arrangements has intensified compared to when the rules were adopted, which means that there is today even a greater need to cover the concerned drivers by the social legislation.

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

For the **passenger transport sector**, there are distinct service needs that are not seen in freight transport, including regular stops for activities that do not require driving and the need to accommodate passenger requests for flexibility (e.g. regarding additional stops, changes of route, changes in departure times etc.). Industry representatives argue that the lack of flexibility in the current road social legislation makes it more difficult to comply and have advocated for a more specific consideration of the passenger transport sector.

7.2 Effectiveness

The questions on effectiveness aim to assess the extent to which the legislation has achieved its objectives. In the following the conclusions on the impact of the legislation on general objectives are provided before the impact of the rules on more specific objectives is discussed.

7.2.1 Impact of the provisions on general objectives

The first general objective of the legislation is to improve **working conditions**. Road social legislation affects only some of the factors that affect overall working conditions, namely: fatigue and stress.

Concerning the **fatigue** of drivers, it appears that the social legislation has not had significant impacts on either **working or driving times**, which have not shown any substantial changes. This is in part due to the similarity of the rules to previously existing provisions. Additionally, for the Working Time Directive there is a low priority given to enforcement and concurrent evidence of low compliance with working time provisions across the EU, with between 40% (Europe) and 90% (Germany) of drivers reporting that they typically work more than 48h per week. Trends over time suggest that there have been uneven impacts on different groups – i.e., there are indications that EU-13 drivers may be more likely to have seen increases in working time whereas EU-15 drivers have seen decreases, but the extent to which this is related to the legislation versus other factors (such as competition in the market) cannot be determined.

Importantly, a *lack of change* is not the same as there having been no benefit: one could regard the apparent stability of the situation as a success in light of the development of increased competition and other pressures in the sector, which in the absence of such rules should have led to increased driving and working times. In general, although it is not possible to link changes to the social legislation as distinct from other influencing factors, reported fatigue among drivers appears to have decreased (although it is still a problem in the sector).

Various factors that contribute to **stress** were assessed, as follows:

- **Performance-based payments.** There is evidence that such payments persist across the Union, particularly among drivers from the EU-13 Member States with with 50-77% of affected drivers in EU-13 countries and the variable portion of salary being on average 57%. According to the majority of drivers interviewed for this study, such payment schemes are a contributor to non-compliance with the rules, which in turn contributes to fatigue and stress.
- **Roadside checks.** The complexity of the legislation, combined with increased numbers of roadside checks and on-the-spot fines that are often paid by the drivers can contribute to greater stress. This must be balanced against the need to ensure adequate enforcement in order to protect workers. The relatively high emphasis on roadside checks seen in most countries (typically more than 75%-80% in 2011-2012) is in contradiction to the requirement of the enforcement Directive, which set a limit of the share of checks at the roadside to 50%.
- **Long periods away from home.** Various surveys have reported that it is frequent practice for drivers to spend their regular weekly rests in vehicles. These drivers are likely to spend at least 1-2 weeks away from their home base. A legal basis for enforcing returns to a home base does not exist. In countries where regular vehicle rests in vehicles are not permitted according to the national interpretation, it cannot be guaranteed that suitable places of rests are available. This can lead to drivers spending regular weekly rest periods in inadequate and/or unsafe places, which has knock-on effects on the health and safety of drivers.
- **Time pressure** has increased over the past decade due to market developments. The associated stress is amplified in case of unforeseen circumstances (such as congestion or weather conditions). Road social legislation does not have a direct impact on these working conditions factors, but rather requires that schedules are set in a way that allows compliance.

The results indicate that trade unions, high level institutions (associations), ministries and enforcers consulted for this study generally consider that the road social legislation has had a positive impact on working conditions. Conversely, drivers and undertakings express a much more mixed view (though not overwhelmingly positive or negative) – potentially because the perceived downsides of the Regulations (e.g. lack of flexibility and high fines) are considered by some to negate the intended benefits on working conditions when confronted with day-to-day demands of driving.

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

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

7.2.2 Clarity of the rules

Concerning Regulation (EC) No 561/2006, 17 out of the 23 amendments/additions to the legal definitions appear to have been successful: neither reviewed literature nor consulted stakeholders pointed to any relevant uncertainty. Similarly, concerning Directive 2002/15/EC, 8 out of the 9 newly provided legal definitions appear to have been successful. The respective clarification efforts can therefore be considered to have achieved their objective of ensuring greater clarity and a uniform application of the rules.

However, certain uncertainties with regards to the legal definitions have pertained after the coming into force - as have uncertainties with other provisions in the legal texts. In particular, this concerns

- 4 legal definitions and 5 other provisions of Regulation (EC) No 561/2006 (of which 8 have been subject to further clarification efforts, of which 2 appear to have been successful in achieving clarity and a harmonised application of the rules) (irrespective of any uncertainties regarding exemptions and derogations)
- 1 legal definition of Directive 2002/15/EC (for which no specific clarification efforts have been undertaken)
- 1 provision of Directive 2006/22/EC (for which clarification efforts have been undertaken; however, these do not appear to have resolved all uncertainties).

The result of these uncertainties are mainly differences in enforcement practices which lead to unequal treatment of drivers and operators being subject to controls.

In several cases, the additional clarification efforts may have resolved legal uncertainties, but a lack of uniform application still remains because of the non-binding nature of the clarifications. Nevertheless, consultation with enforcers via surveys and attendance at the CORTE meeting confirmed that clarification efforts have in general been appreciated.

Concerning the impact of clarifications on compliance, answers from the stakeholder questionnaires show different views: while enforcers and trade unions do not consider a lack of clarity to be a big factor contributing to non-compliance, drivers and undertakings present more mixed opinions.

7.2.3 Effectiveness of enforcement

The enforcement Directive has had positive impacts in terms of reaching thresholds for number of controls and moving toward more checks at the premises, which contributes to a more uniform application of the rules across the EU. Nevertheless, there are various differences that affect the enforcement at national level. Key among these are the risk rating system and penalty systems, where there is considerable divergence in the application of the rules (due to the flexibility allowed to Member States in defining national provisions). There is variation in the implementation of a national **risk rating system**, the extent to which the national system is fed with data from other Member States and the technical specifications of the system itself vary across countries. The same applies for the **definition of the level of fines** and the **type of sanctions**, which vary significantly across Europe.

Concerning the **forms for attestation of driver activities**, there is an inconsistent approach as to whether or not they are required/accepted as proof of driver activities. There are also issues of potentially unreliable information on the forms, as well as the time-consuming nature of the requirement. In combination, these factors mean that drivers may take a long time filling out the form and will not even find it is accepted in all countries, whereas enforcers do not feel they can necessarily trust the information.

A wide range of **administrative cooperation** measures have been introduced by the social legislation, and for the Member States for which data are available the rate of compliance with the requirements is generally high across all requirements (concerted checks, information exchange, exchange of staff etc.). In general therefore, the analysis points to a supporting role for the measures on administrative cooperation in terms of encouraging a more uniform application of the rules. However, cooperative measures have not been sufficient to overcome the diversity of national applications. This appears to be largely due to the non-binding nature of the instruments, wherein alignment is encouraged but not required through information and best practice exchange and/or common training.

The principle of **co-liability** has not contributed to the specific objective of uniform enforcement because the variation in implementation regarding the strict liability of undertakings in Regulation (EC) No 561/2006 – although in line with the flexibility permitted in the legislation – leads in practice to situations where the same facts could in practice to different parties being held liable depending on the Member State. Furthermore, in the case of liability of other actors in the transport chain, some Member States do not allow for third parties to be held liable under any circumstances, which reflects an incomplete implementation of the principles of co-liability in national legislation.

In terms of the overall impacts of the co-liability provisions on improving compliance, there is something of a discrepancy between the way the co-liability of the transport chain is perceived, and how it seems to operate in practice. On the one hand, the literature identifies a range of positive impacts in terms of improving compliance with the social rules, improving road safety, efficiency gains and reducing pressure on transport operators – as well as a host of other benefits. On the other hand, quantitative evidence from enforcement authorities show that other parties in the transport chain are almost never held liable in practice. It therefore seems that the *direct* impacts of the principle of co-liability on improving compliance must be rather minimal if there is not a real risk to third parties of actually being held liable in practice (although this was not possible to determine empirically due to a lack of data availability).

Considering wider factors that are not directly regulated under the social legislation shows that there are widespread issues reported concerning a **lack of budget and manpower**. In addition, the standards and thoroughness of training (including for analysing digital tachograph data) differ across Member States, as well as the uptake of TRACE.

Overall, enforcement measures are therefore found to be only partially effective in addressing the **risk of non-compliance**. While the enforcement measures mitigate the risk of non-compliance, the risks of being detected and its consequences do not outweigh the potential rewards of infringing the rules for all undertakings and/or drivers. The extent to which this applies varies across Member States and their specific enforcement systems

in place, as well as the type of transport operation being carried out and cannot be realistically quantified.

According to inputs obtained during interviews with stakeholders and via stakeholder questionnaires, the combination of external pressures, alongside insufficient enforcement, can make intentional non-compliance more likely. Views on what factors characterise insufficient enforcement vary significantly, yet the factors that were frequently identified during the consultation activities for this study were:

- Low probability of being detected (too few checks or poor risk-targeting);
- Low penalties (lack of deterrent effect);
- Lack of enforcement of co-liability of clients;
- Allowing the continuing use of performance-based payments.

There is also the risk of unintentional non-compliance that is not addressed by the enforcement measures. It can be due to uncertainty about the rules, lack of awareness of the rules, or unforeseen circumstances – issues that are only insufficiently addressed by the legislative framework.

7.2.4 Effectiveness of reporting requirements

The set of indicators available in the Member States' reports allows for adequate monitoring and follow-up of the legislation in terms of the implementation of its core requirements, such as the number of checks. It also allows for a basic assessment of national enforcement capacity and the reported detected infringement rates. The timeliness, completeness and consistency of the monitoring data submitted has increased over time. In part, the introduction of the electronic reporting tool seems to have been successful in encouraging a higher response rate.

Nevertheless, continuing difficulties concern the provision of data around certain indicators where Member States are not able to collect the data at the level of detail that is requested by the Commission, such as the number of vehicles fitted with a digital tachograph or the number and type of offences detected at premises and roadside.

Overall, the key limitations of current reporting requirements (aside from incomplete data) include:

- **Inconsistencies:** Differences in interpretation / definition of some indicators, leading to non-comparable results for several key indicators (e.g. enforcement capacity, reported number of checks, reported number of infringements);
- **Reported infringement rates do not directly represent the compliance rates** due to the presence of other factors that influence the detection rate (e.g. different risk-rating systems);
- **A lack of qualitative information to support the quantitative data** (e.g. training of officers). Although qualitative information is difficult to capture using a standard form, it is still important to provide the context needed to interpret the numbers.

Concerning Directive 2002/15/EC, the availability of data with respect to enforcement and compliance is very limited, mainly due to the fact that Member States are only required to provide qualitative data (quantitative data is only provided on a voluntary basis).

7.2.5 Impact and use of derogations and exemptions

Overall, allowing for exemptions and derogations seems appropriate and proportionate given the type of transport operations that are predominantly covered – i.e. where the vehicles represent very small market shares, are used for specific purposes in the public interest, where driving is an ancillary activity and/or are not subject to competitive pressures. As such, there are not any adverse impacts on the achievement of the objectives of the Regulation in terms of ensuring road safety and adequate working

conditions. This conclusion applies to most exemptions and derogations from the rules, with the few exceptions elaborated below.

Specific issues have been uncovered concerning four exemptions from Regulation (EC) No 561/2006 that were justified on the basis of the short distances travelled by the concerned vehicles. These problems mainly concern whether the definitions are precise and clear enough to avoid possible loopholes that enable the rules to be circumvented (e.g. in the case of breakdown vehicles), as well as an unlevelled playing field in the interpretation of such exemptions.

Specific derogations appear to have resulted in uncertainty over precisely which activities are included or not. The concerns generally relate to the possibility of an overly broad interpretation of the derogations such that sectors involved in competitive activities could be excluded from the rules. A particular concern is Article 13(h) that is intended to apply to public services carried out by public authorities, but may be interpreted to include privately-run services.

7.3 Efficiency

7.3.1 Costs for enforcement authorities and benefits in compliance

The limited availability of the underlying data requires that the estimated costs (summarised in Table 6-14) for enforcement authorities should be interpreted with caution.

Table 7-1: Costs for enforcement authorities (total for EU-27)

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

* Software and maintenance costs are not considered.

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

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

The analysis suggests overall that the largest share of the overall enforcement cost is represented by ongoing staff costs required to maintain the enforcement capacity. The main additional cost category to the ones identified in Table 6-14 was found to be related to the risk-rating systems, although this could not be quantified. At the same time, the risk-rating systems are considered in general to have led to efficiency and effectiveness improvements, and is one of the key areas recommended to focus on as a means to further improve the efficiency of checks. No other additional costs impacts were identified as being significant.

In terms of benefits, the TRACE common curriculum is generally considered positively, and the potential for greater digitalisation of enforcement systems appears to be strong. In particular, a higher degree of digitalising enforcement systems could lead to (i) easier compilations of reports and (ii) access to real-time information on vehicle's and driver's status, leading to cost-savings.

Qualitative assessments provided by enforcers responding to the survey suggest that the requirements under Directive 2006/22/EC have led to higher costs while at the same time contributing to higher effectiveness in terms of improved compliance. No respondents reported increased costs and lower or unchanged effectiveness. Although only based on qualitative estimates, this seems to suggest that any increased costs have been accompanied by benefits in terms of compliance.

7.3.2 Costs for transport operators

Overall, ongoing cost increases have been estimated to be around 1-3% of the annual transport-related turnover for operators in order to comply with the social legislation. This covers costs related to the following main items:

- Hardware (e.g. tools to download digital tachograph data)
- Administrative effort and monitoring e.g. the cost of understanding complex rules, inspection of data, scheduling etc.
- Staff costs and training.
- IT/software.

It should also be noted that there are relatively large ranges reported with some firms indicating cost increases of as high as 20-25%, which indicates that firms are not equally affected and there are likely to be varying individual effects.

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

- 35% of operators identified a need to make changes to daytime distribution schedules, and 25% said that night-time distribution patterns had to be adapted.
- 29% of operators identified a need to hire more drivers, with the median being 2 additional drivers (not necessarily full-time).
- 11% of operators identified a need to purchase additional vehicles (median of 2 additional vehicles).

It is not possible to weigh these additional costs against the magnitude of benefits (if any) since these relate to subjective or diffuse issues that are impossible to quantify.

7.3.3 Costs for reporting

National authorities and ministries typically do not consider that there are significant costs involved to meet reporting requirements. An estimate has been calculated in order to gauge the possible level of costs, starting from the value reported by Slovenia. Overall, the cost for reporting and monitoring has been estimated at €7-8 million/year for the period 2011-2012.

For operators and drivers, administrative costs for reporting activities with digital tachographs have been estimated at €61 million on a yearly basis. For analogue tachographs, this cost has been estimated at €51 million on a yearly basis.

7.4 Coherence

7.4.1 Internal coherence

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

Overall, the legal analysis of the two acts confirms that they have been designed with the aim of avoiding inconsistencies and increasing synergies. The absence of infringements

cases brought to the ECJ under Regulation (EC) No 561/2006 and Directive 2002/15/EC confirms this conclusion.

Although there are no problems of coherence in a strict legal sense, the analysis did point to several practical problems:

3. A difficulty experienced in combining the two systems of breaks provided by the Directive and the Regulation;
4. Problems in combining the driving and working time requirements.

7.4.2 External coherence (legislation)

In-built mechanisms are provided in nearly all pieces of legislation analysed in the context of this study. Their presence illustrates that different types of mechanisms are used. They may be:

4. Cross-references to specific acts,
5. Cross- references to working time/ driving time or rest periods,
6. Wording that may be assimilated to 'without prejudice clauses' ('save as otherwise provided in Community legislation').

These mechanisms not only aim at avoiding inconsistencies or double-regulation, they also show that the acts are designed in a manner that seeks to ensure an efficient application of the different acts in combination. The number of in-built mechanisms moreover indicates that the proper application of the European rules requires a holistic approach of the EU road acquis, which may prove to be challenging in practice. The results of the survey and different study visits however did not highlight any issues or examples of synergies with regard to these interactions. On this basis, a causal link between the existing interactions of the analysed texts and improved working conditions of drivers, enhanced road safety, and undistorted competition among companies could not be established.

Only a limited number of potential issues of inconsistencies, overlaps and gaps were identified. All issues related to differences in definitions across the different legislative texts, namely on the definitions of 'vehicle', 'competent authority', 'cabotage operations', 'international carriage', and 'roadworthiness tests'. Another problematic instance is the lack of definitions in the road social legislation. It appears with the definition of 'undertakings' which is absent in the road social legislation, even though it is used in Directive 2002/15/EC. These discrepancies do not however seem to have a significant impact on the proper application of the road social legislation nor on its objectives of increased road safety, improved working conditions and harmonised competition. Regarding the effectiveness of the existing legislation, this aspect is covered by specific evaluation questions.

With regards to other acts (Directive 2003/88/EC and AETR Agreement), the articulation between those texts and the road social legislation is unambiguous from a legal perspective, even though from a more practical point of view, the similar scope has been raised as a source of confusion in terms of implementation. On the other hand, discrepancies in scope have been observed between Directive 2003/59/EC and Regulation (EC) 561/2006. Even though these do not cause problems in legal terms, and whilst it was not raised as a practical issue amongst stakeholders, an alignment of the scope of the two acts would benefit to road safety, which is a common aim between the road social legislation and Directive 2003/59/EC.

7.4.3 External coherence (policy documents)

In the light of general policy objectives of the European Union, it can be concluded that the road social legislation broadly fits in the EU social policy and contributes to some extent to achieving its goals. This is more particularly the case for the road safety, working conditions, and health and safety components of the EU policies, which are among the main objectives of the road social legislation.

With regards to the objectives of access to market and fair competition, the road transport social legislation contains adequate links with other pieces of EU legislation regulating these aspects¹⁶⁷.

Certain key objectives of EU policy are however not reflected in the road transport social legislation, namely the efficient use of resources, environmental and sustainability objectives, adequate infrastructure and employment. These aspects although crucial for the transport - and more particularly for road transport - policy and legislation, have no clear link with social legislation in itself. In the absence of evidence on these points, the absence of express links does not imply that the scope of integration is not fully exploited. One general policy objective with which the link could however be enhanced is the development of infrastructure. More emphasis could be put on the need to develop adequate infrastructure (e.g. parking and rest areas) within the road transport social legislation in order to support the requirements on breaks and rest periods of drivers.

7.5 EU added value

The opinions of the stakeholders with respect to added value generally validate the notion found in the legislation itself and in the literature that the EU level is the most relevant level to provide road social rules. The objectives of harmonisation of the legislation in this area and the creation of a level playing field are, in general, evaluated positively. However, some issues remain in relation to the effectiveness of reaching these objectives in the light of derogations that can be applied by individual Member States and due to weak enforcement.

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

Since the legislative process undertaken at EU level that is aimed at the creation of the European Single Transport Area including road social legislation started a few decades ago and is at quite an advanced stage, choosing an alternative solution now does not seem to be justified both in political and economic terms. Soft-law measures such as CORTE, ECR and TISPOL initiatives can be, and have been, successfully used to complement the existing EU road social legislation.

7.6 Coordination

Coordination between checks of Regulation (EC) No 561/2006 and Directive 2002/15/EC is generally high (i.e. checks of both pieces of legislation are carried out at the same time by enforcement authorities). There appears to be a higher degree of coordination for checks at the premises than at the roadside, where not all of the required records for working time can be made available and where enforcers are not always competent to control compliance with the working time provisions.

There are several good practices that have been demonstrated in terms of maximising the synergies between the risk-rating system of Regulation (EC) No 561/2006 and other activities, as follows:

- Covering Directive 2002/15/EC (e.g. in Sweden).
- Covering other legislation, such as Regulation (EC) No 1071/2009 (Estonia and Sweden).

¹⁶⁷ Regulation (EC) No 1071/2009 on access to occupation of transport operator, Regulation (EC) No 1072/2009 on access to the road haulage market and Regulation (EC) No 1073/2009 on access to the passengers transport market. For further analysis of the interlinkages existing between these Regulations and the road transport social legislation, see the analysis carried out under question 18 (external coherence of the road transport social legislation).

- Feeding information from Member States into the risk-rating system (Croatia, Lithuania, Netherlands, Romania, Sweden).

At the level of the firms, coordination of the processes for the driving time and working time rules can be achieved through the use of ICT systems. Software packages are available to plan schedules and track driver activities in real time, which can help to minimise the risk of infringements and associated penalties. Nevertheless, the design of the legislation seems to indicate that a level of duplication and complexity in terms of record-keeping cannot be completely avoided.

Coordination efforts between enforcers and firms may also yield positive outcomes, through aiming to support firms in achieving and maintaining high compliance. The trust-based system in the Netherlands is an innovative case that demonstrates how enforcers can work with companies, thereby reducing the need to target them in random checking and achieving good results in terms of compliance levels.

8 RECOMMENDATIONS

The practical recommendations from this evaluation fall mainly into three categories:

- Measures to improve the enforcement system
- Measures to clarify the legislation
- Measures to better address the risks and needs of the sector
- Measures to improve reporting and monitoring information

8.1 *Measures to improve the enforcement system*

8.1.1 *Harmonise enforcement practices*

The application of the social rules is not uniform, yet this is a crucial objective in order to ensure fair competition and a level playing field. Further harmonisation should therefore be encouraged, by

- Ensuring **compliance with the minimum requirements** set out in the legislation. Ensuring compliance with the requirements set under Directive 2006/22/EC concerning the distribution of checks at the roadside and at the premises would furthermore help to rebalance checks away from drivers and towards undertakings where more thorough and comprehensive checks can be carried out.
- Introducing additional **guidance for setting sanctions to infringements**
- Supporting further EU wide **guidelines on training of enforcement officers** (such as TRACE) to improve enforcement capacity. Since problems in enforcement capacity are linked to budget restrictions, it is also recommended to emphasise and raise awareness among Member States of the importance of high quality training, especially where this can enable a better effectiveness of enforcement.
- Investigating and encouraging the use of innovative enforcement practices that make the most of scarce resources. The example of the Netherlands provides an interesting case study, where checks carried out by enforcement authorities are complemented by checks carried out by transport undertakings on a trust basis. If such systems are found to be acceptable on a wider scale, it should also be considered that these trust-based checks should be reflected in the contribution toward the minimum threshold of working days checked.
- Improving the level of administrative cooperation by:
 - o Improving the exchange of data between ECR and non-ECR Member States.
 - o Standardising the format of information exchange regarding detected infringements in filed against an undertaking of another Member State.
 - o Introducing the exchange data on clear checks (where no infringements are found) to facilitate the improvement of national risk-rating systems.
 - o Considering increasing the required number of concerted checks in an Impact Assessment.
 - o Encouraging further participation of enforcement authorities in collaborative networks.

8.1.2 *Ensure an increased enforcement and awareness of the co-liability principle*

The provided analysis suggests that the main issue in enforcement the co-liability principle is the difficulty of proving the role of liable parties. To assist Member States in applying the rules of co-liability, the study team therefore recommend

- Issuing **guidance (or clarifications) at a European level**, which define the duties, roles and responsibilities of different parties in the subcontracting chain.
- **Raising awareness** of the road social rules **among the clients of transport operators** supporting by promoting best practice examples (examples are provided in Evaluation Question 7).
- **Analysing** the impacts of introducing **mandatory co-liability** in an Impact Assessment - a tool already in use for operators for certain legislation.
- **Considering** introducing **co-liability provisions into the Working Time Directive** (which currently does not have any).

8.2 Measures to clarify the legislation

Existing uncertainties regarding specific provisions the rules were listed in Evaluation Question 4 and in Evaluation Question 5 that specifically treated exemptions and derogations. The consultants recommend the following actions to **mitigate uncertainties** that can result in non-harmonised application of the rules across the Union:

- For the uncertainties, where a lack of uniform application is the key issue, a legally-binding approach to the clarifications would be more effective.
- For uncertainties where non-binding clarifications have not yet been attempted, it seems proportionate to address these in the first instance with guidance, given that this can be successful and has shown to be generally well-received.

However, if there is to be a review of the legislation, it would streamline the process if these remaining uncertainties were also clarified in the legal text as part of the wider process of clarifying the rules, in order to avoid persisting differences in application.

Furthermore, in order to simplify the reading of the legal texts and hereby mitigate any uncertainties, it is suggested to:

- Include an explicit definition of "breaks" in Directive 2002/15/EC, coherent with the one provided in Regulation (EC) No 561/2006;
- Update the cross-references included in Directive 2002/15/EC in order to remove the references to the previous Regulation (EEC) No 3820/85, replaced by Regulation (EC) No 561/2006;
- Clarify the relationships between exemptions under Regulation (EC) No 561/2006 and the obligations under Directive 2002/15/EC, through explicit cross-references such as the one of Article 3(2) of Regulation (EU) 165/2014;
- Consider revising the combination of working and driving times.
- Include a definition of 'undertaking' in Directive 2002/15/EC or an adequate cross-reference. This would improve the readability and sense of coherence of the texts.
- Align the scopes of Regulation (EC) 561/2006 and Directive 2003/59/EC (as further detailed in the recommendations of Evaluation Question 18 (Section 6.18.4).

8.3 Measures to better address the risks and needs of the sector

8.3.1 Measures to address the risks of the sector

The study team recommends that further work should investigate additional **tools that could be used to the address issues that are currently outside the scope** of the social rules but that have adverse effects on 1) a level playing field in the transport market, 2) social and working conditions of drivers and 3) road safety levels, in order to better support the achievement of their overall objectives.

Such tools could be instruments that manage risks at a level appropriate to the specific needs of the operators/drivers serving different industries and customers. Examples of

such instruments that have been suggested include: awareness-raising, voluntary commitments and in-vehicle fatigue detection and warning systems (ETSC, 2011); (Fourie et al, 2010). A small number of proactive operators use additional strategies, such as fatigue management training and education for drivers, to enhance the extent to which the operation is protected from fatigue risk (Fourie et al, 2010) and fatigue risk management systems.

Next to such tools also **more specific actions**, partly relating to specific provisions, should be considered, as follows:

- It has proven difficult in practice to show whether a specific **payment scheme** has endangered road safety and/or encouraged infringements (in contravention to Article 10(1)), which is likely to have led to illegal payment practices in this respect.
 - o A first course of action to improve detection of such payment practices would be to introduce guidelines and test procedures that would allow for a differentiation of what precisely constitutes a performance-based payment scheme that would not be considered to cause a "risk to road safety".
 - o An abolition of the if-clause (meaning that all performance-based payments are strictly prohibited regardless of whether there is a link to road safety) would allow a legal basis to prosecute undertakings who still provide performance-based payments. However, variable payments make up important parts of drivers' salaries in some countries and moreover are often set in agreement with social partners to compensate drivers for work abroad and travel. An impact assessment should therefore be conducted in order to shed light on the benefits and drawbacks of such an action.
- The current scope of the road social legislation does not address increasing problems in the industry of **long periods away from home** and a lack of suitable parking, rest and sanitary facilities. The current lack of infrastructure availability coupled with interpretations in some Member States that drivers are not allowed to spend weekly rest in vehicles might result in either disproportionate costs to undertakings or inappropriate and/or unsafe rest conditions for the driver as long as there is no clear requirement on what the alternative accommodation for a driver is supposed to be for such regular weekly rests.
 - o It may be considered whether the legislation can be amended to address such concerns, or whether other interventions are needed. For instance, it could be considered to address the issue of insufficient infrastructure by defining means that require Member States to provide appropriate infrastructure – although this may be better achieved via national initiatives, or European initiatives outside of the social legislation.
 - o It may also be considered whether undertakings should be required to plan schedules in a way such that drivers can return to their home base regularly, in order to avoid long periods away from home. The practicalities and desirability of such a measure would have to be carefully considered. For example, the definition of the term 'home base' would have to be cautiously defined and should involve considerations of current and possible resulting future employment practices in order to avoid drivers returning regularly to an artificial base (e.g. the undertakings' premises). It would also have to be assessed whether some types of transport operations might rely on drivers spending long periods away from home – in these cases adequate remuneration and/or derogations might need to be ensured. Furthermore, distributional impacts could occur (for example, affecting drivers from peripheral countries).

These complexities mean that it is not necessarily appropriate to address such issues in the context of road social legislation. Indeed, since long periods away from home are a well-known concern contributing to the poor image/attractiveness of the profession, there has already been much discussion in the industry about how to improve matters through general management practice, coordination with clients and innovative organisations schemes such as stage coach relays (Bayliss, 2012).

8.3.2 Measures to address the needs of the sector

Concerning the needs of the sector, specific requests for increased **flexibility** have been made by industries, due to their specific operational needs/demands. The potential impact of incorporating additional flexibilities into the rules needs to be assessed on a case-by-case basis. A key issue is that any flexibilities provided in the rules in order to better permit operators to meet exceptional or unexpected circumstances can become the norm. As a result, there is the concern that an increase in flexibilities may have adverse effects on the working conditions, health and safety of drivers. The highlighted differences between passenger and goods transport suggest that consideration of sector-specific regulations for the passenger sector would be justified. A number of specific requests have been put forward that would need to be analysed in more detail in the context of an Impact Assessment, with a view to obtaining an appropriate balance between flexibility on the one hand, and protection of drivers' working conditions and road safety on the other.

Furthermore, the sector is confronted with **shortages of drivers** in several countries, putting additional pressure on drivers' working conditions. Actions to ensure a workforce could include, among others, obligations to ensure sufficient trainings are available as well as obligations to inform the public about existing training and certification schemes for drivers.

8.4 Measures to improve the reporting and monitoring information

There are continuing difficulties in the provision of data around certain indicators where Member States are not able to collect the data at the level of detail that is requested. This hampers establishing assessments of the enforcement systems in place and the performance of road social legislation in more general. To mitigate these issues, the consultants recommend the following actions:

- Ask Member States to clarify more precisely the definitions that they currently use when reporting their data. This would be a low-cost measure that would greatly improve the ability to use the currently available information from past reporting periods.
- Develop and disseminate guidance on interpretations of key inputs, so as to improve the harmonisation of the reporting. The consultants recommend that this be done through amendment of the current reporting template, given that the electronic format is already used by the Member States and has already contributed to improved completeness and quality of data in recent years.
- Examine potential areas for simplification/reduction of the reporting requirements, in particular considering the need for detailed disaggregation (considering the cost/benefit and that several Member States still lack the technical capacity to report on these fields), as well as the future relevance of the requirement to report on the share of vehicles with digital tachographs.
- Require countries to report on the functioning of their risk-rating systems in more detail – for example, what information is fed into the systems and what is the rating criteria applied – to allow for a better understanding of the effectiveness and comparability of enforcement data between countries.
- Ensure accuracy of reported information by seeking and disseminating best practices in this regard in order to assist Member States in their reporting. The incidence of any additional obligations for verification for accuracy should also be assessed as part of an Impact Assessment (i.e. whether this should be the responsibility of the Member States). In the longer run, require the reporting of other/additional indicators to allow for a more thorough assessment of the legislation (see the recommendations of Evaluation Question 10 (Section 6.10.4) for a list of specific indicator proposals. However, their introduction should require

a careful assessment of the additional costs to Member States, the likelihood that this type of information could be obtained, and the possible benefits. Considering that there are still gaps in the current reporting, and that the questionnaire is already rather extensive, the **study team therefore consider that it would be counterproductive to expand the questionnaire further at this point**. Rather, the main focus should be set on making sure that the quality and completeness of the responses to the current template are improved before considering further expansion.

Concerning the reporting on Directive 2002/15/EC and considering that the Member States still struggle to provide complete and good quality data, an expansion of the reporting requirements is not recommended. The main focus should lie on improving the data submissions that are required in the current reporting, based on qualitative information (that still provides useful insights for the Member States that provide information).

9 ANNEX A: SUPPLEMENTARY INFORMATION ON IMPLEMENTATION OF THE PROVISIONS

9.1 Regulation (EC) No 561/2006

9.1.1 Member States' stances to spending regular weekly rest periods in the vehicle

Table 9-1: Response to the question "In your Member State, are drivers allowed to spend their regular weekly rest in the vehicle under any circumstances?"

(Where both answer options are shown, authorities of the same Member State provided different answers).

MS	No	Yes	Comments received
AT	x		
BE	x		Comment from Antwerp Local Traffic Police: For foreign drivers/transport companies, a fine of 1,800 € is to be paid immediately by the undertaking. The checks are carried out at a public parking space. Belgian drivers/undertakings have the possibility to pay the fine later by bank transfer. Comment obtained by the Federal Highway Police: "In our opinion, legislation lacks clarity. We can only ask a fine if we notice the infringement on the moment (caught in the act). If a driver comes to us on Wednesday (he isn't taking his weekly rest on that moment) and asks us to help him because he is sleeping in his truck every day for three months, then we can't help him or sanction his undertaking because we didn't notice it on the moment when he was taking his weekly rest in the truck. Here we are discriminating some drivers because we can only sanction drivers if they are caught in the act. A lot of undertakings know that we only notice the infringement by caught in the act and they are obligating their drivers to take their weekly rest outside Belgium."
BG		x	
CH		x	
CY	x		
CZ	x		
DE		x	NB: In contrast to this response by the national enforcement BAG (responsible for roadside checks) several regional enforcement authorities state that it is NOT allowed. These authorities however mostly indicate that the actual monitoring is difficult in practice (and partly also state that fines are not defined).
DK	x		
EE	x		
FI	x		
FR	x		
GR	x		
HR	x	x	
HU	x		Not allowed but not enforced.
LT		x	If the vehicle is stationary and has built in living space with a bunk.
LU		x	
LV		x	
NL	x		In the NL the policy is to warn the driver/company after it has been established that no alternatives were offered by the company owner. The Member State / country of origin / seat of the company will be informed accordingly.
NO	x		There is normally no fine for taking a regular weekly rest in a vehicle. Instead, inspectors simply inform drivers that taking regular weekly rests in the vehicle is not allowed under the Regulation. Sanctioning this particular type of infringement is not a priority. Our view is that it is far more important to ensure that drivers actually do take weekly rests than to ensure that they do not spend them in their vehicles.

PL	x	x	When our inspectors find that the driver took his regular weekly rest in the vehicle, we do not count this as a properly taken rest and then the fine is imposed for a lack of rest.
PT	x		There are no national restrictions, but EU regulation does not allow it
RO	x		For the moment, according to the Romanian legislation, there are no sanctions for this type of infringement. Nevertheless, ISCTR [the enforcement authority] drew the attention of Road Transport Department to this issue. As a consequence this issue has been made a priority for modifications to be urgently made on the national legislation and sanction system.
SE	x		The responding enforcement authority stated that they did not enforce this in checks at the premises. In the response from the Ministry it was commented that resting in the vehicle is seen to be better than resting in a tent, which is allowed according to the legislation.
SI	x		According to enforcement authority: fine to be paid for infringement ranges from EUR 40 to EUR 2,000 for drivers, and EUR 120 to EUR 7,500 for undertakings. Foreign drivers and undertakings must pay the fine immediately, while Slovenian drivers and undertakings have a deadline of 16 days; according to the national ministry there are "no special sanctions regarding national legislation".
SK	x	x	Drivers must have an access to a sleeping berth for it to be allowed.
UK	x		In the UK the Driver and Vehicle Standards Agency (DVSA) have taken a practical approach to enforcement, taking the view that it is very important that drivers take their weekly rest and we would not wish to discourage them from doing so.

9.1.2 Implementation of the co-liability principle under Regulation (EC) No 561/2006

Table 9-2 shows the implementation of the co-liability principles under Regulation (EC) No 561/2006

Table 9-2: Implementation of co-liability provisions for drivers and undertakings for infringements of Regulation (EC) No 561/2006

	Can the undertaking provide evidence that they are not liable for infringements of Regulation (EC) No 561/2006?	Under which circumstances are drivers held responsible in your Member State for infringements regarding Regulation (EC) No 561/2006 (instead of, or in addition to, their undertakings).	Under which circumstances are other parties (i.e. a party in the transport chain such as freight forwarders, consignors etc.) are held responsible in your Member State for infringements?
Poland	Yes	The driver is responsible for infringements for which he/she has a direct impact	If the circumstances of the case and the evidence clearly indicate that the entity had an impact or agreed to the circumstances that led to the infringement
Portugal	Yes	No information	Other parties are not held responsible in any circumstance
Belgium	Yes	The undertaking has to prove that the driver was acting on his own initiative and to his own advantage, outside of the company instructions and not to the benefit of the company.	They can be held accountable if it can be proven that they have given instructions to commit or encouraged in any way behaviour that is not conform the regulation.
Bulgaria	Yes	Driving and resting time, technical condition of the vehicle and etc.	No information

	Can the undertaking provide evidence that they are not liable for infringements of Regulation (EC) No 561/2006?	Under which circumstances are drivers held responsible in your Member State for infringements regarding Regulation (EC) No 561/2006 (instead of, or in addition to, their undertakings).	Under which circumstances are other parties (i.e. a party in the transport chain such as freight forwarders, consignors etc.) are held responsible in your Member State for infringements?
Estonia	Yes	If specific complaints are identified	If a specific violation of the freight forwarder or the sender is identified
Finland	Yes	If nobody in the company is responsible, then the driver is	If the customer (registered in business), who orders the transport, requires such timetable which cannot be driven legally, he/she is responsible
Latvia	Yes	Latvian Administrative Violations Code foresee sanctions (fines) for both - driver and company. Administrative decision (protocol) is made according to the place where the infringement is detected (not made).	The transport company which holds EU Community licence is responsible for infringements regarding Regulation (EC) No 561/2006
Slovenia	Yes	In the case of the most serious infringement (MSI) from Annex IV of Regulation (EC) 1071/2009.	It is difficult to consider this situation by our enforcement bodies.
Czech Republic	No	The driver is also held accountable for an infringement of Regulation (EC) No 561/2006, but his liability is limited.	There are no other parties.
Sweden	Yes. But for checks at the premises, the undertaking is always responsible	Drivers are responsible for all infringement they commit. The company shall be able to show that they plan their organisation and inform their drivers in a way that the regulation can be followed. The company also has to control the driver's driving and rest periods and take measures if the rules are not followed.	
United Kingdom	Yes		If it is possible to prove Examples of this type of activity have been rare. Almost all examples of improper workloads / timescales have been pressures generated by the operator.
Denmark	No	The driver is responsible for offences committed through negligence	Other parties can be held responsible when aiding and abetting an offence
France	Yes	This is decided on a case- by- case basis by the criminal court.	Potentially, according to the analysis by the criminal court of the role of these other parties in the commission of the offense.

	Can the undertaking provide evidence that they are not liable for infringements of Regulation (EC) No 561/2006?	Under which circumstances are drivers held responsible in your Member State for infringements regarding Regulation (EC) No 561/2006 (instead of, or in addition to, their undertakings).	Under which circumstances are other parties (i.e. a party in the transport chain such as freight forwarders, consignors etc.) are held responsible in your Member State for infringements?
Luxembourg	Yes	Normally the undertaking and the driver are responsible	N/A
Netherlands	Yes	The driver is only responsible when the transport operator can demonstrate that he has provided the needed resources, has given the necessary orders and instructions and has kept the required supervision.	Only if written statements between undertakings and other parties lead to non-compliance with the regulation.
Finland	Yes – company has primary responsibility	Driver can be hold responsible in cases of counterfeiting driving data.	Possible
Cyprus	Yes	Drivers can be held responsible for inaccurate recordings, not carrying required documents, not providing sufficient information for his employment at any or all undertakings.	When agreed transport time schedules violate the provisions of 561/2006/EC
Germany			
Hungary	Yes	The co liability in the HU fine system is freely decided upon by the enforcement authority and there are only a few cases when the driver is automatically the only party holding the liability.	Other elements of the logistical chain are considered only in case of ADR, load securing etc.
Romania	Most sanctions applied to undertakings	Certain sanctions applied only to the drivers like for example: Inadequate use of the recording equipment, abusive interventions on the recording equipment or if there is not used a valid tachograph card. If the driver did not mention all the information related to the activities carried on during the periods when the recording device did not record as a result of a malfunction. Driver does not apply within 7 calendar days for the replacement of a damaged, defect, lost or stolen tachograph card. Driver signature missing from the printout etc.	No liability
Norway	Infringements detected at company checks tend to result in sanctions	Generally, infringements detected at roadside checks tend to result in sanctions directed against the driver. The company shall be able to show that they check their own drivers etc. If they fulfil	

	Can the undertaking provide evidence that they are not liable for infringements of Regulation (EC) No 561/2006?	Under which circumstances are drivers held responsible in your Member State for infringements regarding Regulation (EC) No 561/2006 (instead of, or in addition to, their undertakings).	Under which circumstances are other parties (i.e. a party in the transport chain such as freight forwarders, consignors etc.) are held responsible in your Member State for infringements?
	against the company.	this requirement and a driver still consistently break the rules they may have to fire the specific driver. If one individual driver break the rules the company can be freed from liability and the driver is held responsible instead	
Switzerland	Driver is mainly responsible.	Driver is mainly responsible. If the undertaking has pushed a driver to offences or has, if possible, not prevented drivers offences, the undertaking will be punished same way than the driver.	No liability

Source: Survey of ministries and enforcers and (Transportstyrelsen, 2015)

9.1.3 Inconsistencies between Article 10 and Article 19 of Regulation (EC) No 561/2006

The Swedish ministry highlighted inconsistencies regarding Article 10 vs Article 19. More specifically, Article 19 lays down requirements for Member States to define penalties, and states no infringement shall be subjected to more than one penalty or procedure. This issue was analysed in a publication from CORTE (2013), which recognises that the text may be unclear because it is the responsibility of transport undertakings organise the work of their drivers, instruct and check them (Article 10(2)), and they are considered as responsible in cases where drivers break the rules (Article 10(3)). Conversely, the wording of Article 19 could be interpreted as targeting situations where one single offence could be sanctioned multiple times. It could also cover situations where a single incident could lead to two separate infringements – i.e. the infringements are not the same and the parties sanctioned would be different too (the driver on the one side and the transport undertaking on the other side). In practice, it appears that Member States have interpreted the Regulation such that Article 19 refers entirely to the fact that drivers should not be able to receive two sanctions for the same infringement, as shown in Table 9-3.

Table 9-3: Interpretation of Article 10 and Article 19

	Can a company be sanctioned in accordance with article 10.3 regarding an infringement that a driver has been sanctioned for before?	Does this mean that article 19 is referring entirely to that a driver should not be able to receive two sanctions for the same infringement?
Sweden	Yes, it is different responsibilities so it is not regarded as the same sanction	Yes
Norway	Yes, the company can be sanctioned for a drivers infringement even though the driver has been so previously, since it is two different responsibilities that are fined.	Yes
UK	Yes	Yes
Netherlands	Yes	Yes

	Can a company be sanctioned in accordance with article 10.3 regarding an infringement that a driver has been sanctioned for before?	Does this mean that article 19 is referring entirely to that a driver should not be able to receive two sanctions for the same infringement?
Finland	The company can be held responsible for the same infringement as the driver, but if it is taken to court the prosecutor will probably remove that infringement. They don't usually know if the driver has had a fine at roadside checks before the company check. Only if employer tell about these cases.	No information
Latvia	Yes, it is possible; the infringement of the driver is taken into account in the protocol in the company check.	Yes
Spain	Yes	Yes
Denmark	Yes	Yes
Germany	Yes	Yes
Romania	If the driver has been fined abroad, the company cannot be fined if they can produce the roadside check form. The initial responsibility is the company	Yes

Source: (Transportstyrelsen, 2015)

9.1.4 Comparison of 'old' and 'new' exemptions and derogations

Table 9-4: Comparison of exemptions

Exemptions according to Regulation (EEC) No 3820/85	Exemptions according to Regulation (EC) No 561/2006
Vehicles used for the carriage of goods where the maximum permissible weight of the vehicle, including any trailer or semi-trailer, does not exceed 3.5 tonnes.	Although this exemption has been removed, the Regulation applies its scope to vehicles over 3.5 tonnes only.
Vehicles used for the carriage of Passengers with no more than 9 seats, including the driver's seat.	Although this exemption has been removed, the Regulation only applies its scope to vehicles with more than 9 seats (including the driver's seat).
Vehicles used for the carriage of Passengers on regular services with a route that does not exceed 50 km.	No change.
Vehicle not capable of exceeding 30 kmh.	Vehicle not capable of exceeding 40 kmh .
Vehicles used by or under the control of the armed services, civil defence, fire services, and forces responsible for maintaining order.	Vehicles owned or hired without a driver by the armed services, civil defence services, fire services, and forces responsible for maintaining public order when the carriage is undertaken as a consequence of the tasks assigned to these services and is under their control.
Vehicles used in emergencies or rescue operations.	Vehicles, including vehicles used in the non-commercial transport of humanitarian aid , used in emergencies or rescue operations.
specialised vehicles used for medical purposes	No change.
Specialised breakdown vehicles.	Specialised breakdown vehicles operating within a 100 km radius of their base .

Exemptions according to Regulation (EEC) No 3820/85	Exemptions according to Regulation (EC) No 561/2006
Vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service.	No change.
Vehicles used for the non-commercial carriage of goods and personal use.	Vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used for the non-commercial carriage of goods.
Vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, highway maintenance and control, household refuse collection and disposal, telegraph and telephone services, carriage of postal articles, radio and television broadcasting, and the detection of radio or television transmitters or receivers.	This has been changed to a national derogation and was slightly revised.
Vehicles transporting circus and fun-fair equipment.	This has been changed to a national derogation and was slightly revised.
Vehicles used for milk collection from farms and the return to farms of milk containers or milk products intended for animal feed.	This has been changed to a national derogation.
New exemption.	Commercial vehicles, which have a historic status according to the legislation of the Member State in which they are being driven and which are used for the non-commercial carriage of passengers or goods. (Historic status definition: A vehicle which by virtue of its construction and equipment is suitable for carrying passengers or goods and which was manufactured more than 25 years before the date in which it is being driven.

Table 9-5 Comparison of derogations

Derogations according to Regulation (EEC) No 3820/85	Derogations according to Regulation (EC) No 561/2006
Vehicles used for carrying passengers, which by virtue of their construction and equipment are suitable for carrying not more than 17 persons, including the driver, and are intended for that purpose.	Vehicles with between 10 and 17 seats used exclusively for the non-commercial carriage of passengers.
Vehicles used by public authorities to provide public services which are not in competition with professional road hauliers.	Vehicles owned or hired, without a driver , by public authorities to undertake carriage by road which do not compete with private transport undertakings.
Vehicles used by agricultural, horticultural, forestry or fishery undertakings for carrying goods within a 50 kilometre radius of the place where the vehicle is normally based, including local administrative areas the centres of which are situated within that radius.	Vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking.
Vehicles used for carrying animal waste or carcases which are not intended for human consumption.	No change.
Vehicles used for carrying live animals from farms to the local markets and vice versa or from markets to the local slaughterhouses.	Vehicles used for the carriage of live animals from farms to local markets and vice versa or from markets to local slaughterhouses within a radius of up to 50 km.

Derogations according to Regulation (EEC) No 3820/85	Derogations according to Regulation (EC) No 561/2006
Vehicles used as shops at local markets or for door-to-door selling, or used for mobile banking, exchange or saving transactions, for worship, for the lending of books, records or cassettes, for cultural events or exhibitions, and specially fitted for such uses.	Specially fitted mobile project vehicles, the primary purpose of which is use as an educational facility when stationary.
Vehicles carrying material or equipment for the driver's use in the course of his work within a 50 kilometre radius of the place where the vehicle is normally based, provided that driving the vehicle does not constitute the driver's main activity and that the exception does not seriously prejudice the objectives of the Regulation. The Member States may make such exceptions subject to individual authorisation	<p>Vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used:</p> <ul style="list-style-type: none"> — by universal service providers as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service to deliver items as part of the universal service, or — for carrying materials, equipment or machinery for the driver's use in the course of his work. <p>These vehicles shall be used only within a 50 kilometre radius from the base of the undertaking, and on condition that driving the vehicles does not constitute the driver's main activity</p>
Vehicles operating exclusively on islands not exceeding 2,300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles.	No change.
Vehicles used for the carriage of goods and propelled by means of gas produced on the vehicle or of electricity or equipped with a governor in so far as such vehicles are regarded, under the legislation of the Member State of registration, as equivalent to vehicles propelled by a petrol or diesel engine, the maximum permissible weight of which, including the weight of trailers or semi-trailers, does not exceed 3.5 tonnes.	Vehicles used for the carriage of goods within a 50 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7.5 tonnes.
Vehicles used for driving instruction with a view to obtaining a driving licence.	Vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers.
Tractors used exclusively for agricultural and forestry work.	Agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of up to 100 km from the base of the undertaking which owns, hires or leases the vehicle.
Used to be an exemption (see above) ('carriage of postal articles' has been deleted).	Vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers.
Used to be an exemption (see above).	Specialised vehicles transporting circus and funfair equipment.

Derogations according to Regulation (EEC) No 3820/85	Derogations according to Regulation (EC) No 561/2006
Used to be an exemption (see above).	Vehicles used for milk collection from farms and the return to farms of milk containers or milk products intended for animal feed.
New derogation.	Specialised vehicles transporting money and/or valuables.
New derogation.	Vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals.

9.1.5 Use of derogations (Article 13 and 14) by Member State

Figure 9-1 provides a complete overview of the derogations that have been granted according to **Article 13**.

Figure 9-1: Derogations according to Article 13 by Member State

Derogation (as defined in Article 13)	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden	United Kingdom
a	●	●		●	●	●	●			●	●		●	●		●	●			●	●		●	●	●	●		□
b	●	●	●	●	●	●	●	□		□	●		●	●		●	●			●	●	●	●	●	□	□	●	□
c	●	●	●	●	●	●	●	●		●	●		●	●		●	●	●			●	●	●	●	●	□	●	●
d		●	●	●	●	●	●			●	●		●	●	●	●	●	●			●	●	●	●	●	●		□
d	□	●		●	●	●	●	●		●	●		●	●		●	●	●			●	●	●	●	●	●	●	●
e				●	●	●	●			□	●			●					●		●	●				□	●	●
f				●	●	●	●	●		●	●		●	●			●	●			●	●	●	●	●	●		●
g		●		●		●	●	●			●				□	●	●	□			●	●	●	●	●	●	●	●
h	□	●	●	●	●	●	●	●		□	●		●	●	●	●	●	□			●	●	●	●	●	●		●
i	●	●		●	●	●	●	□		□	●		●	●		●	●				●	●		●			●	●
j	●	●	●	●	●	●	●	●		●	●		●	●	●	●	●	●			●	●	●	●	●	□	●	●
k	●	●		●	●	●	●			●	●		●	●		●	●				●	●	●	●	●	●		●
l	□	●		●	●	●	●	□		□	●		●	●	●	□	□	●			●	●	●	●	●	□	●	●
m	□	●	●	●	●	●	●			●	●		●	□		●	●				●	●	●	●	●	●		●
n		●		●	●	●	●	●		●	□		●	●		●	●				●	●	●	●	●	●		●
o	●	●	●	●	●	●	●	●		●	●		●	●		●	●				□	●	●	●	●	●		●
p	●	●		●	●	●	●	●		●	●		●	●		●	●					●	●	●	●	●		●
Total #	12	15	7	17	16	17	17	11	0	16	17	0	15	17	5	15	16	8	1	13	17	16	14	16	15	14	11	16

● Application of derogation as defined in Article 13 without modification
 □ Application of derogation as defined in Article 13 with modification (i.e. restriction)

Source: Based on EC (2014) and updated for Romania according to inputs obtained via an interview with a Romanian enforcement authority

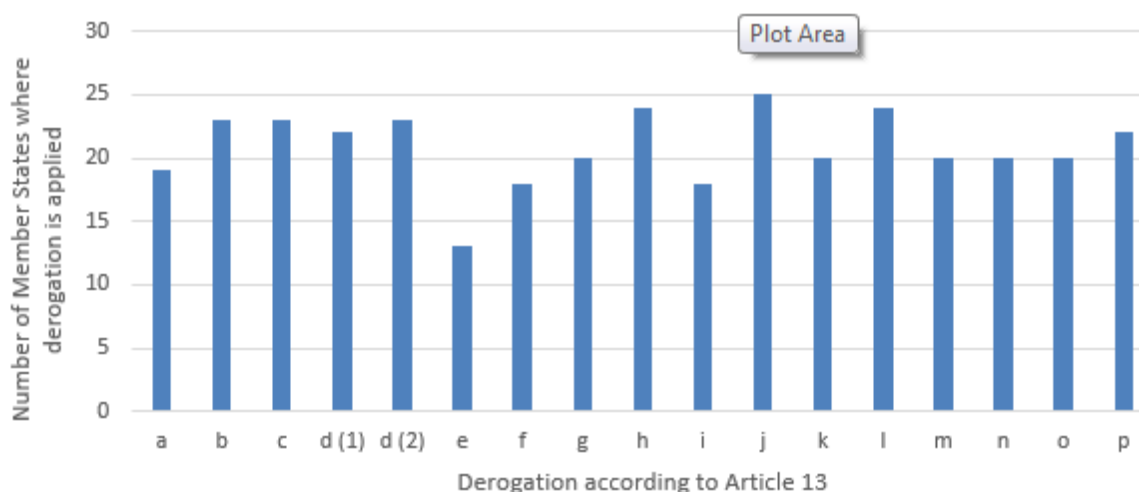
Figure 9-2 shows the frequency with which derogations are applied across the EU Member States. It can be seen that the derogation (e) has been least applied across the Union, undoubtedly since this derogation, referring to islands, is not relevant for all Member States. All other derogations have been similarly frequently applied, between 17 times (derogation (f) referring to vehicles used within a 50km radius propelled by natural or liquefied gas or electricity, with a mass below 7.5t) and 24 times (derogations (h) and (j) referring to vehicles used in connection with sewerage, flood protection, water etc. and specialised vehicles transporting circus and funfair equipment respectively).

A coordinated approach towards exceptions has been chosen by United Kingdom and Republic of Ireland: these two countries agreed on a cross border agreement specifying

common derogations from the EU drivers' hours rules for certain categories of vehicles operating between the two territories in August 2011 (EC, 2014b).

In interviews with ministries the question was raised what the rationale behind choosing a certain set of derogations was. The ministries that responded the according question (UK and Sweden) could not provide an insightful answer.

Figure 9-2: Frequency of applied derogations



Source: Based on EC (2014) and updated for Romania according to inputs obtained via an interview with a Romanian enforcement authority

Article 14(1) further provides Member States the possibility to grant exceptions from Articles 6 to 9 to transport operations carried out in *exceptional circumstances* after the authorisation of the Commission.

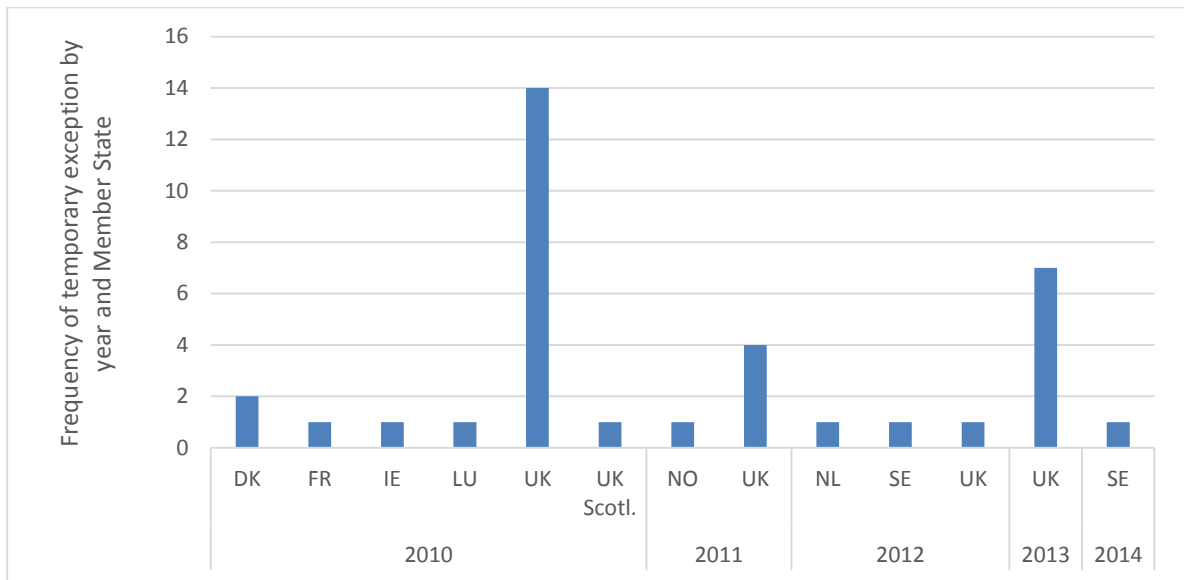
Figure 9-3: Exceptions granted according to Article 14(1)

No.	MS	Subject to exception	Article	Decision	Adoption date	Type
1.	SK	Spruce bark beetle	Art.14(1)	C(2007)3858	16 VIII 2007	Temporary
2.	UK	Foot and mouth	Art.14(1)	C(2007)6811	20 XII 2007	Temporary
3.	DK	Slaughterhouses	Art.14(1)	C(2007)6813	20 XII 2007	Temporary
4.	FI	Carriage of live fish	Art 14(1)	C(2008)8513	19 XII 2008	Permanent
5.	UK	Territorial Army	Art 14(1)	C(2008)7472	22 XII 2008	Permanent
6.	NL	Truckruns	Art 14(1)	C(2009)1065	20 II 2009	Permanent
7.	BE	Truckruns	Art 14(1)	C(2011)3964	22 VI 2011	Permanent
8.	NL	Coronation	Art 14(1)	C(2013) 2316	25 IV 2013	Temporary
9.	DE	Refugees	Art 14(1)	C(2015) 8073	16.XI.2015	Temporary
10.	SI	Refugees	Art 14(1)	C(2015) 8662	30.XI.2015	Temporary

Source: Commission report provided to the consultants (for period 2007-2015)

The Commission also provided the consultants with an overview of temporary exceptions that were granted according to **Article 14(2)**. It shows that up until 12 August 2015, 36 temporary exemptions were granted. Most of them can be related to extreme or unusual weather conditions. Two of them were granted in relation to volcanic ashes (in France and Luxembourg in April 2010); one was granted due to unexpected bus transport needs during the FIS Nordic World Ski Championships in Oslo in 2011. Figure 9-4 shows the split of these temporary exceptions per Member State and year. It can be seen that it is mainly the United Kingdom making use of such temporary exceptions.

Figure 9-4: Temporary exceptions granted according to Article 14(2) by year and Member State



Source: Commission report provided to the consultants (last update: 12 August 2015)

9.1.6 Sanctions per type of infringement by Member State

The following table presents the responses received from national ministries or, alternatively, from national enforcement authorities (where this is indicated with "(EA)") that were consulted in the context of this study.

	Type of infringement								Comment
	Most serious		Very serious		Serious		Minor		
	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	
MS									
AT			€ 300 - to € 3,600; checks at the undertaking		€ 200 - to € 3,600; checks at the undertaking		€ 72 - € 1,815; checks at the undertaking		Roadside checks § 134 (1) KFG: fine up to 5.000 €; in the event of non-payment a period of up to six weeks imprisonment. § 134 (1b) KFG: in accordance with Annex III of the Directive 2006/22/EC, as amended by the Directive 2009/5/EC, ABl. Nr. L 29 vom 31.1.2009; In the event of a serious infringement not less than 200 €: in the event of a very serious infringement not less than 300 €.
BE	Criminal sanctions are defined by article 2 § 1 of Wet van 18 februari 1969 betreffende de maatregelen ter uitvoering van de internationale verdragen en akten inzake vervoer over zee, over de weg, de spoorweg of de waterweg". They range from 8 days to six months of imprisonment and penal sanctions of € 50 - €10,000 euro (amounts to multiply by 6 for effective fine)"; at present time there is no clear classification considering the seriousness of the infringements.								
BG	€ 2,541 (5,000 lv)		€ 1,525 (3,000 lv)		€ 762 (1,500 lv)		€ 100 - € 508 (200 - 1,000 lv)		[Exchange rate used: EUR/lev = 0.50835]
CY (EA)	up to € 3,417	up to six months imprisonment	up to € 3,417	up to six months imprisonment	up to € 3,417	up to six months imprisonment	up to € 3,417	up to six months imprisonment	
CZ	up to € 18,475 (500,000 K)	Possible loss of good repute	up to € 18,475 (500,000 K)		up to € 18,475 (500,000 K)		up to € 18,475 (500,000 K)		[Exchange rate used: EUR/CZK = 0.03695]
DK	€ 26 for each percent the provisions regarding driving time, breaks or rest periods is exceeded		€ 26 for each percent the provisions regarding driving time, breaks or rest periods is exceeded		€ 26 for each percent the provisions regarding driving time, breaks or rest periods is exceeded		€ 26 for each percent the provisions regarding driving time, breaks or rest periods is exceeded		The fine is calculated according to the size of the violation
EE	up to € 800	Removal from driving vehicle	up to € 800	Removal from driving vehicle	up to € 400	-	not specified	-	Traffic Act Rules in the §243-255 § 244. Influencing of driver of power-driven vehicle without violating requirements for working, driving and rest time (1) The penalty for

	Type of infringement								Comment
	Most serious		Very serious		Serious		Minor		
	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	
MS									giving to the driver of a power-driven vehicle a work order the due execution of which calls for a violation of the working, driving and rest time requirements established by this Act is a fine of up to 200 fine units. (2) The penalty for the same act committed by a legal person is a fine of up to 3,200 euros.
FI	€ 90 - € 120 day fines according to the incomes, no exact sums	Immobilisation as long as the rest or break has been finalised							
FI (EA)	Written advice (administrative guidance)		Written advice (administrative guidance)		Written advice (administrative guidance)		Written advice (administrative guidance)		In addition to administrative guidance, Labour Inspectorate notifies most severe infringements to police. Information is also sent to transport permit authority (risk rating system).
FR	Up to € 30,000 and 1 year of imprisonment	Immobilisation; remise en conformité des appareils	Up to € 3,750	Immobilisation; retrait des cartes conducteurs employés indûment	Up to € 1,500	Immobilisation	€ 135	Immobilisation	
GR (EA)	€ 4000	criminal proceedings	€ 400	Immobilisation	€ 250	Immobilisation	€ 200	Immobilisation	The penalties for drivers are different to the ones for undertakings
HU (EA)	€ 1,901 – € 2,535 (HUF 600,000 to 800,000)	Immobilisation	€ 633 – € 1,268 (HUF 200,000 to 400,000)	Immobilisation	€ 254 – € 380 (HUF 80,000 to 120,000)		€ 32 – € 95 (HUF 10,000 to 30,000)		[Exchange rate used: EUR/HUF = 0.00317]
LUX (EA)	€ 251 - € 25,000		€ 251 - € 25,000		€ 250		€ 145		All minor and serious infringements are paid as a fine between 145€ and 250€. Very serious and most serious infringements are paid according discretion of a judge.
LV (EA)	€ 700 - € 1,400	none	€ 210 - € 700	none	€ 70 - € 210	none	none		

	Type of infringement								Comment
	Most serious		Very serious		Serious		Minor		
	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	(Range of fines)	Other sanctions	
MS									
NL (EA)	€ 550 - € 4,400	Immobilisation, withdrawing operating license	€ 550 - € 4,400	Immobilisation	€ 200 - € 549	Immobilisation	Up to € 199		The sanctions are per driver per day with a maximum 44,000 €; The penalties for drivers are different to the ones for undertakings
PT	N.A.		€ 2,040 to € 61,200		€ 612 - € 9,690		€ 204 - € 1,530		Infringements to maximum driving times and minimum rest or pause periods have other sanctions such as immobilisation and administrative procedures
RO (EA)	Sanction fine	Immobilisation + Good Repute Procedure triggered + suspension of the certified copy in certain cases.	Sanction fine	Immobilisation in certain cases	Sanction fine	Immobilisation in certain cases	Sanction fine or warning	-	In the extent that infringements regarding driving hours, rest or breaks are detected during the roadside checks as also in the situations when the driver is not able to prove the compliance with the drivers hours and or/ minimum rest periods according to the law, in addition to the fine applied there shall also be applied the immobilisation of the vehicle until the full reestablishment of the compliance with the legal conditions in order to continue the transport.
SE	€ 426	Immobilisation	€ 426 (4000 SEK)		€ 213 (2000 SEK)		€ 107 (1000 SEK)		Fines for the driver on road and administrative sanctions for the transport company [Exchange rate used: EUR/SEK = 0.10652]
SI	€ 12,000 - € 24,000		€ 6,000 - € 12,000		€ 1,000 - € 6,000		€ 100 - € 2,000		
SK	€ 1,650 - € 16,500		€ 660 - € 3,300		Up to € 660		Up to € 660		
UK	€ 280 - € 3,494 (£ 200 - £ 2,500)	Prohibitions and/or immobilisation	€ 280 - € 3,494 (£ 200 - £ 2,500)	Prohibitions and/or immobilisation	€ 280 - € 3,494 (£ 200 - £ 2,500)		€ 280 - € 3,494 (£ 200 - £ 2,500)		[Exchange rate used: EUR/GBP = 1.39768]

Source: Stakeholder questionnaires of this study

9.2 Directive 2002/15/EC

9.2.1 Sanctions per type of infringement by Member State

	Type of infringement						Comment
	Most serious		Very serious		Serious		
	(Range of) Fines	Other sanctions	(Range of) Fines	Other sanctions	(Range of) Fines	Other sanctions	
AT	€ 300 - € 3,600	Labour inspection	€ 200 - € 3,600	Labour inspection	€ 72 - € 1,815	Labour inspection	
BE	Penal Sanctions can range from € 50 - € 10,000 (x6 for the adjustment to the current year). On-the-spot fine for exceeding the maximal weekly working time is € 44 per hour.						
BG	Labour Code Article 414 (1) (Amended , SG No. 48/2006 , SG No. 108/2008 , SG No. 58/2010 , effective 30.07.2010) Any employer, who violates any provisions of labour legislation other than the rules for provision of health and safety at work, shall be liable to a pecuniary penalty or a fine of BGN 1,500 or exceeding this amount but not exceeding BGN 15,000, unless subject to a severer sanction, and any such blameworthy official shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 10,000 , unless subject to a severer sanction. (2) (Amended , SG No. 48/2006 , SG No. 108/2008) The sanction for a repeated violation under Paragraph (1) shall be a pecuniary penalty or a fine of BGN 20,000 or exceeding this amount but not exceeding BGN 30,000 or, respectively, a fine of BGN 5,000 or exceeding this amount but not exceeding BGN 20,000. Carriage by Road Act Article 104. (New , SG No. 11/2002 , amended , SG No. 85/2006) (1) (Previous Article 104 , amended , SG No. 17/2011) A carrier who does not provide for observance of the provisions concerning the working time and the rests of the drivers engaged in public carriage of passengers and cargo, including carriage on his own account, shall be sanctioned by a penalty payment of BGN 1,000.						
FR	up to € 1,500		up to € 750		up to € 450		
PL	€ 7,045 (30,000 PLN)		€ 235 - € 7,045 (1,000 - 30,000 PLN)		€ 235 (1,000 PLN)		Labour law code, Division XIII Responsibility for infringements against the employee rights. [Used exchange rate: EUR/PLN= 0.23484]
PT	n/a		€ 2,040 - € 61,200		€ 612 - € 9,690		Decreto-Lei n.º 237/2007 , de 19 de Junho concerning mobile workers employed by undertakings and Decreto-Lei n.º 117/2012 , de 5 de Junho concerning self-employed drivers.
SL	n/a		€ 1,250		€ 800		
SE	Sweden has no categorisation of these infringements yet. Today only administrative sanctions.						
UK	The courts have a system of fines and custodial sentences that can be applied to anyone who contravenes the Regulations. For example: failure to comply with any of the relevant requirements could lead to fine of up to £5,000 (the current maximum) in a Magistrates Court; or a fine at the Judge's discretion in a Crown Court; <u>Improvement notices</u> - to notify the employer of a likely breach of the Regulations and to set out the changes that need to be made in a given timescale; and Prohibition notices - requiring the employer to cease operating for a predefined period of time.						In UK, there is a standard scale of fines which applies to all offences. The fines available to be imposed by Magistrates Courts on summary conviction are level 1 – 5 on the Standard Scale (£200 - £5,000). (€ 280 - € 6,988)

Source: Stakeholder questionnaires of this study

9.2.2 Implementation of the co-liability principle under Directive 2002/15/EC

Ministries and enforcers were asked about which parties could be held responsible for infringements of the Working Time Directive. The responses received are shown in Table 9-6.

Table 9-6: Implementation of co-liability for infringements of the Working Time Directive

Member State	Transport operators	Drivers	Others
Poland	Primary responsibility	Unknown	No information
Portugal	Primary responsibility	Primary responsibility	No information
Belgium	Primary responsibility	Co-liability	No information
Bulgaria	Primary responsibility	Primary responsibility	No information
Estonia	Primary responsibility	Primary responsibility	No liability
Finland	Co-liability	Co-liability	No liability
Latvia	Co-liability	Co-liability	No information
Slovenia	Primary responsibility	Co-liability	No information
Austria	Primary responsibility	No liability	No liability
Czech Republic	Unknown	Unknown	No information
Sweden	Primary responsibility	No liability	No liability
Slovakia	Primary responsibility	Primary responsibility	No information
United Kingdom	Primary responsibility	Unknown	Primary (driver agencies and self-employed drivers)
Denmark	Unknown	Unknown	No data
France	Primary responsibility	No liability	Case-by-case in criminal court
Netherlands	Primary responsibility	No liability	No liability
Luxembourg	Primary responsibility	Co-liability	No information
Germany	Primary responsibility	Unknown	Unknown
Cyprus	Primary responsibility	Primary responsibility	No liability
Lithuania	Primary responsibility	No liability	Unknown
Romania	Primary responsibility	Primary responsibility	No information
Croatia	Co-liability	Co-liability	No information

Source: Survey of ministries and enforcers

9.3 Directive 2006/22/EC

9.3.1 Concerted or joint checks carried out by Member States

Table 9-7 shows the number of concerted checks performed by Member States, as reported in their biennial reports. One striking feature of the data on concerted checks is the very large number of checks performed by Bulgaria and Romania (largely conducted with each other), as well as Lithuania in recent years in comparison to other Member States. The reduction Bulgaria made in its frequency of joint checks from 2009-2010 to 2011-2012 is sufficient to explain the decrease in the EU-level total over the same period. In the latest reporting period Romania (55 checks) and Ireland (39 checks) report the highest number of concerted checks which is significantly higher than the number set out in the Directive.

Table 9-7 Numbers of concerted or joint checks reported to the Commission by reporting period (minimum requirement for concerted checks = 6 per year, implying 12 per two-year period)

	2007-2008	2009-2010	2011-2012
Austria	6 (ECR/TISPOL)	24 (ECR + TISPOL)	12
Belgium	4 (TISPOL) + 8 (ECR)	Some, frequency unspecified	Some ECR joint controls, frequency unspecified
Bulgaria	4 (ECR) + 36	40	22
Cyprus	4 (TISPOL)	None reported	None reported
Czech Republic	No data	No data	13
Denmark	No data	No data	Some TISPOL concerted checks, frequency unspecified
Estonia	No data	10	5
Finland	No data	None reported	None reported
France	16 (ECR)	>14 (ECR)	>16 (ECR)
Germany	10-12	10-12 + several ECR joint controls	10-12 (ECR)
Greece	No data	No data	No data
Hungary	16 (TISPOL) + 4 (ECR)	29	20 (ECR/TISPOL)
Ireland	16	18	39
Italy	No data	No data	Some, frequency unspecified
Latvia	27	24	20
Lithuania	No data	28	9 (ECR) + 17
Luxembourg	No data	Some ECR joint controls, frequency unspecified	Some ECR joint controls, frequency unspecified
Malta	No data	No data	0
Netherlands	14 (ECR and TISPOL)	Some, frequency unspecified	16 (ECR/TISPOL)
Poland	12 (ECR)	14	14 (ECR)
Portugal	No data	None reported	None reported
Romania	No data	80	55

	2007-2008	2009-2010	2011-2012
Slovakia	Some, frequency unspecified	>16-20	14
Slovenia	2	>8	>11
Spain	15 (ECR) + 2	None reported	12 (ECR)
Sweden	3	10	Some, frequency unspecified
UK	13	12	13
Total	>211	>337	>318

Notes: "Joint" checks are counted in addition to "concerted" checks in this table. Member States' reference to "controls" and "inspections" are interpreted as referring to checks. Activities described only as "exchanges" "programmes" "meetings" or "campaigns" are not counted as joint/concerted checks unless Member States have explicitly stated they involve joint/concerted checks. Participation in training is not considered a joint or concerted check.

Source: Author analysis of biennial reports from the Commission

9.3.2 Joint training programmes and exchanges of staff by Member State

Table 9-8: Numbers of joint training programmes on best practice and exchanges reported to the Commission by reporting period (minimum requirement for joint training programmes = 1 per year, for exchanges = 1 per year, implying 2 per two-year period each)

	2007-2008	2009-2010	2011-2012
AT	13 exchange initiatives in cooperation with ECR/TISPOL Member States	6 bilateral exchanges and 2 with ECR and TISPOL	6 bilateral exchanges of 26 persons with ECR/TISPOL (objectives; driving time checks, checks on tempering with tachograph, technical checks, securing of loads), 3 multilateral exchanges of 8 persons with ECR/TISPOL (objectives; driving time checks, checks on tempering with tachograph, technical checks, securing of loads)
BE	None reported	Bilateral exchanges with the Netherlands and Luxembourg, participation in TISPOL and ECR training activities.	None reported
BG	None reported	None reported	Exchange of information on detected infringements committed by Bulgarian drivers in Germany, Hungary, Austria, Spain, United Kingdom, Italy, Latvia, Romania and Slovenia.
CY	None reported	Participation in training organised in the Netherlands in 2009	In 2012 two officials attended the TRACE programme in Madrid.
CZ	No data	No data	5 multilateral exchanges organised by ECR, 1 trilateral with Poland and Germany organised by ECR, 1 assessment meeting with Poland in 2012.
DK	No data	None reported	None reported
EE	No data	None reported	None reported

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	2007-2008	2009-2010	2011-2012
FI	No data	None reported	SE and NO regularly send reports to FI concerning FI drivers and undertakings that have committed offences. The data is supplied to the Occupational Safety and Health Inspectorate carrying out checks in undertakings.
FR	A number of exchange initiatives under ECR	Several exchange programmes with Germany, Spain and other ECR countries.	Exchange of experiences within the framework of ECR; visits of enforcement officers from Germany and Spain as well as visits in United Kingdom, Spain, Germany, the Netherlands, Poland and Hungary.
DE	20-30 exchange initiatives in the context of ECR	None reported	Approximately 10-15 exchanges of experience under ECR, TISPOL per year, in which 2-10 inspectors participate.
GR	No data	No data	No data
HU	5 ECR exchange programmes + mutual data exchanges of data on infringements (including manipulations) with ECR members at least four times a year	None reported	ECR programmes and conferences: exchange programme (Leiden, Bristol, Opole, Luxembourg, Manchester), ERRU seminar, ADR master classes, Tachograph Conference (Osnabruck), COM-ECR Cargo Secure Conference, TISPOL conference.
IE	None reported	Participation on exchange programme organised by the UK.	Attendance at TISPOL master classes on manipulation of digital tachograph (3 officers), participation in exchange programmes organised by France, United Kingdom and Spain on compliance (5 officers). Participation in ECR working group meetings in relation to training and enforcement practices.
IT	No data	No data	None reported
LV	exchange of information with Denmark and Norway on vehicle control measures	None reported	Various international events (CASH, TRACE, transport of dangerous goods, enforcers training and exchange of experiences organised by Sweden).
LT	No data	None reported	14 joint campaigns with Poland and Latvia (8 with PL and 6 with LV)
LU	No data	None reported	Cooperation within the framework of ECR
MT	No data	No data	Participation in TRACE project
NL	None reported	Participation in at least 5 multilateral exchanges and one bilateral. In 2009-2010: Netherlands, exchanges with the UK, Luxembourg, Spain, Poland, France, Germany and Hungary.	Exchanges, workshops and master classes, involving between 20-25 Dutch inspection officials a year.
PL	5 multilateral exchange actions and two training	Participation in multilateral exchanges and	Participation in 6 trainings and inspectors exchanges in 2011 and 8 in 2012.

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	2007-2008	2009-2010	2011-2012
	courses organised in the context of ECR	training organised by ECR, Germany, the Netherlands and the UK.	
PT	No data	Participation in ECR exchanges - frequency unknown.	Participation in meetings organised by ECR - frequency unknown.
RO	No data	Participation in several multilateral exchanges.	5 multilateral exchange of experience organised in Romania, France, United Kingdom, Hungary and Spain in 2011.
SK	None reported	In 2010 a joint programme of checks was carried out with the Czech Republic, Hungary and Poland.	None reported
SI	None reported	None specified	Active observer in ECR.
ES	multilateral training programmes in the context of ECR, as well as for bilateral training programmes with France	6 ECR multilateral exchanges each year. 2 bilateral exchanges with France per year. 2 bilateral exchanges with Portugal in 2010. Exchanges of inspectors with France in 2009.	4 bilateral exchanges with France (2 per year), 2 bilateral exchanges with Portugal, organisation of 2 multilateral exchanges with attendants from Belgium, Slovenia, France, the Netherlands, Luxembourg, Poland, Portugal, Czech Republic, Romania.
SE	participation, once a year, in international exchanges of experience in the field of driving and rest periods through TISPOL	None reported	None reported
UK	eight ECR multilateral exchanges	The UK hosted several Member States and participated in some training activities.	Participation in 9 exchanges with Holland, Luxembourg, France, Poland and Spain. Hosting 2 exchanges (one per year) with attendees from France, Ireland, Germany, Romania, Hungary and Spain. TRACE - training package developed in conjunction with CORTE and ECR.

Source: Author analysis of biennial reports from the Commission

9.3.3 Overview of use of forms attesting unrecorded activities

Table 9-9: Response to the question “Does your organisation allow or require a driver to justify unrecorded activities (such as other work, periods of availability and out-of-scope activities, but also annual leave, sick leave etc.) by the use of attestation forms (signed by the employer)?”

	Yes, the driver is <u>allowed</u> to use such a form to proof this type of activities, but can also provide other proof.	Yes, the driver is <u>required</u> to use such a form.	No, our organisation disregards such forms, the driver has to provide other proof for such activities.
AT	x (since March 2015, previously required)*		
	*This enforcement authority response different to the one from Ministry (which did not tick any option but specified that drivers are required to use the tachograph and conduct retrospective entries; a form is <i>required</i> only if such entries could not be made (i.e. due to technical reasons))		
BE	x (since March 2015, previously required) (according to the response of the ministry and one enforcement authority)*		
	*Contrary to one enforcement authority’s response that stated to require such a form		
BG	x		
CH			x
CY			x
CZ	x		
DE	x*	x	
	*Differing answers across the different regional authorities, most common response is that drivers are allowed to use such a form (and are required to use such a form in case manual entries to the tachograph were not possible		
EE	x		
FI	x		
FR			x
GR			x
HR	x*	x	
HU	x (since March 2015, previously required)		
LT	x		
LU	x	x (for long periods away; e.g. sick leave)	
LV	x		
NL	x		
NO	x		
PL	x*	x	
	*Differing response from ministry and enforcement authority		
PT		x	
RO	x		
SE	x		
SI	x (for non-national drivers)	x (for national drivers)	
SK	x		
UK	x		

Source: Survey of ministries and enforcers

9.4 Supporting measures

9.4.1 Overview of clarifications provided for Regulation (EC) No 561/2006 and Directive 2002/15/EC

In an attempt to support common understanding of road social legislation, the Commission has made continuous efforts to clarify the provisions. These can be categorised into i) legal definitions that have been incorporated into the legal texts of the legislation itself, and ii) Guidance and Clarifications Notes. Further, also Commission Implementing Decision C(2011) 3759 provides guidance by recommending a common approach to calculating driving periods when a driver has not taken rest periods in their entirety.

Legal definitions

Difficulties had previously been experienced in interpreting certain aspects of Regulation (EEC) No 3820/85, due to the broad terms in which they had been drafted – this had previously led to many cases being referred to the European Court of Justice, and to variations in the way the Regulation was enforced (RoSPA, 2002). To address this problem, Regulation (EC) No 561/2006 aimed to establish legal definitions for many more of the terms, which are set out in Article 4. Also Directive 2002/15/EC provides definitions in Article 3 of the key terms used in the Directive with the aim to avoid any ambiguities.

Guidance and Clarification Notes

As a means of further ensuring the clarity of the rules, Regulation (EC) No 561/2006 sets out provisions to ensure continued discussions between relevant authorities. Article 22 (4) of Regulation (EC) No 561/2006 hence sets out that the Commission shall support dialogue between Member States concerning the interpretation and application of the Regulation. For this purpose, a Committee has been established in accordance to the provisions of the Article 24 (1) of the Regulation (and as set out under Article 18 (1) of Council Regulation (EEC) No 3821/85).

In 2007 the Commission established a Legal Working Group on the harmonised application of social rules in road transport under the auspices of the Committee on social rules in road transport, which was subsequently merged with the Infringement Working Group resulting in the creation of the Enforcement Working Group in 2015. The Working Group drafts Guidance Notes that are endorsed by the Committee on certain provisions of the Regulation. The **Guidance Notes** concern the following provisions:

- Guidance Note 1 discusses the conditions under which deviations from minimum rest and maximum driving limits in order to find a suitable stopping place can be allowed (referring to Article 12 of the Regulation).
- Guidance Note 2 discusses under which circumstances and how a driver is obliged to record travelling time to a location that is not the usual place for taking charge or relinquishing of a vehicle in the scope of the Regulation (referring to Article 9 of the Regulation).
- Guidance Note 3 explains what needs to be done in case of interruption of a break or daily or weekly rest in order to move a vehicle forward at a terminal, at parking places or at border areas (referring to Article 4(d) and 4(f) of the Regulation).
- Guidance Note 4 provides information on how to apply a proposed 15min-tolerance levels in case of frequent- or multi-stop drop operations during a transitional period when different versions of digital tachographs (with different level so precision concerning the time recording of such operations) are in use (referring to all driving time provisions of the Regulation in case of frequent- or multi-stop drop operations).
- Guidance Note 5 discusses the use of the form for an attestation of activities established by the Commission Decision (2009/959/EU) concerning activities for which tachograph records, including manual entries, were not possible for objective reasons (referring to Article 11(3) and 13 of Directive 2006/22/EC)
- Guidance Note 6 discusses the recording of the time spent on a ferry or train where the driver has access to a bunk or couchette (referring to Article 9(1) of the Regulation).

- Guidance Note 7 discusses the meaning of 'each period of 24 hours' which is relevant for the definition of daily driving times in case of preceding non-compliant daily or weekly rest periods.
- Guidance Note 8 discusses the exceptional circumstances situations when driving without a driver card is allowed, relevant in the context of Regulation (EU) 165/2014.

The elaboration of guidance notes has proven to involve long negotiation periods. For example, a guidance note on the '24 hour period' for calculation of driving time and rest periods that would supplement Commission Implementing Decision C(2011) 3759 has been under discussion for over 4 years (European Commission, 2014a). This shows the difficulty in defining a common and coherent approach to interpretation and enforcement of some provisions of the Regulation across all Member States.

The Commission has also published **Clarification Notes** that set out the Commission services' point of view on the application and implementation of a number of provisions of Regulation (EC) No 561/2006. However, it is highlighted that the interpretation of EU law is ultimately the prerogative of the European Court of Justice (European Commission, 2015a). The Clarification Notes aim to ensure a common understanding of the following items:

- Clarification Note 1 (referring to Articles 1, 2 and 11 of the Regulation) sets out that Member States are free to legislate in the domain which is not covered by European rules and hence, for example, extend the scope of the Regulation to vehicles that are lighter than 3.5t.
- Clarification Note 2 (referring to Article 1, 2, 4(a), 4(c) of the Regulation) discusses the scope of the Regulation in relation to vehicles being driven for repair, washing or maintenance purposes and sets out that Member States are not prevented from extending the scope of the Regulation to transport operations or drivers that are not explicitly covered by the Regulation.
- Clarification Note 3 (referring to Article 13 (d) of the Regulation) discusses the possible exemption of vehicles used for local shops at local markets that can be introduced following an individual Member State's decision whether to grant this exemption or not.
- Clarification Note 4 (referring to Article 26 of the Regulation) clarifies that vehicles exempted under Article 2 of the Regulation are similarly exempted from the obligation to install and use tachographs.
- Clarification Note 5 (referring to Articles 3(h) and 13(i)) discusses the recording requirements of out-of-scope driving in case the driver is also engaged in in-scope driving (i.e. in case of 'mixed' activities).
- Clarification Note 6 (referring to Article 14(2) of the Regulation) sets out that the duration of temporary exemptions from (certain) provisions of the Regulation under exceptional circumstances may surpass 30 days after the authorisation from the Commission.

Further, **Commission Implementing Decision C(2011) 3759** (referring to Articles 4(k), (g) and 8 (2) of the Regulation) provides for recommended approach to calculating driving periods when a driver has not taken rest periods in their entirety. This affects the number of infringements that is potentially detected, and their gravity, as the non-respect of the provisions on rest periods may lead to further infringements. The Decision was intended to avoid situations where drivers are penalised differently and disproportionately for the same records in different Member States (European Commission, 2011). However, it does not provide for any tolerance as to non-compliance with rest periods requirements, as specified in Article 8 of Regulation (EC) No 561/2006, which shall always be regarded as an infringement and sanctioned accordingly. This common approach shall enable the avoidance of situations where drivers are penalised differently and disproportionately for the same records in different Member States.

With regards to the **working time rules** of mobile workers, no similar guidance or clarification documents were established. Member States generally appear to accord a lower level of priority to the enforcement of Directive 2002/15/EC compared to Regulation (EC) No 561/2006, which stems from the hierarchy of these instruments as well as from the fact that the Working Time Directive lacks obligations to perform control activities (European Commission, 2008a). Consequently, there might not have been an apparent need for clarification that has been brought forward to the Commission by enforcement authorities.

9.4.2 Overview of use of TRACE common curriculum

Table 9-10: Response to the question: Has your organisation taken up the TRACE common curriculum in enforcement?

MS	TRACE taken up?	If yes, what impact on your enforcement activities has it had?		
		Its impact on effectiveness	Its impact on efficiency (costs)	Comment
CZ	Yes – completely	Strong positive	No material impact	
LT	Yes – completely	Weak positive	Weak positive impact	
LU	Yes – completely	Strong positive	Strong positive	
LV	Yes – completely	Strong positive		
	<i>Comment LV:</i> Regarding driving and resting times TRACE has given a contribution for better understanding and harmonised enforcement across EU.			
NL	Yes – completely	Weak positive	No material impact	
	<i>Comment NL:</i> The NL fully agrees with the TRACE legal explication of the applicable legislation. The TRACE material did not lead to significant changes in the enforcement approach because it was very much in line with the existing enforcement practices in the NL.			
NO	Yes – completely	Weak positive		
	<i>Comment NO:</i> We contributed to the development of TRACE, and consider it to be another step towards a harmonised best practise in enforcement. Our officers undergo extensive training, into which TRACE has been implemented.			
RO	Yes – completely	Strong positive	Strong positive	
	<i>Comment RO:</i> TRACE is a document developed and targeted on clarifying some certain aspects of Regulation 561/ 2006 and this document proved to be extremely helpful for the inspectors in their activity.			
SI	Yes – completely	Weak positive		
BE	Yes – partially	Weak positive		Our point of view was already the same as Trace.
CY	Yes – partially	Strong positive	No material impact	It is a good interpretation of rules and procedures
DE	Yes, partially	No material impact	No material impact	
GR	Yes – partially	Weak positive	Weak positive	
HU	Yes – partially			The learning is the mainstream for inspectors
PL	Yes – partially	Weak positive		
	<i>Comment PL:</i> The document is used since it provides commonly agreed and simplified explanation of Regulation (EC) No 561/2006.			
SE	Yes – partially	Strong positive	Weak positive	We have taken up all parts applicable to checks at the premises.
SK	Yes – partially	Weak positive	Weak positive impact	

MS	TRACE taken up?	If yes, what impact on your enforcement activities has it had?		
		Its impact on effectiveness	Its impact on efficiency (costs)	Comment
BE	No	Strong positive		
CH	No			
HU	No			
HR	Don't know			
EE	Don't know			
FI	Don't know			
LU	Don't know			
SI	Don't know			
SK	Don't know			

Source: Responses from enforcement authorities to this study's relevant questionnaire

10 ANNEX B: SUPPLEMENTARY TECHNICAL ANALYSIS

This annex contains additional supporting evidence and analysis for each of the evaluation questions that is referred to in the main report.

10.1 Relevance: Do the current EU provisions still respond, and to what extent, to the current needs of the freight transport sector? Do they satisfy, and to what extent, the needs of passengers transport sector? If not, which provisions appear not relevant for the sector and why?

10.1.1 Overview of specific sectors' requests for increased flexibility in the rules

The following complaints received by the Commission (either directly addressed to the Commission or raised as parliamentary question – information that was shared with the consultants by the Commission) suggest that particularly the following sectors call for more flexibility:

- In the **passenger transport sector**, representatives claim that short transfer journeys at holiday destinations or return journeys should an emergency arise cause problems, since this would frequently entail an infringement of the requirement on daily or weekly rest periods; also, the sector advocates for less restrictions on the 12-day rule, a shortening of the required rest periods before and after a journey, longer shift times, more flexibility concerning breaks and more flexibility concerning multi-manning (these demands were communicated to the Commission by the German BDO, the Bundesverband Deutscher Omnibusunternehmer e.V.)
- **Country bus drivers** claim that they find it difficult to comply with the rules and argue that the rules have resulted in the need of passengers to change buses in the middle of their journeys, sometimes incurring serious delays and with only little shelter available.
- **Fuel suppliers** mainly operate within a limited radius around their business and are said to spend more time outside the lorry than behind the wheel, thus, the carriage of fuel plays an ancillary role to that of the drivers' dominant activities.
- The **building sector**, engaged in local transport of building materials claims that they are finding it increasingly difficult to comply with the rules on driving time and weekly rests, particularly during seasonally longer working days (exceeding 56 hours/week)
- Given the requirements of the sector, **fishmongers** and businesses engaged in **bread delivery** claim that it is difficult to comply with the rules on weekly rest, since they typically have to work at the weekend.
- **Car rental firms** question the applicability of rules to their activities, which frequently imply in-house journeys, i.e. journeys to garages, to car wash facilities, for refuelling, between locations, and to drop off vehicles and pick them up from customers. These are activities where no passengers or goods are transported.
- Businesses that supply fresh, hence easily damaged, produce to businesses in the **catering trade** six days a week (including weekends) claim that they find it difficult to comply with weekly rest rules.

Literature supporting the above argumentation brought forward to the Commission could be identified mainly concerning the **passenger transport sector**. For example, the Swedish Passenger Transport Organisation (Sveriges Bussföretag, 2015) emphasises that more flexibility in the provisions of Regulation (EC) No 561/2006 is required to ensure that drivers and companies are not penalised for infringements that are a result of unexpected occurrences that lead to disruptions and delays. Many undertakings that were consulted for this latter study expressed ideas as to how increased flexibility should be introduced. Proposals range from extending the "12-day rule" to domestic passenger transport, reducing weekly rest periods to 24h, extend continuous driving periods to 4h45min (instead of 4h30min), to an increase in daily driving times etc. (Sveriges Bussföretag, 2015). Questionnaire responses obtained for this study and also interviews that were

carried with industry representatives from the passenger transport sector (or undertakings directly) greatly shared the opinion that rules should be more flexible for the passenger transport sector. The most often-cited reason being that the passenger transport sector has to accommodate the needs and wishes of the passengers, which is frequently not possible under the current provisions. In practice, especially when scheduling occasional services where unforeseen events frequently occur (be it due to weather/traffic conditions or passenger demands), it proves to be very difficult to accommodate passengers' requirements and comply with the rules. Furthermore, passengers are frequently not aware of the rules. The resulting discontent when their wishes cannot be accommodated can lead to increased stress levels for drivers, impacting on drivers' driving performance and consequently on road safety (see Evaluation Question 11, Section 6.11, for a more detailed discussion on the causes for and impacts of driver stress).

Concerning **fuel suppliers**, contact was established with Federation of Petroleum Suppliers (FPS). It was uncovered that especially weekly rest period provisions are problematic for the sector. This especially concerns the winter period when oil deliveries are most needed, but delivery operations are affected by fuel shortages (through the supply chain), bad weather conditions and short days (deliveries can only be carried out safely during daytime).

Concerning **bakeries**, concerns were raised in Ireland (Northern Ireland Assembly, 2010) where sector representatives proposed to introduce sector-specific derogations. However, sufficient evidence was not provided to thoroughly analyse the specific needs. In the context of this study specific efforts were undertaken to directly consult the respective representatives of the bakery industry. However, none of the information requests were responded to. A telephone conversation with a German industry association representing the bakery industry revealed that the association was not aware of any issues regarding road social legislation. Also concerning the **fisheries sector** and the **building sector** such efforts were undertaken. In both cases the respective industry associations were not aware of any problems with road social legislation (despite the fisheries association specifically verifying with two of their members). Literature on problems in these specific sectors could not be identified.

Concerning **car rental firms** and the **catering business**, specific literature could not be identified. No specific efforts were made in the context of this study to verify sector-specific issues in interviews.

10.2 Effectiveness: To what extent has the clarification of the provisions on driving times, rest periods and organisation of working time of drivers helped to improve the legal certainty of the rules and their uniform application?

10.2.1 Overview of definitions provided in Regulation (EC) No 561/2006

Table 10-1: Definitions provided in Regulation (EC) No 561/2006 compared to Regulation (EEC) No 3820/85

Regulation (EEC) No 3820/85	Regulation (EC) No 561/2006	Comment
' carriage by road ' means any journey made on roads open to the public of a vehicle, whether laden or not, used for the carriage of passengers or goods	' carriage by road ' means any journey made <i>entirely or in part</i> on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods	Further precision was introduced.
' vehicles ' means motor vehicles, tractors, trailers and semi-trailers	' vehicle ' means a motor vehicle, tractor, trailer or semitrailer <i>or a combination of these vehicles</i>	Further precision was introduced.
' motor vehicle ' : any <i>mechanically</i> self-propelled vehicle <i>circulating</i> on the road, other than a vehicle running on rails, and normally used for carrying passengers or goods	' motor vehicle ': any self-propelled vehicle <i>travelling</i> on the road, other than a vehicle <i>permanently</i> running on rails, and normally used for carrying passengers or goods	The word 'mechanically' was omitted to include a broader range of vehicles; the word 'circulating' was replaced by 'travelling'.
' tractor ' : any <i>mechanically</i> self-propelled vehicle <i>circulating</i> on the road, other than a vehicle running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines	' tractor ': any self-propelled vehicle <i>travelling</i> on the road, other than a vehicle <i>permanently</i> running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines	As above.
' trailer ' : any vehicle designed to be coupled to a motor vehicle or a tractor	' trailer ': any vehicle designed to be coupled to a motor vehicle or tractor	No revision.
' semi-trailer ': a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle	' semi-trailer ': a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle	No revision.
' driver ' means any person who drives the vehicle even for a short period, or who is carried in the vehicle <i>in order to</i>	' driver ' means any person who drives the vehicle even for a short period, or who is carried in a vehicle <i>as part of his</i> duties	Slight revision of wording.

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Regulation (EEC) No 3820/85	Regulation (EC) No 561/2006	Comment
be available for driving if necessary	to be available for driving if necessary	
N/A	'break' means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation	Newly provided definition.
N/A	'other work' means all activities which are defined as working time in Article 3(a) of Directive 2002/15/EC except 'driving', including any work for the same or another employer, within or outside of the transport sector	Newly provided definition.
'rest' means any uninterrupted period of <i>at least one hour</i> during which the driver may freely dispose of his time	'rest' means any uninterrupted period during which a driver may freely dispose of his time	Slight revision of the definition, now omitting the word 'of at least one hour'.
N/A	'daily rest period' means the daily period during which a driver may freely dispose of his time and covers a 'regular daily rest period' and a 'reduced daily rest period' - 'regular daily rest period' means any period of rest of at least 11 hours. Alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least nine hours - 'reduced daily rest period' means any period of rest of at least nine hours but less than 11 hours	Newly provided definition.
N/A	'weekly rest period' means the weekly period during which a driver may freely dispose of his time and covers a 'regular weekly rest period' and a 'reduced weekly rest period': – 'regular weekly rest period' means any period of rest of at least 45 hours, – 'reduced weekly rest period' means any period of rest of less than 45 hours, which may, subject to the conditions laid down in Article 8(6), be shortened to a minimum of 24 consecutive hours;	Newly provided definition.

Regulation (EEC) No 3820/85	Regulation (EC) No 561/2006	Comment
'week' means the period between 00.00 hours on Monday and 24.00 hours on Sunday	'a week' means the period of <i>time</i> between 00.00 on Monday and 24.00 on Sunday	Slight revision of wording (addition of the words 'of time') which does not appear to have any impact.
N/A	'driving time' means the duration of driving activity recorded: — automatically or semi-automatically by the recording equipment as defined in Annex I and Annex IB of Regulation (EEC) No 3821/85, or — manually as required by Article 16(2) of Regulation (EEC) No 3821/85;	Newly provided definition.
N/A	'daily driving time' means the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period;	Newly provided definition.
N/A	'weekly driving time' means the total accumulated driving time during a week;	Newly provided definition.
'permissible maximum weight' means the maximum authorised operating weight of the vehicle fully laden	'maximum permissible mass' means the maximum authorised operating <i>mass</i> of a vehicle <i>when</i> fully laden	Slight revision of wording ("weight" was replaced by "mass") that does not appear to have had any significant impact.
'regular passenger services' means national and international services as defined in Article 1 of Council Regulation No 117/66/EEC of 28 July 1966 on the introduction of common rules for the international carriage of passengers by coach and bus	'regular passenger services' means national and international services as defined in Article 2 of Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus	Revision to refer to the new Regulation that sets rules for the international carriage of passengers by coach and bus.
N/A	'multi-manning' means the situation where, during each period of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, there are at least two drivers in the vehicle to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory;	Newly provided definition.
N/A	'transport undertaking' means any natural person, any legal person, any association or group of persons without legal	Newly provided definition.

