



Support study for an impact assessment for the revision of the social legislation in road transport

Final report - Annexes

Study contract no. MOVE/D3/2016-605



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Annex A Problem definition

A.1 What is the problem and why is it a problem?

A.1.1 Policy context

Since 1969¹ the EU has developed an extensive framework of social rules for goods and passenger road transport operators. These rules aim at: improving working conditions for road transport mobile workers², enhancing road safety for all road users and ensuring fair competition between transport operators in the single market. They apply to all professional

¹ OJ L 77, 29/03/1969, p.49-60

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

drivers (employed and self-employed) and to all transport undertakings engaged in the carriage of goods by vehicles above 3.5 tons or in the carriage of passengers by vehicles for more than 9 persons.

The social rules in road transport are primarily set out in three interrelated European legislative acts:

1) Regulation (EC) 561/2006³ (called also the **Driving Time Regulation**) establishes the minimum requirements on daily and weekly driving times, breaks and daily and weekly rest periods to be observed by drivers and operators when carrying out their mobile road transport activities.

2) Directive 2002/15/EC⁴ (called also the **Road Transport Working Time Directive**) lays down rules on the organisation of the working time of persons performing mobile road transport activities. It establishes the requirements on the maximum weekly working times, minimum breaks in work and on night-time working. It applies to drivers falling within the scope of Regulation (EC) No 561/2006, including self-employed drivers.

3) Directive 2006/22/EC⁵ (called also the **Enforcement Directive**) sets out minimum requirements for enforcement of the Driving Time Regulation by establishing minimum levels of roadside checks and controls at the premises of transport undertakings.

These pieces of legislation are closely interrelated with Regulation (EU) No 165/2014 (called also the **Tachograph Regulation**), which sets the requirements on the installation and the use of tachographs which are the main tool for monitoring and controlling compliance with the different provisions of the Driving Time Regulation.

The global cross-cutting objective of road transport social legislation is to support the completion of a common fair, socially responsible and efficient single market for road transport. Consequently they are closely interlinked with the internal market rules on access to the occupation of road transport operator, on access to the international road haulage market and on access to the international passenger road transport market⁶.

Road transport social legislation does not cover other social aspects than those related to the organisation of drivers' work and rest. However, when transport operators based in one Member State carry out transport operations on the territory of another Member State in the framework of transnational provision of services, there are also other rules relating to working and social protection conditions that apply. This concerns a core set of terms and conditions of employment of the host Member State, which are mandatory to be applied by foreign service providers, and which include: minimum rates of pay, minimum paid annual holidays, health, safety and hygiene at work and other provisions of non-discrimination. They are regulated by Directive 96/71/EC⁷ on posting of workers (subsequently called the **Posted Workers Directive** or **PWD**), which applies to all sectors⁸, including to road transport whenever the conditions for a posting situation are fulfilled. This Directive is now accompanied by the common enforcement rules set out in Directive 2014/67/EU⁹ (subsequently called the **Posting Enforcement Directive**). PWD is currently under revision with the aim to clarify and update provisions adopted more than twenty years ago and ensure that the Directive still strikes the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers. In its proposal of 8 March¹⁰ the Commission highlighted that due to the highly mobile nature of work in road transport sector the implementation of the posting of

³ OJ L 102, 11.4.2006, p. 1

⁴ OJ L 80, 23.3.2002, p. 35

⁵ OJ L 102, 11.4.2006, p. 35

⁶ Regulations (EC) No 1071/2009, No 1072/2009 and No 1073/2009

⁷ OJ L 18, 21.1.1997, p. 1-6

⁸ with exclusion of merchant navy

⁹ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. The deadline for transposing the posting enforcement Directive into the national legislation was 16 June 2016.

¹⁰ COM(2016)128

workers raises particular difficulties which should be addressed through sector-specific legislation.

The shared goal of these different legislative acts is to ensure a balance, on the one hand, between adequate working conditions of workers and on the other, the level playing field between foreign and local competitors in the single market. To achieve this balance, it is of paramount importance that these rules are fit for purpose, proportionate, consistent and effectively and uniformly enforced throughout the EU.

The ex-post evaluation of the social legislation in road transport and its enforcement, carried out in 2015-2017¹¹, concluded that the social legislation remains a relevant tool to address risks of inadequate working conditions, distortions of competition and risks to road safety. However, a number of provisions are unclear and/or inconsistent and some are not up to date. This, combined with differences in the interpretation and enforcement of the rules, has led to considerable non-compliance with the rules. As a result, the evaluation concluded that the objectives of the legislation have not been fully achieved.

The legislation also does not adequately address all risk factors concerning working conditions, such as long periods away from home, time pressure, and inadequate resting facilities. Combined with complex or illicit employment schemes, drivers' working conditions have been adversely affected. In addition, changes on the transport market that have occurred over the period 2007-2014, such as an increased internationalisation of transport operations, multiplication of operational bases, and long sub-contracting chains have all made the enforcement of the rules even more difficult and triggered further non-compliance, and - in turn - further distortions of competition.

The impact of the legislation on road safety cannot be fully distinguished. However, the ex-post evaluation indicates that the rules in force have contributed to the gradual improvement of safety on the EU roads.

Other relevant issues identified during the ex-post evaluation and open public consultation, are: (a) whether drivers of Light Goods Vehicles (LGV i.e., with a weight below 3,5 t) should be subject to the same requirements regarding driving, working and resting times; (b) whether self-employed drivers should be excluded from the requirements on the organisation of the working time set out in the Road Transport Working Time Directive, (c) diverging levels and types of penalties, (d) difficulties with enforcing the principle of co-liability for infringements, (e) inconsistent and insufficient training for enforcers. These issues are not, however, addressed by this impact assessment, mainly due to lack of evidence that they constitute significant social or economic problems at the EU-level or because other EU instruments are intended to address some of these issues. The detailed description of unaddressed issues is provided in Annex 6.

To address the persisting questions about the effectiveness of the social rules in the sector, the Commission has undertaken to further assess, in the context of the REFIT programme, whether and how to improve the legal framework to ensure that the rules are fit for purpose and reflect adequately the social and economic needs of the sector, that they are enforceable and enforced consistently throughout the EU whilst also seeking to ensure that enforcement and compliance with those rules does not impose excessive regulatory burdens.

A.1.2 Market context

Since the adoption of the social rules, the social and business environment of the road transport sector has changed significantly. The liberalisation¹² of the internal market for road transport facilitated the free movement of goods and of workers and the freedom to provide cross-border road transport services, which are cornerstones of the EU single market. The positive effects in

¹¹draft SWD on ex-post evaluation of the social legislation in road transport and its enforcement

¹² Among others: Regulations (EC) No 1071/2009, 1072/2009, 1073/2009 on, respectively: access to occupation of road transport operator, on access to international haulage market and on access to international passenger market.

terms of increased efficiency of the transport operations, enhanced competitiveness and gains for the European consumers and economy have been weakened by the overarching economic trends such as: economic downturn in 2007-2008 and Eurozone crisis that started in 2009. This, combined with the EU enlargements of 2004 and 2010, lead to increasing competition based on cost creating downward pressures on profits and wages.

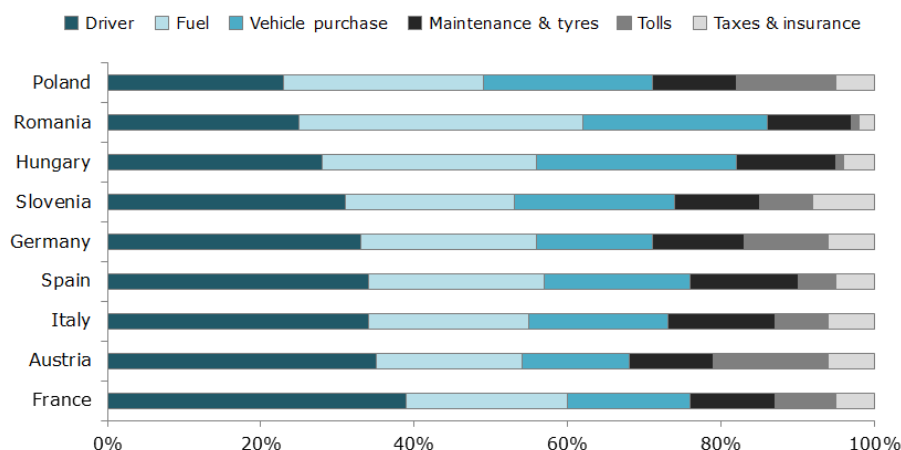
The road transport market has always in any case been highly competitive and price-sensitive, because it is dominated by a large number of small companies and owner-operators. 90% of enterprises in the sector have fewer than 10 employees and account for close to 30% of turnover (including self-employed)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

A number of reports argue that the sector is faced with decreasing profit margins driven by growing competition from EU-13 based operators (TRT, 2013); (ITF, 2009); (European Parliament, 2013a), which have contributed to strong downward pressure on prices of services and subsequently on drivers' wages and other working conditions. On the trunk lines of European corridors, reported (2015) freight rates have fallen sharply to as low as €0.7 per vehicle-km or less. This corresponds to a reduction of some 30% compared to the previous market prices (2010-2011) of about €0.9 to €1.0 per vehicle-km¹³.

It appears that hauliers, in looking to improve margins, are focusing on reducing operational cost and this can be to the detriment of driver's working conditions. In absolute terms, labour costs in the Member States that joined the EU in 2004 and 2007 remain lower than in the old EU Member States (EU-15). It is true that the gap is steadily narrowing, but the cost differentials (mainly in labour costs and social contribution costs) between Member States remain significant. In this context, driver costs play important role, since they represent a significant part of the operating costs of hauliers, ranging from around 20% to around 40% of overall operating costs, depending on the Member State of hiring. As shown in Figure A-1 the most important cost components are the driver's wages and fuel, followed by vehicle purchase costs.

¹³ SWD (2016) 350 final, page 12; KombiConsult. (2015), Analysis of the EU Combined Transport.

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

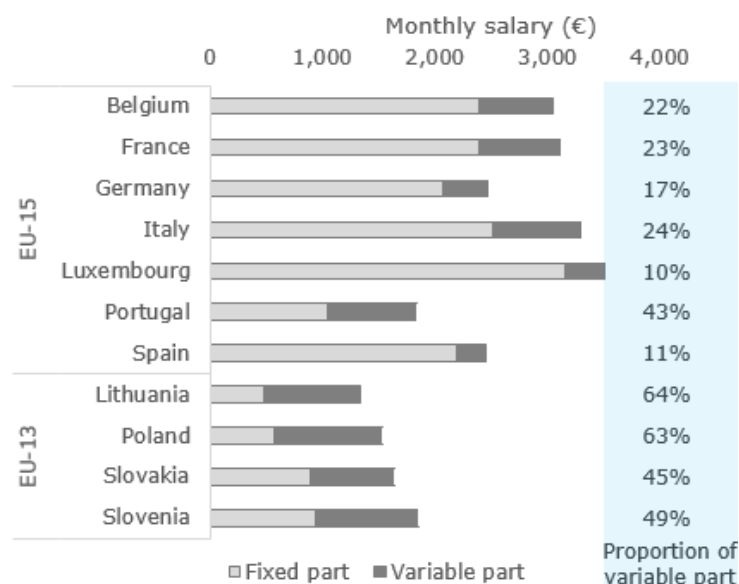


Notes: Driver costs indicate wages; maintenance includes general vehicle maintenance and tyre replacement

Source: (Bayliss, 2012)

Although there are some signs of labour cost convergence across Europe, there are still considerable differences between Member States, as shown in Figure A-2. For example, the cost of a French driver is 2.4 times higher than a Polish driver spending two to three weeks per month outside their respective domestic markets. Even taking into account possible differences in terms of skills and productivity, the pay gaps are sufficiently high to conclude that there are still substantial differences in labour costs. Also differences in social insurance contributions are quite substantial. As an example, the estimated amount of the employers' mandatory (net) social security contributions for a driver operating is €736 per month in France; €446-630 in Germany, €481-584 in Spain, as compared to €316 in Slovakia and €111 in Poland¹⁴.

Figure A-2: Comparison of driver pay for a selection of Member States



Source: (CNR, 2014a), (CNR, 2014b), (CNR, 2014c), (CNR, 2014d), (CNR, 2013a), (ETF, 2012a), (CNR, 2015), case study analysis.

These market issues constitute a major part of the linked social and economic challenges faced by the road transport sector. Social and competition issues are obviously interdependent

¹⁴ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement", p.25

because the business practices that allow operators to gain unfairly competitive advantage (by circumventing the law or profiting from the deficiencies in the legal framework and ineffectiveness of enforcement) are also often depriving drivers of their fundamental rights of social protection and adequate working conditions, including minimum rates of pay. For example, in some cases firms apply the terms and conditions of employment of countries with lower labour and social protection standards to workers who habitually carry out their mobile transport activities in the countries with higher labour costs. These patterns are closely linked to legal uncertainties and uneven application of the horizontal (cross-sectorial) provisions on posting of workers to the road transport sector. They are also closely linked to the problems of 'letterbox'¹⁵ companies and systematic or illegal cabotage¹⁶ operations, which are described thoroughly in the separate Impact Assessment¹⁷ of the EU Regulations on access to profession and access to haulage market¹⁸.

A.2 What is the problem? What is the size of the problem?

Three main problems – low compliance with the social rules, regulatory burdens for operators and national authorities and high level of drivers' stress and fatigue - have been identified that have an adverse impact on the smooth functioning of the EU road transport sector.

All of them are interlinked, but their underlying drivers relate to two different sets of rules: a) 'traditional' social road transport legislation on driving, working and resting times and b) application of the PWD and its enforcement Directive (see Figure A-3: Problem tree diagram). In this section the main problems will be presented together and the underlying drivers will be assessed separately.

One can identify four negative consequences flowing from these main problems, namely increased risks of: (1) distortion of competition between transport operators, (2) inadequate working conditions of drivers, (3) road safety risks and (4) fragmentation of the internal market.

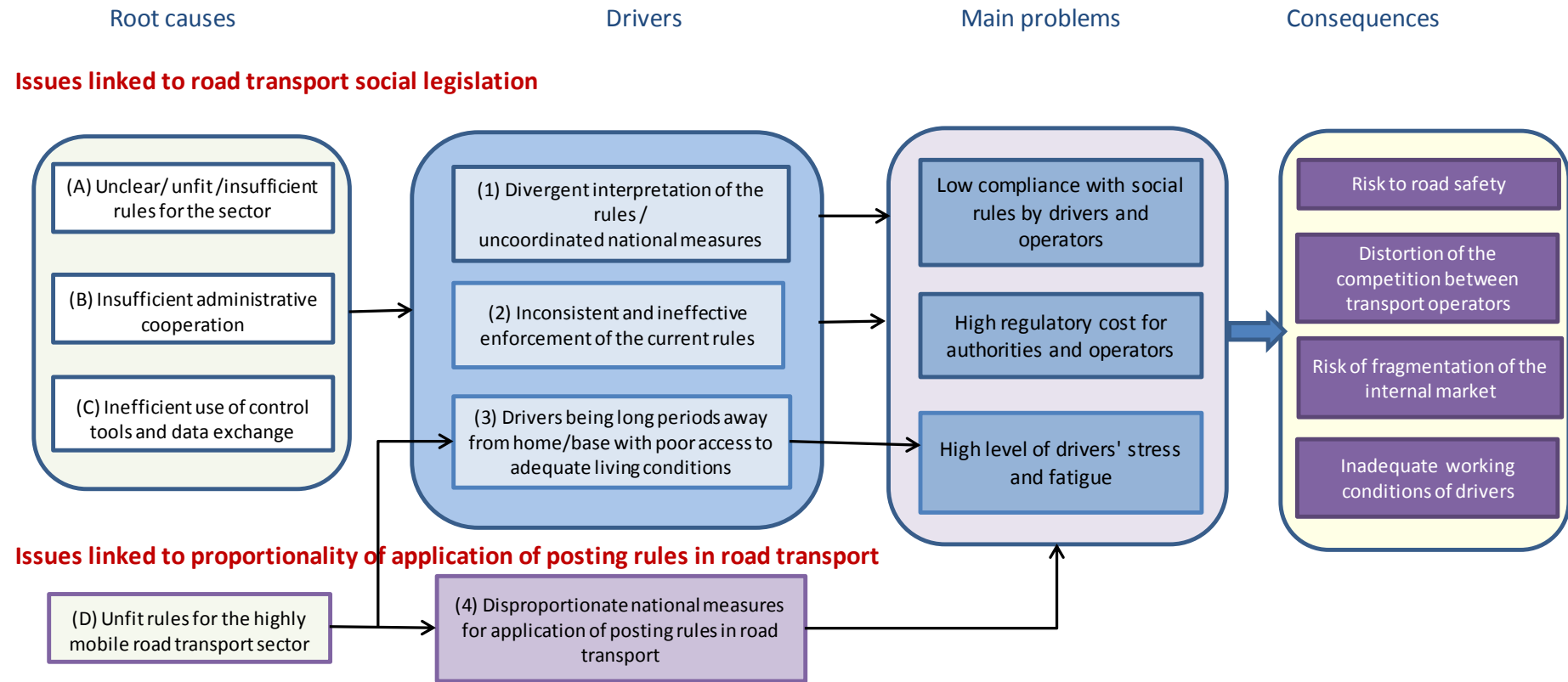
¹⁵ The term 'letterbox' refers to companies "established" in a Member State where they do not carry out their administrative functions or commercial activities, in violation of Article 5 of Regulation (EC) No 1071/2009.

¹⁶ Cabotage –national carriage for hire or reward carried out on a temporary basis in a host Member State

¹⁷ draft SWD on impact assessment for haulage market

¹⁸ Regulations (EC) No 1071/2009 and No 1072/2009

Figure A-3: Problem tree diagram



A.2.1 Problem of low compliance (road transport social legislation)

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

Firstly, the overall enforcement capacity of national authorities in terms of the number of trained enforcement officers decreased by around 35% (from 38.595¹⁹ to 25.148) between the reporting periods 2009-2010 and the latest one of 2013-2014²⁰. Consequently, the total average number of controls carried out in EU in 2013-2014 decreased by 4.8% compared to 2011-2012²¹.

Secondly, as reported by enforcement authorities in the course of the ex-post evaluation and during frequent meetings with enforcement network organisations²², the techniques of manipulation and circumventing the rules have developed, making it more challenging to detect infringement. These factors appear to have negatively affected infringement detection rates, which diminished from 3.1 offences detected per 100 working days checked in 2009-2010, then 2.4 offences detected in 2011-2012 to 2.17 offences detected in the latest reporting period of 2013-2014.

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

There has been a continuous pattern of types of infringements since 2007-2008, with the provisions on breaks and rest periods being breached most frequently, followed by the infringements concerning driving times and driving time records, but those linked to the manipulation of recording equipment or lacking records have a smaller share of infringements detected at the roadside and at the premises of the company²³.