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Regulation (EEC) No 3820/85	Regulation (EC) No 561/2006	Comment
	<p>personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such a personality, which engages in carriage by road, whether for hire or reward or for own account</p>	
N/A	<p>'driving period' means the accumulated driving time from when a driver commences driving following a rest period or a break until he takes a rest period or a break. The driving period may be continuous or broken</p>	Newly provided definition.

10.3 Effectiveness: To what extent is the current system of exemptions and national derogations contributing or hindering the achievement of specific objectives?

10.3.1 Overview of derogations for which minor issues were uncovered

Article 13(b) allows a derogation for “vehicles used [...] by agricultural, horticultural, forestry, farming or fishery undertakings **for carrying goods as part of their own entrepreneurial activity** within a radius of up to 100 km from the base of the undertaking”. The definition was revised compared to its previous version to enlarge the radius from 50 to 100 km as well as to include the phrase in emphasis. This was because enforcement authorities had some serious concerns that those engaged in horticulture or agriculture were abusing the exemption (European Commission, 2001a). The reworded derogation was designed to allow sufficient freedom for those who work on the land whilst restricting the scope for transport operations using agricultural vehicles. During a study visit, the Belgian enforcement authority consulted for this study raised some concerns with regards to the ambiguity of the notion ‘horticultural’, that could potentially be interpreted to allow activities under competitive pressures to be covered by the derogation. While the extent of the issue and implications in practice are unclear, the fact that no other stakeholder raised the issue suggests that the implications are limited.

Article 13(d) derogates (among others) vehicles not exceeding 7.5t that are used for “*carrying materials, equipment or machinery for the driver’s use in the course of his work*” if operated within a 50km radius, and “on condition that driving the vehicles does not constitute the driver’s main activity”. Compared to the previous definition the derogation has been restricted to vehicles of 7.5t or less, in line with a general approach to exceptions where a weight threshold appears appropriate. As evidenced by a case of the ECJ case C-554/09, there was uncertainty concerning the term ‘material’. The final ruling defined that the term may not be interpreted as including packaging materials transported under certain conditions as this interpretation would extend, in principle, the term material “to all goods of a business nature, which would thus undermine the objectives of that regulation”. However, uncertainty does not appear to have been fully resolved yet, since French authorities, consulted for this study, put into question whether this derogation is also applicable to agriculture products or living animals. However, this issue was only raised by France and the limited radius of transport operations suggests that the extent of this issue is not significant.

Article 13(n), which exempts vehicles used for carrying animal waste or carcasses which are not intended for human consumption has been subject to long discussions between industry and authorities in the UK, especially since the approach taken by enforcement officers was not coherent across the country. In 2013, a national guidance was issued that makes it explicit that the derogation should not apply to vehicles transporting animal “derived products” and waste from supermarkets/shops/fast food outlets (VOSA, 2013).

10.4 Effectiveness: To what extent the introduction of the principle of co-liability for infringements has contributed to the achievement of specific objectives?

More detailed elaborations on the enforcement practices in Italy, the Netherlands, Ireland and the UK are provided in Box 10-1, in order to shed some more light on how checks are conducted in practice and what actions are required from different parties.

Box 10-1: Details of how checks are carried out in practice in selected Member States

According to ETSC (2011a), the **Italian** national legislation contains a series of measures that include agreeing minimum costs for carriers, new rules on terms of payment and shared liability covering the entire transport chain. The minimum costs aim to reduce pressure on providers to deliver more or faster services in order to cover their costs (Altalex, 2010). Concerning liability, the police must assess the liability of both the client and the carrier along with that of the driver of the vehicle when they carry out roadside checks. Under national law, a separate document of instructions must be kept on board by the driver (and signed and completed by the contractor), thereby allowing the police to check and enforce co-liability (ETSC, 2011a).

In the **Netherlands**, in principle the undertakings are responsible for infringements on driving and resting times. The driver is only responsible when the transport operator can demonstrate that he has provided the needed resources, has given the necessary orders and instructions and has kept the required supervision. If the company has complied with the "BeMaMiToe" approach, then it is considered to have fulfilled its requirements and will not be held responsible (in which case the driver would be held responsible). The "BeMaMiToe" approach is as follows (Transportstyrelsen, 2015):

- Be- Give orders (policy, contracts, schedules);
- Ma- Take measures (education, information);
- Mi- Give the means to fulfil the regulations (Ways to contact the company, track the drivers etc.);
- Toe- Control the drivers (every day according to a Dutch court verdict, and follow up in some kind of way).

The Dutch enforcement authorities is of the view that all of the above steps are rarely demonstrated. Other parties in the transport chain are only found liable if there are written statements between them and the undertakings that lead to non-compliance. The Dutch enforcers explained in their survey response that in practice the co-liability in the transport chain is very difficult to enforce. As a result of this, they estimate that other parties in the transport chain account for a negligible share of total infringements in the Netherlands.

In **Ireland**, guidance provided by the Road Safety Authority on the chain of responsibility for breaches of the rules explains that everyone in the transport chain could be held legally responsible if they cause or contribute to breaches of the driving time rules (RSA, 2008). According to the guidance, anyone who forms any part of the chain of responsibility must ensure that all journeys undertaken on their behalf, and any contractually agreed time schedules, are "*properly planned and allow sufficient time for the driver to take account of reasonably foreseeable traffic congestion, roadworks and bad weather conditions*", considering in addition: any places where delays generally occur, how well the driver knows the route and taking into account driver's requirements for daily living such as eating, breaks and rests (RSA, 2008). There is also a responsibility to "*ensure that drivers are not encouraged to disregard the drivers' hours rules and that no incentive is provided to drivers to breach these rules.*" Mobile workers have an obligation to inform their employers in writing of any hours worked for another employer, or work done for themselves such as driving a taxi, so that these hours can be included when calculating total working time (RSA, 2012).

The **UK** guidance explains that drivers are protected from conviction in court if they can prove that, because of unforeseen difficulties, they were unavoidably delayed in finishing a journey and breached the EU drivers' rules (VOSA, 2011). The guidance notes that transport undertakings will not be held responsible for these offences if they can show that at the time of the infringement the driver's work was being organised in full consideration of the rules, and in particular that:

- No payments were made that encouraged breaches;
- Work was properly organised;
- The driver was properly instructed; and
- Regular checks were made.

Transport undertakings must also show that they have taken "*all reasonable steps to avoid the contravention*" (VOSA, 2011). Elaborating on what this means further, the guidance explains that if a contract with the customer includes a provision for transport time schedules to respect the EU rules, then the requirement would normally be satisfied - however, "*a driver employment agency is unlikely to absolve itself from the liability if it is found to have been offering back-to-back jobs to drivers where it will be impossible for the driver in question to take a daily or weekly rest in between those jobs.*" Employers have a defence if they can prove that the driver was involved in other driving jobs that the employer could not *reasonably* have known about. In the case of infringements concerning records, the law protects an employer from conviction if they can prove that they took all reasonable steps to make sure that the driver kept proper records.

Under the EU rules, enforcement action can be taken against operators and drivers for offences detected in the UK but committed in another country, provided that the offender has not already been penalised. To prevent further penalties being imposed for the same offence, the driver is required to carry the documentation proving that the penalties have already been penalised, until such time as the infringement cannot lead to further action. According to an interview conducted for this study with the UK enforcers, the legal system – in particular the necessary burden of proof – presents a significant challenge.

10.5 Effectiveness: Do the monitoring and reporting arrangements in place allow for adequate checking and follow-up of the legislation? If not how could it be improved?

A summary of the required details is provided in Table 10-2. This table also shows which reporting requirements were new relative to the reporting regime for Regulation (EEC) No 3820/85.

Table 10-2 Quantitative reporting tables for Member States concerning Regulation (EC) No 561/2006

Table	Disaggregation	Change relative to reporting on Regulation (EEC) No 3820/85
Calculation of minimum checks to be carried out		
(a) number of days worked per driver during the reference period (b) total number of vehicles subject to Regulation (EC) No 561/2006 (c) total number of days worked [(a) x (b)] (d) minimum checks [3% from January 2010]	N/A	No change
Checks at the roadside		
4.1. Number of drivers checked at the roadside by country of registration and main type of carriage	Carriage of passengers vs carriage of goods × Nationals vs non-nationals vs Third countries	No change
4.2. Number of vehicles stopped for roadside check by type of road and country of registration	Type of road × Country of registration	Completely new table
4.3. Number of vehicles stopped for roadside check by type of tachograph	Type of tachograph × Nationals vs non-nationals vs Third countries	Completely new table
If national statistics allow, exact figures concerning vehicles fitted with digital tachograph: (a) number of vehicles fitted with digital tachograph (b) share of vehicles with digital tachograph in a total fleet of vehicles subject to Regulations	N/A	Completely new table
4.4. Number of working days checked at the roadside by main type of carriage and country of registration	Carriage of passengers vs carriage of goods × Nationals vs non-nationals vs Third countries	No change
4.5. Offences - number and type of offences detected at the roadside	Carriage of passengers vs carriage of goods × Nationals vs non-nationals vs Third countries × Type of offense (10 categories)	List of offenses updated
Checks at the premises of the undertaking		

Table	Disaggregation	Change relative to reporting on Regulation (EEC) No 3820/85
5.1. Number of drivers checked and number of working days checked at the premises of undertaking	Carriage of passengers vs carriage of goods × No of drivers checked vs no of working days checked	More disaggregation (new use of cross-tabulation)
	Hire or reward vs own account × No of drivers checked vs no of working days checked	
5.2 Offences - number and type of offences detected at the premises	Carriage of passengers vs carriage of goods × Type of offense (11 categories)	List of offenses updated
5.3. Number of undertakings and drivers checked at the premises by size of fleet of the undertaking	Size of fleet × No of undertakings checked vs No of drivers checked vs No of offenses detected	Completely new table
National enforcement capacity		
(a) Number of control officers involved in checks at the roadside and at the premises (b) Number of control officers trained to be able to analyse data from digital tachographs at the roadside or at company premises (c) Number of units of equipment provided to control officers to be able to download, read and analyse data from digital tachographs at the roadside and company premises	N/A	Completely new table

Sources: Commission implementing decision 93/173/EEC (European Commission, 1993) and Commission implementing decision 2009/810/EC (European Commission, 2009b).

Some qualitative information on the implementation of Regulation (EC) No 561/2006 is also required from Member States. This is summarised in Table 10-3. Notably, the explicit requirements for information on international cooperation were newly introduced with Implementing Decision 2009/810/EC (European Commission, 2009b). In addition to the details shown in the table, the legislation also requires Member States to provide the Commission with details on what use has been made of the exemptions from the rules provided for in Article 13 in Regulation (EC) No 561/2006.

Table 10-3 Further reporting headers for Member States reporting on Regulation (EC) No 561/2006

Section	Change relative to reporting on Regulation (EEC) No 3820/85
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National and international initiatives	National (a) Regulatory (including the update on what use has been made of exemptions under Article 13(1)) (b) Administrative (c) Other	No change
	International (a) Concerted checks: number in each year, countries collaborating (b) Exchange of experience, data, staff: number of initiatives, people, subjects of exchange, countries collaborating	Completely new section
Penalties	Scales in the reference year	No change
	Changes (a) Date and nature of most recent changes (based on reference year) (b) Administrative or legal references	
Conclusion and comments, including any developments in the fields in question		No change

Sources: *Commission implementing decision 93/173/EEC* (European Commission, 1993) and *Commission implementing decision 2009/810/EC* (European Commission, 2009b).

10.6 Effectiveness: To what extent has the package of enforcement measures contributed to improving the application of the social rules in road transport in a uniform manner throughout the EU and to increasing compliance with these rules?

10.6.1 Infringement rates in countries with risk-rating systems

Country	2007-2008	2009-2010	2011-2012
Countries with risk rating system			
Austria	1.31	1.88	1.49
Belgium	0.23	3.59	4.01
Cyprus	0.87	0.89	0.75
Czech Republic	n.a.	2.31	2.28
Denmark	5.36	4.24	1.36
Estonia	2.82	3.16	1.51
Finland	8.09	12.65	15.83
Germany	82.53*	34.03*	22.38*
Latvia	0.64	0.06	0.07
Lithuania	2.37	4.64	4.37
Netherlands	6.51	9.83	12.42
Poland	6.27	11.15	3.45
Romania	1.19	0.21	0.23
Slovenia	0.56	9.85	7.97
Sweden	n.a.	n.a.	15.18
United Kingdom	1.01	1	0.63
Average	8.55	6.63	5.87
Average without DE	2.86	4.68	4.77
Median	1.84	3.59	2.87
Countries without risk rating system			
Bulgaria	0.16	0.04	0.01
France	2.72	1.5	1.16
Hungary	4.29	1.47	11.32
Italy	1.58	10.55	8.98
Luxembourg	0.61	n.a.	2.54
Portugal	n.a.	0.12	0.04
Slovakia	n.a.	7.93	6.64
Average	1.87	3.60	4.38
Median	1.58	1.49	2.54

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

10.7.1 Summary of factors affecting working conditions and their link with the road social legislation

The scope of the evaluation is to cover the risk factors that are related to the scope of existing road social legislation. Other issues affecting working conditions are outside the scope of this study. However, relevant issues have been studied comprehensively in other work, such as EU-OSHA (2010) and Broughton et al. (2015). The qualification and training of professional drivers (as laid down in Directive 2003/59/EC) also may impact on drivers' compliance with safety rules, stress and fatigue by improving their knowledge of the risks and how to address them¹⁶⁸.

Table 10-4 provides a comprehensive overview of the dimensions of working conditions and their potential links to the road social legislation:

- A **direct link** refers to a factor that is targeted explicitly in the legislation (for example, working hours, which are the direct focus of the provisions);
- An **indirect link** means that the factor is not dealt with explicitly in the legislation but there are indirect impacts (for example, periods away from home are only indirectly affected by the provisions on rest periods due to the influence that compliance with driving time, rest periods and working time may have on the organisation of schedules).
- Factors are classified as having **no link** to road social legislation if they are not affected by its provisions. For example, the risk of "poor weather conditions" is a factor of working conditions but clearly cannot be dealt with in any legislative framework. Other issues such as "exposure to dangerous substances" are highly important topics that are dealt with in separate, dedicated legislation.

Table 10-4: Overview of risks to drivers' health, safety and overall working conditions, their factors and links to road social legislation

Risk	Contributing factors covered by road social legislation	Type of link to road social legislation	External factors outside of the scope of road social legislation
Occupational health problems			
<i>Fatigue</i>			
	Long working/driving hours	Direct link - Regulated in legislation	- Shift work and irregular schedules (legislation does not set rules on the regularity of shifts)
	Work-related sleeping disorders	Indirect link - Related to stress (see below)	
<i>Stress</i>			
	Long working/driving hours	Direct link - Regulated in legislation	- Irregular shifts (legislation does not set rules on the regularity of shifts) - Driving to new places - Responsibility for material - Long waits before (un)loading - Disrespectful treatment by shipping/receiving personnel
	Performance-based payment	Direct link - Regulated in legislation	
	Legislative requirements and roadside checks	Direct link - Legislation sets out rules for drivers and its enforcement in roadside checks	
	Long periods away from home	Indirect link - Related to provisions on rest	

¹⁶⁸ A review of the impact of drivers' qualifications and training on working conditions is however out of the scope of this evaluation study – an ex-post evaluation of Directive 2003/59/EC was recently conducted. Readers are referred to Panteia (2014) for more information.

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Risk	Contributing factors covered by road social legislation	Type of link to road social legislation	External factors outside of the scope of road social legislation
	Time pressure to meet tight delivery times or keep buses on time in unforeseen conditions	Indirect link - Regulated in legislation via rules on the organisation of working time of drivers	- Fear of violence/conflicts - Quality requirements - Lack of promotion possibilities
	Unsafe working conditions	Indirect link - Related to accidents on the road/with cargo handling (see below)	- Lack of involvement in decision making - High traffic volumes - Poor road and weather conditions
<i>Illness</i>			
	Insufficient access to adequate nutrition	Indirect link - Related to long periods away from home	- Unavailability of physicians and resulting ignorance of symptoms
	Inadequate vehicle design (e.g. resulting in hot/cold cabs, unhealthy postures, musculoskeletal and vibration-related disorders)	Indirect link - Strongly related to long working/driving hours (hence exposure to vehicle)	- Exposure to dangerous substances (i.e. chemical or biological hazards) - Exposure to diesel/petrol
	Demanding loading and unloading tasks (causing musculoskeletal disorders)	Indirect link - Strongly related to long working/driving hours (exposure to these activities)	
	Alcohol and drug abuse	Indirect link - Can be fatigue and stress related (see above)	
<i>Insufficient/poor sanitary and rest facilities</i>		Indirect link - Related to long periods away from home / provisions on rest	
<i>Violence</i>		n/a	Drunken/ Drugged/ Angry passengers; Other drivers; thefts
<i>Accidents</i>			
	Accidents in cargo and vehicle handling (e.g. failure to follow safe coupling and parking procedures; Unsafe loading and unloading activities)	Indirect link - Can be fatigue and stress related (see above)	- Exposure to dangerous substances - Overload and cargo problems - Poor road or weather conditions - Unsafe vehicle conditions
	Accidents on the road (e.g. unsafe driving)	Indirect link - Can be fatigue and stress related (see above)	
<i>Other risks to satisfying working conditions</i>			
	Low wages	Indirect link - Related to performance-based payments	n/a

Source: Adapted from (EU-OSHA, 2010), (ILO, 2015), and (TRT, 2013)

It is worth noting that many factors can still potentially be affected by the provisions of the road social legislation. This is because the overall working and/or driving times determine how long drivers are potentially **exposed to** any general risk factors while driving or working, even where these issues are clearly external to the scope of the legislation.

10.7.2 Analysis of the EWCS (European Working Conditions Survey)

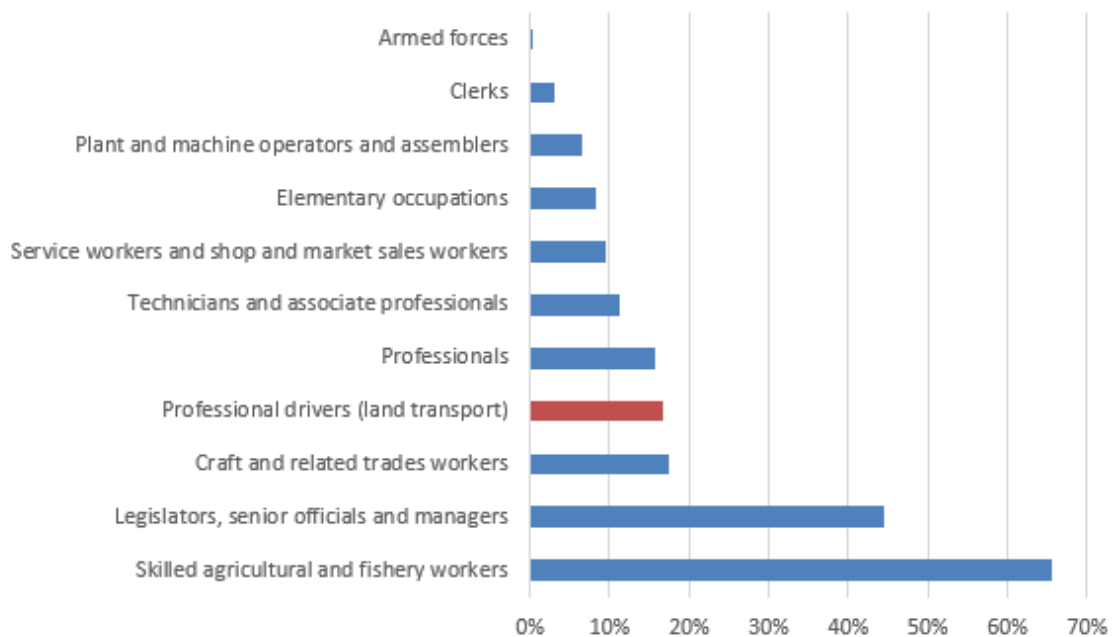
The **European Working Conditions Survey (EWCS)** (Eurofound, 2015) is a relevant source for determining trends in working conditions across Europe, collected by an independent body. However, there are important limitations in this dataset for the underlying study, which are, in summary, the following:

- It is not possible to isolate HGV drivers and bus/coach drivers from other transport workers. The responses in the category “transport workers” therefore also include drivers that are outside the scope of the social legislation (e.g. taxi drivers, railway drivers). It is therefore unknown how many of the drivers in the sample are really in the scope of the Regulation.
- In 2000, the scope of transport workers is even wider, since the NACE (Statistical classification of economic activities in the European Community) codes had not been available at the time – meaning that the category includes an even broader range of transport workers (e.g. including maritime workers). Hence, the possibility of looking at developments over time is limited by the data availability concerning ‘professional drivers (land transport)’.
- The data were collected in 2000, 2005 and 2010. This means that there is no data on how the conditions developed between each of the intervals. Importantly, the social legislation came into effect mid-way between two data collection points, so it is not possible to determine even if there was a significant change before or after its introduction.

As a result of these limitations, only some general observations can be made, which are shown in the following.

The EWCS shows that drivers more frequently reported to suffer from fatigue as a general health problem over the previous 12 months than most other types of worker in 2010 (see Figure 10-1). Thus, self-reported data in the EWCS suggests that the demands of work on professional drivers are relatively high compared to many other service-sector professions. There were slight differences between regions, with a higher proportion of drivers surveyed from the EU-13 (21%) reporting work-related fatigue compared to the EU-15 (14%).

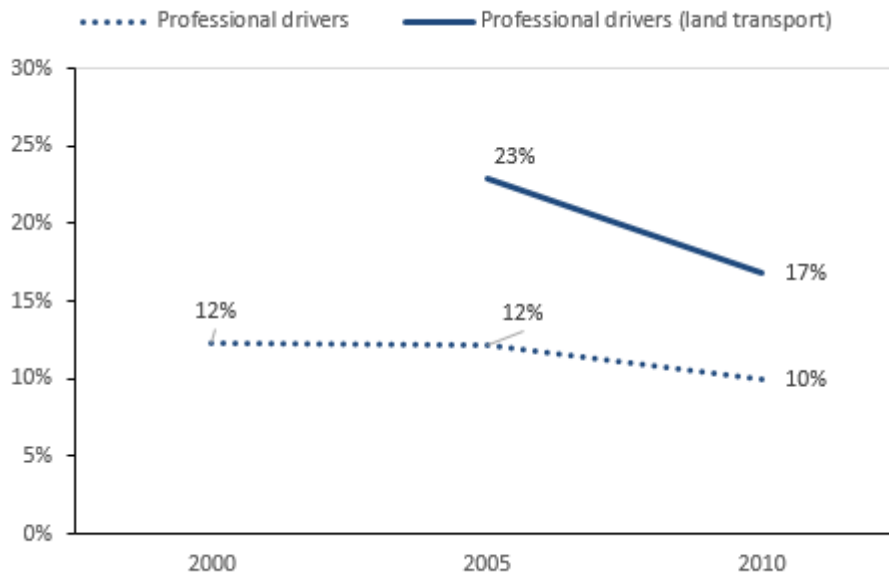
Figure 10-1: Share of workers reporting fatigue as health problem over the last 12 months (2010, EU27)



Source: Data obtained from Eurofound (2013)

Figure 10-2 shows that the share of workers that reported fatigue-related health problems decreased more for the group of 'professional drivers (land transport)' than for the larger group of 'professional drivers' in the period from 2005 to 2010 (by 6% and 2% respectively). However, this data sheds no light on whether this decrease is related to the introduction and enforcement of Regulation (EC) No 561/2006 (which came into force in April 2007), especially since it is impossible to determine whether the observed decrease occurred gradually over the years, or whether there was a step-change from 2007 onwards. As such, it is only possible to state that in general, it appears that the problem of fatigue in the professional driver occupation has reduced between 2005 and 2010, but was still affecting 17% of professional drivers in the land transport segment in 2010.

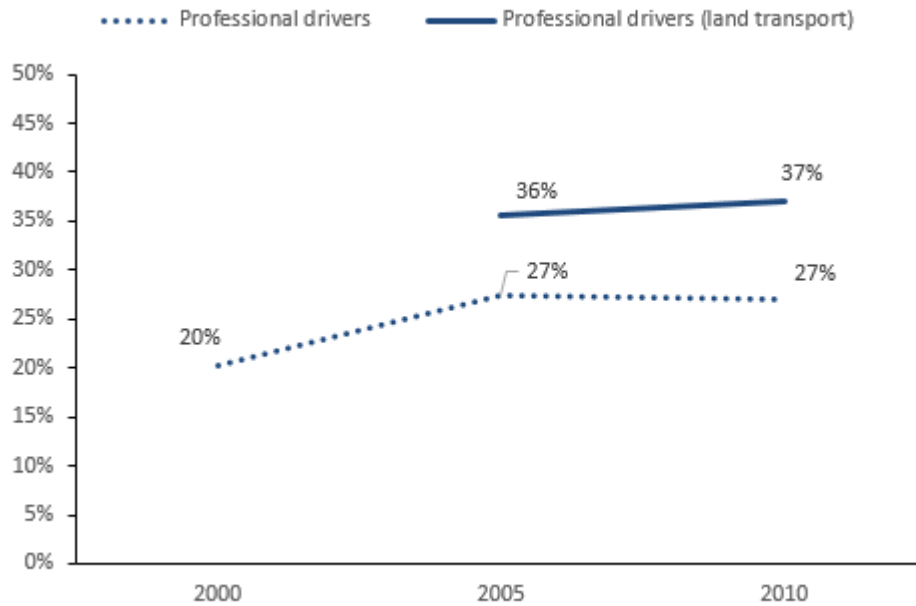
Figure 10-2: Share of drivers reporting fatigue (EU27) over time



Source: Data obtained from Eurofound (2013)

The Working Time Directive for mobile workers limits mobile workers to an average working time of 48 hours per week. However, in 2010, a significant share of both groups of professional drivers and professional drivers (land transport), namely 27% and 37%, stated that they typically work more than 48 hours per week (see Figure 10-3). These shares were largely stable over the period 2005-2010, despite the fact that, from 2009 onwards, also self-employed drivers have been subject to the 48h working hour limit. Available data shows that the share had increased for the larger group of professional drivers in the earlier period from 2000-2005, namely from 20% to 27% - an upwards trend that was then not continued from 2005 onwards.

Figure 10-3: Share of drivers usually working >48hrs/week (EU27) over time



Source: Data obtained from Eurofound (2013)

10.7.3 Analysis of accident statistics

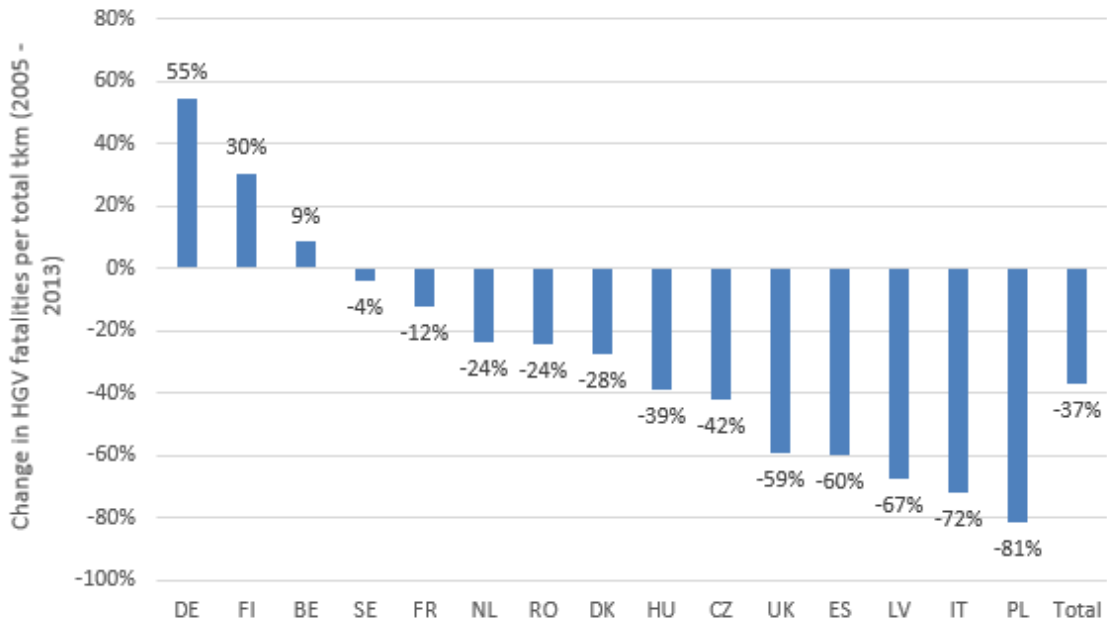
10.7.3.1 The CARE database

The CARE database (a Community database on road accidents) provides (among others) information on fatalities on European roads by mode of transport and Member State (European Commission, 2015a). The relevant transport modes in relation to social legislation in road transport are the modes of 'heavy goods vehicles' (> 3.5t) and 'bus and coaches'. The reported numbers of fatalities have to be normalised in relation to the amount of transport services provided, due to the strong interrelationship between these aspects.

For goods transport, data on freight transport movements is available from Eurostat, which include both national and international operations (including cross-trade or cabotage operations). However, fatalities reported in the CARE database represent the sum of all fatalities that have happened on the *domestic* territory of a Member State (by the respective mode). Relating fatalities that have occurred on the *national* territory (from CARE) to the *total* amount of transport operations (from Eurostat) is hence only an approximate basis by which to normalise against the changing volumes of transport operations over the relevant period.

Figure 10-4 shows the 2005-2013 change in fatalities that were reported as heavy goods vehicle fatalities (NB: the exact understanding of this classification by mode has been possibly interpreted differently by Member State) by Member State. Notwithstanding the above-described mismatch between *national* fatalities and *total* (national and international) transport operations of national undertakings, it can be seen that road fatalities per tonne-km of transport operations decreased over the regarded time period in all Member States for which data are available, other than Germany, Finland and Belgium. When looking at the total for all of the Member States (last column), the unobserved mismatch between the two presented units (*national* fatalities vs. *total* transport operations) can be expected to be less important, since many international transport operations cancel out between the countries and hence the match between the geographic scope of reported fatalities is much better. Also here a significant reduction of 37% in heavy goods vehicle fatalities can be observed over the regarded 8-year period.

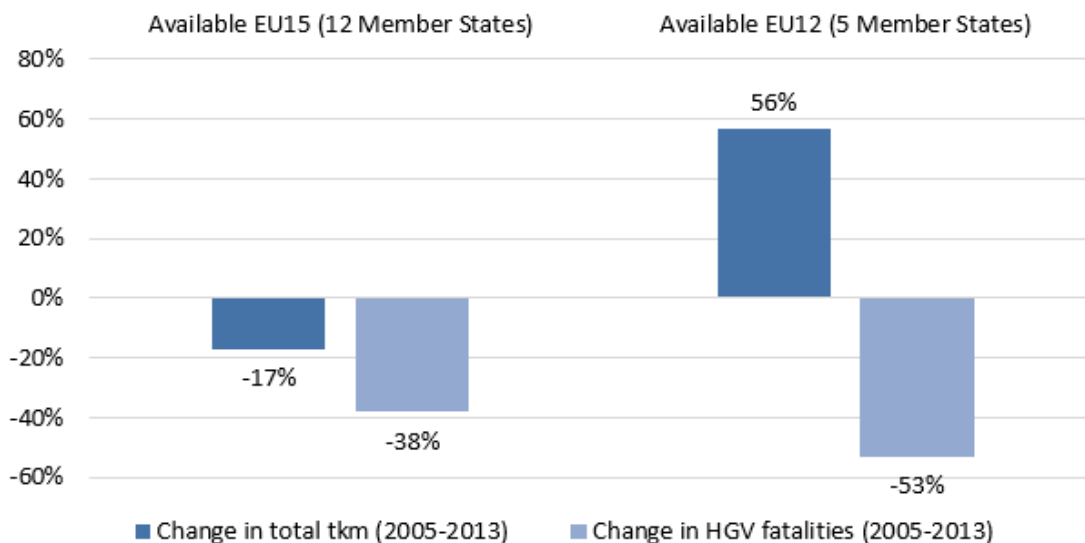
Figure 10-4: Change in heavy goods vehicle fatalities as reported by Member States per total amount of transported goods (in tkm), 2005-2013



Source: Data from CARE (2015) and Eurostat

Figure 10-5 shows the changes of total transport operations and heavy goods vehicle (HGV) fatalities over the period 2005-2013, split into EU-15 Member States (represented here by only 12 countries due to lack of data for the remaining five) and EU-13 Member States (represented here by only 5 countries). It can be seen that fatalities decreased significantly more in the five EU-13 Member States, while transport operations increased comparatively more than in the 12 EU-15 Member States, most probably also due to the liberalisation of the road transport market over that same period and the increasing international activities of EU-13 undertakings. The five available EU-13 Member States decreased their HGV fatalities comparatively more than the 12 available EU-15 Member States.

Figure 10-5: Change in total tkm and HGV fatalities 2005-2013 per geographic area*

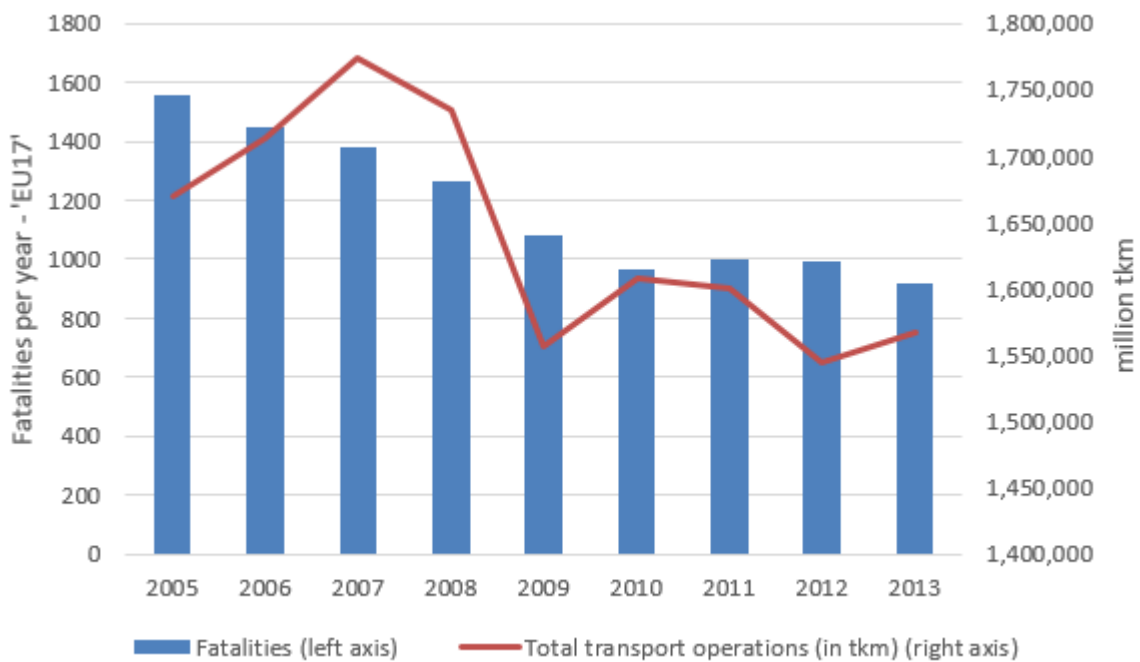


*Available EU-15 Member States: BE, DE, DK, ES, FI, FR, IT, NL, SE, UK
 Available EU-13 Member States: CZ, HU, LV, PL, RO

Source: Data from CARE (2015) and Eurostat

Figure 10-6 shows that the decrease in heavy goods vehicle fatalities in the 'EU-17' Member States (being the Member States as shown in Figure 10-4) in the period from 2005 to 2013 was not continuous. While the total number of fatalities decreased with increasing transport volumes from 2005 to 2007, both transport volumes and fatalities decreased from 2007 to 2009. From then on, fatalities remained fairly similar, with fatalities in the range from 800 to 1000 per year, and both increasing and decreasing transport volumes. Over the whole period, road fatalities decreased by almost 40%, while total transport volumes of the respective Member States decreased by less than 8%, suggesting that roads generally became safer over the timeframe.

Figure 10-6: Heavy goods vehicle fatalities in 'EU-17'* and total transport operations in the period 2005-2013

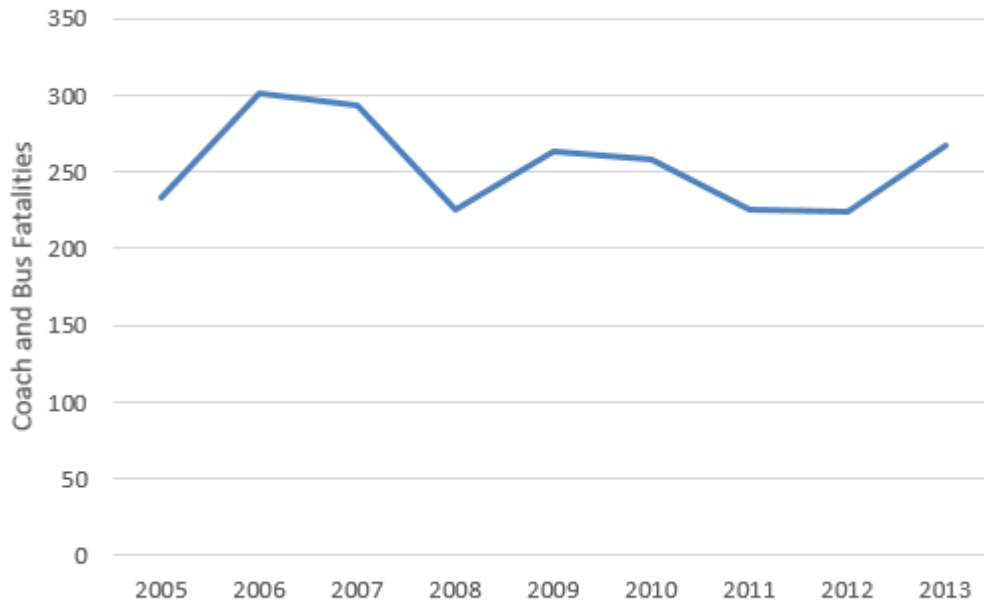


* "EU-17" are all Member States for which the relevant data is available, being twelve EU-15 Member States (BE, DE, DK, ES, FI, FR, IT, NL, SE, UK) and five EU-13 Member States (CZ, HU, LV, PL, RO)

Source: Data from CARE (2015) and Eurostat

Figure 10-7 shows bus and coach fatalities as reported in the CARE database in the 'EU17' Member States (as defined above) over the period 2005-2013. It can be seen that the number of fatalities basically oscillated around the level of 250 fatalities per year.

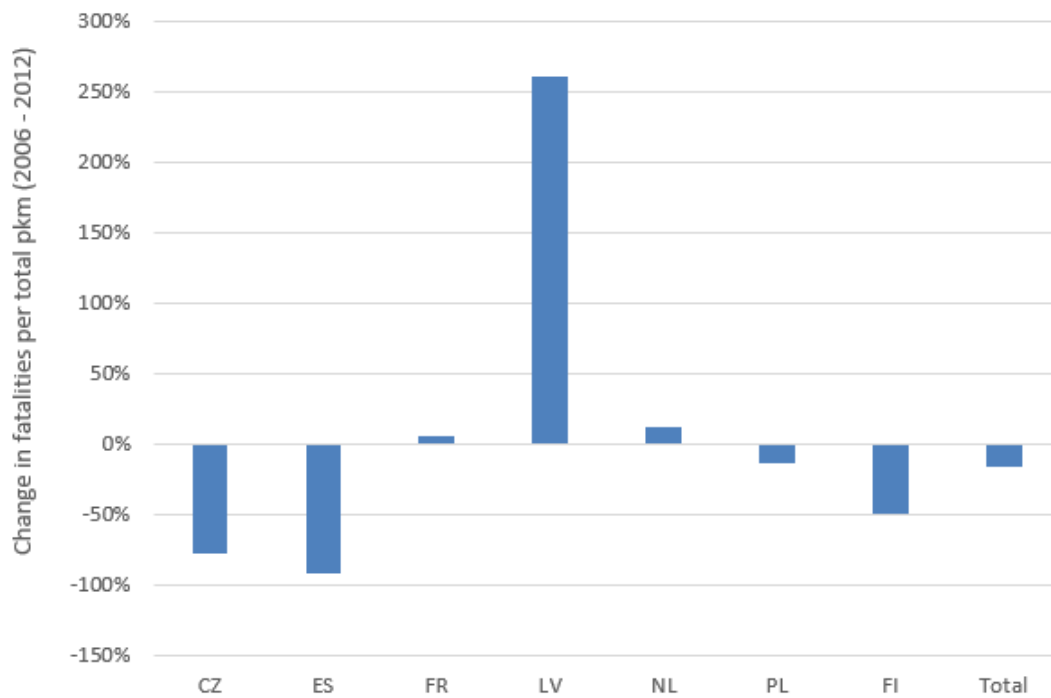
Figure 10-7: Bus and coach fatalities 2005-2013 as reported by the selected 'EU17' Member States



Source: Data from CARE (2015)

Putting these numbers in relation to observed passenger-kilometres is less straight forward than for goods transport, since Eurostat data is scarcer for passenger transport operations. Establishing the relation is possible for only seven Member States, for the period from 2006 to 2012. However, for passenger transport the scope of both fatalities and passenger transport kilometres is the same, since Eurostat provides passenger-km for the national territory. As a consequence, there is no mismatch between the geographic scope of reported fatalities and passenger kilometres. Figure 10-8 shows the change in coach and bus fatalities per national passenger-km in the period from 2006 to 2012 for the seven Member States where sufficient data is available.

Figure 10-8: Change in coach and bus fatalities as reported by Member States per total amount of passenger km (pkm), 2006-2012

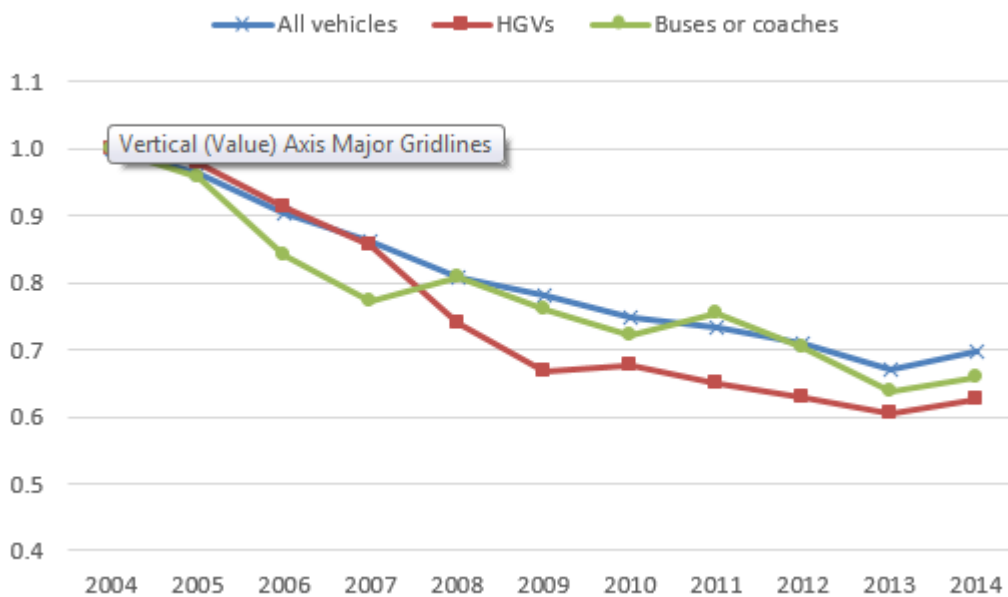


Source: Data from CARE (2015) and Eurostat

Overall, over the period 2006-2012, coach and bus fatalities decreased by 5% while respective passenger kilometres increased by 13% in the shown seven Member States, totalling in an overall decrease in the number of fatalities per bus and coach passenger kilometres of 16% for the regarded 7 EU Member States. This overall trend does however not appear to very well reflect the trends in the numbers of such fatalities in single Member States.

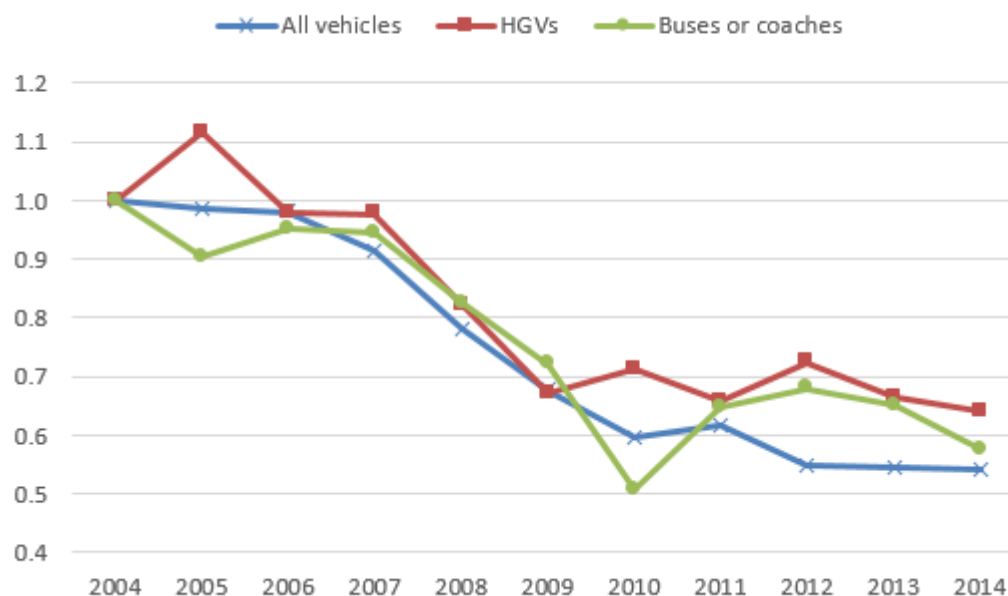
10.7.3.2 Analysis of UK accident data

Figure 10-9: Accident involvement rates by vehicle type (per billion vkm) in Great Britain – All severities (indexed at 1 in 2004)



Source: (UK Gov, 2015)

Figure 10-10: Accident involvement rates by vehicle type (per billion vkm) in Great Britain – Fatal accidents (indexed at 1 in 2004)



Source: (UK Gov, 2015)

10.8 Efficiency: To what extent has the legislation been efficient in its objective of enabling effective and uniform enforcement of the existing rules?

10.8.1 Tables supporting the analysis

Table 10-6 illustrates the calculation for the years 2011-2012 of the costs of enforcement staff at EU27 level as presented in preceding Section 6.13.1.1.

Table 10-5: Estimated cost of enforcement of road social rules by country - total (1000 €/year, PPP adjusted)

Country	2007-2008	2009-2010	2011-2012
Austria	53,238	55,841	18,273
Bulgaria	627	648	642
Cyprus	102	121	115
Czech Republic	12,138	12,672	4,520
Denmark	1,447	1,819	1,728
Estonia	962	1,477	1,414
France	150,694	157,832	127,006
Hungary	3,109	3,278	1,490
Ireland	353	304	248
Latvia	208	74	89
Lithuania	523	922	2,773
Luxembourg	669	2,804	1,438
Malta	39	81	19
Netherlands	6,956	7,285	4,367
Slovakia	225	270	240
Slovenia	4,449	4,660	3,897
United Kingdom	5,983	5,790	12,102
<i>Restricted total</i>	<i>241,723</i>	<i>255,879</i>	<i>180,359</i>
<i>Restricted average</i>	<i>14,219</i>	<i>15,052</i>	<i>10,609</i>

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

The calculation has first considered the initial cost for enforcement in the restricted EU17 Member States. Secondly, the estimation has considered the total number of drivers that at EU27 level have been checked at the roadside and at the premises in the 2-year reporting period 2011-2012 and has calculated the proportion of drivers checked in the restricted EU17 group (36%). This proportion has been multiplied by the staff enforcement cost for the restricted EU17 group to obtain the estimated total staff enforcement cost at EU27 level.

Table 10-6 Calculation of cost of enforcement staff (€²⁰¹², PPP adjusted)

Restricted EU17 cost for enforcement (€ ²⁰¹² , PPP adjusted)	Estimated no. of drivers checked at EU27 level (2011-2012)	Proportion of drivers checked in the restricted EU17 (2011-2012)	Estimated total staff enforcement cost at EU27 level (€ ²⁰¹² , PPP adjusted)
180,359,039	9,428,968	36% (3,348,582)	500,997,331

Source: TRT analysis based on Eurostat and (European Commission, 2014b)

Table 10-7 presents the calculation related to the costs for equipping enforcement officers to analyse tachographs. As described in previous Section 6.13.1.2, the unit cost for the equipment (€ 4,000) has been taken from JRC as cited in (PwC, 2009) and verified during the consultation, while the number of equipment units reported for the 2-year period 2011-2012 has been taken from (European Commission, 2014b).

Table 10-7 Calculation of costs for equipping officers to analyse tachographs

Member State	Nr. of units to analyse tachographs (2011-2012)	Estimated cost (€)
Austria	485	1,940,000
Belgium	76	304,000
Bulgaria	255	1,020,000
Cyprus	4	16,000
Czech Republic	136	544,000
Denmark	40	160,000
Estonia	26	104,000
Finland	95	380,000
France	3,500	14,000,000
Germany	3,315	13,260,000
Greece	66	264,000
Hungary	127	508,000
Ireland	12	48,000
Italy	1,186	4,744,000
Latvia	12	48,000
Lithuania	70	280,000
Luxembourg	6	24,000
Malta	1	4,000
Netherlands	85	340,000
Poland	884	3,536,000
Portugal	80	320,000
Romania	330	1,320,000
Slovakia	45	180,000
Slovenia	46	184,000
Spain	423	1,692,000
Sweden	206	824,000
UK	273	1,092,000
Total EU27	11,784	47,136,000

Source: TRT analysis based on (PwC, 2009), 2009) and (European Commission, 2014b)

Further, Table 10-8 summarises the estimated costs for setting up and interconnecting TACHOnet, As indicated in Section 6.13.1.3 above, this cost has been estimated by taken as reference the set-up and maintenance costs provided by Switzerland through the enforcers survey that respectively amount at approximately € 2,8 million and € 113,000,

Table 10-8 Calculation of costs of setting up and interconnecting TACHOnet (€²⁰¹⁴, PPP adjusted)

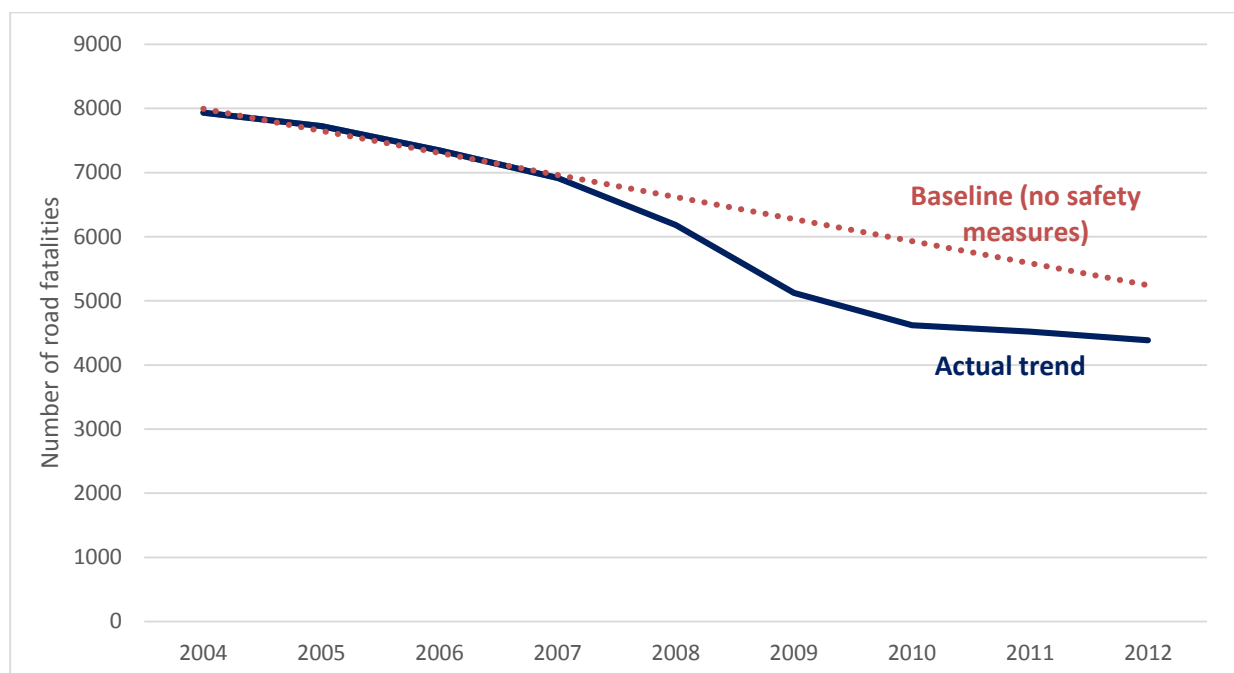
Member State	Set-up costs (€ ²⁰¹⁴ , PPP adjusted)	Maintenance costs (€ ²⁰¹⁴ , PPP adjusted)	Total costs (€ ²⁰¹⁴ , PPP adjusted)
Austria	2,266,445	90,469	2,356,913
Belgium	2,088,877	83,381	2,172,258
Bulgaria	807,376	32,228	839,604
Cyprus	1,547,415	61,767	1,609,183
Czech Republic	1,446,768	57,750	1,504,518
Denmark	2,185,380	87,233	2,272,613
Estonia	1,299,097	51,855	1,350,953
Finland	1,995,316	79,646	2,074,963
France	1,919,095	76,604	1,995,699
Germany	2,206,177	88,063	2,294,240
Greece	1,242,798	49,608	1,292,406
Hungary	1,168,161	46,629	1,214,790
Ireland	2,296,358	91,663	2,388,021
Italy	1,740,118	69,460	1,809,577
Latvia	1,116,241	44,556	1,160,797
Lithuania	1,272,271	50,785	1,323,056
Luxembourg	4,570,587	182,442	4,753,029
Malta	1,482,631	59,182	1,541,812
Netherlands	2,315,961	92,445	2,408,406
Poland	1,190,561	47,523	1,238,084
Portugal	1,320,843	52,724	1,373,566
Romania	935,311	37,334	972,645
Slovakia	1,325,079	52,893	1,377,972
Slovenia	1,407,859	56,197	1,464,056
Spain	1,629,729	65,053	1,694,782
Sweden	2,235,030	89,215	2,324,245
UK	1,898,610	75,786	1,974,396
Total EU27	46,910,095	1,872,489	48,782,584

Source: TRT analysis based on enforcers survey

10.8.2 Cost benefit analysis

To estimate benefits, we have taken into account the actual number of lives saved since 2007 based on the available statistics from the CARE database, and we have compared this against the assumed trend in road fatalities that would have occurred without the implementation of any road safety measures, including the EU rules on drivers' hours (baseline scenario) (Figure 10-11).

Figure 10-11: Comparison between assumed and actual trend over the period 2004-2012 of road fatalities involving freight and vehicles in-scope of Regulation (EC) No 561/2006



Source: analysis based on CARE database

Once the difference between the assumed trend in road fatalities and the actual trend in road fatalities (which includes among other road safety measures also the enforcement of EU social rules) has been calculated, we have assumed the contribution of the social rules to the reduction in the number of road fatalities in fatigue-related accidents, where freight and passenger vehicles in scope of Regulation (EC) No 561/2006 have been involved (Table 10-9).

Table 10-9 Calculation of reduction in fatalities following adoption of Regulation (EC) No 561/2006

Year	Assumed trend in road fatalities without EU social rules or other safety measures	Actual trend in road fatalities	No of lives saved due to all safety measures (including social rules and others)
2004	8,341	-	-
2005	7,997	-	-
2006	7,653	-	-
2007	7,309	6,916	393
2008	6,965	6,182	783
2009	6,621	5,126	1,495
2010	6,277	4,618	1,659
2011	5,933	4,522	1,411
2012	5,589	4,383	1,206

Source: TRT analysis based on CARE database

10.9 Efficiency: What are the related administrative costs of monitoring and reporting arrangements both for the national authorities and operators/drivers?

6.22.6. Quantitative analysis of identified administrative and compliance costs for transport operators

6.22.6.1. Cost of purchasing tools to download data on driver's activity from the recording equipment

A key change introduced by Regulation (EC) No 561/2006 is the requirement to equip all new vehicles registered after 1st of May 2006 with a digital tachograph in replacement to the analogue tachograph.

Transport operators have a responsibility to make data available and accessible to enforcers in order to demonstrate compliance with the driving time rules. Operators need, therefore, to download data from vehicles equipped with digital tachographs at regular intervals and this involves administrative costs.

There are two broad areas of costs associated with the downloading process. The first relates to the compliance cost of equipment needed to download, read and manage driver's data stored in the vehicles' units. The second area relates to the administrative costs for the time that is required to perform the downloading of the tachograph data (see Evaluation Question 16, Section 6.16.1.2). Transport operators are also bound to secure proper inspection (at least every two years) of the recording equipment installed on their fleets. For this cost item a more detailed cost assessment is given in Section **Error! Reference source not found.**

The costs for purchasing tools to download tachograph data include:

- A tachograph company card to unlock driver' personal data stored in the vehicles' units;
- Downloading equipment, e.g. a dedicated "memory stick";
- A dedicated software to read and analyse the downloaded data.

These represent the basic cost items a transport operator needs to sustain to secure compliance with drivers' hours rules, even though it is worth saying that they are fleet size-sensitive, e.g. they largely vary according to the number of vehicles these systems are required to manage.

It is also worth noting that the technological and IT developments that have occurred over the past years have made it possible for tachograph manufacturers to offer a wider range of products that do not only enable the basic analysis and reporting of drivers' hours management but are also intended as a full vehicle fleet management tool. Increasingly, these products are being working in Wi-Fi suites as well as through smart phones' applications. To date, these products remain still limited to larger firms and their cost was not considered in our analysis.

The tachograph company card is used to read off the data from all the digital tachographs in the vehicles in order to comply with legal requirements for data storage. A tachograph company card does not store any data as such but its function is simply to unlock the data and ensure that the digital tachograph vehicle unit recognises the operator before allowing data to be downloaded. To download data from the vehicle unit a download device (for example a memory stick) is needed.

Data on costs for obtaining a tachograph company card were obtained from a number of Member States. In €²⁰¹⁴ PPP adjusted terms, there is a significant variation, from €20 in Hungary to €192 in Luxembourg. Costs remain the same in most Member States when a tachograph company card is renewed after expiration of the validity period (5 years) or is replaced (due to malfunctioning, loss, theft, withdrawal or suspension). The average cost for issuing a company card is €79 and considering that one tachograph company card would be needed for each of the 930,000 freight and passenger undertakings directly affected by the tachograph regulation (European Commission, 2011). This leads to an

overall cost of € 73.5 million that the EU transport industry had borne so far to comply with the requirement of holding a tachograph company card.

Once unlocked, data stored in the digital tachograph must be downloaded for control and recording keeping purposes, using the download device. As explained during an interview with a tachograph manufacturer and validated with publicly available price releases (ShopFTA¹⁶⁹, TachoMaster¹⁷⁰, SmartCompliance¹⁷¹ the typical cost for a download tool that can work interchangeably with tachographs from different manufacturers has a cost of roughly €200. Assuming that each transport operator has at least one download device, the total cost borne by the industry can be estimated at around €186 million.

Finally, once downloaded, drivers' data need to be read by a dedicated software (or an online platform as it is today increasingly in use according to a tachograph manufacturer interviewed) for which a typical cost scaled to EU level of €600 has been identified. Again, assuming that this software has to be purchased by each transport operator affected by the tachograph regulation, the overall cost for the industry amounts at €558 million.

Table 10-10 summarises the costs for the industry associated to purchasing of tools to download data on driver's activity from the recording equipment.

Table 10-10: Overview of cost associated to purchase of digital tachograph monitoring and download equipment (€ millions)

Cost item	Estimated cost (€ million)
Applying for a tachograph company card	73.5
Purchasing of download device (e.g. memory stick)	186
Purchasing of software to read tachograph data	558
Total estimated cost	817.5

Notes: Cost estimates rounded to the nearest 1,000,000

Source: Own elaboration based on (European Commission, 2011) and interview with tachograph manufacturers.

6.22.6.2. Cost of training on use of the recording equipment and on compliance with EU social rules

Transport operators are directly responsible for training their drivers on the functioning and the correct use of the recording equipment as well as on making sure that their drivers have proper knowledge of driving time and rest period requirement so to guarantee the full compliance with EU social norms.

Training on the tachograph and on drivers' hours' rules provided by companies is not compulsory and is additional to training that drivers are required to undergo to obtain the Certificate of Professional qualification¹⁷² (which nonetheless already foresees initial training on the recording equipment and on social requirements). Nevertheless, feedback gathered through the interviews with drivers and operators indicates that it is a standard practice for undertakings to train and regularly upgrade/refresh skills and competences of their drivers on the correct application of the EU social rules.

¹⁶⁹ <https://www.shop.fta.co.uk/c-17-solutions.aspx>. Last visit: 31st December 2015.

¹⁷⁰ <http://www.tachomaster.co.uk/supplies/>. Last visit: 31st December 2015.

¹⁷¹ <https://smartcompliance.descartes.com/shop/tachograph-hardware/digital-tachograph-download-devices/>. Last visit: 31st December 2015.

¹⁷² The Transport Management Certificate of Professional Competence (CPC) is a qualification designed to meet the requirements of Regulation 1071/2009. Achievement of the CPC in either road haulage or road passenger transport demonstrates that the holder of the qualification is qualified to perform the effective and continuous management of undertakings engaged in road transport operations within any EU Member State.

As commented by one European industry association, costs related to this type of training activities are difficult to quantify. This is because EU countries are not prescriptive on the programme to be followed and the manner training is structured varies largely among the different companies. For example, companies may opt for training internal staff that subsequently train their drivers, or outsourcing the training tasks to *ad hoc* training centres. Also, cost of training depends on the number on hours that a driver is required to attend to complete the training. Finally, it is also not unusual that training is provided free of charge by labour unions or industry associations or that costs for this item are partly or totally reimbursed through public funds.

According to the information provided during interviews with operators and industry associations, the cost of training per driver varies rather widely depending on the EU countries where training is delivered. The median estimated cost per driver was €350 and this is taken as the cost of training in the calculations.

Assuming that just above 3.6 million drivers (Panteia et al, 2014) are subject to the social regulations in Europe and that, as indicated by a tachograph manufacturer, a proportion of 10% of all drivers undergo a training scheme every year, it can be roughly estimated an indicative yearly average cost for training borne by industry at EU level was estimated at €126 million.

6.22.7. Quantitative analysis of identified implementation costs for drivers

The only cost category that can be allocated to drivers in compliance with social regulation is represented by the cost of obtaining the tachograph driver card. Although it is not infrequent that the cost for the driver card is borne by the employer, as feedback from interviewed drivers has suggested, drivers usually sustain this cost simply because the driver card is personal and remains to them when they are hired by another employer or become self-employed drivers.

On average, the €²⁰¹⁴ PPP adjusted cost for obtaining a tachograph driver card is 68 € (range between 20 € reported for Hungary and 192 € reported for Luxembourg) (CORTE, 2015). In the majority of the Member States for which the information was provided, the cost of the driver card is the same whether it is issued for the first time, or replaced or renewed (see **Error! Reference source not found.**).

To scale up to the EU level, we assumed again that, based on (Panteia et al, 2014), just above than 2.2 million drivers¹⁷³ are required to apply for a digital tachograph driver card (see Section 6.22.6.2 above), the total compliance cost for them to apply and obtain a tachograph driver card was estimated €152 million.

¹⁷³ The number of drivers required to apply for a tachograph driver card used with a digital tachograph has been calculated as a proportion of the numbers of active drivers holding a C and or D license (Panteia et al, 2014). This proportion amounting at 62% has been estimated by considering the number of vehicles fitted with a digital tachograph and registered in 2014 out of the total number of vehicles registered in that year and equipped with tachographs, as it results from own elaboration of ACEA statistics. Once determined, this proportion has been applied to the total number of in-scope drivers as found in (Panteia et al, 2014).

10.11 Coherence: Are the provisions and definitions related to the organisation of the working time of drivers (Directive 2002/15/EC) consistent with those on driving times, breaks and rest periods (Regulation (EC) No 561/2006)?

10.11.1 Tables and visual tools supporting the analysis

Table 10-11: Specific interpretations of breaks and rest periods for certain activities

Art.	Types of activities	Specific interpretation of
Art. 9 (1)	Driver accompanying a vehicle by ferry or train, with access to a bunk or couchette	Regular daily rest periods
Art.9 (2)	Travelling to a location to take charge of a vehicle by ferry or train with access to a bunk or couchette ¹⁷⁴	Rest periods/ breaks
Art.9 (3)	Driving a vehicle that falls outside the scope of the Regulation, to or from a vehicle falling under the scope of the Regulation	Other work

Table 10-12: Cross-references between Regulation (EC) No 561/2006 and Directive 2002/15/EC

		Regulation (EC) No 561/2006								
		Art. 2 - Scope	Art. 3 - Exclusion	Art. 4(d) - 'Break'	Art. 4(e) - 'Other work'	Art. 4(i) - 'Week'	Art. 6(2) Weekl y driving time	Art. 7 - Breaks	Art. 8 - Rest	Art. 17 - MS reporti ng
Directive 2002/15/EC	Art. 2 - Scope	✓	✓							
	Art. 3(a) - 'Working time'			✓	✓					
	Art. 3(g) - 'Week'					=				
	Art. 4 - Weekly working time						✓			
	Art. 5 - Breaks							✓		
	Art. 6 - Rest								✓	
	Art. 13 - MS reporting									✓

¹⁷⁴ Article 9(2) has been further clarified through clarification note 2.

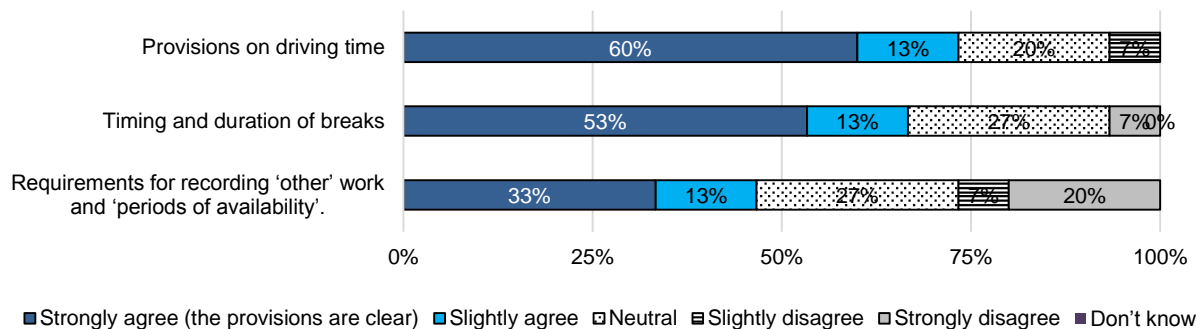
10.11.2 Assessment by stakeholders

Coherence of key provisions

On the coherence of key provisions, 11 out of the 15 responding ministries strongly¹⁷⁵ or slightly¹⁷⁶ agreed that provisions on driving times are sufficiently clear to avoid difficulties in interpretation.

Respondents were also asked to comment on the clarity of the provisions as set out in Articles 4-7 of Directive 2002/15/EC, which define the rules on driving time. All 13 responding ministries¹⁷⁷ stated that the provisions on average weekly working times are clear; 12 stated that daily working times in relation to night work are clear¹⁷⁸; 11 that the provisions on compensating night work are clear¹⁷⁹. The definitions of 'other work' and 'periods of availability' are also considered clear by, respectively, 9¹⁸⁰ and 10 respondents¹⁸¹ out of 13 ministries¹⁸².

Figure 10-12: Member State responses to survey question 4.1 (ministries): To what extent do you agree that the provisions on driving times, reporting and breaks (as defined in Article 6 and 7) are sufficiently clear to avoid difficulties in interpretation? (100% = 15 responses)



Regarding the requirements on rest periods and breaks, 8¹⁸³ out of 15 ministries find that the provisions on daily and weekly rest periods (as defined in Article 8) are sufficiently clear to avoid difficulties in interpretation. 11¹⁸⁴ ministries out of 13 consider the requirements on obligatory break time when working 6-9 hours were clear. However, provisions on weekly rest periods appear to be clear for only six¹⁸⁵ respondents out of 15. This could be due to the ongoing debate on the prohibition of regular weekly rest being taken inside the vehicle and to the extension of the 12- day rule for international passenger transport operations.

¹⁷⁵ Belgium, Bulgaria, Denmark, Estonia, France, Poland, Portugal, Slovenia and United-Kingdom.

¹⁷⁶ Finland and Latvia.

¹⁷⁷ Austria, Belgium, Bulgaria, Estonia, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden and United Kingdom.

¹⁷⁸ Austria, Belgium, Estonia, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden and United Kingdom.

¹⁷⁹ Austria, Belgium, Estonia, France, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden and United Kingdom.

¹⁸⁰ Austria, Belgium, Bulgaria, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia and United Kingdom.

¹⁸¹ Austria, Belgium, Bulgaria, Finland, France, Latvia, Poland, Portugal, Slovakia and Slovenia.

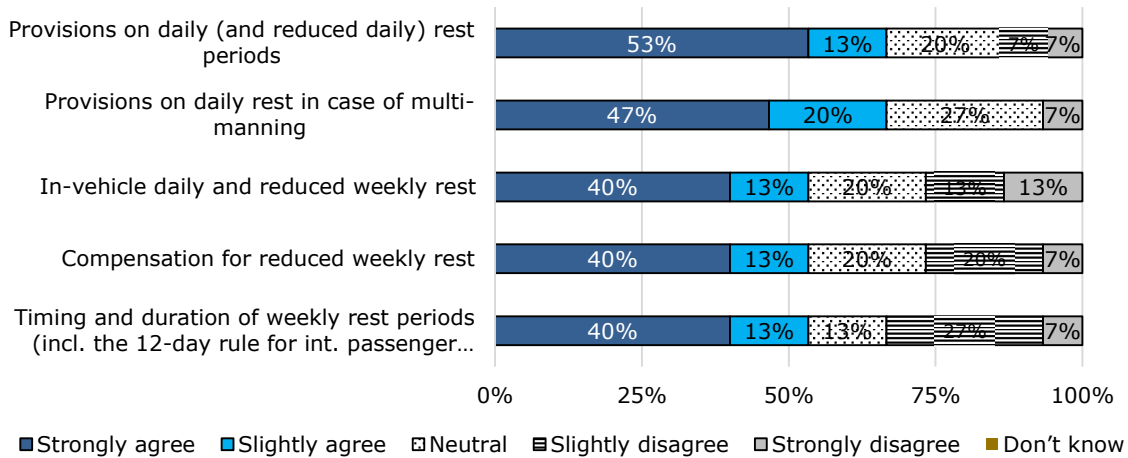
¹⁸² Austria, Belgium, Bulgaria, Estonia, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden and United Kingdom.

¹⁸³ Belgium, Bulgaria, Estonia, Denmark Poland, Portugal, Slovenia and United Kingdom.

¹⁸⁴ Austria, Belgium, Bulgaria, Finland, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden and United Kingdom.

¹⁸⁵ Belgium, Bulgaria, Poland, Portugal, Slovenia and United Kingdom.

Figure 10-13: Member State responses to survey question 4.4 (ministries) : In your opinion, are the provisions on daily and weekly rest periods (as defined in Article 8) sufficiently clear to avoid difficulties in interpretation? (100% = 15 responses)



To the survey question “Are there any other parts in the provisions in Regulation (EC) No 561/2006 on driving times, breaks and rest periods not already mentioned that lead to difficulties or inconsistencies in interpretation?” 6 out of 15 responding ministries and 3 out of 14 enforcement authorities provided comments. The Dutch authorities highlighted the overall difficult relation between Regulation (EC) No 561/2006 and Directive 2002/15/EC. No authority however raised issues in relation to inconsistencies; rather they were related to needs of further clarification.

Undertakings did not clearly highlight instances of incoherence or overlaps. To the question “If you think that there is a lack of coherence and/or overlaps of any provisions of the discussed pieces of legislation, please describe the most important coherence issues/overlaps” 75 points were highlighted by 52 out of 1287 undertakings. 15 comments were hardly readable due to their lack of clarity. Among the readable comments, most remarks were either of general nature (e.g. “overlap between Regulation (EC) No 561/2006 and 2002/15/EC”, “Road traffic regulations and social rules do not match”) or not related to the coherence of the legislative framework (e.g. “cabotage”, “differing practices across Member States”, “Driving without card”). It was however highlighted several times that inconsistencies were sometimes due to particular implementation in Member States (i.e. 12-day rule in Germany, Working Hours National Act in the United Kingdom, French Labour Code, Labour Code in Romania).

Drivers interviewed for this study were divided on the question of clarity and consistency of the rules. 9 out of 31 drivers considered that lack of clarity and inconsistency of the rules are major causes for difficult compliance. 13 out of 31 assessed that these are not a cause at all. According to the general survey, Regulation (EC) No 561/2006 was seen as lacking clarity and coherence by 33 out of 64 responding participants. Regarding Directive 2002/15/EC it was the case for 32 out of 64 responding participants. 17 out of 64 respondents reported instances of lack of coherence, inconsistencies or overlaps. In this case again the comments related to needs of clarification rather than issues of coherence, inconsistencies or overlaps.

Practical consequences of inconsistencies

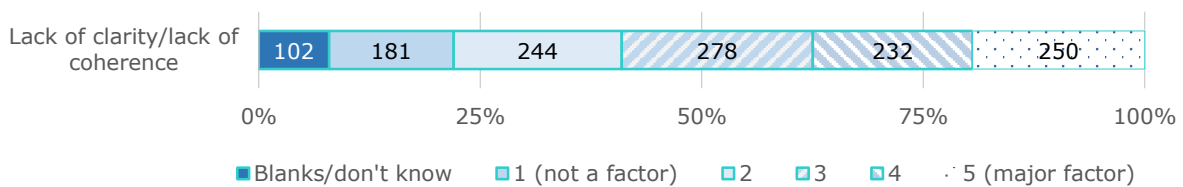
In relation to the Regulation, the majority of enforcement authorities (11¹⁸⁶ out of 21) considered that the lack of clarity or coherence in existing rules and guidelines was not a

¹⁸⁶ Austria, Cyprus, Germany, Finland, Czech Republic, Hungary, Latvia, Lithuania, Slovakia, Slovenia and Romania.

cause/ a minor cause for poor compliance, 6¹⁸⁷ authorities designated it as a moderate to major cause.¹⁸⁸ No enforcement authority considered that a lack of clarity in the definitions relating to rest periods, driving times or breaks significantly contributed to difficult enforcement or monitoring of the Regulation. 21 out of 26 authorities perceived the lack of clarity as “a minor contribution, not contributing, not applicable” or did not know. Also the lack of clarity of definitions was generally one of the least relevant concerns of the enforcement authorities.

According to 8 out of 14 trade unions lack of clarity/coherence in existing rules and guidelines is not a cause for poor compliance. Answers from undertakings to the question “What main factors make complying with Regulation (EC) No 561/2006 more difficult for a business?” were inconclusive with significant disparity in the responses received.

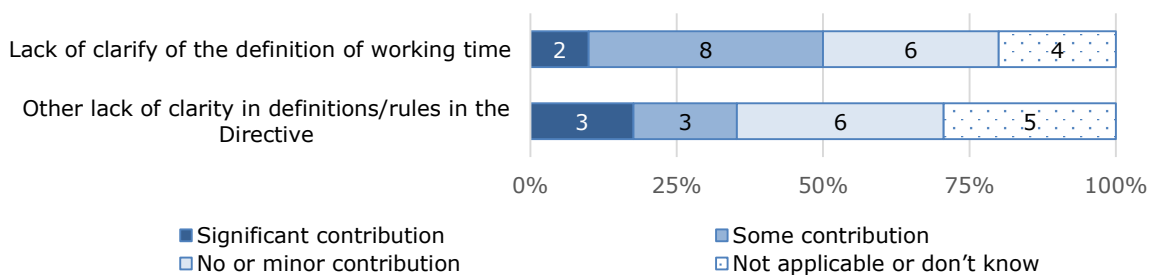
Figure 10-14: Responses to the survey question 3.2 (undertakings) “In your opinion, what are the main factors that make complying with Regulation (EC) No 561/2006 more difficult for a business like yours? Please rate on a scale from 1 (not a cause at all) to 5 (major cause)” (some factors). (100% = 1287 undertakings)



Regarding Directive 2002/15/EC the lack of clarity of the definition of working time was seen as leading to difficulties in monitoring and enforcement by 10 out of 21 enforcers¹⁸⁹.

Moreover, 6¹⁹⁰ out of 21 enforcement authorities considered that a lack of clarity in rules and definitions of the Directive contributed to a moderate or significant extent to difficulties in monitoring and enforcing the Directive. No specific cause of lack of clarity or coherence was identifiable through the survey.

Figure 10-15: Enforcers responses to question 11.5 “Are there any parts of the provisions of Directive 2002/15/EC related to working time listed below that lead to difficulties in monitoring and enforcement?” (100% = 21 responses)



¹⁸⁷ Authorities from Belgium, Estonia, Luxembourg, Poland, Netherlands and Sweden.

¹⁸⁸ The reasons for the negative assessment were not further described by the authorities.

¹⁸⁹ Authorities from Austria, Croatia, Estonia, Hungary, Lithuania, Luxembourg, the Netherlands, Sweden, Slovenia and Slovakia.

¹⁹⁰ Authorities from Estonia, Hungary, Lithuania, the Netherlands and Sweden.

10.12 Coherence: How do different pieces of legislation in road transport interact in terms of road safety, working conditions of drivers and harmonised conditions of competition?

10.12.1 Tables and visual tools supporting the analysis

The table in the overleaf provides a snapshot of cross-references between each of the legal acts listed in the evaluation question. For instance, the first row shows that Regulation (EC) No 561/2006 includes references to Directive 2002/15/EC, Directive 88/599/EEC (repealed by 2006/22/EC), Regulation (EEC) No 3821/85, Regulation (EEC) No 684/92 (repealed by Regulation (EC) No 165/2014), and Directive 2003/59/EC. The second row indicates that Directive 2002/15/EC refers to Regulation (EEC) No 3820/85 (repealed by Regulation (EC) No 561/2006), etc.

The table reflects the interactions existing between these different acts concerning road transport. A cross-reference to one act in a given piece of legislation would indicate that this piece of legislation was designed taking into account the pre-existing rules set by the act it refers to, and thus acknowledges an interaction between the two acts.

Table 10-13: Cross-references in road transport legislation

	Regulation (EC) No 561/2006 ¹⁹¹	Directive 2002/15/E C	Directive 2006/22/E C ¹⁹²	Regulation (EC) No 165/2014 ¹⁹³	Regulation 1071/2009 ¹⁹⁴	Regulation 1072/2009 ¹⁹⁵	Regulation 1073/2009 ¹⁹⁶	Directive 2003/59/E C ¹⁹⁷	Directive 2014/45/E U ¹⁹⁸	Directive 2014/47/E U ¹⁹⁹
Regulation (EC) No 561/2006		✓	✓	✓			✓	✓		
Directive 2002/15/E C	✓									
Directive 2006/22/E C	✓	✓		✓						
Regulation (EC) No 165/2014	✓	✓	✓			✓				
Regulation 1071/2009	✓	✓	✓	✓		✓	✓	✓		
Regulation 1072/2009	✓			✓	✓					
Regulation 1073/2009	✓			✓	✓					
Directive 2003/59/E C	✓			✓	✓					
Directive 2014/45/E U										

¹⁹¹ or repealed Regulation (EEC) 3820/85.

¹⁹² or repealed Directive 88/599/EEC.

¹⁹³ or Regulation (EEC) 3821/85.

¹⁹⁴ or repealed Directive 96/26/EC.

¹⁹⁵ or repealed Regulation (EEC) 881/92, Regulation (EEC) 3118/93 and Directive 2006/94/EC.

¹⁹⁶ or repealed Regulation (EEC) 684/92 and Regulation (EC) 12/98.

¹⁹⁷ or repealed Directive 76/914/EEC.

¹⁹⁸ or repealed Directive 2009/40/EC.

¹⁹⁹ or repealed Directive 2000/30/EC.

Ex-post evaluation of social legislation in road transport and its enforcement

	Regulation (EC) No 561/2006 ¹⁹¹	Directive 2002/15/E C	Directive 2006/22/E C ¹⁹²	Regulation (EC) No 165/2014 ¹⁹³	Regulation 1071/2009 ¹⁹⁴	Regulation 1072/2009 ¹⁹⁵	Regulation 1073/2009 ¹⁹⁶	Directive 2003/59/E C ¹⁹⁷	Directive 2014/45/E U ¹⁹⁸	Directive 2014/47/E U ¹⁹⁹
Directive 2014/47/E U	✓		✓	✓	✓				✓	

Table 10-14: Overview of the working time requirements under Directive 2002/15/EC and Directive 2003/88/EC

	Working time of drivers (2002/15/EC)	General working time rules (2003/88/EC)
Working time	<ul style="list-style-type: none"> Not more than 48h/week in average Maximum of 60h/week (within the 48h average over a four month period) 	<ul style="list-style-type: none"> Not more than 48h/week
Breaks	<ul style="list-style-type: none"> Max. 6 working hours without a break 30 min. break if total working hours between 6 and 9 45 min. break if total working hours more than 9 	<ul style="list-style-type: none"> Max 6 working hours without a break Duration and conditions to be regulated at national level by collective agreements or legislation.
Rest	<p>Rules of the Regulation apply:</p> <ul style="list-style-type: none"> 11h daily rest (3+9h or 9h three times a week) 45h weekly rest (reduced to 24h not on consecutive weeks) 	<ul style="list-style-type: none"> 11h daily rest 24h + 11h daily rest (reduced to 24h under conditions)
Night work	<ul style="list-style-type: none"> Maximum of 10h in 24h if night work is performed 	<ul style="list-style-type: none"> Average of 8h in 24h if three hours of work is performed at night.

Table 10-15: Gaps, overlaps and inconsistencies between the road social legislation and other acts

	Relationship with road social legislation	Gaps, overlaps and inconsistencies
Access to occupation of transport operator ²⁰⁰	Definitions: Article 2(4): Undertaking	Potential gap. For the scope of Directive 2002/15/EC: the Directive applies to 'mobile workers employed by undertakings established in a Member State, participating in road transport activities covered by Regulation (EEC) No 3820/85 or, failing that, by the AETR Agreement'. 'Undertakings' is not defined in the Directive.
Access to road haulage market ²⁰¹	Definitions: Art.2(1): Vehicle	Potential inconsistency: the definition is slightly different from the definition in Regulation EC No 561/2006. It specifies that the vehicle (or at least the motor part of a combined vehicle) must be registered in a Member State, and that it must be used exclusively for the carriage of goods. This corresponds to the scope of Regulation 1072/2009, but does not contradict the definition of Regulation (EC) No 561/2006.
Periodic roadworthiness tests ²⁰²	Definitions: Art.3(1) Vehicle	Potential inconsistency: the definition is different from the definition in Regulation EC No 561/2006. It refers in more general terms to any not rail-borne motor vehicle or its trailer. Even though broader, it applies only in the context of that Directive. In this context, no legal issue of inconsistency arises.
Technical roadside inspections ²⁰³	Definitions: Art.3(1) Vehicle	Potential inconsistency: the definition is different from the definition in Regulation EC No 561/2006. It refers in more general terms to any not rail-borne motor vehicle or its trailer. Even though broader, it applies only in the context of that Directive. In this context, no legal issue of inconsistency arises.

²⁰⁰ Regulation (EC) 1071/2009 (repealing Directive 96/26/EC)

²⁰¹ Regulation (EC) 1072/2009 (replacing Regulation (EEC) 881/92, Regulation (EEC) 3118/93 and Directive 2006/94/EC) and Regulation (EC) 1073/2009 (replacing Regulation (EEC) 684/92 and Regulation (EC) 12/98).

²⁰² Directive 2014/45/EU (repealed Directive 2009/40/EC)

²⁰³ Directive 2014/47/EU (repealed Directive 2000/30/EC with effect from 20 May 2018)

Table 10-16: Interactions between the road social legislation, Regulation (EC) 1072/2009 and Regulation (EC) 1073/2009

	Relationship with road social legislation	Interactions with other legislation?
Access to road haulage market ²⁰⁴	Scope: Art. 1(5): "The following types of carriage and unladen journeys made in conjunction with such carriage shall not require a Community licence and shall be exempt from any carriage authorisation: [...] (c) carriage of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 3,5 tonnes; [...]"	Yes. During the recast process exemption of Article 1(5) (c) was aligned with the general scope of application of Community road transport rules - by exempting vehicles with a permissible laden mass of up to 3,5 tonnes.
	Definitions: Art.2(5) Driver	Yes. The definition is identical to the definition in Regulation (EC) No 561/2006.
	Others: Recital 13 indicates that cabotage operations for national transport services are subject to Regulation (EC) No 561/2006. Art. 9(1)(e): Rules applicable to cabotage operations	Yes. The two acts are complementary in scope.
Access to passengers transport market ²⁰⁵	Scope: N/A	Not relevant
	Others: Amending Art. 8 (6a) of Regulation (EC) No 561/2006 to re-introduce the 12-day rule for coach drivers. Art. 16(1)(d): Rules applicable to cabotage operations: "The performance of cabotage operations shall be subject, save as otherwise provided in Community legislation, to the laws, regulations and administrative provisions in force in the host Member State with regard to the following: [...] (d) the driving time and rest periods."	Yes. The derogation introduced in Regulation (EC) No 561/2006 applies to drivers engaged in a single occasional service of international carriage of passengers 'as defined in Regulation (EC) No 1073/2009. Yes. Art.16 requires the application of the driving time and rest periods for cabotage as per the national legislation 'save as otherwise provided in Community legislation' thus ensuring the application of the EU road social legislation in case of conflicting provisions.

Table 10-17: Interactions between the road social legislation, Directive 2003/59/EC, Directive 2014/45/EU and Directive 2014/47/EU

	Relationship with road social legislation	Interactions with other legislation?
Training of drivers ²⁰⁶	Scope: N/A	Not relevant
	Definitions: N/A	Not relevant

²⁰⁴ Regulation (EC) 1072/2009 (replacing Regulation (EEC) 881/92, Regulation (EEC) 3118/93 and Directive 2006/94/EC) and Regulation (EC) 1073/2009 (replacing Regulation (EEC) 684/92 and Regulation (EC) 12/98).

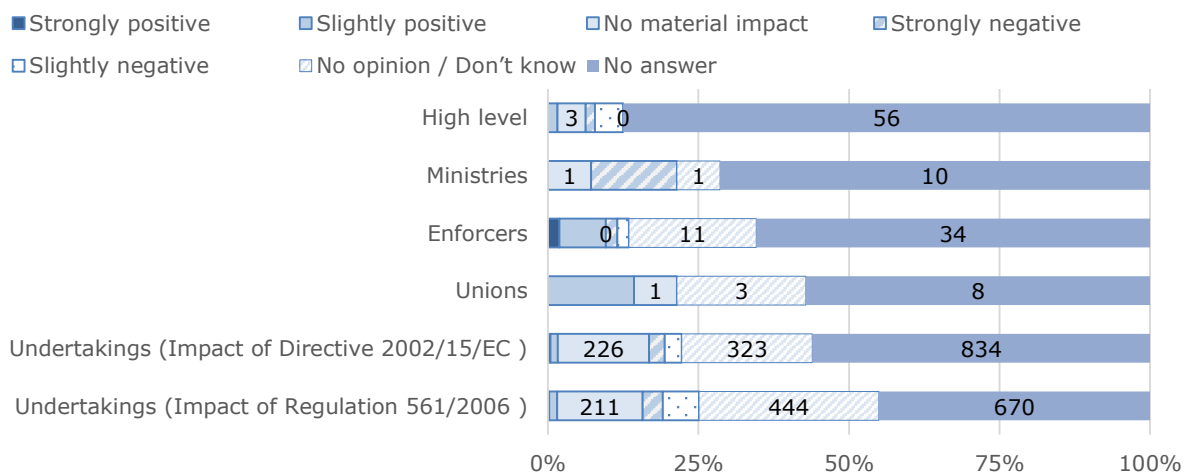
²⁰⁵ Regulation (EC)1073/2009 (replacing Regulation (EEC) 684/92 and Regulation (EC) 12/98).

²⁰⁶ Directive 2003/59/EC (repealed Directive 76/914/EEC)

	Relationship with road social legislation	Interactions with other legislation?
	Other: The Directive repealed Article 5 of Regulation (EEC) No 3820/85.	Key provisions: Provisions on the minimum age of drivers laid down in the Directive had to be transposed by 2009, Article 5 of Regulation No 3820/85 was thus still in force until that date. The link with the Tachograph Regulation is more relevant.
Periodic roadworthiness tests ²⁰⁷	None	Not relevant
Technical roadside inspections ²⁰⁸	Scope: N/A	Not relevant
	Definitions: N/A	The definition of roadworthiness text is defined in according with Directive 2014/45/EU. The definition of 'undertakings' refer to Regulation (EC) No.1071/2009.
	Others: In order to minimise the time loss for undertakings and drivers and to increase the overall efficiency of roadside checks, the performance of technical roadside inspections, along with inspections to check compliance with social legislation in the field of road transport, in particular Regulation (EC) No 561/2006 of the European Parliament and of the Council (2), Directive 2006/22/EC and Council Regulation (EEC) No 3821/85 (3), should be encouraged (Recital 28)	Key provisions: Technical roadside inspections are regulated for the purpose of improving the implementation of the road social legislation. Art. 7 and 9 of the Directive both refer to Directive 2006/22/EC. They feed in and draw upon the risk profiles set under the Enforcement Directive.

10.12.2 Assessment by stakeholders

Figure 10-16: Stakeholder responses to the question: « In your opinion, what was the EU road social legislation’s impact on other EU (transport sector) legislation »



²⁰⁷ Directive 2014/45/EU (repealed Directive 2009/40/EC)

²⁰⁸ Directive 2014/47/EU (repealed Directive 2000/30/EC with effect from 20 May 2018)

10.13 Coherence: How does the social legislation in road transport relate to the goals of EU transport policy, the Charter of Fundamental Rights of the EU and EU Social policy and the wider economic, social or environmental challenges of EU policies?

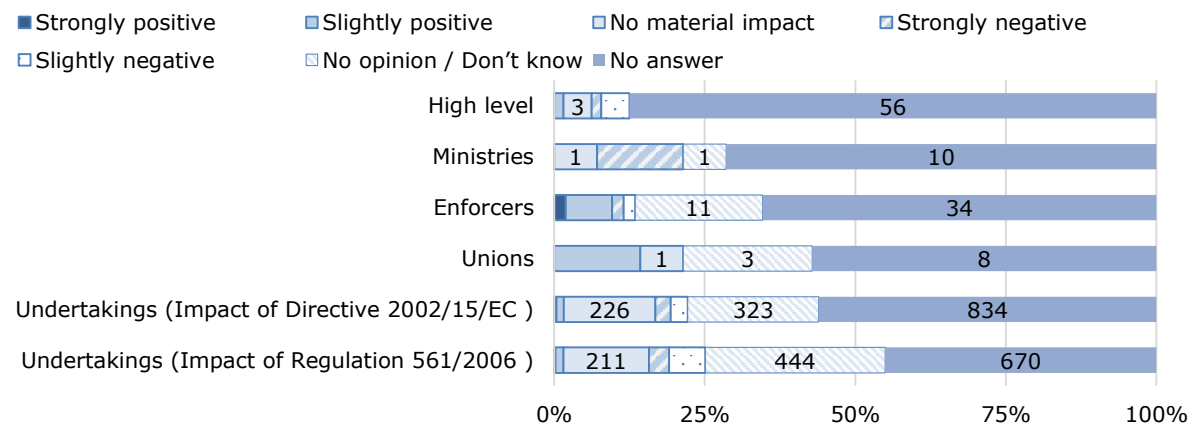
10.13.1 Tables and visual tools supporting the analysis

Table 10-18 - Interactions with other EU transport policies

Policies / fields	2011 White Paper	Charter of Fundamental Rights	Europe 2020	Cohesion Policy	Health and Safety Strategy	Covered by road transport social legislation?
Road safety	✓	-	-	-	✓	Yes (direct links) ²⁰⁹
Working conditions	✓	✓	-	-	-	
Training/skills	-	-	✓	✓	-	
Fair competition	✓	-	✓	✓	-	Yes (indirect links) ²¹⁰
Access to market	✓	-	-	-	-	
Efficient resources	-	-	✓	-	-	No
Attractive infrastructure	-	-	-	✓	-	
Employment	-	-	-	-	-	
Environment	-	-	✓	-	-	

10.13.2 Assessment by stakeholders

Figure 10-17 – Answers to survey to: « In your opinion, how has the EU road social legislation contributed to the following aspects? » regarding the « Impact of EU road social legislation on other EU (transport sector) legislation »



²⁰⁹ See analysis under evaluation question nb 18.

²¹⁰ See analysis under evaluation question nb 18.

10.14 EU Added Value: Is there any evidence that in certain cases a different level of regulation (e.g. national regulation, soft-law measures) could have been more relevant and/or effective and/or efficient than the applicable one to achieve the objectives?

Among seventeen comments to the positive rating on the existence of the EAV received, nine referred to the need for harmonisation and eight referred to the need for ensuring fair competition/a level playing field. Five respondents who disagreed with the existence of the EAV in this area pointed out that individual Member States still have the possibility to apply deviations, which apparently, in their view, undermines the EAV.

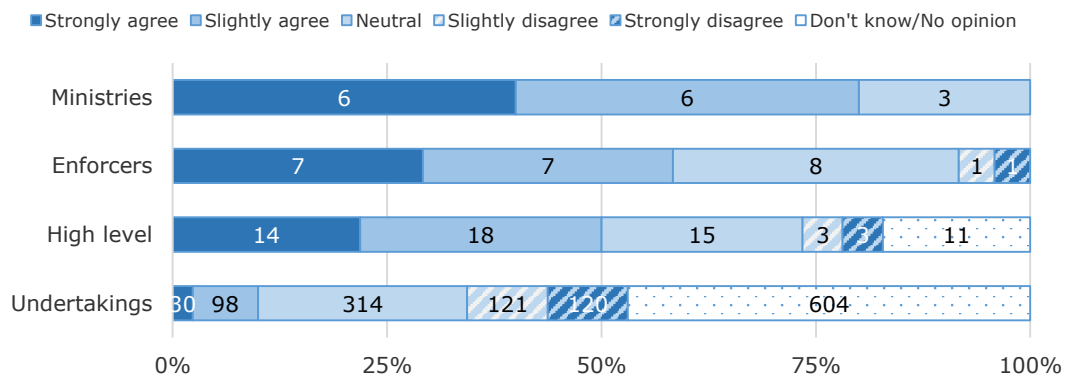
The following opinions relating to the EAV and in particular to the issue of subsidiarity were obtained in the general survey²¹¹:

- A representative of the National Transport Authority in Hungary stated: 'Where the national competence to freely regulate is still there it makes no sense to ask the value of EU legislation as it will be something country specific. Perhaps the regulation can give ideas to law makers'.
- A representative of the Croatian Ministry of Maritime Affairs, Transport and Infrastructure stated: 'National Act is better and more precise'.
- A representative of the Finnish Transport and Logistics SKAL/Employer's Federation of Road Transport ALT stated: 'In order to create a level playing field and fair competition among transport companies in Europe, we need some common rules and regulations at the EU level. But because possibilities to use different transport modes, length of transportation journeys, geographic and climate circumstances, traffic circumstances, work life, business concepts and clients etc. vary from country to country already today greatly – and even more in the future – the EU-rules should have at least some possibilities to flexible and case-by-case application, in company and in national level. Particularly this concerns driving, rest and work time rules, where the EU-rules should not be formulated too detailed. The most important task for regulations at the EU level should be creation of a level playing field and fair competition in all levels'.
- A representative of the National Road Transport Federation in France stated: 'In France, social regulation is already extremely heavy and full. European regulations adds rules to the rules, but France has no price arrangements to articulate its own regulations with EU regulations. This is so that Directive 2002/15/EC does not receive its full implementation example in France. French standards on the effective working time that have nothing to do with the European definition prevent French companies to apply all European standards on driving time. In France, all European can apply the European social regulations, except French'
- A representative of the Chamber of Commerce for the Stuttgart region (Germany) stated: 'Problems arise from the fact that EU-wide and national regulations exist in parallel. For example, the regular passenger traffic up to 50 km line length is exempt from the EU social legislation but falls under the individual regulation in each Member State. In Germany, the driver can then pause for brief periods of 8 or 10 minutes. However on a cross-border bus, such short breaks of only 8 or 10 minutes are problematic'.
- A representative of the Austrian organisation AISO stated: 'EU Social rules + national implementation of Working Time Directive have led to a very complex system that is often contradictive in terms and understanding'.

²¹¹ These comments were received in response to the question 'In your opinion, have EU social rules in transport an added value to national level rules?'

The figure below presents the responses of the stakeholders to the EAV question.

Figure 10-18: Stakeholders' responses to survey question: In your opinion, have EU social rules in transport an added value to national level rules?



Notes: This question was not posed to the group of the drivers' representatives (unions). The option 'Don't know/No opinion' was assigned to the group of the respondents to the surveys who did not reply to the question.

Source: Stakeholder surveys of this study

11 ANNEX C: ANALYSIS OF TRENDS IN COMPLIANCE (TASK 4)

This section presents the conclusions of the quantitative analysis conducted as part of this study. Qualitative analysis was also carried out to support the development of overall conclusions, which is presented in the relevant evaluation questions.

11.1 Quantitative analysis: introduction and overview

The analysis focusses on Regulation (EC) No 561/2006, since quantitative and qualitative information on Directive 2002/15/EC is extremely limited.

Throughout this section, the reported **infringement detection rates** (as required in the biennial reporting) are used as a proxy to understand the trends in compliance. This is under the rather strong assumption that, all else equal, higher infringement rates imply lower compliance and vice versa.

However, the infringement rate is an imperfect indicator of compliance for several reasons: firstly, and most importantly "all else equal" is not usually a valid assumption. The detected infringement rate is also affected by enforcement practices that are unrelated to compliance – such factors are discussed later on, but might include, for example: the thoroughness/quality of checks, equipment available to enforcers, training, use of risk-rating systems etc.

External factors may also influence the overall picture, including developments in wage levels and the provision of national infrastructure.

Another very important issue in the context of the reporting data is the extent to which it accurately reflects the national situation. This will be discussed further below when considering the limitations of the dataset.

In summary therefore, there are four main issues that can affect the reported detection rates:

- Trends in the underlying compliance level of undertakings/drivers (analysed in Section 11.2 by using detected infringement rates as a proxy).
- Factors that affect the effectiveness of enforcement (analysed in Section 11.3).
- External "contextual" factors that are outside of the scope of the social legislation and related to broader market or national trends (analysed in Annex G).
- Limitations in the monitoring data due to, for example, changes in reporting practices and/or measurement errors (discussed below in Section 11.1.1).

The extent to which each of these factors contributes to the observed changes in detection rates must be assessed before any conclusions can be drawn about the underlying trends.

For the reasons described above, infringement detection rates are only a weak proxy for the level of compliance and the analysis of trends on this data should be interpreted with care.

11.1.1 Limitations of the monitoring data

The datasets regarding road transport social rules that are directly relevant for this analysis are reported in the biennial country monitoring reports. The datasets include details on the number of checks carried out by Member State, and the number/type of infringements detected, with disaggregation by type of check (roadside or premises) and type of undertaking (passenger or freight). The reported infringement detection rates are expressed as the number of infringements detected per 100 working days checked (WDC).

There are several limitations of the data that should be acknowledged upfront. Firstly, the reporting is incomplete, as several Member States each year have not submitted complete information, which (as discussed earlier in the report) is due to technical or administrative limitations.

- For the 2007-2008 period a number of Member States²¹² reports did not include all necessary information (European Commission, 2011).
- The completeness of the reports provided by the Member States did improve in the following two reporting periods 2009-2010²¹³ and 2011-2012²¹⁴ (European Commission, 2012) (European Commission, 2014b).

The most recent biennial report indicates some of the data reported to the Commission provided insufficient detail (European Commission, 2014b). Although there is still reasonably good coverage across the EU-27 for some of the aggregate statistics, the data show significant fluctuations and abrupt changes between different reporting years, which in many cases appear to be due to changes in reporting or data collection approaches.

Even so, the quality of key data in the earlier reports is lower. For instance, one of the issues with the first round of reports was that the statistics reported by Member States in the various reporting tables were inconsistent. The total numbers of vehicles checked should be the same across all tables in the report (for a single Member State), as should the total number of drivers checked, and undertakings checked. However, half of the Member States provided contradictory figures on the total number of working days checked (European Commission, 2011). In the next biennial reports (2009-2010 and 2011-2012) the quality and consistency of the data was improved, due to the introduction of a new interactive electronic reporting tool, which performed some elementary checks on the data for inconsistencies like these (European Commission, 2012).

Another issue is that the reporting practices vary by country, which tend to make cross-country comparisons invalid. Key differences include:

- **Differences in interpretation of the reporting requirements** lead to large fluctuations in the data and differences between countries that are not due to the fundamental characteristics of their enforcement systems or the underlying behaviour of undertakings/drivers. For instance, there are different interpretations when it comes to number of checks reported (i.e. some countries such as Belgium report only checks where infringements were found, and others like Germany report all checks including clear ones where no infringements were found). Aside from these flaws due to differing interpretations, there are also fluctuations due to changes in interpretation over the years.
- **Misinterpretation of the reporting requirements and/or data collection errors.** During interviews with national competent authorities, several admitted that the data probably reflected reporting errors or misinterpretations²¹⁵.
- **The use of general tolerances:** some countries do not permit any tolerance in recording infringements (NL, LV, ES, DE), whereas other (FI, UK, RO, DK, SE) allow some leeway (e.g. Denmark allows a tolerance level of 5% in its assessment and SE allows 2-3 minutes tolerance to compensate for tachograph deficiencies in certain cases) (STA, 2015).
- **The approach to sanctioning isolated minor infringements:** Some countries issue a warning if there are only isolated or minor infringements (SE, UK, NL, FI, DK, DE). For example, in the Netherlands, minor infringements are not controlled until the third company check, meaning that infringements before this point are not controlled. In other countries (e.g. ES, RO, LV), sanctions are typically still imposed for minor infringements. Several countries assess infringements dependant on their context and, if these are systematic, then they can be

²¹² E.g. Czech Republic, Slovakia and Sweden did not provide any data on offences detected at the premises

²¹³ Only Finland did not provide any data on the offences detected

²¹⁴ All Member States provided data on offences detected

²¹⁵ For instance, the number of officers involved in the enforcement of road social regulation in Belgium is reported as being 736 in the period 2007/08, then falling to 57 in the period 2009/2010 and then rising again to 370 in the period 2011/2012, the Belgian enforcer, asked for an explanation on this trend replied that this was probably due to misunderstanding and that the last figures (370) should be correct, including officers of the Ministry and of the Police.

sanctioned, but they are disregarded if they are few in number or considered to be random occurrences (STA, 2015).

Due to the issues outlined above the analysis in this section focusses mainly on the trends between 2009-2010 and 2011-2012. Looking at trends rather than absolute figures in the countries can help to correct for the differences in reporting practices to some extent (although absolute figures are still potentially useful and are analysed in some cases).

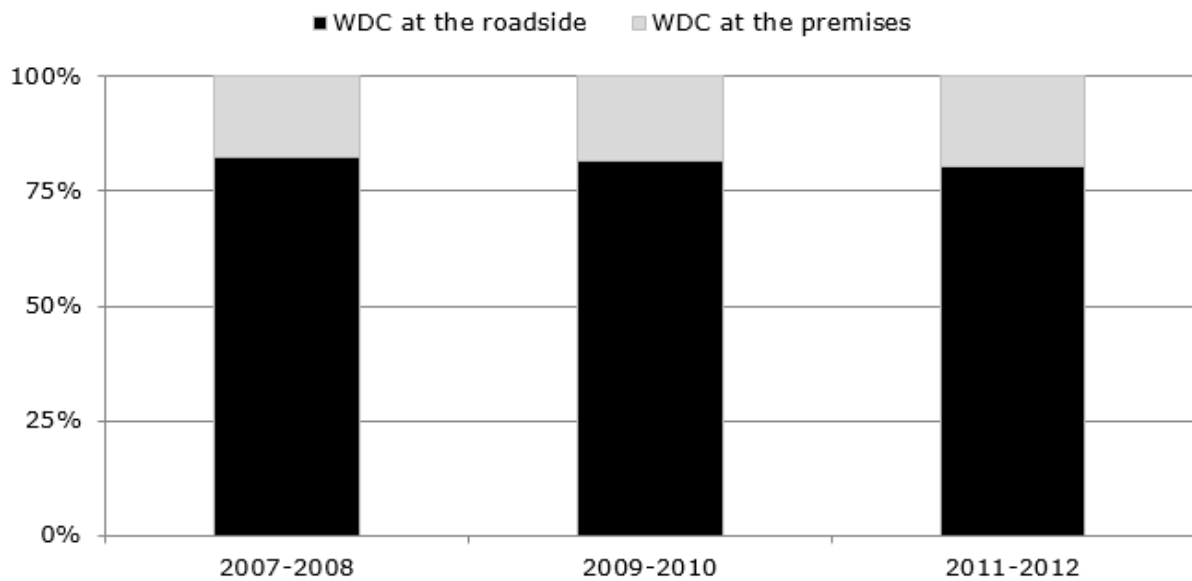
11.2 Analysis of trends in reported infringement detection rates

For the reporting period 2011-2012, 158.6 million working days were checked in the EU-27 countries. This figure corresponds to an 8.6% increase with respect to the previous reporting period 2009-2010 and almost double the number of working days checked compared to the reporting period 2007-2008. The majority of Member States have achieved the minimum number of working days to be checked according to the Regulation (3% of total estimated number of working days). The exceptions concern Denmark, Italy, Latvia, the Netherlands and notably Greece, which performed only 10% of the required checks.

There is generally a higher emphasis on checks at the roadside, which represent on average 80% of wdc – a share that is relatively constant through all reporting periods. The minimum number of working days to be checked at the premises is 50% according to Directive 2006/22/EC, which has not been met at the EU level. In the reporting period 2011-2012, only six Member States met the requirement for the minimum share of wdc at the premises: Cyprus, Greece, Ireland, Lithuania, Malta and Slovakia (countries that collectively represent less than 10% of the vehicles subject to Regulation (EC) No 561/2006).

This is largely because many Member States exceeded the requirement of a minimum of 3% of total estimated number of working days, and did so mainly through increasing the number of roadside checks (this is particularly evident in countries like France and Germany which significantly affect the EU average, where wdc roadside were 5-6 times higher than needed). If the share of checks at the premises is calculated as 50% of the minimum required number of checks (instead of 50% of the overall number of checks), the balance is much closer to that required. The number of working days checked at the premises in 2011-2012 was 31 million, as compared to the minimum objective fixed by the legislation (50%) calculated on the minimum threshold fixed for the 2011-2012 period (68 million of wdc). 13 Member States have reached the minimum target calculated on this basis, while 6 other countries are very close to it. Greece, Sweden, the Netherlands and Denmark are the only four countries still very far from this target.

Figure 11-1: Trend of working days checked for the reporting periods 2007-2012

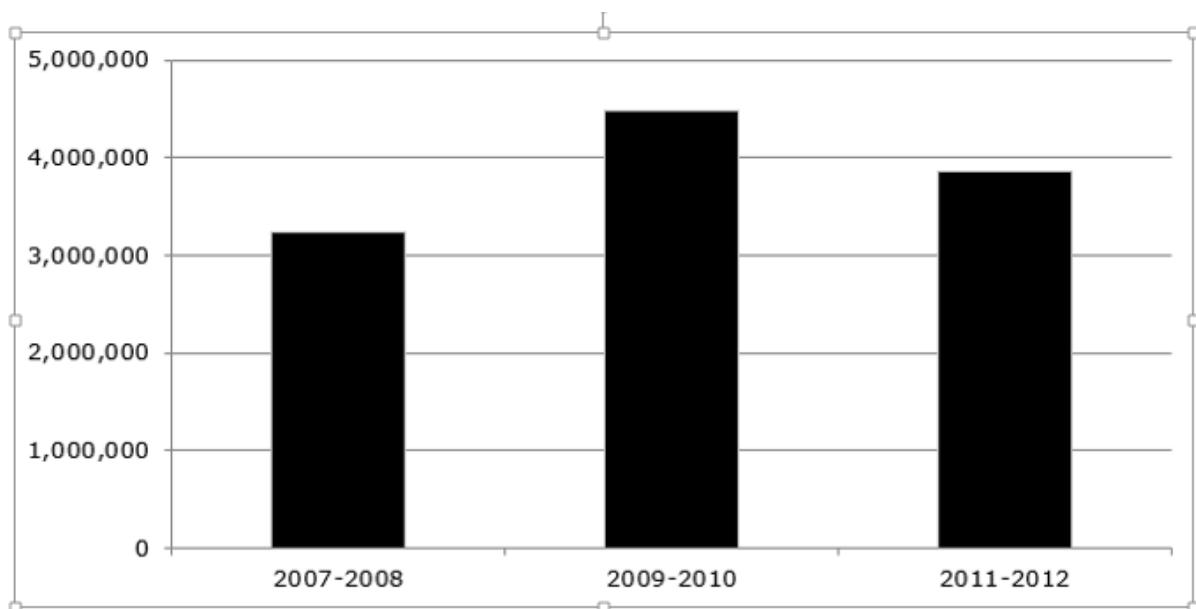


Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

11.2.1 Trends in the number of infringements detected

Some 3.8 million infringements were detected in total for the years 2011-2012. This represents a 14% decrease compared to the previous reporting period 2009-2010, but a 19% increase compared to 2007-2008 (Figure 11-2).

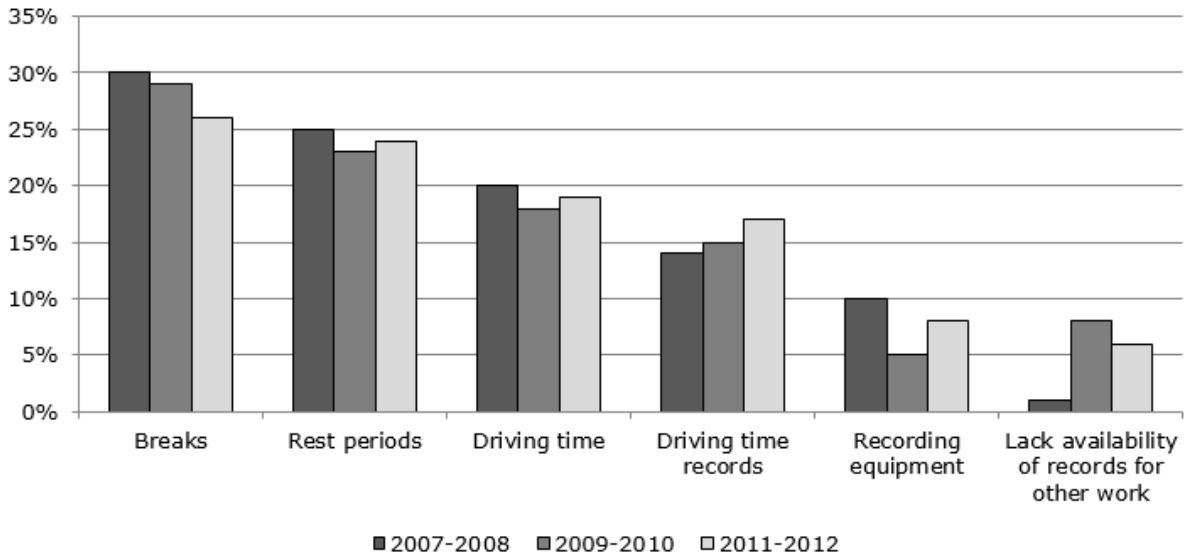
Figure 11-2: Trend of infringements detected for the reporting periods 2007-2012 (No. of infringements)



Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

Nearly half of the infringements detected concern rules on breaks and rest periods (Figure 11-3).

Figure 11-3: Distribution of offences detected by type of infringements for the reporting period 2007-2012



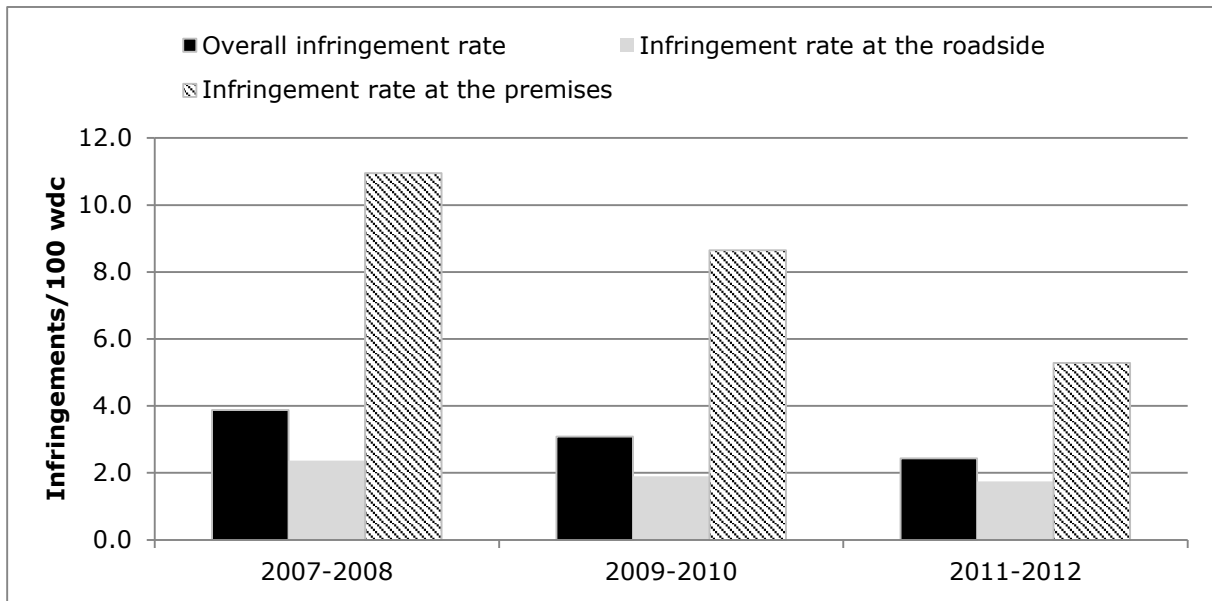
Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

11.2.2 Trends of infringement detection rates

The absolute number of infringements detected is not very informative as it depends on how many checks are made. The most relevant indicator to analyse the trend of offences detected is the **infringement detection rate**, defined as the number of offences detected every 100 working days checked. In the following, we will refer to the infringement rate computed in terms of infringement per 100 working days checked and not per 100 checks.

Considering the EU-27 as a whole, the ratio between the number of infringements detected and the working days checked marks a positive trend over the three available reporting periods (Figure 11-4). The detected infringement rate at the EU-27 level has dropped to 2.4 offences/100 wdc from the values of 3.9 offences/100 wdc and 3.1 offences/100 wdc observed respectively in the years 2007-2008 and 2009-2010. This decrease is mainly a result of the sharp reduction of the detected infringement rate resulting from the checks made at undertakings' premises, which has fallen from more than 10 offences/100 wdc in the years 2007-2008 to 8.6 in 2009-2010 and to 5.3 in the last reporting period. The infringement rate computed on checks made at roadside has also decreased but only in a limited fashion, falling below the threshold of 2 offences/100 wdc.

Figure 11-4: Trends of the detected infringement rates for the reporting periods 2007-2012 (infringements/100 wdc)



Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

The overall infringement rate at the EU level is a very aggregate measure. As discussed above, it is not clear to what extent this reflects a change in compliance or the effectiveness of checks over time, or whether the trend is a spurious result due to how statistics have been collected (e.g. the reduction of the infringement rate could be a consequence of changes in the counting/reporting systems applied in some countries).

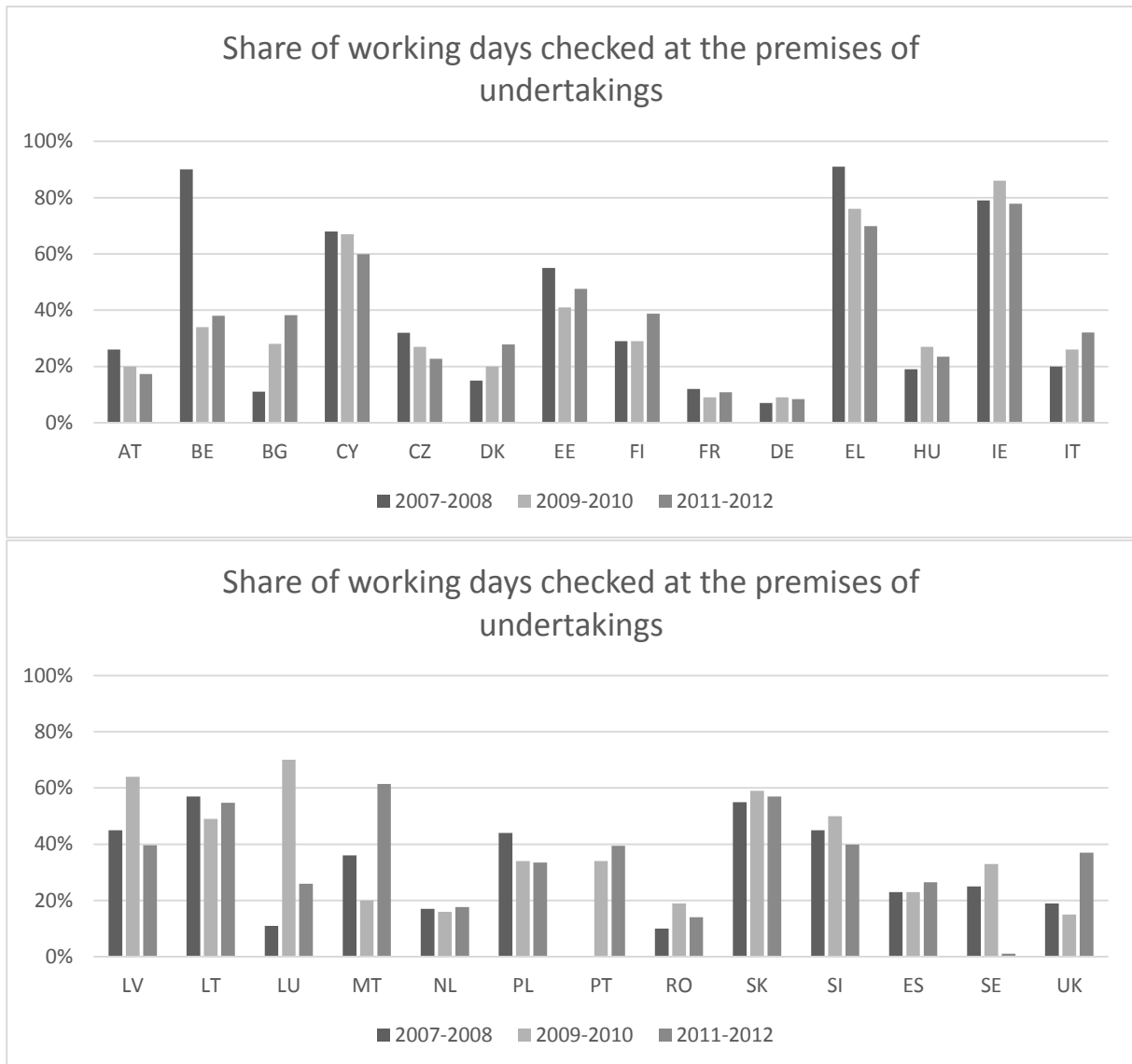
Unfortunately, this doubt could be solved only by a careful scrutiny, country by country, of the whole process from which the reported statistics result. The study team attempted to conduct such a scrutiny by organising interviews with competent authorities in several Member States, as reported in Section 4. However, even input from the authorities responsible for controls and data publication could not provide the necessary detail – it was often the case that the authorities themselves were not sure of the accurate figures or of changes in the reporting.

Given the data available, it is only possible to look more in detail at infringement rates to assess whether the data suggests that some aspects can play a role in the trends. To this end, infringement rates are analysed by country considering separately the location of checks and the freight and the passenger markets.

11.2.2.1 Trends of infringement detection rates by country and location of checks

The following graph illustrates the share of checks performed at the premises of undertakings in each country in the three reporting periods. There are large differences between countries and there are also significant changes over time in some countries. Many differences do exist also in terms of infringement rates both comparing countries and considering trends within each country (Figure 11-5).

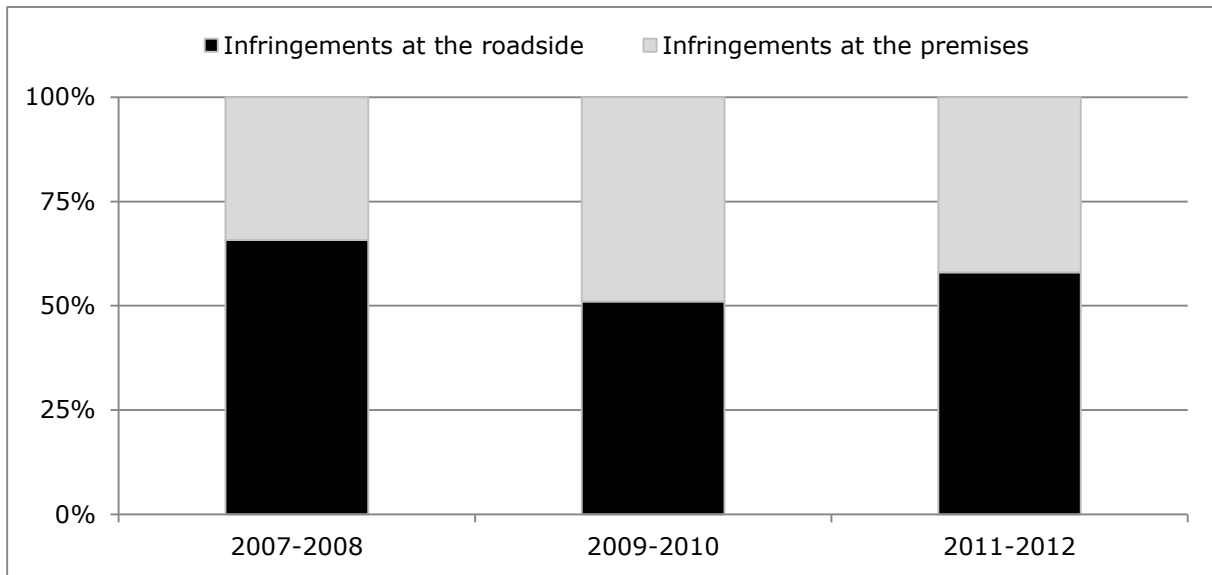
Figure 11-5: Share of working days checked at the premises of undertakings - period 2007-2012



Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

Despite the large majority of checks occurring at the roadside, almost half of all infringements were detected at undertakings' premises (**Error! Reference source not found.**). Taken at face value, this suggests that checks at the premises are more effective – however, as described further below, the actual rate of infringements per working day is not systematically higher. Rather, the difference is because company checks tend to cover a higher number of drivers and working days overall.

Figure 11-6: Trend of the distribution of infringements detected at the roadside and at the premises for the reporting periods 2007-2012



Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

The difference in the detection rates does not depend on the types of infringements that are possible, since they are identical with the exception of one type of infringement that is recorded exclusively in the checks at the premises (i.e. the obligation to keep time records for 1 year). Breaches to this time records provisions (concentrated in Italy, Germany and Poland, which together account for 87% of the overall number of such infringements) represent only 17% of the infringements detected and therefore they alone cannot explain the different rate observed.

Checks conducted at the roadside and at undertakings' premises provide an overall similar distribution by type of offences detected (Table 11.1), although there are generally more infringements on rest periods, driving time and recording equipment found at the roadside, whereas a higher share of infringements to rules on breaks and availability of records for other work is found when checks are made at undertaking's premises.

Table 11-1: Frequency of types of infringements detected by type of check (2007-2012)

Year	Breaks	Rest periods	Driving time	Driving time records	Recording equipment	Lack availability of records for other work
<i>Detected at the roadside</i>						
2007-2008	25%	28%	22%	15%	<i>n.a.</i>	<i>n.a.</i>
2009-2010	24%	27%	23%	15%	8%	4%
2011-2012	20%	25%	22%	16%	12%	5%
<i>Detected at undertakings' premises</i>						
2007-2008	34%	23%	18%	18%	<i>n.a.</i>	<i>n.a.</i>
2009-2010	34%	20%	14%	16%	3%	12%
2011-2012	34%	23%	16%	17%	4%	6%

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

The detected infringement rate has decreased in 12 Member States out of 27 when computed on roadside checks, and in 17 out of 25 Member States when computed on checks at undertakings' premises. The changes show some abnormally high variations that are likely due to measurement issues – for example, the rather high value recorded in Belgium in 2007-2008 is probably due, according to the enforcer interviewed for this study, to a wrong interpretation of the data, while the data of the two last reporting periods are more consistent.

Error! Reference source not found. shows the infringement rates recorded at roadside between 2007 and 2012. As anticipated, some of the figures of 2007-2008, marked in italics in the table, show some inconsistency in the time series and therefore they are not considered in the following analyses. The interviews conducted were not conclusive in stating the reason for this apparent discontinuity.

Table 11-1: Detected infringement rates at roadside checks between 2007 and 2012 in EU (infringements/100 wdc)

Member State	Detected infringement rate at the roadside		
	2007-2008	2009-2010	2011-2012
Austria	4.42	4.45	5.12
<i>Belgium</i>	21.14*	0.45	0.48
Bulgaria	0.23	0.18	0.12
Cyprus	1.16	0.75	0.54
Czech Republic	0.82	0.73	1.60
Denmark	0.06	0.03	0.00
Estonia	3.22	4.09	3.87
Finland	<i>n.a.</i>	<i>n.a.</i>	1.01
France	1.97	0.94	0.92
Germany	3.29	2.92	2.37
Greece	4.92	2.27	15.2
Hungary	1.37	1.69	1.41
<i>Ireland</i>	19.22*	1.04	5.10
Italy	1.01	1.60	2.25
Latvia	0.47	0.53	1.32
Lithuania	3.39	3.03	4.40
Luxembourg	0.58	0.17	2.20
<i>Malta</i>	10.51*	3.43	1.31
The Netherlands	0.77	0.63	1.04
Poland	8.57	3.12	1.14
Portugal	<i>n.a.</i>	2.35	2.99
Romania	0.39	0.38	0.38
<i>Slovakia</i>	42.98*	5.22	5.30
Slovenia	<i>n.a.</i>	2.14	1.83
Spain	3.33	1.86	1.90
Sweden	0.91	2.39	2.32
United Kingdom	0.96	2.23	2.32
EU27 (median value of available data)	1.37	1.86	1.83

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

Table 11-2 reports the observed data for infringements at undertakings' premises. Also in this case there are some missing data and apparent discontinuity, although less visible with the exception of Germany (especially in 2007-2008).

Table 11-2: Detected infringement rates at undertakings' premises checks between 2007 and 2012 in EU (infringements /100 wdc)

Member State	Detected infringement rate at undertakings' premises		
	2007-2008	2009-2010	2011-2012
Austria	1.31	1.88	1.49
Belgium	0.23	3.59	4.01
Bulgaria	0.16	0.04	0.01
Cyprus	0.87	0.89	0.75
Czech Republic	0.00	2.31	2.28
Denmark	5.36	4.24	1.36
Estonia	2.82	3.16	1.51
Finland	8.09	12.65	15.83
France	2.72	1.50	1.16
Germany	82.53	34.03	22.38
Greece	0.24	0.23	0.02
Hungary	4.29	1.47	11.32
Ireland	23.18	7.30	2.30
Italy	1.58	10.55	8.98
Latvia	0.64	0.06	0.07
Lithuania	2.37	4.64	4.37
Luxembourg	0.61	<i>n.a.</i>	<i>n.a.</i>
Malta	3.41	0.52	5.75
The Netherlands	6.51	9.83	12.42
Poland	6.27	11.15	3.45
Portugal	<i>n.a.</i>	0.12	0.04
Romania	1.19	0.21	0.23
Slovakia	<i>n.a.</i>	7.93	6.64
Slovenia	<i>n.a.</i>	9.85	7.97
Spain	0.79	0.43	0.48
Sweden	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
United Kingdom	1.01	1.00	0.63
EU27 (median value of available data)	1.58	2.74	2.28

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

The above data show that *infringement rates* for checks conducted in the two locations are not systematically different. In some countries, the infringement rate is higher when computed on checks made at the roadside, while in other countries it is the other way round. This suggests that, in terms of overall detected infringements per working day checked (which accounts for the difference in terms of number of drivers and higher number of working days that is possible to check at the premises), there are not systematic differences found – this is to be expected considering the potential infringements and the infringing behaviours are largely the same for the two locations (as outlined earlier).

It might however be logical to expect that each check conducted at the premises would be likely to detect more infringements for several reasons. Firstly, because checks are more targeted (for example due to use of risk-rating systems for checks of companies, whereas

roadside checks are typically organised randomly), and checks at the premises cover more drivers at a time, plus a longer time period. In some countries (e.g. Germany and Belgium), the national authorities indicated that companies previously discovered to have committed infringements are specifically monitored on a regular basis, which again may inflate the detection rate. Indeed, according to interviewed national competent authorities, the general expectation among them is that the detected infringement rate at the premises should be higher compared to that at the roadside.

When the data are analysed in terms of infringements detected per check made (i.e. per number of checks, rather than number of working days checked), differences between checks at the roadside and the premises emerge.

If the analysis is restricted to the roadside controls only (Table 11-13) the absolute values and the trend are similar to total figures as roadside checks represent the vast majority of total checks. There are a couple of countries where the trend of the infringement/control ratio is not increasing if computed only on roadside checks.

Table 11-3: Number of infringements per 100 controls by country - roadside

Country	2007-2008	2009-2010	2011-2012
Austria	79.00	66.14	77.83
Bulgaria	1.26	1.12	1.26
Cyprus	14.39	9.27	5.83
Czech Republic	12.30	13.44	29.93
Denmark	0.47	n.a.	n.a.
Estonia	23.54	69.71	61.10
France	17.59	16.22	20.51
Hungary	10.75	5.99	17.99
Ireland	155.23	109.56	28.51
Latvia	7.15	8.66	31.97
Lithuania	12.92	15.93	20.47
Luxembourg	10.19	1.47	35.85
Malta	156.34	67.09	36.67
Netherlands	17.02	19.23	31.97
Slovakia	678.26	101.14	90.50
Slovenia	88.80	18.31	29.65
United Kingdom	14.49	39.41	48.70
Restricted average	17.68	17.30	25.02

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

Looking at infringements per 100 controls at the premises, it can be seen that the overall infringements detected is much higher, as would be expected given the greater targeting and comprehensiveness of such checks (as described above). Controls at undertakings' premises are much more productive in terms of infringements detected: on average in the period 2011/2012 the ratio was of 332 infringements/100controls if the restricted set of 17 countries is considered and even 1,119 infringements/100controls if the whole EU27 countries are taken into account.

Table 11-4: Number of infringements per 100 controls by country – undertakings' premises

Country	2007-2008	2009-2010	2011-2012
Austria	517.74	628.18	627.91
Bulgaria	6.43	6.83	4.17
Cyprus	124.83	180.33	150.47
Czech Republic	n.a.	1,256.51	1,485.04
Denmark	825.36	968.22	338.10

Country	2007-2008	2009-2010	2011-2012
Estonia	595.31	965.79	697.41
France	364.27	264.78	296.14
Hungary	1,840.86	565.32	1,813.36
Ireland	n.a.	3,227.90	2,129.27
Latvia	344.03	41.94	51.00
Lithuania	n.a.	1,495.39	1,208.80
Luxembourg	266.67	n.a.	2,927.27
Malta	250.00	16.67	1,540.00
Netherlands	845.75	1,125.80	1,703.77
Slovakia	n.a.	2,556.18	2,110.47
Slovenia	128.13	3,347.41	4,417.80
United Kingdom	260.79	505.69	42.65
Restricted average	585.14	575.67	332.27

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

Although the number of checks at undertakings' premises has increased over time, the infringements/controls ratio has decreased: it was 585 infringements/100controls in the period 2007/2008 and 332 infringements/100controls in 2011-2012 (approximately halved). Again, this indicator should be considered with care. It may reflect an improved level of compliance (if operators are highly compliant the number of infringements found will be low and so the infringements/controls ratio will be small) but also depends on the quality of the controls (e.g. for a given level of compliance, more accurate controls will detect more infringements and therefore the infringements/controls ratio will be higher). The data does not allow to discriminate the role of these two components as independent measures of the level of compliance do not exist.

The higher infringements/controls ratio for the checks at undertakings' premises is of course linked to the number of vehicles and drivers checked, but this is not the only reason. Indeed, the average number of infringements per driver checked is higher than the number of infringements per vehicles checked at the roadside: 80 infringements/100drivers for the restricted set of 17 countries and even 240 for the whole EU27.

Table 11-5: Number of infringements per 100 drivers controlled at undertakings' premises by country

Country	2007-2008	2009-2010	2011-2012
Austria	83.7	115.1	90.8
Bulgaria	1.0	1.2	0.3
Cyprus	50.1	76.1	66.5
Czech Republic	n.a.	457.0	224.0
Denmark	118.4	95.7	29.5
Estonia	94.8	114.8	76.9
France	86.1	60.7	52.6
Hungary	257.2	88.0	574.1
Ireland	n.a.	571.9	231.2
Latvia	70.4	7.9	8.6
Lithuania	n.a.	179.8	116.1
Luxembourg	3.7	n.a.	257.6
Malta	105.3	16.7	770.0

Country	2007-2008	2009-2010	2011-2012
Netherlands	154.6	133.9	210.0
Slovakia	n.a.	374.2	300.3
Slovenia	40.6	809.8	897.8
United Kingdom	183.0	302.2	429.1
Restricted average	131.1	113.6	81.0

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

11.2.2.2 Trends of infringements rates by country and market

In comparison to the road passenger sector, the freight sector is more important in terms of number of vehicles subject to regulations as well as in terms of transport activity measured in vehicles-km. According to the ASTRA-EC model²¹⁶ at the EU level out of 100 road vehicles-km made by truck or bus/coach, nearly 95 are made by freight vehicles. Therefore, it is not surprising that the large majority of working days checked concern the freight sector (Table 11-3).

As shown by Table 11-3, there are differences in the share of passenger and freight vehicle checked across countries and this broadly reflects the relevance of the two sectors in each country. A higher share of working days is checked in the passenger sector in countries like Bulgaria, Romania, Greece, Poland and Spain, where the modal share of coaches and buses on road passenger transport is larger than the EU average²¹⁷ and this mode of transport represents a relevant alternative for personal mobility.

Table 11-6: Share of working days checked by type of traffic, country and period

Member State	2009-2010		2011-2012	
	Passenger	Freight	Passenger	Freight
Austria	3%	97%	2%	98%
Belgium	6%	94%	5%	95%
Bulgaria	41%	59%	26%	74%
Cyprus	15%	85%	15%	85%
Czech Republic	3%	97%	3%	97%
Denmark	8%	92%	7%	93%
Estonia	6%	94%	8%	92%
Finland	7%	93%	7%	93%
France	8%	92%	6%	94%
Germany	2%	98%	2%	98%
Greece	20%	80%	21%	79%
Hungary	11%	89%	5%	95%
Ireland	11%	89%	9%	91%
Italy	13%	87%	3%	97%
Latvia	13%	87%	6%	94%
Lithuania	12%	88%	7%	93%

²¹⁶ The ASTRA-EC model is a strategic tool for the integrated assessment of transport policy. This tool has been developed in the ASSIST project (see Fermi et. al., 2012) and delivered to the European Commission (DG MOVE) for internal use. We use this source because unfortunately Eurostat does not provide reliable data on vehicles-km.

²¹⁷ According to statistical pocketbook EU Transport in Figures 2015, the modal share of bus and coaches in EU-28 was 9.2% in the year 2013. In Bulgaria the share was 16.0%, in Romania 12.3%, in Greece 17.6%, in Poland 13.9% and in Spain 13.0%.

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Luxembourg	8%	92%	14%	86%
Malta	3%	97%	1%	99%
Netherlands	14%	86%	10%	90%
Poland	16%	84%	15%	85%
Portugal	7%	93%	9%	91%
Romania	10%	90%	20%	80%
Slovakia	6%	94%	7%	93%
Slovenia	11%	89%	12%	88%
Spain	16%	84%	14%	86%
Sweden	7%	93%	3%	97%
United Kingdom	8%	92%	8%	92%
Total EU	9%	91%	8%	92%

Source: (European Commission, 2014b), (European Commission, 2012),

From Table 11-4 it can be observed that, at the level of the whole EU, the infringement rate in the freight sector is about twice as much as the one in the passenger sector. Although there are countries where the difference is lower or even where the infringement rate is higher in the passenger sector (e.g. Cyprus and Czech Republic), in most of the countries the passenger sector actually reports a lower number of infringements for 100 working days checked.

The 2011-2012 average EU rate of 1.2 offences detected every 100 wdc for the passenger sector is the result of a rate of 0.9 at roadside and 2.0 at the premises, while for the freight sector the average 2.5 combines 1.8 at roadside and 5.7 at the premises.

Table 11-7: Detected infringement rate by type of traffic, country and period (infringements/100 wdc)

Member State	2009-2010		2011-2012	
	Passenger	Freight	Passenger	Freight
Austria	4.0	3.9	4.0	4.5
Belgium	0.7	1.6	1.1	1.9
Bulgaria	0.1	0.2	0.0	0.1
Cyprus	1.3	0.8	0.8	0.6
Czech Republic	2.3	1.1	2.9	1.7
Denmark	0.7	0.9	0.4	0.4
Estonia	1.6	3.8	2.4	2.8
Finland	2.6	3.8	8.6	6.6
France	0.6	1.0	0.8	1.0
Germany	6.0	5.6	3.5	4.1
Greece	2.1	0.4	2.2	5.2
Hungary	0.5	1.8	6.5	3.6
Ireland	6.2	8.4	1.7	3.0
Italy	1.7	4.3	3.8	4.4
Latvia	0.1	0.2	0.4	0.9
Lithuania	4.7	3.7	4.1	4.4
Luxembourg	0.0	0.1	3.5	3.9
Malta	-	2.9	-	4.1
Netherlands	0.7	2.3	2.0	3.2
Poland	3.9	6.2	1.0	2.1
Portugal	3.2	1.5	2.9	1.7
Romania	0.9	0.3	0.2	0.4
Slovakia	6.7	6.8	6.6	6.0

Slovenia	3.5	6.3	3.9	4.3
Spain	0.4	1.7	0.5	1.7
Sweden	4.3	1.4	24.3	1.9
United Kingdom	1.3	2.1	1.7	1.7
EU27 (median value of available data)	1.6	1.8	2.2	2.8

Source: (European Commission, 2014b), (European Commission, 2012),

The two following tables provide a further breakdown of the data for the two markets by type of location and confirm the trend already observed. While checks at premises seem to work better on average (and in particular for some big countries such as Germany, France, Italy, Poland) in terms of detection of infringements, in other relevant cases such as Spain, UK, Romania and Bulgaria the opposite happens, i.e infringement rates are lower at the premises than at the roadside.

A reason for this difference may lie in the different population that is targeted by controls at the roadside, which involve also non-national vehicles, while those at premises target domestic companies only. However, the comparison of the infringement rate calculated at the roadside for national and foreign vehicles does not highlight any significant difference.

Table 11-8: Detected infringement rate of passenger sector by type of check, country and period (infringements/100 wdc)

Member State	2009-2010		2011-2012	
	Roadside	Premises	Roadside	Premises
Austria	4.4	3.1	5.3	2.7
Belgium	0.2	2.2	0.2	3.6
Bulgaria	0.1	0.0	0.1	0.0
Cyprus	1.8	0.6	0.5	1.2
Czech Republic	2.4	2.0	3.9	1.8
Denmark	0.0	2.2	0.0	1.3
Estonia	1.0	2.3	2.2	2.6
Finland	n.a.	5.0	0.3	14.3
France	0.6	0.9	0.8	0.8
Germany	2.3	18.4	2.2	9.6
Greece	3.6	0.8	4.7	0.0
Hungary	0.5	0.4	1.2	19.4
Ireland	18.2	5.7	5.2	1.0
Italy	1.0	7.0	2.5	4.6
Latvia	0.2	0.0	1.4	0.0
Lithuania	3.5	6.3	2.6	6.5
Luxembourg	0.0	n.a.	2.1	3.5
Malta	0.0	n.a.	0.0	n.a.
Netherlands	0.4	1.3	0.7	4.3
Poland	2.4	6.1	0.4	2.5
Portugal	5.8	0.0	5.4	0.0
Romania	1.1	0.3	0.2	0.2
Slovakia	6.5	7.1	5.9	7.4
Slovenia	1.5	4.4	2.1	4.9
Spain	0.4	0.3	0.6	0.2
Sweden	16.0	n.a.	24.3	n.a.
United Kingdom	1.8	0.4	2.3	1.2

EU27 (median value of available data)	1.3	2.1	2.1	2.5
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Source: (European Commission, 2014b), (European Commission, 2012),

Table 11-9: Detected infringement rate of freight sector by type of check, country and period (infringements/100 wdc)

Member State	2009-2010		2011-2012	
	Roadside	Premises	Roadside	Premises
Austria	4.5	1.8	5.1	1.4
Belgium	0.5	3.7	0.5	4.0
Bulgaria	0.2	0.0	0.1	0.0
Cyprus	0.4	0.9	0.5	0.7
Czech Republic	0.7	2.3	1.5	2.3
Denmark	0.0	4.5	0.0	1.4
Estonia	4.3	3.2	4.0	1.4
Finland	n.a.	13.7	1.0	16.0
France	1.0	1.6	0.9	1.2
Germany	2.9	35.0	2.4	22.9
Greece	1.5	0.1	20.6	0.0
Hungary	1.8	1.6	1.4	10.7
Ireland	12.9	7.5	5.1	2.4
Italy	1.7	10.8	2.2	9.2
Latvia	0.6	0.1	1.3	0.1
Lithuania	3.0	4.5	4.6	4.3
Luxembourg	0.2	n.a.	2.2	14.6
Malta	3.6	0.5	1.4	5.8
Netherlands	0.7	13.2	1.1	14.5
Poland	3.2	12.3	1.3	3.6
Portugal	2.1	0.1	2.8	0.0
Romania	0.3	0.2	0.4	0.2
Slovakia	5.1	8.0	5.3	6.6
Slovenia	2.2	10.8	1.8	8.7
Spain	2.1	0.5	2.1	0.5
Sweden	2.0	0.0	1.6	23.8
United Kingdom	2.3	1.2	2.3	0.6
EU27 (median value of available data)	1.9	2.1	1.6	2.4

Source: (European Commission, 2014b), (European Commission, 2012),

11.3 Effectiveness of enforcement

Enforcing social legislation aims at improving compliance with the legislation itself, therefore the ultimate measure of the effectiveness of the enforcing system is its impact on the level of compliance. However, since enforcement is expected to influence the level of compliance, the latter cannot be observed independently. We can only observe the number of infringements detected by the controls. However, as already discussed, there is no way to distinguish if the infringement rate is increasing (decreasing) as a consequence of a worse (better) level of compliance, because of more (less) effective enforcement systems, or because of monitoring/reporting practices.

One important methodological remark: the European Commission two years reports are the major sources of data for the following analysis as they provide detailed figures on the number of controllers, number of checks, infringements detected etc. However, these

reports are not complete: not all countries have reported data for the three periods. Even where figures are reported they are not always reliable. There are some known flaws²¹⁸ and some data seems objectively unreliable as it changes wildly from one report to another²¹⁹. For that reason, while below we report data for all countries, when we discuss trends at the European level we will make reference only to a subset of 17 countries for which data looks reasonable. These countries are: Bulgaria, Czech Republic, Denmark, Estonia, Ireland, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Slovenia, Slovakia and United Kingdom. This subset of countries does not include big countries like Spain, Germany and Italy so one should be aware that the European-wide picture is incomplete.

However, wherever possible all data were integrated with the data collected through the survey and the interviews conducted for this study.

11.3.1 Enforcement capacity

Data of the European Commission two-years reports shows that the number of enforcement officers has changed, sometimes significantly, between 2007-2008 to 2011-2012. Excluding countries for which the time series is incomplete or data seems implausible, the overall number has decreased from about 15,500 officers to nearly 11,800, i.e. a 24% reduction.

However, this reduction is heavily driven by three countries: Austria, Czech Republic and France. In these countries the reported number of officers decreased dramatically - all of them had quite a large number of officers in comparison to other countries. In other countries the trend is either stable or even positive (more officers).

These contradictory figures do not provide evidence of a clear trend at the European level.

Data were compared with information collected through the consultation (survey and interviews), which is included in the table below. Specifically, with reference to the three countries mentioned, the enforcement authority from Austria confirmed the latest figures while no reply was obtained by France and Czech Republic. Also in other relevant cases it was not possible to confirm the data reported: Germany and Italy could not provide an estimate (in the case of Italy it was even acknowledged that in the 2009-2010 period, the abnormally high figures were most likely related to man-days employed); in the case of UK where a doubling of available enforcers was reported in the official figures, it was explained that figures are influenced by the interpretation of what should be included (probably in the last report all of the enforcement officers were accounted, not only the staff exclusively dedicated to check on driving time, changes are not depending on new recruiting).

To conclude, there is a big uncertainty regarding this kind of information.

The number of tachograph-analysing equipment units available to the officers has remained rather stable over the time in the 17 countries considered, again with differences at the country level even though in general there is less variation than for the number of officers. Also in Austria and France, two of the three countries where the number of officers has decreased significantly, the number of analysing units has remained stable. Instead, in the Czech Republic, also the number of tachograph-analysing units has fallen. In this case the information reported may be partial (i.e. does not include all the enforcement authorities).

²¹⁸ For instance, an interview with the Italian authorities revealed that the figure reported as number of officers involved in the enforcement of road social regulation is actually something like the yearly number of days spent by such officers.

²¹⁹ For instance, the number of officers involved in the enforcement of road social regulation in Belgium is reported as being 736 in the period 2007/08, then falling to 57 in the period 2009/2010 and then rising again to 370 in the period 2011/2012, the Belgian enforcer, asked for an explanation on this trend replied that this was probably due to misunderstanding and that the last figures (370) should be correct, including officers of the Ministry and of the Police.

The information on equipment units is coherent with the data on enforcement officers employed; on average one unit per 2-2.5 officers is available.

All in all, the available data does not suggest that between 2007/2008 and 2011/2012 there has been a significant change of the resources available for the enforcement of road social rules in the EU countries. However, this conclusion should be taken with care given the uncertainty of the data and the possibility that the same staff (or even a reduced number) has been deployed more intensively (see Table 11-7).

Table 11-10: Number of officers involved in enforcement of road social rules by country, compared to data collected through the survey

Country	2007-2008	2009-2010	2011-2012	Data collected through the survey**
Austria	2,754	2,758	950	854
<i>Belgium</i>	736	57	370	370
Bulgaria	252	249	259	
Cyprus	8	9	9	
Czech Republic	1,852	1,846	693	
Denmark	50	60	60	
Estonia	176	258	260	
<i>Finland</i>	375	25	230	30
France	8,500	8,500	7,200	
<i>Germany</i>	<i>n.a.</i>	18,197	15,690	
<i>Greece</i>	88	93	2,518	500
Hungary	600	604	289	144
Ireland	17	14	12	
<i>Italy</i>	<i>n.a.</i>	316,788	35,363	
Latvia	44	15	19	25
Lithuania	148	249	788	56
Luxembourg	25	100	54	42
Malta	4	8	2	
Netherlands	317	317	200	55
<i>Poland</i>	369	2,040	1,587	500
<i>Portugal</i>	<i>n.a.</i>	<i>n.a.</i>	4,271	
<i>Romania</i>	<i>n.a.</i>	346	661	320
Slovakia	42	48	45	98
Slovenia	426	426	375	137
<i>Spain</i>	470	<i>n.a.</i>	470	
<i>Sweden</i>	<i>n.a.</i>	100	251	26
United Kingdom	303	280	616	
Total EU27	17,556	353,386	73,242	
Restricted total*	15,518	15,741	11,831	

* Total refers to 17 countries only, Countries reported in italics in the table are excluded. Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

** Information is partial in various cases (multiple enforcement authorities)

Table 11-11: Trend of the number of equipment provided to control officers to analyse tachographs by country

Country	2007-2008	2009-2010	2011-2012
Austria	478	485	485
Bulgaria	150	249	255
Cyprus	2	2	4

Country	2007-2008	2009-2010	2011-2012
Czech Republic	292	357	136
Denmark	24	40	40
Estonia	16	26	26
France	3,500	3,500	3,500
Hungary	80	350	127
Ireland	17	14	12
Latvia	12	6	12
Lithuania	n.a.	64	70
Luxembourg	13	24	6
Malta	2	2	1
Netherlands	99	99	85
Slovakia	36	46	45
Slovenia	28	89	46
United Kingdom	303	278	273
Restricted total	5,052	5,631	5,123

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

11.3.2 Productivity of enforcement capacity

The data of the previous table concerned the theoretical capacity of the enforcement system. More significant is however the productivity of the system itself. One indicator of productivity is the ratio between the number of checks carried out and the number of officers. A caveat applies here: according to the information collected, officers are not necessarily full-time dedicated to the enforcement of road social rules. In many cases they have other responsibilities (e.g. in the case of UK it was declared that the staff indicated includes officers that carry out also checks on vehicles – such as roadworthiness - not only on drivers). Therefore, differences in the ratio between the number of checks and the number of officers should not be interpreted as differences in the productivity of officers, but rather of the overall enforcement system. Furthermore, when officers responsible for enforcing road social rules have also other roles, a low number of controls per officer is not necessarily an indicator of low productivity but maybe that the working time dedicated to this specific function is limited (e.g. more limited than in another country).

Having this in mind, Table 11-9 provides the total number of controls performed in the EU countries according to the European Commission reports and the following one provides a breakdown according to the type of check performed. The number of controls has decreased over time in the EU27 countries as a whole as well as in the 17 countries with more complete and consistent information as a whole. This trend seems coherent with the trend regarding the enforcement capacity. There are again differences at the country level. For instance, in Austria, Cyprus, Lithuania and Romania, the total number of checks has grown. These countries have different trends in terms of number of officers, therefore there is not any apparent relationship between the trend of the number of checks and the number of officers.

Table 11-12: Number of controls by country - total

Country	2007-2008	2009-2010	2011-2012
Austria	87,119	199,741	248,135
Bulgaria	499,123	661,793	551,053
Cyprus	3,717	5,496	8,668
Czech Republic	208,961	189,631	179,670
Denmark	39,905	n.a.	n.a.
Estonia	6,797	9,177	8,985
France	1,685,079	1,874,914	1,474,561
Hungary	177,805	441,242	102,569

Country	2007-2008	2009-2010	2011-2012
Ireland	n.a.	17,917	48,218
Latvia	69,023	38,137	9,827
Lithuania	n.a.	66,746	75,291
Luxembourg	5,946	n.a.	8,915
Malta	79	91	35
Netherlands	58,649	37,398	31,082
Slovakia	n.a.	11,610	16,418
Slovenia	8,639	19,080	18,646
United Kingdom	196,219	286,721	241,311
Restricted total	3,135,996	3,872,551	3,023,972

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

The data clearly shows that checks are overwhelmingly made at the roadside. According to the data of the 17 countries with more complete and consistent information the number of checks at undertakings' premises has doubled between 2007/2008 and 2011/2012 but their share in total checks has remained small. There are a few countries where the share of controls at premises is more significant, namely UK (where this share has grown to 18.2% in 2011/2012 (it was around 1% in the previous reporting periods), Malta (16.7%) and Belgium (10.7%, but it was even higher in previous reporting periods). There are also countries showing an opposite trend however: in Austria, Cyprus, Estonia, Latvia, Slovenia the share of checks at undertakings' premises has fallen. Only in Latvia this trend is driven by a substantial reduction of the absolute number of checks, for the other countries the ratio has decreased because the number of checks roadside has grown while those at premises have not.

Table 11-13: Location of the controls by country

Country	2007-2008		2009-2010		2011-2012	
	Roadside	Premises	Roadside	Premises	Roadside	Premises
Austria	85,755	1,364	197,587	2,154	246,279	1,856
Bulgaria	491,364	7,759	653,190	8,603	541,581	9,472
Cyprus	3,141	576	4,896	600	8,024	644
Czech Republic	206,663	2,298	187,318	2,313	178,166	1,504
Denmark	39,554	351	n.a.	387	n.a.	588
Estonia	6,520	277	8,835	342	8,715	270
France	1,669,390	15,689	1,856,146	18,768	1,459,087	15,474
Hungary	177,061	744	439,754	1,488	100,113	2,456
Ireland	12,681	n.a.	16,089	1,828	47,217	1,001
Latvia	67,465	1,558	36,692	1,445	9,627	200
Lithuania	68,171	n.a.	65,726	1,020	73,791	1,500
Luxembourg	5,916	30	12,470	n.a.	8,871	44
Malta	71	8	79	12	30	5
Netherlands	56,741	1,908	35,557	1,841	29,648	1,434
Slovakia	8,084	n.a.	10,688	922	15,329	1,089
Slovenia	8,216	423	18,616	464	18,292	354
United Kingdom	193,513	2,706	284,927	1,794	204,141	37,170
Restricted total	3,100,305	35,691	3,828,570	43,981	2,948,911	75,061

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

The following Table 11-11 shows the ratio between the number of controls and the number of officers; the same information cannot be disaggregated according to the type of control because there is no information on the proportion of officers dedicated to the different types of control.

The number of controls per officer is highly variable across countries. Considering the 17 countries for which data on the number of officers is more complete and consistent the average ratio has increased from 202 controls/officer in the period 2007/2008 to 256 controls/officer in the period 2011/2012, therefore a positive trend in terms of productivity. Countries with a share above the average in 2011/2012 are Hungary (355 controls/officer), Slovakia (365), UK (392), Latvia (517), Cyprus (963) and especially Bulgaria (2,128) and Ireland (4,018). The reliability of these two last data is however questionable, demonstrating that the number of officers indicated is partial. Making more than 4,000 controls in one year would mean 13 checks made every day for 300 days in one year. Should we exclude these two countries, the average values would be smaller (below 200 controls/officer in 2011/2012), but the increasing trend would be confirmed.

Below the average (computed with or without the data of Bulgaria and Ireland) there are countries like The Netherlands (155 controls/officer in 2011/2012), Lithuania (96), Slovenia (50), Estonia (35). The data for Denmark is invalid because the number of checks roadside for this country is unknown. The huge variability across countries is hardly justifiable in terms of pure productivity of the staff. It is quite clear that significant differences exist in terms of specialisation of the enforcement structure: in some countries officers are more dedicated to this task than to other. However, the average productivity is also significantly affected by the split between checks at roadside and check at premises. According to the survey's outcomes, the time needed for a check at roadside is estimated to range between 15-30 minutes for a fully compliant check to 60-120 minutes in cases where infringements are detected. On the contrary, checks at premises may involve a time ranging between few hours (the time needed for downloading data) to one or more days (spent in the enforcers' office) to analyse the data and determine the sanctions in case of infringements. The specific question included in the questionnaire to the enforcers returned a very wide range of values from which it cannot be drawn a consistent average.

Furthermore, controls are often combining different targets: for example, at roadside roadworthiness of vehicles is checked together with the respect of driving times rules, while at premises it is a common practice to hold checks on driving and rest times in combination with checks of compliance with the working time Directive.

Ideally, in future editions of the monitoring report it would be helpful to collect data differentiating the staff dedicated to roadside and to premises checks. This type of data would make the analysis of productivity more robust and comparable. Nevertheless, in terms of trend, the data suggests that the productivity of the enforcement system has somewhat improved.

Reasons for this gain, despite the slight reduction of officers dedicated, were attributed by interviewed authorities to the role of digital tachograph which speeded up the control operations and to the improved training of officers. As seen above, the latest figures on the number of officers (2011-2012) are more reliable and therefore the current levels of productivity are closer to the actual ones.

Table 11-14: Number of controls per officer per year by country - total

Country	2007-2008	2009-2010	2011-2012
Austria	32	72	261
Bulgaria	1,981	2,663	2,128
Cyprus	465	611	963
Czech Republic	113	103	259
Denmark	798	<i>n.a.</i>	<i>n.a.</i>
Estonia	39	36	35
France	198	221	205
Hungary	296	731	355

Country	2007-2008	2009-2010	2011-2012
Ireland	<i>n.a.</i>	1,280	4,018
Latvia	1,569	2,542	517
Lithuania	<i>n.a.</i>	268	96
Luxembourg	238	<i>n.a.</i>	165
Malta	20	11	18
Netherlands	185	118	155
Slovakia	<i>n.a.</i>	242	365
Slovenia	20	45	50
United Kingdom	648	1,024	392
Restricted total (average of the available data)	202	246	256

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

11.4 Quantitative analysis of internal and external factors

A quantitative analysis of factors internal and external to the legislation that could influence the detected infringement rates was carried out (full details are provided in Annex G). The main findings are provided below.

The internal factors considered were:

- **Number and type of checks:** The frequency of checks and the probability of being controlled are likely an important deterrent to breach the rules.
 - Overall, the data seems to suggest that a higher level of enforcement effort is correlated with lower detected infringement rates (both at the roadside and at the premises), and that this relationship holds when controlling for other factors such as the number of enforcers, the level of fines and whether the country is EU-15 or EU-13. However, we do not consider the quality of the underlying data to be sufficient to say anything about the size of this effect.
 - An important caveat of the analysis is that the number of controls is only one element of enforcement. Other factors, such as the quality of controls may also be also important, but these are variables for which we do not have data.
 - The comparison of detection rates against the total number of controls showed a diverse range of situations in the case study countries, indicating that predictions at a country level depend on many factors. For instance, in France and Romania the number of working days checked has always been far higher than the threshold required in the legislation and these countries have relatively low infringement rates. On the contrary Germany, which has also performed well above the threshold in terms of working days checked, shows a higher detection rate. In the case of Poland, an increase of working days checked has corresponded to a decrease in the detection rate, while in the case of Italy a relaxation of controls seems to have resulted in a higher infringement rate.
- **Penalty systems:** More severe and dissuasive penalties may encourage the higher levels of respect of the rules.
 - However, the figures suggest that there is no relationship between the infringement rate and the degree of severity of the penalty systems – either for checks at the roadside or at the premises.
 - The underlying reasons for this lack of correlation are not clear, as penalties can be ineffective for many reasons and we do not have data on these factors – for example, if the risk of being caught is perceived to be low, if the fines

levied in practice are usually much lower than the maximum, or if there are reasons to believe that the sanction may not apply to certain parties (e.g. due to liability rules).

- **Quality and clarity of the legal provisions:** A lack of clarity in legislation may adversely affect compliance, as it may lead to ineffective and contradictory enforcement practices and/or unintentional non-compliance among operators and drivers. An index of quality of the social legislation was constructed from survey responses in order to form a proxy variable against which infringement rates could be compared. However, the theoretical assumption that a better quality and clarity of social legislation can improve compliance cannot be confirmed on the grounds of the data considered. This is in part due to the subjective nature of the quality/clarity of the legislation and the difficulty in gaining a concrete measure of it, but also due to the indirect way in which quality/clarity of legislation may be expected to impact on compliance and enforcement.

Several external factors were also analysed, in order to consider the possibility that factors outside the scope of the social legislation might be influencing the infringement detection rates:

- **Drivers' wages:** Differences in wage levels are an important market factor affecting the competitiveness of transport operators in different Member States. However, comparisons between the reported detected infringement rates and the annual salary level of drivers (actual and PPP adjusted) did not reveal any substantial differences. Nor does the share of variable pay in drivers' salary have any statistically significant impact on the detected infringement rate.
- **Quality and accessibility of infrastructure:** Greater availability of parking and rest areas may encourage higher compliance since drivers are better able to find safe and secure areas in which to stop. Indicators of the availability and quality of parking areas were gathered from the literature and compared with the detection rates. However, the data does not support the conclusion that infringement detection rates are lower in countries with higher availability and quality of parking.
- **Presence of international operators/drivers in the market:** Differing compliance among international operators – either because of a lack of understanding of national rules or due to a (perceived) different risk of being checked, may lead to divergences in detection rates between national and international operators/drivers that feed through into the reported detection rates. However, the ratio of infringements per check is very similar for domestic and non-domestic vehicles – which suggests that their share in the market will not influence the detection rates.

The lack of conclusive evidence as to the effects of any of the above issues, even considering objectively important factors such as the number of controls and the severity of penalties, suggests that the reporting and measurement errors discussed previously are obscuring any underlying relationships.

12 ANNEX D: COSTS-EFFECTIVENESS OF SOCIAL RULES ENFORCEMENT (TASK 5)

Cost-effectiveness concerns the proportion between the financial effort made for enforcement and its results. Similarly to the analyses made above, it can be relevant to consider that ideally results should be interpreted in term of level of compliance, but given the available data we will consider effectiveness in terms of checks made and infringements detected.

Below an estimate of the cost of the enforcement system is proposed. Then this estimate is used to provide cost-effectiveness indicators. An additional section provides elements resulting from the analysis of the responses collected by stakeholders' interviews.

12.1 Estimating costs of the enforcement system

The estimation of the costs of the enforcements system in each country has been made building on the number of officers and of the cost of the equipment required for the analysis of digital tachographs.

As mentioned above, officers are not necessarily full-time dedicated to the enforcement of road social rules, therefore these estimates are a sort of upper bound of the real cost of manpower. At the same time, there are other fixed and variable costs (offices, travels, administration, etc.) that are not accounted for because there is no data available. So the possible overestimation of staff costs is partially compensated by the underestimation of other cost items.

The number of officers has been multiplied by the average yearly wage extracted from the Eurostat database²²⁰. This data is in Euro for all countries and is available for the year 2010. In order to estimate the costs for the reporting periods 2007/2008 and 2011/2012 the data has been deflated using the consumer price index drawn again from Eurostat.

The result of the estimates is reported in Table 12-1. The differences by country depend on the number of officers as well as on the wage level. For instance, the number of officers in Bulgaria and in the Netherlands is similar, but the cost is much higher in the latter country because wages are much higher. The trend over time is instead fully consistent with the trend in the number of officers. Considering the 17 countries for which the data is complete and more consistent, the estimated yearly expenditure for the enforcement system amount to some 180 million Euros/year in the period 2011/2012 while in the period 2007/2008 it was more than 240 million.

Table 12-1: Estimated cost of enforcement of road social rules by country - total (Euros/year)

Country	2007-2008	2009-2010	2011-2012
Austria	53,238,338	55,841,226	18,272,580
Bulgaria	627,371	647,964	641,564
Cyprus	102,459	120,726	114,688
Czech Republic	12,138,073	12,671,867	4,519,160
Denmark	1,446,981	1,818,630	1,727,667
Estonia	961,777	1,476,663	1,413,678
France	150,693,881	157,832,250	127,006,197
Hungary	3,109,216	3,278,210	1,490,093
Ireland	352,962	304,444	247,900
Latvia	207,781	74,190	89,274
Lithuania	523,469	922,421	2,773,138
Luxembourg	669,307	2,804,050	1,438,451
Malta	38,844	81,368	19,325

²²⁰ The source of the data is the European survey on the structure of earnings. The relevant table is `earn_ses_annual` under Population and social conditions\Labour market\Earnings. Wages of the service sectors have been considered.

Country	2007-2008	2009-2010	2011-2012
Netherlands	6,955,949	7,285,453	4,366,594
Slovakia	225,364	269,760	240,251
Slovenia	4,449,050	4,659,801	3,896,769
United Kingdom	5,982,642	5,790,400	12,101,713
Restricted total	241,723,466	255,879,422	180,359,039
Restricted average	14,219,027	15,051,731	10,609,355

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

The other source of costs considered is that of the equipment for checking tachographs. The introduction of the provision on digital tachograph meant for national enforcement authorities the need to equip their inspecting staff with appropriate hardware and software to download, read and analyse the data stored in the digital tachograph.

Based on the value reported by JRC, PwC (2009) a cost of 4,000 Euro per device has been considered. This cost has been cross-checked and validated during interviews with enforcement authorities. The total expenditure for the equipment is the product of 4,000 Euros for the number of new devices. For first period 2007/2008 it has been assumed that all devices reported were purchased in that period (equally distributed in the two years). Most likely, some countries already had some tachograph analysing units but it is fair to assume that the large majority of the devices were acquired when the digital tachograph was introduced.

The data on the amount of devices available for each national enforcing authority (see Section 11.3.1) is not complete and for some countries shows reductions in the number of devices from one period to another. We assumed that when the number of devices is higher compared to the previous reporting period the difference consists of new devices and the correspondent cost is computed. When the number of devices is lower compared to the previous reporting period, it has been assumed that no additional devices have been added and the cost has been set to zero.

The outcome of the estimation is shown in Table 12-2. Under the assumptions used, most of the cost for the equipment concentrated in the reporting period 2007/2008, amounting to 10.8 million Euros for the 17 countries with more complete and consistent data. In the following periods the cost is much lower, reducing to less than 2 million in 2009/2010 and 276,000 Euros in 2011/2012.

Table 12-2: Cost for the equipment to analyse tachographs by country (Euros/year)

Country	2007-2008	2009-2010	2011-2012
Austria	956,000	14,000	0
Bulgaria	300,000	198,000	12,000
Cyprus	4,000	0	4,000
Czech Republic	584,000	130,000	0
Denmark	48,000	32,000	0
Estonia	32,000	20,000	0
France	7,000,000	0	0
Hungary	160,000	540,000	0
Ireland	34,000	0	0
Latvia	24,000	0	12,000
Lithuania	n.a.	0	12,000
Luxembourg	26,000	22,000	0
Malta	4,000	0	0
Netherlands	198,000	0	0
Slovakia	72,000	20,000	0
Slovenia	56,000	122,000	0

Country	2007-2008	2009-2010	2011-2012
United Kingdom	606,000	0	0
Restricted total	10,840,000	1,882,000	276,000

Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

12.2 Qualitative analysis of costs induced by implementing regulation

Some other considerations on the costs faced by enforcement authorities concerning the implementation of Directive 2006/22/EC can be made using the feedback collected from the enforcers' questionnaire.

Concerning Directive 2006/22/EC as a whole, more than half (56%) of the enforcement authorities took the view that this had led to increases in the costs of their organisation while the remaining 44% was equally split between those who did not take a position and those who claimed a cost reduction.

Such cost increase reported by the enforcers seems to be well counterbalanced by a positive effect on the level of compliance determined by the social legislation as a whole (Directive 2006/22/EC, Regulation (EC) No 561/2006 and Directive 2002/15/EC)²²¹ according to the opinion of most of the enforcers.

The table below matches the responses from enforcers responding both to the dedicated question concerning the effects of Directive 2006/22/EC on enforcement costs and the question concerning the effectiveness of the EU social on compliance. It emerges that the large majority (43%) agrees on the fact that although Directive 2006/22/EC has led to an increase in enforcement costs, the overall EU social legislation is effective on compliance level.

Table 12-3: Enforcement authorities' view on the effects of Directive 2006/22/EC on enforcement costs and on the effectiveness of EU social rules on compliance

	Increase in costs	No material impact on costs	Some reduction in costs	Not applicable or don't know
Improved effectiveness	43%	14%	5%	14%
No effect on effectiveness	0%	0%	5%	5%
Reduced effectiveness	0%	0%	0%	0%
No opinion/don't know	10%	0%	0%	5%

Source: Compilation by the authors based on Enforcers survey

Table 12-7 and Table 12-8 below summarise the most relevant responses provided by the enforcers on the effects that a series of measures have had on the enforcement cost (one-off costs and ongoing costs).

Although not reported in the tables, it is important to highlight that for a series of measures, the majority of the enforcers claim that they are not able to provide this type of information.

Investment costs for complying with Directive 2006/22/EC, were borne in particular for training of enforcement officers (Table 12-7). Importantly, nearly half of enforcers responded 'not applicable/don't know' to the question about the costs for setting up a 'TACHOnet' and more than one third did the same regarding the cost for a 'risk rating'

system. This suggests that the costs of these systems have either been not monitored or have not materialised because these systems have not been set up yet.

Table 12-4: Implementation costs for Directive 2006/22/EC, one-off costs

Cost item	Contribution to ongoing annual enforcement costs (% of enforcers' response)
Directive 2006/22/EC (one-off costs)	
Training of enforcers	Slight contribution (54%)
Familiarising with new information obligations	Slight contribution (46%)
Setting up the risk-rating system	Slight contribution (39%)
Adopting derogations and issuing detailed guidance	Slight contribution (33%)
Setting up the electronic registers (TACHOnet system)	Slight contribution (26%)

Source: elaboration from the Survey of enforcement authorities

The ongoing costs that have mainly been experienced by enforcers are: cost for adequate equipment of staff, concerted checks, cost for running the risk rating system (Table 12-8).

Table 12-5: Implementation costs for Directive 2006/22/EC, ongoing costs

Cost item	Effect of Directive 2006/22/EC on ongoing annual enforcement costs (% of enforcers' response)
Directive 2006/22/EC (ongoing costs)	
Costs for adequate equipment of staff (i.e. for extracting and analysing tachograph data)	Some increase (40%)
Costs for concerted checks	Some increase (38%)
Costs for running the risk-rating system (incl. staff costs, system support and software)	Some increase (27%)
Costs for running the TACHOnet system (incl. staff costs, system support and software)	Some increase (13%)
Costs for reporting to the Commission (i.e. compiling info for biennial report)	No material impact (43%)
Costs for issuing & processing fines or other penalties	No material impact (30%)
Costs for prosecuting extraterritoriality	No material impact (22%)
Costs for running the intracommunity liaison body and its activities	No material impact (38%)
Costs for roadside checks	No material impact (33%)
Costs for checks at undertakings premises	No material impact (23%)
Costs for prosecuting extraterritoriality	No material impact (22%)
Costs for prosecuting co-liability	No material impact (22%)
Costs to process appeals	No material impact (17%)

Source: elaboration from the Survey of enforcement authorities

13 ANNEX E: SUMMARY OF STAKEHOLDER CONTRIBUTIONS

13.1 Organisation of the consultation

The consultation consisted of targeted surveys distributed to different stakeholder groups, supported by telephone interviews. Questionnaires were drafted by the study team on the basis of desk research and (6) exploratory interviews. Each survey was then pilot-tested with one or two relevant organisations and revised based on the feedback received. After the European Commission approved the surveys, they were distributed among the target groups and open for responses for at least 8 weeks.

Interviews were scheduled on the basis of responses to the final question of the surveys, where participants could indicate whether or not they were willing to be contacted for further input to the study. Also further organisations were contacted in order to achieve the target number of interviews in each case study country and per stakeholder group.

The stakeholder engagement activities are summarised in Table 13-1. The provided numbers do not include the six exploratory and eight pilot testing interviews that were carried out before launching the stakeholder questionnaires.

Table 13-1: Summary of stakeholder engagement

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

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

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

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

13.2 High-level summary of ministries survey

13.2.1 Sample

The summary figures provided in this section describe the set of questionnaire responses received from national transport and social/labour ministries.

Responses were received from one national ministry of each of the following 15 Member States: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden, and the United Kingdom. Most of the ministries that responded were responsible for the implementation of more than one of the three legal acts subject of this analysis (Regulation (EC) No 561/2006, Directive 2002/15/EC and Directive 2006/22/EC).

13.2.2 Regulation (EC) No 561/2006

13.2.2.1 Scope of the Regulation

All Member States (except Bulgaria) reported that Regulation (EC) No 561/2006 applies to all drivers carrying out in-scope transport operations. Only Austria reported that the Regulation is interpreted to apply to "professional" drivers only. In all Member States the Regulation applies to all goods operations where the mass of the vehicle (incl. (semi)trailers) exceeds 3.5t and to all passenger operations where the vehicle is constructed (or permanently adapted) for carrying more than 9 passengers (incl. the driver) and the vehicle is not subject to a derogation that is permitted under Article 3 of the Regulation. Belgium was more explicit and stated that vehicles used for carriage of goods or passengers that do not fit the definitions of article 4 (a) and 4 (b) are considered to be out of scope of the Regulation. Such vehicles might, for example, be heavy vehicles that are not designed for transporting goods (e.g. mobile machines, cranes etc.) Article 3(h) of Regulation (EC) No 561/2006 firstly set a maximum permissible mass limit of 7.5t to vehicles that are exempted from the Regulation due to their use for the non-commercial carriage of goods. However, in three out of the responding 15 Member States (namely Bulgaria, Slovenia and Slovakia), vehicles over 7.5 tonnes used for the non-commercial carriage of goods are, nevertheless, also exempt from Regulation (EC) No 561/2006.

13.2.2.2 Driving times, breaks, rest periods and their exceptions

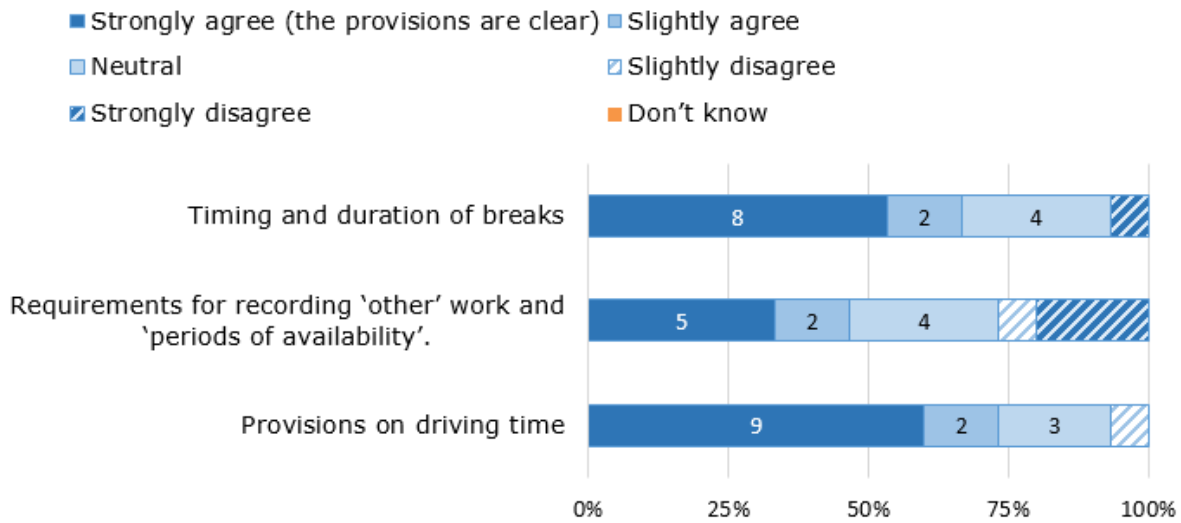
Nine²²² of the responding Member States strongly agree that provisions on driving times are sufficiently clear to avoid difficulties in interpretation; eight²²³ of them strongly agree that the provisions on breaks is clear; however, only five²²⁴ strongly agree that requirements for recording 'other' work and 'periods of availability' is clear (Figure 13-1). Some Member States believe that there is a lack of consistency across countries on the requirements for recording 'other work' and 'periods of availability'. Denmark more specifically reported that it is unclear whether daily and weekly rest periods have to be reported; the UK and Sweden reported that there is a lack of consistency across Member States in terms of their recording requirements; Belgium highlighted interpretation difficulties in this context with Article 6(5), which says the 'other work' and 'periods of availability' are only to be recorded "since the driver's last daily or weekly rest period", implying that these activities are only necessary to record on a day that comprises activities that are in scope of the Regulation.

²²² Belgium, Bulgaria, Denmark, Estonia, France, Poland, Portugal, Slovenia and United Kingdom.

²²³ Belgium, Bulgaria, Denmark, France, Poland, Portugal, Slovenia and United Kingdom.

²²⁴ Bulgaria, France, Poland, Portugal and Slovenia.

Figure 13-1: Member State responses to survey question: To what extent do you agree that the provisions on driving times, reporting and breaks (as defined in Article 6 and 7) are sufficiently clear to avoid difficulties in interpretation?

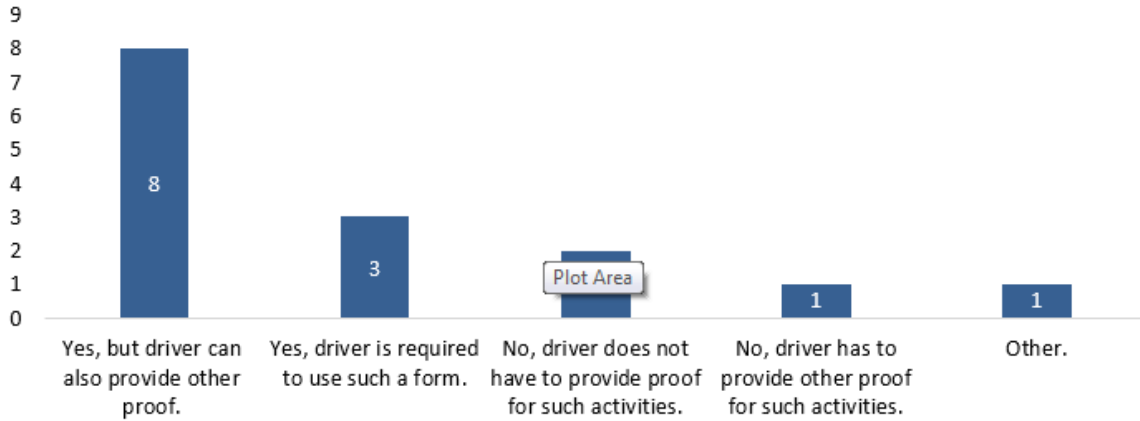


Related to the discussion on recording requirements, Member States were asked how long drivers were required to keep records for 'other' work, 'periods of availability' and out-of-scope transport operations. Eight Member States²²⁵ responded that the period was 28 days, UK and Sweden reported that records had to be kept since the last weekly or daily rest period, Belgium reported that this was not clear (see above for the related response to the previous question). Portugal and Austria responded that drivers must keep records for one year and two years respectively. Latvia and Poland responded taking the companies' view, which - according to the respective ministries - need to keep the records for their drivers for two and three years respectively.

Most Member States allow drivers to use the standard form for attesting unrecorded activities, or other proof, for proving such activities. Poland, Portugal and Estonia stated that these forms were a strict requirement for proving such activities; Sweden and Denmark do not require any proof for such activities; France wants to see other proof (however it was not stated what this proof should be) (Figure 13-2). All Member States (except Bulgaria) reported to have kept the same requirements with regards to the attestation forms compared to before March 2014 (when Article 34 of Regulation (EC) No 165/2014 came into effect). Generally, ministries express that there is a lack of consistency in the requirement of the use of these forms and how unrecorded activities need to be testified.

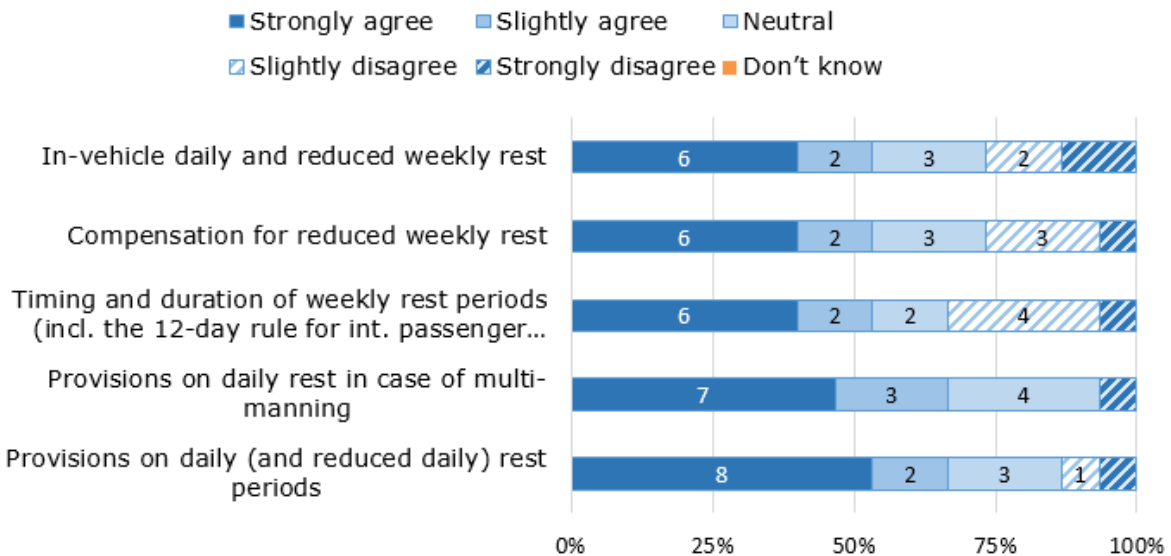
²²⁵ Belgium, Bulgaria, Czech Republic, Finland, France, Latvia, Slovenia and United Kingdom.

Figure 13-2: Member State responses to survey question: In your Member State, is a driver allowed or required to justify unrecorded activities (such as 'other' work, 'periods of availability' and 'out-of-scope' activities, but also annual leave, sick leave etc.) by the use of attestation forms (signed by the employer)?



Most Member States (except for Sweden, Czech Republic and France) find that the provisions on daily and weekly rest periods (as defined in Article 8) are sufficiently clear to avoid difficulties in interpretation. Sweden comments Member States interpret the rules in the different ways. France points out that terms such as 'at least' in Articles 6 and 7 of Directive increases ambiguity. However, provisions on weekly rest periods appear to be generally less clear (Figure 13-3).

Figure 13-3: Member State responses to survey question: In your opinion, are the provisions on daily and weekly rest periods (as defined in Article 8) sufficiently clear to avoid difficulties in interpretation?



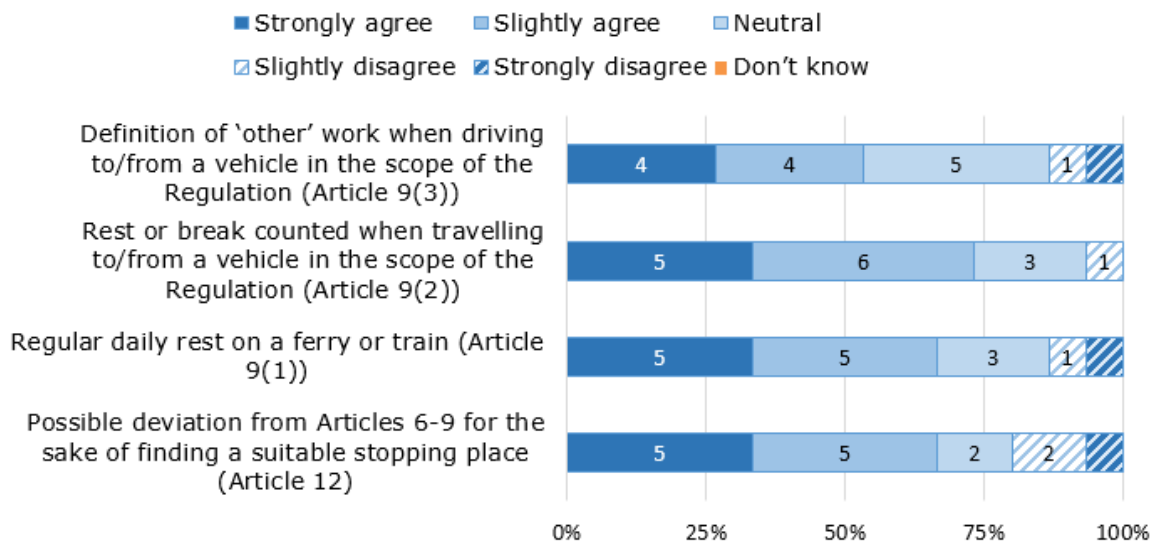
Five²²⁶ out of the 15 Member States allow drivers to spend their **regular weekly rest** in the vehicle. All other Member States take the official stance that this is not allowed, however express differences in how or whether this is enforced. The Czech Republic mentions specifically that EU clarification is required on this issue.

²²⁶ Bulgaria, Czech Republic Latvia, Poland, and Sweden.

The impact of the re-introduction of the “12-day rule” on the road safety and functioning of the international road passenger transport has been received as neutral and positive respectively. The UK and France state that this derogation is rarely used in their country and that its impact is therefore estimated to be negligible.

Most respondents agree or are neutral regarding the clarity of the provisions in Article 9 and Articles 12 that allow drivers to depart from the standard requirements of driving time and rest periods (Figure 13-4). The least clear provisions appears to be the counting of daily or weekly rest periods in cases where a driver accompanies a vehicle which is transported by ferry or train.

Figure 13-4: Member State responses to survey question: To what extent do you agree that the following provisions that allow drivers to depart from the standard requirements of driving time and rest periods are sufficiently clear?



None of the Member States apply rules that diverge from the rules laid out in Articles 6-9 of the Regulation (permitted under Article 11) by either increasing the of minimum breaks and rest periods or shortening the maximum driving times.

Most respondents (except Belgium, Bulgaria, Estonia and Sweden) agree that Regulation (EC) No 561/2006 provides enough flexibility for National authorities in terms of granting exceptions from driving times, breaks and rest periods thanks to the pre-defined exceptions under Article 13, exceptions under exceptional circumstances (Article 14(1)) and temporary exceptions in urgent cases (Article 14(2)). Estonia however stated that the surveillance for the 100 km radius of the requirement in Article 13 is difficult to monitor; Belgium highlighted that it was unclear what was meant by the 'agreement of the States concerned' in Article 13(1) (i.e. it is unclear whether this implies the use of bilateral agreements, simple reciprocal acknowledgement of the use of the exemption, or other) and, as France, highlighted various specific uncertainties concerning the different exceptions provided in Article 13(a-p). The main uncertainty expressed here refers to Article 13(h), whose scope appears to be unclear, especially in the context of previous European Court of Justice rulings (also the Czech Republic mentions uncertainties regarding this specific exception). Sweden emphasized that especially Article 13(g) has led to many different interpretations across Member States and asked for exemptions for vehicles that only operate within a very limited radius and that are carried out by people other than 'ordinary' drivers. The UK noted that the UK appears to be the only country who grants relaxations in extreme winter weather conditions (which are to be immediately notified to the Commission) and wonders how other countries deal with this type of situations.

Respondents were further asked if there were other parts in the provisions in Regulation (EC) No 561/2006 that may lead to difficulties or inconsistencies in interpretation. Most

respondents (except Latvia and the UK) did not express any issues other than discussed above and, if so, reiterated their concerns regarding the weekly rest provisions and the place of where weekly rest should be taken.

13.2.2.3 Liability of transport undertakings

Most Member States (all except Bulgaria and Czech Republic) stated that the liability of undertakings is dependent on potential evidence provided by the undertaking that shows that they cannot be held liable. Only the Czech Republic and Denmark stated that the undertaking is always held liable; the driver might be additionally held liable though (in Denmark this might happen in case of observed negligence of following the rules by the driver). The circumstances under which a driver is (also) held liable are very diverse across the Member States. Responses range from “drivers are responsible for all infringement[s] they commit” (Denmark) to “driver[s] [are] responsible for infringements [on] which [they have] a direct impact” (Poland) and “if nobody in the company is responsible, then the driver is” (Finland). Also the liability of third parties varies greatly across Member States. For example, Portugal states that “Other parties are not held responsible in any circumstance”, while Sweden states that this liability depends on the possibility to proof any violation by a third party.

13.2.2.4 Control procedures and sanctions

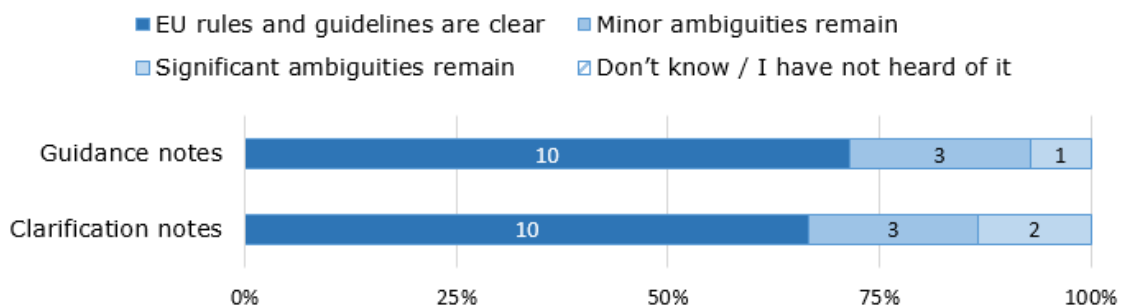
Under Article 19 of the Regulation, Member States are required to lay down rules on penalties applicable to infringements. Different Member States show to have different sanctions an undertaking can face in case of infringement of the rules. For example, reported fines for minor infringements are in the range of EUR 72 - EUR 1,815 (in Slovenia) or EUR 282 - 3,500 (in the UK). Denmark reported to have a fine system that is based on the extent by which a provision has been infringed (i.e. EUR 27 are charged for each percentage by which driving times are exceeded).

Most Member States (all except Belgium, Bulgaria, France, Poland, Portugal and Sweden) state that penalties for drivers or other parties are different to the ones of the undertakings. For example, in the UK, there are fixed penalties for drivers at the roadside that are graduated according to the severity of the infringement; in Slovenia there is a different fine structure for companies, responsible persons within a company and drivers.

13.2.2.5 Guidelines and clarifications

Most authorities (except the UK in the case of guidance notes) responded that the European Commission’s guidance and clarification notes on the implementation of Regulation (EC) No 561/2006 were clear (Figure 13-5).

Figure 13-5 Member State responses to survey question: In your view are the European Commission’s guidance and clarification notes on the implementation of Regulation (EC) No 561/2006 sufficiently clear?



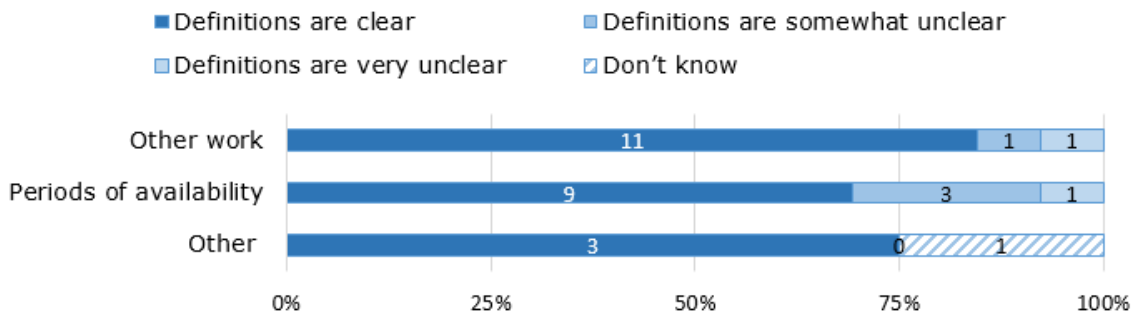
Member States were asked if the current guidance covered all relevant aspects. France stated that clarification on the Regulation’s scope in terms of drivers should be made clearer, while Belgium emphasises the importance to limit the number of guidance and clarification notes, given that drivers are the ultimate parties that are required to read and apply these texts in practice.

Overall, France highlights at multiple instances the importance of harmonising the rules set out in Regulation (EC) No 561/2006 with the ones as provided in Directive 2003/59/EC (on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers).

13.2.3 Directive 2002/15/EC

Member States were asked if they found certain definitions in the Working Time Directive clear; more specifically, they were enquired about the clarity of the definitions of "Periods of Availability" and "Other work" (Figure 13-6).

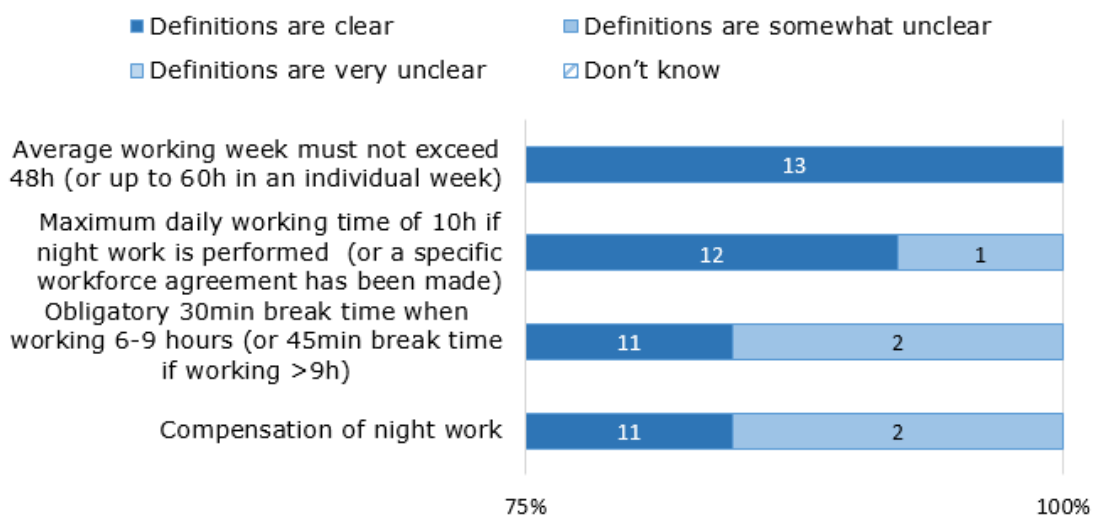
Figure 13-6 Member State responses to survey question: Do you find the following definitions clear?



Concerning "Other work" around 85%²²⁷ of the respondents found the definitions clear, while around 15% found them either somewhat or very unclear. With regards to periods of availability were comparatively found to be somewhat less clear, with around 65%²²⁸ of respondents stating that they were clear and 35%²²⁹ of respondents stating that they were either somewhat or very unclear.

Respondents were also asked to comment on the clarity of the provisions as set out in Articles 4-7 of Directive 2002/15/EC, which define the rules on driving times, breaks and rest periods (Figure 13-7)

Figure 13-7 Member State responses to survey question: Do you find the provisions in Articles 7-10 clear?



All respondents stated that that the provisions on average weekly working times are clear; All except France stated that daily working times in relation to night work are clear; All

²²⁷ Austria, Belgium, Bulgaria, Finland, France, Latvia, Poland, Portugal, Slovenia and the United Kingdom.

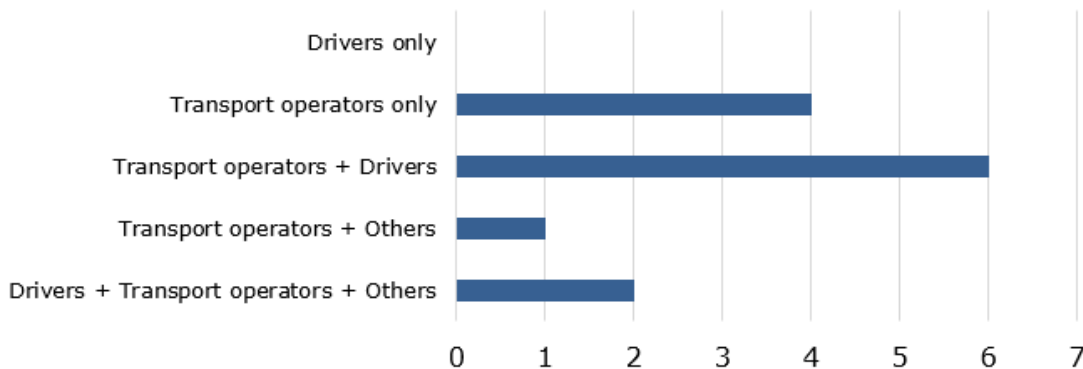
²²⁸ Austria, Belgium, Bulgaria, Finland, Latvia, Poland, Portugal and Slovenia.

²²⁹ Estonia, France and the United Kingdom.

except Estonia and France stated that break times and the provisions on compensating night work are clear.

Figure 13-8 shows the parties that were stated to be held responsible for infringements of Directive 2002/15/EC. All Member States that responded (13) stated that transport operators are responsible for infringements. In four²³⁰ countries these are the sole responsible parties, in six countries²³¹ transport operators or drivers can be held responsible, in one country transport operators and others in the transport chain can be held responsible, and in two countries (Austria and Finland) all mentioned parties can be held responsible. In none of the responding Member States drivers alone are held responsible.

Figure 13-8 Member State responses to survey question: Which parties can be held responsible for infringements of Directive 2002/15/EC in your Member State?



Two Member States²³² proposed to exclude self-employed drivers from the scope of the Directive; UK and France Member States questioned the usefulness of the Directive overall and France highlighted that neither Regulation (EC) No 561/2006 nor Directive 2002/15/EC ensure that drivers are required to return home at regular instances which would allow them to reconcile carrier and family life in an acceptable manner.