The data on infringements against the working time provisions are not available, since there is no legal requirement for Member States to carry out regular controls on compliance with those rules. The compliance level, however, is regarded as low by all stakeholder groups. Almost half out of 36 drivers participating in the survey in the course of evaluation reported that they worked more than 48 hours on average per week (the maximum average weekly working time set out in the Road Transport Working Time Directive). Controlling compliance with working time requirements has become even more challenging in the context of increasing use of complex employment arrangements involving multiple employers and/or subcontractors.

Non-compliance with the rules compromises the protection of workers and gives a competitive advantage to those breaking the law by allowing for cost reductions and productivity gains. However, the precise advantages of non-compliance for undertakings are difficult to quantify, as they depend on the type of transport operation that is

¹⁹ Excluding EL, PT and ES who have not submitted the relevant data on number of trained controllers involved in checks in the reporting period for 2009-2010

²⁰ Biennial Commission reports on the implementation of the social legislation, SEC(2011) 52 final, SWD(2012) 2070 final, COM(2014) 709 final and COM (2017) 117

²¹ (drop from 158.6 million to 151 million of working days checked)

²² DG MOVE meets and participates frequently in the experts group meetings organised by CORTE, ECR, for instance master classes for enforcers organised twice a year by ECR.

²³ COM(2014) 709 final, p.7

carried out, the underlying contract and terms agreed with the contractor, and the type of infringement that is committed as well as its extent. In practice, the benefit will vary with each transport operation and the severity of the violation.

Based on the extensive analysis of non-compliance carried out within the ex-post evaluation study²⁴ it can be concluded that, whilst the social legislation provided for minimum common requirements for enforcement, it has been only partly effective in addressing the risk of non-compliance.

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

The identified causes of intentional and unintentional non-compliance are described in section 1.4.

A.2.2 Problem of regulatory burden (road transport social legislation and posting rules)

The results of the Open Public Consultation show that 53% (80 out of 150) of institutional respondents²⁵ (national authorities, industry associations, workers' organisations) consider high regulatory costs of complying with the EU social rules to be an important challenge. Most notably, as regards the administrative and control requirements in cases of posting, 59 % (642 out of 1094) of individual respondents (drivers, operators) and 60 % of institutional respondents consider the linked regulatory costs a significant problem. When broken down by geographical location, 87% (245 out of 280) of EU-13 based individual stakeholders regarded it a problem, compared with 49% (396 out of 809) of EU-15 based respondents. The trend is similar as regards institutional stakeholders, namely 96 % (26 out of 27) of EU-13 and 56% (57 out of 101) of EU-15 respondents considered so.

Regulatory burden linked to the application of the road transport social rules:

The regulatory costs related to compliance and enforcement of the 'traditional' road transport social legislation²⁶ do not appear to constitute a significant common problem, as these are generally outweighed by the benefits in terms of more effective enforcement and more harmonised working and business conditions. However, the analysis performed shows a potential room for improvement in the reduction of the regulatory burdens for transport operators and national authorities, notably in the areas of proving/controlling compliance with the rules in force. These burdens are mainly due to diverging national interpretations of the common EU rules and different enforcement practices, including widely ranging types and levels of penalties imposed for the same infringements in different Member States.

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

²⁴ Ricardo et al, op cit.

²⁵ No extreme positions were reported within the stakeholder group

²⁶ Ricardo et al, op cit

For the national authorities, diverging interpretations and diverging national measures based on those interpretations, as well as inconsistent enforcement systems appear to be major factors in rendering the cooperation between Member States difficult. Inefficient and uneven use of control tools and systems such as the risk rating system, and insufficient data exchange between Member States, lead to higher than necessary enforcement costs and administrative costs resulting in regulatory burdens that could be avoided by better exploitation of the existing possibilities.

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

In addition, a significant burden for the industry has arisen with regard to the national measures on the application of the PWD by a number of Member States (notably Austria, France and Germany) to the transport sector in terms of unilaterally applying their minimum wage measures, including several different administrative and control requirements, to foreign operators providing services on their territories. The identified difficulties (based on a great number of complaints²⁷, petitions, national assessments of impacts on the sector)²⁸ with the application of these national measures on minimum wage suggest that operational and administrative costs borne by affected operators are excessively high compared to the benefits for drivers. In particular, where transport operations are infrequently and/or briefly taking place on the territories of those countries and/or the amount of work performed is insignificant, these regulatory costs appear unjustified and disproportionate. According to the operators²⁹ engaged in international road transport operations carried out in/from/to/through the territories of these countries, it is not the payment of minimum wages of those countries that constitutes the main concern, but it is the extensive (and divergent) administrative requirements and control measures imposed on them to demonstrate the compliance with the minimum wage law which creates disproportionate administrative costs.

High regulatory costs distort competition but also create risk of depriving drivers from their protection rights when working temporarily in another Member States, because there is a higher incentive for operators to circumvent the rules.

A.2.3 Problem of drivers' high level stress and fatigue (road transport social legislation and posting rules)

According to the results of the ex-post evaluation and its support study, the 'traditional' social road transport legislation is considered to be an adequate and proportionate tool to target specific factors that contribute to overall working conditions. These conditions are mainly related to working hours and resting periods, which have direct impact on drivers' fitness for driving, the fatigue and stress to which they are subject, and subsequently their health and safety. However, 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 long periods of work away from the drivers' home base leading to

²⁷ On 6.03.2015 transport companies from several EU states filed with the Federal Constitutional Tribunal in Karlsruhe a constitutional complaint against the application of the minimum wage law. Source: Motor Transport Institute, 2017, "The impact of Regulation of the Road Transport Sector on Entrepreneurship and Economic Growth in the European Union"

²⁸ Source: Commission databases: Chap (ca 400 registered complaints), ARES (registered correspondence with hundreds of letters)

²⁹ This concerns operators from all EU-13 States and those established in 4 EU-15(DE, ES, PT and AT)

difficult work-life balance³⁰. The studies³¹ show that long periods away from home contribute to driver's stress and fatigue, in particular when combined with inadequate accommodation for rest periods and lack of access to sanitary facilities. Long periods away from home also have adverse effects on drivers' health because of inadequate access to proper nutrition, which is frequently the case for drivers away from their home base, as well as poor quality sleep and work-related sleeping disorders.

The problem amplifies when drivers employed under terms and conditions of employment of low-cost 'home' country carry out their work over long periods of time in high-cost 'host' countries. The drivers' wages and other social protection conditions do not reflect the living costs to which they are exposed during long periods of their presence on the territories of the countries with high labour and social standards.

High level of stress and fatigue is contributing to inadequate working conditions of drivers as well as to increased risks to road safety. Several studies provide various figures on fatigue-related accidents. The IRU in its ETAC study (IRU, 2007) cites a proportion of fatigue-related accidents of 6%. In a study conducted in 2011, the Dutch road safety institute found that fatigue was responsible in approximately 23% of accidents where international truck drivers were involved (SWOV, 2011), while (Connor et al., 2001) report that fatigue is a contributory factor in a range of 10%-20% of road crashes where professional drivers are involved. Finally, a research conducted by the Swedish Transport Institute VTI found that 19% of bus drivers had over the past decade been involved in an incident due to fatigue and 7% of them had been involved in an accident caused by their own fatigue (Anund et al., 2014). None of these sources provide whether the fatigue was due to the working, driving and resting times regulated by the EU legislation or terms and conditions of employment or they are more linked to other factors such as: health problems, drugs, alcohol, unhealthy life-style, sleeping disorders, etc.

A.3 What are the main drivers and root causes of the problems?

As explained above, the underlying problem drivers of the main problems are related to two different sets of EU rules, therefore they are analysed and presented separately in this impact assessment.

Problem drivers linked with the 'traditional' road transport social legislation are: (1) ³²diverging national interpretations of the social rules and different national measures; (2) inconsistent and ineffective cross-border enforcement; and (3) long periods away from home/base by drivers with poor access to adequate living conditions.

The problem drivers (1) and (2) are interdependent, because different interpretations of the rules lead to different enforcement practices. Both contribute to legal uncertainties for drivers and operators leading to higher risk of non-compliance and regulatory burdens. Ineffective enforcement creates an incentive for frauds and abuses, in particular when combined with market pressures. Different national interpretations and implementation of the rules lead to unequal treatment of drivers at controls and an uneven playing field between operators.

The results of the Open Public Consultation confirm that diverging national interpretations and enforcement of the social rules is the most important obstacle to the effectiveness of the social rules. 84 % (969 out of 1152 respondents) of the individual

³⁰European Parliament, 2014, TRT, 2013, ETF, 2012R

³¹ EU-OSHA, 2010. A review of accidents and injuries to road transport drivers, s.l.: European Agency for Safety and Health at Work

³² The number and letters assigned to drivers and root causes in the problem tree are used to facilitate further references in the text.

stakeholders (drivers and operators) and 70 % (106 out of 152) institutional stakeholders (national authorities, enforcement bodies, industry associations and workers' organisations) expressed this view.

The common root causes of those problem drivers are: (A) unclear/unfit/insufficient provisions rules for the sector, which do not reflect the specificities of transport services and evolving needs of the sector and are difficult to apply or to enforce; (B) insufficient administrative cooperation between Member States and (C) inefficient use of control tools and data exchange systems by Member States.

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

The rules causing the most difficulties with their understanding, application and enforcement are the following³³: (i) weekly rest (60% of all respondents); (ii) requirement of recording driver's periods away from vehicle (60% of all respondents), (iii) performance-based remuneration (45% of all respondents), (iv) breaks and resting times (40% of all respondents), (v) scope of legislation (51% of individual and 67% of institutional respondents), (v) controlling working time provisions (56% of institutional stakeholders, including enforcers). The key problematic issues are described in detail in following sections.

Problem driver (3) is also linked with the inconsistent or inadequate application of PWD identified as problem driver (4). The long periods away from home/base become problematic when drivers employed under low-standard labour conditions of the 'home' country work for a large part of the time in 'host' country with higher level of working standards, mainly in terms of pay and social protection. This problem driver must be seen in the context of the increasingly strong cost-based competition creating downward pressures on profits and wages, which incentivises operators to apply such business and employment practices in order to reduce their social and labour costs. This affects negatively the social protection rights of workers and their working conditions and leads to distortions of competition between local and foreign operators.

Problem driver (4) concerns diverging national interpretations and disproportionate application of the posting rules to road transport. It contributes to legal uncertainties for resident and non-resident drivers and operators disrupting organisation of transport services and increasing stress levels. This also leads to higher additional regulatory burdens related to compliance with diverging national administrative and control requirements. Finally it also results in higher non-compliance levels and related costs. During Open Public Consultation stakeholders (72% of all respondents regard them unclear and/or difficult to apply and enforce) assessed posting of workers provisions as the issues causing the most difficulties with their understanding, application and enforcement.

³³Single figure means that both stakeholder categories (individual and institutional) represent very similar share in their respective categories.

A.3.1 Driver (1): Diverging national interpretations of the road transport social legislation and different national measures

Diverging interpretations of the rules could lead to situations where a behaviour considered compliant in one Member State constitutes an infringement in another one and leads to unexpected costs (e.g. in the form of fines, etc.) being borne by operators. The evidence (see examples described below) shows that such diverging interpretations may result in loss of thousands of Euro by an operator resulting from immobilisation of vehicles, financial fines, prosecuting fees, costs of appeal, and losses resulting from non-executed service contracts with client.

For example, the Belgian authorities regard that transporting (driving) a new vehicle intended for the final customer should be subject to the driving times rules and tachograph requirements (i.e.: tachograph must be installed and the driver's card used) and that such operation cannot be subject to any general exemption for new vehicles not yet put into service³⁴. As a result, the vehicles were immobilised and a manufacturer, drivers and employers have been unexpectedly penalised with fines of 25,000 € per vehicle and 50,000 € and 75,000 € per transport company.

Another example is the interpretation and implementation of the provision on the regular weekly rest. Belgium and France introduced national measures in 2014, with (different) sanctions for spending the regular weekly rest in the vehicle. In France the fine is up to €30,000 for the operator and a year's prison sentence, whereas in Belgium, fines are up to €1,800. Germany and Austria are also reportedly considering prohibition measures. However, other Member States³⁵ do not prohibit taking regular weekly rest in the vehicle while others³⁶ regard enforcement of such prohibition to be unfeasible. These different applications of the weekly rest provision cause legal uncertainty among drivers, operators and enforcers and create regulatory burdens linked to both the additional dimension of controls and unclear evidence to be presented at controls. All this results in unequal treatment of drivers and operators engaged in international operations and hence distorts fair competition creating unwarranted barriers to the provision of cross-border transport services.

Another example of different interpretation and enforcement concerns the provision on recording driver's activities when away from the vehicle. In some Member States³⁷, controllers require from the driver a full record for all periods when the driver is not working or working outside the scope of the Driving Time Regulation, whilst in other States³⁸ only those daily activities when driving in-scope need to be recorded. The legislation provides for a possibility to use an attestation form to certify for a driver's activity and inactivity periods when a driver could not use a tachograph to make records due to being away from the vehicle. However, the use of this form has not been used consistently. In Austria the form was still required if retrospective entries for such activities on the tachograph were not possible. In other Member States, such as Finland and Latvia, the use of the form is allowed (but also other proof can be provided), while other Member States, such as France and Greece, disregard such forms (and other proof for such activities is required). This again creates legal uncertainty, unequal treatment of drivers and operators and contributes to regulatory burdens.

³⁴ Article 3(g) of Regulation (EC) No 561/2006

³⁵ BG, CZ, LV, LT, SV, LU

³⁶ NL, EE, FI, UK

³⁷ AT, HR, DE, HU, LU, MT, PL, PT, SK, SL, ES

³⁸ CY, DK, EE, NL, RO, SV, UK

A.3.1.1 Issue of weekly rest requirements

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

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

According to the ETF survey³⁹, 95% of 1000 non-resident drivers interviewed spend their rest times and their week-ends in their trucks. The survey, however, does not specify how many of them spend their regular weekly rest periods in the vehicle, nor the incidence of this occurring in countries where this is prohibited.

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

Another factor relates to a current time requirement on weekly rest and its inflexible application. The Regulation requires that in any two consecutive weeks, a driver must take two regular weekly rest periods or one regular and one reduced weekly rest. The reduced weekly rest shall be compensated by an equivalent period of rest taken *en bloc* before the end of the third week following the week in question. The operators claim that an inflexible implementation of this requirement does not take account of exceptional circumstances which drivers face, such as: traffic issues (congestion, accidents), weather conditions, long waiting times at loading/unloading points, and which result in delays in transport operations. As a consequence, a driver often cannot reach his destination or a home/base for the regular weekly rest. The anecdotal evidence indicates that some drivers (in particular those engaged in long international journeys from/to peripheral EU countries) have to stop driving only at a short distance away from a home/base and spend 45 hours of their regular weekly rest there instead with their families.

The European Court of Justice is expected to issue a preliminary ruling following a request of a Belgian Court⁴⁰ where the Advocate General suggests that: "*Article 8(6) and (8) of Regulation No 561/2006 is to be interpreted as meaning that a driver may not take regular weekly rest periods referred to in Article 8(6) of this Regulation inside the vehicle.*"

The clarification of the issue of whether taking the regular weekly rest on board the vehicle is allowed, would not, however, solve the linked challenge of enforceability of

³⁹ op cit.

⁴⁰ Opinion of advocate general tanchev delivered on 2 February 2017 (1) Case C 102/16 Vaditrans BVBA v Belgische Staat (Request for a preliminary ruling from the Raad van State (Council of State, Belgium))

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

It can only be assumed that the intention of the legislator when adopting this provision in 2006 was to encourage operators to organise the work of drivers in such a way that they can return to home/base to take their regular weekly rest. However, as this requirement was not accompanied either by permitting flexibility in organising the working and resting periods to deal with delays (and other hindrances) in transport operations nor by clear obligation on regular returns to home/base, the objective of improving working conditions appears largely not to have been met.

A.3.1.2 Issue of difficulties to comply with requirements on breaks, resting and driving periods

The ex-post evaluation shows that the requirements on the minimum duration and frequency of breaks and rest periods, and on the maximum duration of driving times, are considered appropriate by all stakeholder groups. However, external factors, such as congestion, poor accessibility to parking and/or resting facilities and growing competition are becoming more pervasive, which makes compliance with the prescriptive rules more difficult.

In addition, there are also inherent features of certain types of transport services, which make it difficult to apply strictly the prescribed thresholds for work and rest. This concerns, in particular:

- International passenger transport by coach: there are distinct service needs related to the demands of passengers, their personal needs during the journey, etc. that do not pertain to the freight transport. For drivers engaged in the international carriage of passengers this lack of flexibility can bring about additional stress from passenger anger when the vehicle cannot reach their destination and has to stay at the roadside to let a driver comply with the driving and resting rules. Short transfer journeys at holiday destinations or return journeys, should an emergency arise, cause problems, since this could frequently entail an infringement of the requirement on daily or weekly rest periods, because a driver would have to interrupt or delay his rest period to carry out such operations. Also the industry (bus and coach operators) has claimed that excessive restrictions on the 12-day rule⁴¹ incite non-compliance especially when drivers are exposed to pressure from customers (e.g., the need for long rest periods before and after a journey; short daily shift times; and inflexibility in the distribution of obligatory breaks).
- Domestic occasional passenger transport by coach: current rules provide different treatment of those operators and drivers from those engaged in international operations. For example a 7 day journey from South Germany to Berlin involves a long journey on the first day, a long return journey on the last day and shorter transfers each day, during which the driving time lasts no more than one hour. But the 12-day derogation (currently applicable to international trips) to postpone weekly rest cannot be applied in Germany, as in this case it is a purely domestic operation. But in another example, an operator based in Strasbourg carrying out a week or longer trip on the German territory is allowed to postpone the weekly rest for up to 12 days. There is no difference between those operations with

⁴¹ Article 8.6a of Regulation (EC) No 561/2005 provides for derogation for international occasional transport of passengers by coach allowing postponing the weekly rest period for up to 12 consecutive 24-hour periods. The general rule is that the weekly rest must be taken not later than at the end of 6 consecutive 24-hour periods since the previous weekly rest.

regard to distance travelled, working time executed and job requirements, hence there is also no reason for differentiating the requirements related to working periods and weekly resting times. According to the available data the demand for longer than one-week domestic tours in Germany, Sweden, Ireland, Finland, UK is in great demand.

- Fuel suppliers and construction site deliveries during longer working days in spring and summer, and heating oil or de-icing products distribution in winter: in these parts of the sector, the weekly rest period provisions are regarded as particularly problematic because of the seasonal changes in demand.
- Businesses that typically work all week, such as the catering trade, bakeries, or delivering specific goods e.g. perishable goods, live animals, concrete-mixers, indicate that they find it difficult to comply in particular with regular weekly rest rules.
- International drivers engaged in long international transport journeys, who due to unforeseen waiting time or traffic obstacles do not reach their scheduled destination or home/base and must therefore stop for a weekly rest, even if they have not reached their daily driving time limit.