13.2.4 Directive 2006/22/EC

Most Member States (12 out of 14 that responded to the according question, except Bulgaria and Finland) stated to have either partially or completely taken up the TRACE common curriculum in enforcement. Nine²³³ out of 13 responding Member States have put a risk-rating system in place in order to target checks.

13.2.5 General questions

Member States were asked their opinion on the impact of EU road transport social legislation. The responses are provided in the Figure 13-9. All of respondents, except Ministry of Labour and social policy of Bulgaria (neutral), stated that road social legislation had a (strongly or slightly) positive impact on the harmonisation of the social rules across the EU Member States. A similarly positive response was received concerning the impact on drivers' fatigue, health and safety and working conditions. 27%²³⁴ of respondents stated that road social legislation had however a slightly negative impact on the attractiveness of the profession. None of the respondents stated that there was a strong negative impact on any of the items listed.

²³⁰ Bulgaria, Estonia, Portugal and Slovenia

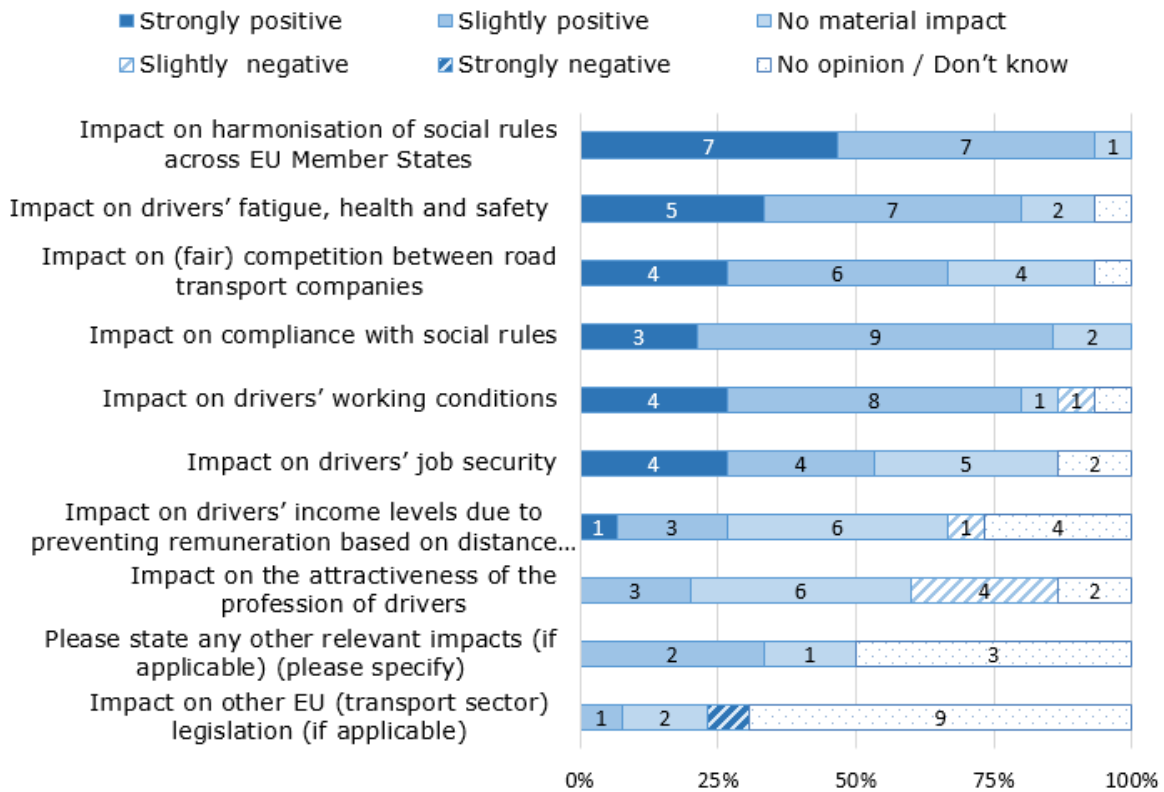
²³¹ Belgium, France, Latvia, Poland, Sweden and United Kingdom

²³² Bulgaria and Finland.

²³³ Austria, Denmark, Estonia, Finland, Latvia, Czech Republic, Sweden, Slovenia and United Kingdom

²³⁴ Belgium, Estonia, Latvia and the United Kingdom

Figure 13-9 Member State responses to survey question: In your opinion, what has been the EU road transport social legislation’s impact?



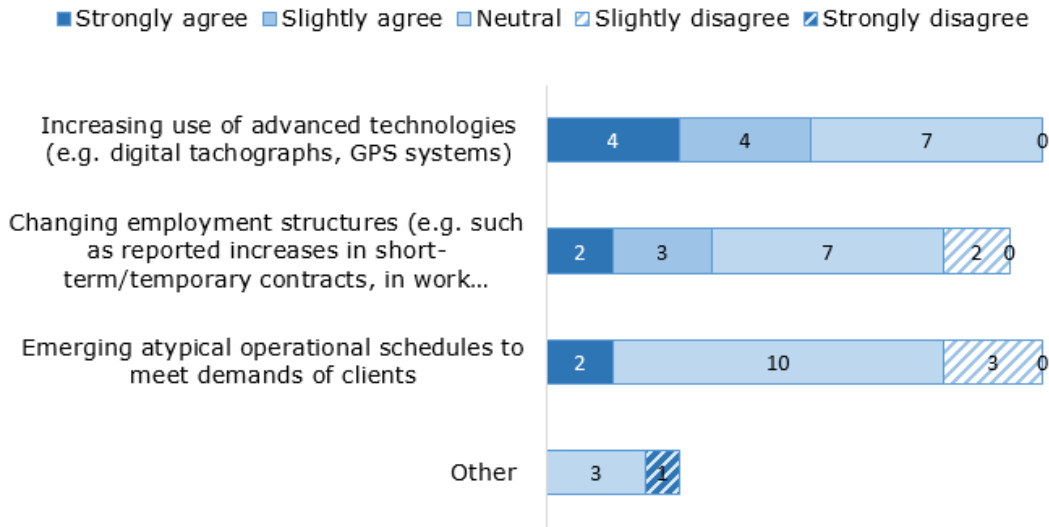
Notes: Where results do not add to 100%, non-responses were received, that can probably be counted as 'No opinion / Don't know'

Half of the responding Member States²³⁵ stated that the current road social legislation is adequate in view of increasing use of advanced technologies (e.g. digital tachographs, GPS systems), while only 13%²³⁶ agreed that it is adequate in view of emerging atypical operational schedules that are put in place to meet demands of clients (see Figure 13-10).

²³⁵ Bulgaria, Demark, France, Portugal and Slovenia

²³⁶ Bulgaria and Slovenia

Figure 13-10 Member State responses to survey question: In your opinion, is the current road social legislation adequate in view of the following ongoing/future market developments?



Notes: Where results do not add to 100%, non-responses were received, that can probably be counted as 'No opinion / Don't know'

Most Member States (all except Austria, Denmark and Sweden-Neutral) either strongly or slightly agree that EU social rules in transport have added value to national level rules. Three respondents found that the rules' impact in this respect was neutral.

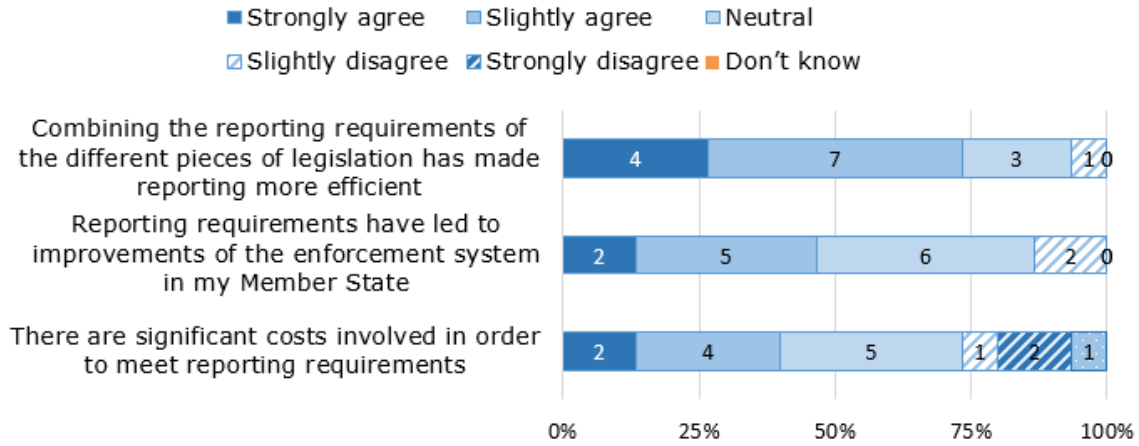
More than 75% (except Belgium, Finland and Latvia) of the respondents stated that the EU road social legislation under one common framework has had positive impact on harmonisation of social rules across EU Member States and on compliance with social rules.

Most Member States (slightly or strongly) agree that combining the reporting requirements of the different pieces of legislation has made reporting more efficient. Almost half²³⁷ of the responding Member States (slightly or strongly) agree that reporting requirements have led to improvements of the enforcement system in their Member State. 40%²³⁸ agree that there are significant costs involved in order to meet reporting requirements (see Figure 13-11).

237 Austria, Bulgaria, Estonia, Latvia, Poland, Portugal and Slovenia.

238 Denmark, Estonia, Latvia, Sweden, Slovenia and United Kingdom

Figure 13-11 Member State responses to survey question: Member States are required to report to the Commission every two years on both Directive 2002/15/EC and Regulation (EC) No 561/2006 (among others) using the standard reporting form (as set out in Commission Decision of 22.IX.2008). To what extent do you agree with the following?



13.3 High-level summary of enforcers survey

13.3.1 Sample

The summary figures provided in this section describe the set of questionnaire responses received from enforcement authorities. In some cases, more than one authority within a Member State responded to our survey. Each national authority's response has been counted once within the totals reported here. However, in Germany, more than 20 enforcement authorities with sub-national (regional or even communal) jurisdictions responded to the survey. In order to avoid skewing the results, these sub-national responses are not included in the summary statistics below – instead, only the response from the relevant national body for Germany, the Bundesamt für Güterverkehr (the Federal Office for Freight Transport), has been included.

In total, the figures reported below provide coverage of 28 national authorities across 17 Member States plus Norway and Switzerland. Of the EU Member States, 8 acceded to the Union before 2004 (referred to as EU15 Member States) and 12 acceded to the Union in 2004 or later (referred to as EU13 Member States).

The questionnaires were split into separate parts covering the three pieces of legislation separately, since (multiple) different authorities may have responsibility for the different pieces of legislation. Most authorities responded to the full questionnaire, with the following exceptions:

- Did not answer the section on Regulation (EC) No 561/2006: FPS Social Security in Belgium, Department of Labour inspections in Hungary
- Did not answer the section on Directive 2002/15/EC: Customs in Czech Republic, Traffic police in Greece.

13.3.2 Directive 2006/22/EC

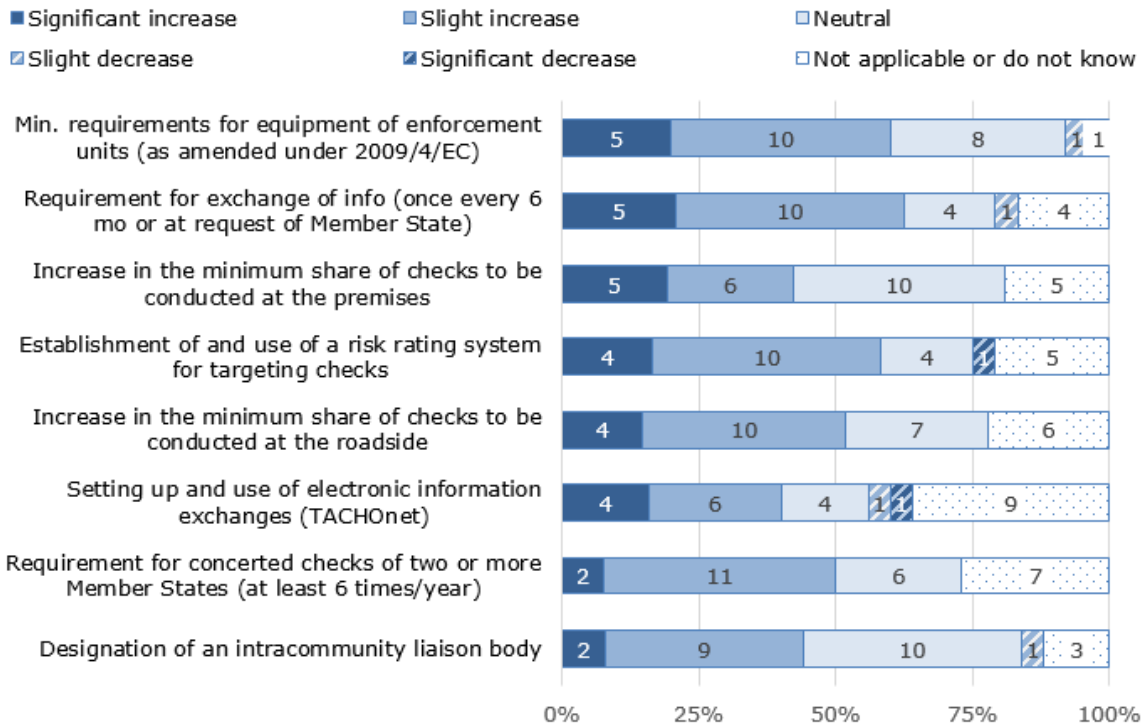
13.3.2.1 Effectiveness of enforcement measures

Respondents were asked to what extent certain provisions of the Enforcement Directive had improved their ability to detect non-compliance with the social rules (

Figure 13-12). The requirements concerning provision of certain equipment to enforcement officers, obligations of exchange of information, and the requirements to establish a risk rating system, and the increase of minimum share of checks at the roadside were regarded to have led to (slight or significant) increases in the organisations' ability to detect non-compliance by more than half of the respondents.

Although few respondents partly indicated that they thought that selected provisions had a detrimental effect on their ability to detect non-compliance, these respondents did not explain how this had happened or why they thought this was the case.

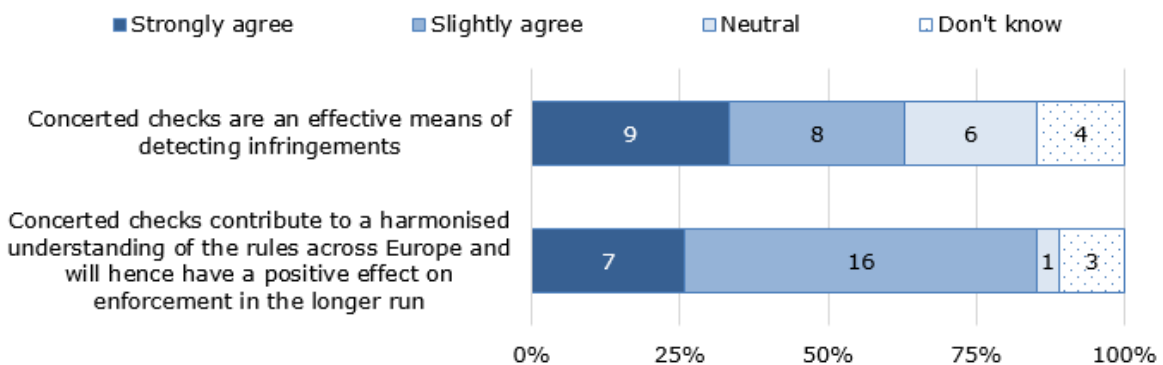
Figure 13-12: Responses to “Have the following measures increased or decreased your organisation’s ability to detect non-compliance with the social rules in road transport?”



Two Belgian Police authorities indicated that access to TACHOnet (which they did not currently have) was needed to improve roadside checks. The Dutch enforcement authority argued that exchange of information between Member States could be improved so as to increase the effectiveness of risk rating systems, if Member States started transferring information also on those checks performed that did not result in any detected infringements (at present, the Dutch ministry of transport only receives information on the checks which do result in detection of infringements).

Respondents were also asked for their views on concerted checks more specifically. The majority indicated that they saw concerted checks as an effective means of detecting infringements, and agreed that they contribute to a harmonised understanding of the rules (Figure 13-13).

Figure 13-13: Levels of agreement with statements about the effectiveness of concerted checks



Two Member States²³⁹ explained that concerted checks tend to be effective because they are well-organised and well-resourced. Polish authorities provided data (Table 13-2) however indicating that in 2014, concerted checks resulted in fewer detected infringements per check than this was the case for other roadside checks in Poland. Other Member States indicated that it was not possible to produce data on the contribution of concerted checks to the overall detection of infringements.

The Dutch enforcement authority stressed that concerted checks did not “lead automatically” to more incisive enforcement, and called for more exchange of enforcement information by Member States in order to achieve that aim. The Dutch authority also stated that “peer review” would be a better means of harmonising interpretation and application of the rules.

Table 13-2: Information provided by Poland on the effectiveness of different types of checks in 2014

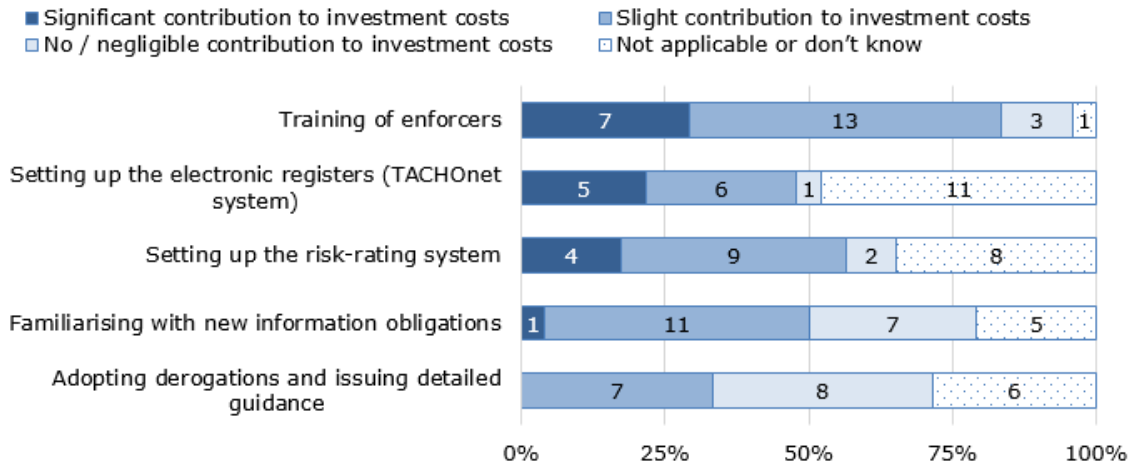
Sample of checks	Checks (number of vehicles)	Vehicles with infringements	Detected individual infringements	Individual infringements detected per check
ECR coordinated control weeks in 2014	18,914	3,437	6,360	0.34
Roadside checks in whole of 2014	218,296	Not stated	110,611	0.51

13.3.2.2 Additional costs of enforcement measures

Respondents were also asked about the one-off investment costs associated with complying with the Enforcement Directive (Figure 13-14). The results of this question provide suggestive evidence that at a European level, training of enforcement officers has been on average the most significant contributor to investment costs. The number of ‘not applicable/don’t know’ answers provided to the questions on the costs for setting up a ‘TACHOnet’ or ‘risk rating’ system indicate that the costs of these systems were either not monitored or have not materialised because these systems have not been set up yet. Among those who did not choose ‘not applicable/don’t know’, a significant minority indicated that the cost of TACHOnet was significant, and a smaller minority indicated that the introduction of the risk-rating system was associated with significant costs.

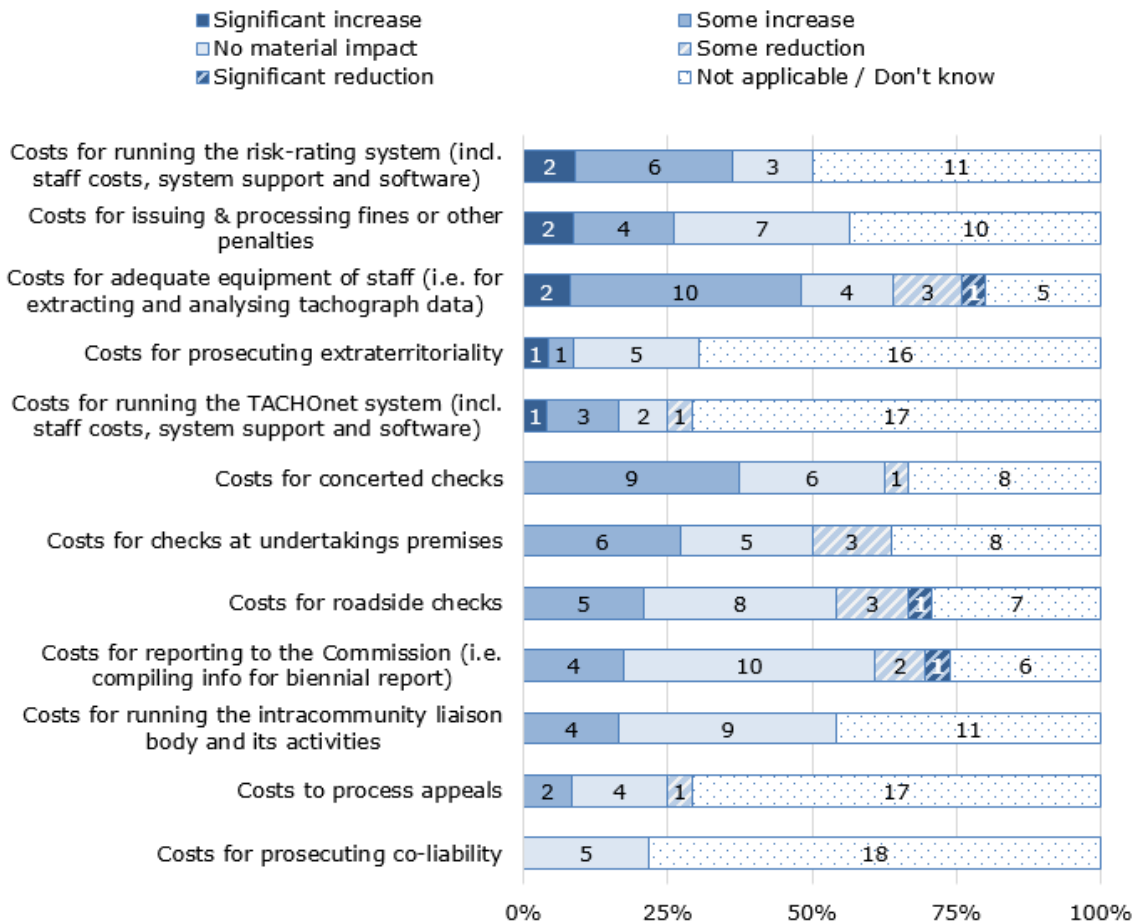
²³⁹ Luxembourg and the Netherlands

Figure 13-14: Responses to “If your organisation experienced any investment (one-off) costs for complying with Directive 2006/22/EC, what are these costs attributable to?”



Respondents were also asked about the effect of the Directive on their on-going costs (Figure 13-15). Large numbers of respondents indicated that they did not know these costs or that the question was not applicable to them. In addition, several respondents stated that they did not have sufficient information to estimate costs, or that their answers were mainly made on the basis of judgement rather than “hard data”.

Figure 13-15: Responses to “Please estimate the effect of Directive 2006/22/EC on ongoing (annual) enforcement costs (where applicable). (Please consider effects on time as either cost reductions or increases.) Has Directive 2006/22/EC caused a reduction or increase of these cost items?”

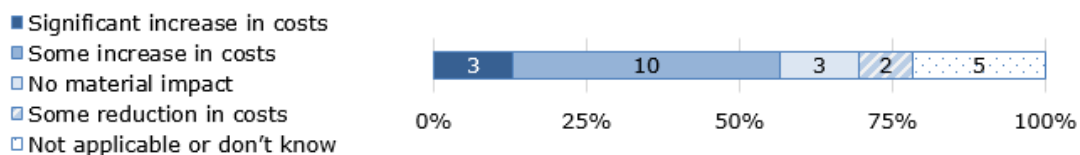


The ongoing cost items that were identified by at least one Member State as having increased significantly due to Directive 2006/22/EC were: running the risk-rating system, issuing and processing penalties, adequately equipping staff, prosecuting extra-territorial infringements and running the TACHOnet system.

Dutch authorities drew attention to the fact that they have incurred costs associated with investing in software to aid in the detection of tachograph fraud.

On the whole, a majority of enforcement authorities took the view that the Directive had led to a significant or some increase in their costs, although a minority did not take that view (Figure 13-16). Respondents did not make use of the opportunity provided in the questionnaire to explain why their overall costs had increased or reduced.

Figure 13-16: Enforcement authorities’ stated view on whether Directive 2006/22/EC has, overall, led to any reductions or increases in costs for their organisation

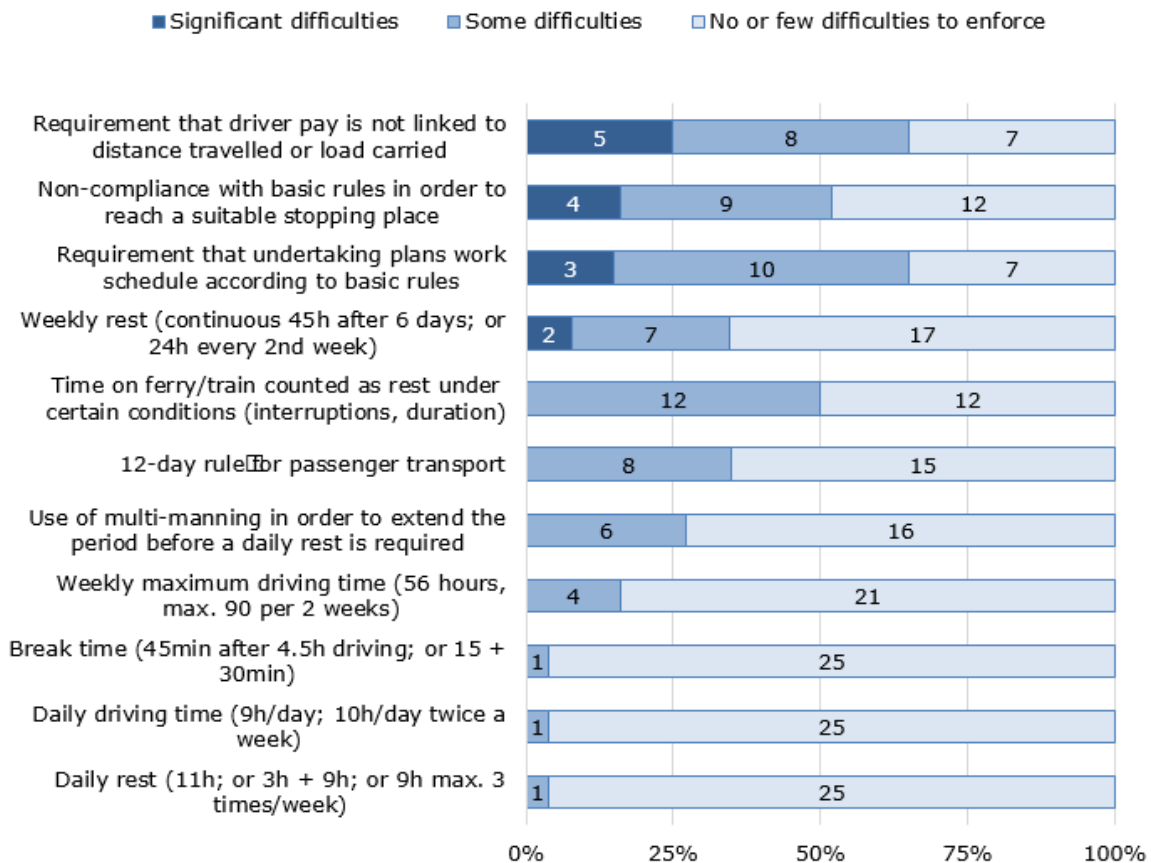


13.3.3 Regulation (EC) No 561/2006

13.3.3.1 Difficulties with monitoring and enforcement

Respondents were asked a set of multiple choice questions about which provisions of Regulation (EC) No 561/2006 led to difficulties in monitoring and enforcement (Figure 13-17).

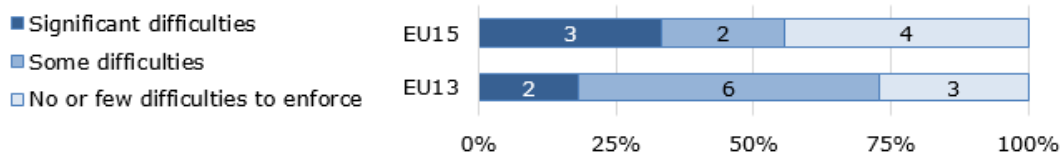
Figure 13-17: Responses to “Are there any parts of the provisions of Regulation (EC) No 561/2006 listed below that lead to difficulties in monitoring and enforcement?”



Notably, the vast majority of authorities indicated that there were no or few difficulties with the provisions setting out the basic rules in break time, daily driving time, daily rest, and weekly driving time. However, more than half of the respondents reported (some or significant) difficulties with enforcing i) the requirement that employers do not link driver pay to distance travelled or load carried in a way that detracts road safety, ii) the specific exception to the rules that can be made when drivers need to continue driving to find a suitable stopping place, and iii) requirements that employers plan work schedules that are consistent with the rules. Half of the respondents reported some difficulties in enforcing the rules on how time spent crossing on a ferry or a train can be counted as rest only under certain conditions; significant difficulties in enforcing standard and reduced weekly rest provisions were reported by a few respondents.

Figure 13-18 shows a comparison between the answers given to the question about the difficulty in monitoring and enforcing adequate payment regimes by EU-15 Member States (i.e. those who acceded before 2004) and newer EU-13 Member States (i.e. those acceding in or after 2004). In the EU-13 Member States a larger share of enforcement authorities reported some or significant difficulties than in the EU-15 Member States.

Figure 13-18: Reported level of difficulty in monitoring and enforcing the requirement that driver pay is not linked to distance travelled or load carried, by date of Member State accession



Respondents were also asked to indicate the reasons for difficulties in monitoring and enforcing Regulation (EC) No 561/2006 (Figure 13-19). The answers to this question indicate that there is a diverse set of problems affecting enforcement. The most relevant concerns appear to be the increasing sophistication of attempts to evade the rules, lack of manpower, the proliferation of different national approaches to applying the legislation, and language barriers.

Figure 13-19: Responses to “To what degree do the following items contribute to difficulties in monitoring or enforcing Regulation (EC) No 561/2006?”

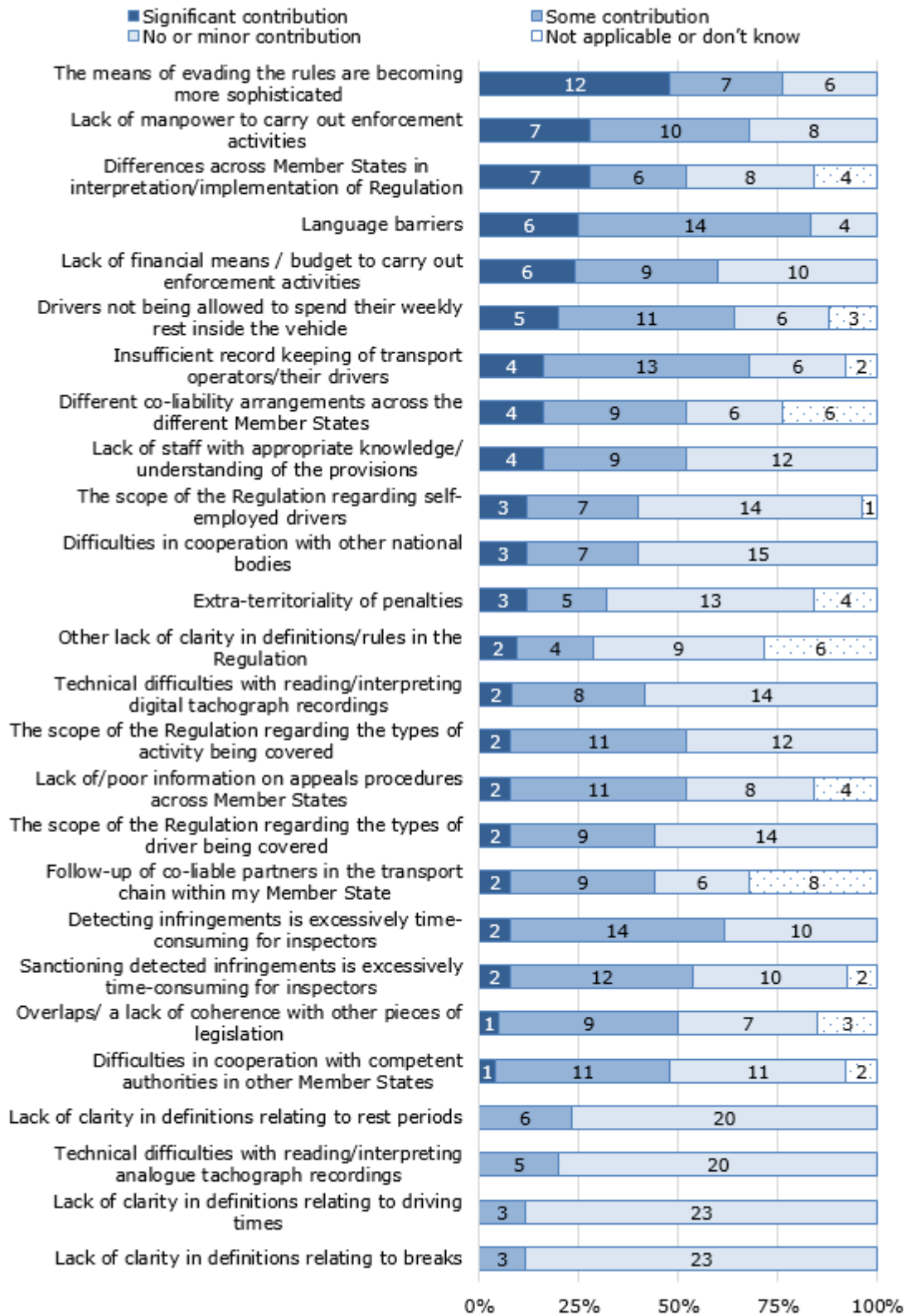
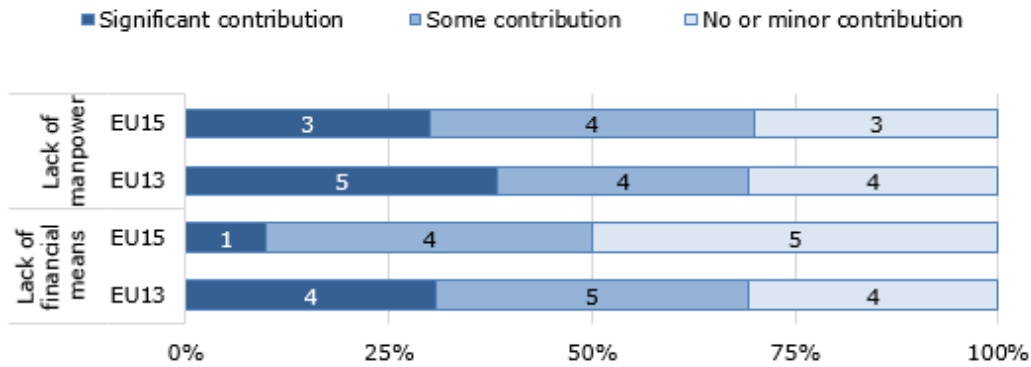


Figure 13-20 illustrates how enforcement authorities' in older versus newer Member States perceive the issues of lack of manpower and lack of financial resources for monitoring and enforcing Regulation (EC) No 561/2006. Enforcement authorities in newer Member States stated slightly less frequently that lack of manpower significantly contributed to problems

with enforcing the legislation, however, they more frequently stated that they suffer from a lack of financial means.

Figure 13-20: Reported contribution of the issues of lack of manpower and lack of financial means to difficulties in monitoring and enforcing Regulation (EC) No 561/2006, by date of Member State accession



13.3.3.2 Factors contributing to non-compliance

Respondents were also asked to indicate which of several problems contributed in a significant way to lack of compliance with Regulation (EC) No 561/2006 (Figure 13-21). Again, the set of problems identified as significant by at least some respondents was diverse. The three factors which were most frequently identified as major causes were that penalties are not strong enough, that undertakings are under pressure to break the rules, and that parties in the transport chain such as freight forwarders are not held sufficiently liable for infringements. Lack of clarity or coherence in the rules or the fact that the rules might not fit the specificities of certain transport operations were seen as relatively insignificant causes.

Figure 13-21: Responses to “In your opinion, what are the main factors that may cause poor compliance with Regulation (EC) No 561/2006, if applicable? Please rate on a scale from 1 (not a cause at all) to 5 (major cause).”

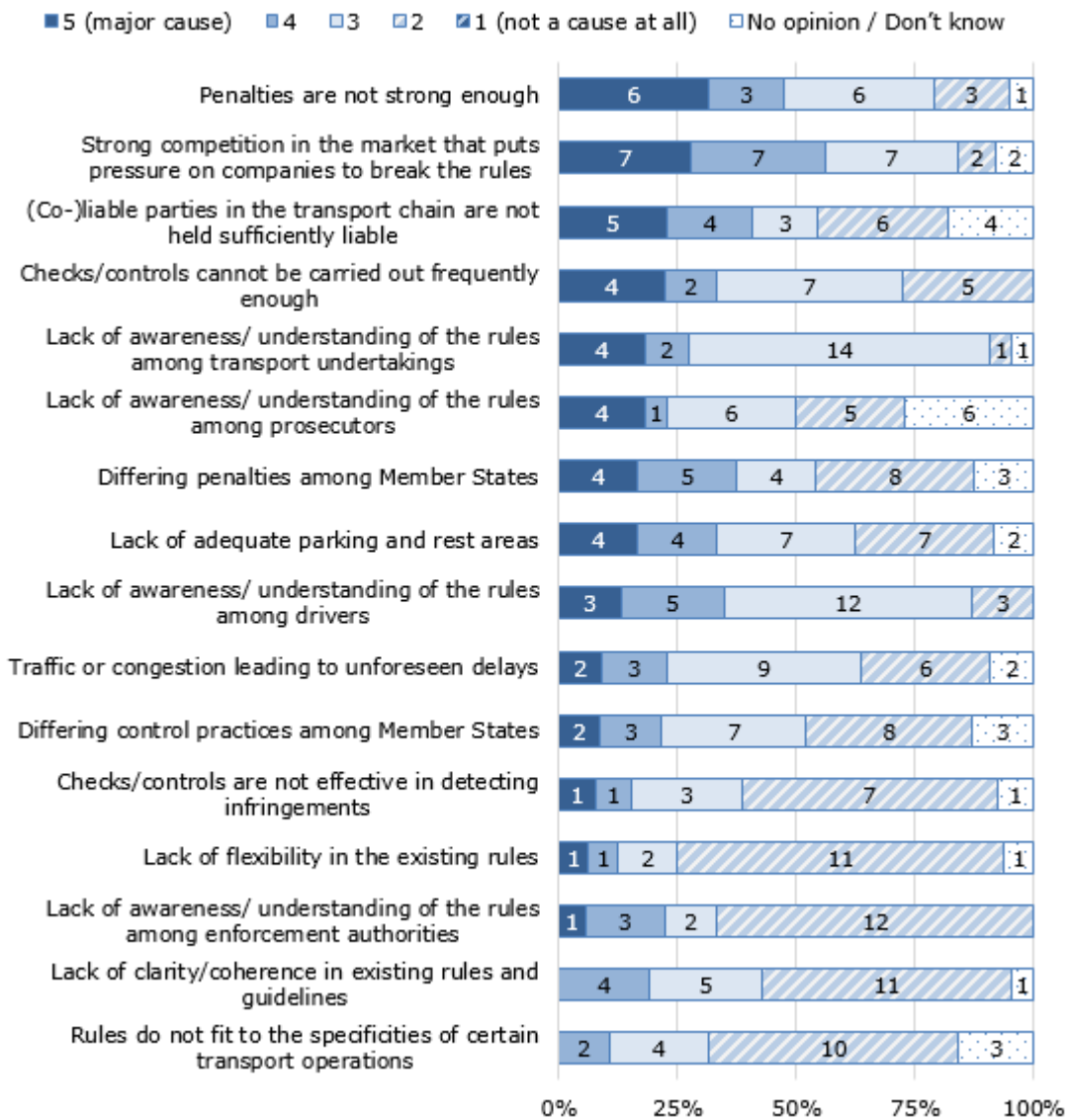
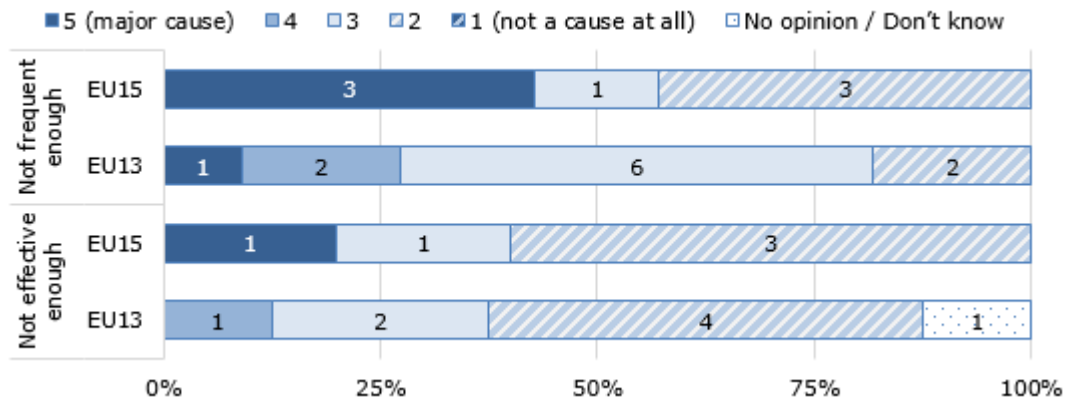


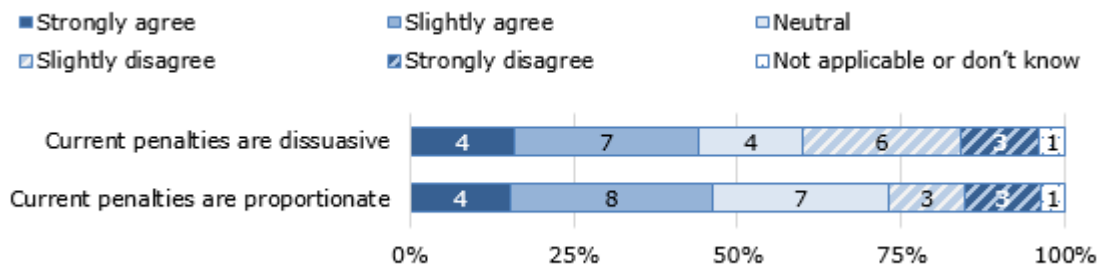
Figure 13-22 illustrates how authorities’ differ in terms of their views on the extent to which not frequent or effective enough checks cause poor compliance. Authorities from EU-13 Member States were significantly less likely to report issues with the frequency or the effectiveness of checks as main cause for poor compliance with the provisions of Regulation (EC) No 561/2006.

Figure 13-22: Respondents' views on whether checks not being frequent enough or not effective enough is a main cause of poor compliance with Regulation (EC) No 561/2006, by date of Member State accession



Enforcement authorities were also asked whether they regarded the penalties for infringements of Regulation (EC) No 561/2006 in their Member State as proportionate and dissuasive (Figure 13-23), resulting in responses that cover the whole range of answer options quite similarly. A Hungarian enforcement authority drew attention to the fact that the same fine may have different levels of dissuasiveness for different operators (the authority argued that larger operators are less sensitive to fines) and also different levels of dissuasiveness for operators from different Member States, due to differences in their typical levels of income.

Figure 13-23: Level of agreement with statements about the proportionality and dissuasiveness of penalties for infringing Regulation (EC) No 561/2006 in respondents' own Member States



13.3.4 Directive 2002/15/EC

13.3.4.1 Difficulties with monitoring and enforcement

Respondents were asked to what extent each of the main rules of Directive 2002/15/EC were problematic to enforce. For each of these rules, a minority of authorities indicated that they had significant difficulties with enforcement (Figure 13-24).

Figure 13-24: Responses to “Are there any parts of the provisions of Directive 2002/15/EC related to working time listed below that lead to difficulties in monitoring and enforcement?”

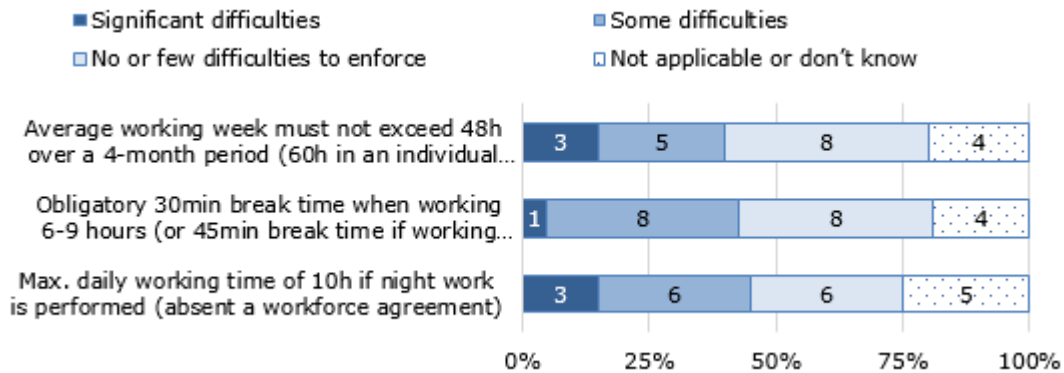
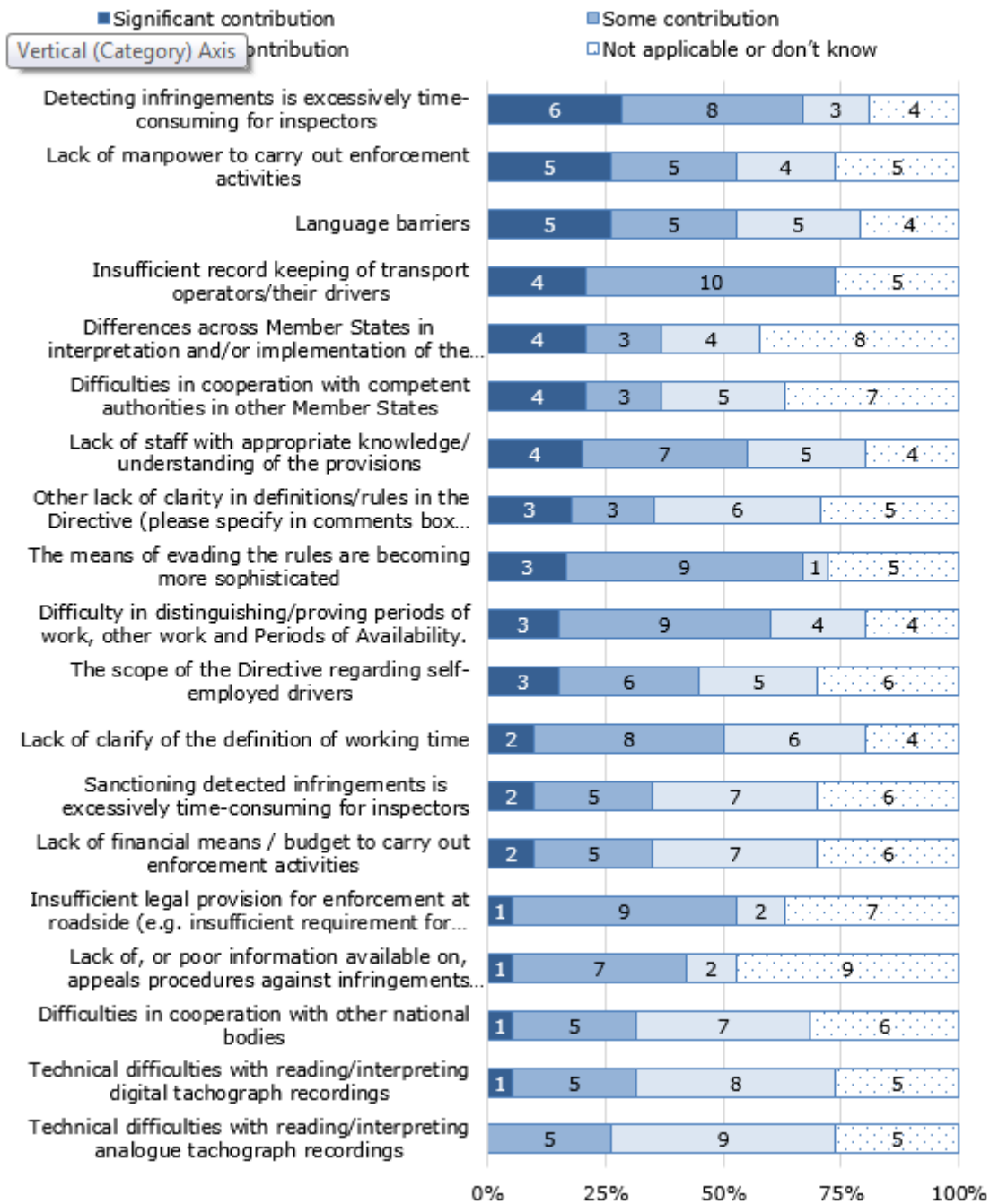


Figure 13-25 shows that authorities stated that a diverse set of issues significantly or somewhat contributes to difficulties in monitoring and enforcing Directive 2002/15/EC. The factors contributing to difficulties in enforcement that were most frequently stated as being 'significant' contributors were the excessive time needed for detecting infringements, lack of manpower, and language barriers. Notably, all authorities (except those selecting "not applicable or don't know") regarded insufficient record keeping by undertakings as a contributing problem.

Figure 13-25: Response to “What are the main reasons that contribute to difficulties in monitoring and enforcement of Directive 2002/15/EC (if any)?”



13.3.4.2 Factors contributing to non-compliance

Authorities were also asked which issues they saw as major causes of non-compliance with the Working Time Directive (Figure 13-26). Lack of flexibility in the rules was seen as relatively unimportant cause, whereas the pressure of fierce competition was seen as a leading cause.

Figure 13-26: Responses to “In your opinion, what are the main factors that may cause poor compliance with Directive 2002/15/EC, if applicable? Please rate on a scale from 1 (not a cause at all) to 5 (major cause).”

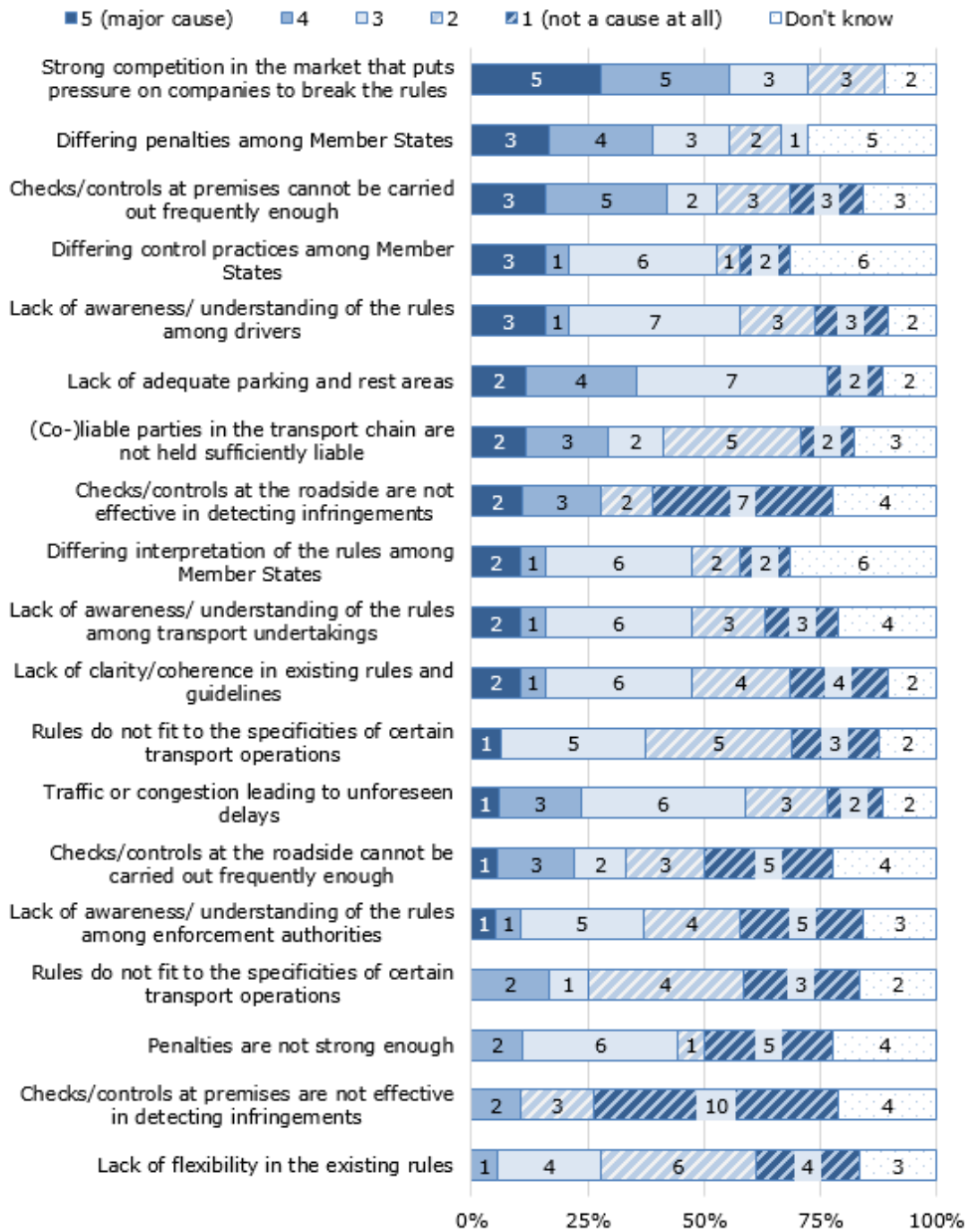
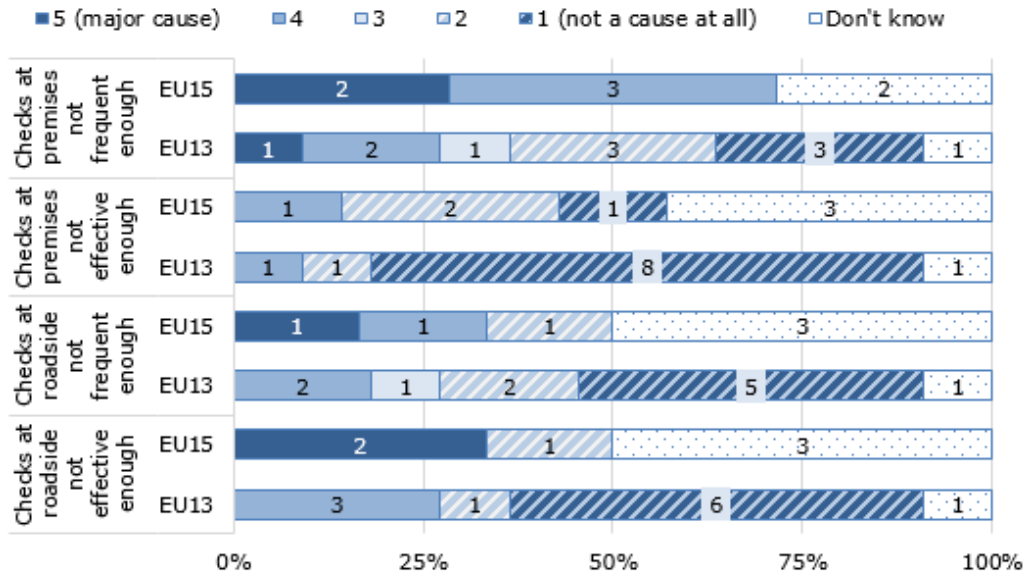


Figure 13-27 illustrates how respondents’ views differ in EU-15 versus EU-13 Member States, on the question of whether checks being not frequent enough or not effective enough contributes to difficulty in monitoring and enforcing Directive 2002/15/EC. Respondents from EU-13 Member States were generally less likely to state that infrequent or ineffective enforcement was a major cause of non-compliance.

Figure 13-27: Respondents' views on whether checks not being frequent enough or not effective enough is a main cause of poor compliance with Directive 2002/15/EC, by date of Member State accession



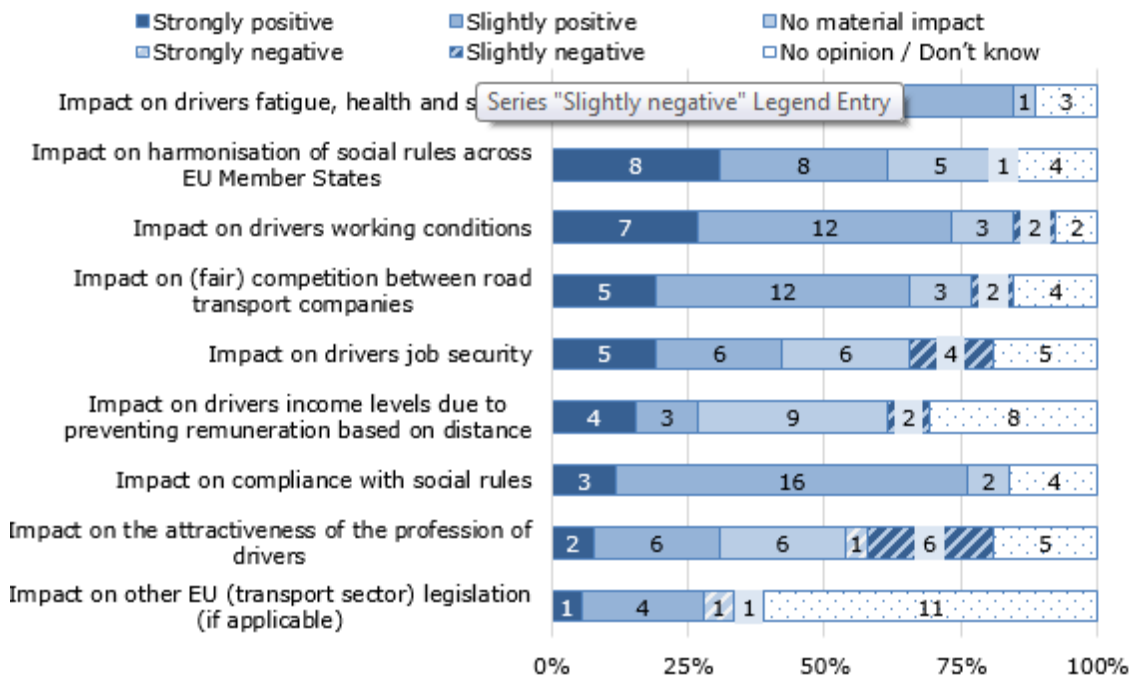
13.3.5 General questions

The survey also asked a number of more general questions about the impacts, coordination and EU added value of the social legislation.

13.3.5.1 Impacts

Figure 13-28 shows respondents' views on the general impacts of the legislation. Most respondents indicated that the legislation has had a slightly or significantly positive impact on areas it was intended to affect, like driver fatigue and fair competition. However, a significant minority seemed to think that it may have made the profession less attractive to work in (these respondents were split roughly evenly across the EU-15 and EU-13 Member States).

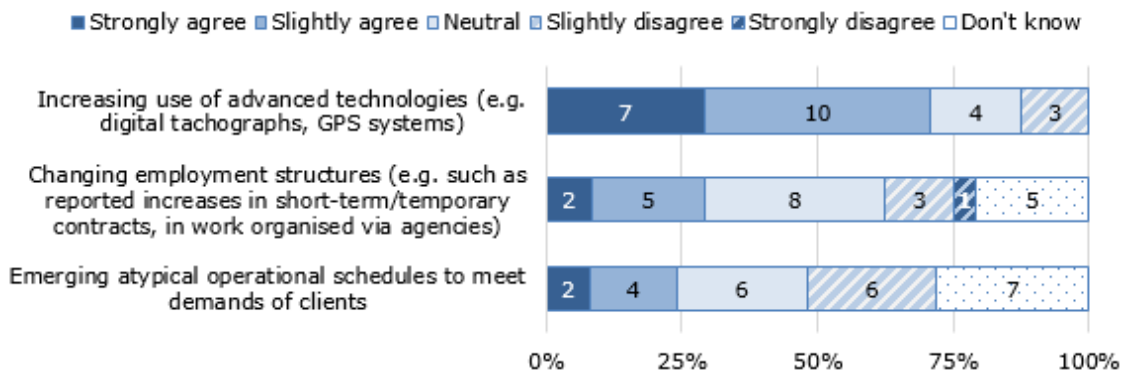
Figure 13-28: Responses to “In your opinion, what has been the EU road transport social legislation’s impact on the following items?”



13.3.5.2 Adequacy

Most respondents indicated that they thought that the legislation is adequate in light of technological progress to date and likely future developments in that area (Figure 13-29). However, opinions were mixed on whether the same could be said regarding changes in employment structures and operational schedules.

Figure 13-29: Responses to “In your opinion, is the current road social legislation adequate in view of the following ongoing/future market developments?”



Belgian authorities stated that the challenges of ensuring social security of drivers are increasing, due to the increasing use of cross-border employment by foreign companies, which is said to be “the rule instead of the exception.” Swedish authorities also stated that the legislation was “more or less based on a regular employment relationship”, but that short-term contracts are becoming increasingly common and this makes it more and more difficult to meet and monitor the requirements to keep records and comply with limits on working time over several months.

Dutch authorities stated that more should be done with new and innovative technology in the mid- to long-term, such as GNSS [Global Navigation Satellite System] and DSRC [Direct Short-Range Communication] solutions. Swedish authorities pointed out that the new Tachograph Regulation (165/2014) will “slightly increase” the use of more advanced

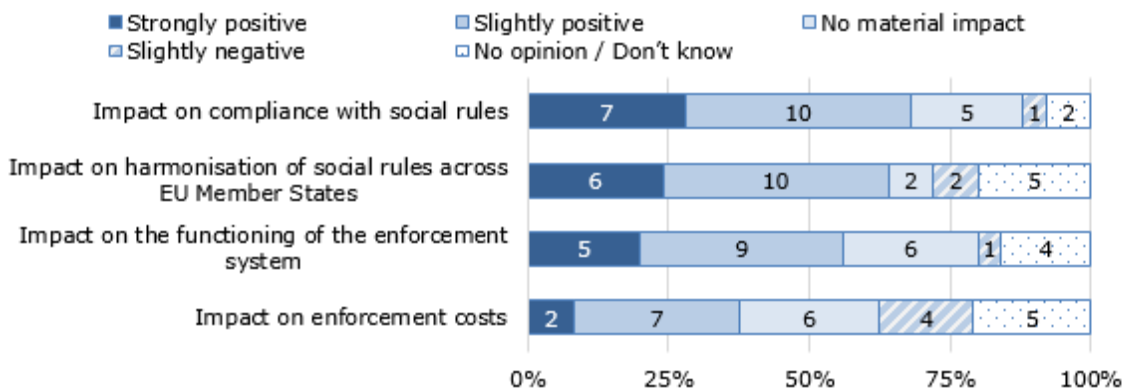
technology. Swedish authorities also stated that Directive 2002/15/EC provides no incentives to use advanced technologies, either for undertakings or enforcers.

On emerging atypical operational schedules, Swedish authorities stated that this development will make it harder for undertakings to follow the current legislation because compliance tends to require long term planning.

13.3.5.3 Coordination

Respondents were asked what they thought the impact was of treating the social legislation under one common framework (Figure 13-30). In general, authorities seemed to think the impact was positive, although opinions were not unanimous. The area in which enforcement authorities were most likely to say the impact of the package has been negative is the impact on their own costs.

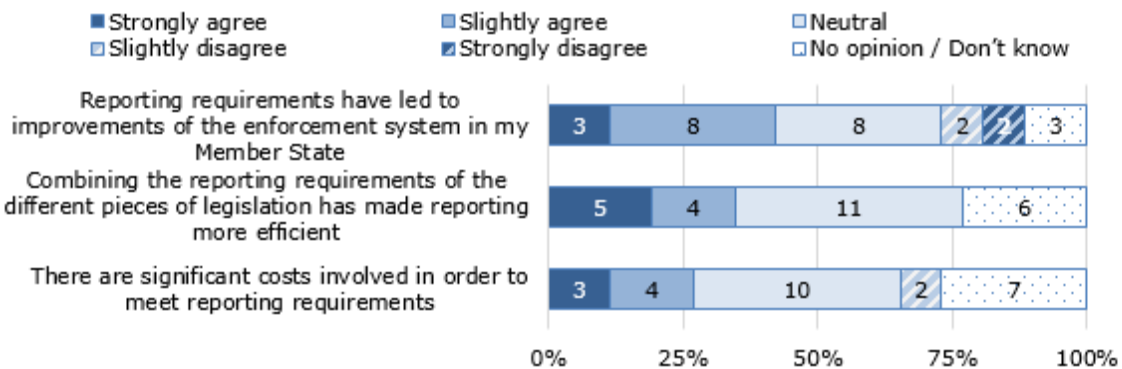
Figure 13-30: Responses to “The EU road social legislation is regarded as a package of measures. In your opinion, what has been the impact of the treatment of the legislation under one common framework?”



13.3.5.4 Reporting requirements

Only few enforcement authorities had a strong opinion about the reporting requirements (Figure 13-31). More authorities tended to agree than disagree that the system had led to improvements in the enforcement system, although this was felt to have come at a financial cost. None of the authorities disagreed with the view that combining reporting requirements of the different pieces of legislation has led to more efficiency in the process.

Figure 13-31: Levels of agreement with statements about reporting requirements



13.4 High-level summary of undertakings survey

13.4.1 Sample

The undertakings questionnaire was sent to industry associations across Europe with the request to distribute these questionnaires among their members. The questionnaires were distributed in the national languages of all case study countries. The English questionnaire version was sent to all industry associations in other Member States. A total of **1269 responses** were received where at least initial questions that help situate the company and understand its size and type of transport operations where (mostly) completed. The following number of such at least partly completed responses per case study country were received: Belgium – 5; France – 160; Germany – 166; Italy – 7; Poland – 2; Romania – 2; Spain – 7; Sweden – 577; UK – 7. A significant amount of responses was also received from Austria (200). The number of responses received from other Member States was 31, covering 11 countries (Bulgaria – 3; Croatia – 1; Cyprus – 1; Czech Republic – 1; Denmark – 4; Estonia - 1; Finland - 8; Ireland – 6; Lithuania – 3; Luxembourg - 2; Netherlands – 1). From Switzerland and Norway we received one response each; we also received one response from 'other' (the country was specified). 1252 responses were received from EU-15; 14 responses were received from EU-13. Especially for Romania and Poland additional efforts were undertaken to make sure that questionnaires were distributed among transport undertakings; in Poland resulting in us sending out questionnaires directly to list of more than 100 undertakings that could be identified on an industry association's website. Responses were nevertheless very modest. Table 13-3 gives further information on the split of the responding transport undertakings across different types of transport operations that they carry out and their turnover.

Table 13-3: Classification of responding transport undertakings by type of transport operation and annual turnover

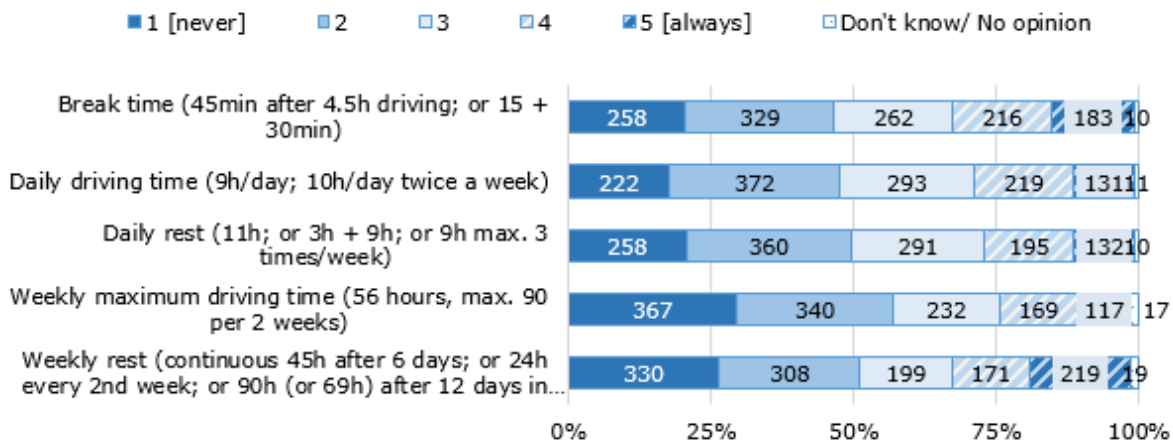
	# of responding undertakings	%
Hire and reward vs. Own account		
Hire and reward	835	66%
Own account	405	32%
Other / Unknown	8	1%
No response	21	2%
Total	1,269	100%
Goods vs. Passenger transport		
Goods transport	878	69%
Passenger transport	346	27%
Both	36	3%
No response	9	1%
Total	1,269	100%
Domestic vs. international operations		
Domestic operations	866	68%
International operations	104	8%
Both	253	20%
No response	46	4%
Total	1,269	100%
Annual turnover		
< €100,000	120	9%

	# of responding undertakings	%
€100,000 - €500,000	339	27%
€500,000 - €5 million	558	44%
> €5 million	222	17%
No response	30	2%
Total	1,269	100%

13.4.2 Regulation (EC) No 561/2006

Respondents were asked to state which provisions of Regulation (EC) No 561/2006 provided compliance difficulties in a typical month (on a rate from 1 [never] to 5 [always]). Each provision was said by around 50% to provide (almost) never difficulties; however, each provision was also rated by 25% to provide (almost) always difficulties (Figure 13-32). Differences between EU-13 and EU-15 Member States are not significant. Undertakings that are (also) engaged in international transport operations tend to rate the compliance difficulty higher, especially concerning the weekly rest provisions, where around 50% state that these provisions (almost) always cause difficulties. When looking at undertakings that are engaged only engaged in passenger transport, this percentage increases to around 60%. Also the daily rest time is seen to be comparatively more difficult provision to comply with by this type of undertaking.

Figure 13-32: Responses to “In your estimation, does complying with the following provisions of Regulation (EC) No 561/2006 ever cause difficulties in a typical month (for any reason)?” (n=1248 on average)



Concerning the reasons for difficulties in compliance, the factors “Lack of flexibility in existing rules and guidelines” and “Rules do not fit to the specificities of certain transport operations” were rated by 59% and 53% of those who had an opinion on these items (1234 respondents on average) to be **a significant or major cause** (ratings 4 or 5). These items are closely followed by “Differing interpretation of the rules among Member States”, “Differing control practices among Member States” and “Differing penalties among Member States” that were rated by close to 50% to be a “major cause”. This is followed by “Traffic or congestion leading to unforeseen delays” (44%) and “Lack of adequate parking and rest areas” (44%). Looking at passenger transport undertakings specifically, the percentage of undertakings that rates the factors “Lack of flexibility in the rules” and “Rules do not fit to the specificities of certain transport operations” to be a significant or major cause increases to just over 80%. Looking at undertakings solely in international operations, a higher percentage of respondents rates all the above mentioned items to be a significant or major cause. Notably, among these undertakings also a higher percentage (>60%) rates the items “Differing penalties; Differing control practices and Differing interpretations of the rules among Member States” to be a significant or major cause.

The factors that most respondents found to be **no or a minor cause** were “Checks/controls are not effective in detecting infringements” (whether at roadside or at premises; 70% and 81% respectively), “Checks/controls are not frequent enough” (again irrespective of where these controls are carried out; 69% and 79% respectively) and “Penalties are not strong enough” (71%).

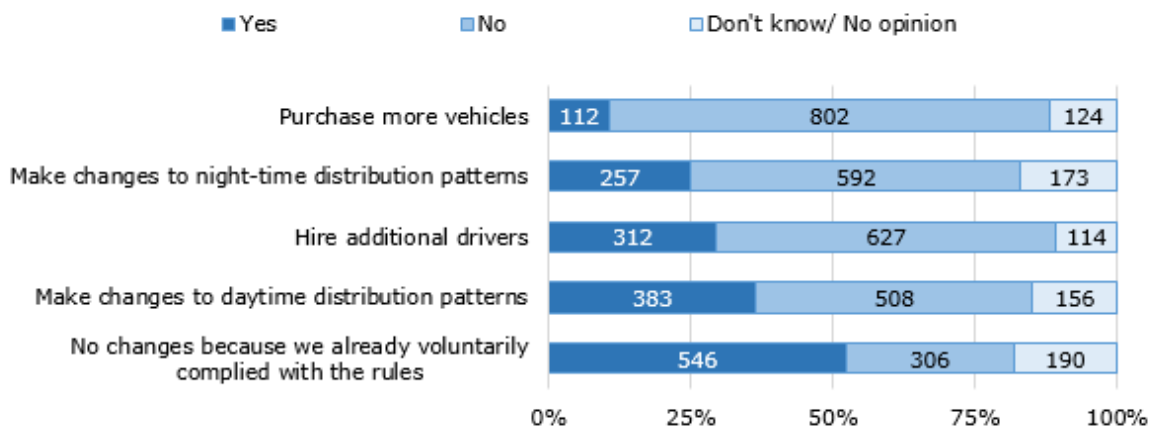
80% of respondents that replied to the relevant question (n=1143) stated that they think that additional **flexibilities** should be introduced in the provisions. This percentage increases to 85% if looking solely at undertakings that are (also) engaged in passenger transport operations, and to 84% if looking solely at undertakings that are (also) engaged in international transport operations.

When asked about whether the provisions allow for enough flexibilities for national authorities for granting **exemptions**, most respondents stated that they did not know or did not have an opinion. Those that did have an opinion on the single times (n=454 on average) mostly stated that these flexibilities for exemptions were insufficient (62% did so concerning pre-defined exemptions; 56% for exemptions in exceptional circumstances and 52% for exemptions in urgent cases).

More than 50% of responding undertakings (n=1198) state that they have never been held **liable** for an infringement that was detected during a roadside check; 35% that they have been sometimes held responsible for such infringements. This repartition varies greatly across Member States though. For example, in Sweden, 70% state they have never been held responsible; in Italy this percentage drops to 35%. Looking at transport undertakings that solely engage in international transport, approximately an equal amount responded that they have either never been held responsible or sometimes. Less than 5% state they have always been held responsible for such infringements.

Figure 13-33 shows undertakings’ responses to the question of what **measures they had to take to maintain their turnover** when Regulation (EC) No 561/2006 came into force. More than 50% of undertakings (and even more so if neglecting those that stated that they did not know or did not have an opinion) stated that they did not take any measures since they already complied with all rules before the Regulation came into force. Around 35% of undertakings said that they had change daytime distribution patterns; around 29% said that additional drivers were hired and 25% said that night-time distribution patterns had to be adapted. Only 11% state that more vehicles had to be purchased. All these latter percentage concerning measures that were taken increase if solely looking at undertakings that are only engaged in international transport operations. This especially concerns the hiring of additional drivers – above 40% of these undertakings state that this measure was necessary.

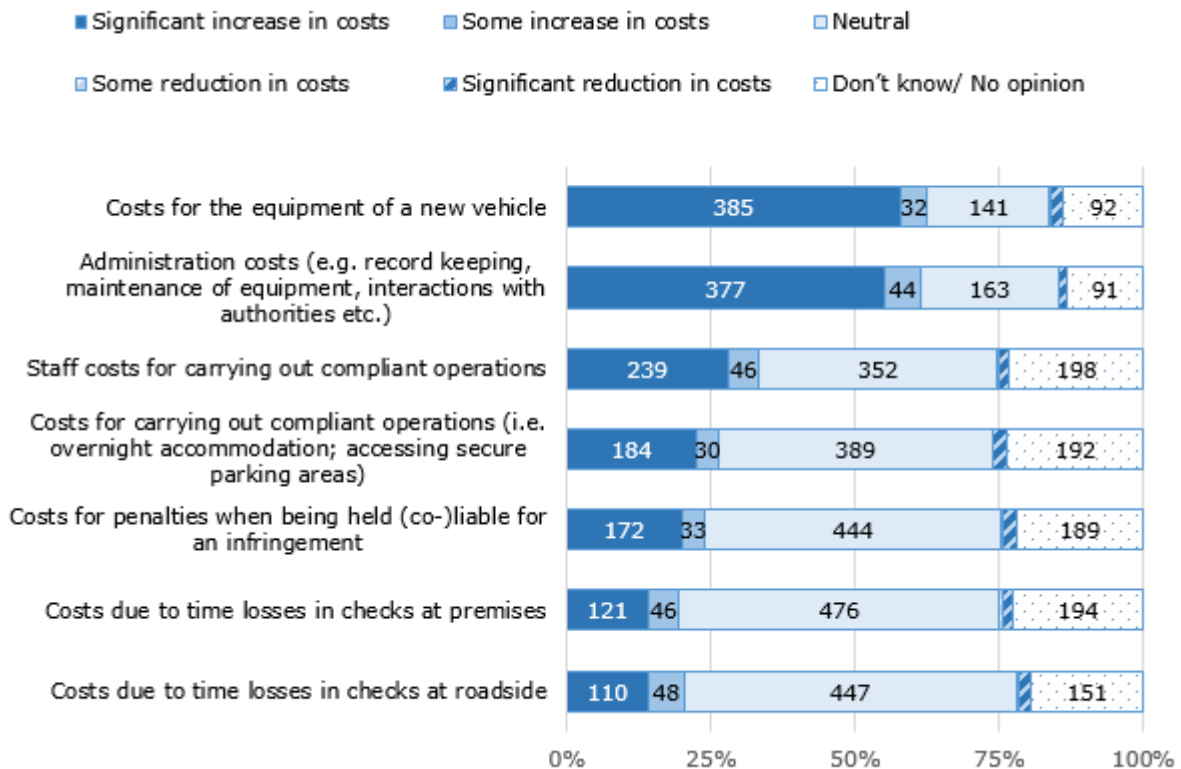
Figure 13-33: Responses to “In order to maintain your level of turnover when Regulation (EC) No 561/2006 came into force, did you need to do any of the following?” (n=1040 on average)



A majority of undertakings (58%) state that the equipment of vehicles as required under Regulation (EC) No 561/2006 has caused significant **cost increases**. This is closely

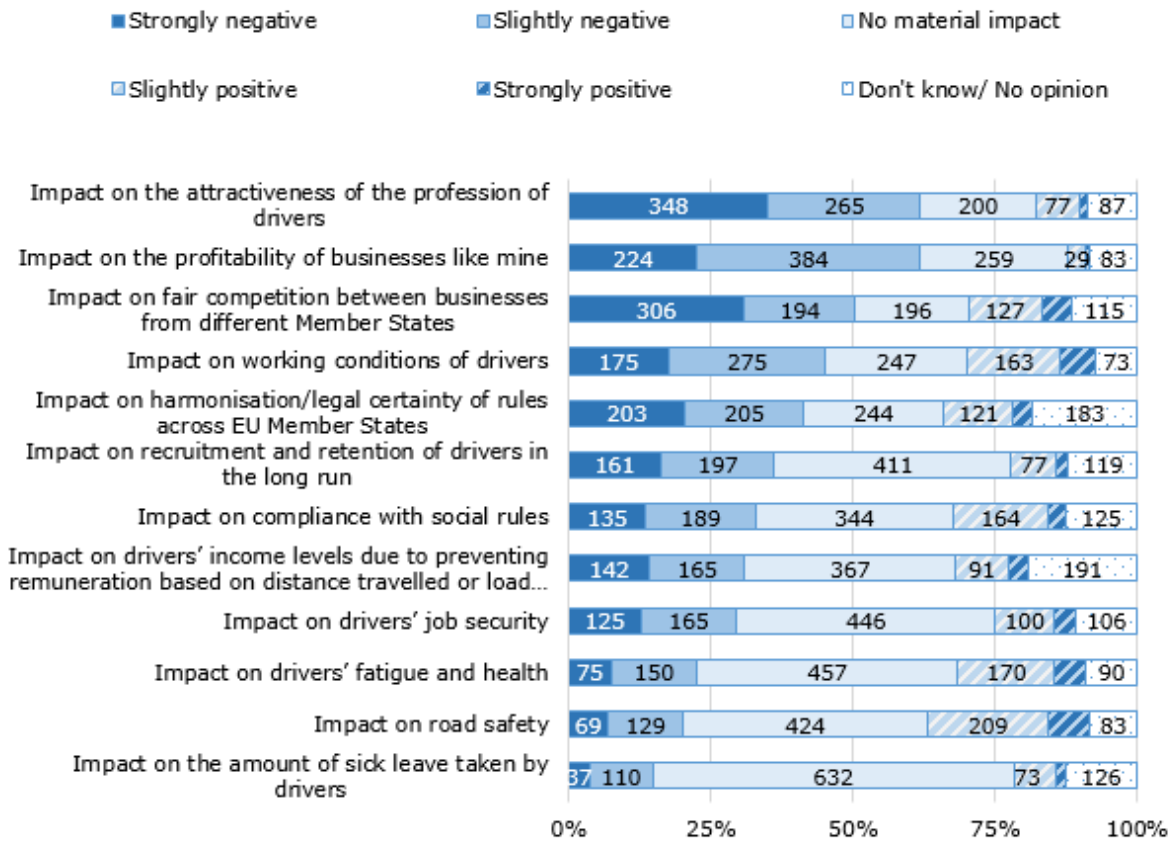
followed by the share of undertakings that state that the Regulation has caused significant administration cost increases (55%). Other cost items were rated by the majority not to have experienced any significant changes. However, only comparatively very few undertakings state that the provisions have caused some or significant **cost reductions**: on average only 2% of undertakings state that any of the listed cost items experienced cost reductions (see Figure 13-34).

Figure 13-34: Responses to question "Has the introduction of Regulation (EC) No 561/2006 had any impact on the following costs of your business?" (n=788 on average)



Concerning the general impact of Regulation (EC) No 561/2006, a majority of respondents (62%) state that the Regulation had strong or slightly **negative impact** on the attractiveness of the profession and on the profitability of businesses like theirs. Also relatively frequently it was expressed that such negative impacts could be observed on competition between businesses of different Member States (51% of respondents), on working conditions of drivers (45%) and harmonisation and legal certainty of the rules across Member States (41%). Far fewer respondents expressed **positive impacts** of the Regulation. Most frequently such (slight or strong) positive impacts were expressed for road safety (28% of respondents), working conditions of drivers (23%), drivers' fatigue and health (22%) and compliance with the social rules (20%) (see Figure 13-35). Looking at the answers obtained from undertakings of EU-13 Member States, impacts of the Regulation were rated to be comparatively more positive. Many impacts of the list shown in Figure 13-35 are rated by around 50% of the total number of responding undertakings from EU-13 (12 undertakings on average) have been rated to have been (slightly or strongly) positive. This concerns the impacts on working conditions of drivers, on harmonisation/legal certainty of the rules across Member States, on job security of drivers, and on drivers' fatigue and health.

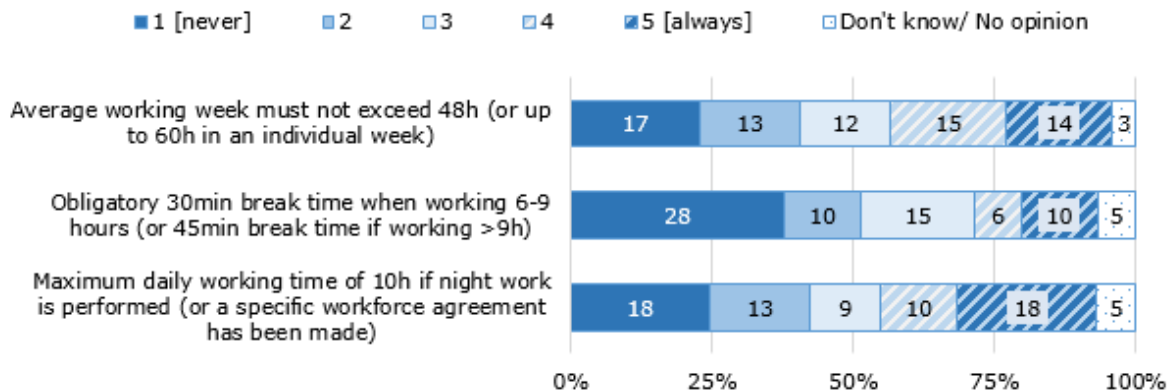
Figure 13-35: Responses to question “What has been the impact of Regulation (EC) No 561/2006 on the following items?” (n=989 on average)



13.4.3 Directive 2002/15/EC

When asked about **compliance difficulties** Working Time Directive (Directive 2002/15/EC) in a typical month (rated at a scale from 1 to 5), responses to single provisions were similar. A majority of respondents stated rated all items in the range from 1-3, meaning that difficulties are encountered either never or sometimes. Around 25% of respondents stated that they encounter such compliance difficulties either often or always (see Figure 13-36). The respective shares do not change significantly if solely looking at undertakings that exclusively carry out international transport operations.

Figure 13-36: Responses to “In your estimation, does complying with the following provisions of the Working Time Directive ever cause difficulties in a typical month (for any reason)?” (n=854 on average)



When asked about reasons for compliance difficulties (on a rating scale of 1-5), on average 702 respondents to the different items of the relevant questions, of which, on average, 564 respondents expressed an opinion. More than 50% of those respondents that expressed an opinion rated the following items to be a **significant or major cause** (rating of 4 or 5) for such difficulties:

- Lack of flexibility in the existing rules (59% of respondents),
- Rules do not fit to the specificities of certain transport operations (58%),
- Traffic or congestion leading to unforeseen delays (57%), and
- Lack of adequate parking and rest areas (51%).

The following items were the items most frequently rated to be **no or a minor cause** (rating of 1 or 2):

- Checks and controls are not frequent enough (at premises (65%), at the roadside (60%)),
- Checks and controls are not effective enough in detecting infringements (at premises (62%), at the roadside (58%)), and
- Penalties are not strong enough (55%).

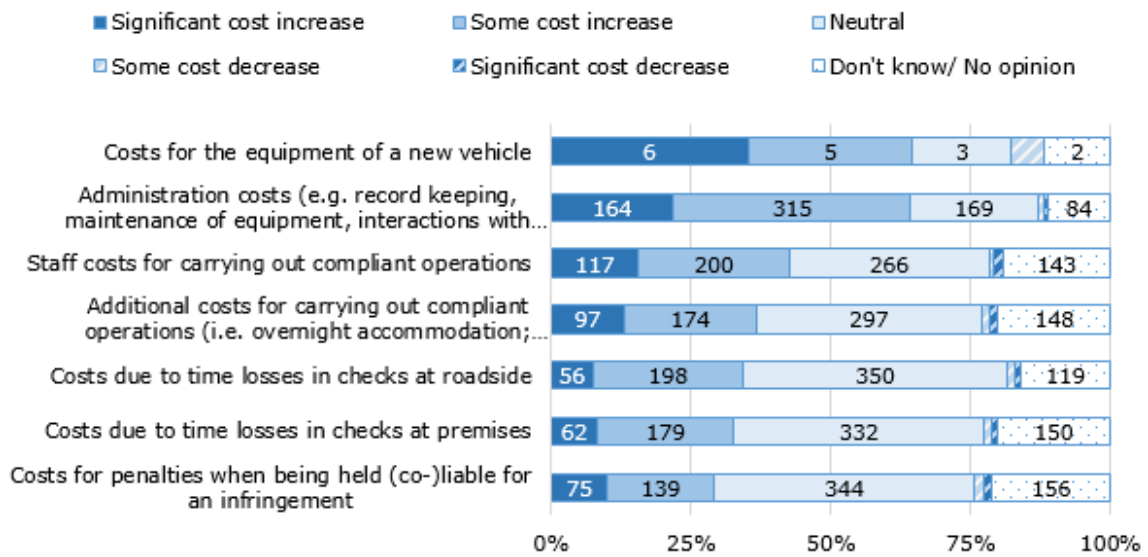
Similar to the respective responses received for Regulation (EC) No 561/2006, those undertakings that engage in international transport operations more frequently also rate different control practices, penalties and interpretations of the rules among Member States to be a significant or major cause for compliance difficulties.

Also the responses received concerning the **measures that had to be implemented to maintain the businesses' profitability** after the coming into force of the Working Time Directive are similar to the ones obtained for the respective question on Regulation (EC) No 561/2006: Around half of the respondents (n=747 on average) state that changes were not necessary because the rules were complied with already before they came into force. Most frequent measures that have taken place were reported to be changes in daytime distribution patterns (which were the case in 35% of responding undertakings). This is followed the measure of hiring more drivers (26%) and making changes in night-time distribution patterns (25%).

64% of respondents (n=696) would introduce additional **flexibilities** in the Working Time Rules. This percentage increases to 73% if solely looking at undertakings that only carry out international transport operations and to 72% if solely looking at undertakings that only carry out passenger transport operations.

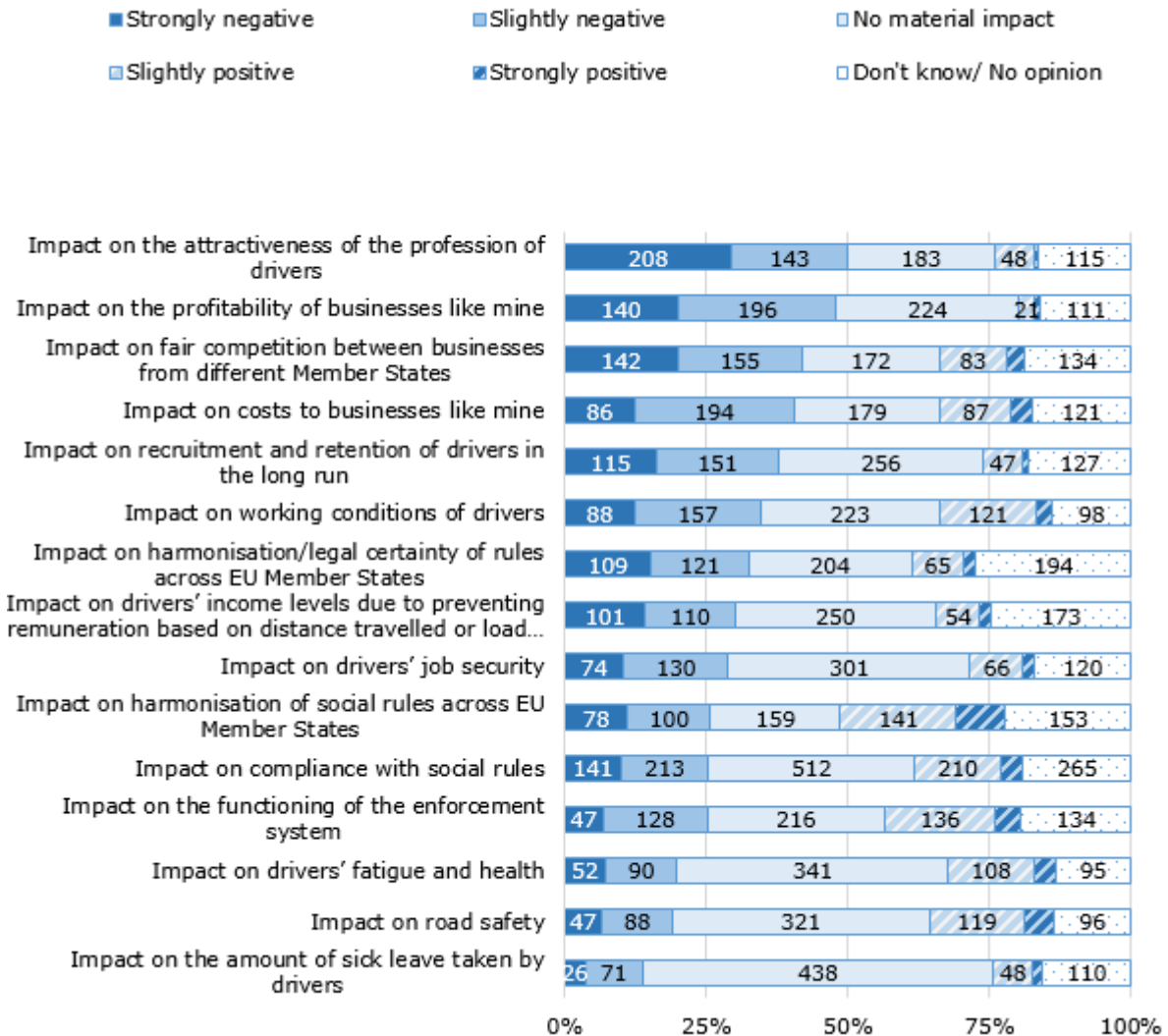
Concerning the observed **impacts on cost items**, also similarly to the responses received for Regulation (EC) No 561/2006, most frequently the costs for equipment of a new vehicle and administration costs were stated to have experienced a significant or some cost increase. Some or significant cost decreases were on average only observed by 3% of the respondents to any of the listed items (see Figure 13-37).

Figure 13-37: Responses to “Has the introduction of Directive 2002/15/EC had any impact on the following costs of your business?” (n=637 on average)



Concerning the general impacts of the Working Time Directive, again, obtained responses were very similar to the ones obtained for Regulation (EC) No 561/2006 (see Figure 13-38). Positive impacts were on average less frequently stated than negative impacts.

Figure 13-38: Responses to “In your opinion, what has been the impact of Directive 2002/15/EC on the following items?” (n=749 on average)



13.4.4 Road social legislation in general

Only around 20% of all respondents that responded to the respective question (n=698 on average) strongly or slight disagree that current road social legislation is adequate in view of **ongoing market developments** (the items specifically stated being changing employment structures, increasing use of advanced technologies and emerging atypical schedules to meet the demands of clients). This percentage increases to around 25% if looking at undertakings that exclusively carry out international transport operations, and to 30% if only looking at answers of undertakings that exclusively carry out passenger transport operations.

35% of respondents strongly or slightly disagree that EU road social legislation has an **added value to national rules**, while less than 20% strongly or slightly agree (n=677). For undertakings solely carrying out international transport operations, the respective percentage concerning those who disagree increases to just above 40%. The same applies to undertakings that solely carry out passenger transport operations. The share of undertakings that disagrees however diminishes to 10% if solely looking at responding undertakings from EU-13 Member States.

13.5 High-level summary of trade union survey

13.5.1 Sample

In total a number of 14 responses were received from Driver Unions across Europe. The distribution of the survey was supported by ETF (European Transport Workers' Federation) who appear to have sent pre-completed questionnaires to their members beforehand. We have received six of such questionnaires where ETF's pre-filled questionnaire was used and, as a result, responses were largely identical (sometimes only a few comments were adjusted/a bit more elaborated). Such equal responses make a meaningful quantitative analysis of results difficult. We will therefore rather focus on the comments provided to open-ended questions and highlight where responses deviate from the pre-filled ETF questionnaire.

Out of all drivers unions that participated, eight represent drivers in both goods and passenger transport. Four drivers unions represent only goods transport drivers, two cover passenger transport only. Next to ETF, one trade union of each of the following Member States responded: Austria, Cyprus, Denmark, Germany, Lithuania, Poland, Romania, Slovenia, Spain and UK. Furthermore also three Italian unions responded.

13.5.2 Regulation on driving times, breaks and rest periods (Regulation (EC) No 561/2006)

13.5.2.1 Suitability of provisions

The drivers unions' representatives were asked to state if they found the **scope** of the Regulation in terms of drivers covered appropriate. Six of the respondents did not answer the question. The rest of the responses was evenly distributed between the available answers: two respondents find the scope of drivers covered very inappropriate, two found it very appropriate, the other responses were in-between these two extremes. The reason for not answering the question that was laid out by ETF was that, in their view, the scope of the Regulation should be extended to *all commercial vehicles*, which would avoid unfair competition. The Regulation would then apply to all "professional drivers" driving such in-scope vehicles. Asking for the "scope of drivers covered" was therefore seen to be inappropriate. Six national drivers associations supported this response. Interestingly, the term "professional drivers" is mentioned in their answer, which suggests that, in their opinion, non-professional drivers should not be covered by the Regulation. We will have to verify this point further, since, in this case, their reasoning concerning the 'invalidity' of this question is not consistent (it specifically asks whether only *professional* or *all* drivers of such vehicles should be covered).

As for the scope of the *vehicles* covered, the majority (9 out of 14) of the respondents stated that the scope was not appropriate at all. This was mainly due to the above stated opinion that all commercial vehicles should be included in the scope of the regulation.

One Italian drivers union did not agree with the scope of drivers and vehicles covered because it is seen to heavily penalise special transport operations (such as frequent stop deliveries, transportation of perishable goods). A Slovenian drivers' union stated that drivers of vehicles with 8+1 passengers (e.g. shuttle transport) should be included (currently it applies to passenger vehicles that are constructed or permanently adapted for carrying *more than nine persons* including the driver).

When asked how suitable the provisions in Regulation (EC) No 561/2006 are to ensure to avoid **drivers' fatigue**, most respondents stated that the provisions were very appropriate. The break time and the daily driving time was rated as very appropriate by 11 representatives, the daily rest by 10 respondents. Also the weekly maximum driving time was found very appropriate by 11 respondents.

Regarding the questions whether there are any **specific industries**, sectors or types of employer for which the rules are not appropriate or difficult to comply with the opinion expressed by several respondents was that the rules should apply to the entire road transport sector. Excluding parts of the sector would lead to more unfair treatment and competition. The Italian drivers' unions highlighted the food sector where some drivers

have difficulties to comply with the driving times. Also the above mentioned special transport operations (frequent stop deliveries, transportation of perishable goods) were stated.

13.5.2.2 Payment regimes

The drivers' unions were asked if there were any loopholes with respect to the provisions on driver payment in Regulation (EC) No 561/2006 and how those could be overcome. One loophole that was mentioned was common tempering with tachograph recordings. It is considered that approach on how to sanction such breaches should be more uniform and that respective penalties should be raised.

Another issue that was mentioned by ETF and supported by six respondents was the fact that the payment per kilometre driven or per delivery (or load) is forbidden *if it represents a threat to road safety*. This formulation is said to lead to enforcement difficulties and abuses in practice, especially by undertakings working with non-resident drivers. It is therefore proposed to clearly forbid payment per km driven and per delivery in the provisions. Furthermore, non-resident drivers are said to be frequently not remunerated for other activities (other work) as defined by Directive 2002/15/EC.