According to the survey of undertakings carried out within the ex-post evaluation study, the lack of flexibility in existing rules set out in the Driving Time Regulation and the fact that they do not fit to the specificities of certain transport operations were rated by 59% and 53% of respondents (1234 respondents) as being a major cause of non-compliance. Among those, 80% of the passenger transport undertakings rate these factors as a major cause. The 'inflexible' rules which mostly lead to non-compliance are regarded to be those on breaks (671 of 1258 (53%)), daily driving times (654 of 1248 (52%)) and daily rest periods (628 of 1246 (50%)).

80 % (921 of 1153) of drivers and 74 % (853 of 1152) undertakings in the open public consultation concurred that the absence of flexibility in the application of the rules in response to the specific needs of the sector are two major (or moderate) obstacles to the effectiveness of the rules. Also national authorities, enforcers and industry associations regarded these two factors as an important obstacle to the effectiveness of the rules, with 70 % (105 of 152) pinpointing the lack of flexibility and 72% (109 of 151) arguing that the rules are unfit for the needs of the sector.

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

A.3.1.3 Issue of the scope of the road transport social legislation

The Driving Time Regulation applies to the carriage of goods by vehicles of more than 3.5t or of passengers by vehicles carrying more than 9 persons (including a driver). Whilst it specifies clearly the vehicles and the transport operations that fall within the scope of the legislation, it does not clearly identify types of drivers who are obliged to apply Regulation's provisions. The Road Transport Working Time Directive is also not much clearer as it simply stipulates that it applies to those drivers who are covered by the Driving Time Regulation.

The definition of a "driver" is very general, which creates uncertainty whether all persons who drive the vehicle, regardless their main professional occupation, who fall within the scope of the legislation should therefore be obliged to use a driver's card⁴² and record all

⁴² Driver card means a tachograph card, issued by the authorities of a Member state to a particular driver, which identifies the driver and allows for the storage of driver activity data

driving and non-driving activities⁴³. This for instance is the case for mechanics employed by transport or lease companies, whose main activity is maintaining vehicles, not carrying goods or passengers and who, as part of their duties, drive such vehicles to a car wash/fuel station/workshop etc., or to a client. It is also the case of private individuals driving those vehicles, which, due to their type or size, fall within the scope of the legislation; those who are transporting their belongings for private purposes (e.g. persons transporting race cars or horses by vehicles beyond 7.5 t in order to participate in races as part of their hobby). This leads again to differences between Member States in the application of the Regulation.

For instance the UK and Spain regard that driving time rules apply also to non-professional drivers, but the UK establishes a category of 'occasional drivers' who are exempt from the provisions. The matter also came up in a recent court case⁴⁴ but the ruling was only that the *provisions of Regulation (EC) No 561/2006 apply essentially to professional drivers and not to individuals driving for private purposes*, so the scope has not been fully clarified.

A.3.2 Driver (2): Inconsistent and ineffective enforcement of the road transport social rules

A.3.2.1 Issue of difficulties to control performance-based remuneration

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

The enforcement of this provision is very difficult and based on national assessment criteria. 65% (13 out of 20) of enforcers who replied to surveys during the ex-post evaluation reported that establishing the link between the driver's pay and the distance travelled or load carried and the impacts on road safety is the most difficult element to control. This view was supported to a larger extent by authorities in EU-13 Member States than in EU-15. The difficulties with enforcement of this requirement was also highlighted by trade unions (though only 6 of 14) responding to the survey, who also stated that the current formulation also leads to abuses, especially by undertakings using non-resident drivers.

A.3.2.2 Issue of difficulties with enforcement of the working time rules

In contrast to the Driving Time Regulation, there is no explicit legal requirement for Member States to carry out regular controls on compliance with the working time provisions and subsequently to collect and submit quantitative information on the enforcement. The lack of quantitative data does not allow for regular monitoring of the working time provisions. A qualitative assessment suggests that the enforcement practices for the Road Transport Working Time Directive vary significantly across Member States and that the level of compliance is low. This further implies that enforcement in general is not effective, which in turn is due to the low priority given to

⁴³ Drivers shall record separately the following activities: driving time, other work, availability and breaks /rest period.

⁴⁴ Case C-317/12, Daniel Lundberg

enforcement of the Directive. For the implementation period 2013-2014 only ten Member States⁴⁵ provided statistics on offences detected.

The evaluation study shows that 40% of drivers across the EU work regularly more than the allowed maximum 48 hours per week (with a particularly high result for Germany of 90%⁴⁶). Exercising the controls seems to be even more difficult (and rarer) when it comes to controlling self-employed drivers, who, as indicated in the evaluation study, account for 8% of all drivers in the freight transport sector. The key difficulties consist of accessibility of records of working days worked, verifying the reliability and accuracy of work records or the lack of national registers of self-employed drivers.

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

A.3.2.3 Issue of insufficient administrative cooperation

A range of administrative cooperation measures set out in the social legislation were designed to address the issue of the low level of exchange of data, experience and intelligence between Member States as well as scarce cooperation in cross-border investigations. However, according to the results of the ex-post evaluation, the framework provided for in the legislation such as concerted checks, setting up an intra-community liaison body or common training sessions, appears not to have been sufficient. The requirement of carrying out a minimum of 6 concerted roadside checks per year is consistently not complied with by around half of Member States⁴⁷. The Member States who cooperate on a regular basis in the field of enforcement, training and exchange of intelligence and good practices are those who also participate in Euro Contrôle Route (ECR)⁴⁸ – the network of European Transport Inspection Services or in Confederation of Organisations in Road Transport Enforcement (CORTE). Outside this network the cooperation between Member States is incidental and remains mostly between neighbouring states. The insufficient joint cross-border controls between Member States and the insufficient exchange of information between national enforcement authorities lead to inconsistent and ineffective cross-border enforcement (problem driver 2). Regular monitoring of developments in the road transport sector on the national markets is very difficult due to the lack of regular exchange of information and structured cooperation between Member States on common understanding and application of the EU rules. This often results in the adoption of uncoordinated and unilateral national measures to address competition or social problems (problem driver 1). This implies deficiencies in the EU regulatory framework (e.g. Member States feel driven to adopt national measures on the application of the minimum wage to road transport) and/or affects negatively the effectiveness of the EU social rules (e.g. national measures on sanctioning for taking regular weekly rest in the vehicle).

⁴⁵ AT, BG, CY, CZ, FR, EL, IE, LU, PL, ES

⁴⁶ German study (ZF Friedrichshafen, 2014) for which 2,196 professional German drivers were consulted

⁴⁷ In 2013-2014 12 Member States (BE, HR, CY, EE, FI, EL, IE, DK, MT, NL, PT, SE) did not carry out or did not inform about the minimum required concerted checks.; source: Commission report, op cit

⁴⁸ Members of ECR are: BE, LU, NL, FR, DE, IE, UK, PL, AT, RO, BG, HU, LT, HR.

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

A.3.3.4 Issue of inefficient and inconsistent use of control tools

The effectiveness and efficiency of enforcements is also affected by lack of access to, or poor usage of, information contained in the national risk rating systems⁴⁹ which were established in order to better target controls at companies with a higher risk rating. Not all Member States have their risk rating system fully operational and accessible to control officers apparently because of underlying budgetary constraints, national arrangements as regards the enforcement system or data protection issues. 17 Member States⁵⁰ out of the 25 States (including Norway and Switzerland) responding to the consultation in the ex-post evaluation study use a risk rating system, while 3⁵¹ of the remaining 8 States⁵² admitted that they do not have their risk rating systems operational. In addition, Member States differ in their definition of the details as regards the functioning and application of their risk rating system, including formulas for calculating the risk rating of a transport undertaking breaching the EU rules on driving and resting times and on use of the tachograph. Only 8 Member States⁵³ use the formula for calculation of risk rating of the transport undertaking based on or similar to the Commission recommended formula established in 2007. All others established their own methods. As a result the same type and number of infringements may lead to classifying an undertaking in one Member States as a high risk company and hence being more frequently checked, whilst in another Member State a company acting in a similar fashion could be regarded as low risk and therefore not subject to more frequent targeted controls, giving them an advantage. In addition, due to diverging formulas and uses of the Risk Rating Systems, the data on risk rating coming from different Member States is not comparable and subsequently not exchangeable. All this makes the mechanism aimed at improving cost-effectiveness and consistency of enforcement ineffective.

A.3.3 Driver (3): Long periods away from home/base with poor access to adequate living/resting conditions

These periods away from home appear to have significantly increased⁵⁴ over the last decade due to the internationalisation of the transport market. However, the causal links are difficult to identify, as is a rigorous quantification of the extent of the problem.

The research and stakeholder consultations and other studies carried out as part of the ex-post evaluation⁵⁵ appear to confirm the increasing problem with long periods away from home/base. It was found that out of the 25 drivers engaged in international transport operations who responded to the targeted survey, 7 (or 28%) typically spend their regular weekly rest (of 45 hours) on-board the vehicle (all engaged in freight transport), 3 spend it in an accommodation provided by an employer (all engaged in passenger transport). While these insights from the interviews do not provide concrete information on the actual lengths that these drivers spend away from home, they

⁴⁹ Article 9 of Directive 2006/22/EC requires Member States to introduce a risk rating system for undertakings based on the number and severity of infringements committed by individual undertakings. The overall aim of this system is to increase checks on undertakings with a poor record concerning the compliance with the driving time.

⁵⁰ AT, BE, CY, CZ, DK, EE, ES, FI, HR, LV, LT, NL, PL, RO, SI, SE, UK
⁵¹ FR, HU, NO

⁵² BG, FR, HU, LU, PT, SK, NO, CH

⁵³ LU, PL, FR, NL, LV, CY, EL, BG

⁵⁴ TRT, 2013. Social and working conditions of road transport hauliers, s.l.: s.n and Broughton et al., 2015. Employment Conditions in the International Road Haulage Sector

⁵⁵ Final report <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

suggest that the periods away from home are likely to surpass two weeks (if one reduced and one regular weekly rest is taken in the vehicle).

According to the survey carried out among Polish drivers⁵⁶ by the Polish employers' association, the largest group of them 23% (46 out of 200) spend 15 days on the road. 15 % (30 of 200) spend more than 30 days away from home/base and 7% (14 of 200) less than 5 days away from home/base.

The Lithuanian trade union estimated that these periods have increased from around 5-10 days to 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, six stated that periods away from home for international journeys have increased.

Research from the case studies carried out within the ex-post evaluation support study 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 do not generally stay away from home for more than one to two weeks. 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 and hence at least two weeks 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 al, 2015). The ETF survey on non-resident drivers reported that 95% (out of 1000 interviewed drivers) of non-resident drivers spend their rest time on board their vehicles (ETF, 2012).

The significance of this problem is greater when combined with an issue of inadequate or inaccessible rest and hygiene facilities as well as with the issue of misapplication or non-compliance with the terms and conditions of employment of the host country in which the driver works for long periods of time. All these factors taken together have at least the potential to affect negatively the driver's working conditions, including health and safety, social protection and remuneration issues, to create indirect risks to road safety through stress and accumulated fatigue and to distort the competition on the internal market.

A.3.4 Driver (4): Diverging national interpretations of the PWD (including the rules on enforcement) and disproportionate national measures

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

In the absence of uniform interpretation of applying PWD to road transport sector and in response to the issues linked to increasing cost-based competition such as illicit business and employment practices (see section 1.2 on the market context), some Member States (Germany, France, Austria, Italy⁵⁷) introduced in 2015, 2016 and 2017, national

⁵⁶Source: Employers' Association 'Transport and Logistics Poland' , 2016

⁵⁷ Italian measures on minimum wage apply solely to cabotage and to agency workers while German French and Austrian apply to all transport operations (excluding transit) regardless a duration or amount of work performed

measures on the application of their national minimum wages to all foreign operators and drivers carrying out any transport activities on their territories. The side effects of such national measures, in particular regulatory requirements provoked heated reactions from the industry (11 associations of road transport carriers mainly from EU-13)⁵⁸ and national authorities (mainly EU-13 Member States⁵⁹) who sent joint position papers to the Commission denouncing what they saw as protectionist measures leading to fragmentation of transport market in the EU. This in turn triggered a response from seven Member States who sent a joint letter to the Commission urging analysis of the social and safety issues⁶⁰ in road transport sector and subsequently established the 'Road Alliance'⁶¹ to combat what they see as social dumping and unfair competition in road transport. These actions appear to show that the EU is essentially divided in two opposing blocs when it comes to some of the key social and competition aspects.

These national measures reportedly have resulted in significant regulatory burdens for industry, such as complying with the strict administrative and control requirements which must be fulfilled by foreign operators. The key requirements include: pre-notification of each and every transport operation intended to be carried out on/to/from the territory of the 'host'⁶² Member State, translation of all relevant employment documents into the language of the 'host' state, and designating a representative to provide all information and documentation to control officers in the 'host' state. These requirements apply equally to all foreign operators from all Member States even those established in countries where minimum rates of pay are higher: these administrative burdens do not seem justified in some cases as they are not linked to any benefits for drivers.

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

Based on estimations provided by haulier organisations from Austria and the Czech Republic, the average additional administrative costs for Austrian and Czech hauliers related with the application of the national minimum wage measures in Germany and France are considerable. They include additional staff costs related to the additional tasks of recording, storing and reporting separate information for work carried out on the territories of the 'host' countries, preparing all requested documentation for control purposes, translating those documents into the language of 'host' state, transmitting data, establishing a representative on the territory of the 'host' state.

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

⁵⁹In June 2016 11 Member States: (BG, CZ, EE, HU, LV, LT, MT, PL, RO, SK and SI) sent to the Commission a 'Joint letter of like-minded Member States against fragmentation of transport market in the EU'. In December 2016 nine Member States (BG, CZ, EE, HU, LV, LT, PL, RO and SI) sent a joint statement to the Commission calling for balanced approach towards EU road transport market and its social rules.

⁶⁰8 Member State (AT, BE, DK, FR, DE, IT, LU,NO) sent a joint letter to the Commission in September 2016.

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

⁶²'host' Member State means a Member State in which a haulier operates other than haulier's Member State of establishment

According to Austrian estimates, the additional administrative costs oscillate (depending on the size of the company and the volume of activities carried out on the territories of 'host' states) between 3300 € and 4000 €⁶³ per company per year for compliance with the German administrative requirements and between 4000 € and 14000 €⁶⁴ per company per year for the French requirements. These costs do not include costs related to controls which are estimated at the level of 750 € per day of control.

The Czech estimations⁶⁵ show that average additional administrative cost linked to the German requirements is around 130 € per driver per month and 289 € in case of application of the French requirements. Additional one-off costs borne by Czech hauliers includes also software that has to be adapted for calculating working time, pay adjustments, separate work records, etc., meaning additional costs which is estimated to be around 1100 € per company. Based on the number of Czech drivers engaged in transport operations in Germany (31 500) and in France (2 100) it is calculated that average administrative costs borne by Czech hauliers engaged in operations in Germany or in France reach around 10m € per year. Including software costs the total additional costs borne by relevant Czech industry due to the application of the German and French minimum wage administrative requirements are more than 15m⁶⁶ € per year.

Additional regulatory costs may also occur in case of non-compliance with these national rules. The German legislation provides for significant penalties of up to 500 000 € if due wages are not paid or if they are paid with a delay; and up to 30 000 € for other lesser breaches such as failure to conform to the various administrative documents required. The French legislation envisages the penalty of 2 000 € per 'posted' worker and 4 000 € in case of recurrence of failure to comply, with maximum sanctions of 500 000 €.

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

A.2.4.1 Unfit posting rules for highly mobile road transport sector

The PWD applies to businesses in all sectors (except the merchant navy and the self-employed) that post workers temporarily to a Member State other than the one in which the worker habitually works⁶⁷. It stipulates a 'core set' of terms and conditions of employment of the host Member State, which must be applied by foreign services providers and which include: maximum work periods and minimum rest periods; the minimum rates of pay; minimum paid annual holidays; the conditions of hiring-out of workers; health, safety and hygiene at work; equality of treatment between genders and other provisions of non-discrimination. The PWD does not establish the minimum duration of the temporary work, hence the core set of the terms and conditions of employment of host country apply to foreign service providers and their employees from the very first moment of their activity in the host State, regardless of the total duration and/or frequency of such work.

⁶³ These costs exclude costs of translations into German and costs of representative, which is not required by the German measure.

⁶⁴ These costs include translation costs for all work-related documents, also those required specifically at the controls, and costs of representative on the French territory

⁶⁵ NextFinance, April 2016 "Macroeconomic importance of automotive transport and its international competitiveness"

⁶⁶ These calculations cover only costs of hauliers and do not reflect costs for passenger operators.

⁶⁷ Article 2 of Directive 96/71/EC defines a 'posted worker' as a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.

At first sight, it would appear that the PWD might not be suitable for the road transport sector. Whilst these general rules work well in "typical" posting situations such as construction or the meat industry, where the amount and the duration of work is usually significant, they are less appropriate where there are long cross-border sub-contracting chains and inherently high mobility of the workforce, such as in the road transport sector.

The Open Public Consultation shows that 70 % of all respondents (765 out of 1106 individual respondents and 97 out of 137 institutional respondents) regard the posting provisions not adapted to the specificities of highly mobile road transport sector. This opinion was expressed by more respondents from EU-13 than from EU-15. SME Panel Review brought similar results with 70% (39 out of 56) of respondents regarding the posting provisions not fit for the sector. In particular, the obligation to apply the host country minimum wage and the rights to annual paid holidays is difficult to apply in case of drivers engaged in typical international road transport operations. The typical operations are carried out in several countries (5-6 in one month) often for a very short duration on the territory of one Member State. According to estimations provided by road industry a typical international transport operation involving several transport services of short individual durations performed on the territory of several countries over a period of around 2 weeks constitute around 40 % of all international freight transport activities. In such cases it is difficult to establish the place where a driver 'habitually' works or the place in which he performs majority of his activities in order to calculate his salary and establish his rights to annual holidays.

However, there are obviously cases of road transport operations, which clearly meet the current criteria of posting. These concern transport undertakings that perform the substantial part of their transport activities in one or two 'host' Member States in one month. In other cases, the application of posting of workers rules creates disproportionate barriers to cross-border provisions of transport services.

As regards the administrative requirements provided for in the Posting Enforcement Directive aimed to fight and sanction circumventions, these are also not well adapted to the specificity of the sector. In particular, requirements of pre-notifications of each operation, keeping all work related documents on board the vehicle (employment contract, payslips, time-sheets, proofs of payment of wages, all translated into the languages of 'host' Member States), designating a representative to liaise with national authorities of 'host' Member State and being available for a period of 18 months following the end of the posting are excessively burdensome and disproportionate, in particular in case of typical international road transport operations carried out for brief periods in many 'host' countries.

According to the findings of the Open Public Consultation, 73% (802 out of 1106) of the individual stakeholders and 68% (93 out of 137) of institutional stakeholders indicated that lack of clarity of the rules on posting of workers is the key problem. Whilst this was a key issue for a great majority (91% or 282 out of 309) of both institutional and individual EU-13 respondents, 65% (599 out of 924) of EU-15 respondents also considered it as important.

The legal and practical difficulties with application of the posting rules to the highly mobile workforce in road transport sector have been recognized and explicitly highlighted in the Commission proposal of 8 March 2016⁶⁸ for amending PWD. In recital (10) of the proposal it is stated that: *Because of the highly mobile nature of work in international road transport, the implementation of the posting of workers directive raises particular legal questions and difficulties (especially where the link with the*

⁶⁸ COM(2016)128

concerned Member State is insufficient). It would be most suited for these challenges to be addressed through sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.

A.4 How would the problem evolve, all things being equal (baseline scenario)

The baseline scenario reflects a likely evolution of the identified problems in case of no EU policy intervention. To assess how these problems may evolve, several assumptions are made with regard to the internal elements (root causes and problem drivers) and external variables (e.g. GDP, smart tachograph deployment, etc.). These assumptions are described in the following sections.

The methodological challenge in assessing a baseline is linked to the fact that the identified problems, their drivers and root causes are highly interdependent and derive from two separate legislative frameworks of social and internal market rules. One concerns 'traditional' social road transport legislation (driving, working and resting times) with an enforcement regime based on the tachograph and another concerns horizontal rules on posting of workers with its own enforcement regime. To avoid cumulative or opposing effects stemming from the two different legislative frameworks which may be confusing, the baseline scenario is described separately for these two sets of rules.

A.4.1 The road transport social rules

To develop the relevant baseline scenario, the following assumptions for internal factors have been applied⁶⁹: (i) rules will remain unclear/unfit/insufficient leading to proliferation of national interpretations and uncoordinated measures to satisfy national interests; (ii) due to persisting differences in national interpretations, cross-border enforcement will remain inconsistent leading to unequal treatment of drivers and operators at controls; (iii) the level of cooperation between Member States will remain largely the same, with possible slight improvements in the level of coordination between Member States participating in the existing network organisations, in particular when Euro Contrôle Route (ECR) is transformed into the European Grouping of Territorial Cooperation⁷⁰; improvements will appear due to obligatory connection to TACHOnet by March 2018 and better use of ERRU data exchange systems; and (iv) control tools remain incompatible and will not be exploited to their full potential rendering enforcement inefficient, and in addition only gradual deployment of 'smart' tachograph and 'smart' control tools for enforcers will further delay possible improvements in the efficiency and effectiveness of controls.

Although further guidelines may be issued, given their non-binding nature, these efforts can only have limited impact on the harmonisation of the enforcement/interpretation of the rules. This is evidenced by experience following the existing set of clarification/guidance notes, which did not lead to notable changes in this regard (Ricardo et al, 2016).

The main assumptions applied with regard to external variables are: (a) transport activity will show significant growth due to GDP growth (2016 EU Reference Scenario), (b) 'smart' tachograph penetration will occur in line with fleet turnover rates; (c) the amount of operations carried out regularly in 'host' countries will increase given projected freight transport growth. However, it is also assumed that this development

⁶⁹ See Annex 4 for further details and justification

⁷⁰The EGTC is a European legal instrument designed to facilitate and promote cross-border, transnational and interregional cooperation.

will be affected by measures taken with respect to cabotage rules and rules on stable establishments.

Level of compliance

The reported infringement detection rates are used as a proxy to estimate the trends in compliance since they represent the best available indicator. The differences in enforcement practices constitute an important limitation. Analysis of infringement (non-compliance) rates over the years 2007-2014 show large fluctuations, which are expected to continue if the regulatory and practical deficiencies in enforcement and reporting persist. Due to these fluctuations none of the models applied yielded robust statistical relationships to develop and quantify the baseline (see technical annex 8). The qualitative description of the expected developments in compliance, based on the assumed evolution of the problem drivers and root causes, suggests that:

Unintentional infringements will decrease over time, as drivers/operators become more used to the rules and the ways they are interpreted and enforced in various Member States; IT software solutions to ensure driver's compliance will penetrate the fleet more; in the longer term, enforcement practices are expected to converge due to the forthcoming establishment of the EU common curriculum for obligatory initial and continuous training of enforcers. However, certain disparities in national interpretations and enforcements practices will persist and hence this type of infringements will not be completely eliminated.

Intentional infringements seems likely to be affected by two opposing trends. Cooperation between Member States will, on the one hand, lead to a gradual improvement over time. In particular, continued sharing of best practices in cross-border concerted checks and via voluntary membership in organisations such as ECR and slight improvements in connection via ERRU/TACHONET; voluntary uptake of TRACE (Transport Regulators Align Control Enforcement) and CLOSER (Combined Learning Objectives for Safer European Roads) training curriculum; increasing penetration of 'smart' digital tachographs into the fleet and increasing use of 'smart' control tools⁷¹ by enforcers (external variable) which should render controls more targeted and more effective. However, intentional non-compliance seems likely to continue due to: cost-based incentives for circumventing the rules, where risks of being detected and fined (in countries with weaker enforcement) are lower than the perceived benefits from non-compliance; practical difficulties to comply with rules that are unfit for the specific operations; the emergence of increasingly sophisticated techniques of manipulation of tachographs; and insufficient exchange of information between Member States on controls and infringements.

The social provisions infringed most often will tend to remain the same (see section 1.3.1), with infringements on rest periods and on breaks being most frequent, followed by infringements on driving times and records. The infringements of manipulation of tachographs will, in longer term, decrease as a result of deployment of more tamper proof 'smart' digital tachograph and more advanced digital enforcement techniques.

Regulatory costs and savings

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

⁷¹ Remote Early Detection Communication Reader

In the short term, the administrative and enforcement costs for Member States seems likely to remain unchanged. In the mid-term some increases in enforcement costs will occur due to gradual digitalisation of the enforcement system requiring to equip controller with 'smart' control tools (REDCR – Remote Early Detection Communication Reader) compatible with 'smart' digital tachographs and to provide them with initial and continuous training. In addition, the volume of enforcement activity is expected to increase over time due to increased road transport activity and the requirement for Member States to check a fixed percentage of 3% of all drivers' working days. This percentage is also projected to increase to 4% once 90% of vehicles are equipped with digital tachograph. According to the analysis of the data from the 2013-2014 monitoring report, the share of vehicles checked with digital tachographs was, on average, 62%. However, assuming an average replacement period of 8 years, it should be expected that the 90% threshold will be reached by 2026 in the absence of any other measure promoting the use of 'smart' digital tachographs. Subsequently, the ongoing enforcement costs will evolve in proportion to the transport growth projected in the 2016 EU Reference Scenario while also taking into account the possible increase in checks from 3% to 4%.

For businesses, costs of compliance and fulfilling administrative obligations are expected to remain the same due to largely unchanged tasks. However, in the absence of an EU solution with regard to the issue of weekly rest (in what circumstances it can be taken on board the vehicle and how it should be controlled), more national measures seem likely to be adopted, which will lead to increase in compliance and non-compliance costs for drivers and operators. At the same time, the efficiency of enforcement activities will improve in longer term due to the digitisation of enforcement system and increasing use of 'smart' digital tachographs driven by the requirements in the Tachograph Regulation. This should lead to cost savings for both authorities and businesses. These were already taken into account in the impact assessment of the Tachograph Regulation, where the administrative burdens of compliance with road social rules were already identified as a problem. The net cost impacts from the digital tachograph were estimated to be: savings of €515.5 million in administrative costs for businesses, mainly due to improved tachograph functions requiring automated recording of location using GNSS⁷²

Level of drivers stress and fatigue

One of the factors contributing to driver's stress and fatigue are long periods away from home/base without guaranteed adequate accommodation and living conditions. The current provisions on regular weekly rest are one of the contributors to persistent long periods away from home/base. Without EU intervention, the current length and frequency of periods away from home/base are likely to remain unchanged for EU-15 drivers whose working patterns will not be affected. For EU-13 drivers these periods may slightly increase in proportion to the prospective growth in transport activity. The evolution of this issue may also be positively affected by the results of the Social Dialogue negotiations between the EU Social Partners (workers' organisations and road transport employers' organisations) launched in September 2016 on the so called Social Code⁷³ in road transport. Should the Social Partners come to an agreement on the topic of regular return to home/base, this should contribute to shortening the duration and/or reducing the frequency of periods away from home/base.

Other more direct factor contributing to drivers' fatigue levels are working patterns. To calculate the extent of driver fatigue, the tool developed by the UK Health and Safety

⁷²European Commission, 2011

⁷³ The EU Social Partners (ETF and IRU) agreed to negotiate on the following topics: conditions on loading/unloading points, applicable law, access to medical assistance for drivers en route, conditions during rest, return home, language of labour contracts.

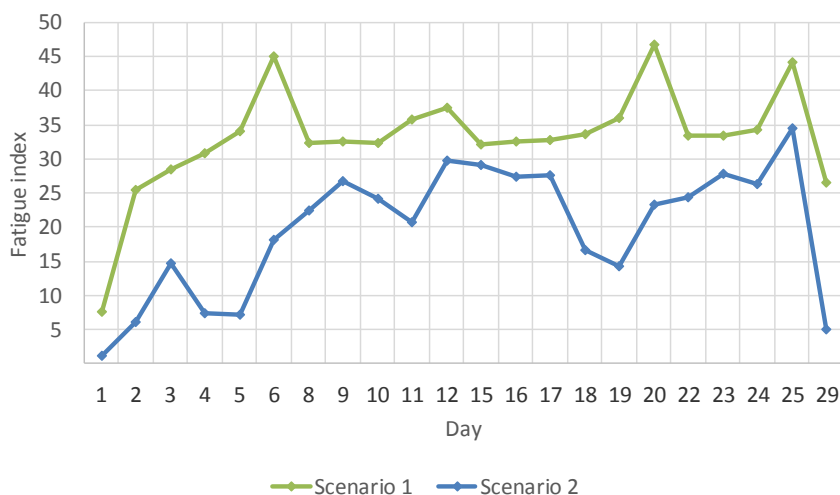
Executive (HSE)⁷⁴ was used. The tool provides two outputs: the *fatigue index*, expressed by an average probability multiplied by a high score value of 100, giving a value between 0 and 100; and the *risk index* expressed by the relative risk of an incident occurring on a particular shift. A baseline index of 1 represents the average risk. The two indices provide slightly different, complementary indicators of the impacts on fatigue and it is desirable to keep both as low as possible.

In the analysis, two theoretical scenarios were used: *Scenario 1* applies maximum legal values for working and driving times, and minimum values for daily and weekly rest, filling the remaining time with periods of availability. *Scenario 2* has no extended driving times, reduced daily rest, but the same number of working hours. For both scenarios, a maximum of 60 hours working time is achieved for every week over the time span of 4 weeks. Both scenarios account for practices which are currently allowed under the legal framework.

Figure A-4 shows the fatigue index of the two scenarios. The points given for each day reflect the fatigue index for the driving time duty period. Although fatigue indexes were also derived for other work and periods of availability, they tend to be lower than for driving time since the attention required for these periods is lower. It can be seen that Scenario 1 has a consistently higher fatigue index, due to the high periods of availability assumed in the schedule. Scenario 2 shows a significantly lower fatigue index of the 4-week reference period, as a result of longer daily and weekly rest periods, and no extended daily driving hours.

This fatigue index serves as a useful reference to analysing the changes in fatigue that could arise from the adoption of specific policy measures. Nevertheless, as a rough benchmark, a maximum daytime fatigue index of 35 is considered good practice, and of 45 for night work (or combinations of day and night work) in order to mitigate risks of causing employee fatigue.

Figure A-4: Fatigue index of 4-week shift pattern for the baseline scenarios

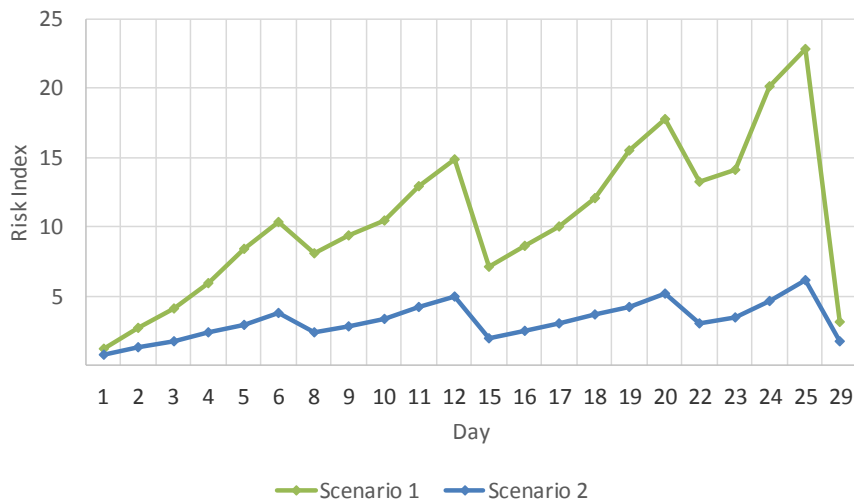


Source: HSE tool and author calculations

Figure A-5 shows the risk index for driving times for the scenarios. Again, the results indicate significantly higher risk for scenario 1 compared to scenarios 2. The baseline scenarios therefore represent very high levels of risk at peak levels.

⁷⁴ The detailed explanation on the methodology and HSE tool used is in Annex 4

Figure A-5: Risk index over 4-week shift pattern for baseline scenarios



Source: HSE tool and author calculations

In the baseline scenario, it is assumed that there are no major changes to driver schedules in future, since there are no changes to the framework of the social legislation – hence, the fatigue and risk indices will remain as calculated above.

In the longer term, the prospective Social Partners' agreement on: (i) conditions at loading/unloading points, (ii) conditions during rest, (iii) access to medical assistance for drivers *en route* and (iv) regular return to home/base may contribute to reducing the levels of stress and fatigue of drivers and hence to improving working conditions.

A.4.2 The application of the rules on posting to road transport

Given the widely applied differences in the implementation and enforcement of PWD by Member States to the road transport sector, the baseline scenario is based on the de-facto regimes⁷⁵, which reflect the way in which Member States actually currently enforce the rules on posting to the transport sector.

Level of compliance by operators

In the absence of clarification on the conditions of application PWD to some international transport operations the application of PWD will remain inefficient and based on different national measures imposing diverging administrative and control requirements on foreign operators. Hence, in baseline scenario compliance by operators with the PWD provisions is considered as compliance with the national measures transposing the Directives (PWD and Enforcement Directive) into the national legislation (including those imposing minimum wage to foreign road transport workers). Bearing in mind the high administrative and compliance costs related to the application of those national measures and the severe sanctions for non-compliance with national laws, it is expected that some foreign operators (mainly small and micro enterprises) will withdraw from activities on the national markets with such requirements and others (mainly more prosperous or bigger operators) will make an effort to fulfil the obligations imposed by 'host' countries. Yet, others will try to circumvent the national rules on posting by changing the employment contracts into 'bogus' self-employment (posting provisions do not apply to self-employed), hence affecting negatively compliance level.

⁷⁵Some of which are considered disproportional and subject to infringement cases launched by the Commission

Currently three Member States (Germany, France, Austria) have implemented and enforced national minimum wage laws (in the framework of PWD) together with numerous administrative and control requirements (in the context of the Posting Enforcement Directive) for each international transport operation (except transit) carried out by foreign operators on their territories, and counting from the very first minute of such activity, even where operations are sporadic or very short. Italy, on the other hand, applies currently the posting provisions only to cabotage operations and to temporary agency road transport workers⁷⁶. Other Member States do not enforce the PWD on foreign operators and drivers carrying out road transport services to/from/within their territories. This group includes those States who have transposed the PED⁷⁷, which provides a legal framework for enforcement of the national minimum wage laws to posted workers. However, it is assumed that other countries (in addition to 4 States mentioned above) such as those who signed recently the 'Road Alliance' demanding 'respect of fundamental social rights of drivers', namely: Belgium, Luxembourg, Denmark, Sweden and Norway, will adopt similar measures. These nine countries of the 'Road Alliance' have relatively high labour and social protection standards and they are usually the 'host' countries, due to their location and their relatively high levels of GDP/capita, for cabotage and international operations⁷⁸ carried out by operators from those states⁷⁹ with lower minimum rates of pay.

According to the analysis made by the impact assessment study for the haulage sector, the overall amount of cabotage in absolute terms (in t-km, indexed to 1 in 2012) will increase by around 30% in the period 2020-2035 if operators follow the cost structure of their 'home' country (compared to 20% increase if operators follow the cost structure of the 'receiving' country). This increase in total activity is due to projected increases in overall transport activity across the EU up to 2035⁸⁰. The expected increase in transport activities of foreign operators from low-cost countries, seen as undercutting local operators in high-cost 'host' countries, will continue to be a main incentive for 'host' Member States to impose restrictive minimum wage measures in order to dissuade those foreign operators from providing services on their territories.

Regulatory costs and savings

The regulatory costs borne by foreign operators (as estimated in section 0) carrying out activities in the territories countries with minimum wage legislation applicable to road transport would increase significantly. The costs resulting from the posting of workers arising for operators are two-fold: (i) administrative costs linked to fulfilling all administrative and control requirements and (ii) compliance costs arising from matching the driver's actual (lower) remuneration to the (higher) minimum pay rate in host country.

Figure A-6 gives an overview of the annual administrative costs by posting Member State, summing administrative costs across all hosting countries with minimum wage laws in place. The annual administrative costs are presented for the base year of 2014/15 (minimum wage laws in AT, DE, FR) and 2035 (additional minimum wage laws in BE and SE). It can be seen that administrative costs increase significantly for all posting countries between 2015 and 2035, partly due to the projected increases in activity in line with the Reference Scenario, but mostly due to the introduction of the minimum wage laws in the four extra countries.