The percentage of drivers that are represented by the participating drivers unions and that receive distance-based or load-based payment is reported to range from 5% for a UK drivers' union to 77% for a Lithuanian union. While in some cases there was stated to be no difference in the respective percentage between resident drivers and non-resident drivers in this respect, the UK drivers' union estimated the share of drivers that they represent and that are paid on a 'per-rate' basis to be 5% for resident drivers and 90% for non-resident drivers. 8 drivers' unions were unable to provide any estimation in this respect. Most of the respondents (7) observed a significant increase in the number of drivers being paid on a distance/load bases since the introduction of Regulation (EC) No 561/2006. Estimations on the extent of such increases were given by three respondents and range from 10-20%.

ETF and the six unions that provided largely the same answers question whether that increase can be linked to Regulation (EC) No 561/2006 and suspects other market developments such as the enlargement of the EU to be the main reason. Other respondents relate the said increases in the number of drivers that are paid on a per-rate basis to the introduction of the Regulation (EC) No 561/2006 (four responses) and to the introduction of the enforcement/penalty system (four responses).

13.5.2.3 Responsibilities of undertakings

With regards to the **satisfaction of drivers with the way their work is organised** and the way they are instructed by employers, the majority of drivers' unions (9) state that the drivers are not satisfied. Three respondents think that their drivers are not entirely satisfied, only one drivers' union (from Cyprus) responded that they were very satisfied, thanks to the provisions of Regulation (EC) No 561/2006. One participant did not answer the question. Reasons for the drivers' dissatisfaction were stated to be:

- Employers that do not follow the obligation to instruct according to Article 10 (DK).
- A general lack of education and organisation from the employers' side (IT).
- Employers that force drivers to break the rules or look for loopholes in the provisions to enhance their profit (LT, SI).
- The way undertakings organise work schedules among non-resident drivers (drivers working outside of their home country) (ETF + 6 national drivers unions).

In general the respondents stated that these problems are not caused by the provisions themselves, but by the lack of controls of undertakings.

Estimates on the shares of **transport operations that are typically NOT planned according to Article 10(2)** by the undertakings range from 20% (PL) to 90% (ES, DK) for national operations and 10% (IT) to 80% (PL) for international operations. The Spanish drivers' union stated that in general undertakings do not plan transport operations sufficiently. It is left to the driver to comply with the provisions.

Estimates on the **number of undertakings that regularly check their drivers** for compliance with Regulation (EC) No 561/2006 in the unions' respective Member State (rated on a scale from 1 to 5) were varied. None of the respondents stated that that none of the undertakings checked their drivers; four respondents stated that almost all undertakings do so; one Italian union stated that they all do so.

Five respondents did not answer the question stating it to be inappropriate since undertakings are not only required to check their drivers' compliance but to also ensure that drivers are trained to make correct use of recording equipment and to download and store the registered data.

13.5.2.4 Co-liability

Out of the six respondents that answered the question on whether the requirement of co-liability in Regulation (EC) No 561/2006 is respected/executed, three respondents stated that it is respected and executed, three respondents said that this was not the case. The Slovenian drivers' union stated that currently the driver is liable for all infringements discovered at a roadside check irrespective of whether the infringements were committed by the driver's choice or by employer's instructions.

ETF and all unions that followed the common response considered that this question was inadequate given that Article 10.3 of Regulation (EC) No 561/2006 states that "A transport undertaking shall be liable for infringements committed by drivers of the undertaking [...]". It was acknowledged though that in practice drivers may still occasionally be held responsible. Further questions on co-liability were not completed.

If an infringement of Regulation 561 is detected at a roadside check and a fine is detected four out of seven respondents state that the fine does not have to be paid immediately to avoid immobilisation if the driver is a resident in the Member State where the check is carried out. Three responses state that it has to be paid immediately, one response says that it depends. For non-resident drivers the situation is different. In five cases the fine is said to have to be paid immediately; only one respondent states that it does not have to be paid right away; one respondent states that this depends on the circumstances.

13.5.2.5 Enforcement

The respondents were asked to state the main **factors that could make compliance** with Regulation (EC) No 561/2006 **difficult**. Factors that were rated as a major cause by most of the respondents were "Strong competition in the market that puts pressure on companies to break the rules" (11 out of 14), "Traffic or congestion leading to unforeseen delays that are not adequately accounted for in the organisation of driving and rest times" (11 out of 14) and "Controls are not frequent enough" (11 out of 14). On the other hand the following factors were considered not a cause at all by a high number of respondents: "Lack of clarity / coherence in existing rules and guidelines" (8 out of 14), "Lack of flexibility in the existing rules" (10 out of 14) and "Rules do not fit to the specificities of certain transport operations" (10 out of 14). The responses were most diverse for "Penalties are not strong/dissuasive/effective enough" (8 respondents consider it not a cause, 4 consider it a major cause) and "Lack of awareness/understanding of the rules among transport undertakings" (6 respondents consider it not a cause at all, 2 respondents consider it a major cause, the rest of the respondents is distributed between the other 3 options).

When asked to comment on the **appropriateness of the penalties** for violating Regulation (EC) No 561/2006 only roughly half of the participants responded. With regards of the penalties being dissuasive the most selected answer was "Strongly disagree" (4 out of 8), followed by "Slightly agree" (3 out of 8) and "Neutral" (1 out of 8). When asked if the penalties are proportionate the responses were more varied (3 out of 9 "Slightly agree", 2 out of 9 "Strongly agree" and "Slightly disagree", 1 out of 9 "Neutral" and "Strongly disagree"). Most of the respondents (5 out of 7) strongly agreed that the penalties are non-discriminatory, 1 respondent chose "Slightly agree", 1 selected "Strongly disagree".

The **opinions on how well the enforcement of the Regulation works** were very diverse. All options were selected by one or two respondents. One of the Italian drivers'

unions said that the enforcement was not effective at all, a Danish drivers union stated that the enforcement was highly effective.

Improvements to the enforcement system of Regulation 531/2006 that were suggested are the following:

- More controls including fiscal controls
- Increased penalties for undertakings
- The use of digital tachograph only for faster checking procedures and data access
- Harmonised implementation of the enforcement across all Member States with the European Commission acting as guarantor
- Provision of access to real time data for enforcers
- Use of new technological innovations to complement human enforcement capacity

ETF further pointed to Article 8 of Regulation (EC) No 561/2006 that only allows daily and reduced weekly rest periods to be taken in the vehicle, and only with the driver's consent. The normal and the compensatory weekly rest periods must not be taken in the vehicle under any circumstance. ETF sees the enforcement of this article in this interpretation as key to meeting the objectives of the road social legislation.

13.5.3 Working Time Directive for mobile workers (Directive 2002/15/EC)

13.5.3.1 Suitability of provisions

Concerning the **scope** of Directive 2002/15/EC with regards to drivers, respondents leaned towards "not appropriate". More so did when asked about the scope with regards to vehicles. One positive development that was mentioned is that the scope of the Directive was extended to self-employed drivers. The Danish drivers' union expressed the opinion that all vehicles used for commercial driving should be covered by the Directive.

The rules that set **maximum weekly working hours, obligatory breaks and their durations, and maximum daily working hours if night work is performed** were considered suitable by most of the respondents (9, 10 and 10 out of the 14 respondents found the respective provisions appropriate).

As for Regulation (EC) No 561/2006, one Italian union respondent suggested to enlarge the scope of the Directive to drivers of passenger vehicles with a total capacity of nine persons that are used for the commercial transport services (e.g. shuttle transport services).

One respondent expressed the opinion that there should not be different Directives for mobile and other workers, but that such requirements such be harmonised and comprised in one single Working Time Directive.

13.5.3.2 Co-liability

Six out of seven respondents state that for the purpose of legal certainty, they would consider it to be useful to include a co-liability clause in Directive 2002/15/EC that clearly defines the liable party in case of infringements.

13.5.3.3 Enforcement

The respondents were asked to state the main **factors that make compliance with Directive 2002/15/EC difficult**. Factors that were rated as a major cause by most of the respondents were:

- "Strong competition in the market that puts pressure on companies to break the rules" (11 out of 14),
- "Inadequate organisation of driving and rest times by transport undertakings" (11 out of 14)

- “Traffic or congestion leading to unforeseen delays that are not adequately accounted for in the working time organisation” (11 out of 14)
- “Unsuitable payment regimes (i.e. based on distance travelled or loads carried)” (10 out of 14)
- “Controls are not frequent enough” (10 out of 14).
- “Penalties are not strong/dissuasive/effective enough” (10 out of 14)

“Lack of flexibility in the existing rules” and “Rules do not fit to the specificities of certain transport operations” on the other hand were considered not a cause at all by a high number of respondents (9 out of 14).

The opinions on whether current **penalties** for violating Directive 2002/15/EC in the respective Member State are dissuasive were diverse. Four out of ten respondents that responded to this question strongly disagreed; three slightly agreed. Almost the same results were received for the question on whether the current penalties for violating Directive 2002/15/EC are proportionate.

Overall the enforcement of Directive 2002/15/EC is not perceived as very effective to ensure a high level of compliance with the rules.

Suggestions for improvements of Directive 2002/15/EC that are mentioned are:

- More and more frequent checks , especially of ‘high-risk’ employers
- Stronger penalties
- Increase of the scope of the Directive
- Clearer definitions of work and rest time
- Recording of loading/unloading activities via an on-board motion sensor interconnected with the digital tachograph
- Definition of a standard period of time of X days for ‘other activities’ defined by Article 3 (a) 1; the total time spent on driving, loading/unloading and the fix period of time allocated to other tasks would have to stay within the required working time limits.
- Better cooperation and communication between the different responsible enforcement authorities.

13.5.4 Social legislation in road transport in general

13.5.4.1 Recording requirements

Most of the respondents (12 out of 13) do not consider recording to be burdensome for drivers. To make time recordings less burdensome, it was suggested that all equipment should be digital and furthermore connected to a GPS system. ETF furthermore highlighted that recording activities cannot be considered as administrative burden as they are an insignificant fraction of the driver’s tasks while they are key to proving compliance the rules. They hence consider it to be disproportionate to aim at evaluating the cost-effectiveness and potential burden of these activities. Hence, several subsequent questions on recording requirements were not completed by ETF and 5 national drivers’ unions.

Estimates for **time spent for recording activities** per day with an analogue tachograph ranged between 1 and 30 minutes. For the digital tachograph the estimates were between 1 and 45 minutes. Most of the respondents (5 out of 9) experienced a slight increase in the time drivers spend on time-recording and administration since the introduction of Regulation (EC) No 561/2006. One respondent pointed out that this increase was only observed when the respective legislation was introduced (however, the time needs stayed stable since then).

Overall, most respondents consider **retrospective recording of activities** when the driver is away from the vehicle necessary (12 out of 13). Two out of six respondents find this recording burdensome; four do not find it is burdensome.

13.5.4.2 General impacts

Positive impacts of the social legislation in general that were highlighted by a majority of respondents were "Impact on drivers' fatigue, health and safety" (9 out of 14), "Impact on road safety" (9 out of 14) and "Impact on drivers' job security" (9 out of 14). Particularly negative impacts were not highlighted.

The current road social legislation in general was rated adequate in view of ongoing/future market developments, such as changing employment structures, increasing use of advanced technologies, and emerging atypical operational schedules to meet demands of clients. ETF specifically highlighted that the rules safeguard the driver's social conditions and road safety in the context of increased competition, increasing low-wage pressure, shorter delivery schedules, and denser and increasingly difficult traffic conditions.

When asked about the **major concerns** of international drivers, the following items raised were:

- Heavy traffic resulting in delays,
- Bureaucracy,
- Overhead costs,
- Insufficient number of secured parking areas,
- Vehicle and cargo security,
- Fatigue (said to be mainly related to undertakings that fail to plan driver's work in line with the rules),
- Long periods spent away from home (particularly in the case of non-resident drivers).

Four out of seven respondents said that it is difficult for drivers in international transport to **reconcile work and family life** (the other three respondents, labour unions from Italy and Lithuania, said that this was not difficult). Six out of eight respondents that had an opinion on whether lengths of **periods away from home** for international drivers have changed in the last ten years, stated that these lengths have either 'increased' or 'significantly increased'. Reasons for this increase listed were: "Low salaries led by high unemployment", "Lack of clear regulation", "Lack of effective enforcement of Article 8.8 of Regulation (EC) No 561/2006" and "Lack of effective cross-border enforcement". ETF raised that non-resident drivers – the group who is primarily concerned – are not remunerated according to the legal requirements of most of the Member States.

Regarding the type of **employment arrangements**, most respondents report that the share of long-term contracts has decreased over the last 10 years, while short-term contracts and employments via agencies have increased. The only exception is Cyprus, where the responding union stated that long-term contracts have increased (the share was estimated to have increased from 30% to 70% of drivers over the past 10 years), while the share of short term contracts decreased from 40% to 20%. The share of sub-contracting developed differently in Member States. An increase was observed in Lithuania, Germany and Italy. A decrease and stagnation was stated by driver unions in Cyprus and the UK respectively.

The respondents unanimously agree that the general EU social rules in transport should be complemented by additional or more detailed national level rules.

Other positive effects of road social legislation that were not mentioned in the questionnaire were stated to be that the provisions contributed to the status of the driver profession and the drivers' ability to defend their rights.

Other negative effects that were reported were the increased stress of drivers, which were however not directly related to the legislation, but rather to unlawful practices such as the pay per kilometre driven, the rest taken in the vehicle and the prolonged periods spent away from home. **Proposed actions to reduce these negative impacts** were to adjust specific provisions, such as to completely forbid the pay per kilometre driven or per delivery, to require drivers to regularly return to their home and to enforce Article 8(8)

(referring to the allowed place of resting periods) Furthermore, it is suggested that high-risk employers should be check more frequently.

13.6 High level summary of general survey

13.6.1 Sample

The high level survey was designed for stakeholders that are not captured specifically in any of the targeted surveys and was mainly sent to organisations representing the transport industry or (other) EU-level associations that represent the different types of stakeholders at EU-level. Despite the targeted send-out of the questionnaire, also three national trade unions and one large transport company (for which targeted questionnaires would have been available) completed this survey – they are here classified under 'other'. In total, 64 organisations completed the general survey. Most of the respondents were industry representative bodies. A full overview of the affiliation of the respondents is shown in Table 13-4.

Table 13-4: Affiliation of the respondents of the general survey

Type of organisation	#
Industry representative body	50
NGO	4
Individual Expert	3
Trade Unions	3
Other	9
Total	64 (69)*

*The total number of responses adds to 69 instead to 64 (the actual number of responses) since some respondents gave multiple responses when asked about the type of organisation that they represent

The survey covered a range of high level questions on the compliance, the impact and the appreciation of social rules. Responses were received on the international as well as the national and regional level. Due to the diversity of stakeholder types in the respondent pool and the fact that a number of associations of transport operators submitted coordinated responses a detailed numerical analysis of the respondents is not appropriate. The analysis of the results will therefore focus on general trends in the answers and the qualitative responses. Given the high number of industry associations that responded, these general trends can be mainly assumed to reflect the opinion of industry.

13.6.2 Compliance with the social rules in road transport

13.6.2.1 Rating of current compliance

The respondents were asked to rate the compliance with social rules for both Regulation (EC) No 561/2006 and Directive 2002/15/EC on a scale from 1 [compliance levels are very poor] to 5 [compliance levels are very good]. For Regulation (EC) No 561/2006 more people (87%) rated the compliance as good instead of bad. None of the respondents rated the compliance levels as very poor. The compliance of the Working Time Directive was ranked slightly less favourably (77%) but still as good overall.

When asked to comment on their answers most of the respondents stated that an increase in compliance with social rules due to Regulation (EC) No 561/2006 and Directive 2002/15/EC could be observed. A number of the respondents here referred to the increase of compliance as documented in the Commission's biennial implementation reports. The general opinion is that the legislation is stringent enough and the focus should rather lie on better enforcement rather than making the rules stricter. A number of respondents were suggesting that the legislation should be more flexible regarding the definition of driving times and rest periods and especially regarding specific sectors (e.g. tourism). It was further mentioned that in some cases the text leaves too much room for different

interpretation which is why clarifications should be provided or guidance for drivers on how to interpret the requirements.

13.6.2.2 Reasons for poor compliance

The survey participants were then asked to further specify the factors that cause poor compliance with the social legislation in general. The factors that were perceived as a major cause by a high number of respondents were "Strong competition in the market that puts pressure on companies and drivers to break the rules" and "Lack of adequate parking and rest areas". In particular the safety and security of parking and rest areas is questioned. This is especially important for the transport of high value, flammable or explosive products. It was highlighted that the current provisions best fit the needs of long distance hauliers; other sectors (e.g. construction site hauliers, coach drivers) that have different travel patterns (e.g. short distances, stop-and-go transport operations) or special needs struggle with complying with the road social provisions. Another factor mentioned is delays due to the waiting times at (un)loading points: customers are often not aware of the implications their behaviour (i.e. delays, loading and administration works at ramps) has on the driver or undertaking.

When asked about factors that cause poor compliance with the Working Time Directive specifically, the lack of flexibility in the existing rules and the differing control practices among Member States are stated by a high number of respondents as a major cause. On the other hand, more than a third of the respondents thinks that the frequency of checks is sufficient and the amount of checks and controls is not a factor that causes poor compliance.

With regards to Regulation (EC) No 561/2006 the picture is quite similar. Differences compared to the Working Time Directive could be observed for the item "lack of clarity/coherence in existing rules and guidelines": Regulation (EC) No 561/2006 was stated to be less clear/coherent. The lack of flexibility in the existing rules is again clearly stated as a major cause for poor compliance. The responses suggest that differing control practices among Member States are perceived as a more significant problem for Regulation (EC) No 561/2006 than for the Working Time Directive.

The differing enforcement practices are highlighted by a number of respondents. To overcome the issue one transport operators' body suggested the use of modern IT tools (e.g. a functional ERRU) to ensure consistent enforcement across the EU. To support such consistent enforcement, the use of risk rating systems should be promoted. Another suggestion to ensure better compliance is to revert more consistently to the principle of shared liability of different parties in the transport chain, which is currently not sufficiently implemented in practice.

13.6.2.3 Measures to increase compliance rates

The respondents were asked to state which measures could be taken to increase compliance rates with road social legislation. One general issue that was mentioned by a wide range of stakeholders was again the lack of flexibility of the current legislation. Especially the provisions on driving times and rest periods need to be more flexible for particular situations such as traffic congestion, return runs to the company headquarter, delays at ports and logistic centres. A specific issue here is that clients often generate requests to the transport company, which can only be satisfied if the driver does not comply with the rules. Long-distance drivers furthermore should have the possibility to postpone their weekly rest to after six 24-hour periods, which would more frequently allow them to spend their weekly rest with their families. The current provisions in this respect are more stringent and are said to lead to experienced drivers leaving the profession. A further suggestion for improvement is that long ferry journeys should count as weekly rest.

The current situation is perceived as being designed for the goods transport sector, passenger transport is not sufficiently covered. Due to the different schedules of passenger transport stakeholders state that more flexibility in the existing rules is needed. It was further highlighted that before changing the provisions, all effects need to be anticipated. As such, for example the provisions on driving times and rest periods have to be aligned

with the actual provision of infrastructure, i.e. with the availability of safe and secure parking areas.

It was criticised that profound problems in the sector are only fixed superficially by solutions such as the minimum wages or the prohibition to rest in the cabin in France and Belgium. These national provisions are perceived as being discriminatory for non-resident hauliers.

Several issues regarding enforcement were raised. In particular the fragmentation into country- and regional-specific enforcement systems/practices is seen to undermine the regulatory framework, fair competition and road safety, and is said to impose inappropriate costs on operators. Current ambiguities in the rules need to be eliminated and national enforcement authorities should be better trained on social rules to identify breaches in a consistent way across the EU. Also the classification of infringements into minor and (very) serious infringements should be coherent across the Union.

In order to insure that drivers and undertakings which carry out international transport are always well informed, the European Commission should ensure the transparency of national provisions governing the road transport sectors. One suggested way to do so is to publish all relevant national provisions and related sanctions in case of non-compliance on the EC's website in the European official languages.

With regards to Directive 2002/15/EC the general consensus is that there needs to be a clarification of the status of self-employed drivers. Several stakeholders propose that genuine self-employed drivers should be excluded at EU level, but that it should be possible for Member States to introduce national rules to include them. To simplify the rules it was suggested to integrate the requirements covered in Article 5 of the Directive into Regulation (EC) No 561/2006 and consequently repeal Directive 2002/15/EC.

It was stated by a number of respondents that Regulation (EC) No 561/2006 is not clear enough and leaves room for different interpretation, implementation and enforcement. A clarification of the Regulation is said to be necessary to ensure a harmonisation in detecting violations and would increase compliance.

A suggestion made to increase compliance with Directive 2006/22/EC brought forward by several respondents is to increase the number of checks at the premises as those are seen to be more effective in identifying structural non-compliance. Road side checks should focus on safety issues. Also a common approach on which provisions are checked at the roadside and which ones are checked at the premises should be developed. Regarding passenger transport, it was expressed that roadside checks should be regulated in such a way that they cause minimal disruption to passengers. This could, for example, be achieved by setting maximum durations of controls, and/or by organising checks predominately at terminals and stops. Further improvements could be made by ensuring that Member States introduce risk rating systems and connect to the ERRU, and by defining a list of serious infringements that risk to cause fatalities or serious injuries.

13.6.3 Guidance

The general opinion on whether the available guidance on the interpretation of the social rules is sufficient to ensure common understanding of the rules is that there is a need for improvement. The majority of the respondents disagree with the statement that the current guidance and clarification notes by the Committee on Road Transport are sufficient. As for guidance provided at the national level, the picture is similar. While there are slightly more respondents that find the guidance on the national level sufficient, the majority of respondents state that they disagree.

The major concerns are discussed in the following. While the guidance and clarification notes by the Committee are seen as a helpful tool, the fact that it is not mandatory is seen to limit its usefulness. National and regional guidance documents often interpret the EU provisions differently which leads to variances in the implementation of the rules across Member States. To limit the room for interpretation the regulation should be more precise and the guidance should become binding.

Further examples of areas which require more guidance according to the respondents are:

- Weekly rest provisions: clarification is required on whether regular weekly rest is allowed to be taken in the cabin of the truck.
- out-of-scope driving: Stakeholders state that Member States' interpretations of when driving can be considered to be out of scope of the Regulation are diverse across the Member States and furthermore that national changes in interpretation sometimes change without the industry being informed.

13.6.4 Impact of social rules in road transport

In the next section of the survey the impact of the social rules in road transport were investigated in more detail. The respondents were asked to rate whether the EU road social legislation had a negative or a positive impact on a set of 12 items. Positive impacts were observed on compliance with social rules, working conditions, road safety, drivers' fatigue and health. Areas where a negative impact was observed were the recruitment and retention of drivers in the long run and the attractiveness of the profession of drivers. No material impact was the most popular choice for the amount of sick leave taken by drivers, drivers' job security and drivers' income level due to preventing remuneration based on distance travelled and load carried.

The respondents were asked if they had experienced any unintended or unexpected positive effects of the EU road transport social legislation. The obligation for all new vehicles put into service to be fitted with a **digital tachograph** has minimised the possibility of errors. In general, it is said that improvement in the regulatory compliance was observed which is reflected in better road safety records. It was however also highlighted that expected improvements in road safety and security did not materialise.

The number of comments on the negative effects of the social legislation was significantly higher. One impact that was observed by a number of respondents was the increased stress for drivers. This is said to be caused by a range of factors such as the legal uncertainty, the lack of flexibility, high fines and loss of income as the severe rules lead to less working hours for drivers. An additional stress factor for drivers in international transport is the fact that due to the current provisions they often have to take their weekend breaks in other Member States and not at home, which decreases the attractiveness of the profession makes it more difficult to attract new and retain experienced drivers. A further negative trend that was highlighted is the shift to the use of light duty vehicles in order to stay out of scope of Regulation (EC) No 561/2006. This is stated to result in a higher number of vehicles on the road and increased CO2 emissions. An issue related to passenger transport is that due to the rigid and inflexible social rules the needs of passenger groups concerning flexible time schedules cannot be satisfied.

When asked about loopholes with respect to the social rules the main issue that was raised was that the provisions leave too much room for interpretation. The rules were furthermore stated to give national authorities room for applying control procedures which do not necessarily serve the purpose of social protection and increased road safety.

13.6.5 Appreciation of the social rules in road transport and outlook

In the final section the survey explored the adequacy of the current road social legislation regarding ongoing or future market developments. A high number of respondents agrees that the current legislation goes in line with the increasing use of advanced technologies (e.g. digital tachographs, GPS systems). For changing employment structures (e.g. such as reported increases in short-term/temporary contracts, in work organised via agencies) positive and negative responses were obtained. As for the emerging atypical operational schedules to meet demands of clients, the current legislation is perceived as less adequate.

Other market developments that are according to respondents of relevance in relation to the road social rules are connected to flexibility. Flexibility that is said to be especially required in passenger transport can currently only be met through increased staffing given the road social legislation. Also delays caused, for example, by customer demands, bad weather conditions, unforeseen strikes etc. are difficult to accommodate given the current provisions.

Most of the respondents (60%) agree that the EU social rules have an added value to national level rules. The general consensus is that in order to create uniformity EU level legislation is necessary and an EU harmonized social legislative framework is perceived as highly important.

The final comments regarding the survey mainly involved stressing the fact that an appropriate, effective and coherent balance is needed between EU and national measures to avoid that Member States take actions that undermine the harmonisation of the market. Especially in international transport administrative barriers need to be avoided.

Further aspects that were raised by individual stakeholders were:

- the importance of an EU level minimum salary in transport to avoid competence of companies established in a different country only for economic reasons,
- the need for a differentiation in the legislation between goods and passenger transport,
- that vehicles under 3.5t should not be brought under the scope of Regulation (EC) No 561/2006 and Directive 2002/15/EC because the main activity of the drivers of these vehicles does not constitute driving but delivering in city centres,
- the need to improve the resting time situation for drivers: drivers should be required to take rest in specified intervals in their familiar environment,
- that Directive 2002/15/EC is perceived as unnecessary legislation as it cannot be controlled in practice.

14 ANNEX F: CASE STUDIES

The case study investigations were carried out in order to conduct more in-depth analysis of specific situations, which would not be possible for all Member States. The analysis was conducted for nine Member States, as follows:

1. Belgium;
2. France;
3. Germany;
4. Italy;
5. Poland;
6. Romania
7. Sweden
8. Spain; and
9. UK.

The collected information (via desk research, questionnaires and interviews) is provided in the same structure for all case study countries (by piece of reviewed legislation). The first section furthermore provides information on the overall transport market and working conditions of drivers in the respective country. While significant effort has been undertaken to provide the same level of detail for all Member States, data availability did not allow to do so in all aspects.

Direct comparisons of specific aspects covered in case studies are, where relevant, provided in the main part of the report and are therefore not repeated here. Where possible, these direct comparisons were not only limited to case study countries. For example, the section on Implementation (Section 0) provides direct comparisons of the use of derogations, the implementation of risk rating systems or penalty systems for the different pieces of legislation. Also Section 6 that gives the responses for all evaluation questions provides direct comparisons of case study findings where these were relevant for the analysis (complemented with the information from other Member States where possible).

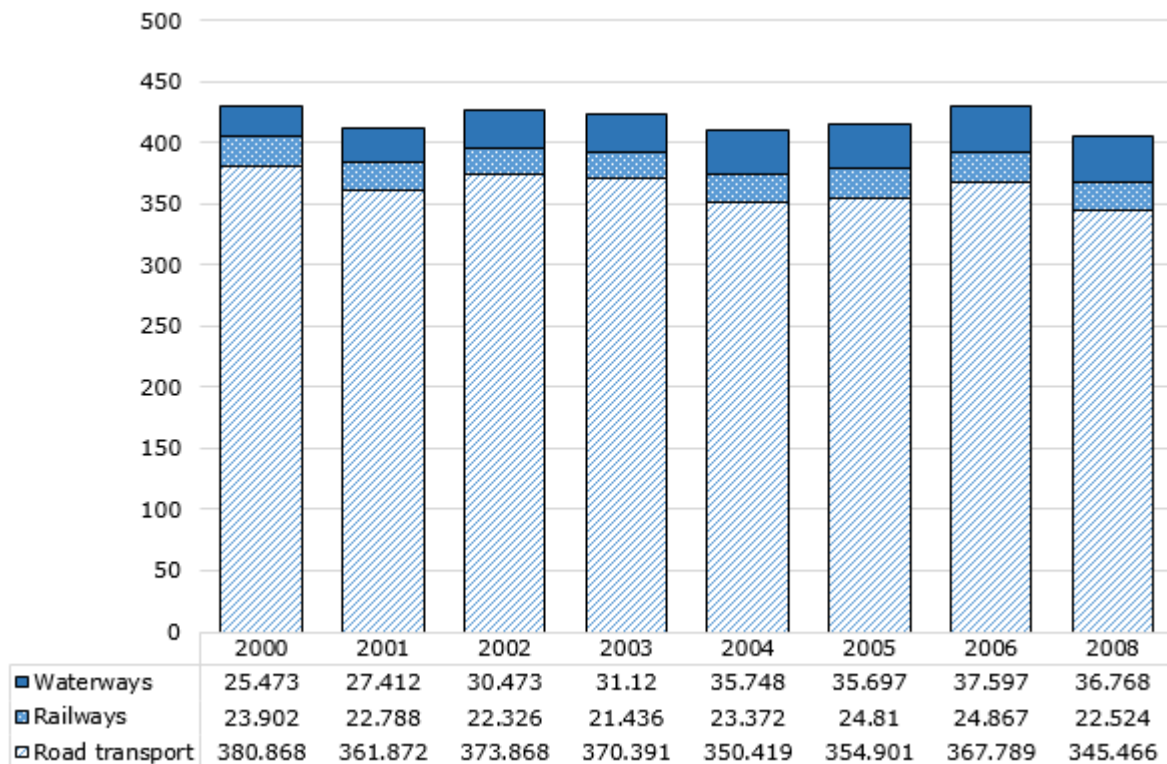
14.1 Belgium

14.1.1 Market situation and developments

14.1.1.1 Market Overview

Transport by road is the dominant type of transport in Belgium with 76% of freight transport carried out by road, 14% by waterways and 10% by railways in 2010 (FPS Mobility and Transport, 2015). The distribution of freight transport has been stable in the past decade (Figure 14-1). In the future, road transport is expected to remain the dominant means of transport for both passenger and freight transport operations, with only a minor relative decline of its share of the overall transport market forecasted towards 2030 (Strale, 2011; BFP, 2012). By 2030, it is foreseen that 71% of total tonnes-kilometres will be carried by road and 80% of passengers-kilometres. (BFP, 2012).

Figure 14-1 National freight transport per means of transport (in million t)



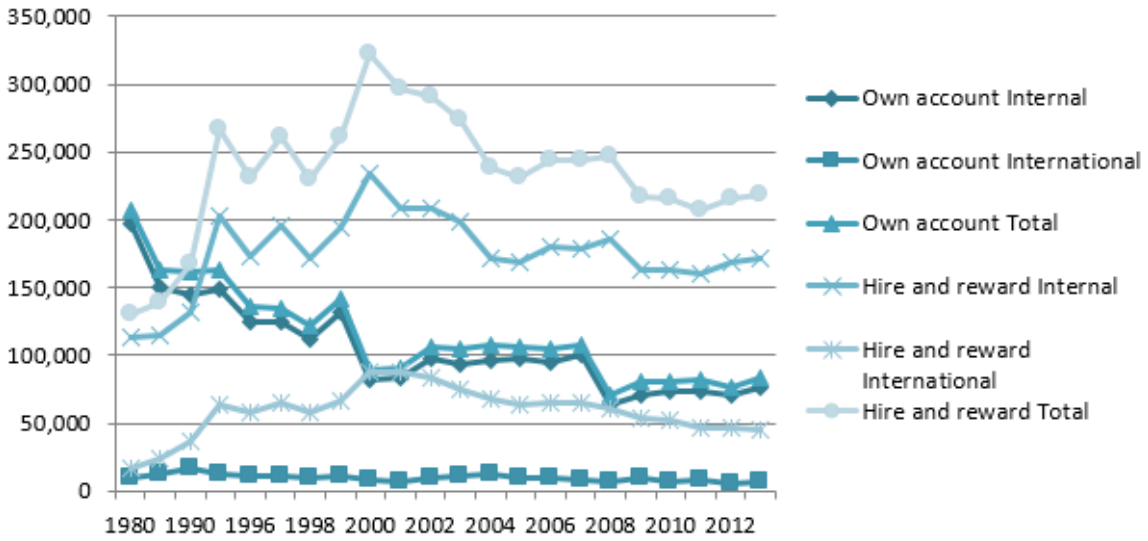
Source: BFP (2015)

While the amount of goods transported by road declined between 2000 and 2005, an increase was observed from 2005 to 2006, before the financial and economic crisis finally led to a marked decrease in the amount of goods transported by road (

Figure 14-2). International transport was much less affected by the crisis than internal transport (

Figure 14-2). Overall, the period 2000-2010 had a weaker average annual growth with regards to the production (-0.1%), the exports (2.1%), imports (2.2%) of goods compared to the previous decade that had an average annual growth of respectively 2.7%, 5.1% and 4.8% (BFP, 2012). In 2013, the transport volume (t) is still down by 14% compared to its status in 2007, and the transport performance (tkm) down by 22% (FPS of Economy, 2015). Decrease in activity has been perceived in all types of Belgian freight transport: national and international transport operations, own account and hire and reward transport operations.

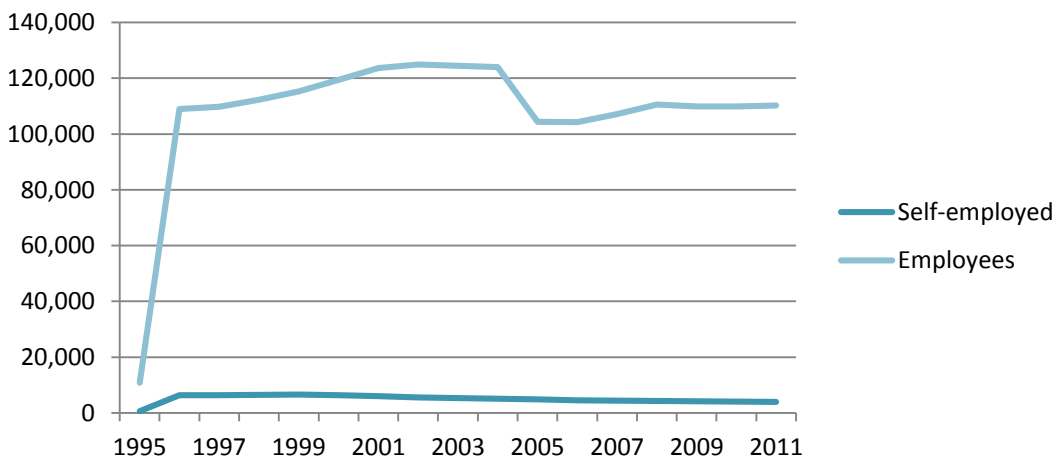
Figure 14-2 Road freight transport by Belgian HGVs from 1980 to 2013 (by transported goods in 1000t)



According to Eurostat data, after a peak in 2007-2008, the passenger transport sector has also dropped from 20,370 million passenger kilometres in 2008 to 17,260 million passenger kilometres in 2010, displaying a decrease of over 15% within this 2-year period.

On January 2013, 8,522 companies had a community or national license for transport of goods, with a total fleet of 59,505 vehicles. Regarding passenger transport, 387 licensed companies had 2,840 vehicles in January 2013, compared to 426 companies and 2,739 vehicles in 2009 (FPS Mobility and Transport, 2014)²⁴⁰. The number of road transport companies has decreased by 4% in the period from 1998 to 2007. Similarly the number of workers in the road transport sector has slightly decreased since the year 2000, reaching a total of 114,123 workers in 2011 (BFP, 2015). Regarding the status of workers, 5% of the workers were self-employed on average between 1995 and 2011 (Figure 14-3). Interviewed transport company and representatives of the transport industry highlighted that Belgium has addressed the question of “fake independents” by adopting a presumption of subordination (and therefore of employment contract) whenever a driver is not owner of the driven vehicle.

Figure 14-3 Number of workers in the road transport sector

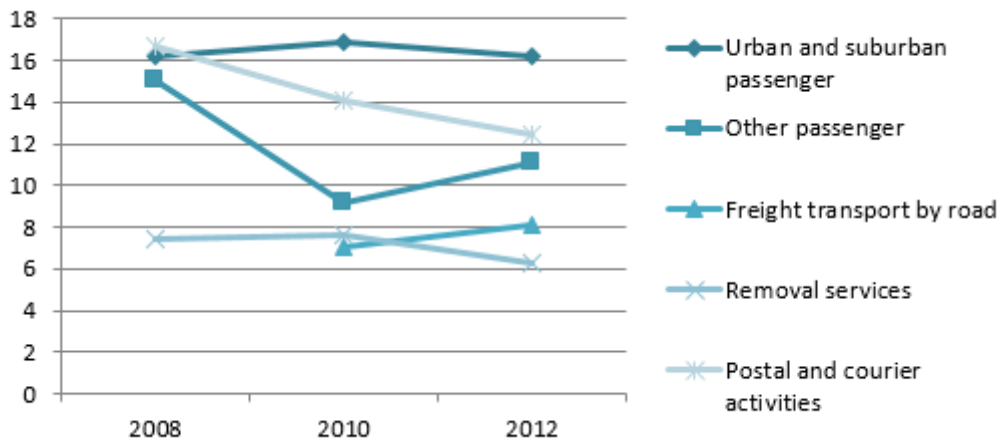


²⁴⁰ While the 2014 report from the Federal Public Service on Mobility mentions 8.522 companies in 2013, the federal office of statistics reported that in 2008 there were 12.576 transport companies in Belgium. There is no clear data from the federal office of statistics for 2013.

Source: BFP (2015)

Regarding the size of companies, the average number of employees per company in the road transport sector was 10 employees in 2007 (BFP, 2015). According to more recent data obtained from the Structural Business Statistics, this number decreased to nine in 2012, with observed differences between the different types of road transport services (Figure 14-4).

Figure 14-4 Average number of persons employed per enterprise

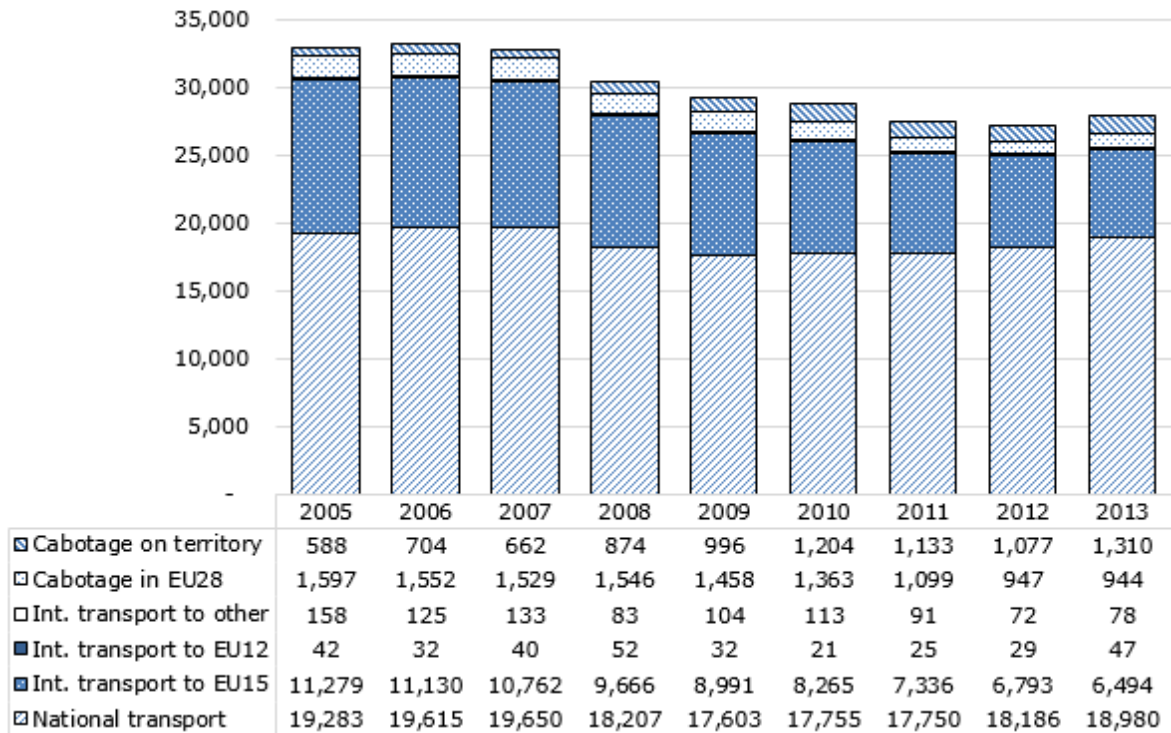


Source: Structural Business Statistics

14.1.1.2 Importance of international transport operations

Given the size of Belgium and its central position in Western Europe, cabotage operations on the Belgian territory accounts for 5% of total transport operations, which signifies that Belgium has the highest cabotage penetration in Europe, while ranking 6th with regards to the amount of cabotage undertaken by Belgian haulers (Eurostat, 2014).

Figure 14-5 Goods transport in Belgium (in millions of tonne km)

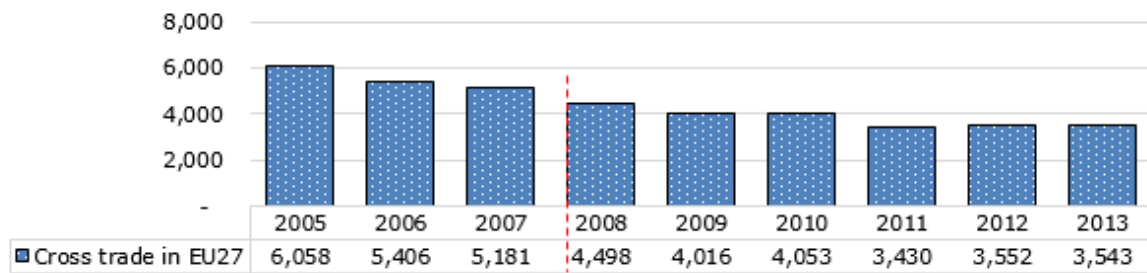


Source: Eurostat

The amount of goods transported through cabotage operations on the Belgian territory has more than doubled since 2005, while it has dropped by 41% for cabotage operations carried out by Belgian haulers on the territory of the EU 28 (Figure 14-5).

Regarding international transport, the amount of goods international transported has increased by 12% with regards to transport to EU12 Member States while it has remarkably fell by 42% with regards to transport to EU15 countries, and by 51% for transport to other countries (Figure 14-5).

Figure 14-6 Cross trade by vehicles registered in Belgium in thousands of tonnes



Source: Eurostat

Note: break in series between 2007 and 2008

Data provided by Eurostat indicated that cross-border operations over the same period of time have decreased by 42% (Figure 14-6). Dutch haulers hold by far the highest share of foreign entries of goods on Belgian territory (39.4% in 2010), followed by German (17.6%), French (12.7%) and Polish haulers (8.9%) (FPS of Economy, 2015).

14.1.1.3 Drivers' salary levels and working conditions

In Belgium, labour unions play an important role for representing workers at company, sectorial, inter-sectorial and national levels. The sectorial and inter-sectorial levels play a substantial part in the elaboration of labour legislation applicable to the road transport sector. At the sector level, the unions negotiate, within different joint committees

(*Commissions Paritaires*), the collective labour agreements (*Convention Collective de Travail* or 'CCT'). The joint committees are composed of representatives of employers and trade unions of the same sector. The CCTs establish the rights and duties of employers and workers of the sector. At inter-sectorial level, trade unions act at the national labour council (*Conseil National du Travail*), the central economic council (*Conseil Economique Central*) and in groups of social partners. Every two years an inter-professional agreement is negotiated which applies to all sectors, and therefore to all workers.

The interests of workers of the transport sector are represented in the "Road transport of freight and passengers" joint committee (number 140). Within the joint committee 140, several sub-sectorial committees exist for bus public services (140.01), bus special services (140.02), road transport for third parties (140.03), freight transport (140.04), removal services (140.05), taxis (140.06), airport auxiliaries (140.08) and logistics (140.09).

The main labour unions representing workers in Belgium are the FGTB-ABVV, the CSC-ACV and the CGSLB-ACLVB²⁴¹. Specific labour unions exist for the transport sector: UBOT (part of FGTB), Transcom (part of CSC), the SECOP-ITSRE and FEBETRA²⁴².

The labour rates in the transport sector increased steadily since 1995 when the average wage was of 20.7 € per hour (34,165 € per year). In 2011, the averages were of 31.39€ per hour and 48,049 € per year (BFP, 2015). These numbers correspond to the gross salary of workers without deduction of the social contributions and before taxes (BFP, 2015). The source of this information does not specify which premiums are included. It could include averages of a per diem premium (overtime premium, night premium, Sunday premium, bank holiday premium), end of the year premium and holiday allowance. According to an interviewed Belgian labour union, the average net salary is of approximately €2,000/month. This salary includes seniority premiums but not the overnight premiums or hourly premiums.

Regarding minimum wages, these are established by the legally binding collective labour agreements of the joint committee 140, and its sub-committees. There are therefore numerous collective labour agreements setting out different wage rates according to the sub-sector. Regarding the sub-sector of road transport for third-parties (140.03), the minimum wages were set by the collective labour agreement of 27 January 2005 on the working conditions and wages of the road personnel working for freight transport companies²⁴³. The minimum hourly wages differ depending on the type of tasks carried out by the personnel, as illustrated in Table 14-1.

Table 14-1: Minimum wages per hour on 1st of January 2015* (in €)

	38h/week	39h/week with 6 compensatory days
• Labourer-conveyor	10.3	10.0

²⁴¹ The acronyms stand for: Fédération Générale du Travail de Belgique – Algemeen Belgisch Vakverbond (FGTB-ABVV), Confédération des Syndicats Chrétiens - Algemeen Christelijk Vakverbond (CSC-ACV), Centrale national des syndicats libéraux de Belgique- Algemene Centrale der Liberale Vakbonden (CGSLB-ACLVB)

²⁴² The acronyms stand for: Union Belge du Transport- Belgische Transportbond (UBT-BTB), Syndicat et Fédération du Transport (SECOP-ITSRE), Fédération Royal Belge des transporteurs et des prestataires de services logistiques – Koninklijke Federatie van Belgische Transporteurs and Logistieke Dienstverleners (FEBTRA).

²⁴³ Convention collective de travail du 27 janvier 2005 fixant les conditions de travail et salaires du personnel roulant occupé dans les entreprises du transport de choses par voie terrestre pour compte de tiers et de la manutention de choses pour compte de tiers.

• Worker in training	10.3	10.0
• Worker of a vehicle with net weight load <7t, communication worker (<6 months seniority)	10.7	10.4
• Worker of a vehicle with net weight load between 7t and 15t, communication worker (>6 months seniority)	10.9	10.6
• Worker of a vehicle with net weight load equal or >7t, worker of articulated vehicle, worker of accredited vehicle for the transport of dangerous goods, worker of a refrigerated vehicle, worker of a post company, worker of a taxi-van company.	11.3	11.0

*The salary rates are generally indexed every year on the 1st of January.

The labour unions have reported several practices of “social dumping” in Belgium. For instance, they reported the use of non-European drivers at low costs in Belgium. The labour union UBOT-FGTB and the Dutch Association of Transport and Logistics (TLN) closely examined the practice of hiring Filipino drivers on European roads. Their conclusions showed that in some cases foreign drivers were paid just over 600 euros per month, which amounts to about half the salary level of a professional driver in the EU-15 (TRT Trasporti e Territorio Srl, 2012). Another concern related to the use of “letterbox companies” by Belgian companies on the territory of EU 13 Member States. Such companies were blamed to be solely used to register vehicles that will then operate in Belgium in order for the companies to hire drivers at only a third or fourth of the wage of a Belgian driver (UBOT-FGTB, 2012; CSC-Transcom, 2015). All interviews related to transport of goods corroborated these facts. In the passenger transport sector, the situation is less problematic. Understanding of the language being a key requirement of numerous transport services of passengers, social dumping by foreign companies is not common, with the exception of ‘international tours of Europe’ where understanding of the language is rarely considered a condition.

Due to the ageing of the workforce and the expansion of the road transport sector, driver shortages have been reported in Belgium (Logistique, 2014). With the ageing of the workforce, a considerable flow of drivers will be leaving the labour market, with approximately 10,000 out of 35,000 professional drivers retiring in the coming years (Belga, 2011). This phenomenon – reported by all interviewed Belgian stakeholders – is expected to increase the shortage of qualified drivers (holding a “CE driving license”) on the labour market (RTBF, 2010) although no quantifiable data was found.

According to the European Road Haulers Association consulted in the context of this study, the increase and internationalisation of freight transport, together with stricter rules and controls in terms of driving times, led to shortages in the number of secure parking and resting areas in Europe and in Belgium. Consequently, every night the secure parking and resting areas available in Belgium are reported to be overcrowded, and subsequently drivers park their vehicles in areas dedicated to other uses, such as lawns, acceleration lanes, deceleration lanes, or emergency lanes (Helmus, 2012; UBOT-FGTB, 2012). This subject is further discussed in the next section.

14.1.2 Regulation (EC) No 561/2006

14.1.2.1 Implementation and status

Regulation (EC) No 561/2006 was implemented in Belgium through the Royal Decree of 9 April 2007 on the harmonisation of some provisions of the social legislation in the field of road transport. The Federal Public Service for Mobility and Transport (FPS Mobility and Transport) is in charge of the application of the Regulation.

Given the direct effect of the Regulation, the Belgian implementing legislation only contains substantive provisions regarding:

- the research and detection of infringements (listing the competent authorities, specific actions regarding infringements of Articles 6, 7 and 8 of the Regulation);

- the age of the drivers (use of the exception laid down in Article 5(2) of the Regulation);
- the exemptions granted under Article 13 of the Regulation.

The scope of application of the Regulation in Belgium is therefore directly based on the terms of the Regulation. Hence Regulation (EC) No 561/2006 applies to all drivers carrying out in-scope transport operations. It is not limited to "professional" drivers. The following activities are covered:

- All passengers operations where the vehicle is constructed (or permanently adapted) for carrying more than 9 passengers (including the driver), and the vehicle is not listed in Article 3;
- All goods operations where the mass of the vehicle, including (semi-) trailers exceeds 3.5t and the vehicle is not listed in Article 3.

Pursuant to Article 13 of the Regulation, Belgium granted derogations under Article 6 of the Royal Decree of 9 April 2007 to all the vehicles listed under Article 13 of the Regulation. All the potential derogations listed under Article 13 of the Regulation were granted by Belgium with the exception of two categories of vehicles, which are therefore subjected to the general regulatory regime, namely:

1. Vehicles operating exclusively on islands not exceeding 2,300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles (Article 13(e)), which is not relevant for Belgium;
2. Vehicles used for the carriage of goods within a 50 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7,5 tonnes (Article 13(f)).

Given the continental nature of the Belgian territory, it seems logical that the derogation of Article 13 (e) of the Regulation was not mentioned in the Belgian legislation. The situation is less obvious regarding the second type of vehicles.

Besides the prohibition of regular weekly rest being taken in the vehicle (see next paragraph), the FPS Mobility and Transport reported for this study that more stringent rules than the ones laid down in Articles 6-9 of the Regulation have not been adopted in Belgium.

Unlike the vast majority of Member States, Belgium has implemented a prohibition of regular weekly rest inside the vehicle. The particular position of Belgium on this point was discussed during a CORTE Enforcement Meeting in March 2015. According to the Belgian enforcement authorities the prohibition of weekly rest in the vehicle is a logical consequence of the wording and objectives of Article 8(8) and Article 4 (f) and (g) of the Regulation. Article 8(8) states that "where a driver chooses [to take compensation rest], daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary". According to the Belgian enforcement authorities, Article 8(8) of the Regulation means that only compensation rest can be taken in the vehicle in contrast with the regular weekly rest.

On a practical level, given the small size of the Belgian territory, which allows Belgian drivers to usually rest at home, the prohibition could be of little impact for Belgian drivers. Regarding international transport of passengers, this prohibition was reported by the interviewed company and representative of the passenger road transport sector as being non-significant. For non-national Belgian drivers the situation is reported to be more problematic especially given a significant lack of adequate infrastructures (FEBETRA, 2014; UBOT-FGTB, 2012). In 2012, the average occupancy rate of parking places was reported by labour unions to be of 117% - i.e. 17% beyond the actual capacity - and reaching 175% in some parts of the Flemish Region (UBOT-FGTB, 2012). In this respect, it is noteworthy that transport policy is the competence of the three Regions in Belgium, which are acting in a competitive rather than coordinated manner (Strale, 2011). Each Region therefore has its own policy regarding the development of secure parking and resting areas.

According to the survey completed by Belgian enforcement authorities for this study, the monitoring and enforcement of the weekly rest leads to significant difficulties in particular for calculating the appropriate fines. Moreover, given that the enforcement authorities can only sanction drivers and their undertakings if drivers are caught in the act of spending their regular weekly rest inside the vehicle, many undertakings are suspected to force their drivers to take their weekly rest outside of Belgium to avoid checks in Belgium according to the surveyed enforcement authorities.

The use of form for the attestation of activities and mixed other activities carried out by drivers was clarified by the European Commission through specific guidelines, namely Guidance note 5 and Clarification note 5. On the basis of these clarifications, the position of Belgium now is that the form for the attestation of activities has not been suppressed and can, in very specific cases, be used as an alternative to mandatory manual recordings (FPS Mobility and Transport, 2015).

14.1.2.2 Enforcement and compliance

Pursuant to Article 3 of the Royal Decree of 9 April 2007, the authorities in charge of the enforcement of Regulation (EC) No 561/2006 and Directive 2002/15/EC are:

- The staff of the federal and local police;
- Officers of the Directorate General Mobility and Road Safety as well as officers from the Directorate General for Land from the Federal Public Service for Mobility and Transport (FPS Mobility and Transport)(with judicial warrant);
- Agents of Customs and Excise;
- Social inspectors and social controllers of the Inspectorate of Social Legislation of the Federal Public Service Employment, Labour and Social Dialogue;
- Social inspectors and social controllers of the Social Inspection Federal Public Service Social Security;
- Social inspectors and social controllers of the National Social Security Office.

The staff of the federal and local police, officers of the Directorate General Mobility and Road Safety (FPS Mobility and Transport), and officers from the Directorate General for Land (FPS Mobility and Transport) are competent for the enforcement (roadside checks, checks at the premises and concerted checks) of driving times and rest periods, checks on the undertakings' organisation of the work of drivers, as well as the functioning, installation and use of recording equipment (tachographs). According to the competent ministry consulted for this study, next to the checks carried out by the inspectors of the FPS themselves, the federal police is in general conducting the checks at the premises, while the local police usually focuses on road checks. Social inspectors are in charge of enforcing the working time requirements of Directive 2002/15/EC (see below).

Regarding evidence of compliance, drivers must be able to provide the enforcement authorities with their recordings from the last 28 days including proof of 'other' work, 'periods of availability' and out-of-scope transport operations. For this purpose, the driver is allowed to use an attestation form to prove these potentially unrecorded activities, but is also allowed to provide other type of evidence. Drivers must register manually all activities away from the vehicle or use an attestation-form. According to the competent ministry consulted for this study, the use of an attestation form has not changed since the entry into effect of Article 34 of Regulation (EC) No 165/2014. The FPS Mobility and Transport reported for this study that with regards to the respect of driving and resting times, the lack of harmonisation can weaken enforcement. The fact that, for example, the Netherlands no longer use attestation forms makes controlling the schedule of the drivers more difficult.

Regarding compliance rates with the road legislation, the proportion of offending vehicles compared to the number of controlled vehicles has slightly decreased between 2008 and 2011, with 12.0% of breaches in 2008 and 11.1% in 2011 (FPS Mobility and Transport, 2014). The data provided by Belgium for the implementation period 2011-12 showed that the overall infringement rate was 1.82 (infringements per 100 working days checked; 0.48 for roadside checks and 4.01 for checks at premises). None of the interviewed enforcers

were able to assess the representativeness of this data. It was however repeatedly highlighted that the difference between the rates at roadside checks and checks at the premises, seemed logical and representative. Besides, the data provided by Belgium for the two implementation periods 2009-10 and 2011-12 show that the total offence rate (per 100 working days checked) increased by almost 20% between the two implementation periods. This increase was assumed by the interviewed enforcers to be due to the training of officers, exchange of best practices during coordinated checks and the overall increased knowledge of the road transport social legislation. The FPS Mobility and Transport moreover reports that the compliance rate is similar across Belgian companies and European or international companies (FPS Mobility and Transport, 2014). The FPS for Mobility and Transport highlighted that fraud with regards to the use of the tachograph is a major issue (FPS Mobility and Transport, 2014). The European Road Haulers Association interviewed for this study further asserted that in Belgium about half of all infringements in road transport are allegedly related to the tachograph and driving time rules.

According to the Belgian enforcement authorities surveyed for this study, the main reasons for poor compliance are:

- Co-liaible parties in the transport chain are not held sufficiently liable;
- Strong competition in the market;

Traffic or congestion leading to unforeseen delays.

14.1.2.3 Penalties for non-compliance

In Belgium, criminal sanctions regarding breaches of the Regulation are set by Article 2(1) of the law of 18 February 1969 on the measures for the implementation of international acts and treaties related to transport by sea, road, railway, and waterway. Pursuant to this article, sanctions range from eight days to six months of imprisonment and criminal fines between 50 to 10,000 euros. For determining the effective criminal fines in 2015, the amount must be multiplied by six (surcharges apply i.e. "*décimes additionnels*"²⁴⁴). Regarding on-the-spot fines these require the agreement of the person committing the infringement and are regulated by the Royal Decree of 19 July 2000 on the levying and consignment of a sum of money at the time of the findings of certain infringements in the field of road transport. Such fines range from 55 to 2,640 euros that must also be multiplied by six ("*décimes additionnels*"). However, there is currently no clear classification regarding the assessment of the seriousness of the infringements, according to the surveyed enforcement authorities. According to them, penalties are currently considered to be too inadequate and disproportionate to have a dissuasive effect.

Regarding administrative fines, these are set by the law of 15 July 2013 on goods transport and the law of 15 July 2013 on transport of passengers which were adopted to implement Regulation (EU) No 1071/09, Regulation (EU) No 1072/09 and Regulation (EU) No 1073/09. Although transport of goods and transport of passengers are regulated by two different texts, the penalty system is similar. The administrative fines can be imposed only in the absence of prosecution by the public prosecutor. Administrative fines are set on the basis of a calculation matrix established in the Royal Decree of 19 July 2000. The calculation matrix does not follow the distinctions between most serious, very serious, serious and minor infringements according to Annex IV of Regulation (EC) No 1071/2009 (Annex IV). Rather the calculation matrix bases itself on the existing gap between the factual situation and the legal limits on driving times and required rest periods. According to the FPS Mobility and Transport, the penalty system is however expected to be entirely revised within the upcoming years in order to be in line with the European categories.

These texts strengthened the liability of people upstream and downstream of the execution of the transport operation itself. According to Article 43 of the law of 15 July 2013 on goods

²⁴⁴ *Décimes additionnels* were introduced by the law of 5 March 1952 in order to counteract inflation. They are not raised on a yearly basis but on a punctual basis. The last increase was due to the law of 28 December 2011 which brought the *décimes additionnels* from 45 to 50. In practical terms it meant that the coefficient by which the amount of criminal fines must be multiplied, went from 5.5 to 6

transport and Article 32 of the law of 15 July 2013 on transport of passengers, the contractor, the shipper, freight forwarder and transport carrier can be held co-liable with the driver in cases where breaches of resting and driving times have been observed. These changes were welcomed by representatives of the road haulers (FEBETRA, 2014) and labour prosecutors (Vandendaele, 2014). In such cases, the fine will amount to minimum five times the minimum of the applicable criminal fines (excluding "*décimes additionels*"), and maximum five times the maximum of the applicable criminal fine (excluding "*décimes additionels*"). Representatives of road haulers (FEBETRA, 2014) expressed in 2014 that this change could lead to a disproportionate shift of responsibility from the hauler to the company, which could in turn lead to intentional negligence of drivers with regards to compliance with the Regulation. However it seems to have remained a theoretical change given that the FPS Mobility and Transport and representatives of the transport industry reported that over the last three years, no cases of co-liability were established.

14.1.3 Directive 2002/15/EC

14.1.3.1 Implementation and status

Directive 2002/15/EC was implemented in Belgium through the same act as the one covering the Regulation, namely the Royal Decree of 9 April 2007 on the harmonisation of some provisions of the social legislation in the field of road transport. The Labour Inspectorates of the FPS Employment is in charge of the application of the Directive.

14.1.3.2 Enforcement and compliance

The enforcement and compliance of this Directive is the responsibility of the Labour Inspectorates of the FPS Employment. The Social Inspectors carry out road side checks and checks at the premises of undertakings often in cooperation with the authorities competent for the enforcement of Regulation (EC) No 561/2006. Penalties for non-compliance

The liability and penalty system applicable to infringements of Directive 2002/15/EC are established under the Royal Decree implementing Regulation (EC) No 561/2006, and the general legislation on road infringements (Law of 18 February 1969 on the measures for the implementation of international acts and treaties related to transport by sea, road, railway, and waterway). The liability and penalty system applicable to infringements of Directive 2002/15/EC are therefore the same as the ones described for Regulation (EC) No 561/2006. In practice substantial differences however exist between the two enforcement systems. Unlike officers from SPF Mobility and Transport or the police, labour inspectorates are indeed not empowered to impose administrative fines. It implies that offences can only be pursued through judicial proceedings. These happen only on an extremely rare basis according to the interviewed enforcement authority.

14.1.4 Directive 2006/22/EC

14.1.4.1 Implementation and status

Directive 2006/22/EC was implemented in Belgium through the Royal Decree of 8 May 2007 transposing Directive 2006/22/EC. The FPS Mobility and Transport is in charge of the application of the Directive. The distribution of responsibilities and missions follows the one mentioned for the enforcement and compliance of the Regulation (EC) No 561/2006 (see above). The Royal Decree of 8 May 2007 appoints the Directorate General for terrestrial transport of the FPS Mobility and Transport as the intracommunity liaison body in charge of the tasks prescribed by Articles 7 (intracommunity liaison) and 8 (exchange of information) of Directive 2006/22/EC.

Regarding risk-rating system and electronic exchange of information, Belgium does not yet have a risk-rating system to target checks or a system for the electronic exchange of information (SPF Mobility and Transport, 2013). On the basis of the same above-mentioned questionnaire filled in by the FPS Mobility and Transport, Benelux countries are however in the process of developing such risk rating system and a system for exchanging data related to infringements of Regulation (EC) No 561/2006.

The Directorate General Mobility and Road Safety and the Directorate General for Land of the FPS Mobility and Transport have 55 inspectors (of which 22 engage into checks at premises and 33 on road checks), 52 computers with a controlling programme and OCTET and 130 data downloading. To this number must be added the enforcement staff of the local polices (approximately 370 officers), such as the 30 police officers of the local police of the zone of Antwerp who are trained to analyse data from digital tachographs. According to all interviewed enforcers, the capacity of the enforcement authorities is stable. Regarding the number of checks per day, according to the FPS Mobility and Transport consulted for this study an enforcer spends on average five hours on the road during which an average of seven checks will be conducted, if no complication or unforeseen event extends one check or the other.

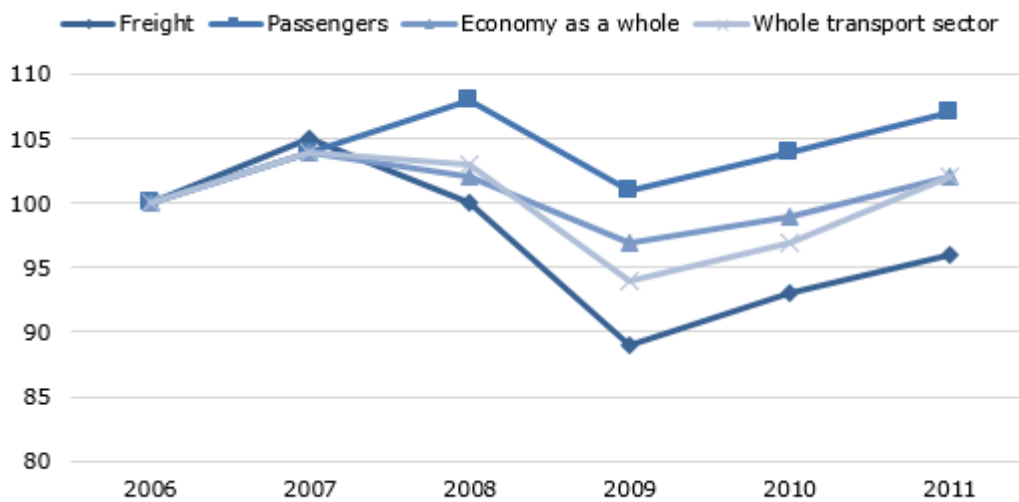
14.2 France

14.2.1 Market situation and developments

14.2.1.1 Market Overview

In 2012, the transport sector accounted with a size of EUR 371 billion for around 18% of France's GDP. 77% of the total transport market was attributable to the road transport sector, 7% to the rail sector and 6% to air transport (Ministry of Ecology, 2015). Figure 14-7 illustrates the transport sector's development in the period from 2006 to 2011. It shows that the development of the size of the sector closely followed the development of the size of the economy as a whole: after a significant drop in 2009, the transport sector attained pre-crisis levels in 2011 (ORSEU, 2013).

Figure 14-7 Evolution of size of the transport sector in France, 2006-2011 (Indexed at 100 in 2006)

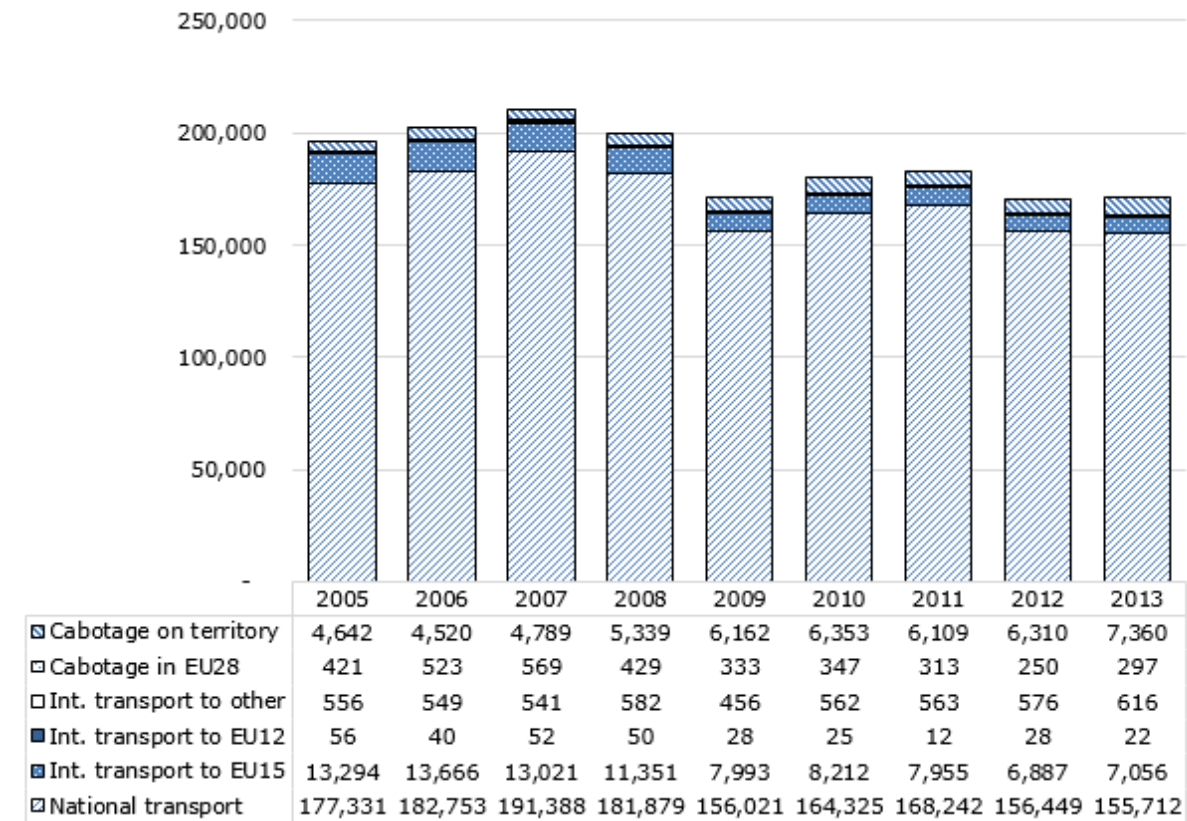


Source: ORSEU (2013)

Between 2007 and 2012, road freight transport carried out by vehicles with a maximum mass of above 3.5 tons dropped by 21% in France (compared to 14% at EU level). A reason for this comparatively high drop is seen to be various transport cost increased (such as petrol and wages), that have led to losses in the French road transport sector specifically since 2007 (Commission, 2015). In 2013, the road freight sector increased by 0.9% compared to 2012. Own-account transport by vehicles above 3.5 tons increased compared to the previous year, while hire and reward transport operations reached in 2013 their lowest level since 1999 (INSEE, 2014).

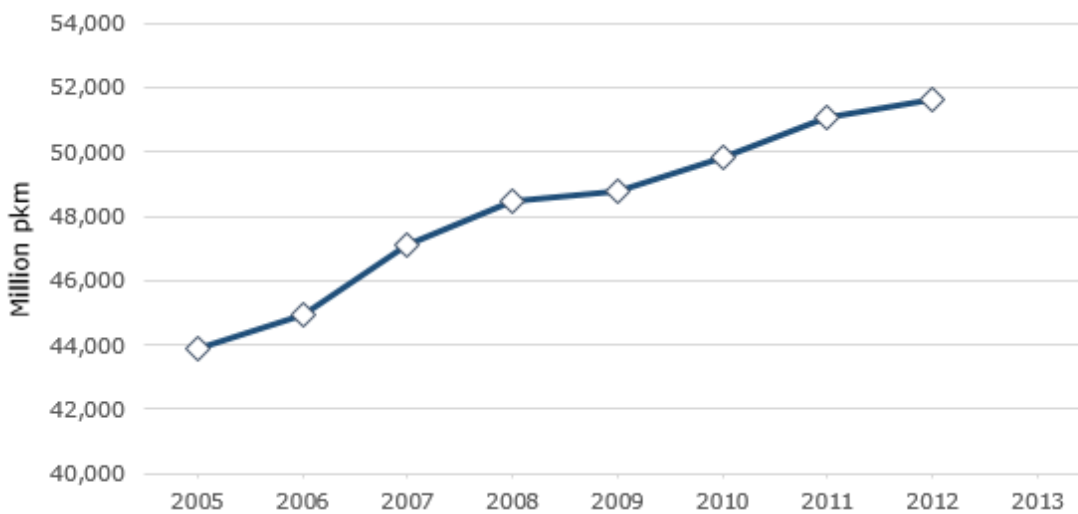
Figure 14-8 below provides the overall trends of various types of transport operations in t-km between 2005 and 2013. National transport operations have decreased by over 10%, international transport operations (that are 1% of the size of the national transport market) have decreased by around 45%. Cabotage operations by French operators have decreased by 30%, while cabotage operations on French territory have increased by more than 50%.

Figure 14-8 Goods transport in France (in million t-km)



In the transport passenger segment, Eurostat data indicate a steady increase in activity in terms of passenger kilometres in France between 2005 (43,900 millions km) and 2012 (51,617 millions km), even though this increase has slightly slowed down between 2008 and 2009 as shown in Figure 14-9 below.

Figure 14-9: Millions of passenger kilometres driven in France by bus, trolley bus or motor coach



Source: Eurostat

The evolution of the labour market follows the same pattern as the evolution of the activities in the area of road transport. Due to the economic crisis, the number of jobs in the road freight sector has dropped by 10% between 2008 and 2009, and by 3% between

2009 and 2010. However, 2011 was marked by an increase in the number of jobs in the sector: it increased by 2.8% in the road freight transport sector and by 1.4% in the road passenger transport sector compared to 2010.

In 2013, there were 36,130 companies employing more than 290,000 persons in the sector of road freight transport, and 6,181 companies employing nearly 68,000 persons in the road passenger transport sector. The most recent data describing transport undertakings are shown in below.

Table 14-2: Representation of transports firms as of 2013 (in million EUR)

	Road freight transport			Road passenger transport		
	2013	Evolution (%)		2013	Evolution (%)	
		2012-13	2009-13		2012-13	2009-13
Turnover (million EUR)	42,998	- 2.3	3.2	6,721	9.1	0.7
Investment (million EUR)	1,566	- 9.2	3.5	1,28	- 66.6	- 6.9
Number of employees (full time)	292,628	0.1	0.6	67,821	- 1	1.9
Number of undertakings	36,130	3.5	-0.9	6,181	32.8	-4.9

Source: Ministry of Ecology (2015)²⁴⁵

According to most recent statistics published by the French Ministry of Ecology, Sustainable Development and Energy (MEDDE), there were 40,000 French road freight transport companies registered in April 2014 (Ministry of Ecology, 2014).

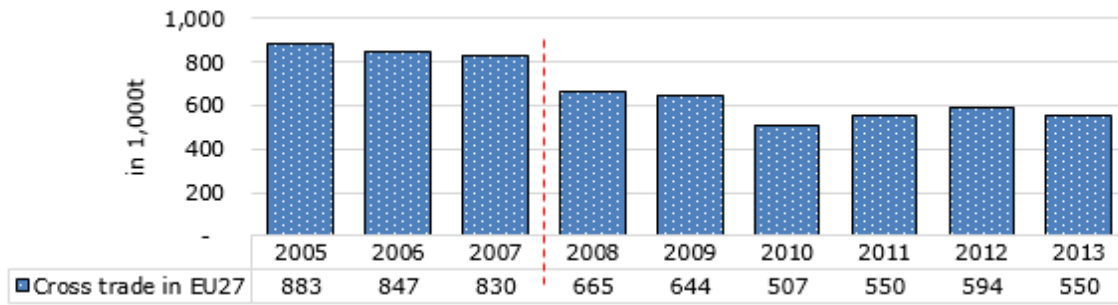
14.2.1.2 Importance of International Transport operations

The cabotage penetration rate in France has slightly increased in the last years due to the abolition of restrictions previously applied to drivers from the new EU Member States, making France one of the countries with the highest cabotage penetration rates in Europe (with only Germany showing a higher cabotage rate since 2011). While Germany's level rose from 6 billion tonne-kilometres in 2010 to 6.7 billion in 2011, France recorded a decline to a level of 6.1 billion tonne-kilometres in the same period.

Despite a slight increase in 2010, France has had a decreasing cabotage performance over the past eight years and has reached its lowest level since 2007. This can be explained by the strong competitive pressures felt by the haulage industry as a result of the increase in international transport operations carried out by Eastern European Member States (Eurofound, 2013). Cross-trade operations carried out by vehicles registered in France (in t) have decreased by more than 15% in the period from 2008 to 2013 (see Figure 14-10).

²⁴⁵ Note: Other statistics provided by the same source (MEDDE) provide different figures for 2013, indicating that the road transport sector comprises about 1.34 million employees; out of which 465.000 work in the field of transport of passengers and 360.000 for the road freight sector (Ministry of Ecology, 2015).

Figure 14-10: Cross trade by vehicles registered in France (in thousands t)

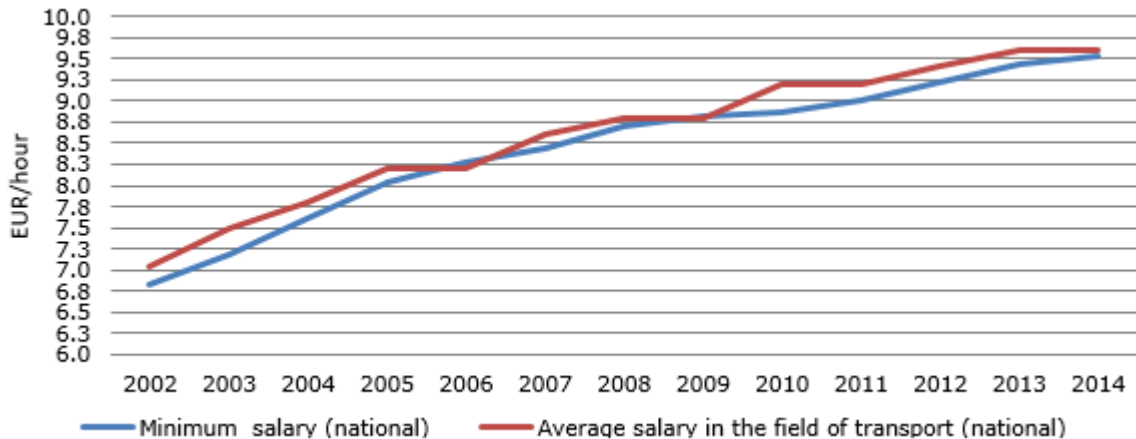


Source: Eurostat, Note: break in series between 2007 and 2008

14.2.1.3 Drivers' salary levels and working conditions

Salaries in the transport sector have increased over the last decade (see Figure 14-11). Drivers' average salary levels have on average continuously been at a very similar to the minimum wage, which, however, increased from 6.03 EUR/hour in 2002 to 9.61 EUR/hour in 2015 (Data, 2015). According to the National Federation of Road Transport (FNTR) consulted for this study, this can be explained by the fact that a third of French transport undertakings are in a situation of economic instability and are unable to afford any salary raises.

Figure 14-11 Evolution of salary levels in the transport sector in France (in EUR/hour)



Source: Media (2015)

According to social agreements, transport workers are categorised into four different salary grades. Table 14-3 shows the salary levels of these grades by level of experience.

Table 14-3 – Salaries of transport workers in France - Hourly rates as of 1 January 2013 (in EUR)

Salary grade	At time of recruitment	After 2 y with the company	After 5 y with the company	After 10 y with the company	After 15 y with the company
Grade 1 Short-distance drivers	9.43	9.61	9.80	9.99	10.18
Grade 2 Short or long-distance drivers	9.51	9.70	9.89	10.08	10.27
Grade 3	9.53	9.72	9.91	10.10	10.29

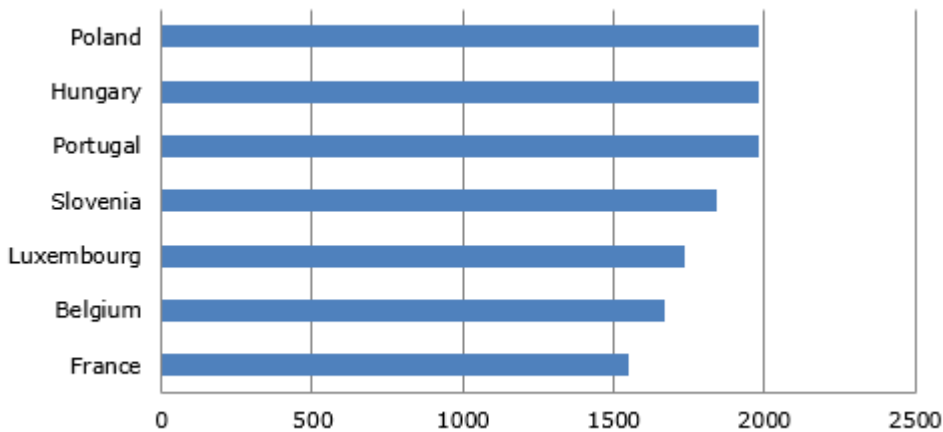
Short or long-distance drivers					
Grade 4	9.79	9.98	10.18	10.37	10.57
Short or long-distance drivers, highly qualified					

Source: Media (2015)

Irrespective of the salary category, 12% of the road transport workers were reported not to earn above the minimum salary in 2013 (Ministry of Ecology, Bilan social du transport routier de voyageurs, 2014).

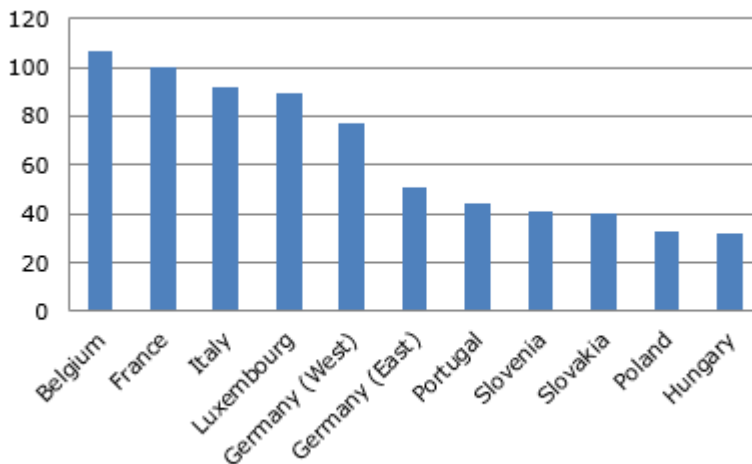
Since the beginning of 2015, labour unions in the sector have been increasingly active and have lobbied for a 5% salary raise as well as more social benefits. Currently, French drivers' monthly average salary levels come to around 2,600 EUR (before tax, all potential bonuses included), which is below the respective remuneration levels in Italy, Luxembourg and Belgium (Obs, 2015). Reasons for such salary differences are the relatively low number of annual working hours of French drivers (see Figure 14-12), and the comparatively high costs that employers have to bear (see Figure 14-13). As Germany, also France has made the minimum wage obligatory for foreign drivers carrying out transport operations in France (Monde, 2015).

Figure 14-12 Drivers' average annual working time (in hours)



Source: Obs (2015)

Figure 14-13 Driver's costs for the employer (Indexed at 100 for France)



Source: Obs (2015)

Labour unions play an important role in France, including in the field of transport. Today, there are eight main union confederations. However, five historical unions remain the most important ones (Fulton, 2013) and are recognized as official representatives of workers at national level by the Decree of 23 July 2013 (Anon., 2013) across all professional sectors²⁴⁶.

There is a significant reported **shortage of drivers** in France. According to the Observatory of employment and qualifications in the field of Transport and Logistic (Observatoire Prospectif des métiers et des qualifications dans les Transports et la Logistique (OPTL)), 22% of vacancies are not or only with difficulty filled. Some regions, such as the Nord-Pas-de-Calais, Brittany, Normandy, Aquitaine, Champagne-Ardenne and Rhône-Alpes, are more affected than others by this shortage. The main reasons for this driver shortage have been identified to be the lack of attractiveness of the job among youngsters, as well as the mismatch of required and available skills on the job market (Manpowergroup, 2015). According to a temporary employment agency (Randstad), 15,000 recruitment adverts have been issued by the French National Employment Agency (Pôle Emploi) last year in the field of road transport in general.

A 2011 study from the Ministry of Ecology reports that half of French drivers spend more than 15 nights a month away from their home. The vast majority of these drivers report to rest inside their vehicles: less than 5% are reported to sleep elsewhere. The study further showed that between 2006 and 2008 the share of drivers working overtime has increased from 81% in 2006 to 88% in 2008 (Ministry of Ecology, 2011).

According to the International Union of road transports (IRU), 17% of the long distance drivers in Europe have been subject to a theft in the past five years (Girard-Oppici, 2015). In response to reported increases in thefts on parking areas, motorway operators have decided, together with the French government, to increasingly provide secured car park and rest areas for trucks. Rest areas are now equipped with 24-hour alarm and camera systems; security staff accompanied by dogs are present to ensure security. These safety measures have been implemented by the recent Decree of 27 April 2015 (Legifrance, 2015).

14.2.2 Regulation (EC) No 561/2006

14.2.2.1 Implementation and status

Decree No. 2008-418 of 30 April 2008 (Legifrance, 2015) is the main implementing instrument for Regulation (EC) No 561/2006. It introduces inter alia derogations from the requirement of use of tachographs for 16 different types of vehicles. Regulation (EC) No 561/2006 was to a lesser extent also implemented by the Decree of 9 May 2007 (Legifrance, 2015) which transposes Directive 2006/22/CE on the minimum conditions for the implementation of Regulation (EC) No 561/2006. All legal provisions have been codified and are provided in the Code of Transports, under Article L. 3313-1 and following.

The MEDDE is the main responsible body for the implementation of road social legislation. The Directorate for maritime, road and river transports ensures coordination with equivalent bodies in other Member States. The provisions of the Regulation apply to road freight transport operations carried out by vehicles of 3.5 tons and above, as well as by vehicles responsible for the transportation of passengers given these can transport more

²⁴⁶ These five are the CGT (*Confédération générale des travailleurs*), the CFDT (*Confédération française démocratique du travail*), FO (*Force ouvrière*), the CFE-CGC (*Confédération française de l'encadrement - Confédération générale des cadres*) and the CFTC (*Confédération française des travailleurs chrétiens*). These trade unions are also active in the field of road transport. In addition, sectoral trade unions are also involved in social dialogue, such as the FNTR (*Fédération nationale des transports routiers*), TLF (*Fédération des entreprises de transport et logistique de France*), UNOSTRA (*Union Nationale des Organisations Syndicales des Transporteurs Routiers Automobiles*), AUTF (*Association des utilisateurs de transport de fret*), FFD (*Fédération française des déménageurs*), and FNCR (*Fédération Nationale des Conducteurs Routier*).

than 9 persons (driver(s) included). All drivers, whether professional or not, fall within the scope of the Regulation.

Pursuant to Article 13 of the Regulation, Article 1 of Decree No. 2008-418 of 30 April 2008 provides a list of vehicles that are exempt from the application of Articles 6, 7, 8 and 9 of Regulation (EC) No 561/2006. These derogations are granted to all the vehicles listed under Article 13 of the Regulation with the exception of vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers (Article 13(g)). Moreover, regarding the derogation applying to vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity (Article 13(b)), France limits this derogation within a radius of up to **50 km** from the base of the undertaking (instead of 100 km as set out in the amended Regulation). Similarly, under national law, the derogation applying to vehicles operating exclusively on islands in areas which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles, concerns islands not exceeding **400 km²** (while the Regulation refers to a limit of 2300 km²). A derogation also applies to vehicles used for the carriage of goods within a **50 km** radius from the base of the undertaking (100 km in the Regulation) and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7.5 tonnes.

Even if permitted under Article 11 of the Regulation, France does not have more stringent rules with regard to driving times, breaks and rest periods as the ones set out in Articles 6-9 of the Regulation.

France does not allow drivers to take their regular weekly rest inside their vehicle; however, according to some stakeholders consulted for this study, it is in practice very difficult to enforce this ban as there are very few secured rest areas in France that provide sufficient infrastructure for drivers to spend the night elsewhere. This ban is set out in Article L.3315-4-1 of the Code of Transports and sanctioned with a 1-year imprisonment as well as a fine of EUR 30,000 in the case of breach of this requirement (Anon., 2014).

14.2.2.2 Enforcement and compliance

Enforcement and compliance of Regulation (EC) No 561/2006 is ensured in France by various agents from different ministries. In total, about 7,000 agents from the MEDDE, the Ministry of Labour, Employment, Professional training and Social dialogue, the Ministry of the Interior as well as the Ministry for Economy and Finance and the National Police contribute. Road side checks are ensured by the staff of the national police, agents of the customs authorities and by the MEDDE. Checks at premises fall under the responsibility of social inspectors and social controllers of the Labour Inspection, as well as inspectors from the Fraud Control and again the MEDDE (Ministry of Ecology, 2002). The MEDDE remains hence the principal enforcement body of the Regulation. It ensures coordination at national level through the involvement of about 700 control agents; 500 being responsible for roadside checks (checking the functioning as well as the installation and use of recording tools such as tachographs), 170 others dedicated to controls within companies (administrative aspects, organisation of the work of drivers, etc.) and 35 additional ones checking the weight of controlled vehicles.

According to the latest available data for the year 2012, out of 650,000 vehicles checked at the roadside, 110,000 have been controlled by agents from the MEDDE. 47% of these vehicles were registered in France, while 53% were foreign vehicles. Among the latter, 18% were in a situation of infringement which consisted in – for 60% of them – in a breach of the European legislation.

As per the modification brought to Article 1 of the Regulation (EC) No 561/2006 by Decree of 28 January 2008, drivers have to be able to provide the enforcement authorities with their data from the last 28 days (instead of 15 days as previously set out in the legislation)

including 'other' work, 'periods of availability' and out-of-scope transport operations. It is forbidden for drivers to drive without recording their data (Labour, 2015).

According to the only questionnaire received from a transport operators' association, the compliance rate with social rules is seen to be satisfactory. Reasons for non-compliance are stated to be the lack of adequate parking and rest areas as well as the lack of harmonisation of the Regulation's interpretations across the Member States.

14.2.2.3 Penalties for non-compliance

Employers are held responsible for any infringement of the provision set out in Regulation (EC) No 561/2006. Even if a driver decides on his own behalf to take a regular weekly rest on board the vehicle, employers are held responsible according to the relevant modified provision of the French Code of Transport as of February 2014 (Legifrance, 2014) (see Article L.3311-1 and Article L.3315-1 to 3315-6).

However, according to the information obtained from stakeholders' opinions, drivers are being made responsible for certain types of infringement when uncovered during roadside checks, the idea being that if the driver breached a rule upon his own initiative they are responsible of their own action.

14.2.3 Directive 2002/15/EC

14.2.3.1 Implementation and status

Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities has been transposed in France through Decree No 2004-1197 of 12 November 2004 (Legifrance, 2004). All relevant provisions can be found in the Code of Transports, more precisely from Article L.1321-1 onwards. Provisions applying to independent drivers have been added at a later stage, in Article L. 3312-4.

The implementation and enforcement of all provisions contained in Directive 2002/15/EC fall within the competences and responsibilities of the MEDDE and the Ministry of Labour, Employment, Professional training and Social dialogue. According to a stakeholder consulted within the MEDDE, and as per Article 8 of the Directive, there are collective agreements in France that introduced more favourable provisions for long-distance drivers than the ones set out in the Directive. These result from agreements among social partners, such as the agreement of 23 November 1994 on rest periods and salary of long distance drivers.

While the majority of countries use the same average and maximum working time as given in the Directive, France follows stricter rules regarding the average weekly working time limit (it is limited to 46h instead of 48h) and the maximum weekly working time limit (53h and 50h in case of international transport and national transport operations respectively) (TNO, 2006). This more restrictive approach prevents French companies from fully using the provisions on driving times of Regulation (EC) No 561/2006.

14.2.3.2 Enforcement and compliance

The enforcement authorities responsible for enforcing the transposed Directive 2002/15/EC are the same as for the Regulation (see Section 1.2.2 above).

On the basis of the same above-mentioned questionnaire filled in by a stakeholder, it seems that compliance with rules on working times for mobile workers as defined in Directive 2002/15/EC is poor. A reason being for instance that while the inclusion of self-employed drivers in the scope of the Directive has been successfully transposed in France, according controls do not appear to take place in practice. The lack of clarity as well as the lack of awareness of the rules among the different stakeholders are reported to be further main factors causing poor compliance with Directive 2002/15/EC.

According to the responsible Ministry that was consulted for this study, transport operators are the only party being held responsible for infringements of the provisions transposing Directive 2002/15/EC. Drivers are generally not held responsible, unless it is decided otherwise by the judge in very extreme cases. In practice, drivers are held liable more frequently though, as is the case with Regulation (EC) No 561/2006 (see above).

The sanctions faced by the primary responsible party in case of infringement consist of fines that may vary from 450 EUR to 1500 EUR (Ministry of Ecology, 2015).

14.2.4 Directive 2006/22/EC

14.2.4.1 Implementation and status

Directive 2006/22/EC was implemented in France by the Decree of 9 May 2007 and further amended by the Decree of 28 January 2008 and Decree of 31 December 2009.

The French MEDDE is the main responsible body for its implementation. More precisely, the Directorate for maritime, road and river transports ensures the coordination with equivalent bodies in other Member States. Agents from this Ministry primarily but also coming from other relevant ministries contribute to the enforcement (roadside checks, checks at the premises of a transport company, concerted checks, etc.).

France had with 17% of all working days checked, the highest percentage of working days checked across the EU Member States in the reporting period 2010-2011 (Commission, 2012). During the same reporting period, France was involved in several concerted checks. In total, six controls have been done in 2009 and eight in 2010 with the Euro Contrôle Route (ECR). There have been concerted checks with Germany and Belgium and several exchange programmes with Germany, Spain and other ECR countries (Commission, 2012). France is part of an administrative agreement between the Benelux countries that permits the four countries to share information on undertakings, exchange best practices and organise common checks. This agreement has been extended to Germany, Ireland, Poland, Spain, the United Kingdom, Austria and Bulgaria in the last decade.

There is no risk-rating system to target checks in France. According to the Ministry of Ecology, the possibility of introducing such a system is currently being discussed

14.3 Germany

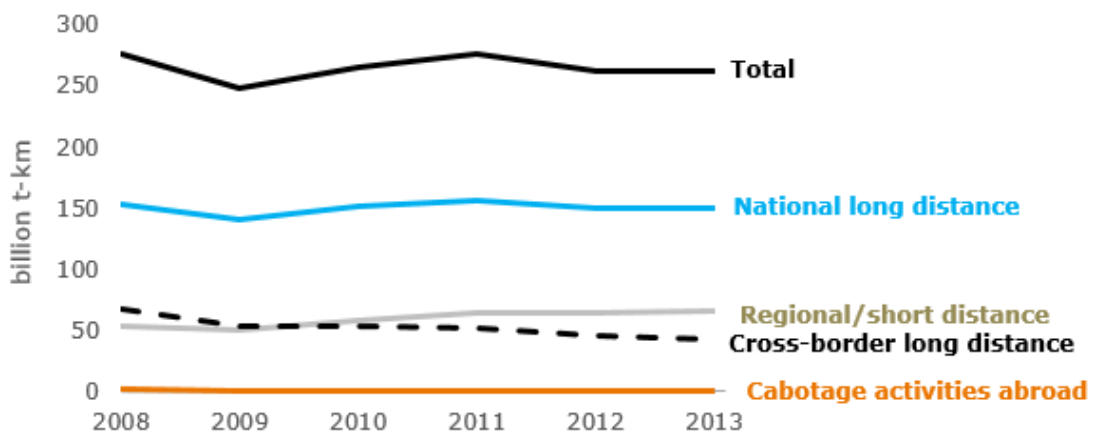
14.3.1 Market situation and developments

14.3.1.1 Market Overview

Goods transport

Figure 14-14 more specifically shows the development of road freight transport operations (in t-km) by distance class, solely carried out by German HGVs. The registered decrease in transport performance over the period from 2008 to 2013 (from 276.2 to 261.8 billion t-km, or by 5.2%) was mainly due to decreases in cross-border long-distance transport and, to a lesser extent, in cabotage operations and national long-distance transport (while the latter experienced a temporary significant increase in 2011). Short-distance transport has continuously increased during the same period.

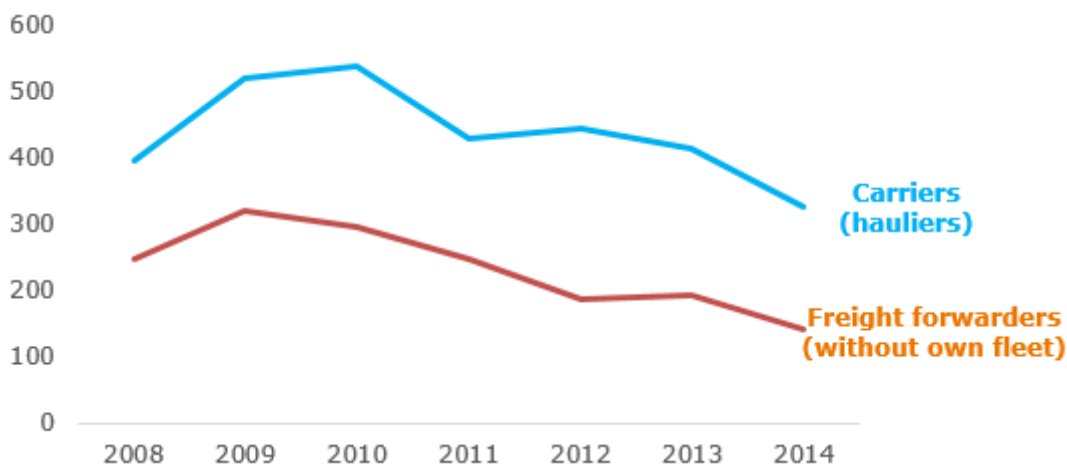
Figure 14-14: Road freight transport by German HGVs from 2008 to 2013



Source: BAG (2014)

In the first half of 2014, increases in road freight transport activities were observed: in comparison to the first half of 2013, the transport volume (t) increased by 9%, while the transport performance (t-km) increased by 4%. Increases were observed in all distance classes, however, the short-distance segment experienced a proportionately higher increase. The whole market especially benefited from increased demand stemming from the construction sector (BAG, 2014). This upswing in 2014 is also reflected by the significant decrease in the number of registered insolvencies during the first half of the year in the road freight transport sector, as shown in Figure 14-15, which depicts carriers (hauliers) and freight forwarders (without own fleet) separately.

Figure 14-15: Number of registered insolvencies in the first 6 months of the years 2008-2014



Source: BAG (2014)

The market structure of the German road haulage market has not significantly changed in recent years: In 2010, the majority (53%) of German undertakings in the road freight transport sector operated with fewer than four HGVs whereas 1% of the undertakings operated with more than 50 HGVs (BAG, 2012). A very similar distribution can be found for the year 2005 (BAG, 2007). Also, average employment levels at the company level have not significantly changed: in 2010, 44% of undertakings in the sector employed fewer than four employees; self-employed entrepreneurs represented 20% of the undertakings; 4% employed more than 49 employees (BAG, 2012). In 2005, this distribution was very similar (BAG, 2007).