⁷⁶The application to international transport operations is subject to further instructions from the government or the EU guidance

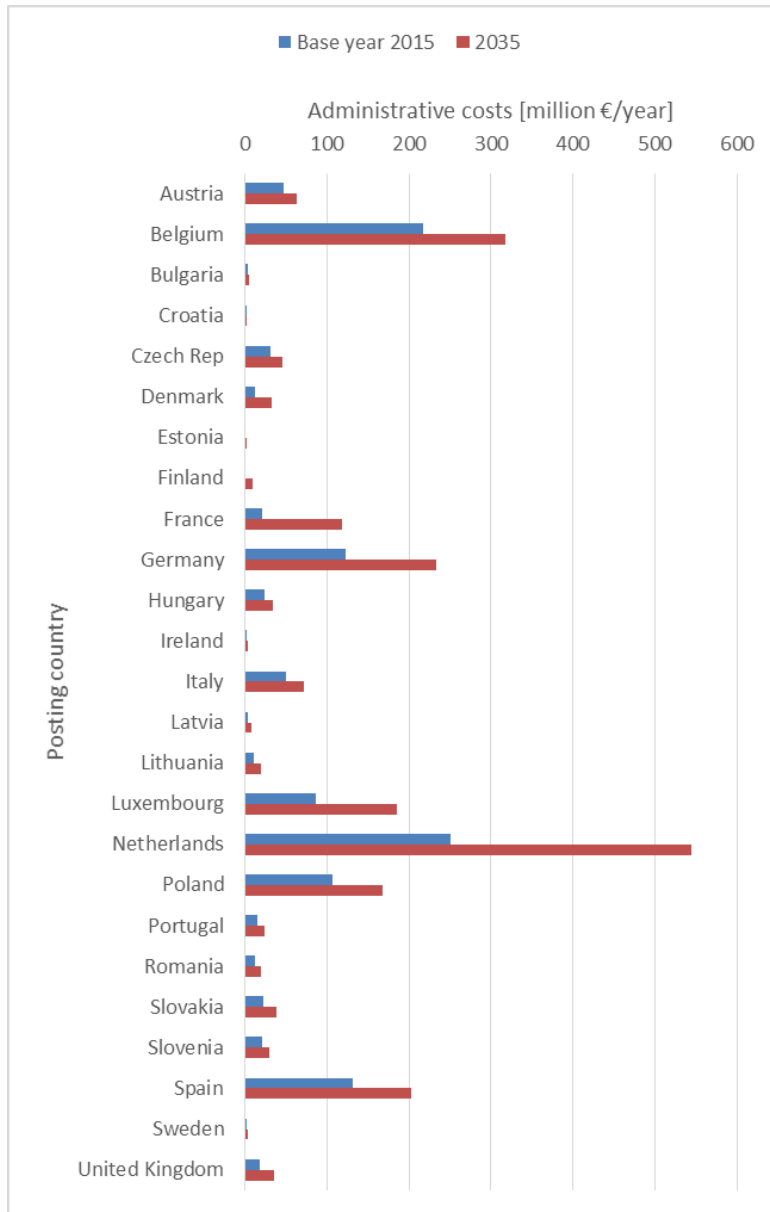
⁷⁷ 19 MS transposed Directive 2014/67/EU (BE, BG, DK, DE, EE, EL, FR, IE, IT, LV, LT, HU, MT, NL, AT, PL, SK, FI, UK) and infringements are open with 9 MS (CZ, CY, HR, PT, SI, ES, LU, RO, SE) at the level of Reasoned Opinions (15/02/2017) - state of play on 21.02.2017

⁷⁸ According to the Impact Assessment SWD for the road haulage Germany, France, Italy, UK and Sweden are the main Member States where cabotage operations take place accounting for 82% of total cabotage in EU.

⁷⁹ In 2014 around 29% of all cabotage activity was carried out by Polish operators.

⁸⁰ 2016 EU Reference Scenario, Commission, 2016a

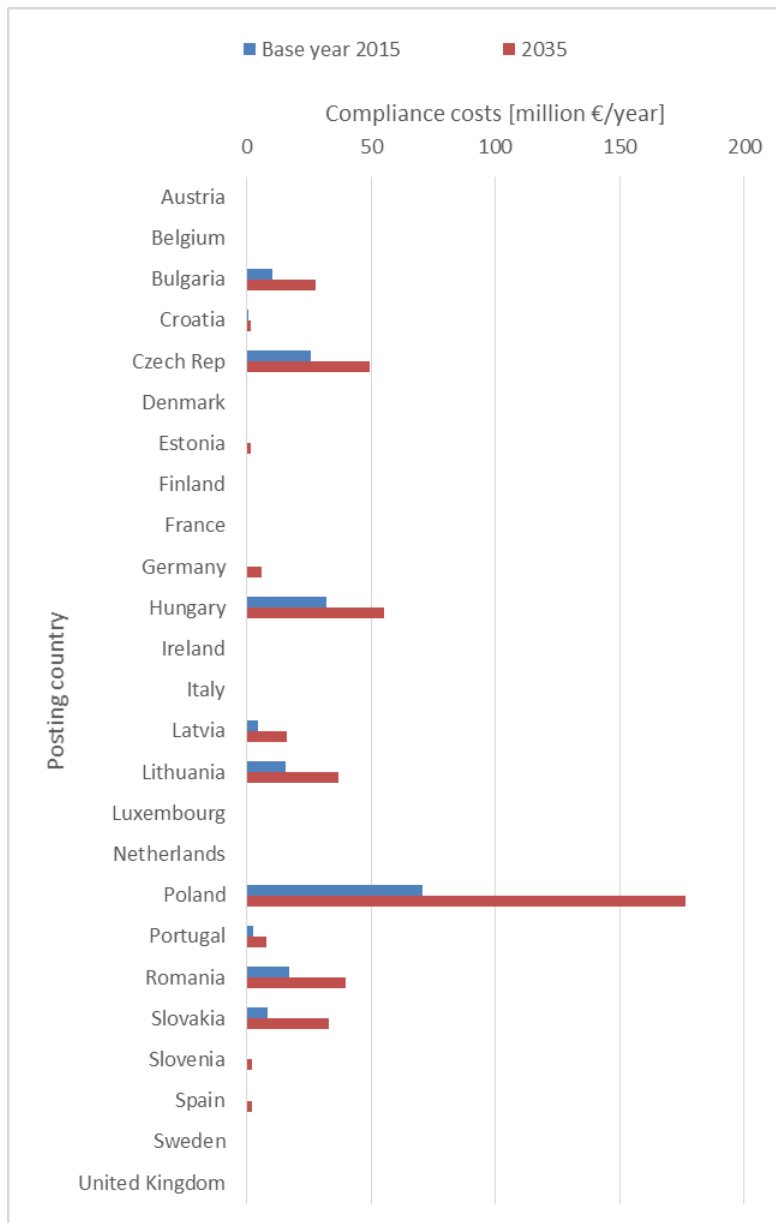
Figure A-6: Annual administrative costs by posting country summed up across all host countries that apply minimum wages in the baseline (AT, DE, FR, BE, SE)



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

The compliance costs have been calculated by comparing the actual driver's remuneration with the host countries minimum remuneration. In the cases where the actual driver's remuneration is already higher than the minimum remuneration, the compliance costs were set to zero (since no adjustments would be required). In all other cases the difference is used to calculate the annual compliance costs (in terms of adjustment to drivers' wages). Figure A-7 shows the compliance cost for each posting country for activities across all host countries. The costs increase for all posting countries due to the introduction of minimum wage laws in additional countries and the projected increase in transport activity.

Figure A-7: Annual compliance costs by posting country summed up across all host countries (AT, DE, FR, BE, DK, SE)



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

Overall, it will become difficult and burdensome to manage practicalities of applying different national labour laws (with different remunerations systems, composition of minimum wage, social entitlements, collective bargaining agreements) to international transport and its mobile staff, depending on the country to which the passengers/goods are transported. The administrative and enforcement costs for Member States applying such measures would also increase, mainly due to a need to establish notification systems, to deploy and train more staff, and in particular enforcers to carry out controls of compliance.

Level of drivers stress and fatigue

The controls carried out in the context of checking compliance by foreign drivers and operators with national minimum wage requirements are expected to contribute slightly to better detection of employment practices where drivers employed under the 'home'

country's lower labour standards work most of the time in the 'host' country with higher labour standards. This will contribute to reducing the level of driver's stress linked with inadequate employment conditions and pay rates not reflecting the real costs to which they are exposed while working in the high-cost countries. In addition, the continuing activities of the EU Social Partners in the Social Dialogue will lead to wider awareness of workers' and employers' rights and obligations with regard to applicable terms and conditions of employment in international road transport contracts.

Benefits for drivers operating on the territories of those countries would be significant only in cases of significant amount of time worked on the territory of higher-pay 'host' country. The benefit for drivers engaged in typical international operations, where the duration of presence in one country is not significant, would be minor, in particular in the context of gradually converging salaries across the EU.

In addition, the baseline concerning the implementation of the rules on posting would be affected by unknown results of the infringement procedures launched against the German and French national measures (in 2015 and 2016 respectively) and the prospective infringement against Austria⁸¹. It is expected that a judgment of the Court of Justice would not provide full legal clarity on the conditions of application of the current posting provisions to international transport operations by establishing in which cases the 'host' country terms and conditions of employment should or should not apply. If the Court confirms the interpretation of the Commission of the posting of workers directive, the Court would simply conclude that the Member States concerned have infringed EU law. It is not the role of the Court to decide which national legislation should be adopted to put an end to the infringement. Hence, the legal uncertainty for national administrations and transport operators as well as drivers with regard to applicable terms and conditions of employment to international transport contracts would persist.

Long periods away from home

As regards the long periods away from home as contributing factor to stress and fatigue level, data from the parallel study on data collection for posting (DTU, 2017) were used to inform the baseline analysis⁸². Figure A-8: Average probability of a driver spending 10 or more days in a given month in a selection of host countries in 2014/15 shows the probability of drivers from the EU-13 and EU-15 spending 10 or more days in a host country. It shows that EU-13 drivers are more likely to spend longer periods away from home in all 10 countries⁸³ for which data are available (12% of EU-13 drivers spend 10 or more days per month in a host country, compared to 7% of EU-15 drivers).

⁸¹ Pre-infringement communication launched with Austrian authorities at the end of 2016

⁸² See detailed explanation of analyses in the support study for impact assessment, Ricardo, 2017

⁸³ DTU study collected relevant data for 10 host countries: AT, BE, BG, DE, ES, FR, NL, PL, RO, SE.

Figure A-8: Average probability of a driver spending 10 or more days in a given month in a selection of host countries in 2014/15

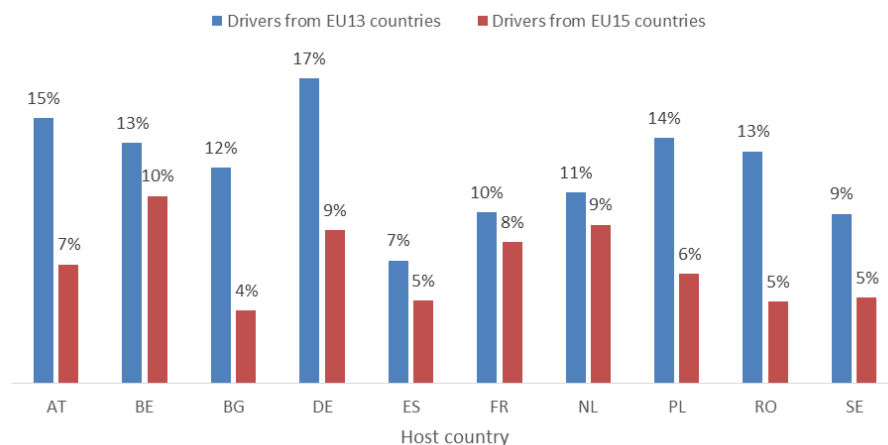
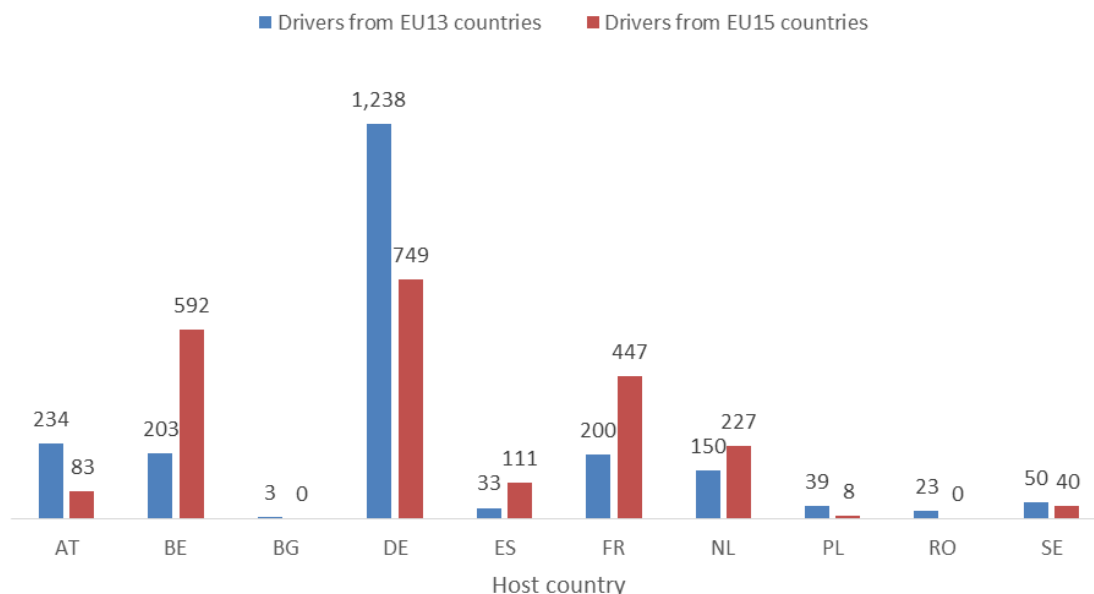


Figure A-9 shows the absolute number of trips per year where drivers spend more than 10 days in the host country. By far the largest number of trips can be observed for Germany with significantly more trips carried out by EU-13 drivers than EU-15 drivers. A high number of trips can also be observed for Belgium, France and the Netherlands. In these three countries more trips are carried out by EU-15 drivers than EU-13 drivers.

Figure A-9: Trips per year with periods away from home of 10 days or more in the base year 2014/15, split by EU-13 and EU-15 drivers [1000 trips]



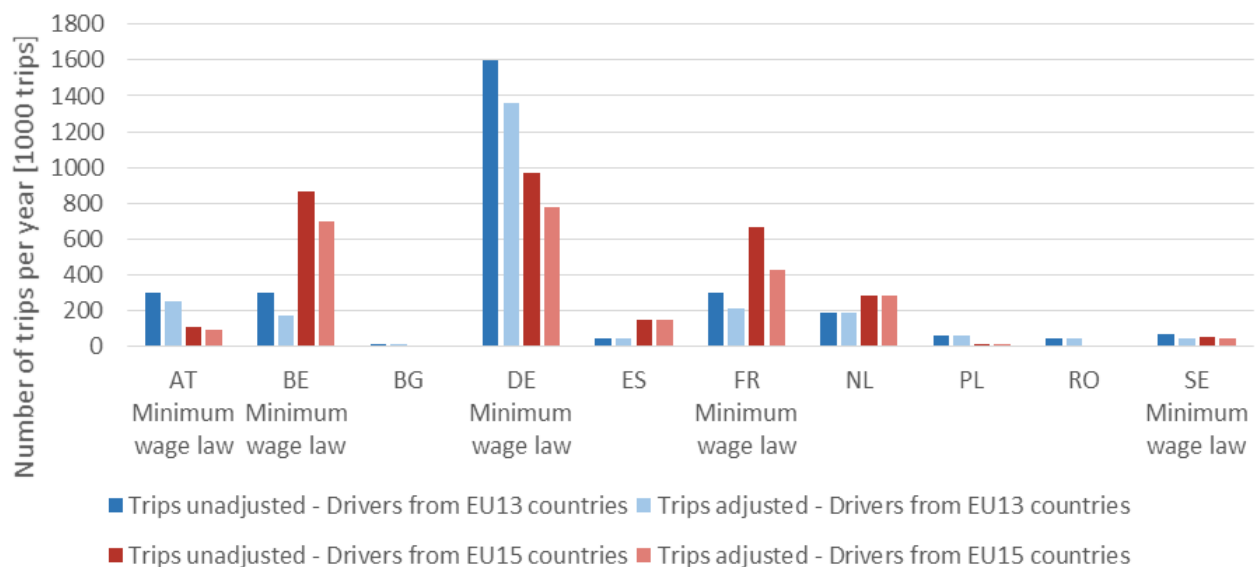
Projecting activity in the baseline is done in two steps: (1) unadjusted baseline - projecting future activity to account for developments in transport demand and (2) adjusted baseline - adjusting the baseline from step (1) to take into account the influence of additional costs of minimum wage legislation (administrative and compliance).

In the baseline, minimum wage laws are assumed to be in place currently in 4 Member States (AT, FR, DE, IT) and are assumed to be introduced in further 4 Member States (BE, DK, LU, SE). The presence of minimum wage laws is expected to lead to significant increases in costs (administrative and compliance). These cost in turn are expected to

lead to a reduction in the activity of foreign drivers compared to the unadjusted baseline (and hence a reduction in periods away from home).

Figure A-10 shows the number of trips by EU13 and EU15 drivers in the unadjusted baseline (i.e. where the impact of the introduction of minimum wage laws on activity is not taken into account) and also in the adjusted baseline (taking into account the impact of changes in cost on transport activity). It can be seen that there are significant reductions in activity for countries that apply minimum wage laws compared to the unadjusted baseline, due to the significant costs involved. Although EU-13 drivers are generally affected by additional compliance costs (i.e. adjustments to driver wages), the figures actually show higher reductions in trips for drivers from EU-15 countries (due to the higher labour costs in these countries, including for administrative staff, which leads to higher administrative costs for EU-15 drivers). There are of course no changes in the countries that do not introduce minimum wage laws; however, these tend to be those countries that have smaller numbers of foreign drivers in any case.

Figure A-10: Trips per year with periods away from home of 10 days or more in 2035, split by EU13 and EU15 drivers [1000 trips]



Source: (DTU, 2017) for baseline 2014/15, indexed to 2016 EU Reference Scenario

The calculations above showing high impact of administrative costs connected to minimum wage laws on transport activity were also supported qualitatively by a range of national stakeholders that were consulted on the impacts of national minimum wage laws. Overall, the calculations, literature and stakeholder inputs all agree that the impact of minimum wage laws will lead to significant reductions in international transport/cabotage – and hence, in periods away from home. Other possible changes to the legal framework, such as changes to Regulations 1071/2009 and 1072/2009 to reduce the level of letterbox companies and illegal cabotage may also have some, although probably more limited, impact on periods away from home.

Annex B Screening of policy options

Feasible / no problematic / in scope Unclear feasibility / Somewhat problematic Not feasible / Highly problematic / Not in scope

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
1.	Performance-based pay	Clarify rules / test procedures for performance-based payment that would endanger road safety, i.e. specify what constitutes a performance-based remuneration that endangers road safety	Not clear how the current definition of such payment systems can be clarified further.	No clear how such test procedures would be implemented	No clear how further clarification of such payment systems that endanger road safety can benefit the current social legislation.	No problem foreseen	No problem foreseen
2.	Enforcement	increasing the minimum number of concerted checks from 6 to 10 per year	No specific problem foreseen	Lack of resources may make it very difficult to implement	Considered too costly for authorities since they consistently do not meet current thresholds	Possibly not supported by many Member States in view of the fact that available resources are limited	no specific problem foreseen
3.	Enforcement	Exclude self-employed and define better the mobile worker, self-employed and false self-employed driver	Possibly improve enforcement of Working Time Directive	No problem foreseen	No major impact expected on the improved effectiveness of the social legislation.	Politically not feasible in a context with social rules high in the agenda. Already rejected	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
						twice in the past	
4.	Enforcement	Establish mandatory initial training of enforcers based on TRACE	Possibly in conflict with regulation (EU) No 165/2014	No scope for social rules to regulate training of enforcers when it is already addressed by tachograph rules.	No problem foreseen	No problem foreseen	No problem foreseen
5.	Enforcement	Standardising the format of information exchange regarding detected infringements filed against an undertaking of another Member State	Possible conflict with standardisation system implemented by ERRU.	No need to introduce an additional standardisation system already regulated by ERRU	No problem foreseen	No problem foreseen	No problem foreseen
6.	Enforcement	Increase the number of joint trainings (if there is no mandatory harmonised training) to 2 or 4 per year	Out of scope of this legal revision. Training of enforcers is already addressed by Regulation (EU) No 165/2014	Possible issues of practical implementation	No problem foreseen	No problem foreseen	No problem foreseen
7.	Clarification	Incorporate most relevant provisions of the Working Time Directive 2002/15/EC into Regulation 561/2006/EC	Issues of coherence between Regulation 561/2006 and Directive 2002/15/EC may arise	Would require a very broad revision and may be complicated	Possibly help simplify and clarify rules - However no significant impact	No problem foreseen	Could be seen as disproportionate since it will require a broad revision
8.	Clarification	Retain separate legislation, but ensure coherence by clarifying the scope and legal terms to be consistent	No problem foreseen	No problem foreseen	No considered having a significant impact and would require significant change to legal framework and costs	No problem foreseen	Could be seen as disproportionate since it will require a broad revision
9.	Clarification	Merge Article 3 and 13	Not feasible as the	No problem	No expected impact	No problem	Could be seen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		of Reg. 561/2006 to make it easier to identify exemptions to the Regulation applicable in different MS	revision of derogation/exceptions is out of scope of the revision of social rules.	foreseen	on the effectiveness of the social rules; significant costs for any changes for limited impact	foreseen	as disproportionate since it will require a broad revision
10.	Posting of Workers	Exempt road transport from the PWD.	Possibly against treaty obligations	No problem foreseen	Against the objectives of the initiative of combating unfair business and employment practices MS will still be able to introduce own requirements on minimum wage unless explicitly forbidden	No support from a number of Member States	No problem foreseen
11.	Tachograph	earlier introduction of smart tachographs	No in scope of this Regulation and as is addressed in the Tachograph Regulation.	No problem foreseen	No problem foreseen	May not be supported by all Member States, but demanded by several stakeholders and some Member States. Commission would need to assess the impact and costs first in a dedicated study.	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
12.	Sanctions	Adoption of common classification of infringements not related to safety	No problem foreseen	No problem foreseen	No added value since it will be to be done via revision of Regulation 1071	No problem foreseen	No problem foreseen
13.	Sanctions	Adoption of common level of penalties	May require significant changes to national legislation	No problems foreseen	More certainty for hauliers and more consistent framework to dissuade infringement of the rules	Some opposition could be expected from MS that wish to retain their existing classification	May be considered disproportionate and infringe subsidiarity
14.	Scope	LCVs fully/partly covered or excluded from legislation	No problems foreseen	Possible issues of practical implementation	Possible rise in compliance costs which may not be beneficial for operators.	No support from a number of Member States	Too little evidence to justify a scope in the social legislation for LGVs see more in Annex 6
15.	Clarification	clarifications of applying existing rules in certain situations 1. Creation of an online platform where Member States can post information relating to applicable national rules, legal interpretations, national enforcement practices, documentation and any other requirements.	No problem foreseen	No problem foreseen	No need for legal action for such aspects - Costs of revision disproportionate to benefits	No problem foreseen	Action at EU may be considered disproportionate

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		<p>2. Clarification of the following concepts: - digital tachograph rules, - weekly rest in the cabin, - recording other work, - recording periods away from vehicle, - availability periods, - ferry rule.</p> <p>3. The calculation of frequent breaks, - extended daily driving times (and the question if an extended daily driving falls in two weeks, for which week this extended daily driving should be accounted), - situation in the first hour of driving in the case of multi-manning, - the definition of journey.</p> <p>4. Clearer differentiation of infringements.</p>					
16.	Suitable stopping space	Allow drivers to inform enforcement officers orally at the beginning of a roadside check in case they are currently 'in search' for a suitable stopping place and could not make any indications on the print out/ record sheet yet.	No legal certainty	Possible issues of practical implementation	Does not address an important issue - overall effectiveness is expected to be limited	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
17.	Weekly rest	<p>A driver engaged in international goods transport operation could postpone his weekly rest period up to nine periods of 24 hours after the end of the previous weekly rest period, provided that:</p> <ul style="list-style-type: none"> <input type="checkbox"/> International transport operations should include at least 24 consecutive hours in a Member State that is not the country where the undertaking is established. <input type="checkbox"/> Once the exception granted, the driver should take a regular weekly rest period within the Member State where the undertaking is established. <p>c) The regular weekly rest period provided in paragraph b) should be increased by one hour for each period of three hours (or fraction) exceeded by the driver in the six 24hour period after the end of the previous weekly rest</p>	No problem foreseen	Expected to be complex to implement/monitor	Negative in terms of protecting working conditions and road safety	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		period.					
18.	Weekly rest	<p>A driver engaged in an occasional service of carriage of passengers may postpone the weekly rest period for up to 12 consecutive 24-hour periods following a previous regular weekly rest period, provided that:</p> <ul style="list-style-type: none"> the driver takes after the use of the derogation at least one regular weekly rest period. However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the thirteenth week following the end of the derogation period; the vehicle is equipped with recording equipment in accordance with the requirements of Annex IC to Regulation (EEC) No 165/2014 ; <p>The first hour of the</p>	Out of scope of the revision of the social rules	Difficult to check on the road since it includes reference period of over 4 weeks	Limited impact on improving effectiveness of social rules.	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		first day and the last hour of the last day in the journey it is allowed that only one driver is on board. This shall be understood as a double manned transport anyhow.					
19.	Weekly rest	A driver engaged in an occasional service of carriage of passengers (or occasional coach tour service) may derogate from the weekly rest provision in the case of the 12 day derogation provided that s/he does not work for more than 12 consecutive daily driving periods between weekly rests and takes a full weekly rest immediately before and after making use of the 12-day derogation. The 12-day derogation is extended to domestic coach tour services with a duration of more than six days. This extension is accompanied by the abolition of the single trip limitation.	Out of scope of the revision of the social rules	Difficult to check on the road since it includes reference period of over 4 weeks	Limited impact on improving effectiveness of social rules.	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
20.	Weekly rest	Driver engaged in a single occasional service of international carriage of passengers may postpone the weekly rest period for up to 12 consecutive days following a previous regular weekly rest period, provided that: (a) a single occasional service of transport is provided; (b) after the single service, the driver takes one calendar day off; (c) after 60 calendar days, the driver shall take a rest of at least 7 calendar days. The driver shall take this rest at the address of normal residence.	No problem foreseen	Difficult to check at roadside	Limited impact on improving effectiveness of social rules.	No problem foreseen	No problem foreseen
21.	Daily rest / driving times	By way of derogation, in case of a driver engaged in an occasional service of carriage of passengers reduced daily rest period means any period of rest of at least 8 hours but less than 11 hours	No problem foreseen	No problem foreseen	Reducing daily rest to 8 hours would not improve the overall effectiveness of the social rules	Probably not acceptable from some stakeholders	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
22.	Daily rest / driving times	Allow greater flexibility of the rest period, including taking the bigger break first, or three smaller breaks.	No problem foreseen	Difficult to enforce	Alternative proposal for more flexibility in taking breaks considered more effective (e.g. a break of minimum 45 min may be split into utmost 3 parts, each of minimum 15 minutes)	No problem foreseen	No problem foreseen
23.	Daily rest / driving times	Clarify that after a daily rest a new daily driving time starts, even if the period of 24 hours hasn't been reached. (For example: when you have reached your daily rest after 20 hours, you can start a new driving time).	Out of scope of the revision of the social rules - already addressed by guidelines	No problem foreseen	No problem foreseen	No problem foreseen	No problem foreseen
24.	Breaks / driving time	For passenger transport: Define total period for considering driving/break time on an annual basis to allow to balance periods of high demand with low demand	No problem foreseen	No problem foreseen	Not effective in terms of protecting road safety/driver's fatigue which is a daily concern and cannot be averaged over the period of 1 year.	Probably not acceptable from some stakeholders	Potentially disproportionate - providing too much flexibility for the issue under consideration
25.	Breaks / driving time	Single definition of daily driving time to 10 hours (without exceptions)	No problem foreseen	No problem foreseen	Possibly help simplify rules - However against safety/working condition objectives	Probably not acceptable from some stakeholders	No problem foreseen
26.	Multi-manning	3 hours available at	No problem foreseen	No problem	Endangers road	Probably	No problem

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		either end of the journey where multi-manning is not compulsory.		foreseen	safety too much at the end of the trip	not acceptable from some stakeholders	foreseen
27.	Multi-manning	2 hours available at either end of the journey where multi-manning is not compulsory.	No problem foreseen	No problem foreseen	Endangers road safety too much at the end of the trip	Probably not acceptable from some stakeholders	No problem foreseen
28.	Clarification	Codification of issues dealt with by the EC guidance and clarification notes in legislation	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
29.	Enforcement / Clarification	With regard to the provisions concerning checks of 28 days and the current day, a clarification could be to make it clear in 2006/22 that the enforcement officer has to check that the driver has all the data with them, but can decide themselves how many of these days are to be checked at each check.	No problem foreseen	No problem foreseen	No problem foreseen	Probably not acceptable from some stakeholders	No problem foreseen
30.	Scope / Derogation	Daily and weekly rest exemptions/derogations for delivery of domestic heating fuel	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
31.	Enforcement	Mandatory training on	Not in scope of	No problem	Covered in other	Support is	No problem

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		social legislation for drivers, intermediaries and transport managers	legislation	foreseen	legislation - limited contribution - possibly costly	unclear	foreseen
32.	Enforcement	Bring forward GNSS by making it mandatory	Possible conflict with tachograph regulation	No problem foreseen	Significant additional costs to hauliers	Already discarded in the tachograph regulation IA	Could be seen as disproportionate
33.	Rest/Breaks / Derogation	Greater flexibility for combined transport specifically	No problem foreseen	Possibly difficult to enforce	Maybe costly to enforce separately	May not be supported by some stakeholders	No problem foreseen
34.	PwD	Criteria for posting situation in road transport has to separate international transportation (going to deliver/take cargo) from posting a driver to work as a driver to another company established in another Member State.	No problem foreseen	Possible difficulties to separate activities	May reduce effectiveness of measure	Not acceptable to exclude certain types of international transport	No problem foreseen
35.	Enforcement	Introduction of training provisions for enforcement officers, similar to those in Regulation (EC) No 165/2014	No problem foreseen	No problem foreseen	Covered in other measure related to training	No problem foreseen	No problem foreseen
36.	Enforcement	Whistle blower report system	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
37.	Enforcement	Increase number of	No problem foreseen	No problem	Already covered in	No problem	No problem

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		checks on premises (but don't reduce number of roadside checks); Ensure increased enforcement at premises (also for scheduled / line bus trips)		foreseen	other measures	foreseen	foreseen
38.	Enforcement	Company visits must be made through physical visits to at least 25% of all businesses controls	No problem foreseen	No problem foreseen	Too costly	National authorities will probably not support it	Probably excessive - it is up to authorities to establish appropriate level
39.	Enforcement	Adapt list of most serious infringements to include infringements to payment regimes	No problem foreseen	No problem foreseen	Covered in other legislation	No problem foreseen	No problem foreseen
40.	Enforcement / Attestations	Make Clarification note 7 (on forms of attestations) binding	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
41.	Enforcement / Attestations	Abolish the form of attestation for occasional international traffic	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
42.	Attestation forms	Abolish attestation forms only when/if all LCVs are required to be equipped with a digital tachograph	No problem foreseen	No problem foreseen	Limited effectiveness since it is only relevant for Germany	No problem foreseen	No problem foreseen
43.	Recording of activities	Allow for 'break room' tacho to facilitate/avoid	No problem foreseen	No problem foreseen	Already covered in other measure	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		retrospective recording of activities and/or make driver card compatible with other working time systems			(abolishing attestation forms)		
44.	Recording of activities	Simplify recording activities for companies that only rarely fall into the scope of the Regulation --> e.g. drivers that only carry out in-scope activities for 10-20 times a year could register those on an official form that the company has obtained beforehand and that is valid for a certain number of trips	No problem foreseen	No problem foreseen	Already covered in other measure (abolishing attestation forms)	No problem foreseen	No problem foreseen
45.	Recording of activities	Reduce requirements on retrospective recording	No problem foreseen	No problem foreseen	Already covered in other measure (abolishing attestation forms)	No problem foreseen	No problem foreseen
46.	PoA / Recording of activities	Abolish the term availability as it is now obsolete.; Don't make a distinction between 'other work' and 'periods of availability' to ease retrospective recording	No problem foreseen	Practical issues since availability periods are remunerated different in different MS	Limited effectiveness since problem limited to few Member States	May not be supported by trade unions	Disproportionate since problem is not EU wide
47.	Breaks	Allow the split of breaks into 3x15min from the second block of driving time	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		in a 24h period onwards;					
48.	Daily rest	Change the rest time to 10 hours with two breaks of 30 minutes that we can put where we want within the 10 hours so we can adapt to the customer's needs without limiting rest time	No problem foreseen	Possibly difficult to control	Possible negative impact on road safety	Probably not acceptable from some stakeholders	No problem foreseen
49.	Scope / Derogations	Change the definition of scheduled bus services to a radius of 100km	No problem foreseen	No problem foreseen	Limited effectiveness since problem limited to few Member States	Not expected to be supported	Disproportionate since problem is not EU wide
50.	Scope / Derogations	Derogation/Exemption for national occasional transport for 50km radius around base	No problem foreseen	Possibly difficult to control	Limited effectiveness since problem limited to few Member States	Not expected to be supported	Disproportionate since problem is not EU wide
51.	Scope / Derogations	Exclusion of transport of concrete over small distances	No problem foreseen	Possibly difficult to control	Limited effectiveness since problem limited to few Member States	Not expected to be supported	Disproportionate since problem is not EU wide
52.	Scope / Derogations	Exclude craftsmen from scope of legislation	Legal since Regulation's scope is on the basis of the vehicle not the driver	Possibly difficult to implement/control	Costly to implement with limited impact	Not expected to be supported	No problem foreseen
53.	Scope / Derogation	Introduce a derogation for those who move vehicles within a radius of 50 km for the purposes of repair, maintenance, inspection, etc. when	No problem foreseen	Possibly difficult to control	Costly to implement with limited impact	Not expected to be supported	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		the driver's main job is not performing road transport operations.					
54.	Scope / Derogations	Increase radius for derogations/exceptions from 100 to 150km;	No problem foreseen	Possibly difficult to control	Costly to implement with limited impact	Not expected to be supported	No problem foreseen
55.	Coherence across MS	Avoid/Don't allow for any national-level differences/specifications of the rules	No problem foreseen	Possibly difficult to control	Already covered in other measures	Not expected to be supported	No problem foreseen
56.	Weekly rest / away from home	Fix a maximum period spent outside the home	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
57.	Weekly rest / 12 day derogation	Abolish the 24h requirement of being abroad for the 12-day rule; Apply 12-day rule to domestic operations	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
58.	Weekly rest / 12 day derogation	Abolish compensation for reduced weekly rest periods and review the possibility of introducing the 12-day rule domestically and also for the carriage of goods	Extension of 12 days derogation to freight transport is out of scope of the revision of the social legislation	No problem foreseen	Limited impact on improving effectiveness of social rules.	No problem foreseen	No problem foreseen
59.	Weekly rest	Weekly rest in bus no problem	No problem foreseen	No problem foreseen	Introducing different rest requirement will not increase effectiveness/efficiency	Probably not acceptable from some stakeholders	No problem foreseen
60.	Weekly rest	Ensure that there are	Not in scope of	No problem	No problem foreseen	No problem	No problem

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		sufficient/high quality rest places and trucks are sufficiently equipped to spend night in the vehicle	social leg.	foreseen		foreseen	foreseen
61.	Liability	Hold organisers of trips liable, not only drivers and the undertakings;	Requires changes to internal market legislation	No problem foreseen	No problem foreseen	Interference with MS-level competence	Interferes with national competence
		Extend the access to profession criteria to all actors in the supply chain would improve the co-liability with regard to infringements of rules. Shippers and freight forwarders' roles should be included.	Not in scope of social leg.	No problem foreseen	No problem foreseen	Interference with MS-level competence	No problem foreseen
62.	Software	Harmonise software - i.e. certify companies that supply equipment/software (replacing equipment at company/enforcement level would be too costly now)	Not in scope of social leg.	Possibly complicated	Possible impact on increase of enforcement cost	No problem foreseen	No problem foreseen
63.	Other	Allow self-employment also in passenger transport segment	No problem foreseen	No problem foreseen	Limited effectiveness since it is not EU wide problem	No problem foreseen	May be considered disproportionate given that it not EU wide issue
64.	Scope /	Extend the scope of the	No problem foreseen	Possibly difficult	No problem foreseen	Not	No problem