Passenger transport

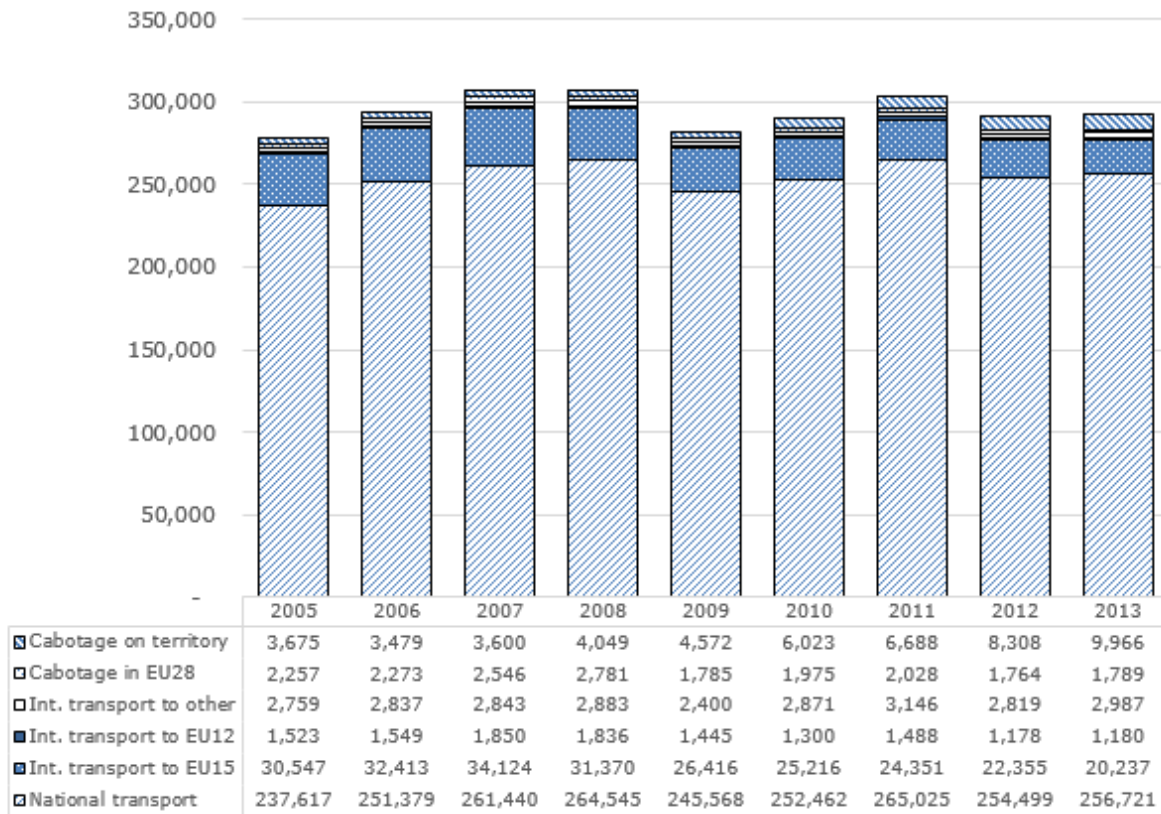
In the year 2013, a total number of 76,023 buses (coaches, school buses, buses for line traffic) were registered, of which 5,824 were newly registered in that year. Since 2002, the number of new bus registrations per year has moved between 5,000 and 6,000. Total passenger kilometres carried out by buses decreased in the period from 2004 to 2013 by 11% - occasional traffic shrunk by 29%, while scheduled services²⁴⁷ increased by 2% (Statistisches Bundesamt, 2014). Other relevant market data on the passenger transport sector could not be identified.

14.3.1.2 Importance of international transport operations

Figure 14-16 shows the development of overall freight transport operations in Germany as reported by Eurostat. The total volume of transport operations (in t-km) has not reached pre-crisis levels in 2013. While cabotage operations on the German territory have continuously increased, cabotage operations carried out by German undertakings have experienced a significant drop in 2009 (with the opening of the market to Eastern European countries on 1 May 2009) of around 40% and have since stayed relatively stable until 2013. International transport operations (counted as all international transport operations that were loaded on German territory) have decreased by around 20% in the period 2009-2013; national transport operations increased in the same period by around 5%.

²⁴⁷ The source is not explicit about which traffic is considered as scheduled services.

Figure 14-16: Goods transport volumes in Germany (in million t-km)



Source: Eurostat

The German market is said to have shown greater resilience to foreign **cabotage** operations since the opening of the market in 2009 when compared to that of many other EU15 Member States (European Parliament, 2013a). Germany's requirement regarding liability insurance²⁴⁸ is thought to be one of the main factors. For instance, following market opening in 2012 Romanian and Bulgarian hauliers were expected to need a supplemental insurance of around €500 per year per vehicle (BAG, 2012). In addition, the German market is protected by (BAG, 2012):

- The geographic distance of the transport markets with partly non-matching freight flows;
- Language barriers and differences in mentality;
- Quality differences - domestic companies were expected to be able to charge a premium due to their higher quality of service, reliability and punctuality (European Parliament, 2013a);
- Competitive pressures from road transport undertakings from Poland, the Czech Republic; and the Baltic States that had already operated in the German market.
- High efficiency of German hauliers, which negates the labour cost advantage of other hauliers. For example, Romania's labour cost advantage is estimated fall from 50% to a total operating cost advantage of only 30%.

Eurostat data shows that cabotage activities in Germany have nevertheless more than doubled between 2008 and 2013. The biggest caboteurs in Germany were Polish undertakings in 2013, who increased their cabotage activities by 32% compared to the year 2012 (to 4.4 billion t-km). Despite these increases, the cabotage penetration rate in

²⁴⁸ § 7 of the German Road Haulage Act, the GüKG, requires liability insurance against the damage of goods amounting to no less than €600,000 for each claim, and no less than €1.2 million for a year

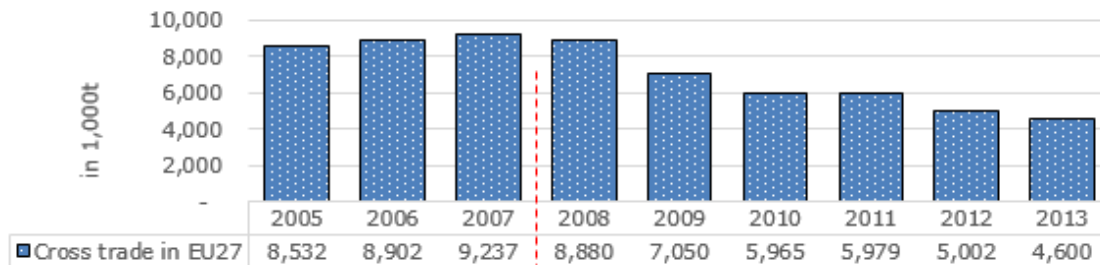
Germany is still lower than in countries such as Belgium (6.5%), Austria (5.2%), France (4.5%) and Sweden (3.9%) (BAG, 2014).

The analysis provided in European Parliament (2013a) suggests that the 2012 cabotage market opening had even a more significant impact than initially expected: journeys realised by Bulgarian hauliers on German roads increased significantly more than the trade flows between these two countries in the period from 2011 to 2012. Part of this is seen to be due to cabotage activities that are carried out in the continuation of international transports to Germany.

The cabotage activity of German hauliers reduced markedly after the financial crisis, and has not yet recovered to 2008 levels. German cabotage activity is spread across many neighbouring or nearby countries, especially Italy and France.

Cross trade operations carried out by German vehicles have experienced a continuous decrease since 2008. On average cross trade transport operations have decreased in transported volume (t) by around 50% in the period 2008-2013.

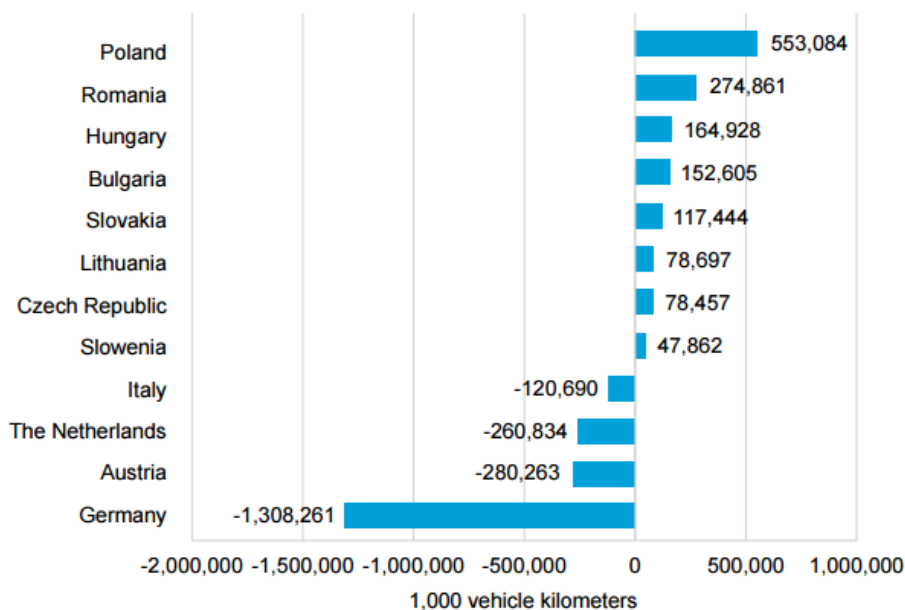
Figure 14-17: Cross trade by vehicles registered in Germany (in thousand t)



Source: Eurostat

Overall, there was a significant shift in the share of traffic from German and Western European common carriers to companies based in Eastern Europe. This phenomenon has been apparent in international road haulage since the opening of the transport markets and, in particular, since the commencement of EU enlargement to the east, shown by toll statistics for German highways in the five-year period from 2007 through 2012 (see Figure 14-18).

Figure 14-18: Development of mileage of heavy trucks on German highways by nationalities 2007 through 2012



Source: ZF Friedrichshafen (2014)

14.3.1.3 Drivers' salary levels and working conditions

In December 2013, there were 819,000 employed drivers paying social security contributions in Germany, of which 65% (543,000) were drivers of heavy goods vehicles. Less than 2% of the drivers of heavy goods vehicles were women – a percentage that slightly decreased since to the year before. The share of foreign HGV drivers was with 9% above the national average of foreign employees (which was at 8% in the year 2013) and increased by more than 1% since 2012. Despite this increasing share of foreign drivers, it is reported that so far only few undertakings use the possibility of hiring foreign drivers. Foreign drivers are typically employed under the same conditions as German drivers; partly foreign drivers also get support for finding accommodation and for dealing with administrative issues. In case a driver moves their place of residence to Germany, frequently specific working hour models are deployed that allow the drivers to return to their home country regularly (BAG, 2014).

Less than 3% of employed HGV drivers were younger than 25 years in December 2013. The share of drivers with an age of 50 years and older has been increasing and attained a level of 43% in December 2013. This age structure shows the recruitment problems in the driver profession in Germany: the BAG reports that a significant share of drivers will retire in the coming years. This shortage of young drivers is amplified by the fact that many drivers retire early due to health issues. For example, in 2011, the average age of drivers that applied for such early retirement was 53 years. In this context also the possible retirement at age 63 is to mention – the age at which drivers (or others) can obtain their full pension if they have contributed to the pension scheme for 45 years (BAG, 2014).

The BAG reports that drivers are regularly subject to **high time pressure**. Time management systems of loaders have helped to avoid peaks at loading and unloading points, however, they have put more pressure on drivers to arrive at the exact time. Especially drivers engaged in long-distance transport are reportedly subject to long and irregular working times (BAG, 2014). The BAG sees this as one major reason for the non-compliance with the driving time regulations (see the next section for data on controls and detected infringements).

The German statistical office (Statistisches Bundesamt) collects data on **accidents** per involved vehicle type. Table 14-4 and Table 14-5 show the number of accidents that caused personal injuries where a bus and a goods vehicle were involved. The tables further show the accidents where the driver of the respective type of vehicle was the main responsible²⁴⁹ of the accident.

Despite a decrease of bus vehicle kilometres in the period from 2004 to 2013 of 10%²⁵⁰ (Statistisches Bundesamt, 2014) the number of accidents causing personal injuries with bus involvement slightly increased. The share of accidents where the bus driver was the main responsible is close to 40% in both years. The main share of these latter accidents goes with around 60% to line buses, which correlates with their higher driving performance: line traffic (probably including the services of line buses, school buses and trolleybuses) accounted for 75% of all bus traffic in 2004 and of around 80% in 2013.

²⁴⁹ The main responsible is the person involved in the accident that is, according to the assessment of the police, the main guilty person for the accident. The driver involved in a single-vehicle accident is always the main responsible.

²⁵⁰ The source does not provide information on whether these vehicle kilometres include the vehicle kilometres of foreign vehicles on German roads and/or the vehicle kilometres of German vehicles abroad.

Table 14-4: Accidents causing personal injuries where a bus was involved

Year	Total	Bus driver was the main responsible						
		All bus types (Share of total)	Split across different bus types					Other buses
			Line buses	School buses	Coaches	Trolley- buses		
2004	5,406	2,124 (39%)	60%	8%	6%	0%	26%	
2013	5,488	2,321 (42%)	63%	6%	5%	0%	26%	

Source: Statistisches Bundesamt (2014)

In the case of goods vehicles, the share of accidents where the goods vehicle driver was the main responsible is, with around 65%, higher. Here the main share goes to goods vehicles with a mass of below 3.5t – again, this is likely to be correlated with their higher share in total performance. Drivers of heavy goods vehicles (above 3.5t and trailers) are responsible for 41% of accidents where the goods vehicle driver was the main responsible.

Table 14-5: Accidents causing personal injuries where a goods vehicle was involved

Year	Total	Driver of goods vehicle was the main responsible										
		All goods vehicles (Share of tot.)	Split across different goods vehicle types							Semi- trailer	Tractor- trailer	Other
			Normal goods vehicles									
			All	≤ 3.5t	3.5- 12t	≥ 12t	n/a					
2004	36,525	23,377 (64%)	82%	48%	13%	12%	9%	15%	1%	2%		
2013	30,017	19,468 (65%)	78%	50%	11%	10%	7%	18%	1%	2%		

Source: Statistisches Bundesamt (2014a)

The BAG (2014) further reports that the cause of accident depends, among other, on the age of the goods vehicle driver. Older drivers are less likely to cause accidents with personal injuries due to inappropriate speeds. However, drivers aged 55-65 are more likely to cause an accident due to a violation of the right of way. Other parties involved in an accident with a goods vehicle run a risk to be killed in the accident that is four times as high as the risk to be killed for the goods vehicle driver.

Wages are ruled by labour agreements negotiated at the regional level (the "Länder"), which have led to West German transport operators frequently focus on 'high quality' transport and increasingly outsource transport operations to their Eastern European or Eastern German subsidiaries (Guihery, 2008). East German drivers can be paid 30% less than Western German drivers, given that Eastern German undertakings are more exposed to competition from lower-wage countries. Labour cost differences between Germany and other Member States have been gradually decreasing since the cabotage rules were introduced in 2009 and part of the remaining differences are outweighed by a higher efficiency of German hauliers (European Parliament, 2013a). In the first half of 2014 various wage increases were registered in Germany, such as in Bayern and Thüringen. In Bayern, the collectively agreed wage for a certified driver (i.e. who has passed the examination of the German Chamber of Industry and Commerce for professional drivers) or for a driver that has more than 15 years of employment with the company has increased at the beginning of 2014 by 2.4%, to EUR 2,028 per month. In Thüringen, the collectively agreed wage increased in July 2014 by 2.5% to EUR 1,820 per month (BAG, 2014). Bremen is an example that does not have collectively agreed wages for drivers. Instead, single undertakings have signed their own collective wage agreements with unions. According to the BAG, most undertakings that do not have such agreements pay according to the agreements that are in place; some drivers are paid above the collective agreements. The latter reportedly applies mainly to drivers with specific know-how or to drivers that are engaged in long-distance transport operations. In metropolitan areas, wages frequently lie above the average wages typical for the sector (BAG, 2014). Bioly and Klumpp (2014)

report that the average starting wage for professional drivers lied in April 2014 at EUR 1,600 to 1,800 per month. The average annual wage was at EUR 24,600 for drivers below 30 years of age, at EUR 26,600 for drivers between 30 and 40, and at EUR 27,200 for drivers above 40.

The introduction of **the German minimum** wage has reportedly been an issue for undertakings located in the East of Germany, where some drivers' basic wage (without bonus or expenses) lies below the minimum wage of EUR 8.50 per hour. Concerned undertakings have been considering to include bonus payments in the basic fixed hourly wage rate, so that the final labour costs remain approximately stable for the company (BAG, 2014).

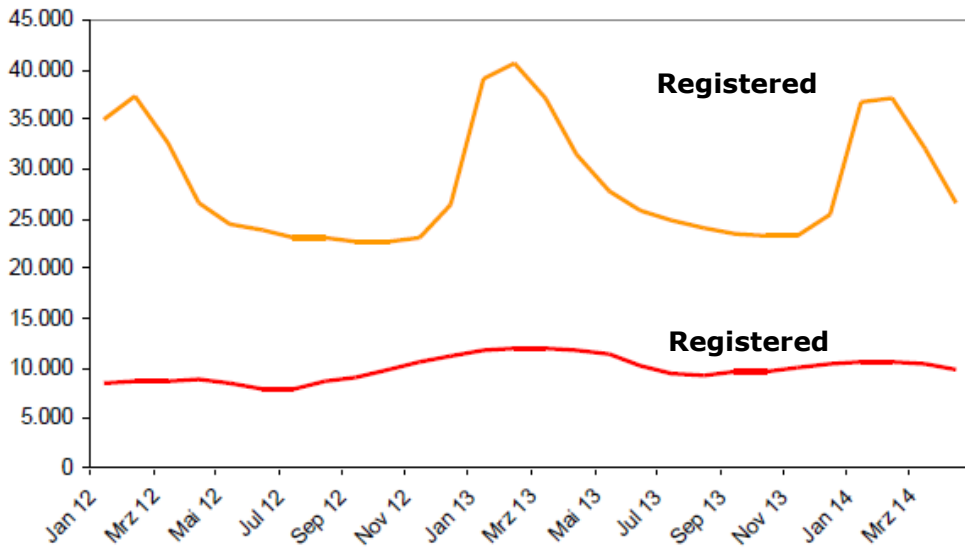
The **organisation of drivers** in unions is little compared to other professions in Germany. However, in 2014 certain associations have achieved to organise demonstrations demanding more harmonisation of conditions of competition in Europe, especially with regards to wages, and more effective controls of road social legislation (especially of the driving and rest time provisions) and of cabotage provisions. Despite partly same interests, drivers' organisations do not appear to cooperate with each other and frequently remain unknown (BAG, 2014).

The **education to a professional driver** takes three years in Germany. The applicant obtains the driving licences to various vehicle classes. In 2013, there were 3,206 new training contracts, leading to a total of 7,322 running training contracts. There were 260 female trainees, signifying a share of 3.6% of all trainees. In 2013, 83% of trainees passed the final exam. The number of running training contacts has stagnated since 2011. The dissolution of training contracts in the year 2012 was 46%, which is the seventh highest dissolution rate of training contracts in occupations that require training. This high dissolution rate is one of the reasons for undertakings not to invest in professional training. Professional schools have run into problems to maintain their operation. The reported **reason for teenagers to decide against the driver profession** is mainly the relatively bad public image of the sector and driver profession. This bad image is reportedly caused by, among others, the high volumes of good transport and the resulting goods vehicles on the street, and a negative representation of the profession in the media. The average monthly wages of trainees to the driver profession is EUR 745 in the Western parts of Germany and EUR 704 in the Eastern parts of Germany over the three-year period and is EUR 41 and EUR 18 lower than the average trainee wages across all professions (BAG, 2014).

Driver shortage

Figure 14-19 shows the number of registered unemployed professional drivers against the number of registered vacancies: the number of unemployed drivers surpasses the number of vacancies. However, numerous unemployed drivers and vacancies are likely to remain unregistered. Especially undertakings frequently omit to register their vacancies (especially if they previously failed to employ new drivers with the help of employment agencies). Frequently, such vacancies are then filled by word-of-mouth advertising or by advertising vacancies on the back of their trucks (BAG, 2014). In general, undertakings find it difficult to employ new drivers, this especially applies to vacancies in the long-distance transport segment and to vacancies where drivers need to meet specific requirements, such as to be allowed to transport dangerous goods (BAG, 2014).

Figure 14-19: Registered vacancies and registered unemployment in the profession of drivers of goods vehicles from 01/2012 to 03/2014



Source: BAG (2014)

The numbers of registered unemployed drivers and vacancies appears to be misleading concerning the expected driver shortage due to mainly demographic changes. For the study "ZF-Zukunftsstudie Fernfahrer" (ZF Friedrichshafen, 2014) 2,196 professional drivers were successfully consulted in 2014. The demographic data of these drivers shows that 45% of these drivers are 50 years and older. It is estimated that around 15,000 to 20,000 drivers will retire each year in the coming years, whereas currently approximately only 3,500 training contracts are finished each year (ZF Friedrichshafen, 2014). Given expected increases in the volume of transport operations, this is in line with BAG's estimations of a driver shortage of 315,000 drivers in the upcoming 15 years, and the Federal Labour Office's estimate of 200,000 missing drivers in the upcoming 10 years (Bioly & Klumpp, 2014).

Working and driving times

The drivers consulted for the study carried out by ZF Friedrichshafen (2014) stated that in short-distance traffic (till 50km) driving takes almost 50% of the working time. The driving time share of the total working time increases to around 70% in the long-distance transport segment (>150 km) (ZF Friedrichshafen, 2014).

Table 14-6 shows reported average driving and working times of professional drivers in Germany. In long-distance traffic the average *driving* time was found to be 39h and 42h per week for national and international traffic respectively. In long-distance traffic there is hence not much room to increase driving times, given that 90h within two weeks cannot be surpassed according to the driving and rest time provisions of Regulation (EC) No 561/2006. In shorter distance traffic there is the potential to increase driving times if other work activities were to be reduced.

According to Directive 2002/15/EC working time for professional drivers is limited to maximal 60h per week, if - over a period of four months - the average working time of 48h is not surpassed. Only drivers operating in the local transport segment show work below 48h though. Drivers engaged in all other transport segments report to have average working times that lie (partly well) above 48h.

Table 14-6: Reported weekly working and driving time of professional drivers in Germany in 2014 (in 2012 in brackets where available)

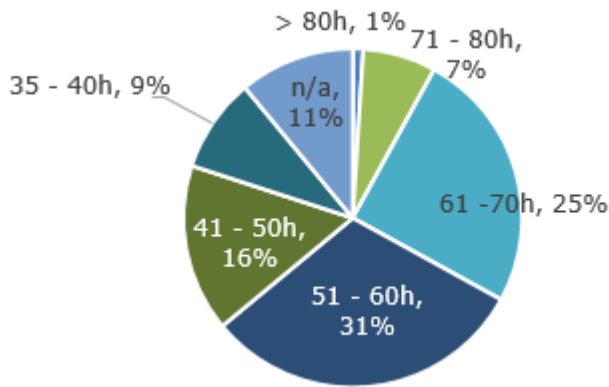
Type of transport operations	Share of drivers	Average weekly	Average weekly	Distance (in km/week)	Average speed (in km/h)

		working time (in h)	driving time (in h)		
Local (<50 km)	9.9%	44.4 (47.3)	22.6	673	30
Regional (<150 km)	30.3%	49.1 (52.2)	30.0	1,290	43
National long-distance	32.6%	57.1 (60.0)	38.6	2,554	66
Intern. long-distance	27.2%	59.3 (62.9)	41.5	2,665	64
Total	100.0%	54.0 (56.7)	35.5	2.032	56

Source: ZF Friedrichshafen (2014) and ZF Friedrichshafen (2012) where numbers are available

A study by HS Furtwangen (2012) that consulted over 1,000 drivers in Germany in 2011 is largely in line with the above findings. A large share of consulted drivers stated that their weekly working time was above, and partly even significantly above the legal limits as provided for in Directive 2002/15/EC (see Figure 14-20).

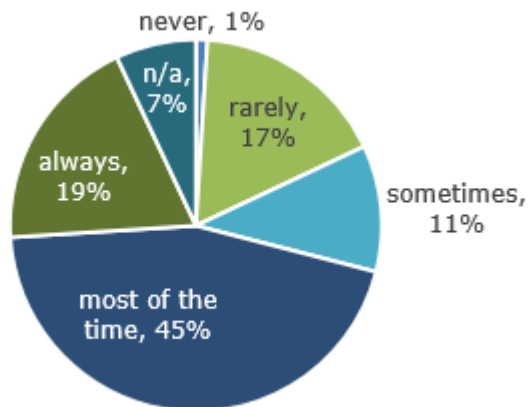
Figure 14-20: Reported duration of an average weekly working week of professional drivers



Source: Furtwangen University (2012)

For the same study almost 30% of consulted drivers reported that they were able to adhere to driving and rest times 'sometimes' or more rarely (see Figure 14-21).

Figure 14-21: Reported compliance with driving and rest periods

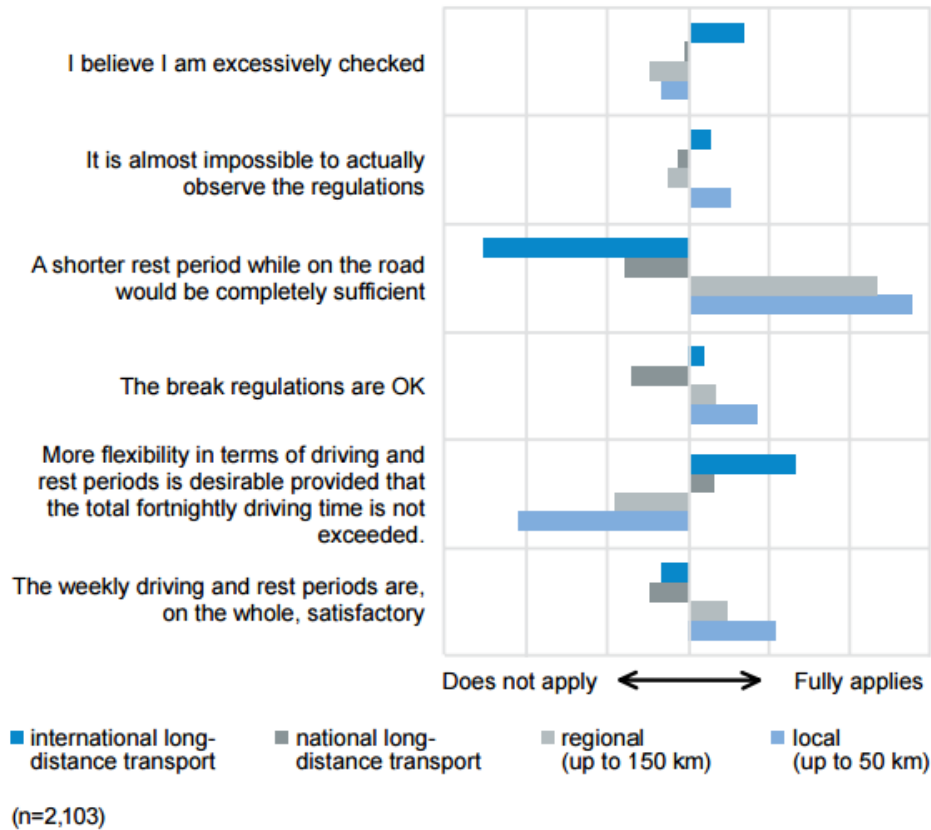


Source: Furtwangen University (2012)

Perception/ Assessment of driving times and rest periods by drivers

Drivers consulted for ZF Friedrichshafen (2014) generally expressed a preference for more flexibility regarding driving times and rest periods, while retaining total driving time over two weeks. This assessment was confirmed by the high satisfaction with the applicable weekly *total* driving times and rest periods. An approval of drivers of the demand for a reduction in rest periods on the road is therefore only limited. Drivers were found to be very indifferent when they assess the checks or compliance with the Regulation on Driving Times and Rest Periods. Drivers did not report to feel that they were subject to excessive checks, with the majority able to comply with the regulations. Figure 14-22 shows an overall assessment of driving times and rest periods, classified by the operating range of the consulted drivers.

Figure 14-22: Assessment of driving times and rest periods by operating range



Source: ZF Friedrichshafen (2014)

It can be seen that short-distance and regional transport drivers are much more satisfied with the driving times and rest period provisions than their colleagues from the long-distance transport segment. Therefore, it is not surprising that long-distance transport drivers would like to see more flexibility for driving times and rest periods, while at the same time they tend to reject shorter breaks. Short-distance and regional transport drivers tend to be more in favour of shorter break time. When it comes to the assessment of checks on driving times and rest periods, only international long-distance transport drivers feel they are subject to above-average excessive checks. However, the survey does not provide any reasons for this sentiment (ZF Friedrichshafen, 2014).

Stress and attractiveness of the profession

The drivers consulted for the study by ZF Friedrichshafen (2014) were asked about **stress factors** in their work. The most significant stress factors were stated to be faulty vehicles, traffic situations on the road and unforeseeable waiting periods. Combining all stress factors into a single average on the basis of the individual assessments allowed ZF Friedrichshafen (2014) to make the following statements regarding a driver's average sense of stress: The sense of stress falls with age (and with generally greater professional experience); conversely, the perceived stress when carrying out the job increases as a factor of weekly working hours. This also applies as driving time increases.

For boosting the attractiveness of the profession, drivers especially call for better remuneration, an improvement of the public image of the profession, and better planning of weekends and working times.

The most frequently cited reason for choosing the profession of a driver was found to be 'fun when driving' (with 67% of drivers stating this as one of the reasons). This is followed by 'interesting profession' (ZF Friedrichshafen, 2014). 80% of drivers stated that they had worked in a different profession before becoming a driver; and 65% of drivers stated that they have at least changed their employer once (ZF Friedrichshafen, 2014).

14.3.2 Regulation (EC) No 561/2006

14.3.2.1 Implementation and status

The German "**Fahrpersonalgesetz**" (FPersG)²⁵¹, which applies to drivers of motor vehicles that are used on public roads and light rail vehicles, defines the implementation of the EU road social rules: it sets out the competences for enforcement as well as the measures for the prevention of infringements, and extends the scope of the provisions concerning the prohibition of task wages (see Article 10(1) of Regulation (EC) No 561/2006) to driving personnel of all vehicle types. It contains the description of offences of Regulation (EC) No 561/2006 and the FPersG which can lead to fines. The competent implementing authority is the Ministry of Transport that, explicitly, has to act with the consent of Ministry of Labour and Social Affairs. The first version of the FPersG dates back to 1971 and was last amended on the 2nd of March 2015.

The German "**Fahrpersonalverordnung**" (FPersV)²⁵² was first introduced in June 2005 and was last amended in June 2015. It extends the scope of the driving and rest time provisions of Regulation 561/2009 to vehicles with a maximal mass (including trailers) of 2.8t to 3.5t as well as to vehicles designed for the carriage of passengers of nine passengers (including the driver) on regular services where the route covered by the service does not exceed 50 kilometres. It hence also covers the vehicles that are derogated from Regulation (EC) No 561/2006 according to Article 3 (a). However, vehicles that are derogated from FPersV are (i) all vehicles that are listed as possible exemptions of Regulation (EC) No 561/2006 in Article 13, (ii) all vehicles that are exempted from Regulation (EC) No 561/2006 according to Article 3 (b-i), as well as (iii)

- all vehicles that are used for the transport of material, equipment or machines that are used by the driver to perform their professional activities (as long as the driving is not the main activity of the driver);
- all vehicles that are used to the transport of goods that belong to the undertaking of the driver and that were produced in artisanal fabrication or in small batches, or whose repair is scheduled in the undertaking (or whose repair has already happened in the undertaking; as long as the driving is not the main activity of the driver);
- all vehicles that are used as sales vehicles at local markets or for ambulant sales and that were especially equipped for such purposes (as long as the driving is not the main activity of the driver); and
- all self-driving work machines.

Regular **passenger services** that fall within the scope of FPersV have to comply with slightly modified driving and break times (as compared to the provisions of Regulation (EC) No 561/2006):

- If the average distance between stops of the regular passenger service is more than three kilometres, then the driving break after 4.5h of driving is to be at least continuous 30min. This break can be split into two breaks of continuous 20min each

²⁵¹ Fahrpersonalgesetz in der Fassung der Bekanntmachung vom 19. Februar 1987 (BGBl. I S. 640), das zuletzt durch Artikel 1 des Gesetzes vom 2. März 2015 (BGBl. I S. 186) geändert worden ist

²⁵² Fahrpersonalverordnung vom 27. Juni 2005 (BGBl. I S. 1882), die zuletzt durch Artikel 1 der Verordnung vom 9. März 2015 (BGBl. I S. 243) geändert worden ist

- or three breaks of continuous 15min each. These split breaks must occur within the driving time of the maximal 4.5h or partly within this time and partly instantly after.
- If the average distance between stops of the regular passenger service is not more than three kilometres, then working breaks (e.g. such as turning times) suffice as driving breaks, as long as the total time of the working break is at least one sixth of the scheduled driving time. After a continuous driving time of 4.5h a driving break of at least 45min is required. Working breaks below 10min are not accounted for in the calculation of the total break time. However, collective agreements may allow that working breaks of at least 8min can be considered, as long as other provisions ensure sufficient recreation of the driver. For self-employed drivers the authorities in the regions, the 'Laender', may grant deviations to these provisions.
 - Furthermore, drivers of vehicles used in regular passenger services are not required to take a weekly rest after six 24-hour periods; they can also distribute the weekly rest period across a period of two weeks.

With regards to **recording requirements**, goods vehicles falling in the scope of FPersV are not subject to the requirement of the build-in of recording equipment. Drivers of such vehicles can hence record their activities in writing. However, in case such a vehicle is nevertheless equipped with such recording equipment, the driver is obliged to use this equipment for all recording of driving and rest times.

Under Article 18 of the FPersV, Germany permits all **derogations** that are defined under Article 13 of Regulation (EC) No 561/2006. Up until April 2013, Germany has not made the use of any possible temporary relaxation of the provisions that are permitted under Article 14(2) of the Regulation [Ref²⁵³].

Vehicles with a total maximal weight below (or equal to) 2.8t do not fall into the scope of FPersV. Drivers of these vehicles are exclusively protected by the provisions of the German "Arbeitszeitgesetz" (ArbZG), the German working time provisions. Both FPersV and FPersG apply to vehicles on the German territory and also apply to foreign vehicles that carry out operations in Germany.

14.3.2.2 Enforcement and compliance

The German Office for Goods Transport (the BAG) as well as the police are the responsible authorities for performing roadside checks. Checks at premises are carried out by regional authorities, which can have deployed different enforcement systems for the checks at premises.

According to interview responses from a German regional enforcement authority, **company checks** are carried out by using a 'traffic light system' – red companies that have shown to have highest infringement rates will be logged and visited annually for company checks. Other companies are checked every three to five years. Company checks take around two to three months and cover all available data on driving time rules and working hours.

Most German enforcement authorities consulted for this study (including the BAG) reported that forms for **attesting unrecorded activities** (signed by the employer) are a possible means for proving such activities, however, also other proofs are accepted. Only three out of the 18 regional enforcement authorities reported that the drivers are *required* to use such a form. Although these authorities are not responsible for roadside checks, these partly differing answers show that there remains a certain incoherence in the understanding on the use of these forms. The German Chamber of Industry and Commerce explicitly recommends to use the official forms for attesting unrecorded activities, in order to avoid potential problems at controls abroad.

Table 14-7 shows **control statistics and infringement rates** for the controls carried out by the National Office for Goods Transport (BAG) on the 'Fahrpersonalrecht' (Regulation

²⁵³ http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/index_en.htm

(EC) No 561/2006 and Regulation 3825/85) for the year 2014. It can be seen that the detection rate of non-compliance with the 'Fahrpersonalrecht' is slightly higher for goods vehicles (18%) than for passenger vehicles (16%). Across all vehicle types the highest share of infringements regarding Regulation (EC) No 561/2006 goes to infringements of rest period provisions. Especially the rules on daily rest periods are most frequently infringed; in the passenger and goods transport sector, infringements of the daily rest period account for slightly more than 40% of all infringements concerning Regulation (EC) No 561/2006. The weekly rest periods appears to be specifically a problem in the passenger transport sector, where these infringements account for an additional 17% of all infringements concerning Regulation (EC) No 561/2006. In both the passenger and freight transport sector, the infringement rate was higher for German vehicles than for foreign vehicles. On average, in 2014, five infringements per non-compliant vehicle were detected. There were not any significant changes in detection rates or in the split of detected infringements across the different infringement types compared to 2013. Altogether, the share of infringements of Regulation 3821/85 was higher in 2014 than in 2013.

Table 14-7: Control and infringement statistics - Germany 2014

	Passenger Transport			Goods transport		
	German vehicles	Foreign vehicles	Total	German vehicles	Foreign vehicles	Total
Vehicles checked for Reg. 561/2006, 3820/85, 3821/85 or AETR	1,881	864	2,745	71,870	107,335	179,205
Vehicles where infringements were detected	309 (16%)	129 (15%)	438 (16%)	14,989 (21%)	16,919 (16%)	31,908 (18%)
Total number of detected infringements (multiple infringements per vehicle possible), of which:	1,321	295	1,616	91,191	59,494	150,685
(I) Infringements of Reg. 561/2006, 3820/85 or AETR, of which:	426 (32%)	93 (32%)	519 (32%)	41,538 (46%)	30,888 (52%)	72,426 (48%)
Infringements of driving time rules	17%	12%	17%	29%	32%	30%
<i>Daily driving times</i>	15%	12%	15%	23%	22%	23%
<i>Weekly driving times</i>	0%	0%	0%	0%	1%	0%
<i>Bi-weekly driving times</i>	2%	0%	1%	5%	9%	7%
Infringements of rules on breaks	27%	17%	25%	28%	14%	22%
<i>Surpassing of point when break should have been taken</i>	13%	9%	12%	15%	8%	12%
<i>Insufficient break</i>	14%	9%	13%	14%	6%	10%
Infringements of rules on rest periods	55%	71%	58%	43%	54%	48%
<i>Daily rest periods</i>	37%	59%	41%	40%	45%	42%
<i>Weekly rest periods</i>	19%	12%	17%	4%	9%	6%
(II) Infringements of Reg. 3821/85 and AETR, of which:	895 (68%)	202 (68%)	1,097 (68%)	49,653 (54%)	28,606 (48%)	78,259 (52%)
No recording equipment	0%	0%	0%	1%	1%	1%
No according use of the recording equipment	7%	13%	8%	9%	9%	9%
Recordings/ drivers card not available or not shown	6%	0%	5%	3%	6%	4%
No or unduly use of recordings/ drivers cards	49%	74%	54%	61%	67%	64%

Non-disclosure of recordings / Missing of attestations of unrecorded days	38%	12%	33%	25%	18%	23%
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Source: (BAG, 2015)

While there is no official document that explicitly says whether spending the **regular weekly rest** in the vehicle is allowed or not, there is general consensus that spending the regular weekly rest in the vehicle is not prosecuted. The BAG consulted for this study stated that spending the regular weekly rest in vehicles is 'tolerated' as there is no 'legal basis for an effective prosecution and/or punishment'.

Articles 8 and 8(a) of the FPersG and Articles 21–25 of the FPersV define infringements against the FPersV, the FPerG and all EU-level provisions relevant to road social legislation (incl. Regulation 3821/85, Regulation 2135/98, Regulation (EC) No 165/2014, Regulation (EC) No 561/2006 and the AETR). The infringements are largely stated for either drivers, undertakings, vehicle owners, garage owners or installers. Article 8(a) of the FPersG defines the infringements of most provisions set out in Regulation (EC) No 561/2006. Also here the infringements are stated for undertakings and drivers separately. Article 8(a) 3 defines the **co-liability** of freight forwarders, shippers, consignors and tour operators if they contractually agree a transport time schedule without ensuring that this schedule is not in conflict with the provisions. Article 8(1)c sets out that payments related to the distance travelled or the amount of freight transported constitute an infringement against the FPersG.

According to the questionnaire answers of different enforcement authorities from the regions, the extent to which drivers are held responsible in practice varies immensely. While some enforcement authorities state that in practice the driver is held responsible for less than 5% of detected infringements, other enforcement authorities estimate the share to be at around 70% or even 95% in their regions. Most responses indicate that this share will very much depend on whether the infringement was detected at a roadside check or during a check at the premises. Concerning the liability of other parties in the transport chain, the majority of enforcement authorities stated that such liability has hardly ever or never been enforced in practice and mainly say that proving such liability is the main difficulty.

14.3.2.3 Penalties for non-compliance

Article 8a(4) of the FPersG defines the maximal fines that can be imposed for infringements against Regulation (EC) No 561/2006 (or other pieces of legislation relevant to the road social rules): Undertakings and other co-liable parties in the transport chain can be fined with up to EUR 30,000 (before March 2015 the limit was EUR 15,000), drivers and garage owners or installers can be fined with up to EUR 5,000. The document "Buß- und Verwarngeldkataloge zum Fahrpersonalrecht" gives detailed descriptions of how to calculate fines for infringements of Germany's road social legislation and provides numerous calculation examples (LASI, 2012). The last part of the document lists the explicit level of fines for each type of infringement for Regulation (EC) No 561/2006, Regulation 3821/85, FPersG, FPersV and AETR separately. The catalogues give standard rates which can be adapted to the specific circumstances. Standard rates of an infringement are defined for drivers and undertakings separately, typically provided for a certain time unit of an infringement and frequently higher for the undertaking than for the driver. An illustrative example is the infringement of the weekly rest time in international passenger transport: the driver would be fined with EUR 100 for each started 24h-period in which the weekly rest has already been overdue. The undertaking would be fined with EUR 300 for the same infringement if it is found not to have ensured that the weekly rest is taken accordingly. In case a driver is paid in relation to the distance travelled or the quantity of goods transported, the fine is in the range of EUR 2,500 to EUR 7,500 per identified case.

14.3.3 Directive 2002/15/EC

14.3.3.1 Implementation and status

General working times are regulated in the German Working Time Act (the **Arbeitszeitgesetz, ArbZG**²⁵⁴). It was last amended in April 2013 and dates back to 1994. Articles 18 to 21 provides special provisions for several professions, including workers employed in the aviation sector, in the inland shipping sector and the road transport sector, the latter being defined in Article 21a, which was first introduced on 1st of September 2006. The ArbZG's version that is in force since 11th April 2007 refers to Regulation (EC) No 561/2006 to define the scope of activities that fall within the scope of Article 21a, and makes furthermore clear that Regulation (EC) No 561/2006 remains 'untouched' by any provisions in the ArbZG. It further defines the periods that do not count as working time, i.e. periods of availability (at or away from the place of work), the time spent next to the driver in case of multi-manned transport operations, and the maximal working time of 48h (or maximal 60h in case the conditions defined in Directive 2002/15/EC are met). Article 21a also sets out the provisions on recording requirements for the employer and allows diversions from the rules in case of collective agreements; Article 7 defines exactly which deviations to the ArbZG are allowed under such collective agreements.

Article 2 defines the period during which work is to be counted as night work to last from 23h to 5h. Every work surpassing a period of 2h during that time is considered to be night work. Article 6 further defines that a worker that carries out night work is not allowed to work for more than 8h during such a day (or a maximal of 10h in case an average of 8h per day within a 4-week timeframe is not surpassed), which is a more favourable provision from the drivers' perspective than what is required under Directive 2002/15/EC (which does not allow drivers to work more than 10h during days when night work is carried out).

Employed transport workers are subject to all provisions in the ArbZG, unless they are defined differently in Article 21a. All employed transport workers that are not covered by Article 21a (since their activities do not fall in the scope of Regulation (EC) No 561/2006) are covered by the general ArbZG.

The Working Time Act for self-employed drivers (**Gesetz zur Regelung der Arbeitszeit von selbständigen Kraftfahrern, KrF ArbZG**²⁵⁵) was issued 11th of July 2012 (and came into force on the 1st of November 2012). It refers to Directive 2002/15/EC, Article 3(e) to define the workers that are in scope of KrF ArbZG and sets out the same working time provisions as the ArbZG, hence in line with the Directive 2002/15/EC. The provisions on night work for self-employed drivers are more in line with Directive 2002/15/EC and are therefore less stringent than for employed drivers in Germany: self-employed drivers are allowed to work for 10h on a day that comprises night work; night work itself is defined as the work that is carried out during the period from 0h to 4h.

The German Ministry of Labour and Social Affairs is the responsible authority for the ArbZG. However, the FPersG explicitly states that the Ministry of Transport, in agreement with the Ministry of Labour and Social Affairs, is the responsible authority to guarantee working times in the road transport sector, and can therefore be seen as the responsible authority for the KrF ArbZG and Article 21a of the ArbZG, which refers to road transport workers specifically.

Enforcement authorities that were consulted for this study estimated that the share of undertakings that have collective agreements with their employees relating to their working times to be in the range of 5-10%. Some enforcement authorities stated that the share would be negligible.

²⁵⁴ Arbeitszeitgesetz vom 6. Juni 1994 (BGBl. I S. 1170, 1171), das zuletzt durch Artikel 3 Absatz 6 des Gesetzes vom 20. April 2013 (BGBl. I S. 868) geändert worden ist

²⁵⁵ Gesetz zur Regelung der Arbeitszeit von selbständigen Kraftfahrern vom 11. Juli 2012 (BGBl. I S. 1479)

14.3.3.2 Enforcement and compliance

Article 17 of the ArbZG defines that the regional authorities, as defined by the respective regional law, are responsible for the enforcement of the ArbZG. The majority of German regional enforcement authorities consulted for this state stated that the enforcement of Article 21a of the ArbZG (relevant for transport workers) has been in place since the coming into force of the respective version of the ArbZG (in 2006). All enforcement authorities stated that these checks were carried out at the premises of undertakings, while one interview of a regional enforcement authority highlighted that working hours were also checked in roadside checks, in combination with the checks on Regulation (EC) No 561/2006. Most German enforcement authorities state that they detect infringements against the ArbZG for transport workers either sometimes (1 in 50 checks) or often (more than 1 in 10 checks). They therefore find compliance rates on average rather poor (with a few exceptions that state that they find compliance rates rather good).

Statistics on infringements are not available, since these are only collected on a regional level due to the enforcement competences of the regions.

14.3.3.3 Penalties for non-compliance

Offences against the ArbZG are defined in Article 22 of the ArbZG itself. Article 22(2) gives the maximum fines that can be enforced for such offenses, being either up to EUR 2,500 or up to EUR 15,000 for more serious offences. Article 23 provides the possibility of criminal proceedings that can go up to 1 year of imprisonment or a fine in case certain offenses are i) committed intentionally and put the health of the employer or employee in danger, or ii) repeated persistently. In the case of the KrFArbZG (for self-employed drivers), offences and their penalties are defined in Article 8. Penalties can go up to EUR 5,000 or EUR 10,000 in case of more serious infringements.

As it is the case with Regulation (EC) No 561/2006 and the FPersV and FPersG, a catalogue that defines fines and potential criminal proceedings for infringements against the ArbZG has been developed (LASI, 2014). Also here, the catalogue gives standard rates which can be adapted to the specific circumstance. All defined fines apply to employers only; there are no provisions concerning infringements that potentially fall within the responsibility of the employee. The maximum standard rate for a single infringement is EUR 1,600 and is the rate that is charged per case for infringements concerning the obligations regarding record keeping, such as not making any records or not keeping these.

While the official provisions do not point to any co-liability of employees, some enforcement authorities appear to hold drivers responsible for infringements, at least in certain circumstances: in the questionnaire responses received for this study, 16 out of 20 German enforcement authorities that provided an answer to the respective question stated that employers were the primary responsible party, four stated that they were co-liable. Drivers, on the other hand, were stated by 5 authorities to be (also) the primary responsible party, by two authorities to be co-liable, and by 11 authorities not to be liable (leaving two authorities 'did not know'). One interviewed regional enforcement authority however emphasized that only employers are to be held responsible and fines are never to be paid by the employee.

14.3.4 Directive 2006/22/EC

14.3.4.1 Implementation and status

Directive 2006/22/EC is referred to in Article 2 of the FPersG that makes the Ministry of Transport, in agreement with the Ministry of Labour and Social Affairs, the main responsible for working, driving and rest times in the road transport sector and its enforcement. Article 2(4) makes the Ministry furthermore responsible for ensuring the set up and maintenance of a national register of control equipment. Article 11 of the FPersV makes the Kraftfahrt-Bundesamt (KBA), the Federal Motor Vehicle Transport Authority, the authority responsible

for keeping that register. The "VkBl. Heft 22-2009, S. 720" from 2009 transposes all requirements set out in Directive 2006/22/EC in national law.

According to the data reported in European Commission's 27th implementation report for the period 2011-2012 (EC, 2014a), Germany performed considerably more checks than the 3% of working days that are required by the legislation: 16% of working days were checked. Only in France more working days were checked. Germany was, however, one of the countries that proportionally had very few checks at premises (only 8% compared to the 50% that are required by Directive 2006/22/EC). Also, each year around 5-6 joint checks took place in Euro Controle Route initiatives (with inspectors from France, Austria, the Netherlands, Czech Republic and Poland). 10-15 exchanges of experiences were reported to have taken place under ECR or TISPOL per year, where typically 2-10 inspectors participate. The BAG furthermore reported that in the period 2011-2012 close to 16,000 control officers were engaged in checks at the roadside or at premises, of which around 6,300 were trained to be able to analyse data from digital tachographs. Compared to the previous reporting period (2009-10) these numbers show a significant decrease in enforcement capacities by 11% and 21% respectively. 3,315 units of equipment were available that allowed control officers to download, read and analyse data from digital tachographs at the roadside and company premises (compared to the reported 2,392 units in the previous reporting period).

The Bundesamt für Güterverkehr (BAG, the Federal Office for Goods) is the authority that is responsible for the biennial reporting to the Commission and has done so over the previous reporting periods in line with the reporting template that is provided by the Commission for that purpose.

Germany has a risk rating system to target checks that has been transitioned because of Directive 2006/22/EC. Most German enforcement authorities participating in this study stated that the risk rating system contains information from a selection of responsible enforcement authorities. It does hence not appear that the system is already operating optimally.

The BAG reported for this study that the TRACE curriculum for roadside checks has been taken up partially but that it did not have any material impact on any enforcement activities.

14.4 Italy

14.4.1 Market situation and development

The Italian road transport market has strongly been affected by the economic crisis and the increasing competitiveness of Eastern European countries. The general sentiment of dissatisfaction among Italian entrepreneurs that emerges from the analysis shows that besides the crisis there are specific weaknesses within the road transport system itself that prevent Italian undertakings from facing the increased competition and the tight market conditions.

14.4.1.1 Market Overview

In the year 2012, the value added of the Italian road freight transport sector was € 10,571 million, which corresponds to 0.76% of the total value added of the Italian economy and nearly 90% of the total value added of the Italian freight transport sector. The relevance of road freight as a share of the overall freight transport sector and of the economy as a whole has not significantly varied over the years (Confcommercio, 2015).

As shown in Figure 14-23, the road freight market has strongly been affected by the economic crisis. Its value added decreased by 8% in 2009 with respect to 2008; however, the sector appeared to recover in the following two years, until another decline in 2011–2012. Basically, the road freight market has reflected the general economic trend in an amplified manner. At the same time, oscillations have been smaller than those in the total freight transport sector. This suggests that road freight transport has been less sensitive to the economic cycle than freight transport as a whole.

Figure 14-23: Trend of the Italian value added of road freight transport, total freight transport and total economy, 2008-2012 (indexed at 1 in 2008)



Source: (Confcommercio, 2015)

The long distance coach transport industry in Italy has been liberalised since 2007 and the regulatory up is gradually changing from exclusive concessions to non-exclusive authorisations²⁵⁶. To our knowledge neither official public figures nor comprehensive studies about the road passenger transport industry in Italy are currently available to quantify such a development. (SDG, 2009) collected some data, but their reliability was evaluated by same authors to be “very poor”. Some estimations of the market were provided in (Beria et al., 2013) based on the information provided by 42 transport operators associated to ANAV, the Italian road passenger transport association representing the large majority of Italian operators. Private coach operating companies are medium- to small-sized, with only 4 firms producing more than 6 million kilometres per year and only 7 producing more than 2 million kilometres per year (Beria et al., 2013).

²⁵⁶ We make reference to the long distance passenger transport services only as local and regional bus transport are out-of-scope of Regulation (EC) No 561/2006).

Interestingly, the largest companies are mostly based in southern regions. Assuming an average load factor of 30 passengers per vehicle, an indicative value of roughly 3 billion pkm carried in 2010 can be estimated.

As estimated by Confcommercio on the basis of national statistics (Confcommercio, 2015), in the year 2012 the number of employees in the road freight transport sector in Italy was 275,600, whereas the most recent figure available for the road passenger transport sector (including urban/suburban land transport) is the Eurostat data of 171,231 employees in the year 2011 (European Commission, 2014b).

According to Eurostat (European Commission, 2014b), Italy accounts for 11% of European employment in the road freight transport sector and 9% in the road passenger transport sector which puts Italy at the fourth place in terms of the share of road transport employees in the EU, preceded by Germany (13% in road freight, 17% in road passenger), France (12% in road freight, 13% in road passenger) and basically at the same level as UK (9% in road freight, 12% in road passenger).

The employment in the road freight sector is therefore in line with Italy's share of total European employment (11%), while the road passenger sector is slightly less represented. The development of employment levels in absolute terms shows the evident negative impacts of the crisis: the number of employed in the road freight sector declined by 9% in the period 2008-2012. In the road passenger transport sector, no negative effects were observed as a result of the initial phase of the crisis, however a noticeable drop in employment has been registered in 2011.

Data on the registration of vehicles provided by the AIRP (Italian association of tyre manufacturers) shows that the total number of vehicles operating in the road freight transport sector amounted to 3.9 million in 2014 (of which 380,000 had a total maximal mass of above 3.5t), which signifies a reduction of 0.2% with respect to the preceding year (TuttoTrasporti, 2015). Eurostat data confirms this decline in the road freight vehicle stock: between 2011 and 2013, the stock reduced by 2%, after a continuous increase since 2005, which started to flatten in 2008.

In the period 2010-2014, CNA-FITA (Italian association of small transport undertakings) reports a decline of the stock of HGVs by 7.6%; this vehicle category was subject to the biggest decline after the economic crisis in the road freight sector. The main reasons for this are seen to be the reduction of the number of Italian transport undertakings and the transfer of their headquarters to Eastern European countries (CNA-FITA, 2015).

With regard to the road passenger transport sector, there was a decline in the growth rate of vehicle stock since 2008 (from 2% in 2008 to 1% in 2009 and 2010), followed by a flat trend in 2010-2011 and a 1% reduction in 2012 (Eurostat).

In 2011, the turnover of Italian road freight transport enterprises was €46,700 million (after a significant drop in the years 2008-2009 and a stable development since 2010), while the turnover of road passenger transport enterprises was €11,132 million, following a more stable development since the year 2006 (see Table 14-8). As shown in previous Figure 14-24 the value added of the sector decreased again in 2012, so it is reasonable to expect that also the turnover suffered a further decline in that year, even if there is still no available data to support this expectation.

Table 14-8: Turnover in road freight and passenger transport (in million EUR)

Type of transport	2006	2007	2008	2009	2010	2011
Freight	43,128	47,367	46,601	37,366	46,065	46,700
Passenger	6,919	7,731	9,083	9,257	10,741	11,132

Source: (European Commission, 2014b)

14.4.1.2 Transport operations: national, international and cabotage

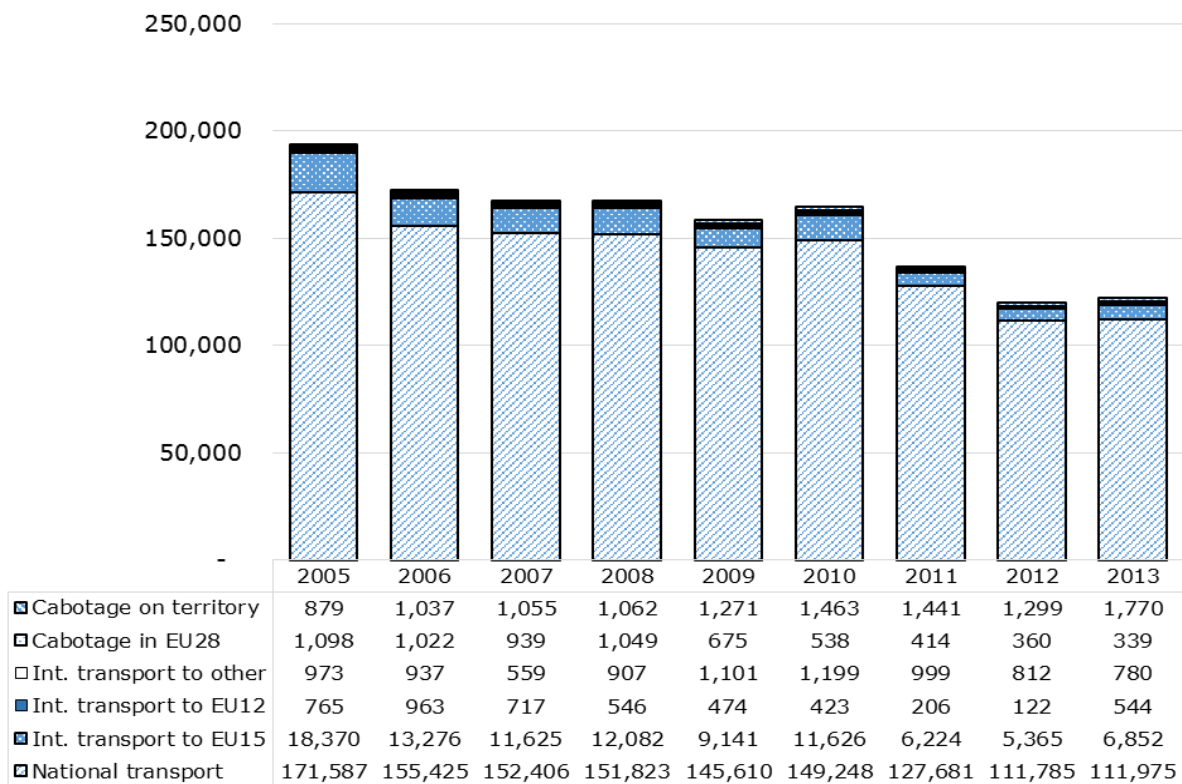
Figure 14-25 presents the activity of the hauliers registered in Italy and the extent of cabotage performed on the Italian territory. The vast majority of transport activity is registered by in the segment of national transport operations, followed by international

transport operations to EU-15 countries. The amount of cabotage services carried out by Italian undertakings in the EU28 is comparatively negligible.

Total transport operations have been decreasing since 2005; the only countertrend business is cabotage carried out by foreign vehicles in the Italian territory, which, although representing a small percentage of the road transport business, has been strongly increasing over the years: i.e. from 879 million t-km in 2005 to 1,770 million t-km in 2013, i.e. an increase of 101.3% in 8 years.

Interestingly, these are only the official figures, deemed to be underestimating the phenomenon. In EU, Italy is the third country in terms of cabotage market (6%). In Germany and France cabotage on the national territory performed by foreign vehicles is much more common: 39% of EU cabotage transport operations are carried out in Germany and 29% in France (European Commission, 2014b).

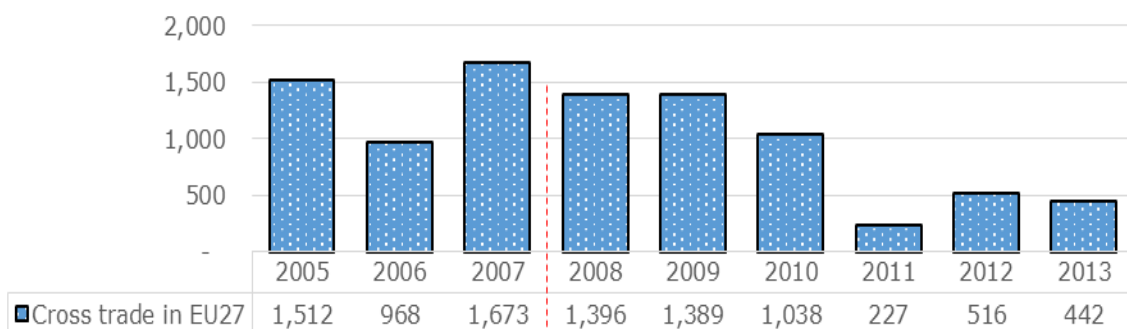
Figure 14-24 Goods transport in Italy in millions of tonne km



Source: Eurostat

The amount of cross trade operations has highly varied since 2005, with a peak in 2007 with 1,673 thousands of tonnes transported and a net decrease in the recent years. The high variability of data might reflect the insufficient reliability of data collected.

Figure 14-25 Cross trade by vehicles registered in Italy in thousands of tonnes



Source: Eurostat, Note: break in series between 2007 and 2008

14.4.1.3 Structure of the road transport market

The road transport sector in Italy is characterised by a large number of very small enterprises with few employees and a small number of vehicles (see Table 14-9). 87% of Italian road transport undertakings (i.e. 63,580 out of 73,030) employ 1 to 5 persons and only 1% of the firms employ more than 50 persons. The percentage of those undertakings with very few vehicles is by far higher (75%) with respect to those firms with many vehicles: only the 1% of the firms in Italy hold between 50 and 100 vehicles, and only the 0.5% hold more than 100 vehicles.

Table 14-9: Goods road transport enterprises by number of employees and number of vehicles (% in 2012)

Type of firm (per # of employees)	Share (%)	Type of firm (per # of vehicles)	Share (%)
From 1 to 5 employees	87%	From 1 to 5 vehicles	75%
From 6 to 9 employees	6%	From 6 to 10 vehicles	12%
From 10 to 19 employees	4%	From 11 to 50 vehicles	12%
From 20 to 49 employees	2%	From 51 to 100 vehicles	1%
50 employees or more	1%	More than 101 vehicles	1%

Source: Eurostat and (Freight Leaders Council, 2014)

The number of enterprises has been experiencing a steady decline since the beginning of 2000. According to UNRAE (Italian association of the representatives of foreign vehicles) over the period 2008-2013 approximately 29,800 undertakings have ceased their business activity and 93% of this fall concerned the smaller companies (1 to 5 employees) (TuttoTrasporti, 2015).

Undoubtedly, the economic downturn and the subsequent financial crises have represented a major cause for this reduction as self-employed drivers and smaller operators have suffered more and have been more heavily affected compared to larger operators. However, the economic and financial crisis in itself does not fully explain the continuous reduction in the number of undertakings registered in Italy.

On this point it is worth quoting again UNRAE (UNRAE, 2015) (which has observed that since the years 2010-2011 the number of companies having delocalised in Bulgaria and Romania has increased).

The research concluded that cheaper operational costs (labour and fuel costs) are the main reason for delocalising (48% of undertakings out of a total of 176 operators with fleets of more than 6 vehicles), while only 13% of the cases analysed were targeted at expanding clients and market share.

A study commissioned by the Italian Central Committee of the Register of Road Transport Operators (*Comitato Centrale dell'Albo degli Autotrasportatori*) has further confirmed the lack of competitiveness of Italian road transport undertakings compared to the undertakings of other European Member States (Freight Leaders Council, 2014). This study compared nine European countries²⁵⁷ and distinguished undertakings according to four different classes defined by the number of vehicles operated for each class²⁵⁸.

Table 14-10 shows that the turnover of Italian road transport undertakings is in line with the average turnover in the nine sampled countries, while at the same time is significantly lower than the average turnover in France, which is the best performing country for all

²⁵⁷ Italy, France, Germany, Spain and Austria (classified as EU15 Member States) and Slovenia, Hungary, Poland and Romania (classified as EU12 Member States)

²⁵⁸ Class I: single-manned road haulage undertaking with one vehicle; Class II: road haulage undertakings with up to 3 vehicles; Class III: road haulage undertakings with up to 5 vehicles; Class IV: road haulage undertakings with more than 10 vehicles.

classes of undertakings considered. At the same time, the study reveals that Italian undertakings pay higher costs compared to the average of the sampled countries.

Table 14-10 Turnover of Italian road transport undertakings compared to other European countries per class of undertaking (€/year)

Class of undertaking	Average turnover of IT undertakings	Average turnover of EU15 undertakings	Average turnover of EU12 undertakings	Difference of IT undertakings to EU15+EU12 average	Difference of IT undertakings to the best performing country (France)
One-vehicle (Class I)	123,699	165,743	97,095	-5.3%	-33.4%
2-3 vehicles (Class II)	391,027	456,943	282,937	5.0%	-23.7%
4-5 vehicles (Class III)	675,026	739,952	499,866	7.8%	-18.0%
> 10 vehicles (Class IV)	1,382,532	1,544,927	1,080,536	4.7%	-15.0%

Note: France is considered as the best performing country for each class of undertakings. The average turnover of EU15 undertakings considers the turnovers of Austria, France, Germany and Spain. The average turnover of EU12 undertakings considers the turnover of Hungary, Poland, Romania and Slovenia.

Source: (Freight Leaders Council, 2014)

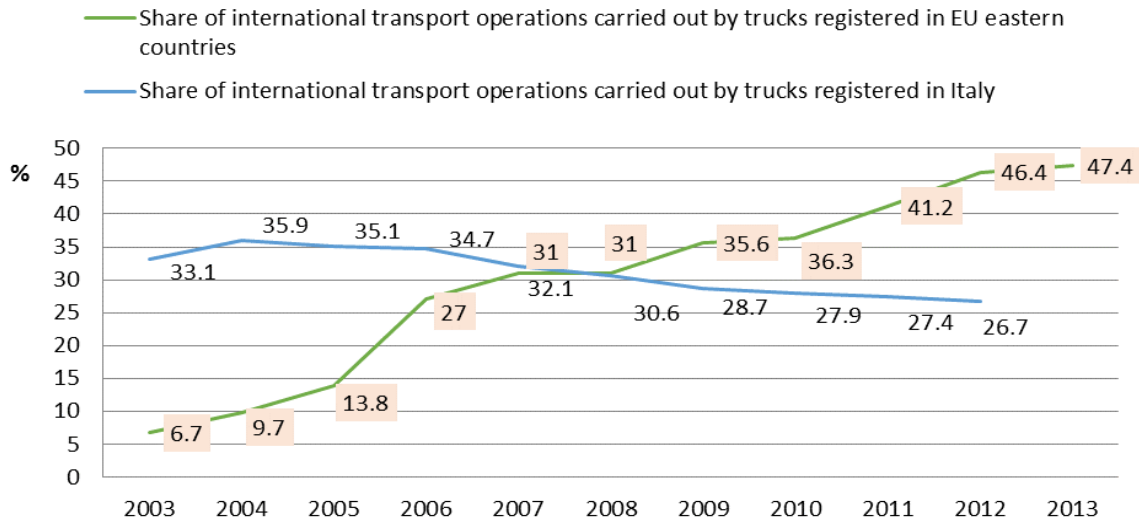
The additional cost estimated by the Freight Leaders Council study amounts to some +12% for one-vehicle undertakings up to +21% for undertakings with 4 or 5 vehicles. The competitive disadvantage of Italian undertakings is higher when compared to Eastern European countries, as costs are nearly 35% higher. In particular, undertakings with 2-3 and 4-5 vehicles can pay up to 50% more than similar undertakings based in Eastern Europe, whereas for one vehicle firms and undertakings with more than 10 vehicles the difference is lower.

14.4.1.4 The Italian operators' market share in international transport operations

An important element that emerges from the analysis is the increasing loss of market share of Italian road freight transport operators in international transport, which might be explained also by mergers and delocalisation of Italian undertakings. Eurostat data shows that the market share of operators using vehicles registered in Eastern European Member States on international road freight transport to and from Italy climbed to nearly 50% in 2013 (Figure 14-26). It was less than 14% in 2005 and less than 7% in 2003 (Confcommercio, 2015).

At the same time, the number of Italian trucks carrying out international transport operations with origin or destination in Italy has been continuously decreasing over the years: the market share of vehicles registered in Italy in this segment has fallen from 35.1% in 2005 to 26.7% in 2012.

Figure 14-26: Road freight international transport to and from Italy according to the nationality of registration of trucks.



Note: The largest majority of trucks considered in this analysis is >3.5 tonnes

Source: Based on (Confcommercio, 2015) and (ANITA, 2014)

According to the analysis on road transport market carried out by the association of Italian enterprises (Confcommercio, 2015), the evaluation and expectation of Italian road transport undertakings on their business is quite pessimistic. A very small share of road transport undertakings (3.4%) have registered increasing incomes lately, and this percentage is only half of the already low respective percentage for all Italian enterprises as a whole (6.9%).

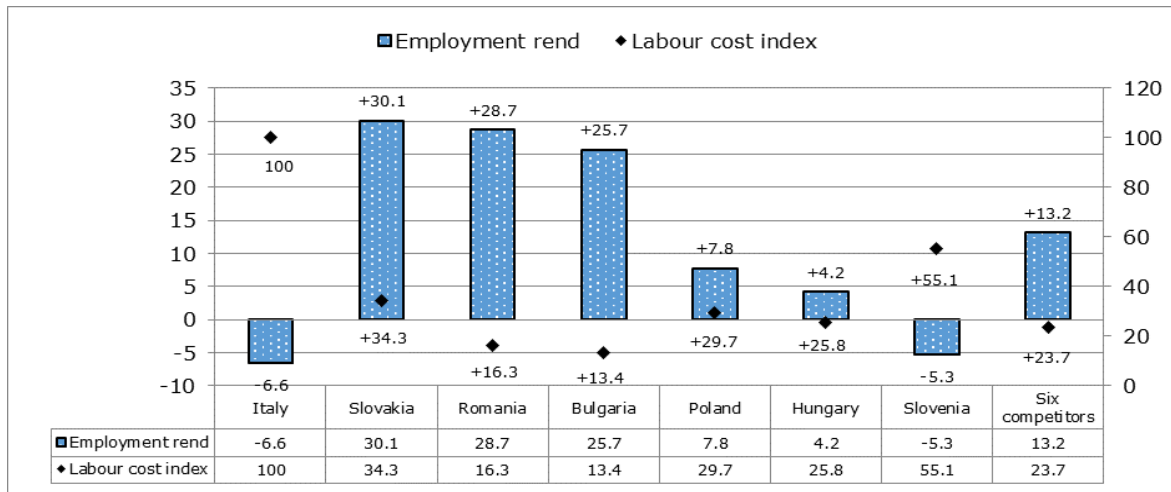
14.4.1.5 Drivers' salary levels and working conditions

The economic downturn occurred in 2008 and the subsequent financial crisis have heavily hit employment in the commercial road transport sector in Italy.

This holds true in particular for the haulage segment where according to a recent survey conducted by CNA-FITA (2015) for the 3-year period 2010-2013 (Figure 14-27, the employment rate has dropped by 6.6% (-21,800 units). As stated by the study, the main reason for this reduction in the number of domestic drivers is the increased delocalisation of Italian transport companies in the six main EU12 competitor Member States (Slovakia, Romania, Bulgaria, Poland, Hungary and Slovenia). This is confirmed by the parallel increase (+13.2%, or +68,500 units) in the employment rate in these six Eastern EU countries, as graphically displayed in Figure 8-6.

Importantly, this fall has also involved self-employed drivers, for which approximately 16,000 businesses have closed down (-14.7% over the period 2009-2013) since the beginning of the crisis.

Figure 14-27: Comparison in employment trend between Italy and its six main competitors (in %, 2010-2013)



Source: (CNA-FITA, 2015)

Figure 8-6 above illustrates as well what has become a crux of the matter in understanding the developments that have occurred in the Italian commercial road transport sector over the past years, and namely in the freight segment.

The decisive point at issue is that the labour cost of an employed Italian driver is considered to be too high compared to other EU countries. Under strong market pressure, Italian companies have been searching for solutions to cut their labour costs by increasingly recurring to cheaper eastern drivers. Based on (CNR, 2014c), Table 14-11 provides an evidence of the cost advantages for Italian hauliers of progressively move the employment toward EU 12 countries.

Table 14-11: Impact on labour costs of recurring to eastern European drivers for Italian hauliers

% of eastern European drivers in the haulage company	0%	15%	30%	50%	100%
Labour cost for Italian driver (€/year)	50,487 €	42,914 €	35,341 €	25,244 €	€0 €
Labour cost for EU12 driver (€/year)	0 €	3,900 €	7,800 €	13,000 €	26,000 €
Total labour cost (€/year)	50,487 €	46,814 €	43,141 €	38,244 €	26,000 €

Source: (CNR, 2014c)

14.4.1.6 Wage levels

In Italy, the **salary** of an employed professional driver consists of three main components, e.g. (i) the minimum wage, (ii) an amount paid on a forfeit basis for 10 hours/month of overtime work and, finally (iii) the amount paid for daily allowances.

The first component of a driver's wage is the **minimum wage**. The minimum wage is established by a legally binding national labour collective agreement signed by the three major Italian labour unions (FILT-CGIL²⁵⁹, FIT-CISL²⁶⁰ and UIL-TRASPORTI²⁶¹) (the last

²⁵⁹ Federazione Italiana Lavoratori Trasporti

²⁶⁰ Federazione Italiana Trasporti

²⁶¹ Unione Italiana dei Lavoratori dei Trasporti

renewal of the national collective contracts dates back to August 2013) and, for the freight transport segment, it is set at just above 1,600 €/month. This represents the gross taxable income on which social contributions (partly paid by the undertaking and partly by the driver) and taxes are calculated, resulting in a net salary of approximately 1,200 €/month.

Increases in the minimum wage are also regulated by the labour collective agreements. For example, the collective agreement currently in force (valid until December 2015) foresees an average wage increase of approximately 100 € per month over the period 2013-2015 distributed according to the following schedule: +35 € in 2013, +35 € from October 2014 and the remaining of 35 € from October 2015 (CCNL, 2013).

As said above, the salary of an Italian driver also includes an amount paid for ten hours of **overtime work**. This amount is calculated on a forfeit basis and is also taxable for social contributions and income taxes. This component is not recognised to foreign workers posted to Italy when hired in their Member State of residence.

The third and last component of an Italian driver's salary are **daily allowances**. If spent in Italy, daily allowances amount at 46.5 € per day, while they equal to 77.5 € per day if spent abroad. Unlike the previous two components that are considered as fixed parts of the salary, daily allowances are considered as the variable part since their amount recognised differs according to the number of stays a driver spends away from his base of operations, as well as on whether the stays are spent in Italy or abroad. Up to certain amounts daily allowances are not subject to the payment of any tax and social contribution.

When considering together the components above, the typical monthly salary of an Italian driver ranges between 1,800 € and 2,200 € if domestic trips are mostly done, and between 2,500 € and 2,600 € per month if international trips are the most frequent type of transport operations carried out by a driver. The figures for drivers involved primarily in international trips are in line with estimates provided by (CNR, 2014c) and with the information collected by the interviews to Italian drivers.

Regarding, instead, the net monthly salary of drivers in the road passenger transport sector a distinction shall be done between regular passenger services (regular public transport services longer than 50 km and regular long-distance services provided at market prices), on the one hand, and occasional passenger services, on the other hand.

Regarding regular public transport services longer than 50 km, according to information provided by ANAV (the Italian association of road passenger transport operators) the average net monthly salary of a professional drivers equals approximately 1,500 €, whilst it rises up to between 1,800 € and 2,000 € in case of regular long-distance services provided at market prices. At present, no increases in salary levels are foreseen for the passenger sector for which the collective agreement has expired in 2009 but still has not been renegotiated so far.

Concerning occasional passenger services the average net monthly salary of a professional driver amounts at approximately 2,000 € as confirmed by the industry association CTL.

A final consideration is worth saying as well for the large share of very small companies with self-employed drivers to whom employment standard contracts do not apply. Indeed, undertakings with 1 to 5 vehicles are often individuals that are paid on a "forfeit" base. This forfeit, calculated as €/trip or €/load, is negotiated between the shipper (or the logistics provider) and the haulier with the only constraint that its value exceeds the minimum costs borne by the haulier on the basis of common criteria (e.g. minimum labour cost, fuel cost, vehicle purchase and mortgage, tires consumption etc.) fixed by the Ministry of Transport. As reported by the labour union and the industry associations interviewed, to date the monthly earnings of a self-employed driver equals the monthly salary of an employed driver (on average 1,900 €).

14.4.1.7 Recently observed developments in the labour market and on social and working conditions

There is not a univocal opinion among the groups of stakeholders considered about how social and working conditions of Italian drivers have evolved over the last ten years.

Labour unions argue that social and working conditions have been significantly worsened over time, with overall workload increased, work-life balance deteriorated, remuneration levels decreased, higher discomfort linked to the long hours spent on driving and subsequent fatigue concerns.

Conversely, industry associations reported a mixed perspective. They acknowledge that, while important improvements have been introduced with respect to comfort and safety levels provided by the new generations of vehicles, improvements in social and working conditions EU rules were expected to achieve have not been fully secured because of lack of effective enforcement.

Mixed views were also given by the interviewed Italian drivers, for which remuneration and work-life balance are the aspects where deterioration is mostly perceived.

A further point of interest concerns the change that has occurred in employment contracts over the last ten years with specific reference to the increased use of temporary contracts.

Although the collective contract agreement prescriptions still represent the standard practice for employment contracts among large road transport operators, feedback obtained from Italian labour unions, industry associations, operators and drivers interviewed reports for Italy an increasing use of temporary and short-term contracts (often established in eastern Member States) to replace standard contracts. The increased use in temporary contracts is also often associated to an increased recourse to sub-contracting forms for carrying out the transport activities (see Table 14-12).

Table 14-12 Share of total number of drivers in Italy subject to the type of employment

Type of employment contract	10 years ago	Today
Long-term contract	80%	30%-80%
Short-term contract	20%-30%	40%-80%
Employed via agencies	20%	60%
Sub-contracting	10%	60%

Source: Survey of labour unions

The issue related to the increase in use of temporary contracts can be disentangled from two different but interlinked perspectives.

On the one hand, temporary contracts are often used to hire low-cost eastern drivers and to consequently save on social contribution costs. As an example, estimates provided during the interview with an industry association suggest that recruiting a Romanian driver posted to Italy through a temporary contract can allow an Italian undertaking to save some 27% of the total annual labour costs that the company should bear when an Italian driver is employed²⁶².

In particular, savings are obtained on the amount of social and tax contributions that are due on the taxable pay (see Table 14-13). Importantly, these social and tax contributions are not paid in Italy but in the Member State where the employment contract is registered, e.g. in Romania in this example.

²⁶² It is worth reminding that, when posted to a Member States that represent its main base of operations, a foreign driver receives the same pay as a national driver. In Italy, a foreign driver can be posted for up to a maximum of 36 months and cannot be hired as a replacement of another driver already employed by the same undertaking. Regrettably, this limits are often disregarded by the companies that hire the eastern drivers on a continuous basis and/or in substitution of Italian drivers.

Table 14-13 Impact on labour costs of recurring to eastern European drivers for Italian hauliers (in €)

	Italian driver employed via a standard contract	Romanian driver employed via a temporary contract
Net salary	26,250	26,250
Tax and social contribution	20,150	7,700
Total labour	46,400	33,950

Source: Interview with an Italian industry association

It is worth saying that, at present, the practice of replacing standard employment contracts with temporary contracts remains fundamentally confined to the haulage segment as in the passenger segment this is still not considered to be a major issue. However, forms of temporary jobs are also in use in the passenger segment, e.g. recourse to "on call" drivers when there is a need to secure a second driver but (chiefly for cost reasons) an operator cannot afford to have a second employed driver on board since the beginning of the journey.

If the use of temporary contracts allows operators to save on tax and social contribution costs, there is a second aspect that is negatively affected by this practice. As emerged during the interviews with labour unions, industry associations, undertakings and drivers, it is becoming not unusual that Italian drivers are forced to accept temporary contracts to keep their workplace. For example, this occurs when drivers are dismissed by their Italian transport undertaking and subsequently recruited again by the same undertaking through a Romanian temporary work agency.

In this circumstance, although the total monthly salary may not differ, the great disadvantage for the Italian drivers is that they perceive a significantly lower taxable pay than with a standard employment contract and, therefore, they can benefit from considerably lower social contributions at the retirement age.

14.4.1.8 Driver shortage

Finally, it was investigated whether driver shortage is perceived as an issue in the sector. On this, there is no comprehensive research analysis that can shed light on whether, and to what extent, driver shortage may arise as an issue today or in the medium and longer term. When interviewed on this topic, labour unions, industry associations and undertakings (both in the freight and in the passenger segment) stated that today driver shortage is not an issue in Italy, but it is expected to be in the medium- and longer term.

On this subject the following considerations can be drawn on the basis of the feedback provided by Italian stakeholders:

- There is a clear lack of appeal of the driver profession, also due to declining working and salary conditions, which could cause in the future a lack of younger workers. This declining attractiveness is also due to the high cost for obtaining a Certificate of Professional Qualification (€ 3000) which is often unaffordable and discourages young people from becoming a professional driver.
- Employment levels in the sector are declining and therefore there could be a reduced demand for skilled workers and particularly for national workers as many undertakings are opening subsidiaries in other Member States and employing people abroad thanks to more favourable conditions.

14.4.1.9 Availability of secured parking areas

There is unanimous consensus among all groups of stakeholders that Italy does not provide a sufficient number of secured parking areas where drivers can stop and take their rest. Also quality of the services provided is considered to be very poor. As explained in the interviews, only a very few areas exist in Northern Italy, but stopping there implies a cost and a route planning that is not always compatible with delivery times of the operators.

It has also to be said that *unavailability of secured parking areas is a problem perceived in particular truck drivers*, while bus and coach drivers are used to take their daily rest in a hotel (both in case of regular and occasional services) when destination is reached. Conversely, anecdotal evidence from truck drivers reports many cases of theft (fuel, load, vehicle, etc.) as well as aggression towards them.

14.4.2 Regulation (EC) No 561/2006

14.4.2.1 Implementation and status

In Italy, the Ministry of Transport has the responsibility for the legal and policy implementation of the EU social legislation in the area of commercial road transport. This responsibility is also shared with the Ministry of Home Affairs, the Ministry of Labour and the Ministry of Development. The Ministry of Transport also acts as Intra-community liaison body. As explained by the Italian Ministry of Transport responsibilities and competence in the area of enforcement of Regulation (EC) No 561/2006 have remained the same since 2000.

On the operational side, the national traffic police and the labour inspectorates are the principal bodies commissioned to supervise and enforce the implementation of the EU social legislation in Italy. The national traffic police secures the conduction of the roadside checks, while the labour inspectorates are in charge of carrying out company checks and can, in a concerted manner, also support the national traffic police in carrying out roadside checks (this occurs at the occasion of the so-called “high-impact operations” where the objective is not solely to check compliance with driving times and rest periods rules, but also with other laws on, for example, cabotage, roadworthiness of vehicles, etc.).

The labour inspectorates are also the main responsible for securing compliance to Directive 2002/15/EC.

Finally, the Union of Chambers of Commerce acts as Card Issuing Authority for the issuance of the driver and company cards used with the digital tachograph. Table 14-14 illustrates the correspondence between the EU social rules and their transposing Italian laws.

Table 14-14: Correspondence between EU social rules and transposing Italian laws

Item	EU rules	Italian transposing laws
Driving and rest times, and recording equipment	Regulation (EC) No 561/2006 Regulation 581/2010 Directive 2006/22/EC	Article 174 Codice della Strada (highway code)
Working time of drivers	Directive 2002/15/EC	D.lgvo n.234/2007
Risk classification	Directive 2006/22/EC	D.Lgvo n. 245/2010
Qualification of drivers	Directive 2003/509/EC	D.Lgvo n.286/2005 Capo 2

Source: Based on (CNR, 2014c)

In Italy, the scope of Regulation (EC) No 561/2006 applies, for the freight segment, to all vehicles with a maximum permissible mass equal to or higher than 3.5 tonnes. For the passenger segment, the Regulation applies to all vehicles that can transport more than 9 persons including the driver.

As reported by the European Commission (European Commission, 2014b) and as allowed by Article 13.1 of Regulation (EC) No 561/2006, Italy applies only two of all pre-defined national derogations being the exemptions for:

- Vehicles with a maximum permissible mass up to 7.5 tonnes that are used for transport of goods but with no commercial purpose and within a range of maximum 50 km (Article 13(1d) of Regulation (EC) No 561/2006). For this group of vehicles the use of the tachograph is not requested, while the range has been extended to

100 km as a result of the transposition of article 45 of new Regulation (EC) No 165/2014 on the recording equipment.

- Vehicles used for special purposes, such as for sewerage, transport of milk/animal feed from/to farms, vehicles for circus/funfair exhibitions (Article 13(1g, 1h, 1j, 1l)).

As clarified by the Italian ministry of Transport, Italy has chosen to stay in line with the same number of derogations granted with previous Regulation (EEC) No 3820/85 and to avoid legislative confusion and/or erroneous interpretations of the rules in force.

For the period 2010-2011, concerted checks have been carried out in cooperation with control officers from the bordering countries Austria, France, Slovenia, Switzerland. Concerted checks were also carried out in the port areas of Trieste, Ancona, Genoa, Civitavecchia and Livorno. No evidence was, however, reported on the number of concerted checks conducted (European Commission, 2014b).

14.4.2.2 Enforcement and compliance

The traffic police carry out the largest proportion of roadside checks: in 2014 the national police on its own covered 93% of the total number of roadside checks and 70% of the total combined number of roadside checks and checks at the undertakings premises. Similar proportions can be observed for the preceding years as well.

As can be seen in Table 14-15, in the years 2013-2014 the total number of working days checked equals to 9,601,333 almost evenly split between the years. These are in excess of 863,305 (or +10%) compared to the minimum number of working days required by the EU legislation.

Table 14-15: Overview of number of working days checked in Italy in the 2-year period 2013-2014

Year 2013		Year 2014	
Minimum number of working days to be checked =	4,423,812	Minimum number of working days to be checked =	4,314,216
Working days checked at roadside	3,403,078	Working days checked at roadside	3,754,541
Working days checked at the premises	1,444,205	Working days checked at the premises	1,179,508
Total number of working days checked	4,847,283	Total number of working days checked	4,754,049
<i>Difference compared to EU required minimum</i>	+423,471	<i>Difference compared to EU required minimum</i>	+439,824
Overall total of working days checked for 2013-2014			9,601,333
Difference compared to minimum checks (3%) for 2013-2014			+863,305
Difference compared to working days checked in the reporting years 2011-2012			+430,746 (+4.7%)

Source: Based on (Commissione per la sicurezza stradale nel settore dell'autotrasporto, 2015)

Importantly, compared to the reporting period 2011-2012, the data collected for the years 2013-2014 shows a positive difference (+430,746 working days checked, or +4.7%) and marks again the achievement of the minimum target set by the EU legislation. More specifically, the minimum threshold was achieved in 2009-2010 (126% assuming that 100% signifies meeting the minimum threshold of 3% of checks) and was missed in 2011-2012, although only shortly (92%) below the minimum threshold of 9,938,958 working days (European Commission, 2014b). These minimum thresholds are, however, very difficult to be met according to the Ministry of Transport, mainly due to the limited resources that are currently available to the traffic police and to the labour inspectorates in conducting roadside and company checks respectively.

Working days checked at roadside still represent the bulk of all working days checked and in the year 2014 they have also increased by 5% compared to 2013. While this ensure that

at least 30% of all roadside controls in terms of roadside checks are met, checks at the premises are far below the minimum requirement (at least 50%) set by Directive 2006/22/EC as they represent only 30% (2013) and 25% (2014) of the total number of working days checked.

Concerning checks at the premises of the undertakings, in the years 2011-2012 a total of respectively 11,088 companies and 37,103 drivers were checked. As shown in Table 14-18, reflecting the composition of the road transport companies size, the greatest part of these checks (92%) target small transport operators (up to 20 vehicles in use) and in particular very small companies (up to 5 vehicles in use). This target of checks is justified by the composition of the Italian road transport sector introduced above (75% of companies operate 5 vehicles or less). Interestingly, from Table 14-18 it can be noted that larger undertakings are a minority of those checked but are responsible for a significant share of offences detected.

Table 14-16: Total number of undertakings and drivers checked, and offences detected by size of vehicle fleets (years 2013-2014)

Size of undertaking (vehicles)	No of undertakings checked	Proportion	No of drivers checked	Proportion	No of offences detected	Proportion
1	2,444	22%	3,042	8%	15,909	6%
2-5	4,491	41%	10,142	27%	61,918	23%
6-10	2,154	19%	7,879	21%	43,741	17%
11-20	1,157	10%	5,483	15%	60,883	23%
21-50	632	6%	6,232	17%	48,151	18%
51-200	185	2%	3,746	10%	31,420	12%
201-500	16	0%	569	2%	1,946	1%
Over 500	9	0%	10	0%	141	0%
Total	11,088	100%	37,103	100%	264,109	100%

Source: Based on (European Commission, 2014b)

Regarding the number of vehicles stopped for control purposes, a total of 283,286 and 311,990 vehicles had been checked in 2013 and respectively 2014²⁶³. Checks have largely targeted domestic vehicles (87.1%), while EU- and non-EU registered vehicles were stopped in only 12.9% of cases. This trend aligns to the previous reporting period 2010-2012 when checks on national vehicles ranged between 88.1% and 90.1% and checks on foreign vehicles ranged between 7.9% and 11%. Lastly, the total number of vehicles checked augmented by 23.1% over the years 2010-2014 and despite a slight decrease between 2011 and 2012 (-1%).

Even so, it is worth quoting that during the years 2010-2014 the number of EU registered vehicles checked has considerably increased by 76.4% compared to an increase of 18.6% in the number of domestic vehicles stopped over the same period (Table 14-7). This seems confirming a greater level of efforts by Italian enforcement authorities to target foreign drivers.

Table 14-17: Total number of vehicles checked by nationality (years 2010-2014)

Vehicle checked by nationality	Year 2010	Year 2011	Year 2012	Year 2013	Year 2014	Difference 2010-2014
Nationally registered vehicle	229,152 (90.4%)	234,989 (89.3%)	229,867 (88.1%)	247,686 (87.4%)	271,795 (87.1%)	+18.6%
EU registered vehicle	20,168 (7.9%)	23,544 (8.9%)	26,357 (10.1%)	31,198 (11.0%)	35,593 (11.4%)	+76.4%

²⁶³ As feedback to the interview, the Italian Ministry of Transport has also provided initial evidence for the number of checks conducted in the first half of 2015 (e.g. between 1st January 2015 and 30th June 2015). A total of 19,628 vehicles have been checked and a total of nearly 18,000 sanctions have been emitted.

Non-EU registered vehicle	3,997 (1.5%)	4,542 (1.7%)	4,438 (1.7%)	4,830 (1.6%)	4,602 (1.5%)	+15.1%
Total	253,317	263,075	260,662	283,286	311,990	+23.1%

1Source: Based on (Commissione per la sicurezza stradale nel settore dell'autotrasporto, 2015) and (TuttoTrasporti, 2013)

On the basis of the responses received up to now from high level stakeholders in Italy, it appears that most of the respondents believe that the compliance rate with social rules of Italian undertakings in road transport is sufficient. In particular, large industry associations think that there is a good level of compliance overall.

The volume of checks described above is, however, criticised by trade associations, which claim that it is not quantitatively sufficient to secure a proper level of compliance of foreign drivers with the provisions on Regulation (EC) No 561/2006 and to secure infringements to cabotage rules. As stated by one of these trade associations, a greater number of controls is, therefore, needed along with a higher degree of flexibility in the application of the EU social rules accompanied by a more harmonised approach across all Member States in the manner in which these rules are interpreted, applied and enforced.

Offences

A full, updated overview of the offences detected as a result of infringements on driving and rest times rules for the years 2013-2014 is not yet publicly available. Evidence reported by the Italian traffic police, but limited to the year 2014 (Commissione per la sicurezza stradale nel settore dell'autotrasporto, 2015), quantifies in 19,286 the number of offences against driving and rest times rules (25% of all violations reported and with a drop by 6.4% from the year 2013). In line with the proportion of checks performed, the greatest share (85.2%) has been detected against domestic drivers.

In the last available reporting period 2011-2012, Italy reported a total of 404,320 infringements, which represented a 6% decrease in comparison with the previous period 2009-2010 (429,347). More than a half of these offences concerned the 28 days record sheet requirement and this share increased in comparison to the previous reporting period (2009-2010). Infringements of breaks rules rank second, with less than 20% of cases and decreasing compared to the previous period.

14.4.2.3 Penalties for non-compliance

The Legislative decree no. 285/1992 establishes the regulatory discipline for the penalty system applicable in Italy to the infringements against the provisions laid down in Regulation (EC) No 561/2006 on driving times and rest periods.

More specifically, Article 174 (provisions (4) to (14), later repealed by Article 3 of Law no. 120/2010) identifies the distinct administrative offences to which monetary fines are applied and which are organised around three main thresholds of penalties (up to 10%, between 10% and 20% and over 20%) according to the seriousness of the infringement committed. The degree of seriousness is calculated as a proportion of the hours that a driver exceeds against the maximum permitted daily, weekly and fortnightly driving and resting times (Rausei P., 2010). With the introduction of the penalty points driving license system, these administrative fines are accompanied by the loss of (up to 10) driving points.

Fines range from a minimum of € 40 (disregard of the maximum permitted driving times) to a maximum of € 1,686 (disregard of the minimum rest periods). Fines are increased by one-third if the infringements are committed between 10 pm and 7 am.

The fines applicable in Italy for the infringements to the driving and rest time rules are as follows:

- Fines imposed to infringement against requirements on daily and weekly driving times range between a minimum of € 40 to a maximum of €1,686.
- Fines imposed to infringement against requirements on daily resting times ranges between a minimum of € 211 to a maximum of €1,686.

- Fines imposed to infringement against requirements on weekly or fortnightly resting times range between a minimum of € 369 to a maximum of €1,686.
- Fines imposed to infringement against requirements on breaks ranges between a minimum of € 163 to a maximum of € 653.

Since 21 June 2013, Article 20 of Law 98/2013 has introduced an important change in what was considered a discrimination between Italian and foreign drivers for whom it was possible to pay a lower fine level for equivalent severe infringements.

Before that date, in case of severe infringements (e.g. infringements against driving and rest times or manipulation of the tachograph) the person driving a vehicle registered in Italy was compulsorily requested to pay the fine on-spot in order to avoid the requisition of the vehicle. If the driver was lacking of sufficient money a deposit amounting at half of the maximum sanction applicable was due.

Conversely, in case the infringement was committed by a person driving a vehicle not registered in Italy, the fine level was equivalent to the minimum sanction applicable. For example: pursuant to Article 174 of an infringement of daily driving times greater than 10%, the application fine ranges between 316 € and 1,686 €. If the violation was committed by a person driving a vehicle registered in Italy the deposit amounted at 843 €. If the same infringement was committed a person driving a vehicle not registered in Italy the deposit amounted at 316 €.

Therefore, the modification introduced by Law 98/2013 has made uniform the manner in which deposits can be paid to avoid the requisition of the vehicle as, from now onwards, all drivers irrespective of the nationality of the vehicle will pay the same amount for similar infringements committed.

It is also understood that Article 174(13) confirms that for all offences detected against the rules on driving times and rest periods, the transport undertaking employing the driver that is found guilty of an infringement is jointly liable with its driver for the payment of the monetary penalty.

In addition, Article 174(14) states that the transport undertaking is subject to a penalty of between € 324 and € 1,294 in case the documents required by Regulation (EC) No 561/2006 are (i) not kept, (ii) expired, (iii) incomplete or altered. This penalty is paid for each single employed driver the infringement refers to. This means that the penalty has not solely to be paid correspondingly to number of drivers having found guilty of an infringement, but also on the basis of the number of offences committed by each of them.

The *rationale* of this penalty approach has been further confirmed by a clarification note (no. 13587 of 2 August 2010) issued in 2010 by the Ministry of Labour which was requested in order clarify two different interpretation on the application of Article 174(14), e.g.:

- With a first interpretation, both the number of drivers involved as well as the number of infringements committed were considered as a parameter to calculate the level of fines applicable to transport undertakings.
- With a second interpretation, the calculation of the level of fines was solely based on the number of drivers involved.

By confirming the first interpretation, the Ministry of Labour has acknowledged that taking into account both the number of drivers involved and the number of offences committed is more respectful of the principle of proportionality, since the extent to which a transport undertaking is penalised is proportional to the seriousness of its overall behaviour.

Along with Article 174, Article 179 lays down the fines applicable to infringement on the correct use and functioning of the recording equipment. These range from a minimum of € 47 (disregard of the requirements on records) to a maximum of € 6,238 (altering or forging the seal on a tachograph with the intent to deceive (Table 14-18)).

Table 14-18: Penalties applied to infringements on use of tachograph (years 2010)

Type of infringement	Rule infringed	Penalty applied
Failure to install or use a tachograph	Article 179	€ 779 to € 3,119
Altering or forging the seal on a tachograph with the intent to deceive	Article 179	€ 1,558 to € 6,238
Using vehicle without tachograph equipment, or with altered or forged tachograph equipment and without records	Article 179	€ 749 to € 2,996
Failure to insert records relating to recording equipment	Article 179	€ 779 to € 3,119
Failure to insert driver card	Article 179	€ 779 to € 3,119
Failure to make or keep records	Article 179	€ 47 to € 92
False entry or alteration of a record with the intent to deceive	Article 179	€ 47 to € 92
Failure to hand over records relating to recording equipment as requested by an enforcement officer	Article 179	€ 47 to € 92
Using of tachograph discs altered or unreadable	Article 179	€ 47 to € 92

Source: Based on (Rausei P., 2010)

14.4.3 Directive 2002/15/EC

14.4.3.1 Implementation and status

Directive 2002/15/EC has been transposed in Italy by Legislative decree 234 of 19 November 2007, which has been brought into force on 1 January 2008, e.g. with a 3-year delay compared to the deadline set by Directive 2002/15/EC for its transposition (23 March 2005). The Ministry of Labour, through the labour inspectorates administratively organised as county level, is responsible for enforcing the provisions of Legislative decree 234/2007.

Legislative decree 234/2007 provides the overall legislative discipline that governs the working time of persons driving all vehicles that fall into the scope of Regulation (EC) No 561/2006 but that are not covered by the derogations permitted by the regulation. In this respect, Legislative decree 234/2007 contributes therefore to the achievement of the overarching objectives of (i) improving health, social and working conditions of drivers, (ii) improving road safety and, not to the least, (iii) making competition in the commercial road transport sector fairer.

On this point, it is also important to say that the provisions laid down in Legislative decree 234/2007 apply without prejudice of the national collective labour agreements currently in force in the sector, and that may allow a different *regime* in terms of working time if required by to specific technical or organisational circumstances. This regime must not, however, lead to working conditions that are detrimental to the workers' health, as stated in Article 4(2) of Legislative decree 144/2007. Mindfully, Legislative decree 234/2007 supplements and completes the regulatory framework established in Italy as a result of the transposition of Regulation (EC) No 561/2006 on driving times and rest periods.