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
	derogations	existing Article 13.1(d): all delivery operators shall be considered exempted from Regulation 561/2006/EC if they operate vehicles below 7.5t, stay within a 100 km radius with their vehicle and the driver's main activity does not constitute driving.		to control		expected to be supported	foreseen
65.	Scope / derogations	Individual exceptions for member states according to Art. 13 Reg.(EC) 561/2006 should be limited to exceptional circumstances only.	No problem foreseen	No problem foreseen	Limited effectiveness since it is not EU wide problem	Not expected to be supported	Disproportionate since problem is not EU wide
66.	Enforcement	There should be a general tolerance for all time limits of 15 min.	No problem foreseen	Possibly difficult to control	Danger that tolerance limits will become a rule	No problem foreseen	No problem foreseen
67.	Breaks	Driving breaks (Art. 7 Reg.(EC) 561/2006): even more flexibility needed (e.g. splitting into parts of at least 10 minutes; it should be allowed that breaks may be executed within a period of 9 hours instead of 4.5 hours)	No problem foreseen	No problem foreseen	No effectiveness as already covered	No problem foreseen	No problem foreseen
68.	Suitable stopping place	Suitable stopping place (Art 12 Reg.(EC) 561/2006): clarification	Not in line with social rules regarding road	No problem foreseen	Possibly against road safety objectives	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		that for passenger transports at the end of each day the suitable stopping place is the final destination of that day.	safety				
69.	Weekly rest	Weekend breaks (Art. 4 lit. h Reg.(EC) 561/2006): clarification that the reduced weekly rest period may be compensated within 4 weeks.	No problem foreseen	No problem foreseen	No effectiveness as already covered in weekly rest proposal	No problem foreseen	No problem foreseen
70.	Enforcement / Penalties / Tolerance	No penalty shall be meted out for infringements that have taken place as a consequence of unexpected occurrences that resulted in disruptions and delays. It is not reasonable to apply penalty if the company can provide a reasonable explanation for the infringement.	Potential conflict with national legislation	Possibly complicated	No problem foreseen	Interference with MS-level competence	May be considered disproportionate and infringe subsidiarity
71.	Enforcement / Penalties / Tolerance	No penalty shall be made for short movements of buses without a card inserted in the tachograph, e.g. in connection with washing and cleaning or marshalling of the	Potential conflict with national legislation	Possibly complicated	No problem foreseen	Interference with MS-level competence	May be considered disproportionate and infringe subsidiarity

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		vehicles.					
72.	Enforcement / Penalties / Tolerance	The penalty for omission on the part of the driver to register the start and destination country should be made less severe.	Potential conflict with national legislation	Possibly complicated	No problem foreseen	Interference with MS-level competence	May be considered disproportionate and infringe subsidiarity
73.	Weekly rest	Prolong reference periods for the compensation of weekly rest period	No problem foreseen	No problem foreseen	No effectiveness as already covered	No problem foreseen	No problem foreseen
74.	Clarification	Provide clarification that duplicate punishment for one and the same violation is forbidden	No problem foreseen	No problem foreseen	No effectiveness as already covered	No problem foreseen	No problem foreseen
75.	Clarification	Clarification as to what applies when a vehicle is moved by car ferry or stevedore personnel within a harbour area (i.e. not by the driver, but by other personnel <input type="checkbox"/> the tachograph still registers these movements)	No problem foreseen	No problem foreseen	No problem foreseen	No problem foreseen	Not considered significant issue to require regulatory intervention
76.	Enforcement	Require a national inspection authority to conduct a survey before a penalty is imposed (a 'priority 1 measure' for them)	potential conflict with national legislation	Possibly complicated	No problem foreseen	Interference with MS-level competence	May be considered disproportionate and infringe subsidiarity
77.	Enforcement	EC Regulations should be developed and	No problem foreseen	No problem foreseen	No effectiveness as already covered	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		clarified with respect to proportionality of fines, to avoid non-proportionate sanctioning					
78.	WTD	Working time rules that are not in contradiction with driving time's breaks and rest periods should be integrated into Regulation (EC) n°561/2006; those in contradiction and that are not useful should not be kept.	No problem foreseen	No problem foreseen	No effectiveness as already covered	No support for such measures in earlier rounds	No problem foreseen
79.	Multi-manning / breaks / availability	The definition of availability should be changed to indicate that the concept only exists in relation to a second driver (multi-manning). In case of multi-manning, availability would then be considered as a break.	No problem foreseen	Practical issues since availability periods are remunerated different in different MS	Covered by another measure	May not be supported by trade unions	No problem foreseen
80.	Recording of activities (retrospectively) / form of attestation	Article 34 (5. point (iv) of Regulation (EC) 165/2016, the reference to "breaks or rests" should be changed to "breaks or daily rests" because the tachograph should only be used for days when	Not in scope of the revision of the social legislation as addressed already by guidelines.	Possibly complicated	Expected to be more cost-effectively addressed through guidelines	No problem foreseen	Not considered significant issue to require regulatory intervention

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		driving is performed. This would be in line with Article 15 point 3 (d) of Regulation (EC) 3821: 'breaks and daily rest'.					
81.	Other Work	Delete reference to the Working Time Directive in the definition of other work of Regulation (EC) 561/2006 and include a reference to situations in which the driver is engaged for the purpose of being able to operate as a driver (such as a training - i.e. on the request of the driver's employer or not).	The proposed measure remains unclear to the Commission.				
82.	Multi manning	Availability in multi-manning should be considered as a break	It would not reflect the social rules provisions on occupational health and safety	It may be difficult to enforce	It would not reflect the social rules provisions on occupational health and safety	May not be seen acceptable by trade unions	No problem foreseen
83.	Ferry crossings	Everything under one hour on board a ferry should be considered part of a break. Anything over one hour on board a ferry can be a part of an interrupted daily rest.	Out of scope of the revision of the social legislation	No problem foreseen	Limited impact on improving the effectiveness of social rules	No problem foreseen.	Not consider significant issue to require regulatory intervention
84.	Unforeseen	Further flexibility	No problem foreseen	It may be difficult	Limited effectiveness	No problem	No problem

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
	circumstances	should also be provided in situations of unforeseen delays, as long as this did not compromise safety. Greater flexibility to ensure drivers can complete the journey, by diminishing limits, such as the ability to drive for no more than 15 further miles or 30 further minutes where it can be demonstrated that an unforeseen event had caused the driver to "run out of hours".		to enforce	since already covered in Article 12 / Rather to include in enforcement guidelines	foreseen	foreseen
85.	Unforeseen circumstances	Improve article 14, by clarifying what the term 'unforeseeable circumstances' means and can include. By clarifying the current Regulation, drivers that, for example are stuck in traffic, could claim the time spent in traffic as 'break' or 'emergency', and therefore allow for some flexibility on their working schedule.	No problem foreseen	No problem foreseen	Limited effectiveness since already covered in Article 12 / Rather to include in enforcement guidelines	No problem foreseen	Not considered significant issue to require regulatory intervention at EU level
86.	Precision to possible expansion to	<3.5 tonnes vehicles should be included but should not have to	It is out of scope of the revision of the social legislation	It may be difficult to enforce	Limited impact on improving the effectiveness of social	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
	LCVs	comply to the same rules as bigger vehicles. For example, instead of asking all <3.5 vehicles to install and use a tachograph, which would be quite demanding, especially for small operators (SMEs), these vehicles could for example use the log book.			rules according to OPC results it is not a major issues across MS		
87.	Enforcement	Set concrete minimum requirements and specific thresholds for the MSs to follow and cooperate. For example, more specific requirements should be introduced on the use of ERRU among the MSs states to improve cooperation and exchange of information.	No problem foreseen	No problem foreseen	Limited effectiveness since already covered in another policy measure.	No problem foreseen	No problem foreseen

Annex C Analysis of interactions with social measures

C.1 Analysis of interactions with social measures

Table C-1 Interactions between Haulage and Social IA measures

Haulage IA measures	Relevant measures in social IA	Design interactions	Effectiveness / benefit interactions	Cost interactions
Promote common training of enforcement officers and a common EU training curriculum (voluntary/mandatory)	N/A	N/A	N/A	N/A
Introduce cross-border joints controls (voluntary/mandatory)	N/A	N/A	N/A	N/A
Introduce a minimum number of checks of compliance with the cabotage provisions	N/A	N/A	N/A	N/A
Set further minimum common requirements for the administrative procedure to assess good repute and rehabilitation procedure.	N/A	N/A	N/A	N/A
Encourage wider participation in voluntary initiatives	N/A	N/A	N/A	N/A
Opening up of the national risk-rating systems to other Member States to promote exchange of information on high-risk companies and to target checks	N/A	N/A	N/A	N/A
Facilitate cross-border checks on establishment provisions, by introducing a maximum time period for replies to questions regarding establishment (along with a procedure for escalation if these timescales are not met).	Enhance administrative cooperation of national control authorities by introducing a requirement to respond to requests of one MS within a certain time period: (a) 2 working days in urgent cases (e.g. in case of very serious infringements	Requirements / escalation procedure should be similar for both pieces of legislation.	Not significant. Potential for minor improvements (e.g. better compliance with required response times) due to increased familiarity with requirements across multiple legislative	Not significant

	(b) 25 working days in non-urgent cases unless a shorter time limit is mutually agreed		areas	
Adopt common classification of undertakings (green amber, red label used to indicate increasing level of risk of non-compliance and be linked to more/less frequent inspections)	Establish the EU uniform formula for calculating risk rating, which would also include the results of so called "clean" checks (no infringement detected)	Requirements / timeframes should be similar for both pieces of legislation.	Yes. Risk targeting can take into account more data.	Yes. Fixed costs for any changes to the system should be incurred once and so there should be synergies if multiple changes are made at the same time.
Identify minimum common data/information to be included in risk rating systems	Establish the EU uniform formula for calculating risk rating, which would also include the results of so called "clean" checks (no infringement detected)	Requirements / timeframes should be similar for both pieces of legislation.	Yes. Risk targeting can take into account more data.	Yes. Fixed costs for any changes to the system should be incurred once and so there should be synergies if multiple changes are made at the same time.
Remove maximum number of cabotage operations (currently 3), while possibly reducing the maximum period for cabotage operations (currently 7 days).	N/A	N/A	N/A	N/A
Share best practices on how to conduct cabotage checks effectively and efficiently, in particular how to use supplementary evidence from sources other than the CMR (such as tachograph data).	N/A	N/A	N/A	N/A
Pre-notification of cabotage operations (cabotage register)	N/A	N/A	N/A	N/A
Clearly stipulate that the haulier must keep on board vehicle clear evidence of the cabotage operations as well as of the relating incoming international journey	N/A	N/A	N/A	N/A
Amend the definition of cabotage to better sustain its temporary nature by introducing a waiting	N/A	N/A	N/A	N/A

period for the vehicles engaged in cabotage activity				
Use of GNSS digital tachograph for enforcement after a certain date	At the roadside, enable the controller to establish the frequency of presence of a driver in the territory of a given Member State over a rolling period of 29 days, by obliging the driver to record in the tachograph the country code of the country where he is, each time he stops a vehicle and not only at the start and the end of his daily working period. This would prevent revising consistently the current tachograph requirements (through modification of Regulation 165/2014 on the smart tachograph).(Establishing frequency of presence of a driver in a Member State at roadside checks)	Requirements / timeframes should be compatible with both pieces of legislation	Yes. More available data to enforcers at the time of the check	Yes. Additional costs of training / equipment for enforcers can be shared between the two pieces of legislation to some extent (although not completely – e.g. some training would need to be specific).
Acceptance of electronic consignment notes by enforcers after a certain date	N/A	N/A	N/A	N/A
Allow secure record and storage (company site and Member State data base) of geo-positioning data of driver and vehicle	N/A	N/A	N/A	N/A
Include the conditions on establishment in ERRU and possibly financial standing and professional competence (currently it only includes good repute).	N/A	N/A	N/A	N/A
Extend access to ERRU to road side check officers and make mandatory the fields in ERRU relative to vehicle registration plates. Currently ERRU is only accessible to enforcement	Allow controllers to access the risk-rating system in real-time of control (both for roadside and premises checks)	Requirements / timeframes should be similar for both pieces of legislation.	Yes. More available data to enforcers at the time of the check	Yes. Possible synergies if roadside officers need additional equipment to access both systems (unknown, to be checked)

authorities through an administrative request.				with stakeholders what is needed)
Set up 'integrated operator files' where vehicle and driver are intrinsically linked to the operator as the main organiser of the transport activity and user of resources (measure proposed by ETF – similar to the one below)	Harmonize the control tools and systems used by enforcers, in particular national risk rating systems (RRS) to enable comparability of data and their exchange between Member States' enforcement authorities and software used to read and analyse data downloaded from the tachograph and driver's card.	N/A	N/A	N/A
Review reference points for effective and stable establishments, so as to ensure that the establishment in a given Member State is indeed effective and stable.	N/A	N/A	N/A	N/A
Provide a clearer definition of the relevant persons to be checked for good repute	N/A	N/A	N/A	N/A
Set more precise requirements on how a newly established enterprise can prove its financial standing.	N/A	N/A	N/A	N/A
Development of a practical guide for interpretation of EU rules, prepared for the road transport sector.	N/A	N/A	N/A	N/A
Extend scope of Regulation (EC) No 1071/2009 to cover vehicles below 3.5 t fully.	Review clause– obligation on EC to review in 5 years' time the scope of the legislation to verify whether or not it would be justified and proportionate to include drivers of LGVs (of below 3,5t), to exclude self-employed, to update derogations and exemptions	Requirements / timeframes should be compatible with both pieces of legislation	Not clear	Not clear Only relevant to the extent that enforcement is carried out at the same time / by the same organisations, which is not always the case
Extend scope of Regulation (EC) No 1071/2009 to cover vehicles below 3.5 t partially	Review clause– obligation on EC to review in 5 years' time the scope of the legislation to verify	Requirements / timeframes should be compatible with	Not clear	Not clear Only relevant to the extent that enforcement is carried

	whether or not it would be justified and proportionate to include drivers of LGVs (of below 3,5t), to exclude self-employed, to update derogations and exemptions	both pieces of legislation		out at the same time / by the same organisations, which is not always the case
Extend scope of Regulation (EC) No 1072/2009 to cover vehicles below 3.5 t fully	Review clause– obligation on EC to review in 5 years' time the scope of the legislation to verify whether or not it would be justified and proportionate to include drivers of LGVs (of below 3,5t), to exclude self-employed, to update derogations and exemptions	Requirements / timeframes should be compatible with both pieces of legislation	Not clear	Not clear Only relevant to the extent that enforcement is carried out at the same time / by the same organisations, which is not always the case
Extend scope of Regulation (EC) No 1072/2009 to cover vehicles below 3.5 t partially	Review clause– obligation on EC to review in 5 years' time the scope of the legislation to verify whether or not it would be justified and proportionate to include drivers of LGVs (of below 3,5t), to exclude self-employed, to update derogations and exemptions	Requirements / timeframes should be compatible with both pieces of legislation	Not clear	Not clear Only relevant to the extent that enforcement is carried out at the same time / by the same organisations, which is not always the case
Introduce penalties for shippers and freight forwarders, in case they knowingly commission transport services involving infringements of the Regulations (e.g. illegal cabotage operations).	N/A	Intervention should be consistent between both pieces of legislation	Not significant	Not significant
Extend the empowerment for the Commission to come forward with a classification of infringements which are not related to safety and revise annex IV of Regulation (EC) No 1071/2009 on the most serious infringements.	Include additional criteria for establishing national penalty systems to ensure that the level and type of penalties are proportionate to the level of seriousness of infringements	Intervention should be consistent between both pieces of legislation	Not significant May be some mutual reinforcement of compliance with rules overall where operators offend in multiple areas	Not significant
Introduce cabotage in the classification of serious infringements leading to the loss of	N/A	N/A	N/A	N/A

good repute				
Remove the possibility for Member States to add additional requirements for establishment.	N/A	N/A	N/A	N/A
Clarify the possibility of "groupage" transport in cabotage to ensure that multiple loadings and unloadings are possible as part of one cabotage operation	N/A	N/A	N/A	N/A
Creation of an online platform where Member States can post comprehensive information relating to applicable national rules	N/A	N/A	N/A	N/A
Clarify the treatment applicable to the transport of empty containers or pallets, to ensure that whenever the transport of these goods is itself subject to a contract, it should be considered as a transport operation in its own right.	N/A	N/A	N/A	N/A

Annex D Assessing impact on level of fatigue and road safety

D.1 Overview of the model

To calculate the extent of driver fatigue in the baseline and under the proposed policy measures, we use a tool developed by the UK Health and Safety Executive (HSE). This tool is widely used in British industry to assess the risk arising from fatigue associated with work patterns for safety critical workers. Since its initial development in 1999, the tool has been reviewed and improved, taking into account the latest literature on the effect of cumulative fatigue, shift patterns, breaks, time of day, duty duration, rest periods (both between shifts and after long shift patterns), work load and other factors on the fatigue and risk of workers. Further information on the data used to inform the indexes is available in the HSE Research Report (HSE, 2006).

The tool provides two outputs, both of which are used in this study:

- The **Fatigue Index** is calculated as follows: expressed by an average probability multiplied by a high score value of 100, giving a value between 0 and 100. The high score is equivalent to a value of eight or nine on the Karolinska Sleepiness Scale (KSS), which is a nine-point scale ranging from one (extremely alert) to nine (extremely sleepy – fighting sleep). It has been extensively validated, and high scores are known to be associated with a high frequency of micro-sleeps.
- **Risk index:** expressed by the relative risk of an incident occurring on a particular shift. A baseline index of 1 represents the average risk derived from a two-day, two-night, four-off schedule involving 12-hour shifts starting at 8am and 8pm (DDNNRRRR shift pattern). A value of two represents a doubling of the risk.

The two indices provide slightly different, complementary indicators of the impacts on fatigue and it is desirable to keep both as low as possible. In particular, the time of day of the shift has different implications – whereas both fatigue and risk will be highest on a night shift, the risk of an incident is considered higher in an afternoon compared to a morning shift; however, fatigue is higher in the morning.

Overall, both indexes are constructed of three separate components:

- **A cumulative component (C)**, determined by the work pattern preceding the shift.
- **A duty timing component (T)**, determined by the start time, length and time of day of the shift.
- **A job types and breaks component (J)**, determined by the activity (in terms of work type and attention required) and provision of breaks.

The fatigue index is calculated by:

$$FI = 100 \{1 - (1 - C)(1 - J - T)\}$$

The risk index is calculated by:

$$RI = C \times J \times T$$

The risk index has been normalised with respect to a DDNNRRRR schedule as described above.

A key limitation of these indices is that they are based on group/average data and do not take into account individual factors related to the driver (e.g. age), social factors (e.g.

lifestyle, domestic responsibilities) or specific work-related issues (e.g. exposure to chemical hazards).

D.2 Baseline

The tool calculates the fatigue index and risk index based on work schedules. For the purposes of this study a basis against which the policy measures can be compared is needed. Since there are a lot of possible variations in the way in which a driving schedule can be organised, it is not appropriate to have a single baseline; at the same time, given the flexibility in the rules it would not be constructive to attempt to compare every possible schedule.

In order to provide the best basis for comparison, a schedule was designed that met the maximum working and driving times allowed under the current rules. This represents the *maximum possible levels of fatigue and risk that could be expected under the current rules*. In practice, many drivers will have shorter working/driving times; however, the maximum levels were intended to provide a certain level of protection against excessive fatigue, and therefore this is the factor that is of most relevance for the policy comparison. That is, the **maximum levels of fatigue and risk that can be achieved in the baseline vs the policy measures indicates the level of protection offered to drivers under the social rules.**

The baseline schedule was designed to respect the framework of the EU road social rules, as shown in **Error! Reference source not found..**

Table D-1 Rules for driving, working, and rest times used for creating driving schedule.