Ancillary to Legislative decree 234/2007 is Legislative decree 66/2003 that regulates the working time of drivers out of scope of Regulation (EC) No 561/2006 (e.g. vehicles with a maximum lower than 3.5 tonnes or subjects to the derogations permitted under Regulation (EC) No 561/2006).

In those circumstances where a driver performs both in-scope and out-of-scope transport activities, clarification notes no. 24/2008 and no. 27/2009 issued by the Ministry of Labour specify that the "**prevailing activity**" must be considered in order to understand which of the two legislative decrees find application. The "prevailing activity" is determined considering the number of hours spent on driving tasks or the number of km driven. In

case uncertainty persists, enforcers are requested to apply the “most favourable” norm, e.g. Legislative decree 234/2007.

Definitions

As stated by Article 2, the provisions established by Legislative decree 234/2007 apply as follows:

- Since 1 January 2008 to mobile workers employed by undertakings established in a Member State and that perform freight and passenger transport activities in scope of Regulation (EC) No 561/2006 (Article 2(1)).
- Since 23 March 2009 to self-employed drivers holding a valid Community License or any other licenses that entitle them to perform transport activities (Article 2(2)).

As specified in Article 3, working time is defined as any period any period when a driver is working at their employer’s disposal and carrying out their activity or duties (breaks and rest periods are not included into the definition of working time). Correspondingly, working time includes time spent on:

- Driving tasks.
- Loading and unloading.
- Supervising embarking and disembarking of passengers.
- Cleaning and technical maintenance of the vehicle.
- Any other activity aiming to secure security and safety of the vehicle, of the goods and passengers transported as well as any other activity required to secure compliance with any applicable the legal requirements.
- Any periods of on-call time when the driver is obliged to be at his/her workplace and carry out duties at employer's request.

Also on this matter, Article 3 defines the notion of working week as well as of night work. A working week is defined as a continuous period of 7 days starting from 0 am on Monday and ending on 12 pm on Sunday, while night work is defined as work performed during a period of at least 4 consecutive hours from 0 am to 7am.

Key requirements

The average length of a working week cannot exceed 48 hours, although the maximum duration can be extended up to 60 hours solely in the case in which, during a 4-month period, the average duration of all working hours is not greater than 48 hours. This means that in a working week a driver can be asked to work up to 60 hours, but only if during a 4-month period the average of his worked hours does not exceed the limit of 48 weekly working hours.

Looking further at the requirements on break, Article 5 sets that persons performing mobile transport activity are not allowed to work continuously for more than 6 hours. Drivers’ working time must, therefore, be interrupted by intermediate breaks of at least 15 minutes each and totalling at least:

- 30 minutes if the overall working time ranges between 6 and 9 hours.
- 45 minutes if the overall working last beyond 9 hours.

Importantly, these provisions are without prejudice of, and does not replace Article 7 of Regulation (EC) No 561/2006 according to which after a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes. This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of the first paragraph.

Working during night-time is ruled by Article 7(1) which states that for this situation the daily working time cannot be greater than 10 hours. The definition of night working in the

commercial road transport sector has been explicated in the Italian legislation by two clarifications issued by the Ministry of Labour, respectively in July and August 2010.

With the first clarification (no. 12009 of 9 July 2010), the Ministry of Labour has specified that it shall be considered as not compliant a working activity that lasts for at least 4 consecutive hours in the timeframe between 0 am and 7 am, whereas the overall length of the daily working activity exceeds the maximum of 10 hours for each 24-hour period.

This interpretation is further confirmed by the Ministry of Labour with the second clarification cited above (no. 13587 of 2 August 2010 cited above), where it is reiterated that the definition of night work, required for the correct enforcement of Article 7, results from the combined reading of paragraphs (h) and (i) of Article 3 of Legislative decree 234/2007 and concerning the definition of "night" (e.g. a period of at least 4 consecutive hours between 0am and 7am) and of "night work" (any working activity performed during night-time).

14.4.3.2 Enforcement and compliance

As previously described in Section 1.3.1, labour inspectorates are the main responsible body for its enforcement although since 2010 this responsibility has been shared with other public entities (e.g. police force, national social security agency, driver and vehicle licensing agency) following the adoption of Law 183/2010 (known as "*Collegato lavoro*").

It is worth quoting that controls on compliance with Directive 2002/15/EC are generally conducted in combination with controls on compliance with Regulation (EC) No 561/2006 and synergies are sought when checks are carried out on these two pieces of legislation. Operationally labour inspectors control in a combined manner the printout of the tachograph data (recording must be kept for at least one year) and the number of hours that the company declares its driver(s) has/have worked over a 1-month period. Normally, checks consider the weekly or monthly volumes of the hours worked.

As a labour inspectorate commented, a proper recording of driving and rest times as well as a proper recording of "other work" activities is generally associated with good compliance with Directive 2002/15/EC. Conversely, problems usually arise when "other work" is not properly recorded or is not recorded at all, and in this circumstance the cross-check with the number of hours worked is essential to determine whether the driver/the company have acted in accordance with the requirements of Directive 2002/15/EC.

Enforcement conducted by labour inspectorates takes action in two specific situations, the former being imposed by law, the latter being carried out by initiative of the labour inspectorates themselves or of any other authorities (e.g. traffic police) that instruct labour inspectorates to carry out additional checks at the premises as a follow-up of checks conducted at the roadside.

The first situation applies when a road accident involving a professional driver occurs and that causes damages either to people (casualties) or material damages. Labour enforcers inspect the company where the driver is employed and make comprehensive checks on compliance with Regulation (EC) No 561/2006 and Directive 2002/15/EC.

The second situation is called "**surveillance by initiative**" which is carried by the labour inspectorates themselves (by making use of their records) or following instructions from other control authorities. As a general rule, labour inspectorates aim to monitor all transport undertakings at least once every 5 to 7 years. However, the frequency of controls depends on the frequency and severity of the infringements committed and special attention and priority in the controlling activity is given to those operators that more frequently or more severely breach the rules.

Finally, labour enforcers that were interviewed for this study commented that the general awareness on compliance with the requirements set by Directive 2002/15/EC has increased

over the past ten years among drivers and operators. Today, clear and large violations (e.g. driving for 15 hours) are rare to be found on national roads, but there is an increasing tendency to shift the responsibility for violations either on self-employed drivers and very small operators (who have less bargaining power against larger companies) or branches established in other Member States where controls at the premises cannot be conducted by Italian labour enforcers.

Feedback provided during the interviews by industry associations and operators would suggest that three main factors have a play in undermining compliance with Directive 2002/15/EC. These are: (i) a harsh market competition that puts pressure on companies and drivers and that lead to situations where they are encouraged to infringe the rules; (ii) road congestion that creates situations in which drivers are pushed to not respect the rule in order to deliver on time and, finally, (iii) a lack of adequate parking and rest areas that are in a not sufficient number to allow drivers to take their breaks and rest in safe, comfortable and secure places, hence, not allowing them to rest properly.

14.4.3.3 Penalties for non-compliance

The penalty system applicable to infringements on Directive 2002/15/EC is structured as illustrated in Table 14-19. Once notified, the transport operator has 60 days to lodge an appeal against the notified infringement(s).

Table 14-19: Penalties applied to infringements on Directive 2002/15/EC

Type of infringement	Rule infringed	Proportion applied	Penalty applied (7am-10pm)
Disregarding the requirements on the average and maximum duration of the working week	Article 4(1)	Exceeding the average and maximum working week by no more than 10%	€ 130 to € 780 for each driver and for each working period the infringement refers to
	Article 4(1)	Exceeding the average and maximum working week by more than 10%	€ 260 to € 1,560 for each driver and for each working period the infringement refers to
Disregarding the requirements on minimum breaks	Article 5	None	€ 103 to € 300
Disregarding the requirements on night work	Article 7(1)	None	€ 300 to € 900

Source: Based on (Rausei P., 2010)

14.4.4 Directive 2006/22/EC

14.4.4.1 Implementation and status

In Italy, the legislative basis governing the enforcement of social regulations for the commercial road transport sector relies on **Legislative Decree 144**²⁶⁴ of 4 August 2008 which has transposed Directive 2006/22/EC into the national legal system. Further legislative adaptations occurred in July and December 2010 with the adoption of:

- **Law n. 120** of 29 July 2010, which makes the level of fines imposed proportional to the seriousness of the infringements committed. The new discipline foresees that, alongside the payment of the administration sanctions, driving license may be

²⁶⁴ Decreto Legislativo 4 agosto 2008, nr. 144, Attuazione della direttiva 2006/22/CE, sulle norme minime per l'applicazione dei regolamenti n. 3820/85/CEE e n. 3821/85/CEE relativi a disposizioni in materia sociale nel settore dei trasporti su strada e che abroga la direttiva 88/599/CEE. Gazzetta Ufficiale (Italian Official Journal) n. 218 del 17 settembre 2008.

temporarily withdrawn and/or the journey may be temporarily stopped until the drivers has not taken the minimum required breaks or period of rest.

- **Legislative Decree n. 245** of 23 December 2010, which amends Legislative Decree nr. 144 in order to incorporate the modifications brought to Directive 2006/22/EC by the new Directives 2009/4/EC and 2009/5/EC. Furthermore, this Decree sets the standard technical devices that control units must be equipped with for performing the checks at the roadside and at the premises of the transport undertakings.

Directive 2006/22/EC is finally supplemented by Article 1 of the decree of Ministry of Labour of 31 March 2006 which sets obligations of the transport company (as employer) and of the driver against the norms laid down in the Directive. Table 14-20 summarises the main legal obligations for transport companies and drivers to secure compliance with Regulation (EC) No 561/2006.

Table 14-20: Principal legal obligations for transport companies and drivers for compliance with Regulation (EC) No 561/2006

Legal obligations for the transport operator	Legal obligations for the driver
To inform the driver about the normative discipline in the area of driving time and rest periods To regularly control compliance with the rules on driving times and rest periods To train the driver about the correct use of the tachograph To submit to the control authority all data regarding the driver card at the latest within 3 weeks after the driver has left the company To submit to the control authority all data regarding the digital tachograph at the latest within 3 months after a vehicle is dismissed or sold To keep records for at least one year To secure a proper maintenance of the recording equipment To give drivers, upon their request, copy of records of activity or of the data downloaded from the digital tachograph	To full comply with rules on driving times and rest periods To correctly use the recording equipment To keep on board the vehicle copy of records of activity for the ongoing week and for the preceding 28 days To renew the driver card at least 15 days before its expiration

Legislative Decree 144/2008 also sets under the overall coordination of the Ministry of Transport the responsibilities for conducting checks at the roadside (primarily delegated to the national traffic police) and at the premises of the undertakings (primarily delegated to labour inspectorates at county level – known as “*Direzioni Territoriali del Lavoro*” - of the Ministry of Labour). This split of competencies also applies to the data collection and reporting responsibilities. In this respect, the Ministry of Interior (through the traffic police) collects data concerning roadside checks at the roadside, while the Ministry of Labour collects data concerning company checks this is transmitted to the Ministry of Transport that bears the final responsibility for data gathering and submission to the European Commission. Further, the Ministry of Transport is also responsible for exchange of information with other Member States and for participation to the Intra-community liaison group.

Although to a lesser extent, roadside checks and checks at the premises may also be conducted by other police forces (e.g. *Carabinieri, Guardia di Finanza e Corpo forestale dello Stato*). It is not unusual, however, that checks are conducted as well in a concerted manner by the different inspecting bodies, as it is the case of the concerted roadside checks jointly carried out by the highway police and the labour inspectors.

Along with the definition of responsibilities on checks, Legislation decree no. 144/2008 also introduces (in compliance with Decision 230/2007/EC) the compulsory requirement to keep a form to be used when a driver has been on sick leave or on annual leave or when the driver has driven another vehicle exempted from the scope of Regulation (EC) No 561/2006. This form must be filled in by the employer and countersigned by the concerned driver and must be presented upon request of the highway police (in case of roadside checks) and of the labour inspectors (in case of checks at the premises of the operators).

For checks carried out at the roadside, Legislative decree 144/2008 establishes that the following elements must be controlled as a minimum:

- Daily and weekly driving times.
- Breaks, daily and weekly resting times.
- Forms of attestation of the previous days that must be present on board the vehicle.
- If occurring, exceeding maximum authorised speed which are defined as any period lasting more than a minute during which vehicle's speed exceeds the maximum limits of 90 km/h (N3 vehicles) or 105 km/h (M3 vehicles).
- If occurring, the actual vehicle's speed as registered by the recording equipment during the last 24 hours in which the vehicle has been in use.
- The proper functioning of the recording equipment (e.g. detection of any manipulation of the recording equipment, and/or of the driver card and/or of the forms of attestation).

Checks at the roadside are generally conducted by police patrols consisting of 2 police officers with distinct responsibilities. Roadside checks can also be conducted with the so-called "*Centri Mobili di Revisione*", .e.g semitrailers that are specifically equipped to carry out in-depth revision of vehicle.

When conducted by police patrols, the first police officer identifies and stop the vehicle and asks the driver the daily working and driving activities with the purpose to manually control the last event recorded in the tachograph (which should always be set on "driving"). The second police officer downloads the data from the tachograph and checks compliance with driving and rest times, also asking for clarifications to the driver if necessary.

As described by the Ministry of Transport, there is not a specific budget dedicated to enforcement of the EU social legislation. Therefore, dedicated recourses are part of the overall national state budget and a quantification is neither possible of their total amount, nor of the number of staff employed for conducting enforcement responsibilities.

Also, it has to be underlined that Italy has not an operational risk-rating system in place, despite the efforts done and the resources spent in the setting up process. As explained by the Ministry of Transport, many difficulties have been encountered, especially with respect to the manner in which infringements are defined and ranked. Additional resources would then be needed, given also the investments borne so far in implementing the national electronic register required by Regulation 1071/2009.

Italy has not taken up the guidelines of the TRACE common curriculum. However, the national traffic police is member of TISPOL that cooperates with the TRACE project.

14.5 Poland

14.5.1 Market situation and developments

14.5.1.1 Market Overview

Poland is a key transit country in Europe – following its ascension to the Union in 2004, the Polish road transport industry rapidly modernised its fleet and became a major competitor. Transportation of cargo by means of road transport in 2011 reached nearly 1322 million tons, an increase of 153% compared to 2005. This was made possible by the increasing number of companies and vehicles, which is in contrast to much of Europe where the number of enterprises has fallen. In 2013, Poland had a total of 28,227 businesses with a valid license for carriage of goods in the EU (GITD, 2015), compared to 11,835 businesses in 2004. During the global economic crisis from 2007-2009, more than 3 thousand new companies were established as well as over 16 thousand new vehicles were bought in Poland.

Table 14-21 indicates that the sector is dominated by small companies. Although some progress on consolidation can be expected, the supply side of the international transport market is still very fragmented (Motor Transport Institute, 2014). The total number of licenses also includes carriers acting as agents in the process of goods transportation services, so called freight forwarders. Carriers without any vehicles (referred to as pure agents) are also listed alongside licensed carriers actively participating in the actual transportation of goods (Motor Transport Institute, 2014).

Table 14-21: Number and size of enterprises with a valid licence for carriage of goods in the EU (2013)

Employees	Number of businesses	Number of vehicles
None	1,652 (6%)	0 (0%)
1	6,750 (23%)	6,749 (4%)
2-4	11,818 (40%)	32,652 (19%)
5-10	6,015 (20%)	40,554 (24%)
11-20	1,988 (7%)	28,206 (17%)
21-50	948 (3%)	28,609 (17%)
51-100	223 (1%)	15,215 (9%)
Over 100	94 (0%)	16,660 (10%)
Total	29,488	168,645

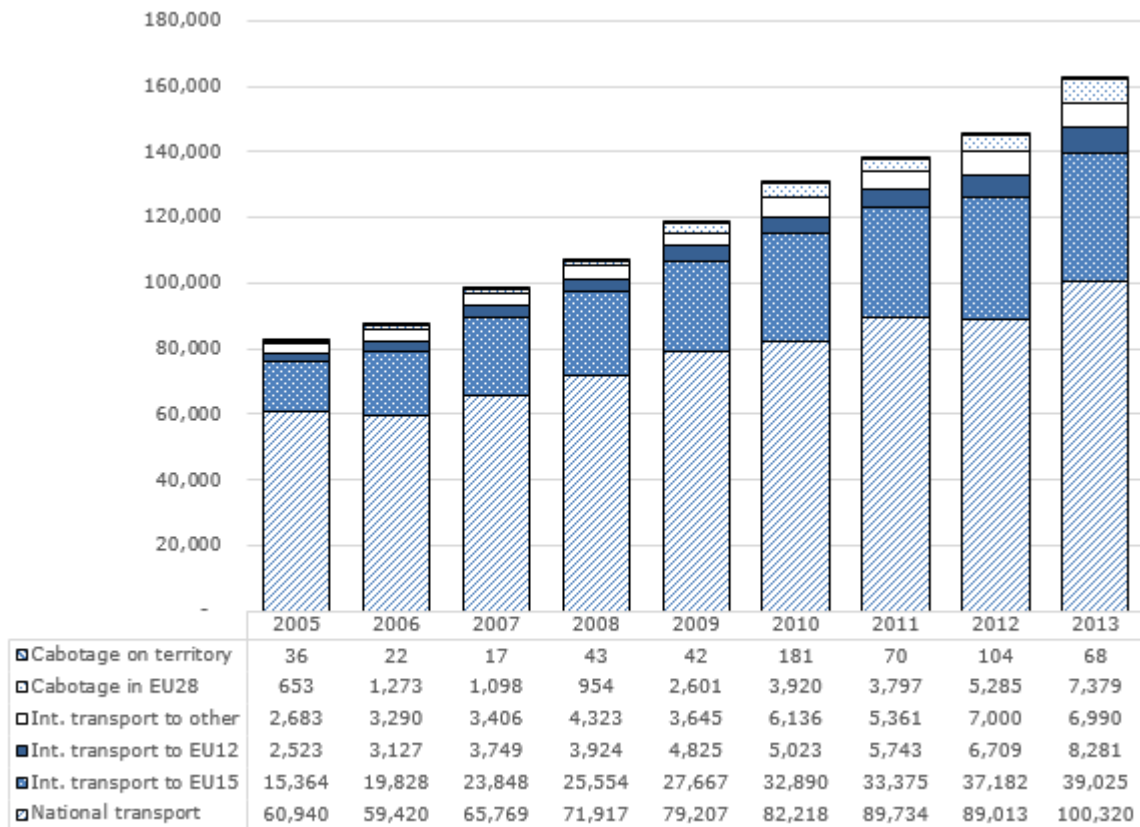
Source: GITD (2015)

14.5.1.2 Importance of international transport operations

The share of national transport in the total has been falling, mainly caused by the significant growth of international traffic, especially since Polish EU accession, which resulted in a vast growth from about 6% in 2005 to almost 11% in 2011 (Motor Transport Institute, 2014). The success of the Polish operators in international transport has been attributed to the industry gradually becoming acquainted with the EU laws and regulations, learning foreign languages developing skills and qualifications of personnel and working hard at keeping existing and gaining new business partners (Motor Transport Institute, 2014).

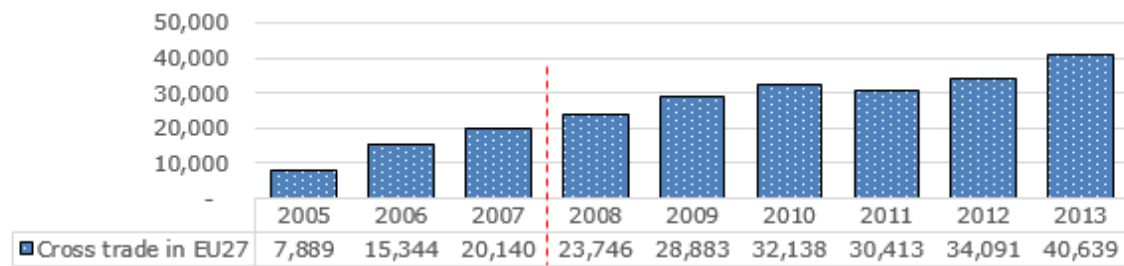
Figure 14-28 shows available Eurostat statistics on goods transport carried out in Poland and internationally. The constant increase of the size of the goods transport market becomes apparent – all types of transport operations have experienced growth in the period from 2005 to 2013. Cabotage on Polish territory remains insignificant, while cabotage operations carried out by Polish undertakings have grown to a total size similar to international transport to EU-12 Member States. Figure 14-28 further shows the increase in cross-trade operations (in t) during the same time period.

Figure 14-28: Goods transport volumes in Poland (in million t-km)



Source: Eurostat

Figure 14-29: Cross trade by vehicles registered in Poland (in thousand t)



Source: Eurostat, Note: break in series between 2007 and 2008

Poland enjoys competitive advantages over many countries due to its relatively lower driver wages, fuel costs, maintenance and repair services (CNR, 2012). In recent years, foreign companies operating in Poland (notably from Germany) have given rise to additional competition in the sector. This has led to an observable **increase in the quality of service** that is provided, which is moving markedly towards the levels of Western competitors (CNR, 2012). The continued economic growth might point to gradual increases in the Polish **salary levels**, however, increased competition from Romanian and Bulgarian drivers may still keep them in check (European Parliament, 2013a).

Poland was excluded from the EU cabotage market due to interim restrictions for new Member States between 2004 and 2009 (1st May). Poland is by far the largest provider of cabotage services across the EU (by comparison, the second largest provider is the Netherlands, where the cabotage activity is around one third of that in Poland (measured in t-km). Polish hauliers are responsible of around 28% of all reported cabotage activities across the EU in 2013 (Eurostat). Poland's strong cabotage position is certainly due to

several reasons, such as having a large fleet of vehicles, its location in relation to large markets such as Germany and its comparatively low rates compared to many EU15 countries. In certain circumstances Polish drivers however also operate at similar wages as local competitors under the Directive on Posting of Workers (AECOM, 2014a).

The activity of Polish caboteurs is mainly concentrated on Germany – 62% of all tonne-kilometres by Polish caboteurs in 2013 were performed there. This reflects Germany's geographic proximity, its large market for national transport, and the cost differential between companies based in the two Member States. Aside from market liberalisation, an important factor in the success of the Polish goods road transport sector has also been the opening of new sections of motorways, which further reduced journey times for trips to/from Germany and Western Europe (European Parliament, 2013a).

14.5.1.3 Drivers' salary levels and working conditions

According to estimates from CNR, the cost/km ratio (excluding structural costs) in Poland is 38% lower than in France (CNR, 2012). A major part of this is the lower driver cost, which is estimated at €19,686 per year in Poland compared to €46,402 in France (CNR, 2012). Among the other operating costs, fuel is relatively cheaper in Poland compared to many other Member States. The geography of the main markets (Germany, the Netherlands, Belgium and France) and the choice of night driving also enable additional fuel savings. Maintenance and repair costs are also relatively cheap in Poland due to lower labour costs.

Besides increased market and cabotage activity, low wages in Poland have however also caused a driver migration from Eastern to Western European countries, resulting in observable **driver shortages** within Poland. In Poland this shortfall was estimated to amount to 30,000 drivers already in 2007 and is up until today seen to be particularly high in Poland (AECOM, 2014a). As a result several operators have started employing drivers from other countries, "turning a blind eye to employment documentation and thus saving money", such as from Romania and Bulgaria (AECOM, 2014a).

Collective agreements exist in Poland, although they are not mandatory. Remunerations are established by both company-level agreements and employment contracts. There are several driver unions but driver membership is not common, except in the case of a dispute with their employers (CNR, 2012). There are a large number of individual drivers, some of which do not own a vehicle but instead work in a haulage company on a regular basis via contracts for the provision of services. Since they are not employees, these drivers are not governed by labour laws, and are not entitled to paid leave or job security, except during the period of their business contract (CNR, 2012). This practice is tolerated by Polish law, although it is becoming less common in recent years.

There is a national minimum wage amounting to 1,386 PLN gross/month (in 2011), i.e. less than €350 (CNR, 2012). Social security contributions are well below European average - the employer settles 18.48% contributions on the gross salary, while the employee pays 13.71% (CNR, 2012).

14.5.2 Regulation (EC) No 561/2006

14.5.2.1 Implementation and status

On the day of the Polish accession to the European Union (1st May 2004), the previous Driving Time Regulation (3820/85) became applicable, and was subsequently replaced from 11th April 2007 by Regulation (EC) No 561/2006.

The exclusion of specialised vehicles for the technical assistance was included, but the condition of exclusion can be applied only within the radius of 100km from the headquarters of the company. This difference caused the decrease in number of imported cars after accidents from the EU countries by means of emergency road service vehicles (Czech, 2009).

At the time of the introduction of the Regulation, specialists commented that transport productivity could decrease by 5-10%, stemming from difficult order management due to shorter working time and restructuring of breaks (Romanow, 2008). The Ministry of Transport on the other hand felt that the Regulations would be beneficial for both sides – especially in terms of improving transport safety and reducing the number of violations connected with road transport paid work (Romanow, 2008).

An issue that has been raised with Regulation (EC) No 561/2006 in Poland is the scope of **Article 12** (allowing for the driver to depart from the provisions of Articles 6 to 9 in order to reach a suitable stopping place). This is reportedly seen as a loophole to relax the general standards of working time and drivers use it with a lot of “enthusiasm” (Smoreda, 2014); however in the opinion of the inspection body, the provisions of Article 12 do not apply in many cases – especially if a lot of record sheets contain the use of Article 12. One of the issues is that the legislation does not describe what constitutes an adequate stopping place (Smoreda, 2014). Another common mistake is that drivers will record the reason for the departure many months later instead of immediately after stopping the vehicle (Smoreda, 2014).

According to analysis of payslips conducted by CBR, drivers receive a monthly gross fixed salary of €500 to €600 (€300 to €350 take-home after tax and contributions), irrespective of his workload. The fixed salary is topped up by a variable part. Although it is prohibited by Regulation (EC) No 561/2006 (Article 10) and Polish regulations, **the variable part of the remuneration of over 60% of the drivers matches the travelled mileage** (CNR, 2012). The scale is 9 Euro cents net per kilometre in the Western and Southern regions of Poland, where companies specialised in international haulage are numerous.

Polish enforcement authorities report that spending the **regular weekly rest** in the vehicle is prohibited. In case a driver is found to do so, then the resting is not counted as actual rest time and a fine is imposed. The driver is forced to adequately take the regular weekly rest before being allowed to continue with their operations.

14.5.2.2 Enforcement and compliance

According to the survey response from the Polish enforcers, there are around 500 road transport inspectors who are responsible for performing roadside checks as well as company checks in full scope. The Road Transport Inspectorate is tasked with monitoring compliance with the rules on driving, rest periods and breaks. Other services are also involved in enforcement, including the Police, Border Guard and Customs Service, which have the authority to monitor vehicles fitted with tachographs. Finally, the National Labour Inspectorate has the authority to look into records on sheets and driver cards, and can also extend this scope to matters of proper salary calculation (Wloch, 2015).

In 2014, the overall number of conducted roadside checks in Poland was 218,296. During those checks inspectors revealed 110,611 infringements (51% detection rate). The Polish authorities are somewhat supportive of concerted checks as an effective means of detecting infringements. By way of comparison, during 8 ECR-coordinated control weeks in 2014, Polish road transport inspectors checked 18,914 vehicles and found 3,437 infringing vehicles with a total of 6,360 infringements (33% detection rate).

The use of **driver attestation forms** in Poland is mandatory (URTU, 2015).

The Polish authorities make use of the **TRACE guidelines** for enforcement, since they provide commonly agreed and simplified explanations of the Regulation. The Polish interpretation of the gravity of infringements is aligned with **Annex III** of Directive 2006/22/EC.

Previously, road transport undertakings performing transport on **own account** were out of scope driving time rules, whereas currently such hauliers are in scope. Vehicles over 7.5 tonnes used for the non-commercial carriage of goods are not considered to be exempt from Regulation (EC) No 561/2006.

The Polish industry association is very concerned over “protectionist” measures introduced by other countries (ZMPD, 2014), citing in particular the interpretation in Belgium and

France that **restricts drivers from spending their regular weekly rest in the vehicle**. Conversely, the Polish enforcers consider that in Polish law, the driver is also not allowed to spend their weekly rest in the vehicle. The response from the Polish authority outlines their position: *"When our inspectors find out that the driver took his regular weekly rest in the vehicle, we do not count this as a properly taken rest, and then the fine is imposed for lack of rest. Moreover, driver has to take relevant rest before continuing carriage."*

According to Polish provisions (Article 92(b) of Road Transport Act), the transport undertaking is not liable if they have ensured the proper organisation of work that is required to conduct road transport operations according to binding provisions.

In the majority of cases, it is the undertaking that is responsible for infringements. In 2014 there were 41,273 infringements committed by drivers, whereas transport undertakings were responsible for 66,188 infringements.

Moreover, according to Article 92(c) of aforementioned act, administrative proceedings against transport undertakings or other parties involved in the transport chain are not launched for infringements that occurred as a result of events or circumstances that could not have been foreseen. Conversely, other parties may be held liable, if the circumstances of the case and the evidence clearly indicate that the entity had a direct impact or agreed to the occurrence of infringement. In 2014 there were 312 cases in which administrative proceedings were launched against other parties such as freight forwarders, consignors etc.

14.5.2.3 Penalties for non-compliance

Level of fines range from PLN 50 up to 10,000 (EUR 12 – EUR 2,360) for transport undertakings and from 50 up to 2,000 PLN for drivers (EUR 12 – EUR 472).

Poland differentiates fines according to the severity of the offense. Some examples are provided below, according to the Annexes of the Polish Road Transport Act:

- Exceeding daily driving time: about PLN 150 (EUR 35) for excess of 15 minutes to 30 minutes, and for each next 30min;
- Exceeding weekly driving time: about PLN 50 (EUR 12) for 30min to 2h and for each subsequent commenced hour;
- Shortening of weekly resting time: about PLN 50 (EUR 12) for first hour and for each next hour;
- Shortening of daily resting time: about PLN 100 (EUR 24) for 15min and for each subsequent hour started;
- Failing to record activities by using analogue or digital recording equipment: around PLN 2,000 (EUR 472).

There are no fundamental differences between roadside checks of national and foreign transport companies apart from the time of payment for the infringement committed. National companies/drivers are obliged to pay within 21 days from the moment of imposing a penalty, whereas non-residents have to pay at the spot (ECR, 2007). The form of payment can be chosen by the driver – with cash against receipt or by credit card.

Fines for specific infringements are defined in the annexes to the Road Transport Act.

14.5.3 Directive 2002/15/EC

14.5.3.1 Implementation and status

Working times have been brought into line with European legislation. Directive EC 2002/15 was incorporated into Polish law even before the country's entry into the Union. The first legislative act dealing with the drivers' time of work, which was brought to the Polish legal regulations to the European was the regulation concerning the drivers' working time from

24th August 2001 (Dz. U. 123, point 1354). Its main aim was to prepare the Polish transportation industry for the application of the EU regulations (Czech, 2009).

On 5 April 2013, the law on the amendment of the Law of 16 April 2004 on road transport and Law on Working Time of Drivers was enacted. The law was introduced to comply with the requirements of Directive 2002, with special regard to Article 2 item 1 (inclusion of self-employed drivers within the scope of the Directive).

The Polish labour code has set the legal working time to 40 hours. Freely paid overtime cannot exceed an average of 8 hours a week, which allows for a weekly working time of 48 hours in total. In theory, overtime is restricted to 260 hours per calendar year, although this is not displayed on payslips (CNR, 2012). The Polish implementation of Directive 2002/15/EC is a direct transposition - It therefore provides an exception to the labour code as it de facto allows for exceeding overtime allowance, which makes it possible to reach 2,496 working hours per year (an average of 48 hours a week out of 52 weeks).

Reportedly, Polish drivers are usually remunerated by the kilometre. Therefore, they only use the "driving" and "rest" modes of the tachograph. In this way, working time is not properly recorded and is not displayed on the payslip (CNR, 2013).

14.5.3.2 Enforcement and compliance

The National Labour Inspectorate is the leading law enforcement authority, whereas the Polish Ministry of Infrastructure and Development is responsible for reporting to the European Commission. Violations of the working time rules are one of the most frequent, and reportedly the imposed fines have a significant impact on SMEs (Romanow, 2008).

14.5.4 Directive 2006/22/EC

14.5.4.1 Implementation and status

The Polish **Risk Rating System** was introduced in order to comply with the requirements of the social legislation. The data used to calculate risk ratings consists of the outcomes from checks at the roadside and at the premises. On the basis of this system, 217 companies were selected for checks in 2014.

In the reporting period 2011-2012, Poland carried out 14 concerted or joint checks under the ECR initiatives.

Poland has partly taken up the guidelines of the **TRACE** common curriculum.

The GITD (the Główny Inspektorat Transportu Drogowego - Chief Inspectorate of Road Transport) gathers all relevant information from all enforcement authorities to comply with the Directive's **reporting** requirements. The GITD is also responsible for exchanging information with other Member States. However, according to the GITD (which was interviewed for this study) there is room for improvement concerning the **exchange of information** with non-ECR Member States.

14.6 Romania

14.6.1 Market situation and developments

14.6.1.1 Market Overview

The Romanian road freight transport market experienced a big drop in activity during the financial and economic crises in the first decade of this millennium. Between 2008 and 2010, the market decreased by more than 50%, which is the sharpest fall in transport activity across the Member States. The year 2012 has been the first year that showed some slight recovery in terms of transported goods (t) and transport performance (t-km), as shown in Figure 14-30.

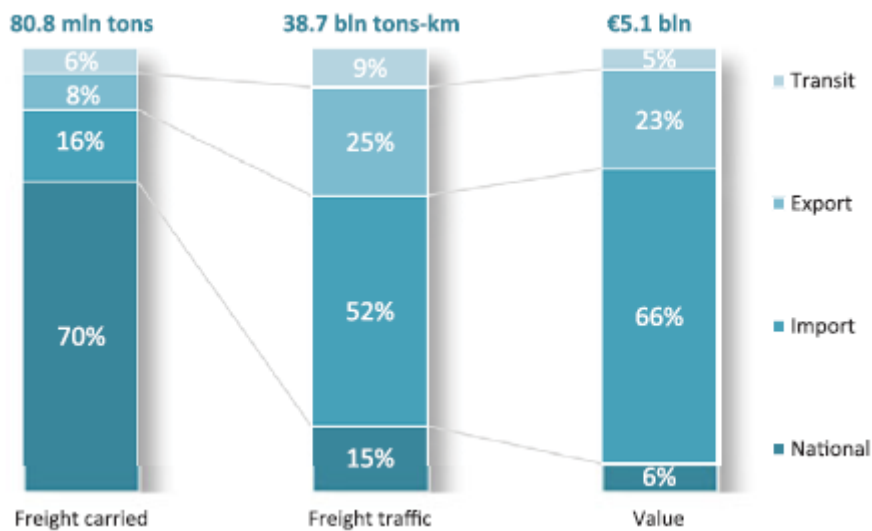
Figure 14-30: Goods transport in Romania from 2007 to 2012



Source: INS (2013)

National transport activities were equally split across own-account (51%) and hire for reward (49%) transport services in 2012. These splits are found to be largely the same for the years before the financial crises (INS (2008), INS (2013)). The Romanian transport industry association UNTRR (Uniunii Naționale a Transportatorilor Rutieri din România) provides numbers on the structure of the Romanian freight transport sector (see Figure 14-31). The majority (70%) of all freight carried (in tons) can be attributed to national transport. This, however, constitutes only 15% of all freight traffic (in t-km) and 6% of all transported value in the freight sector. The UNTRR identifies this imbalance between imports and exports as one of the biggest problems in the Romanian road haulage sector, leading to a high number of empty loads for trucks leaving the country.

Figure 14-31: Freight transport by road, structured by main indicators - 2012



Source: UNTRR (2013)

In the period from 2008 to 2009 - the most difficult year in that decade for the Romanian freight transport market - the overall number of goods transport vehicles (>3.5t) decreased by 20,000 vehicles (or by 15%) (UNTRR, 2013). In 2009, out of a total of 30,294 licensed Romanian transport operators, 4,582 operators (or 15%) were inactive (UNTRR, 2010). In 2010, Romanian transport companies came under additional pressure due to cost increases in the range of estimated 10-15%. These cost rises stemmed from increases of fixed cost (20% raise in taxes on vehicles and 10% raise of insurance premiums) and variable costs (15% raise in diesel excise, raises in 'bureaucracy' costs for obtaining approved documents and authorisations) as well as from rising opportunity costs due to the lack of and/or bad condition of Romanian motorways that Romanian hauliers increasingly had to face compared to many other EU hauliers (UNTRR, 2010).

The UNTRR furthermore reports to have observed an increase in competition from carriers of the new EU countries (Hungary, Poland, Lithuania, Bulgaria), some of them having bigger fleets than Romanian carriers. A great disadvantage of the Romanian carrier is reported to be the lack of trust from the direct customers and the lack of know-how concerning complex transport services (logistics of goods throughout the entire value chain) (UNTRR, 2013).

Over the last 4 years, the **fleet for goods transportation** recorded significant changes. In particular the numbers of minivans (+22%, +97,200 units) and semi-trailers (+27%, +16,300 units) has significantly increased (UNTRR, 2013). Table 14-22 shows the development of the freight transport fleet by distribution of different freight vehicle types

Table 14-22: Freight transport fleet in Romania

Registered fleet for road freight transport, by type of vehicle, 2008 – 2012 '000 units							
Type of vehicle	2008	2009	2010	2011	2012	Of which companies*	CAGR
Commercial vehicles, of which:	559.4	576.7	583.9	614.6	659.2	72%	↑4%
minivans	431.3	450.9	458.3	487.1	528.5	69%	↑5%
specialized vehicles ¹⁾	74.1	69.9	66.0	62.6	60.2	77%	↓5%
trucks **	53.5	55.5	59.2	64.5	70.1	98%	↑7%
lorry tractors	0.5	0.4	0.4	0.4	0.4	100%	↓5%
Road vehicles for special purposes ²⁾	30.5	32.1	30.7	31.0	31.5	98%	↑1%
Trailers and semi-trailers, of which:	225.8	239.4	252.3	269.0	286.4	51%	↑6%
Semi-trailers	61.2	63.9	67.1	72.3	77.5	80%	↑6%
Mixed use vehicles	74.0	71.5	68.8	66.0	63.7	49%	↓4%

1) open top lorries, cisterns, isotherms

2) labs, road material works, motor water car etc

* fleet owned by companies **InterBiz calculation based on DRPCIV and ARR a=data

Sources: NIS, DRPCIV, ARR

Source: UNTRR (2013)

Since 2008, the **road passenger transport** market has decreased by around 12% when counted in terms of number of transported passengers on intercity or international trips or by 16% when counted in terms of passenger-kilometre (considering only those trip that were carried out with vehicles designed for the transport of more than nine passengers, including the driver). During the same timeframe the number of registered buses and minibuses has increased by 1% (UNTRR, 2013). Other relevant data for the passenger transport segment could not be identified.

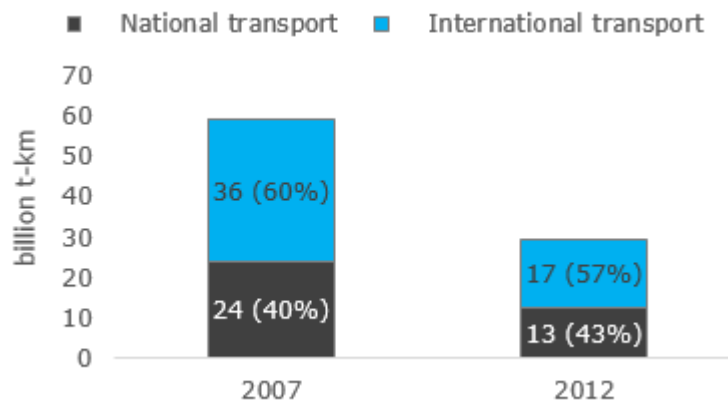
The majority of Romanian transport companies are classified as small companies with either 0-10 employees (44%) or 11 – 50 employees (28%). Only 4 % of the companies have more than 500 employees. The turnover of the companies is largely proportional to their size (UNTRR, 2013). According to a Romanian Industry Association interviewed for this study, there are still a lot of self-employed drivers. According to their estimates, 50% of transport companies are one truck companies.

14.6.1.2 Importance of international transport operations

Eurostat data shows that Romania’s cabotage penetration rate (0.4% in 2013) is among the lowest in the EU. However, the share of cabotage as a percentage of all t-km that Romania hauliers perform is fairly typical, at 2.8%. As with other EU12 Member States, there has been a dramatic growth in the cabotage activity of Romania hauliers, given that Romania was subject to a transitional period preventing hauliers from performing cabotage in certain other Member States until the end of 2011. Cabotage activity in tonne-kilometres almost doubled in 2012 and then more than doubled again in 2013. Data also show that Romanian hauliers perform a significant amount of cabotage in France, despite the distance from Romania.

Figure 14-32 depicts the split of transport activity across national and international transport and shows the importance of international transport: International transport takes with around 60% the predominant share – a share that appears to have been stable since before the financial crisis. International transport is mainly carried out by hire for reward transport services (round 90% in 2012).

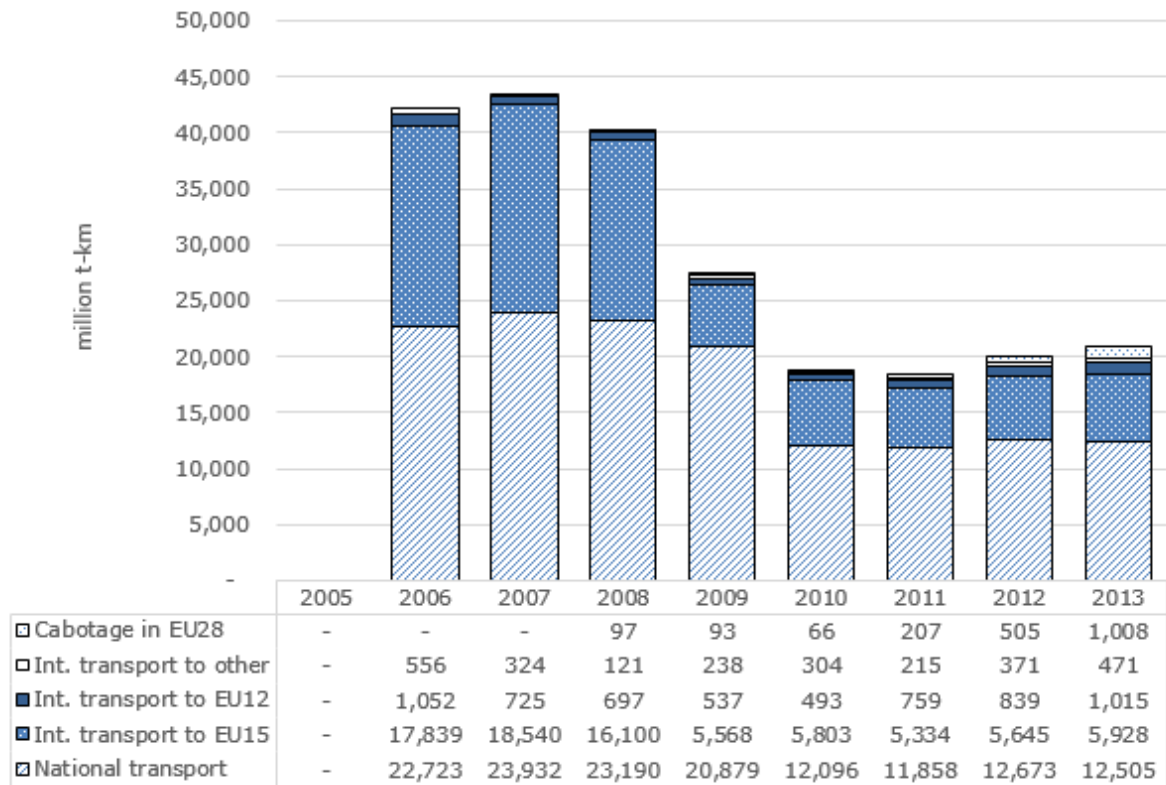
Figure 14-32: Good transport in Romania by type of transport



Source: INS (Transport, Post and Telecommunications, 2013)

Figure 14-33 shows that the share of international transport as identified by Eurostat is not quite as big (which counts operations where the truck is loaded on Romanian territory – incoming international transport operations are hence not included, while outgoing operations by foreign operators are counted). However, in comparison to other Member States also here the relatively high share of international operations is evident. Since 2012 these international operations have been expanded by cabotage operations carried out by Romanian operators elsewhere. Also the Eurostat data shows the significant drop in overall operations in the year 2009, from which the sector has not yet recovered.

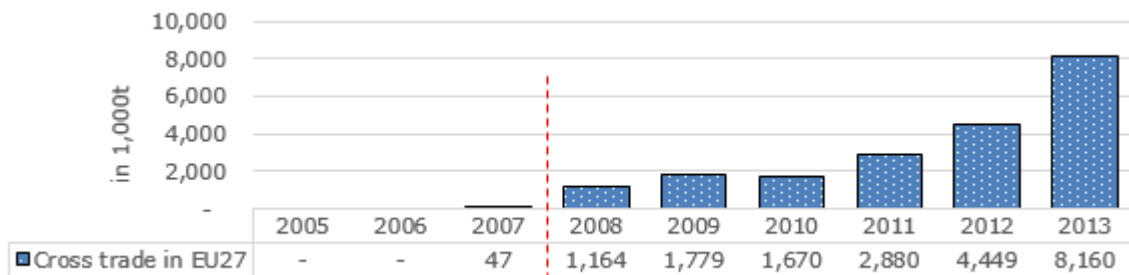
Figure 14-33: Goods transport volumes in Romania (in million t-km)



Source: Eurostat

Cross-trade operations (in t) have been increasing since 2008 and have almost doubles in the period from 2012 to 2013.

Figure 14-34: Cross trade by vehicles registered in Romania (in thousand t)



Source: Eurostat

Available data on **community licences** do not provide any evidence of an increase in the number of Romanian haulage businesses with access to the international market between 2009 and 2013²⁶⁵. According to the data provided by Romania to the European Commission, fewer than 100 driver attestations have ever been in circulation since 2011, suggesting the use of drivers from third countries by Romanian transport operators is negligible.

²⁶⁵ Source: Ricardo-AEA analysis of Member State reportage to the Commission pursuant to Regulations 684/92, 881/92, 1072/2009

14.6.1.3 Drivers' salary levels and working conditions

Regarding driver wages, reports are varied. Considering all remuneration elements, the wages of Romanian drivers in international transport appear to be reaching similar levels to those of Spanish hauliers (4-5 €/hour) (European Commission, 2014b). In terms of monthly salaries (after tax), it has been reported that Romanian drivers earn approximately EUR 300, to which typically a daily allowance of EUR 5 or EUR 35 is added for drivers engaged in national or international transport operations respectively (Transportstyrelsen, 2015). When compared to Poland, driver costs for Romanian hauliers are 92.5% of those incurred by Polish undertakings (European Parliament, 2013b). Anecdotal evidence further 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 when ignoring requirements regarding employment documentation (AECOM, 2014a). It has also been reported that Spain reverts to drivers from mainly Romania (or Latin America), that accept net salaries in the range of EUR 1,000 per month (CNR, 2013). In conclusion, it is likely that the wage differential between Romania and other countries is falling, but the precise figures are difficult to determine. In early 2015, UNTRR and other Eastern European industry associations have been very active to oppose the application of minimum wage laws in Germany and France to international transport operations as well as the banning of spending weekly rest periods in drivers' cabs (Neo Protectionism, 2015) (UNTRR, 2015). Both of these measures are seen as 'neo-protectionist' and as against EU principles, as measures that come to the cost of Eastern European businesses which can operate profitably in Western Europe.

The Romanian Association for International Road Transport (ARTRI) estimates a 10% driver shortage in Romania. According to UNTRR's, the main reason for this shortage is the migration of Romanian drivers to EU-15 countries with higher wages²⁶⁶.

In 2010, UNTRR reported on the difficulties that the Romanian transport market was experiencing (UNTRR, 2010). According to UNTRR, Romanian hauliers first had difficulties in complying with legislative requirements from the EU in 2007, when international competition started to increase, and when distortions of competition came to light due to an inadequate enforcement of Romanian and EU legislation. In 2008, this led to national haulier protests: hauliers also protested due to the disastrous state of Romanian roads, the lack of parking facilities that made compliance with EU requirements concerning resting times difficult, abusive traffic controls, high fuel prices and the high fiscal burden prevalent in the sector.

14.6.2 Regulation (EC) No 561/2006

14.6.2.1 Implementation and status

Regulation (EC) No 561/2006 is implemented in Romania by Ordinance "GO 37/2007 on the establishment of the application of the rules on driving times, breaks and rest periods for drivers and the use of recording equipment of their work" (released on the 16th of August 2007), that sets the scope of Regulation (EC) No 561/2006. The main responsible Ministry is the Ministry of Transport, in cooperation with the Ministry of Labour, Family, Social Protection and Elderly (both of which are also responsible for enforcement activities, see the following section).

Article 2 of Ordinance GO 37/2007 sets out the derogations that apply in Romania to Regulation (EC) No 561/2006 by referring directly to Article 13 of the latter Regulation. Out of the 16 possible derogations, 9 derogations are granted in Romania.

According to the questionnaire response received from the main Romanian enforcement authority, ISCTR, the State Inspectorate for Road Transport Control, Regulation (EC) No 561/2006 applies to all drivers (being "the person who drives the vehicle even for a short

²⁶⁶ Inputs received by these associations for a different study carried out by the Ricardo-AEA for the European Commission (Evaluation study for the Regulation 1071/2009 and 1072/2009)

amount of time, or the person who is on board of the vehicle during their duties in order to be able to drive the vehicle in case it is necessary”) that carry out operations as defined in Article 2(1) of Regulation (EC) No 561/2006.

According to the Romanian Ministry interviewed for this study, Romania increased the number of derogations that are applied in Romania from 9 to 13. They now apply all except for the ones that refer to non-commercial transport or to geographic conditions that do not apply to Romania. According to the Ministry, recently also a formal written request was received from the transport industry to also apply the derogation as defined under Article 13(o) (for vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals). This derogation is therefore currently under consideration and may be applied in future. The Romanian ministry further reports exceptions that were made for driving schools and the delivery of fresh milk and dairy products. The Ministry considers that they itself to have taken a positive approach to valid exemption requests obtained from the industry.

14.6.2.2 Enforcement and compliance

Company checks in Romania are mainly carried out by ISCTR, the State Inspectorate for Road Transport Control, which functions under the Ministry of Transport. ISCTR is organized in 8 territorial inspectorates, each covering several counties of Romania. Next to ISCTR, also the Labour Inspectorate that function under the Ministry of Labour, Family, Social Protection and Elderly carried out checks at premises. ISCTR is the national coordinator of checks at premises.

Roadside checks are carried out by ISCTR and the Traffic Police that functions under the authority of the Ministry of the Internal Affairs. The Traffic Police is here the body that organises and coordinates (in collaboration with the Ministry of Transport) all roadside checks on social legislation.

According to ISCTR, parties other than the driver or the transport undertaking cannot be held responsible for infringements against Regulation (EC) No 561/2006 in Romania.

ISCTR has further reported that drivers are required to keep records for other work, periods of availability and out-of-scope transport operations for a period of 28 days. Proving such activities is possible with forms of attestations, however, such forms are not officially required following the debates with the European Commission and the members of the CORTE enforcement group, especially surrounding the introduction of Regulation (EC) No 165/2014.

Also according to the questionnaire responses by the Romanian enforcement authority ISCTR, spending regular weekly rest is not allowed in Romania. However, the enforcement of this ban has not yet taken effect. At the time of conducting this study, the Romanian Road Transport Department is working on potential modifications to the sanctioning system as a first step toward the enforcement of the ban of spending the regular weekly rest inside the vehicle.

According to the data obtained by the European Commission from the Member States for the biennial implementation reports, the detected non-compliance with the provisions of Regulation (EC) No 561/2006 was one of the lowest in Europe in the implementation period 2011-12. On average, the overall offence rate was 0.36 offences per 100 working days (the rate of offences detected at roadside checks was 0.38; the one detected at checks at premises was 0.23). Compliance with the rest provisions appear to be the most problematic: 42% of total offences detected at premises, and 23% of offences detected at the roadside were related to the relevant provisions (at the roadside, this comes second to offences of driving time provisions, detected in 26% of the total number of offences detected the roadside). In the previous implementation period (2009-2010) the rates of detected offences on the roadside and at premises were very similar (respectively 0.35 total offences per 100 working days, 0.38 roadside offences, and 0.21 offences at premises); rest period provisions were the most problematic at checks at premises and among the main problematic provisions at roadside checks (next to driving time provisions and provisions on record keeping).

14.6.2.3 Penalties for non-compliance

Article 8 of GO 37/2007 defines offences of Regulation (EC) No 561/2006. Article 8(1) defines a list of altogether 38 very serious infringements, Article 8(2) defines a list of 17 serious infringements, and Article 8(3) defines a list of minor infringements. Article 8(4) furthermore sets out that the falsification of recording data is punishable under criminal law.

Article 9 of the same law then defines the penalties: Very serious infringements are fined in a range between 4,000 and 16,000 lei (around EUR 900-3,600); serious infringements (that partly apply to drivers) are fined in a range between 3,000 and 6,000 lei (around EUR 700-1,400); minor infringements (that also partly apply to drivers) are fined in a range between 1,500 and 3,000 lei (around EUR 340-680). In case the driver has had insufficient rest or break, the vehicle can be immobilised until sufficient rest or break has been taken (in addition to the administrative fine that is enforced). Next to immobilisation of the vehicle and administrative fines, sanction can include the withdrawal of the licence to operate, or the loss of good repute (Transportstyrelsen, 2015). According to Transportstyrelsen (2015), the average fine that is imposed on companies is EUR 4,000, while the maximum fine is around EUR 8,000. This maximum fine is attained if multiple infringements are detected – in this case single fines are cumulated until the very maximum level (which is twice the maximal fine of a very serious infringement) In case an offence involves more than one person, the same penalty will be applied to each person involved. It is currently under discussion whether the penalty system should take the size (or turnover) of the committing undertaking into account when defining administrative fines. This would allow higher penalties for potentially bigger undertakings that are more likely to commit multiple infringements than smaller companies (Transportstyrelsen, 2015). According to the Ministry of Transport interviewed for this study, a possible solution may also be to avoid making all the checks in the same day – this way infringements could be counted separately and larger companies could be made liable for more infringements as they have officially been detected in different checks.

Also according to the Romanian Transport Ministry, Romania revised the penalty system at the beginning of 2015. The changes involved alterations to the treatment of minor infringements and the introduction of a more solid link between the nature of serious infringements and the penalty imposed to be more in line with Directive 2006/22/EC and its relevant guidelines.

Concerning **liability**, Romanian law follows an 'agent relationship principle', meaning that the undertaking is held liable for any infringement of a driver when the driver carried out activities under the authority of the undertaking. The driver is only liable for the infringements that are out of scope of the agent relationship principle, and hence fall within the driver's responsibility. Such infringements include:

- Inadequate or non-use use of the recording equipment, drivers cards or diagrams;
- Insufficient recording of activities during the periods when recording is impossible due to malfunctioning of the equipment;
- Belated reporting of a damaged, defect, lost or stolen tachograph/driver card;
- Missing signatures on tachograph printouts;
- Manipulation of the recording equipment, etc.

Concerning manipulations of recording equipment, the driver's liability might soon shift over to the undertaking given current discussions and considerations in Romania (Transportstyrelsen, 2015). According to the Ministry of Transport, this change in liability to the undertaking has already taken effect at the time of writing this report.

14.6.3 Directive 2002/15/EC

14.6.3.1 Implementation and status

Directive 2002/15/EC was transposed into national law by Decision no. 38 of 16 January 2008 (which was updated on 12th of January 2012). Article 2 of this decision defines its scope, by referring to Regulation (EC) No 561/2006, and includes within its scope all self-employers that are specifically mentioned in Article 2(2). Article 3 provides all definitions relevant to the Working Time Directive, such as working time, periods of availability and the period of a week. Nightwork is defined as any work performed at night, which is defined any period of 4h during 0h00 and 7h00. Working time limits, including the limits when night work is performed, are in line with Directive 2002/15/EC and are hence not more favourable for drivers than the provisions defined in this latter Directive. Article 7 permits collective agreements between social partners in relation to night work as long as road safety is not put in danger.

According to the Ministry of Transport interviewed for this study, no derogations to the Directive have been agreed under collective labour agreements or social dialogue.

14.6.3.2 Enforcement and compliance

Article 11 of Decision no. 38 of 16 January 2008 defines the responsible enforcement authorities for checks at the roadside and at premises, being the Road transport inspectorate (now the ISCTR) and the Ministry of Labour, Family, Social Protection and Elderly (i.e. the Labour Inspectorate). According to the Ministry of Transport interviewed for this study, the ISCTR has the ultimate responsibility of the enforcement of road social rules (while the Labour Inspectorate has the power to impose sanctions, it has also the responsibility to report infringements of road social legislation to the Road transport inspectorate). The responsibilities of the enforcement of the Working Time Directive are therefore in line with the responsibilities as defined for Regulation (EC) No 561/2006.

The ISCTR reported for this study that infringements of the Working Time Directive were 'rarely' detected as it is difficult to control, i.e. less 1% of inspections result in administrative sanctions for the concerned parties.

The Ministry of Transport interviewed for this study highlighted that only undertakings can be held liable for infringements of the working time rules.

14.6.3.3 Penalties for non-compliance

Article 12 of Decision no. 38 of 16 January 2008 defines offences; Article 13 defines the related sanctions to these offences. Non-compliance with the organisation of the working time by undertakings and the failure to comply with recording requirements is fined with 1,500 to 2,000 lei (around EUR 340-450); the refusal to allow inspection at the premises is fined with 3,000 to 4,000 lei (around EUR 680-900). As it is the case with the provision of Regulation (EC) No 561/2006, drivers can be held liable for certain infringements of Decision no. 38 of 16 January 2008 that transposes Directive 2002/15/EC. This mainly applies to the failure to comply with recording requirements. The responsible enforcement authority, ISCTR, that we consulted for this study could not report how often drivers were held responsible for such infringements in practice.

14.6.4 Directive 2006/22/EC

14.6.4.1 Implementation and status

Ordonnance GO 37/2007 transposes the provisions of Directive 2006/22/EC. More specifically, Article 4 of GO 37/2007 defines the control activities that are in line with Directive 2006/22/EC. It defines that the ARR (the Romanian Road Authority) – the former ISCTR – is the main responsible body for all enforcement activities and furthermore acts as the national coordinator. Article 5 of the same law makes these responsibilities more explicit by defining the exact number of checks that are to be carried out (as defined in Directive 2006/22/EC), by defining its collaboration role with similar bodies in other EU

Member States for exchanging information and for carrying out joint checks, as well as its reporting responsibilities towards the European Commission. Other national enforcement authorities are according to Article 6(1) required to submit the according information to the national coordinator (ISCTR, or the former ARR). Article 15 of Decision no. 38 of 16 January 2008 that transposes Directive 2002/15/EC into national law furthermore sets out that ISCTR is also the responsible body for reporting to the Commission on the implementation of Directive 2002/15/EC in the same frequency as this happens for Regulation (EC) No 561/2006.

According to questionnaire responses received for this study, ISCTR has 398 staff members, of which 317 are control officers. All control officers are equipped to be able to download and analyse data from digital tachographs. ISCTR works with a risk rating system that was introduced resulting the requirements of Directive 2006/22/EC (Article 11 of GO 37/2007 defines this set-up of the risk rating system). Information from national enforcement authorities as well as information received from other Member States is feed into this risk rating system. Furthermore, ISCTR has taken up the TRACE curriculum in its entirety and judges it to have been very useful. Also all international cooperation activities and concerted checks have been very well received in Romania and are judged to be very useful.

According to the data obtained by the European Commission from the Member States, Romania has reported control statistics in line with the requirements for (at least) the last two implementation periods (2009-2010 and 2011-2012). As in previous reporting periods, Romania carried out considerably more checks than required in the reporting period 2011-12 (11% of working days were checked compared to the 3% required). However, only 14% of these were carried out at the premises of undertakings (compared to the required 50%). The detection rate of offences was with around 0.4% one of the lowest ones reported across the Union.

During the 2011-2012 reporting period, Romania has largely surpassed the requirement of conducting six concerted checks with other Member States per year: Only in 2011, Romania has carried out three concerted checks under an ECR initiative, 42 concerted checks with Bulgaria and participated in five multilateral exchanges of experience that were organised in Romania, France, UK, Hungary and Spain. In 2012, Romania participated in 8 concerted checks under ECR and participated and two more coordinated controls (EC, 2014a). Concerning the exchange of information across Member States, ISCTR reported to work with two different system. One is used for countries participating in ECR's activities and another one is used for all communication with non-ECR Member States. Communication with ECR countries is said to be more informal and occurs every three months; communication with other Member States is organised via the ERRU.

14.7 Spain

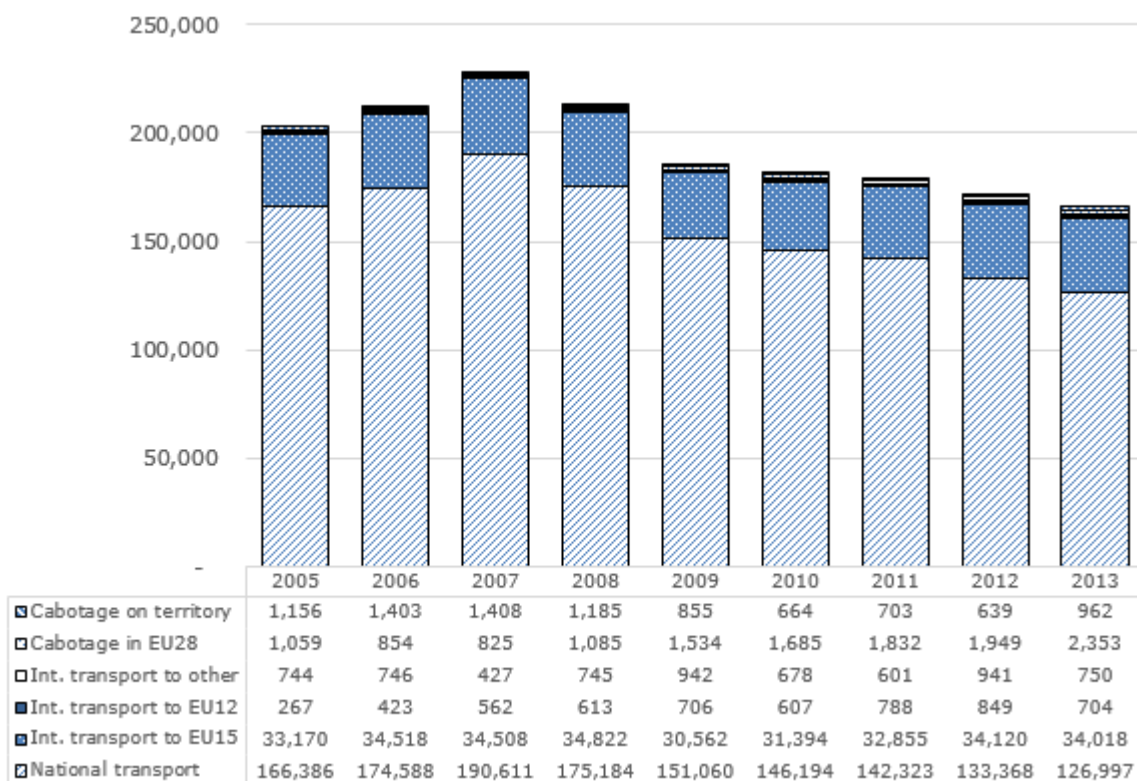
14.7.1 Market situation and developments

14.7.1.1 Market Overview

Size of the road transport market (in terms of GDP, employment, in share of overall EU transport market), and its development.

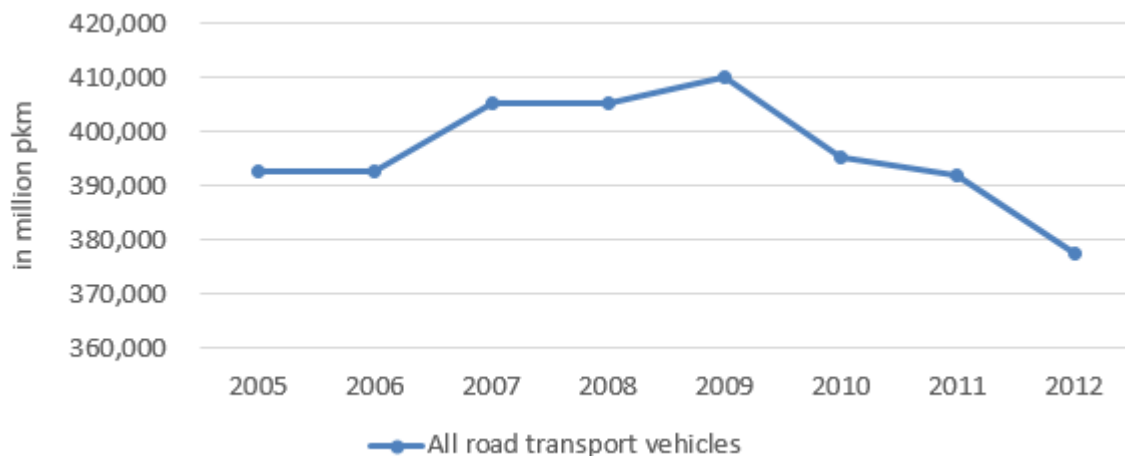
Spain is among the largest markets in terms of inland road transport. The total volume of road freight transport reached (national and international) in 2013 was around 160 million tonne-kms while in 2013 while the total volume of road passenger transport in 2013 was close to 370,000 passenger-kms (Ministry of Development, 2015) . However, in both cases, as a result of the economic crisis the total volume of transport has significantly declined since 2008 (see Figure 14-35 and Figure 14-36).

Figure 14-35: Volume of goods transport in Spain (in million t-km)



Source: Eurostat

Figure 14-36 – Total passenger transport in Spain (passenger kms)



Source: Eurostat

The decline in the total level of transport activity is also reflected in the decline in the number of enterprises active in the transportation and storage sector, from 224,458 in 2008 to 200,928 in 2012. According to the Spanish office of national statistics, in 2014 there were 107,142 firms offering road transport services, down from 145,099 in 2008 (Ministry of Ecology, 2014). Furthermore, there has been a sharp decline in the number of companies authorised to use HDVs from 75,965 firms in 2008 to 60,918 firms in 2015 (INE, 2015).

In terms of the structure of the sector, the data from the National Statistical Office (INE) show that it is dominated by many small businesses (see Table 14-23). Most of the road freight transport firms have only one vehicle (52%); however these companies together account for only 15% of total HDVs (Ministry of Infrastructure and Transport, 2015b).

Table 14-23: Distribution of firms in the road transport of goods sector by size in Spain

Type of firm by # of employees	Number	Share
No employees	59,555	56%
1-9 employees	44,056	41%
10-49	3,198	3%
50-499	320	0.3%
500 or more ²⁶⁷	13	0.01%
Total	107,142	100%

Source: INE (INE, 2015)

Total operating costs of HGVs in Spain are relatively low compared to other EU-15 countries, although they still exceed those of new Member States. In part, this is because driver wages in Spain are on a par with those in Eastern Europe, averaging at €1,000 to €2,000 per month – similar to a driver in Poland or Bulgaria (€1,000 to €1,200 per month) and lower than other Western European countries (AECOM, 2014a). Fuel is also relatively cheap compared to neighbouring countries, with a typical pump price of €1.374/litre compared to €1.411/litre in Portugal and €1.387/litre in France (AECOM, 2014a).

Table 14-24: Hourly cost of operating an HGV

Country	Total operating costs (in EUR per hour)	Driver costs (as a percentage of total operating costs)
Spain	58.87	34.7%
France	80.10	38.9%
Germany	79.06	33.3%
Italy	76.94	33.5%
Austria	74.38	34.3%
Slovenia	60.14	30.5%
Poland	52.05	23.0%
Hungary	51.44	27.5%
Romania	44.6	24.9%

Source: AECOM (2014a)

Similar data relevant for the passenger transport sector could not be identified.

14.7.1.2 Importance of international transport operations

Although the average size of road haulage companies had gradually increased from 1.9 vehicles in 1999 to 3.1 vehicles in 2008 (Ministry of Infrastructure and Transport, 2015b),

²⁶⁷ INE data do not provide data on the basis of the SME definition

this trend levelled off between 2008 and 2015 in part due to the economic crisis, and also partly due to changes in national regulations (Order FOM/734/2007).

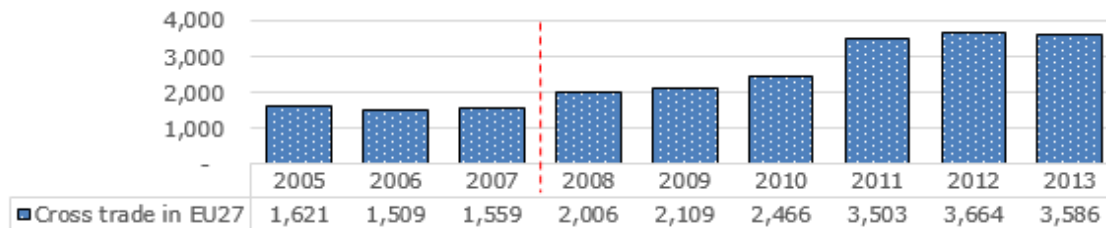
Furthermore, even though the number of transport companies in Spain fell between 2009 and 2013, the number of Community licences increased slightly during the same period. The number of certified true copies has remained roughly flat over the same period, which may suggest a reduction in average fleet size of international hauliers based in Spain (Ministry of Infrastructure and Transport, 2015b). As of 31 December 2014, the number of Community Licenses was 27,724 and the number of certified Copies was 104,633 (Ministry of Infrastructure and Transport, 2015b).

Driver attestation data from Spain suggest that the use of drivers from third countries may have recently decreased, but Spain makes relatively frequent use of foreign drivers (at least compared to other Member States) with as many as seven or eight drivers from third countries for every 100 Community licenses or certified copies

In terms of the level of international transport of goods from Spanish operators, according to the data presented in Figure 14-35, it has remained largely stable during the period 2008-2013, both in terms of transport to EU15 (33,000- 34,000 million tonne-kms), as well to new Member States, that is still very limited (less than 1000 million tonne-kms).

In terms of the level of cross trade from Spanish operators, there has been a steady increase during the 2008-2013 period, from 2,006 thousand tonnes in 2008 to 3,586 thousand tonnes in 2013.

Figure 14-37: Cross trade by vehicles registered in Spain in thousands of tonnes



Source: Eurostat, Note: break in series between 2007 and 2008

Cabotage

After falling steadily since 2007, the total amount of cabotage activity in Spain partially rebounded in 2013, even though it remains much lower than it was before the financial crisis. The cabotage penetration rate in Spain is low (0.8% in 2013) and it mainly hosts caboteurs from Portugal. While the amount of international transport unloaded in Spain by Portuguese hauliers has decreased since 2008, the number of tonne-kilometres of cabotage they performed was roughly the same in 2008 and 2013, meaning the ratio of cabotage to international transport has increased by about 30%.

The cabotage activity of Spanish hauliers is focussed almost entirely on France, where Spanish hauliers have exploited their competitive advantages (mainly due to lower wages) (European Parliament, 2013a). Overall, cabotage figures reveal that Spanish operators have a significantly favourable competitive position when compared to France but a less favourable position when compared to Portugal. This balance is partly the result of the average cost base, including labour costs and trade flows between these markets. Also the level of internationalisation of the national fleet plays a role. 75% of vehicles in Portugal carry out both national and international transport, while only 4% of vehicles in Spain do (European Parliament, 2013a).

14.7.1.3 Drivers' salary levels and working conditions

According to available data, average gross monthly salaries for drivers of heavy trucks in Spain are in the range of €1,500 to €2,000, depending on the years of experience (Tusalario.es, 2015), with no difference reported between those conducting domestic and

international operations. Salaries for drivers of (touristic) buses and coaches are reported to be in the range of €1400 to €1,900. As already indicated, such salary levels are higher than those in Poland or Bulgaria (€1,000 to €1,200 per month) and lower than other Western European countries (AECOM, 2014a).

Minimum wage in Spain applies to all occupations and in 2014 it was €615 on a monthly basis (Boletín Oficial de Estado, 2012) . However, in the case of road transport, collective agreements (at the national or regional level) establish the basic salary and salary supplements that apply. Most regional associations of truck drivers have signed collective agreements with employers. However, less than 50% are covered by collective agreements (Tusalario.es, 2015). Furthermore, Spanish authorities and most stakeholders have taken a negative position against the introduction of minimum wage requirements for drivers of vehicles performing international haulage operations, as introduced in Germany.

According to an older survey (Jerónimo Maqueda Blasco, 2005) non-Spanish drivers – mostly Romanian, Portuguese and Bulgarian - represent 21% to 31% of the total number of drivers in large companies of over 50 employees, but only 10% of companies with less than 10 employees. Foreign drivers are more often involved in international operations (24.9% of all international operations) than in national operations (5.5% of all national operations). Furthermore, according to the same source, , the most problematic aspects in the context of working conditions are considered to be the time spent (wasted) for loading/unloading and the poor quality of the motorways. Other issues, such as working hours, rest hours and rest facilities were not emphasized (less than 16% of respondents considered them as particularly problematic).

The majority of drivers (around 77%) are employees – of which around 80% have long terms contracts and 20% temporary contracts – while 23% are self-employed (autonomo) (ibid).

14.7.2 Regulation (EC) No 561/2006

14.7.2.1 Implementation and status

In Spain, Regulation (EC) No 561/2006 has been implemented through amendments to Regulation 16/1987, for the organisation of road transport (ordenación de los transportes terrestres (hereinafter, "LOTT"). The most recent amendment took place in September 2013268. Royal Decree of 1211/1990, as subsequently modified and updated (hereinafter, "ROTT") – most recently amended in September 2013 - develops and complements the LOTT.

The interpretation of the scope of Regulation (EC) No 561/2006 is that it applies to all drivers engaged in any form of road transport, whether public or private, freight or passenger, Spanish nationals or foreigners, operating within Spain or in the European Community, with a loaded or empty vehicle, provided the vehicle they are driving has a maximum authorised weight of above 3.5 tonnes, or in the case of passenger vehicles, more than 9 seats including the driver's. That is, there is no differentiation between professional and non-professional drivers (Ministry of Development, n.d.) .

Spanish authorities have granted exceptions permitted under Article 13 of the Regulation, except for the exceptions defined in Article 13.1 (h), (i) and (n), referring to vehicles used for sewerage/flood protection/water services; the non-commercial passenger transport with vehicles with between 10-17 seats; and vehicles used for the transport of animal waste or carcasses. Exception (b) is further restricted only to vehicles operating in a range of <50km; exception (e) was further restricted to vehicles operating on islands <1,500 square km only; exception (j) referring to transports in funfair/circus were further restricted to only those that are operated on own activity; exception (l) is further restricted to milk/animal feed from /to farms within a range <100 km only.

In general, proof that exemption from the scope of the Directive is based on the provision of relevant evidence, which can vary from case to case. For example, in the case of buses, for proving driving in a radius < 50 km, the undertaker can use documents of selected routes. They also have to present which drivers have driven the specific routes on the basis of time books records (Transportstyrelsen, 2015).

14.7.2.2 Enforcement and compliance

Enforcement of the Regulation is a shared responsibility of the national transport authorities and the transport authorities of the autonomous communities (regions). In terms of company checks, the national authorities develop an annual inspection plan in coordination with the regional authorities. Both national and regional authorities perform these checks. The specific companies to be inspected by the national authorities is decided by a random process. In total around 80% of the checks conducted by the central authorities are company checks (Transportstyrelsen, 2015). Each regional authority can only check undertakings established in the region if they carry out transport operations take place within the region. The checks are most often (90% of the time) based on the review of documents and relevant data sent to the authorities. Sometimes these checks may also include visits to the companies' premises. If the company has several very serious infringements or a most serious infringement, a second check is carried out. Such additional checks are carried out repeatedly until no more very serious or most serious infringements are detected. (ibid.)

Drivers' checks are conducted by the police in coordination with the regional authorities. The police reports the identification of an infringement following a road check to regional authorities, who then initiate proceedings. The infringing party may admit the infringement (and pay the fine and accept the related sanctions) or appeal the resolution.

The involvement of the regional authorities in the enforcement of the Regulation is considered as positive in terms of the presence of a wide network to cover the country. However, it reportedly also leads to differences in the interpretation of the rules among the regional transport departments: regional discrepancies in the application of the LOTT-ROTT rules have been reported (Grimaldi, 2013) .

Spanish authorities are allegedly (Trans.eu, n.d.) supportive of the position taken by the French and Belgian authorities' approach of imposing fines in the case of drivers spending nights in their compartments during their regular weekly rest. However, no relevant action has been taken to this point.

In 2013 the national and regional authorities completed 5,662 company checks, covering 20,816 vehicles and 30,000 drivers. These numbers signify that the minimum requirement of 3% of working days to be checked are surpassed by around 2-3 %. These checks resulted in 2,754 procedures against companies and led to €4.7 million in total sanctions (Transportstyrelsen, 2015).

According to the data reported in the 2014 National inspection plan (FPS of Economy, 2015), there were a total of 168,549 infringements initially detected (compared with 146,358 in 2013), 106,602 were eventually verified by the competent authorities (compared to 95,401 in 2013). They led to a total amount of sanctions of €98 million in comparison to € 104 million in 2013. This reduction was due to a revision of the penalty system. Table 4 summarises the most common types of infringements. The authorities also reported checks of a total of 1,909 freight transport operators in 2014, 9% higher than in 2013 (1,752).

Table 14-25: Enforcement activities and infringements detected (2013-2014)

	2013	2014
Company checks	1752	1909
Infringements detected	146,358	168,549

- Of which proceedings completed	95,401	106,602
Total sanctions imposed	€ 103,838,000	€97,950,558
Type of infringement		
Lack of transport cards	13,349	8,076
Driving times and rest	31,529	53,226
- Goods transport		50,948
- Passenger transport		2,278
Excess weight	20,584	19,776
Tachograph	26,301	27,747

Source: Ministry of Development (2015)

In terms of road checks, the Spanish police checked a total of 260,240 vehicles in 2014, up from 252,298 in 2013 and detected infringements in 110,150 cases, down from 115,117 in 2013. 224,435 checks concerned road freight transport vehicles (compared with 215,683 in 2013), a 3.15% increase. From these checks, infringements were detected in the case of 149,545 vehicles (150,041 in 2013), of which 27,573 were related to the use of tachographs and 63,059 the driving and rest period (FPS of Economy, 2015).

14.7.2.3 Penalties for non-compliance

In general, a transport undertaking is responsible for any infringements by a driver that it employs although it may not be held responsible if it can show that it has fulfilled its obligations. However, it is generally considered quite difficult for a company to prove that they have fulfilled their responsibility. For example, this would require the company to show that it has attempted to impose compliance with the Regulation on the driver, that it has penalised them in case of non-compliance, and that the driver has accepted this penalty (Transportstyrelsen, 2015).

A recent report (Grimaldi, 2013) , indicates that transport operators generally view the Spanish road transport sanction system as extremely complex and difficult to understand.

In accordance to Article 19 of Regulation (EC) No 561/2006, a transport operator may be punished for infringements discovered in Spain even though it might have originated in another Member State or third country. In this case, the relevant Spanish legislation (LOTT and ROTT) is applicable for these infringements, including the respective fines.

According to the Spanish Regulation, the different categories of infringements and their respective sanctions are (Grimaldi, 2013):

- Very serious infringements (regulated in Articles 140.20 LOTT and 197.20 ROTT) are infringements when there is an excess of over 50% of the maximum driving times or uninterrupted driving, as well as when there is a reduction in excess of 50% of the mandatory rest periods. Sanctions for very serious infringements consist in a fine ranging from 3,301 to 4,600 € and the vehicle's immobilisation (Articles 143.3 LOTT and 201.3 ROTT). The fine will range from 4,601 to 6,000 € if the person liable had been fined for another very serious infringement within the previous 12 months
- Serious infringements (regulated in Articles 141.6 LOTT and 198.6 ROTT) are infringements when there is an excess of over 20% of the maximum driving times or uninterrupted driving, as well as when there is a reduction in excess of 20% of the established rests periods, except when the excess or reduction shall be considered as a very serious infringement in accordance to Articles 140.20 LOTT and 197.20 ROTT. Sanctions for serious infringements range from 1,501 to 2,000 € and the vehicle's immobilisation (Articles 143.3 LOTT and 201.3 ROTT). The fine will range from 2,001 to 3,300 € if the person liable had been fined for another identical serious infringement or for any very serious infringement within the previous 12 months

- Minor infringements are regulated in Articles 142.3 LOTT and 199.3 ROTT. According to these two Articles, it will be a minor infringement when there is an excess in the maximum driving times or uninterrupted driving, as well as when there is a reduction of the established rests periods or breaks, except when they shall be considered as a serious or very serious infringement. Sanctions for minor infringements include a fine in the range of 301 to 400 €. The vehicle's immobilisation will also apply when the remaining distance until destination exceeds 30 kilometres. The fine ranges from 401 to 1,000 € if the person liable had been fined for another very serious infringement within the previous 12 months.

The law also contemplates as a specific and independent infringement "the excess in more than 50% of driving times or the reduction in more than a 50% of rest periods provided in the legislation". Thus, in addition to the very serious infringement, there is an additional infringement (and respective fine) with the liability attributed to the driver. This infringement is qualified as a very serious infringement and is subject to a fine of 500 €. This fine may be increased by up to 30% in the situations described in Article 68 (relevance of the infringement, the infringing person's background, recidivism, potential danger of the infringement to the infringing party and to the road's users, proportionality).

If the infringing party's residence is not in Spain, the authorities will request that a provisional fine deposit be made. If the deposit is not made, the vehicle will be immobilised. If the infringing party pays the fine immediately or within 15 days after the infringement notice has been notified, there is a 50% reduction on the fine amount (articles 79 and 80).

The Department of Transport (Ministerio de Fomento) of the Spanish Government has issued a document called "Baremo sancionador" with guidelines on the application of fines within the pre-defined ranges. The "Baremo" is updated regularly and has no legal binding character, although it bears the authority of the issuing Department and it is seen as extremely useful. The provision of fines within a range system has however been criticised, because the fine ranges are seen to be too large (Grimaldi, 2013).

14.7.3 Directive 2002/15/EC

14.7.3.1 Implementation and status

The European working time rules are implemented in Spain by Royal Decree 902/2007 of 6 July on special working time. The Royal decree transposed the Directive into Spanish law, which has thus been transposed into the Spanish legislation on working time relating to road transport. Furthermore, the Royal Decree 1635/2011 of 14 November on special working time, determines the periods of availability in road transport (*Official State Gazette* of 17 December).

Relevant information on the enforcement and (non-)compliance with the Working Time Directive in Spain could not be identified.

14.7.4 Directive 2006/22/EC

14.7.4.1 Implementation and status

Directive 2006/22/EC has been implemented by the Resolución of 19 April 2007 of the Directorate General for Road transport, establishing minimum controls in relation to working hours of drivers. The Ministry of Development, Directorate General for Transport and Infrastructure is responsible for the implementation of the Directive and is that one that develops annual inspection plans. It is also responsible for reporting to the Commission.

According to the data for 2014, the authorities checked an equivalent of 2.8 million working days in companies and 1.6 million through road checks, adding to a total of 4.5 million, which is 61% higher than the minimum target set for 2013 (2.8 million) to meet the targets set in by the Directive. (FPS of Economy, 2015) The total number of infringements in companies detected in 2014 was 12,192, up from 9,164 in 2012, with the apparent

infringement rate also increasing. We should note that there are significant differences between the data provided in the Ministry report cited above and those included in the earlier reports submitted to the Commission for the preparation of the biennial implementation reports (that indicate up to 8.5 million working days checked in 2010). We will need to investigate this issue further to explain these differences.

Figure 14-38 – Total number of infringements detected during company controls

	2012	2013	2014
Number of checks		1752	1909
Number of infringements	9,164	8,156	12,192
Infringement rate		4.6	6.3

Source: Spanish Ministry of Development

According to the 2015 inspection plan in terms of company checks priority is to be given to those involved in the international transport operations. In addition, priority should be given to those companies for which there are recorded complaints from professional associations, trade unions, agencies responsible for monitoring road transport, inspection companies or individuals concerning the respect of driving time and rest periods requirements.

In the case of road checks, control of heavy vehicles authorized for national and international transport is given priority. Furthermore, in cases where the forces responsible for monitoring road have suspicions of breaches of the relevant provisions that cannot check be checked on the road, they are expected to inform the inspection bodies of the Autonomous Community responsible for company checks.

To this end, there have been complaints from the forces responsible for the monitoring road transport, the abuse in the use of certificates activities by some companies, which suggests in a fraudulent use of the document.

At the national level, in 2014 there were around 20 inspectors (16-17 FTE) and 16 assistant inspectors (13 FTE). To this one should add the 17 autonomous communities, each of whom has 2-4 inspectors (total of 50-84 inspectors). Total costs per inspector are estimated to be around 40k/year (Transportstyrelsen, 2015).

According to the Spanish Ministry of Transport that was interviewed for this study, Spain uses a risk rating system in line with Directive 2006/22/EC to target checks.

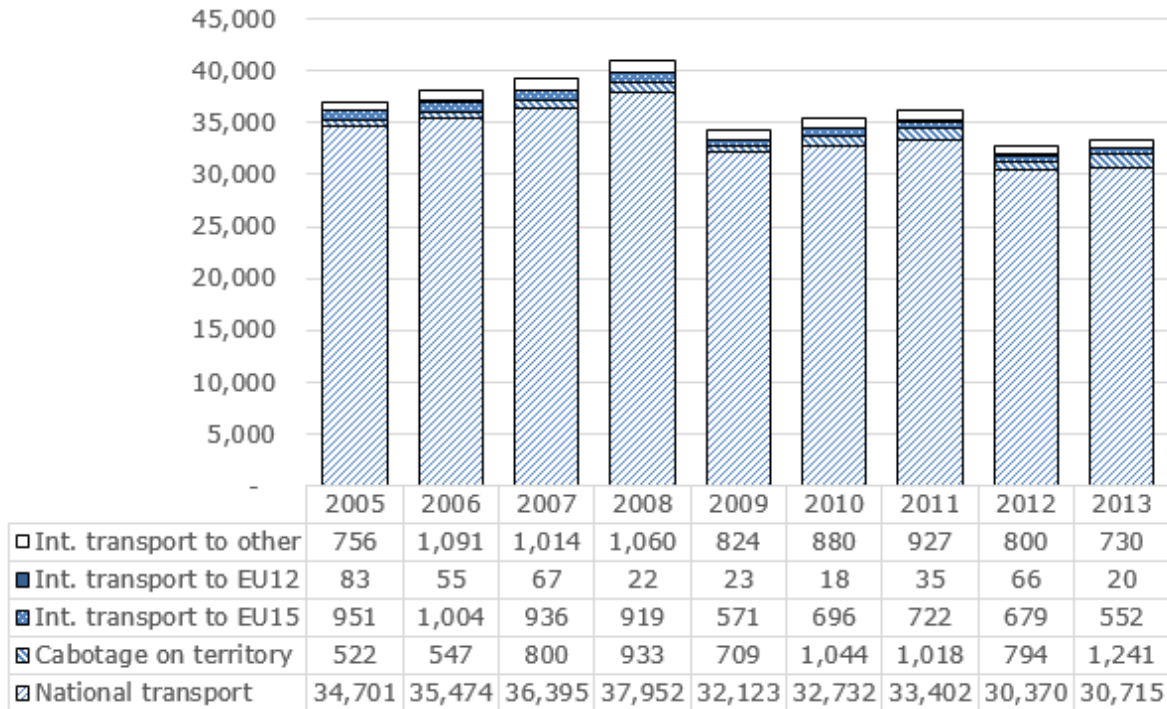
14.8 Sweden

14.8.1 Market situation and developments

14.8.1.1 Market Overview

According to Eurostat, the total volume of freight transport in 2013 reached 33,529 million t-km representing no more than 1.9% of the EU28 total. The economic crisis affected the road transport with total volume of road transport down to 80% of the 2008 levels – both domestic and international – and cabotage operation even less (44% of 2008 levels).

Figure 14-39: Road transport of goods in Sweden (million t-km)



Source: Eurostat

In total, there were 8,524 enterprises active in the goods road transport sector in 2011 employing around 60,265 persons. The majority of Swedish firms are small, with an average size of less than 10 employees (AECOM, 2013). From the total 8,326 road transport enterprises in operation in 2010 (Eurostat), 142 had 50 employees or more (representing around 26% of total employment in the sector) while 7012 (83%) had less than 9 employees. Around 60% of enterprises (5,051) had only one vehicle with 1,365 more between 1-5 (Eurostat, 2015b).

Despite the crisis, the number of firms remained largely stable over the period 2006-2011. The turnover of the sector was close to 11.2 billion representing 3.5% of the total EU28.

In terms of road **passenger transport**, according to Eurostat domestic passenger transport by motor coaches and buses reached 8,560 million passenger-km in 2010, remaining largely stable during the period 2006-2010 (Eurostat, 2015a). Other relevant data specifically for the passenger transport sector could not be identified.

14.8.1.2 Importance of international transport operations

The number of Community licences for hauliers declined slightly during the period 2008-2013, from 4,673 in 2008 to 4,527 in 2013. On the other hand, the number of certified true copies has slightly increased since 2008, up to a total of 15,175 by the end of 2013.

In relation to passenger transport, as of 31 December 2013, the number of Community Licences was 669, down from 733 in 2008, while the number of certified copies increased to 4,078, suggesting a significant increase in the average number of vehicles per company (see Table 14-26).

Table 14-26: Number of community licences and certified copies (2013)

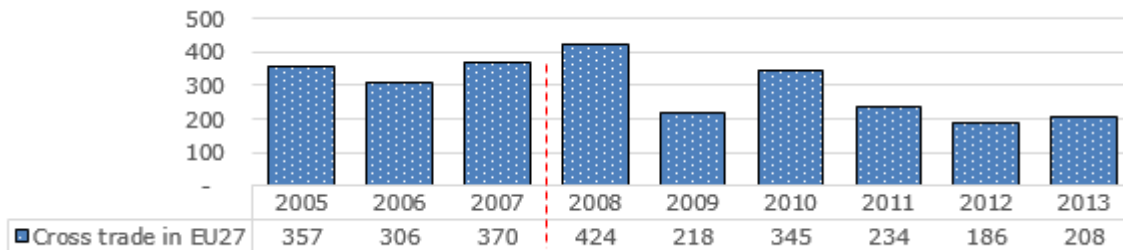
	Community Licences		Certified copies	
	2008	2013	2008	2013
Freight hauliers	4,673	4,527	14,297	15,175
Passenger carriers	733	669	2,843	4,078

Source: National report²⁶⁹

In terms of driver attestations, there were 43 new attestations issued in 2013, down from 65 in 2011 and 2012. The total number of driver attestations in circulation declined, 97 by the end 2013, down from 222 in 2012. This suggests that the use of drivers from third countries may have recently decreased.

International and cross-trade transport operation represent only a small share of the total freight transport (2,814 million t-km; 8.3% of total) in Sweden. Cross-trade operations represented 8.9% of total international trade in 2013, down from 13.2% in 2008 (Eurostat, 2015c) while cabotage operations by Swedish hauliers was 101 t-km in 2013, around 3.5% of the total international transport. (see Figure 14-39 and Figure 14-40). Sweden operators mainly perform cabotage operations in Germany (65% of total) and, less so, in Norway (20%).

Figure 14-40: Cross trade by vehicles registered in Sweden (in thousand tonnes)



Source: Eurostat, Note: break in series between 2007 and 2008

Cabotage operations within Sweden represented 3.1% of total domestic transport (Eurostat, 2015d), among the highest across the EU28. Total cabotage operations reached a total of 1.24 million t-km in 2013, 56% higher than in 2012, but even higher than the pre financial crisis period (0.9 million t-km in 2008). Sweden hosts cabotage operators from a significant number of countries. According to Eurostat data, Polish hauliers significantly increased their total cabotage operations to around one third of the total in 2013. Hauliers from other EU12 (mainly Bulgaria, but also Estonia and Latvia) also increased their share, primarily in the expense of hauliers from the Netherlands. German and Danish hauliers maintain a significant share of the total volume.

²⁶⁹ Data from national reports provided by the Commission services

14.8.1.3 Drivers' salary levels and working conditions

Labour costs in the road transportation sector in Sweden are among the highest across the EU with a total hourly cost of €30.3 in 2012, up from €26.1 in 2008. In total, labour costs have increased faster than the EU28 for most of the 2005-2013 period and this has been the case for both wages and salaries (including bonuses) as well as other labour costs (Eurostat, 2015e).

Table 14-27: Evolution of labour costs in the road transport sector

		2008	2012
Total labour costs	EU28	17.5	19.6
	SE	26.1	30.3
Wages and salaries	EU28	13.3	14.5
	SE	18.4	21.5
Direct remuneration, bonuses and allowances	EU28	12.0	13.1
	SE	15.9	18.6

Source: Eurostat (Labour force survey)

There is no **minimum wage** in Sweden. Monthly wages in Sweden are fixed on the basis of collective agreements which are only binding for employers who join them voluntarily (Ahlberg, 2013). According to the Swedish transport union, there are 20 collective agreements covering the various branches professions in the road transport sector. According to the transport union, around 70-80% of workers are members of the union and are covered by the relevant collective agreement.

In general, **working conditions** in the transport sector are considered to be good in comparison to many other countries (Swedish transport union, 2011). However, the union of Swedish transport workers union has recently expressed its concern about the competition from drivers from eastern Europe, that come to work in Sweden employed by foreign transport companies that run domestic routes. They get lower salaries and the working conditions are reportedly poor. According to one source, foreign workers earn between 4,500 and 10,000 Swedish kronor (€478 to €1,060) a month, while the Swedish Transport Workers Union's collective agreement secures a starting salary of 24,000 kronor (€2,548) (Rolfer, 2015). They also often sleep in their trucks and have no access to showers or toilets.

In terms of **demand for truck drivers**, earlier studies (2008-2009) showed a strong demand for professional truck drivers, four out of ten Swedish road carriers have predicted an increased need for truck drivers in 2009, and four out of ten companies also reported that recruitment of skilled staff would probably be difficult. According to the Statistics Sweden's Labour Market Tendency Survey 2014, there is shortage of experience professional drivers while there is greater availability of trained professional drivers (Statistics Sweden, 2014).

According to the IRU Transpark database there are 45 parking areas in Sweden (IRU/ITF, 2015).

For the time being there is no general support for the introduction of a minimum wage (Rolfer, 2015). There are concerns raised by road transport workers union about the low salaries paid to drivers from Eastern Europe and suggestions that that a similar introduction of minimum wage could be used to address this issue. However, the transport workers union does not seem to support this view and the same applies for the employer associations. There is currently a discussion on the possible adoption of universal collective agreement, even though this is also not universally supported.

14.8.2 Regulation (EC) No 561/2006

14.8.2.1 Implementation and status

Regulation (EC) No 561/2006 has been implemented in Sweden through an amendment of the 2004 National Regulation on Driving times, Breaks and Tachographs etc. (Förordning (2004:865) om kör- och vilotider samt färdskrivare, m.m.).

Since 2011, the Swedish Transport Agency has taken the responsibility for company checks and for sanctioning transport undertakings with infringements against the relevant rules and regulations. These cases were previously investigated by the police and prosecutors, and guilty companies were punished with fines. However, drivers can still be fined at roadside checks by the police. Accordingly, Sweden has two control authorities for the enforcement of driving times and rest periods.

The National Regulation on Driving times, Breaks and Tachographs covers all types of drivers carrying out in-scope operations. In-scope operations include goods operations where the mass of the vehicle exceeds 3.5Mt and passenger operations for carrying more than 9 passengers as provided in Article 2(1) of the Regulation 561/2009. Vehicles over 7.5 tonnes used for non-commercial carriage of goods are not exempt.

Sweden has not introduced rules diverging in any way from those set out in Articles 6-9 of the Regulation. On the basis of Article 13 of the Regulation, Swedish authorities have decided not to grant five exemptions that are allowed under the Article (European Commission - DG MOVE, 2014).

According to questionnaire responses received for this study, Swedish authorities consider that it should also be possible to provide exemptions in the case of short movements of vehicles by people that are not the drivers (e.g. maintenance staff, mechanisms) when these do not exceed 50 km.

14.8.2.2 Enforcement and compliance

In the Swedish legal system the roles of the competent authorities are the following:

- the Swedish Transport Agency is responsible for company checks and revokes authorisation when applicable;
- the police are responsible for conducting driver's checks and imposing relevant fines; and
- the prosecutor's office may also issue certain fines.

With regards to proving out-of-scope activities, the Swedish legislation does not require drivers to do so. The view of the authorities is that manual recordings or attestation forms are not a valid means for proving such activities since there is no proof that validates their accuracy. Nevertheless, Swedish undertakings have reported that it is often difficult to know what specific documentation is required (Transportstyrelsen, 2015).

According to the input provided by the Swedish ministry to the stakeholder consultation carried out for this study, the Swedish authorities allow drivers to spend their regular **weekly rest** in their vehicles, since the rest conditions in these vehicles are seen to be often better than those otherwise available.

In comparison to other Member States, company checks in Sweden are usually based on documentary evidence that is requested by and then submitted to the authorities and typically do not entail actual visits to the premises of the undertaking (Transportstyrelsen, 2015).

There is reported uncertainty regarding which information the transport undertakings need to submit in order to prove exemptions and deviations from the rules and regulations. This uncertainty makes administration more difficult for the transport undertakings and leads to protracted investigation times (Transportstyrelsen, 2015). Furthermore, according to the input from the Swedish ministry for this study, a deviation in Sweden is the provision of 2-3 minutes tolerance that the Swedish Transport Agency applies to compensate for deficiencies in tachographs, in certain cases.

Recent data on company compliance has been made available by the Swedish Transport Agency (see Table 14-28). This data covers the period from 1/2012-9/2014. During this period, a total of 196 company checks were carried out - a much greater number than the 19 companies checked during the period 2011-2012²⁷⁰. A total of 42,872 infringements were identified (signifying that 219 infringements per check were detected), in comparison to the 3,201 infringements reported for the 2011-2012 period (or 169 infringements/check). As shown in Table 14-28, almost half of the infringements were classified as very serious with the highest applicable sanction imposed being SEK 4,000 (€ 428). The total sanction fee imposed per check was, on average, SEK 570,663 (€60,259) with a median value of SEK 245,000 (€25,871).

Table 14-28 – Number of infringements detected during company checks (period 1/2012-9/2014)

	Number of infringements detected	Infringements/check	Total sanction fee imposed
Minor infringements (SEK 1,000 / €107)	17,596	90	SEK 17,596,000 (€ 1,884,250)
Serious infringements (SEK 2,000 / € 114)	3,425	17	SEK 6,850,000 (4 733,526)
Very serious infringements (SEK 4,000 / € 428)	21,851	111	SEK 87,404,000 (€ 9,359,570)
All	42,872	219	SEK 111,850,000 (€ 11,977,300)

Source: Transportstyrelsen (2015)

Table 14-29 presents the five most common infringements found during the specific period. Only one of the five most common infringements is in relation with the drivers' actual driving times and rest periods. The other infringements concern management of the tachograph or driver card.

Table 14-29 – Most common types of infringements detected (period 1/2012-9/2014)

	Number of infringements
Incorrect use of record sheet/driver cards – Very serious	9,959
Too late downloaded data – Minor	4,905
Not using the manual input when required to do so – Very serious	3,371
Exceed uninterrupted driving time – Minor	3,285
Symbol of country not entered in recording equipment – Minor	2,812

Source: Transportstyrelsen (2015)

14.8.2.3 Penalties for non-compliance

In Sweden, penalties (in the form of administrative fines) can be imposed to both the driver – who is responsible for all infringement they commit - and the transport undertaking, which in principle is considered responsible for the driver's infringements. This liability is

²⁷⁰ Data from the national report

conditional on the undertaking's infringement of paragraphs 1 and 2 article 10.3 in the Regulation (EC) No 561/2006.

Transport undertakings can show that they cannot be held responsible if they provide evidence that they plan their organization and inform their drivers in a way that the regulation can be followed. The company also has to control the driver's driving and rest periods and take measures if the rules are not followed.

The Swedish authorities can also accept that other parties in the transport chain are held responsible if proof is provided by the transport undertaking.

In general, the amount of the financial penalties is low compared to the amount foreseen in other Member States for similar infringements (Transportstyrelsen, 2015). The penalties imposed according to the Swedish Regulation FKV (2004:865) have the form of an administrative sanction. The fine imposed to the undertakings or the driver, depending on who is held responsible, is in the range of 1,000 SEK - 4,000 SEK (€ 422). It is 1,000 SEK (€ 106) for minor infringements, 2,000 SEK (€ 211) for serious infringements and 4,000 SEK (€ 422) for very serious and most serious infringements. In addition, according to the input of the Swedish authorities to the stakeholder consultation of this study, vehicle immobilisation is imposed in the case of most serious infringements. The maximum total fine that can be imposed to a company in a single control is 200,000 SEK (€ 20,870) or 10% of the company's turnover. In the case of a driver this maximum amount is, 10,000 SEK (€ 1,056). In the case of a few minor infringements within a single check, a fine may not be imposed even though this will still affect the risk rating of the undertaking.

There are different thresholds of penalties of the driver for the infringements of rules on driving times when the violation has been committed in another country, within the EES or in Switzerland, and the violation is revealed in Sweden.

- (i) Pursuant to Article 6 when the driver has violated the rules on driving times, there may be a fine of 3,000 SEK (€ 313).
- (ii) Pursuant to Article 7 mom.1 when the driver has violated the rules on breaks, there may be a fine of 3,000 SEK. Pursuant to Article 8.1-8.5 when the driver has violated the rules on rest periods, there may be a fine of 3,000 SEK (€ 313).
- (iii) Pursuant to Article 8.6 when the driver has violated the rules on weekly rest periods, there may be a fine of 3,000 SEK (€ 313).
- (iv) Pursuant to Article 8.6 a when the deferred weekly rest period has not been sufficient, there may be a fine mom. 1 fine of 3,000 SEK (€ 313).
- (v) Pursuant to Article 12 when the driver has not indicated the reasons for depart from 561/2006 sec. 2 on the record sheet of the recording equipment, on a printout from the recording equipment or in the duty roster, there may be a fine of 1,800 SEK (€ 188).

The same amount is established for most of the infringements of Regulation (EC) No 561/2006 and of Regulation 3821/85. The same applies to infringements of the Directive 2006/68/EC. Therefore, the system does not appear proportionate.

The law does not foresee sanctions such as withdrawal of driving licences as well of Community licences. Such sanctions are indeed deemed to have a higher deterrent effect than financial penalties.

14.8.3 Directive 2002/15/EC

14.8.3.1 Implementation and status

Directive 2002/15/EC is implemented in Sweden through the Act on Working Hours Regarding Certain Road Transport Work adopted in 2005 (Lag (2005:395) om arbetstid vid visst 637 vägtransportarbete). Rules on self-employed workers were introduced into the Act on 1 May 2012. The Swedish Transport Agency is responsible for establishing the national regulations on this matter. According to stakeholder input received for this study, the Directive covers only vehicles registered in Sweden.

Sweden has not applied any more favourable provisions to those provided in Articles 4 to 7. It has however allowed derogations agreed among social partners in line with the provisions of Article 8 of the Directive.

According to a Swedish Enforcement authority (interviewed for this study) Labour agreements that allow specific derogations from the working time and night time provisions of Directive 2002/15/EC have not been used excessively. Checks suggests that they apply to 10% of all transport operations.

14.8.3.2 Enforcement and compliance

The Swedish enforcement authority interviewed for this study highlighted that data collection concerning infringements of Directive 2002/15/EC has started but is still in its early stages. Assessments can therefore not yet be made, however, a general lack of awareness of the provisions of Directive 2002/15/EC has been observed. The authority reported further that more than 1 in 10 inspections lead to the detection of infringements. However, the authority considers that the overall compliance rate is good.

Only transport undertakings can be held responsible for infringements of the Directive. Drivers and other parties cannot be held responsible.

14.8.3.3 Penalties for non-compliance

According to the implementing Act on Working Hours Regarding Certain Road Transport Work (Article 25) an employer who intentionally or negligently fails to comply with an order or prohibition issued by the enforcement authorities against him may be fined or sentenced to imprisonment for at most one year. Furthermore, the Regulation states that a fine should be imposed on an employer who does not comply with its provisions. However, the level of the fine is not determined. (The Working Hours for Certain Road Transport Work Act (2005:395))

14.8.4 Directive 2006/22/EC

14.8.4.1 Implementation and status

Directive 2006/22/EC has been transposed to the national legislation through adaptations to the Act on Driving times, Breaks and Tachographs (Lag (2004:865) om kör- och vilotider samt färdskrivare). The Act addresses all the checks required on drivers, transport companies and vehicles which fall under the scope of Regulation No. 3821/85. The Act on Driving times, Breaks and Tachographs contains several provisions regarding the check system, the number and the modalities of these controls, depending on the fact that they are carried out on the road (roadside checks) or at the transport operator premises. The Act furthermore designates the Swedish Transport Agency the competent authority – the body that is responsible for intra-community liaison.

Sweden introduced a risk rating system to ensure compliance with the requirements of Directive 2006/22/EC. The selection for company checks is currently conducted through a risk rating system that is based on previous experiences of driving times and rest period checks. The size of the transport undertaking is not a deciding factor (Transportstyrelsen, 2015). It is built around a score point system according to the severity of the infringement divided by the number of vehicles checked. The enforcement authority interviewed for this study judges the risk-rating system to have been very effective for company checks. Companies with a higher risk profile are now checked more frequently. The authority reported that the severity of infringements as entered into the system is in line with Directive 2009/5; entries are deleted after 3 years. Experience has shown that for some companies major improvements in compliance occur after entries are deleted, for other regrettably not and are consequently re-entered. The risk-rating system is not used for

conducting roadside checks which should, according to the enforcement authority, remain random to be more effective.

In 2012, there were 251 officers involved in checks at the roadside and premises, 215 of which were trained to the analysis of data from digital tachographs (Transportstyrelsen, 2015).

According to the input provided by the Swedish authority for this study, in 2014, there were 205 staff trained to the analysis of data from digital tachographs. It also indicated that there are 416 police officers and 68 vehicle control inspectors involved in roadside checks.

In an interview, the Swedish enforcement authority further highlighted that in the reporting period 2011-2012, the authority had just started to build up their capacity for company checks. This is reflected in the number of checks that were predominately carried out at the roadside. In the reporting period 2013-2014 a first re-balancing in the number of roadside and company checks will be noticeable.

In Sweden, The TRACE common curriculum has been adopted and is considered to be very important. The interviewed enforcement authority considers that it has raised the skills of the enforcers and has increased effectiveness of controls through common understanding of enforcement practices and rules.

14.9 United Kingdom

14.9.1 Market situation and developments

14.9.1.1 Market Overview

In terms of inland road freight transport, the UK is one of the largest markets in Europe, with only France, Spain, Germany and Poland accounting for more freight moved in terms of billion tonne kilometres. The volume of goods lifted by HGVs registered in the UK was 1.89 billion tonnes in 2014 (Appleby Associates, 2015), with hire and reward operators account for the majority of the market.

Market conditions following the recession have been challenging in the UK, with the retail, manufacturing and construction sectors being particularly hard-hit. This has led to a wave of consolidation in the road haulage market in recent years, with many of the leading operators being acquired by other companies. The number of transport businesses in the UK has fallen continuously since 2001, from 104,390 businesses in 2001 to 90,894 in 2012 (FTA, 2015).

Other market structure changes have been due to the radical evolution of the way freight transport and distribution is organised, due to technological advances, changes to supply chain management and opening of markets in Europe.

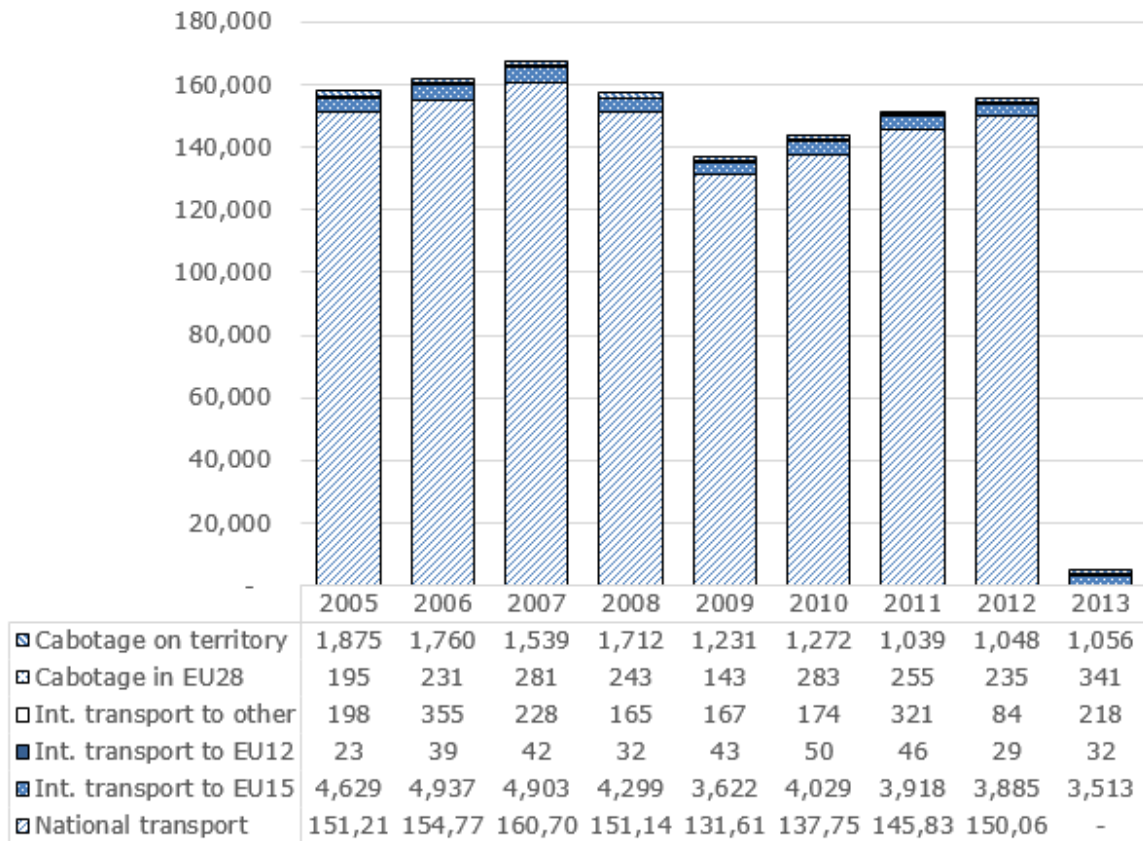
There are over 1,000 enterprises in the UK bus and coach industry (Appleby Associates, 2015). The bus sector is highly fragmented due to deregulation of the scheduled local bus sector in the 1980s, which opened up the market to privately owned operators. Private companies have always played a major role in the coach sector. The largest bus and coach companies in the UK include the National Express, Stagecoach, FirstGroup and Arriva (Appleby Associates, 2015).

14.9.1.2 Importance of international transport operations

UK hauliers are particularly concerned over the relatively higher cost of diesel compared to mainland Europe, which puts domestic carriers at a competitive disadvantage against the continental hauliers. Any increase in competition from foreign hauliers risks eroding profit margins, which stood at around 3% in 2014 – down from 4% in 2010 (FTA, 2015). On the other hand, the growth in the UK economy and favourable movements in the exchange rate of Sterling against the Euro have probably encouraged an increase in trade with Western Europe (FTA, 2015).

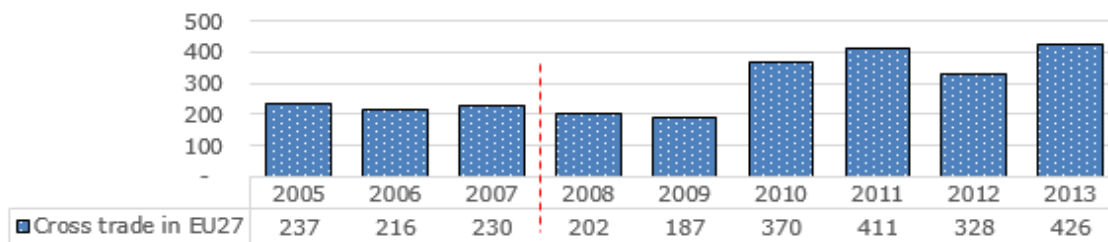
Figure 14-41 shows the development of different types of transport operations in relation to the UK. It can be seen that the international transport market takes only a very minor share of the total amount of operations being carried out. The same applies to cabotage operations (whether carried out by UK undertakings or on the UK territory). Overall, continuous growth in the period from 2009 to 2012 has been observed, however, pre-crisis levels have not been attained in 2012. International cross-trade operations take a comparatively insignificant share. They have, however, doubled in the period from 2009 to 2013 (see Figure 14-42).

Figure 14-41: Goods transport in the UK (in million t-km)



Source: Eurostat, Note: national transport data is not yet available for 2013

Figure 14-42: Cross trade by vehicles registered in the UK (in thousand t)



Source: Eurostat, Note: break in series between 2007 and 2008

14.9.1.3 Drivers' salary levels and working conditions

In the UK, recruitment of qualified drivers is a growing challenge, with industry representatives expressing concerns about a skills shortage (Traffic Commissioner, 2014). Government figures suggest that between 500,000 and 750,000 commercial vehicle drivers are active in the marketplace with 16% of HGV drivers 60 or over and only 1% of employed drivers under 25 (Traffic Commissioner, 2014). There are around 220,000 people working in the UK bus and coach industry (Appleby Associates, 2015).

It is estimated that the shortfall in HGV drivers is between 50,000 and 60,000²⁷¹ (FTA, 2015). The industry perception is that pre-existing problems were compounded by

²⁷¹ There is no definitive number for the current driver shortage but different methods arrive at similar

requirements for Driver CPC, where drivers opted to retire instead of completing the necessary training (FTA, 2015).

The problem is also evident in the difficulties that firms face in recruitment. The vast majority of companies in the UK transport and distribution sector are also experiencing problems recruiting key staff, with the number of road transport firms recruiting more than doubling to 17% in recent years (Appleby Associates, 2015).

The main barrier to recruitment, as reported by the FTA (2015), is thought to be the poor driver roadside facilities, followed by medical requirements and hours of work. Across the country there is a lack of secure truck stops, which means drivers must use lay-bys and side streets (FTA, 2015). There is also a rising problem of truck theft (FTA, 2015)

14.9.2 Regulation (EC) No 561/2006

14.9.2.1 Implementation and status

In the UK, Regulation (EC) No 561/2006 applies to drivers of most goods vehicles weighing more than 3.5t and passenger vehicles with more than 9 seats. **The interpretation of the scope** is that "A driver is anyone who drives a vehicle or is carried on the vehicle in order to be available for driving". That is, the rules apply to *all* drivers (as long as they use one of the vehicles covered under the scope of the rules), not just *professional* drivers.

In 2015 there were minor changes to the rules, which mainly concerned raising the distance threshold for exemptions from a 50km radius from base to 100km radius for derogations (DVSA, 2015). From 2 April 2015 the maximum period for downloading digital data from vehicle units was increased from 56 days to 90 days (DVSA, 2015).

The following vehicles are exempt from the EU rules after the European Commission granted a special authorisation (VOSA, 2011):

- Any vehicle which is being used by the Royal National Lifeboat Institution;
- Any vehicle that was manufactured before 1 January 1947; and
- Any vehicle that is propelled by steam

The UK also exercises all of the derogations permitted – however, any vehicle exempt from the EU rules will usually be in scope of the UK domestic rules (as contained in the Transport Act 1968) when travelling in the UK. These are:

- Maximum of 10 hours of driving per day.
- Maximum amount of duty permitted is 11 hours per day.
 - In the case of an **employee driver**, this means being on duty (whether driving or otherwise) for anyone who employs him as a driver. This includes all periods of work and driving, but does not include rest or breaks
 - For **owner drivers**, this means driving a vehicle connected with their business, or doing any other work connected with the vehicle and its load.
 - A driver who does not drive for more than 4 hours on each day of the week is exempt from the daily duty limit.
 - Off-road driving for the purposes of agriculture, quarrying, forestry, building work or civil engineering counts as duty rather than driving time

After the 2006 Regulation was brought into force in the UK, there were concerns about the impact of the electronic tachograph requirements on bus services, particularly in rural areas. This led to some bus operators finding that it was no longer practical or economical to operate buses on routes over 50km (House of Commons Library, 2009b)

14.9.2.2 Enforcement and compliance

The main enforcement authority in the UK is the Driver and Vehicle Standards Agency (DVSA), who carry out both roadside checks and checks at the premises (until April 2014 this was the Vehicle and Operator Services Agency (VOSA)). Roadside inspections can also be carried out by the police in theory, although this happens rarely.

Regarding **attestation forms for out of scope activities**, these are not mandatory in the UK. Drivers are not expected to account for rest and other days off, unless enforcement authorities have reason to believe that they were working (DVSA, 2015).

Where reduced weekly rest periods are taken away from base, **these may be taken in a vehicle**, provided that it has suitable sleeping facilities and is stationary (DVSA, Enforcement Sanctions Policy, 2015).

Guidance on best practice is issued by VOSA, and intended to help ensure a consistent approach to enforcement. They aim to strike a balance between ensuring that the best enforcement value is obtained, while and not giving the impression that minor infringements will always be overlooked (DVSA, Enforcement Sanctions Policy, 2015).

Infringements of drivers' hours and tachograph rules can result in the following (VOSA, 2011):

- Verbal warnings: for minor infringements that appear to have been committed accidentally
- Offence rectification notices: for a number of infringements not related to safety. Operators are given 21 days to carry out a rectification of the shortcoming
- Prohibition: Many drivers' hours and tachograph rules infringements attract a prohibition in order to remove an immediate threat to road safety. When issued, driving of the vehicle is prohibited
- Prosecution: If it is considered to be in the public interest, more serious infringements are considered for prosecution, either against the driver, the operator or other undertakings, or against all of them.

Drivers are protected from conviction if they can prove that, because of unforeseen difficulties, they were unavoidably delayed in finishing a journey and breached the rules. The UK interpretation of this provision follows the judgment by the European Court of Justice dated 9 November 1995, i.e. "It can apply only in cases where it unexpectedly becomes impossible to comply with the rules on drivers' hours during the course of a journey. In other words, planned breaches of the rules are not allowed." Examples of such events are delays caused by severe weather, road traffic accidents, mechanical breakdowns, interruptions of ferry services and any event that causes or is likely to cause danger to the life or health of people or animals.

At the time of introduction, a partial regulatory impact assessment was conducted (DfT, Partial Regulatory Impact Assessment, 2007). This did not identify any significant additional costs law abiding operators and drivers. The general costs for operators associated with enforcement were already incurred under the existing EU Regulation. Furthermore, the Regulations were not expected to result in increased enforcement costs for the enforcement authorities. Finally, the effective enforcement of the EU Regulation was expected to enhance the operation of the market by ensuring there is a level playing field that prevents law-abiding firms suffering from unfair competition from firms or drivers working excessive hours.

14.9.2.3 Penalties for non-compliance

In terms of **co-liability**, UK legislation refers to the entire supply chain, in Section 96(11C) of the Transport Act 1968. In the UK, co-liability only extends to ensuring that contractually agreed transport time schedules respect the EU Regulation – i.e. these provisions separate from the automatic liability provisions for transport undertakings. It was identified at the time that the term "driver employment agency" used in the Regulation would benefit from

clarification – this is interpreted to include employment businesses, as defined in the Employment Agencies Act 1973, Section 13(3).

Transport undertakings will not be held responsible for offences committed by their drivers if they can show that at the time of the infringement the driver's work was being organised in full consideration of the rules, and in particular that (VOSA, 2011):

1. No payments were made that encouraged breaches;
2. Work was properly organised;
3. The driver was properly instructed; and
4. Regular checks were made.

Transport undertakings must also show that they have taken all reasonable steps to avoid the contravention – for example, by showing a contract with the customer that includes a provision for transport time schedules to respect the EU rules (VOSA, 2011).

Employers can also avoid being penalised if they can prove that the driver was involved in other driving jobs that the employer could not reasonably have known about. However, a driver employment agency is likely to be found liable if they have been offering back-to-back jobs to drivers where it will be impossible for the driver in question to take a daily or weekly rest in between those jobs.

Penalties for infringements of the drivers' hours rules in Great Britain, with maximum fines as contained within Part VI of the Transport Act 1968 (as amended), are as follows:

- failure to observe driving time, break or rest period rules: fine of up to £2,500 (Level 4);
- failure to make or keep records under the GB domestic rules: fine of up to £2,500 (Level 4);
- failure to install a tachograph: fine of up to £5,000 (Level 5);
- failure to use a tachograph: fine of up to £5,000 (Level 5);
- failure to hand over records relating to recording equipment as requested by an enforcement officer: fine of up to £5,000;
- false entry or alteration of a record with the intent to deceive: on summary conviction fine of £5,000 on indictment two years imprisonment;
- altering or forging the seal on a tachograph with the intent to deceive: on summary conviction fine of £5,000, on indictment two years imprisonment; and
- failure to take all reasonable steps to ensure contractually agreed transport time schedules respect the EU rules: fine of up to £2,500 (Level 4).

These are the maximum fines/punishment that can be imposed by a court of law. UK legislation sets maximum levels of penalties but does not specifically differentiate between serious and non-serious infringements

In April 2009 the Graduated Fixed Penalty, Financial Penalty Deposit and Immobilisation Scheme (GFP/DS) was launched and came in to effect from June 2009, prior to the introduction of 1071/2009. Under this scheme, for some drivers' hours offences, there is a clear **system of graduated penalties** that ramp up with the seriousness of the offense. For example, a driver exceeding the daily driving limit by 30 minutes would receive a lower level fixed penalty than a driver exceeding it by 2 hours. Fixed penalty notices are based on the severity of the offence as follows (DVSA, 2015):

- Level 1 - £50
- Level 2 - £100
- Level 3 - £200
- Level 4 - £300

For **drivers without a verifiable UK address**, a deposit is required immediately from the offender. The deposit will either be equal to the fixed penalty amount or a set figure of £500 per offence (up to a maximum of £1500). If the driver cannot or refuses to pay the

deposit, the vehicle will be prohibited for non-payment and will not be able to continue on its journey. It may also be immobilised until payment has been received or the case has been disposed of by the court (DVSA, 2015). There is no requirement for the driver to be culpable in any way for either a fixed penalty or prohibition notice to be issued.

Whilst DVSA is unable to take any direct action against non-UK operators, sanctions will be imposed via the drivers of such vehicles by the issue of fixed penalty notices (DVSA, 2015).

14.9.3 Directive 2002/15/EC

14.9.3.1 Implementation and status

The European working time rules are implemented in the UK by the Road Transport (Working Time) Regulations 2005 (SI 2005/639) on 4 April 2005, which have been subsequently amended by the Road Transport (Working Time) (Amendment) Regulations 2007 (SI 2007/853). At the time, the Regulatory Impact Assessment found that this amendment had no additional impact on businesses or enforcement activities (DfT, 2007).

Periods of availability are defined broadly in UK legislation, with examples including (VOSA, 2013):

- Delays at a distribution centre.
- Time spent travelling in the vehicle (only if no work is carried out such as navigating)
- Reporting for work then being informed that no duties are to be undertaken for a specified period.
- Accompanying a vehicle being transported by boat or train.
- A PoA can be taken at the workstation. Providing the worker has a reasonable amount of freedom (e.g. they can read and relax) for a known duration, this could satisfy the requirements of a PoA.

Drivers exempt from the EU rules are not without any protection - they are subject to UK national rules set out in the Transport Act 1968. The national provisions on working time are as follows:

Table 14-30: Difference between UK Legislation and Directive 2002/15/EC

	UK rules	Difference compared to Directive 2002/15/EC
Weekly working time	Must not exceed an average of 48 hours per week over the reference period* Individuals can 'opt out' of this requirement if they want to	<ul style="list-style-type: none"> • Does not include the provision of the EC rules that allows a maximum of 60 hours in any single week provided the average 48-hour week is not exceeded. • Drivers covered by the EU rules cannot opt out
Paid annual leave	An entitlement to 4.8 weeks' paid annual leave (increased to 5.6 weeks from 1 April 2009)	Identical
Health checks	Health checks for night workers	Identical
An entitlement to adequate rest	The exact periods are not specified, they must be "sufficiently long and continuous" to ensure the health and safety of workers.	

* The reference period for calculating the 48-hour average week is normally a rolling 17-week period. However, this reference period can be extended up to 52 weeks, if this is permitted under a collective or workforce agreement

Source: House of Commons Library (2009a)

Drivers that only occasionally drive vehicles subject to the EU drivers' hours rules, may be able to take advantage of the exemption from the 2005 Regulations for occasional mobile workers. The definition of occasional mobile workers is if they drive a vehicle subject to the EU drivers' hours rules for less than 10 days in a 26-week period, or less than 15 days in a period longer than 26 weeks)

A review of the UK's implementation of the EU road transport Working Time Directive published by the DfT in 2008 concluded that there were "*no fundamental problems with the Regulations themselves*" and recommended changes only to the guidance and enforcement of them (House of Commons Library, 2009a).

In UK law the Road Transport (Working Time) Regulations 2005 (SI 2005/639) define **night working** as: "*night time*" means in respect of goods vehicles the period between midnight and 4 a.m. and in respect of passenger vehicles the period between 1am and 5am"

14.9.3.2 Enforcement and compliance

Formal enforcement authorities are split between DVSA and Health and Safety Executive (HSE). Annual enforcement costs due to transposing Directive 2002/15/EEC were estimated to be between £120,000 - £217,000 (DfT, 2005) At the time of introduction, the DfT had also estimated that an additional 12,600 vehicles could be required with a compliance cost to the road transport industry in excess of £1 billion per annum (DfT, 2005) The Department of Transport (interviewed for this study) believes however that these numbers do not appropriately reflect the situation as it has evolved and hence does not think that that these initial estimates were accurate.

Enforcement of the working time rules is mainly conducted as a result of complaints, with a focus on education rather than prosecution. However, where evidence exists that rules are being systematically broken examiners will be at liberty to check working time records at employers' premises (FTA, 2005).

The domestic requirements do not apply to self-employed drivers who are exempted from the EU rules. In response to the EC's Impact Assessment of the possibility of including self-employed drivers as of 2009, the DfT reported that full coverage of all self-employed mobile workers would be unenforceable (House of Commons Library, 2009a).

14.9.3.3 Penalties for non-compliance

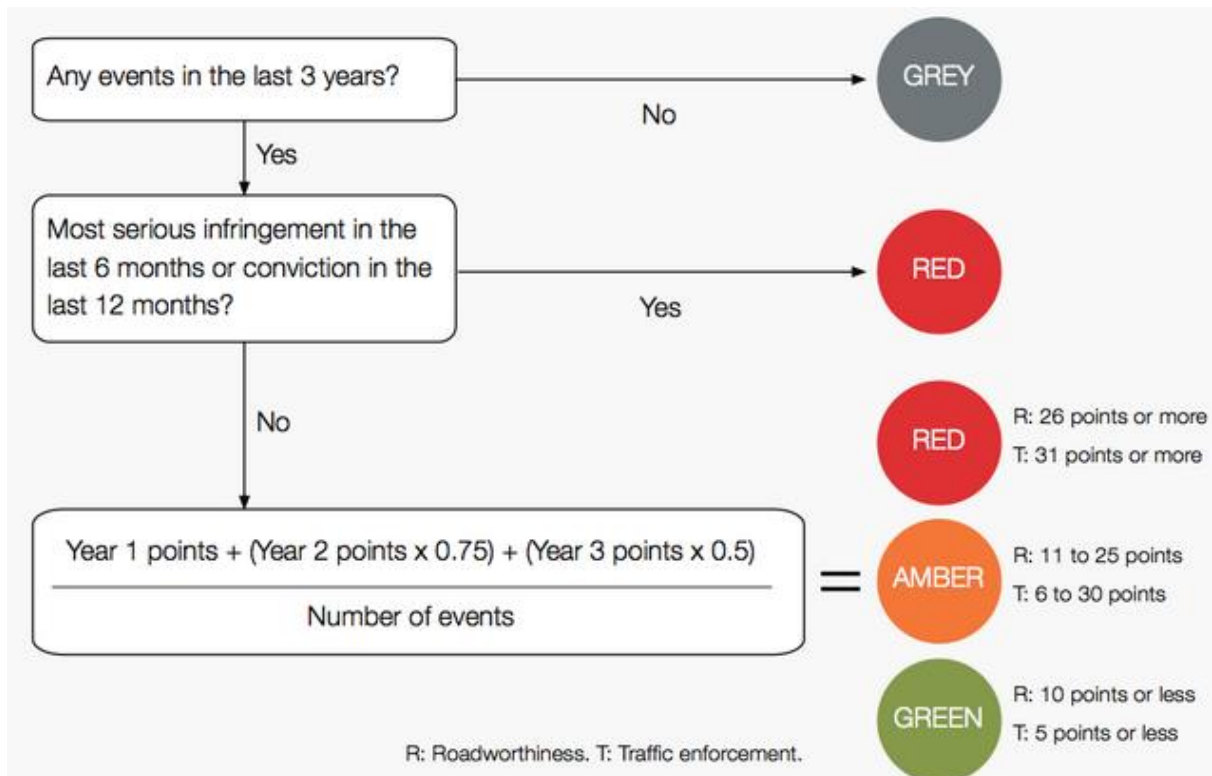
An inspector can issue an improvement notice requiring a contravention to be rectified within a specified period. A prohibition notice can be served if an inspector believes there is a risk of serious personal injury. There is a right of appeal against improvement and prohibition notices served in respect of contravention of working time regulations. The penalty for failing to comply with the terms of a notice or failure to provide information or for obstructing an inspector depends on the seriousness of the offence. However, fines can range from £5,000 to an unlimited fine on conviction on indictment. Offences can also result in imprisonment (in addition to any fine) ranging from three months to two years. (FTA, 2005).

14.9.4 Directive 2006/22/EC

14.9.4.1 Implementation and status

DVSA use the Operator Compliance Risk Score (OCRS) system to decide which vehicles should be inspected at the roadside. For UK operators it uses data from annual tests, roadside inspections and inspections at operators' premises over a rolling 3-year period (DVSA, 2014). The non-UK OCRS is based on data captured at the roadside because there is no annual test or prosecution data available. Since older offences or defects have less impact on road safety, the points attributed to these reduce over the 3-year period OCRS uses to work out the 'base score' (DVSA, 2014). New reporting arrangements introduced recently for the OCRS should enable operators to develop a better understanding of their compliance history (DVSA, 2014).

Figure 14-43: Overview of Operator Compliance Risk Score in the UK



Source: DVSA (2014)

The effectiveness of the risk targeted has been demonstrated in the enforcement statistics – the prohibition rate of targeted checks was 26.6% on average in 2013-2014, compared to a rate of 12.5% found for random checks (VOSA, 2015).

For the implementation period 2011-12 the UK reported to the Commission an enforcement capacity of 616 officers for Regulation (EC) No 561/2006, whereas this number was reported to be 280 in the previous reporting period:

According to the Ministry consulted for this study, this reduction was due to the exclusion of officers whose primary responsibility was not the enforcement of this Directive. However, upcoming reports will again include these officers with a clear distinction between the larger number that are involved in all checks and the number of officers directly responsible for the drivers time checks.

15 ANNEX G: APPENDIX TO THE ANALYSIS OF TRENDS IN COMPLIANCE

This annex includes details of the quantitative analysis carried out to supplement the analysis of the trend in compliance, according to factors internal and external to the legislation.

15.1 Analysis of internal factors

The internal factors considered were:

- Number and type of checks
- Penalty systems
- Quality and clarity of the legal provisions;

15.1.1 Internal factors 1 & 2: Number and type of checks performed and penalty systems

15.1.1.1 Theoretical reasons for considering these factors

The frequency of checks and the probability of being controlled are likely an important deterrent to breaching the rules.

Compliance is directly affected by both number and type of checks carried out. Compliance is also influenced by the quality of controls, e.g. the extent to which enforcers are skilled and well-equipped. Concerning penalties, the theoretical consideration is that higher penalties may be more dissuasive and hence encourage greater compliance with the rules.

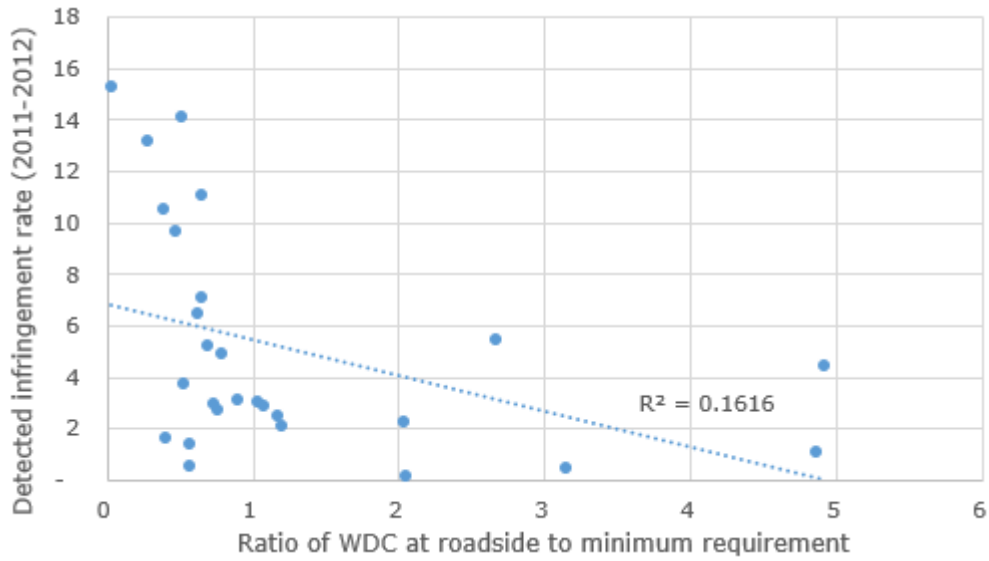
15.1.1.2 Methodology of the analysis

The ratio between the number of working days checked and the minimum threshold of working days to be checked set by the legislation has been taken as a measure of the performance of the countries in terms of checks conducted. The higher this ratio, the higher the enforcement effort of the country. These ratios have been compared to the detected infringement rates. The assumption to be tested is that countries where the check ratio in comparison to the minimum threshold is higher are also the countries where the detected infringement rate is lower.

15.1.1.3 Results of the analysis of correlation

As shown below, a simple regression suggests that an increase in the enforcement effort of a country (measured in terms of the ratio between the number of working days checked and the minimum threshold of working days to be checked set by the legislation), leads to a decrease in the detected infringement rate.

Figure 15-1: Detected infringement rates at the roadside versus ratio of wdc at the roadside compared to minimum requirement



The outputs of the simple regression model are shown below. The constant is rather meaningless in this context, as it literally indicates the detected infringement rate if no checks were carried out (which is not the case for any of the countries). The slope coefficient suggests that the detected infringement rate falls by 1.38 per 100 wdc for each unit increase in the ratio of wdc to the minimum requirement. A statistical test of the results suggests that this is significant at the 5% level, but it is not considered reliable as the overall fit is rather low (14%) and there are certainly other factors that influence the detected infringement rate.

Model 1: OLS, using observations 1-27
 Dependent variable: RATEROAD2011 (R2 = 0.14)

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
const	6.82619	1.11477	6.1234	<0.0001	***
RATIOWDCROAD2011	-1.38555	0.631243	-2.1950	0.0377	**

RATIOWDCROAD2011 = ratio of WDC at roadside to minimum requirement
 RATEROAD2011 = detected infringement rate in 2011-2012

Testing for relationships with other parameters showed that none really provided a good explanation for the patterns seen. Data for the number of wdc per enforcement officer (a normalised indicator of the size of the enforcement), the maximum fines and a dummy variable indicating whether the country is EU-15 or EU-13 were added to the model. Although the problems of data reliability that were discussed earlier are rather severe, and hence we do not consider the results to be very reliable, as a general guide to what factors might be important, the results indicate that only the enforcement effort is likely to be important. The slope coefficient of the ratio of WDC at the roadside compared to the minimum requirement now controls for all of the other factors, but again the reliability of this result is poor given the quality of the underlying data so it should not be interpreted directly. The coefficients for other variables are not significant (indicating no effect). The fact that these new variables do not add any explanatory power to the model is confirmed with an F-test, hence, the data confirms that the additional variables can be dropped (and the adjusted R2 has fallen dramatically to 1%). Again, it must be emphasised that the poor data quality means that the results are rather uncertain, but we have no means to check what the true underlying data are, since interviews with national authorities did not provide any improved statistics.

Model 2: OLS, using observations 1-27 (n = 25)

Missing or incomplete observations dropped: 2
 Dependent variable: RATEROAD2011 (R2=0.17, adjusted R2=0.012)

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
const	6.06288	1.58206	3.8323	0.0010	***
RATIOWDCROA D2011	-1.27631	0.713822	-1.7880	0.0889	*
OFFICERSN	2.69302e-05	4.32126e-05	0.6232	0.5402	
MAXFINE	1.93037e-05	0.00017775	0.1086	0.9146	
EU15	0.14335	1.89683	0.0756	0.9405	

RATEROAD2011 = detected infringement rate in 2011-2012 for roadside checks

RATIOWDCROAD2011 = ratio of WDC at roadside to minimum requirement

OFFICERSN = wdc per officer

MAXFINE = maximum penalty for violation of driving time rules

EU15 = dummy variable to account for EU-15 vs EU-13 countries

The lack of significant effect of the maximum fines is perhaps counter-intuitive. It may be that the maximum fine does not represent very well the actual fines that are typically levied. It is also known in other fields that severe penalties are not necessarily effective in preventing infringements²⁷². Sometimes even strong sanctions do not provide disincentive to infringements if the likelihood of being punished is very low.

Severity of the penalties can be also ineffective if there are reasons to believe that eventually they will not be paid (i.e. the sanction is not certain). Although anecdotal evidence based on complaints is that in the United Kingdom no (or hardly any) detected infringements of working time rules have resulted in penalising the transport operator, we do not have, however, elements to assess whether this might apply here.

Similar analysis was conducted on the checks at the premises. The direction of the trend is the same (more enforcement effort implies a lower infringement rate), but the overall test statistic is not as significant (only at the 10% level) and we do not consider a direct interpretation of the coefficient to be sensible given the poor quality of the underlying dataset. The variation in the enforcement effort at the premises is much lower compared to that for roadside checks, since a large majority of checks is carried out at the roadside.

Model 3: OLS, using observations 1-27
 Dependent variable: RATEPREM2011 (R2 = 0.15)

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
const	8.99926	2.30048	3.9119	0.0006	***
RATIOWDCPRE M2011	-8.38091	4.1931	-1.9987	0.0566	*

RATEPREM2011 = detected infringement rate in 2011-2012 for checks at the premises

RATIOWDCPREM2011 = ratio of WDC at premises compared to minimum requirement

²⁷² It is well known for instance that US states where death penalty is applied do not have lower murder rates but more often the opposite (see e.g. <http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state>)

Adding other explanatory variables into the model does not result in any additional significant coefficients (the coefficient for the number of officers is again basically indicating no effect), and a loss of significance for the ratio of wdc (due to the small sample size). The F-tests and the fact that the adjusted R2 shows no improvement over the original model show again that these additional factors are not providing any explanatory power.

Model 4: OLS, using observations 1-27 (n = 25)
 Missing or incomplete observations dropped: 2
 Dependent variable: RATEPREM2011 (R2=0.16)

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
const	8.28692	3.44492	2.4055	0.0259	**
RATIOWDCPRE M2011	-8.54619	5.87518	-1.4546	0.1613	
OFFICERSN	1.85709e-05	6.91296e-05	0.2686	0.7910	
MAXFINE	0.000191252	0.000230878	0.8284	0.4172	
EU15	-0.68089	2.96832	-0.2294	0.8209	

RATEPREM2011 = detected infringement rate in 2011-2012 for checks at the premises

RATIOWDCPREM2011 = ratio of WDC at premises compared to minimum requirement

OFFICERSN = wdc per officer

MAXFINE = maximum penalty for violation of driving time rules

EU15 = dummy variable to account for EU-15 vs EU-13 countries

Looking in more detail at the trends in case study countries reveals a range of situations, making predictions of the outcome in individual countries rather difficult and unreliable:

- Countries like France and Romania, where the number of working days checked has always been far higher than the threshold fixed, show an absolute low infringement rate, but, on the contrary Germany, which has also performed well above the threshold in terms of working days checked, shows a higher infringement rate.
- Spain, UK, Sweden and to a certain extent Belgium perform well in terms of detection rate, even without exceeding significantly the threshold fixed, and although they all present a detection rate in the last reporting period higher than that recorded in 2007-2008;
- Poland and Italy are two opposite cases, but both demonstrating a certain correlation between the two variables considered: in the case of Poland, an increase of working days checked has corresponded to a decrease in detection rate, while in the case of Italy a relaxation of controls seems to have resulted in a higher infringement rate.

Overall, the data seem to suggest that a higher level of enforcement effort seems to be correlated with lower detected infringement rates (both at the roadside and at the premises), and that this relationship holds when controlling for other factors such as the number of enforcers, the level of fines and whether the country is EU-15 or EU-13. However, we do not consider the quality of the underlying data to be sufficient to say anything about the size of this effect. An important caveat of the analysis is that the number of controls is only one element of enforcement. Other factors, such as the quality of controls may also be also important, but these are variables for which we do not have data. The analysis also suggests that the level of fines does not have an appreciable effect on the detected infringement rate. We can only suggest possible reasons, as the data do not give an explanation for this lack of correlation – we can only theorise that the deterrent effect is not working as might be expected due to other factors.

15.1.2 Internal factor 3: Quality and clarity of the legal provisions

15.1.2.1 Theoretical reasons for considering this factor

A lack of clarity in legislation may adversely affect compliance, as it may lead to ineffective and contradictory enforcement practices. Conversely, clear legislation facilitates a more consistent approach to enforcement and may reduce unintentional non-compliance.

15.1.2.2 Methodology of the analysis

In order to analyse whether and how the level of quality and clarity of the legislation is linked to the level of compliance, a quantitative measure of the former element is needed.

Quality and clarity are at least partially subjective elements (in turn made up of several aspects) and do not have an inherent unit of measure. In order to derive a semi-quantitative description of these elements in different Member States, we used the responses collected by the Ministries and Enforcers surveys as a proxy indicator. The survey was carried out in all Member States but we considered only those countries for which a response to both surveys has been made available²⁷³.

The reason for using the responses from Enforcers and Ministry in this way is because these two target groups were specifically asked with questions about the degree of quality and of clarity of the legislation, bearing in mind that these organisations have the competence to enforce it. Conversely, operators and drivers were not asked to evaluate the level of quality and clarity of the legislation.

To calculate the index of quality of the EU social legislation, we have extracted from the survey those questions that were deemed to be more relevant to provide an input in this respect, as summarised in Table 15-1.

Table 15-1: Questions from Ministries and Enforcers surveys considered for correlation analysis on quality of legal provisions

Question no.	Question title	Source
4.1	To what extent do you agree that the provisions on driving times, reporting and breaks (as defined in Article 6 and 7) are sufficiently clear to avoid difficulties in interpretation?	Ministries survey
4.4	In your opinion, are the provisions on daily and weekly rest periods (as defined in Article 8) sufficiently clear to avoid difficulties in interpretation?	Ministries survey
4.7	To what extent do you agree that the following provisions that allow drivers to depart from the standard requirements of driving time and rest periods are sufficiently clear?	Ministries survey
4.11	Are there any parts in the provisions in Regulation (EC) No 561/2006 on exceptions for driving times, breaks and rest periods provisions that lead to difficulties or inconsistencies in interpretation?	Ministries survey
7.1	In your view are the European Commission’s guidance and clarification notes on the implementation of Regulation (EC) No 561/2006 sufficiently clear?	Ministries survey
7.2	If you feel that current guidance does not cover all relevant aspects, please specify which areas of the legislation you require (more) guidance for.	Ministries survey
7.7	Do you find the following definitions clear?	Ministries survey
7.8	Do you find the following provisions on working time, breaks, rest periods and night work (as defined in Articles 4 to 7) clear?	Ministries survey

²⁷³ Austria, Belgium, Czech Republic, Finland, Latvia, Poland, Slovenia, , Slovakia, Sweden.

Question no.	Question title	Source
10.1	Do you feel the guidance your organisation has received on the interpretation of Regulation (EC) No 561/2006 has been useful	Enforcers survey
14.1	Do you feel the clarity of the rules of Directive 2002/15/EC is sufficient?	Enforcers survey

Source: Ministries and Enforcers surveys

The responses to these questions consisted of selecting one option out of 3 or 5 predefined scale of rates (e.g. from “totally agree” to “totally disagree”). The responses have been transformed in scores as follows. The score was assigned using a scale between 1 and 5. Score 5 was assigned to responses corresponding to the most positive feedback on clarity, while score 1 was assigned to responses corresponding to the most negative feedback.

The resulting scores for each single Member State have been summarised in a single index by taking the average across all indexes. This means that all responses have been considered of the same importance to define the overall quality index of social legislation for a Member State. Responses of ministries and enforcers have been treated separately and therefore two separate indexes have been estimated.

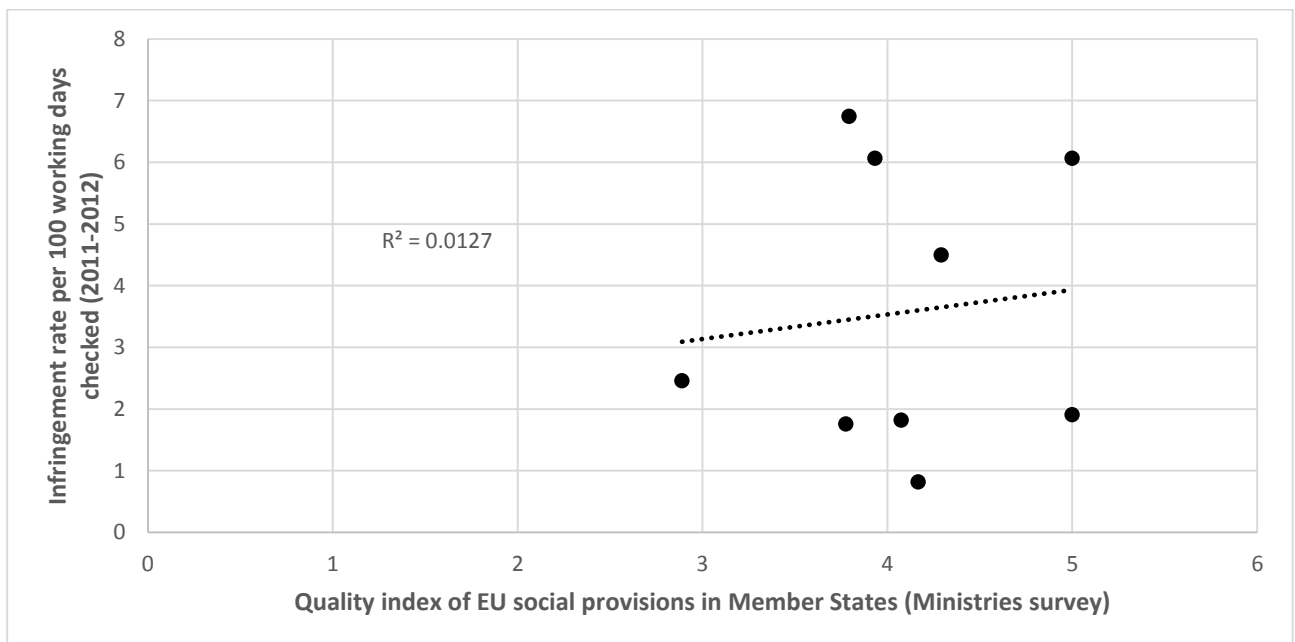
15.1.2.3 Results of the analysis of correlation

The correlation between the quality indexes computed as explained above and the infringement rate has been investigated. The hypothesis would be that a higher level of compliance (i.e. lower infringement rates) would be expected for countries with better quality and clarity of the legislation (i.e. higher quality index).

The analysis has been carried out separately for the indexes obtained from Ministries responses and for the indexes reflecting Enforcers’ responses.

Looking first at the correlation between the infringement rates and the quality index of EU social provisions as calculated for the Ministries, we can see from Figure 15-2 that no statistically significant correlation between these two variables is found. The infringement rate and the quality index based on Ministries’ responses are not linked in any visible manner.

Figure 15-2: Overall infringement rate by quality of EU social legal provisions (Ministries’ replies)



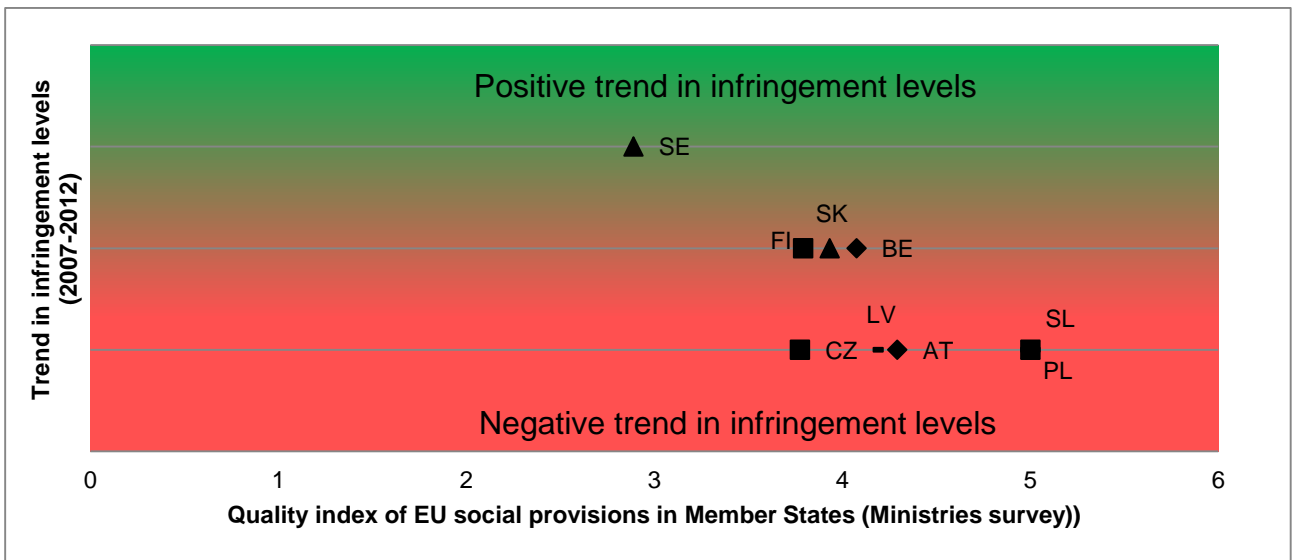
Source: (European Commission, 2014b), Ministries survey

Since we want to analyse also the correlation between the quality of the legislation and the trend of compliance, we have computed also an index of such a trend. This index can assume three values, where:

- A value of 1 means that the trend of the infringement rate detected is continuously increasing (i.e. compliance is worsening) over the time frame 2007-2012.
- A value of 2 means that infringement rate is fluctuating over the time frame 2007-2012 and a clear trend is not recognised.
- A value of 3 means that the trend of the infringement rate detected is continuously decreasing (i.e. compliance is improving) over the time frame 2007-2012.

Figure 15-3, shows the distribution of the investigated countries according to this infringement rate trend index and the index of quality of legal provision. Again we can notice that there is not a statistically relevant correlation between the two variables considered as a positive trend is not found for countries with a better quality nor negative trends are registered in countries with a lower quality of regulation.

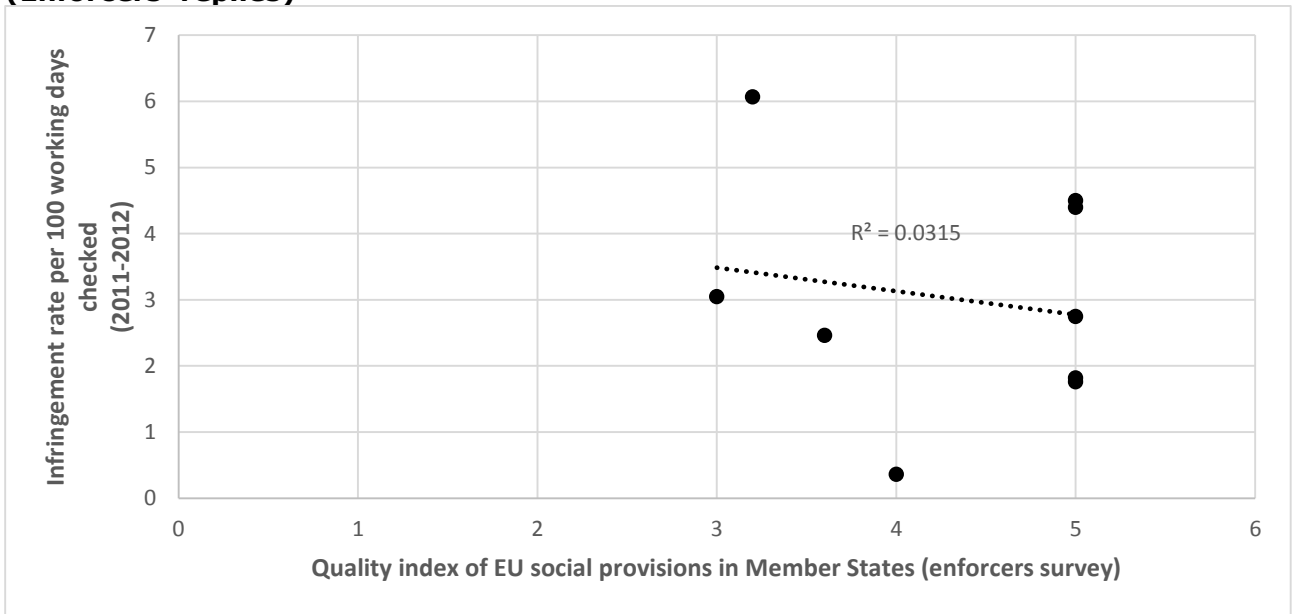
Figure 15-3: Overall infringement rate trend by quality of EU social legal provisions (Ministries' replies)



Source (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011), *Ministries survey*

Similar considerations can be drawn when analysing the correlation between the infringement rate and the quality index of EU social provisions as calculated for the enforcers.

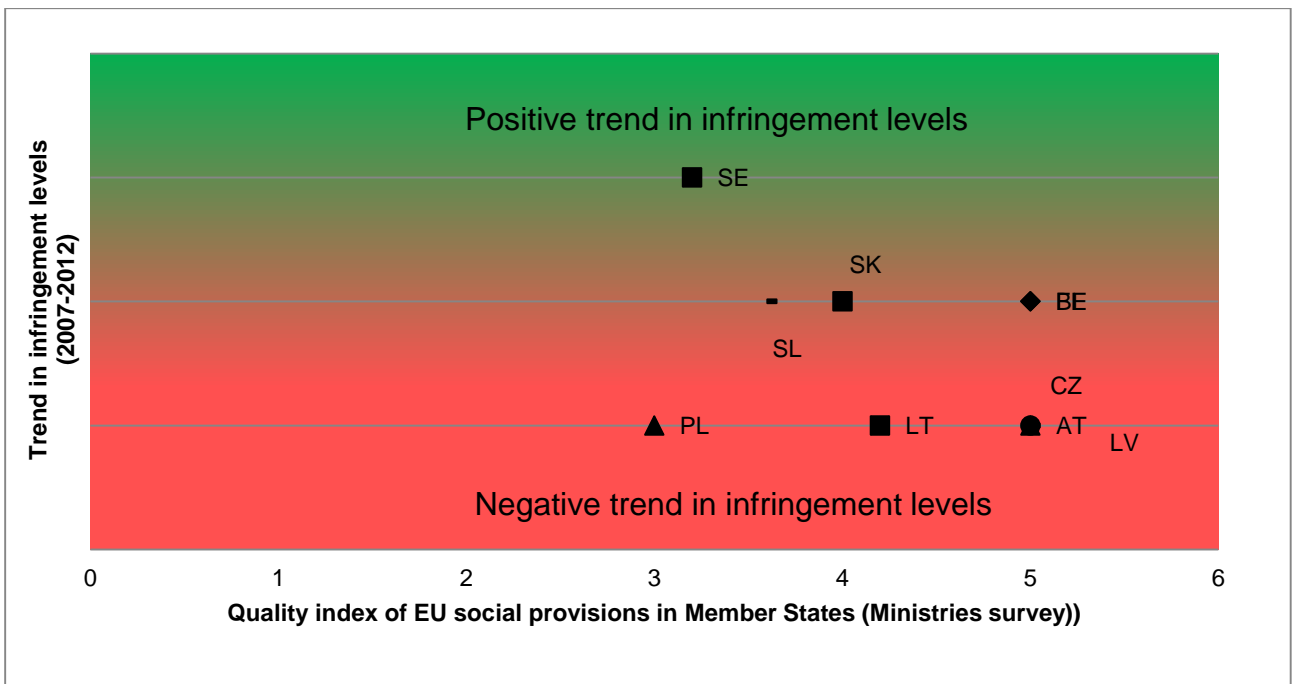
Figure 15-4: Overall infringement rate by quality of EU social legal provisions (Enforcers' replies)



Source: (European Commission, 2014b), *Enforcers survey*

And also when the trend in compliance for the period 2007-2012 is considered no correlations emerge (Figure 15-5).

Figure 15-5: Overall infringement rate trend by quality of EU social legal provisions (Enforcers' replies)



Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011), *Enforcers survey*

The theoretical assumption that a better quality and clarity of social legislation can improve compliance cannot be confirmed on the grounds of the data considered. However, this is not an ultimate conclusion because there are different methodological aspects that should be considered.

First, as mentioned earlier, it is generally acknowledged that for the time being EU social legislation in the road transport sector lacks of clarity at least in the manner it is interpreted, applied and enforced in the Member States.

Second, quality of legislation is at least partially a subjective concept. Actually what we could analyse was not the “real” quality and clarity of the provisions but the view of some stakeholders about these properties. Personal judgments are however hardly comparable. Especially considering the limited number of responses available, the value of ranks based on personal judgments are not fully reliable measures.

Third, the index used for the analysis is an aggregation of several items. The aggregation rule implicitly weighted each item the same, which was a reasonable and neutral assumption.

Nevertheless, it is unlikely that the responses collected through the surveys are completely non-representative of the actual “objective” quality of legislation in each country. It also unlikely that a significant correlation between clarity of provisions and compliance is hidden by methodological choices. So, it is fair to conclude that data does not reveal a robust influence of quality of provisions on compliance, nor does it rule out such a possibility.

15.2 Analysis of external factors

The following external factors were analysed:

- Drivers’ wages
- Quality and accessibility of infrastructure
- Presence of international operators

15.2.1 External factor 1: Drivers’ wages

15.2.1.1 Theoretical reasons for considering this factor

Differences in wage levels are an important market factor affecting the competitiveness of transport operators in different Member States. As discussed in the market overview section (see Section 5), there are important differentials between countries, with large disparities seen between EU-15 and EU-13 Member States in general. Nevertheless, a systematic and comparative analysis of drivers’ salaries at EU level is problematic (Alonso & Asociados, 2014). This is first due to the lack of consistent data on driver costs, the different salary levels in the two haulage and passenger segments as well as the partial reliability of the driver cost information pulled together by the available literature. Secondly, the difficulties in comparatively analysing drivers’ costs also reflect the complexity of the salary structure in the different Member States along with the different regulatory regimes and employment contracts that shall be considered when calculating the drivers’ remuneration levels (Alonso & Asociados, 2014).

In parallel to all this, it is also important to consider that the fixed (basic and overtime wage) and variable (expenses sustained when away from base of operations²⁷⁴) components of drivers’ salary may differ across Member States. Combining and comparing again the information gathered by the French institute CNR for the 5-year period 2011-2014 for 11 Member States (see Table 15-2), we notice that on average in the EU15 Member States the fixed part of the monthly salary represents the larger component (76%) of the total drivers’ monthly pay, while in the EU13 countries the variable part have a greater weight (56%) in determining the overall monthly salary²⁷⁵. This allows to conclude that EU13 drivers receive a considerably lower fixed monthly pay compared to their western colleagues.

²⁷⁴ These include reimbursement for: hotel, showers, parking fees, eating.

²⁷⁵ Anecdotal evidence provided by drivers during interviews suggests that, in addition to their base salary, EU12 drivers are paid 8 €/km with bonuses if they achieve specific targets, such as for example if they drive a certain amount of hours per month or if their fuel consumption during a 1-month period is below the average fuel consumption of the preceding month.

In principle, performance pay is not absolutely forbidden by the EU legislation, unless it jeopardises road safety or provides incentives to infringe EU social rules.

The point on performance base is important because it can be a source of wage inequality. Unlike the fixed part of the salary, not only the variable part is usually paid free of tax by employers, but are also paid free of social and retirement contributions. Moreover, salaries based on performance pay encourage workers to work harder. In the commercial road transport sector this can imply for drivers prolonging the time spent on driving tasks without taking adequate rest compensation and, consequently, increases their stress levels and the chance of being involved in fatigue-related accidents (see Section 8.9.2).

Table 15-2: Comparison between fixed and variable components of drivers' monthly salary for a selection of Member States

Member State	Year	Monthly fixed part (in €)	Monthly variable part (in €)	Monthly overall salary (in €)	Proportion of fixed part	Proportion of variable part
Belgium	2013	1,734	580	2,314	75%	25%
France	2012	2,365	736	3,101	76%	24%
Germany	2012	2,072	410	2,481	83%	17%
Italy	2014	1,809	909	2,718	67%	33%
Lithuania	2013	440	943	1,383	32%	68%
Luxembourg	2014	2,757	387	3,144	88%	12%
Poland	2011	571	743	1,313	43%	57%
Portugal	2014	1,041	800	1,841	57%	43%
Slovakia	2012	1,219	810	2,029	60%	40%
Slovenia	2014	662	1,035	1,697	39%	61%
Spain	2011	2,195	261	2,456	89%	11%

Source: (CNR, 2014a), (CNR, 2014b), (CNR, 2014c), (CNR, 2014d), (CNR, 2013a), (CNR, 2012a), (CNR, 2015), case study analysis.

There is a risk that the non-harmonisation of cost structures, in particular of wages, might lead to non-compliance with social rules, due to competitive pressure (European Commission, 2014b). This correlation might be especially significant if drivers are paid according to the distance travelled (the higher the distance travelled, the higher the payment level and potentially the higher risk of not complying with driving and rest time rules).

So, even though there is no available literature investigating if a correlation between compliance with EU social rules and drivers' salary exist, we have tested the assumption that countries with higher wages are those with a better level of compliance.

15.2.1.2 Methodology of the analysis

In order to analyse whether the level of salaries is linked to the level of compliance, we need to locate cost information on drivers' annual wages. With the information provided by the case-study analysis and the available literature, this was possible for all case study Member States with the only exception of the United Kingdom for which we have used proxy data retrieved from Eurostat data on annual earnings (year 2010). A salary index for each country has been defined as the ratio between the actualised and PPP adjusted country wage and the average wage across the 9 countries. This index has been then compared to the infringement rate.

The table provides an overview of the drivers' annual salary levels for the case studies of this assignment.

Table 15-3: Average salary levels for drivers in the case study Member States

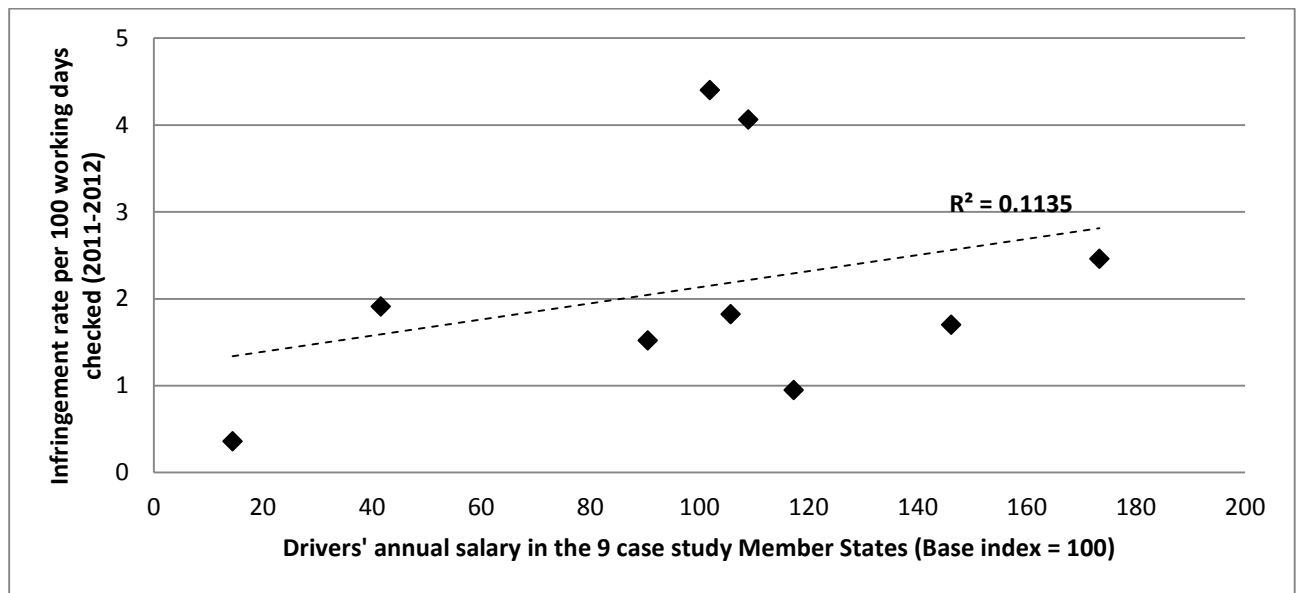
Member State	Actualised and PPP adjusted annual salary level (in € ₂₀₁₄)
Belgium	30,212
France	33,507
Germany	31,127
Italy	29,119
Poland	11,890
Romania	4,120
Spain	25,866
Sweden	49,521
United Kingdom	41,750

Source: (CNR, 2014a), (CNR, 2014b), (CNR, 2014c), (CNR, 2014d), (CNR, 2013a), (CNR, 2012a), (CNR, 2015), case study analysis.

15.2.1.3 Results of the analysis of correlation

No apparent correlation between infringement rate and drivers’ annual salary levels is visible in the data. Indeed, Romania is the country with the lowest infringement rate and is also the country with lower wages. Italy is among countries with higher wage and ranks second in terms of infringement rate.

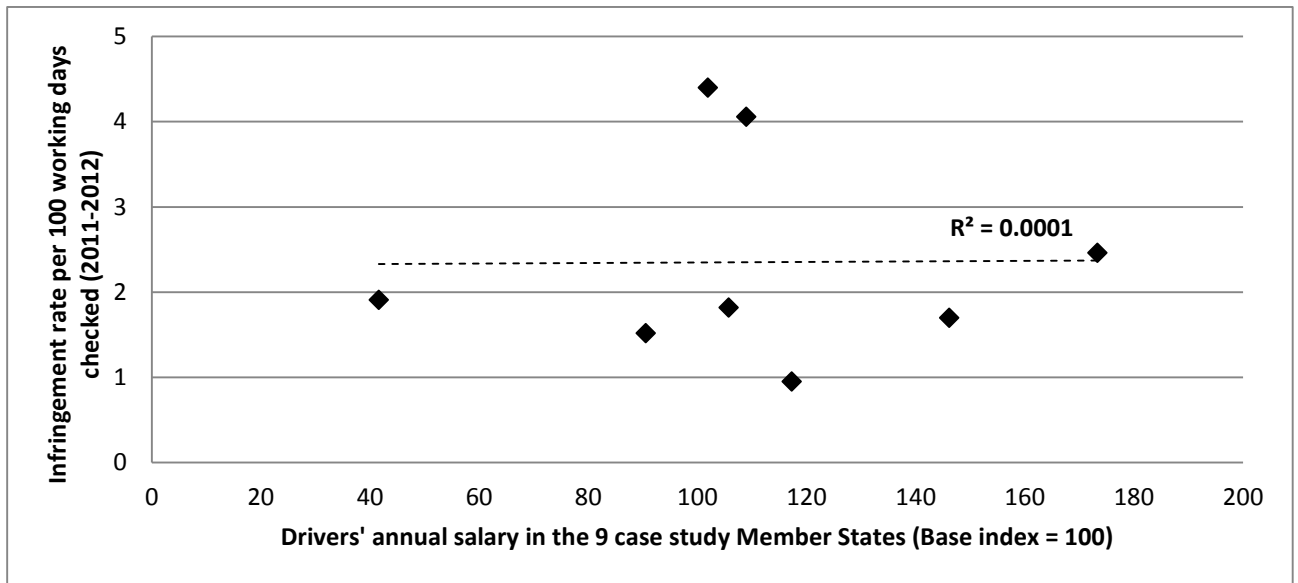
Figure 15-6: Overall infringement rate by drivers’ annual salary in the case study Member States



Source: (CNR, 2014a), (CNR, 2014b), (CNR, 2014c), (CNR, 2014d), (CNR, 2013a), (CNR, 2012a), (CNR, 2015), case study analysis.

Romania may be considered as a “statistical outlier” as this Member State differs and detaches from the other case study countries because of a very low number of offences (0.36) every 100 working days checked (Confcommercio, 2015). If we remove Romania (see Figure 1-29), we can observe that a no correlation appears with a R² value that remains extremely low.

Figure 15-7: Overall infringement rate by drivers' annual salary in the case study Member States except for Romania



Source: (CNR, 2014a), (CNR, 2014b), (CNR, 2014c), (CNR, 2014d), (CNR, 2013a), (CNR, 2012a), (CNR, 2015), case study analysis.

Considering whether there is any trend between the share of variable payment in drivers salary compared to overall infringement rates suggests some weak correlation if interpreted at face value (see chart below). However, since there are only 11 observations, the statistical significance of this result is negligible (as discussed below the chart) and the data therefore do not support the conclusion that the variable part of salary influences infringement detection rates.



The results from a regression analysis show that the influence of the variable share in salary on the detected infringement rate is not significant (p-value of 0.24), hence we reject the notion that the variable share of salary has an influence on detected infringement rates.

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
const	1.93135	1.01948	1.8944	0.0907	*

Variable share in salary	3.13555	2.52818	1.2402	0.2462	
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The lack of evidence that the absolute wage level is linked to compliance with social legislation in the transport sector should not be read as a conclusive sentence that market conditions do not affect rules infringements. Indeed, in the analysis above the level of wage is used as a measure of the market conditions, but this measure is by no way exhaustive. Actually the wage level depends much on the overall economy of one country. That is, countries with lower wages are not necessarily those with more competition. The opening of markets has put wages under pressure especially in EU15 countries rather than in EU13. So, if competition has a negative impact on compliance with social regulation, one should expect higher infringement rates in countries with a higher wage. Even this assumption is not supported by data, but this aspect should be taken into account: different drivers exist and clear relationships between single variables are hard to identify.

15.2.2 External factor 2: Quality and accessibility of infrastructure

15.2.2.1 Theoretical reasons for considering this factor

Quality and accessibility of infrastructure can represent important factors determining the quality of the profession and of the working conditions. In the context of compliance, higher availability of parking and rest areas may encourage higher compliance since drivers are better able to find safe and secure areas in which to stop. On this point, a study conducted in the United States (Banerjee, et al., 2009) has demonstrated that the presence of rest areas was found to lower fatigue-related collisions statistically significantly.

However, it has been highlighted through the SETPOS and LABEL projects (LABEL project, 2010) that in some countries secured and high quality parking facilities do not exist or are limited at best. Equally, the level of comfort in parking areas is often limited: factors such as high levels of noise, the risk of hold-ups and theft, limited toilet facilities or the lack of eating establishments often make the parking areas an insufficient place to rest. Information and anecdotal evidence supplied by drivers during the interviews also suggest that, with the exception of France and Germany, parking areas are considered to be quantitatively insufficient, badly equipped with basic facilities (markedly showers) and often too expensive compared to the low quality of the services provided.

The assumption to be tested is that where better parking facilities exist infringement rate is lower.

15.2.2.2 Methodology of the analysis

In order to carry out a correlation analysis a measure of quality and density of the parking infrastructures in the various countries is needed. This measure has been defined using two indicators:

- An indicator of the availability of parking areas, measured through the number of available areas as retrieved from the IRU led TRANSPARK project, which provides a useful recording of all parking areas available. Since a key info on the dimensions of the concerned parking areas (e.g. slots available) is missing, the adopted proxy is the number of parking areas; the variable considered is then the density of parking areas in the principal network (summing motorways and national roads), measured as number of parking area per 1000 km of network.
- An indicator of the quality of parking areas measured through the star rating system attributed by the LABEL project and the assessment included in the Transpark project

The indicator of the availability of parking facilities has been transformed in an index with values between 1 and 5. Value 1 was assigned to the country with the lowest density of parking areas; value 5 was assigned to the country with the highest density. For the other

countries the value of the index was computed by means of a linear interpolation between the two edges.

The scale 1-5 was chosen because it is directly comparable to the quality indicator. Finally, the value of the index has been weighted with the qualitative assessment obtained by drivers during the interviews and assigning a value 1 to the country with no secured parking area and a value of 5 to the country with the highest availability of secured parking areas.

An overall index summarising the availability and quality of parking areas has then been obtained as an average between the value of the two indicators for each country. The values are reported below Table 15-4.

Table 15-4: Assessment of availability and quality of parking areas in the case studies

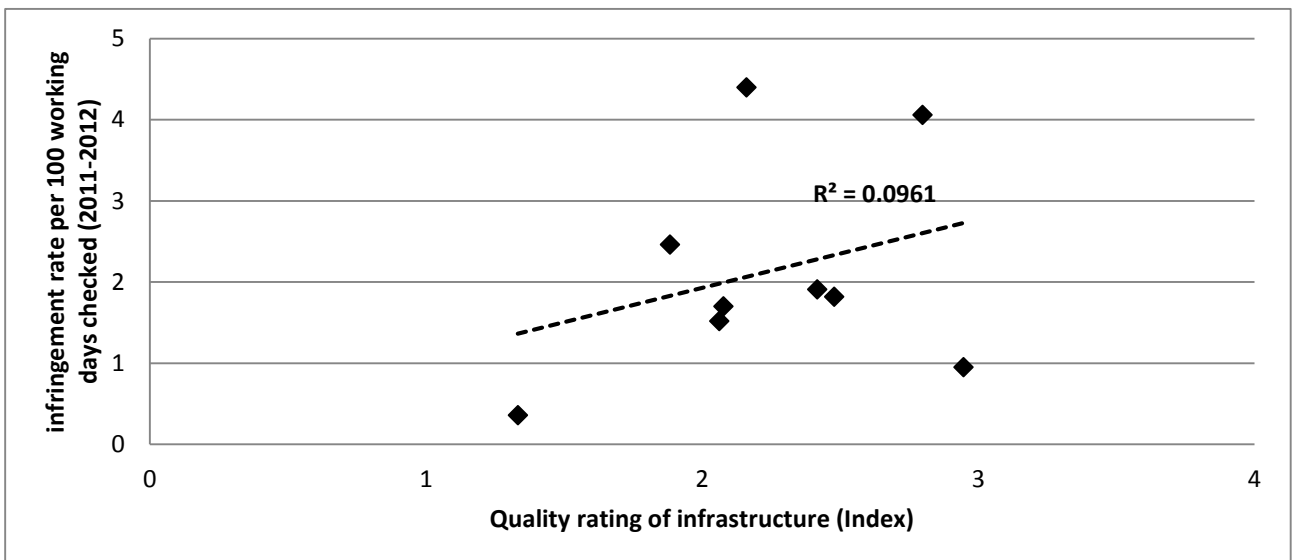
	BE	FR	DE	IT	PL	RO	ES	SE	UK
Number of parking areas	108	180	400	120	200	105	49	45	300
Length of motorways (km)	1763	11465	12879	6726	1365	550	14701	2013	3756
Length of main roads (km)	13229	9784	39604	19861	6505	16690	15110	13507	49038
Total principal network extension (km)	14992	21249	52483	26587	7870	17240	29811	15520	52794
Parking areas/1000 km	7.2	8.5	7.6	4.5	25.4	6.1	1.6	2.9	5.7
Density rating (interpolation)	1.9	2.1	2.0	1.5	5.0	1.7	1.0	1.2	1.7
Quality rating	2.5	2.7	2.4	3.0	1.3	1.3	3.1	2.6	2.6
Drivers' rating	3.0	4.0	4.0	2.0	1.0	1.0	n.a.	n.a.	2.0
Overall rating	2.5	2.9	2.8	2.2	2.4	1.3	2.1	1.9	2.1

Source: elaboration on (Eurostat, 2015), (LABEL Project, 2010), IRU TRANS-PARK website (<https://www.iru.org/transpark-app>), interviews drivers

15.2.2.3 Results of the analysis of correlation

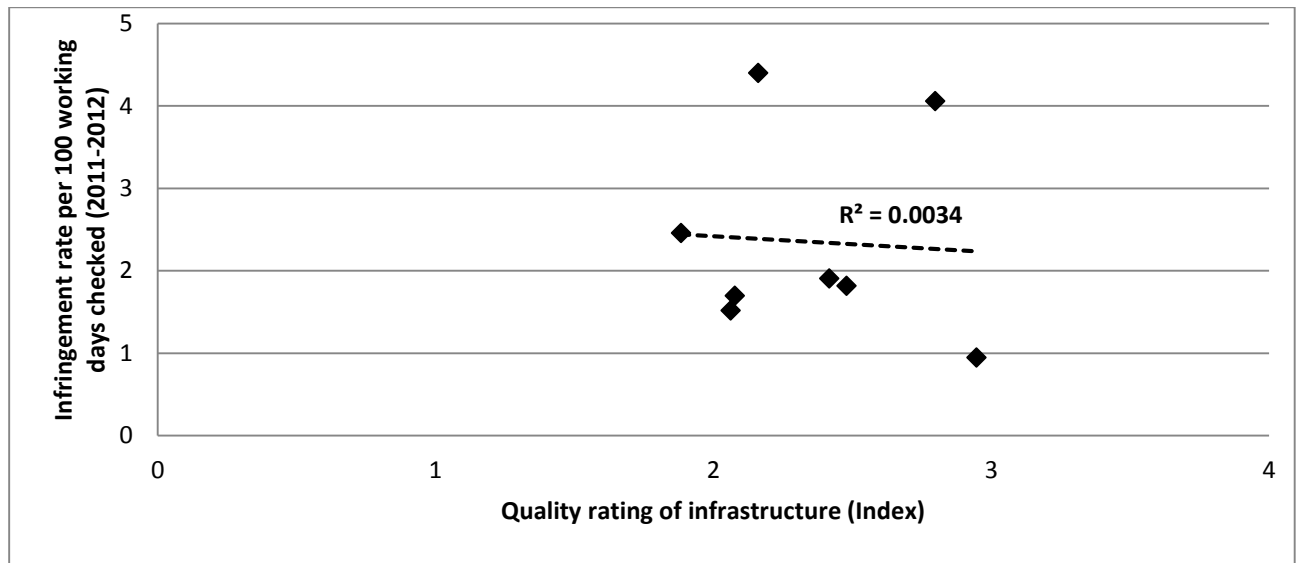
When countries are plotted according to the value of infringement rate and parking index, the pattern does not support the assumption made: countries with better quantity/quality of parking infrastructures are not those more compliant to social legislation (

Figure 15-8: Overall infringement rate by quality of infrastructure in the case study Member States



Source: Elaboration on (Eurostat, 2015), (LABEL Project, 2010), IRU TRANS-PARK website (<https://www.iru.org/transpark-app>), interviews drivers

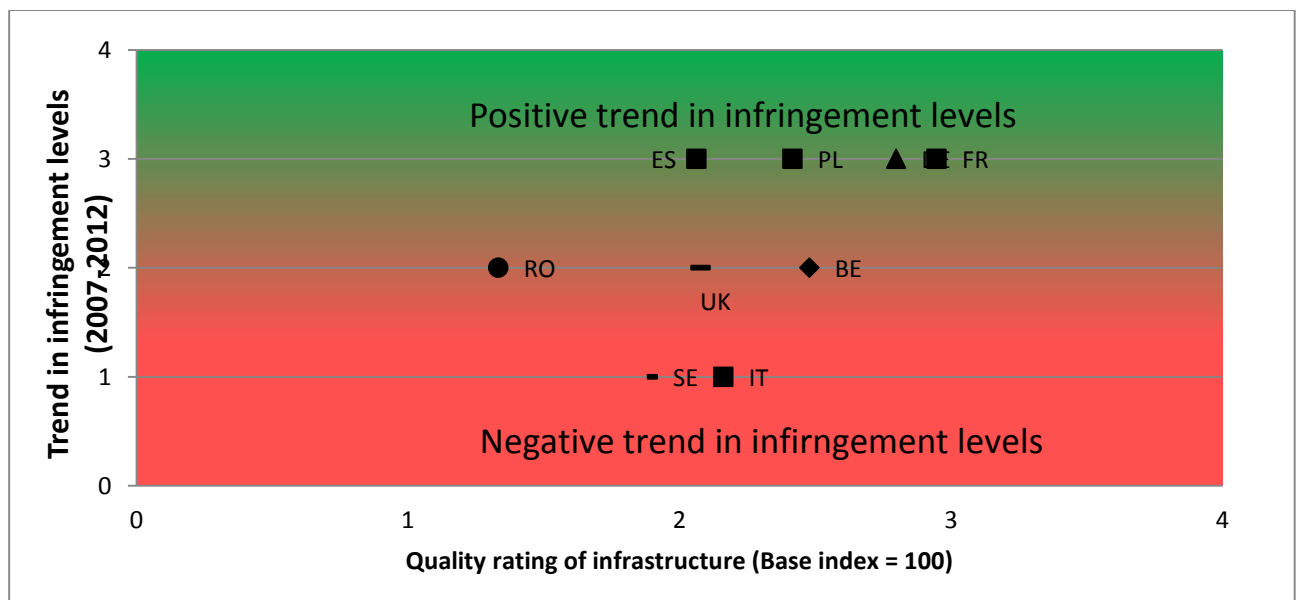
Figure 15-9: Overall infringement rate by quality of infrastructure in the case study Member States except for Romania



Source: elaboration on (Eurostat, 2015), (LABEL Project, 2010), IRU TRANS-PARK website (<https://www.iru.org/transpark-app>), interviews drivers

As for other elements, a correlation cannot be identified also when the trend in compliance for the period 2007-2012 is considered (Figure 15-10).

Figure 15-10: Overall infringement rate trend by quality of infrastructure in the case study Member States



Source: elaboration on (Eurostat, 2015), (LABEL Project, 2010), IRU TRANS-PARK website (<https://www.iru.org/transpark-app>), interviews drivers

The analysis above involves only some countries and one might argue that the measure of availability and quality of parking areas is somewhat arbitrary. Nevertheless, in comparison to other factors examined here, the explanatory variable is quantified with more reliable data: density of parking areas and a quality rate validated by other European projects. Therefore, even if further research will be needed, it is fair to say that the data does not support the idea that offences are significantly due to fatigue and stress of drivers.

15.2.3 External factor 3: Presence of international operators /drivers in the market

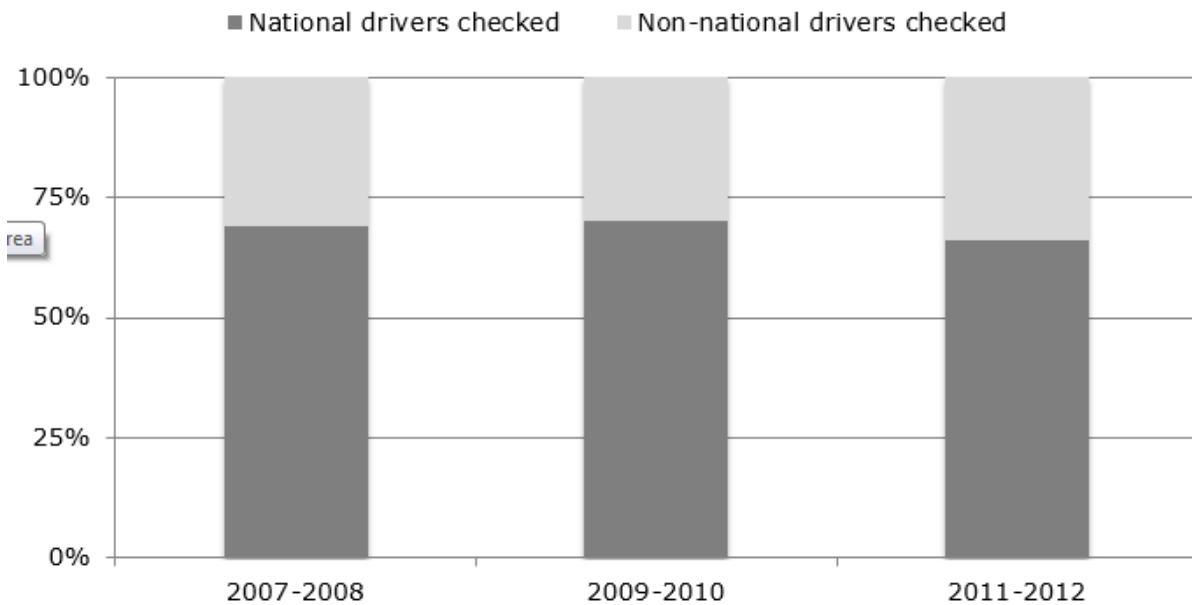
15.2.3.1 Theoretical reasons for considering this factor

In principle, enforcement procedures can be negatively affected by a significant share of foreign vehicles on roads. On the one hand, as suggested by an Italian association of road transport operators, there is the risk that foreign vehicles are checked less frequent or thoroughly than national ones given language barriers. On the other hand, checks could target foreign vehicles more than needed, in order to protect the national sector. In that case national operators could perceive that controls are mainly a threat for foreign operators and might lessen the respect of social regulation.

As a matter of fact, controls at the roadside predominantly target national vehicles and drivers. This is reasonable as most of traffic is domestic and, in most of the countries, domestic transport is entirely operated by national operators. However, there are a few Member States where the majority of roadside checks involve foreign vehicles. These are countries where transit traffic is significant such as Slovenia (73% of checks on foreign vehicles), Luxembourg (65%) and Belgium (60%).

On average, for the years 2011-2012 at EU28 level controls targeting national drivers amount at 66% of all drivers stopped for control purposes. Importantly, this proportion has substantially remained unaltered over the timeframe 2007-2012 (as shown in Figure 15-11) despite in the same period the internalisation of haulage market has increased.

Figure 15-11: Trend in the proportion of national and non-national drivers checked at the roadside (years 2007-2012)



Source: (European Commission, 2014b), (European Commission, 2012), (European Commission, 2011)

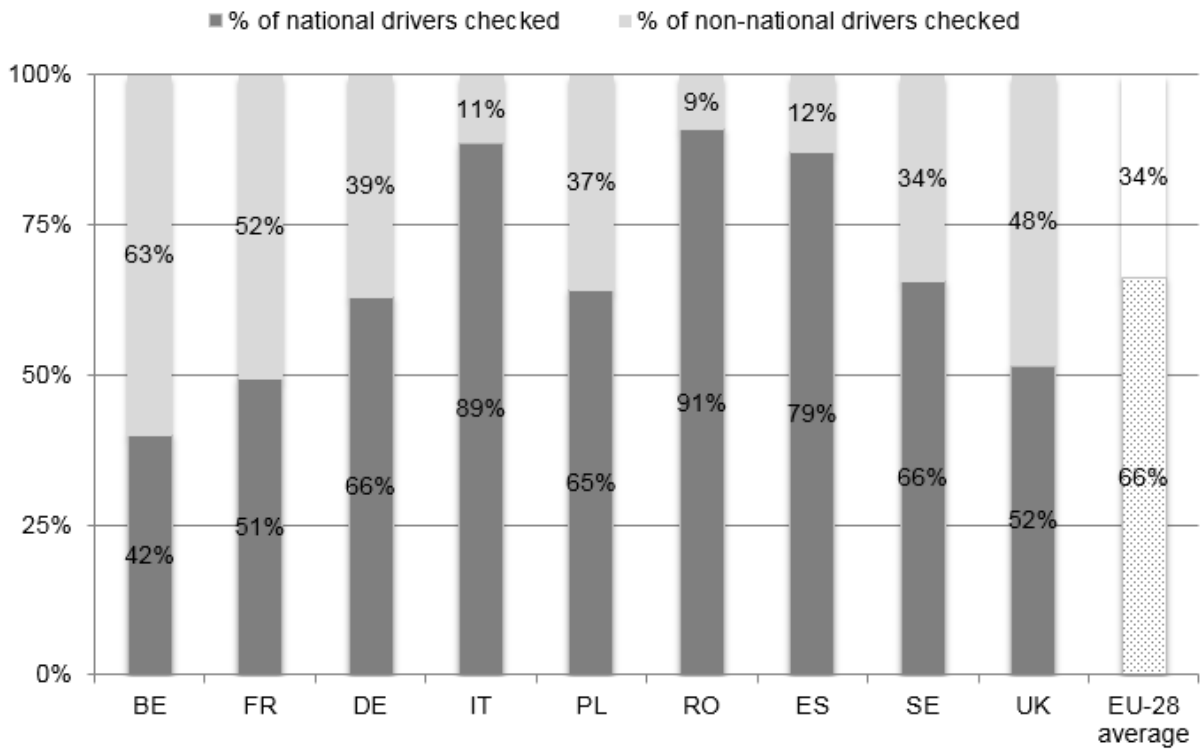
A closer look at the 9 case study countries for the last 2-year reporting period 2011-2012 shows that in 8 of them (Germany, Italy, Poland, Romania, Spain, Sweden and United Kingdom) the majority of controls involve national drivers with the highest and lowest levels respectively found in Italy (89%) and United Kingdom (52%). Only in Belgium (60%) and France (51%) the proportion of non-national drivers stopped for control purposes is greater than that one reported national drivers. For these 9 countries (Figure 15-12), the average proportion of national drivers checked aligns to the EU28 average value (66%).

As it can be seen by comparing Figure 15-12 and 15-39, there is a clear correspondence between the proportion of national and non-national drivers checked and the proportion of offences detected in these two groups. This data suggests that foreign vehicles are neither more likely nor less likely associated to infringements of social rules in the transport sector.

With the exception of Sweden, and Romania, where their infringements are significantly more than proportionally detected when foreign drivers are checked, in other countries the ratio of infringement per check is very similar for domestic and non-domestic vehicles (in some cases even lower for the foreign operators).

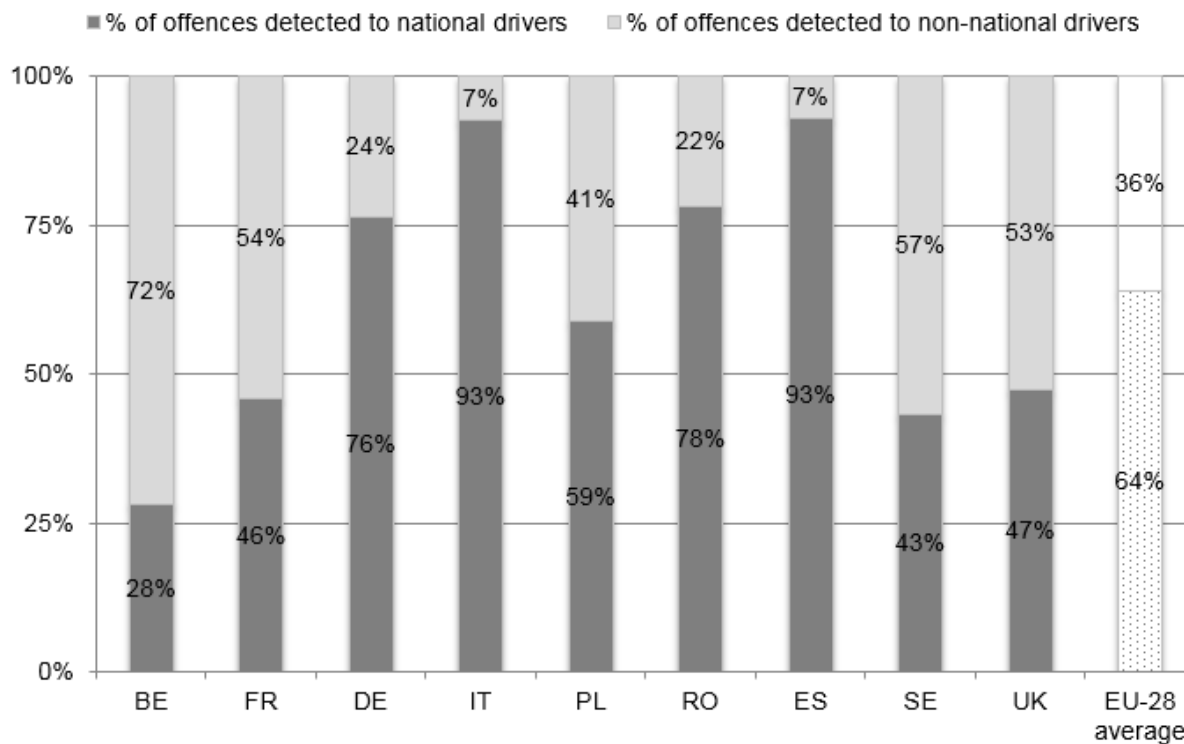
This means that the assumption that the proportion of foreign drivers checked can be influential on the compliance level does not hold. If domestic and non-domestic operators show the same infringement level, any proportion in checks will lead to the same infringement rate.

Figure 15-12: Proportion of national and non-national drivers checked at the roadside in the 9 case study countries (years 2011-2012)



Source: (European Commission, 2014b)

Figure 15-13: Proportion of offences detected against national and non-national drivers in the 9 case study countries (years 2011-2012)



Source: (European Commission, 2014b)

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17 ANNEX I: GLOSSARY

ACEA	European Automobile Manufacturers' Association
AETR	Accord Européen sur les Transports Routiers
ARR	Romanian Road Authority (now ISCTR)
ARTRI	Romanian Association for International Road Transport
BAG	Bundesamt für Güterverkehr (German road enforcement authority)
BDO	Bundesverband Deutscher Omnibusunternehmer e.V. (German national bus and coach industry association)
Cabotage	National carriage for hire or reward carried out on a temporary basis in a host Member State
CARE	Community database on road accidents
CLOSER	Combined Learning Objectives for Safer European Roads
CNR	Comité National Routier
CORTE	Confederation of Organisations in Road Transport Enforcement
DfT	UK Department for Transport
DVSA	UK Driver and Vehicle Standards Agency
EAV	EU added value
EC	European Commission
EU15	EU Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.
EU12	EU Member States: Bulgaria, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia
EU13	EU12 and Croatia
EU27	EU15 and EU12
EU28	EU15 and EU13
ECJ	European Court of Justice
ECR	Euro Contrôle Route
EESC	European Economic and Social Committee
ERRU	European Register of Road Transport Undertakings
ESAW	European Statistics on Accidents at Work
ETF	European Transport Workers' Federation
ETSC	European Transport Safety Council
EWCS	European Working Conditions survey
FNTR	French National Federation of Road Transport
FPS	Federation of Petroleum Suppliers
FPS	Federal Public Service of Belgium
Freight forwarder	A freight forwarder is a person or company that organises shipments for individuals or firms. A forwarder is not typically a carrier, but is an expert in supply chain management.
FTE	Full time employee
GITD	Główny Inspektorat Transportu Drogowego (Polish road transport enforcement authority)
HGV	Heavy Goods Vehicle
HLG	High Level Group on Road Freight Transport

INSEE	Institut national de la statistique et des études économiques (French statistics office)
IRU	International Road Transport Union
ISCTR	Romanian State Inspectorate for Road Transport Control
LCV	Light Commercial Vehicle
MEDDE	French Ministry of Ecology, Sustainable Development and Energy
OCRS	UK Operator Compliance Risk Score
OSHA	Occupational Safety and Health Administration
POA	Periods of availability
RoSPA	The Royal Society for the Prevention of Accidents (UK)
RSA	Irish Road Safety Authority
TFEU	Treaty on the Functioning of the European Union
TISPOL	European Traffic Police Network
TRACE	Transport Regulators Align Control Enforcement
UETR	European Road Haulers Association
UNTRR	Uniunii Naționale a Transportatorilor Rutieri din România - Romanian road transport industry association
VOSA	UK Vehicle and Operator Services Agency (replaced by DVSA)
WDC	Working days checked