Variables	Rules
Daily driving time	10 hrs a day with 1.5 hr break, 2 times a week (extended driving time)
	9 hrs a day with a 45-min break, all other times
Weekly driving time	Maximum 56 driving hrs a week, maximum 90 driving hrs bi-weekly
Weekly working time	Maximum 60 working hrs a week (for all 4 weeks)
Regular daily rest	Reduced 9 hrs daily rest, 3 times a week
	11 hrs regular daily rest all other times
Regular weekly rest	Reduced weekly rest of 24 hrs, compensated by 21 hrs taken within 3 weeks and attached to any rest of 9 hrs

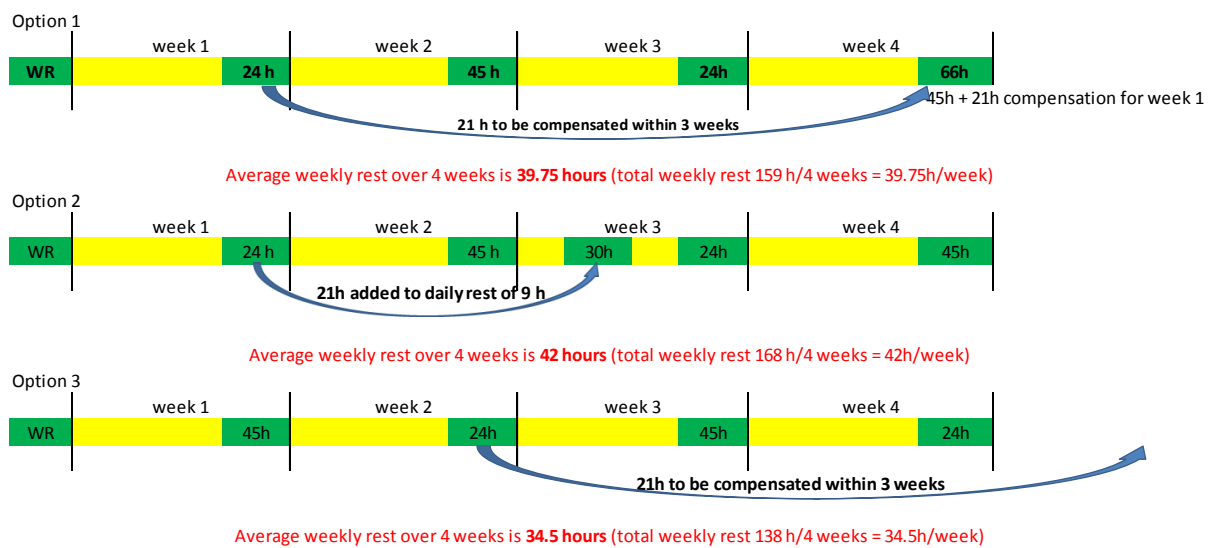
Along with the parameters above, the model requires information on job type, attention required, commuting time, and breaks. These were defined as follows (constant for all schedules):

- Commuting time – 1 hour
- Breaks:
 - Taken typically every 2.5 hours, with an average length of 30 minutes
 - The longest period of work before a break – 4.5 hours, with a longest break of 45 minutes.
- Workload parameters
 - Driving time – Extremely demanding workload, and no spare capacity (maximum setting)
 - Other work – Moderately demanding workload and little spare capacity

- Attention required
 - Driving time – Attention required all or nearly all the time (maximum setting)
 - Other work – Attention required most of the time

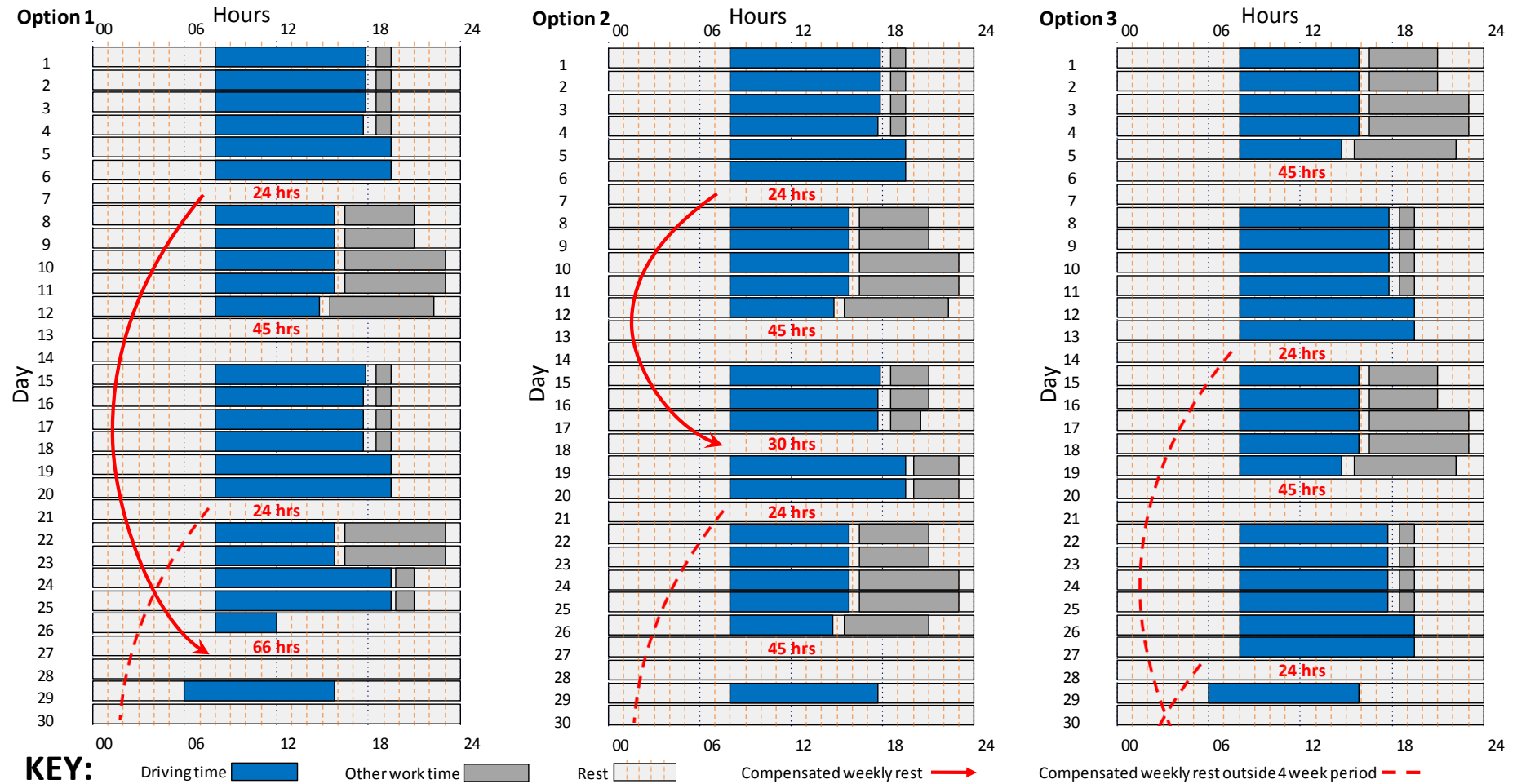
Even when consistently applying the maximum driving times and working times, there are still multiple possible configurations for taking **weekly rest** within the current rules (due to the possibility of taking reduced weekly rest that will be compensated later on). In light of this, three options for weekly rest were set in the baseline, shown in **Error! eference source not found..**

Figure D-1 Three example options for weekly rest that are possible under current rules (baseline)



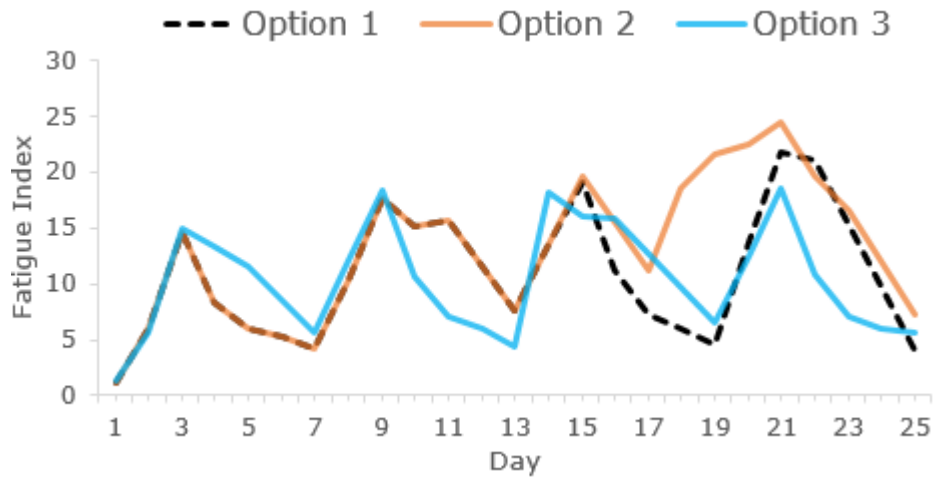
The three options outlined above were translated into driving schedules for input into the tool, as shown in Figure D-2. The compensated weekly rest periods are indicated by red arrows, with dotted red lines showing rest periods that are compensated *outside* of the 4-week reference period

Figure D-2: Baseline work schedules covering three possible options for the organisation of weekly rest



These baseline schedules give rise to the follow profiles for the fatigue index. The points given for each day reflect the fatigue index for the driving time duty period. The average fatigue index over the whole schedule for options 1, 2 and 3 respectively are: 10.6, 13.0 and 10.4.

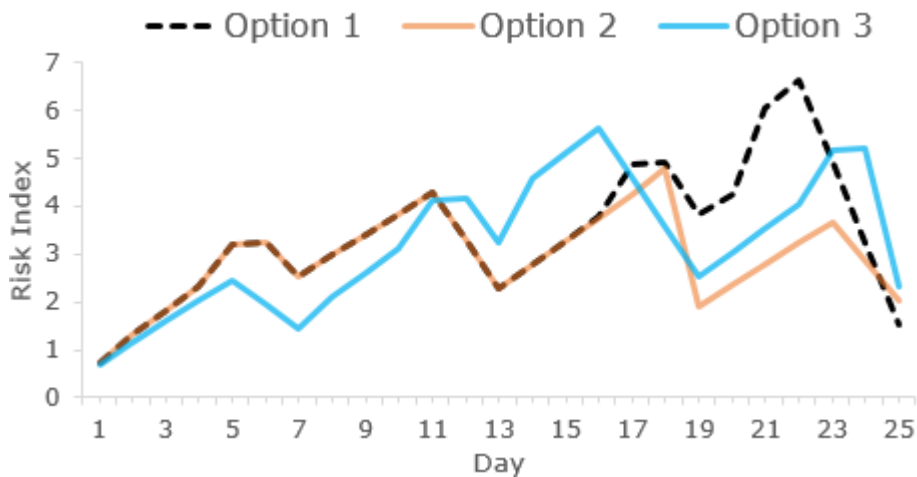
Figure D-3: Baseline fatigue indexes for three possible options for organisation of weekly rest



Source: author calculations, HSE tool (HSE, 2006)

Figure D-4 shows the baseline levels of risk under the three options. The average levels for options 1, 2 and 3 respectively are: 3.4, 2.9 and 3.2.

Figure D-4: Baseline risk index for three options for the organisation of weekly rest



Source: author calculations, HSE tool (HSE, 2006)

D.3 Approach to model proposed changes to the regulations

The analysis is conducted in relation to the following specific measures that have been proposed:

1. **Measure (1) Changes to required regular weekly rest (calculation system and organisation of work) (Art.8 561/2006):** Calculating the required regular weekly rest period of 45 hours as a minimum average resting time over a reference period of rolling 4 weeks. The weekly rest period of less than 45 hours

should not, however, be less than 24 hours and the reduction should be compensated by an equivalent period taken en bloc and attached to another weekly rest period. The weekly rest of 45 hours and more must not be taken in the vehicle. It should be taken either at the suitable accommodation provided/paid by the employer, or at the home base or at another private place of rest. Include a definition of 'adequate accommodation'.

2. **Measure (13) Changes to requirements on calculation and enforcement of the working time provisions:** Reduce the reference period used for a calculation of the maximum average weekly working time (of 48h) from 4 months (or 6 months according to national law) to 4 weeks in order to avoid accumulated fatigue and to enable the controls of working time at roadside via tachograph records and hence render enforcement more efficient.
3. **Measure (5) Changes to break time:** a break of minimum 45 minutes may be split into maximum 3 portions of at least 15 minutes each. Basic provision on breaks remains unchanged

These proposed measures are modelled separately, in order to be able to determine the impact of the individual measures. In addition, modelling all measures together would allow for too many degrees of freedom, making it difficult to understand what factors are driving any changes that emerge. In order to work out what the impact of specific changes would be, the direct and indirect influences of the policy have been mapped out, as indicated in Table D-2. Direct influences indicate the factors that are changed in response to the specific measure, whereas indirect influences indicate the parts of the schedule that must be adjusted in response to changes in the direct influences (but are not affected directly themselves). All other factors have been kept constant in the schedules so that we can isolate the impact of the policy itself (and ensure we are comparing like with like).

Table D-2: Variables used in modelling the policy changes (C=Constant)

Variable	Changes to regular weekly rest	Changes to the calculation of working time	Changes to breaks
Daily driving time	C	C	C
Weekly driving time	C	C	C
Weekly working time	C	Distribution directly affected	C
Regular daily rest	C	Indirectly affected	C
Regular weekly rest	Directly affected	C	C
Driving schedule	Indirectly affected	C	C
Break times	C	C	Directly affected

In addition, the following measures have been analysed for passenger transport:

- (6) Adapt '12-day rule' in international occasional passenger transport by coach
- (7) Allow for flexibility for domestic occasional transport of passengers by coach:
 - (7 a) '12-day rule' –postpone weekly rest for up to 12 periods of 24h, etc.
 - (7 b) '8-day rule' –postpone weekly rest for up to 8 periods of 24h, etc.

Occasional passenger transport has very different work schedules to freight transport. As such, the work schedules used to model these changes have been simplified from the models used for the other measures. "Other work" is considered to be included in the driving time of the model, as it is normally a very small share of working time compared to freight transport. The driving schedules also used the assumption that the first and last day of the derogation would involve longer driving periods, while the days between would be reduced driving time. Furthermore, as the derogations result in longer driving schedules before regular weekly rest is taken, the impacts have been looked at over a 2-month period, rather than a 4-week period.

Table D-3: Rules for weekly rest used to create work schedules under the changes to the derogation for passenger transport

	Baseline	Proposed rules
International	Two regular weekly rest period of 45 hours (90 hrs) taken following the 12-day derogation	One regular weekly rest of 45 hours and one reduced weekly rest of 24 hours (69 hrs) taken following the 12-day derogation
Domestic	No derogation (6-day maximum driving period) with regular weekly rest	12-day derogation: As above 8-day derogation: One regular weekly rest of 45 hours taken following the 8-day derogation

The following work schedules were created for occasional passenger transport, as shown in Figure D-5 and Figure D-6.

Figure D-5: Work schedules for occasional passenger transport 12-day derogations (repeated for 2 months)

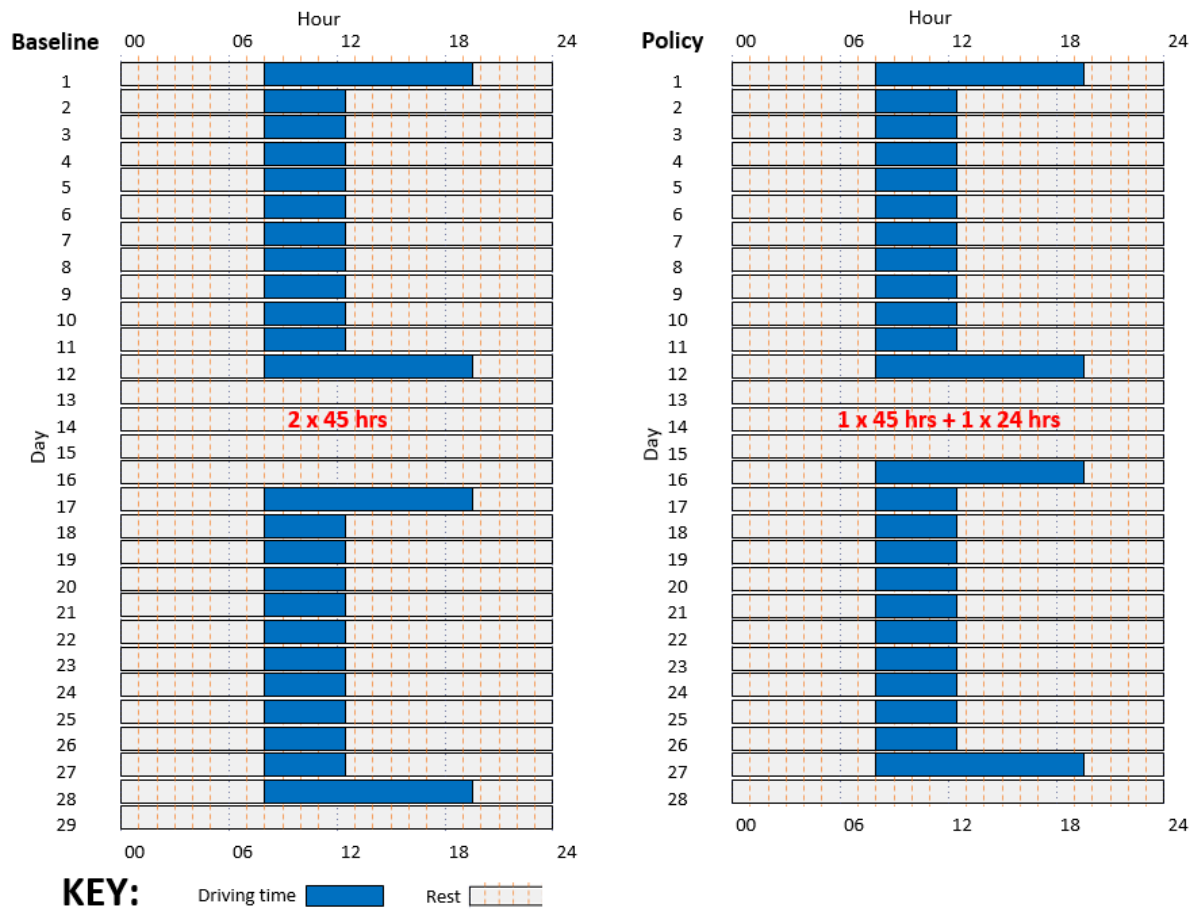
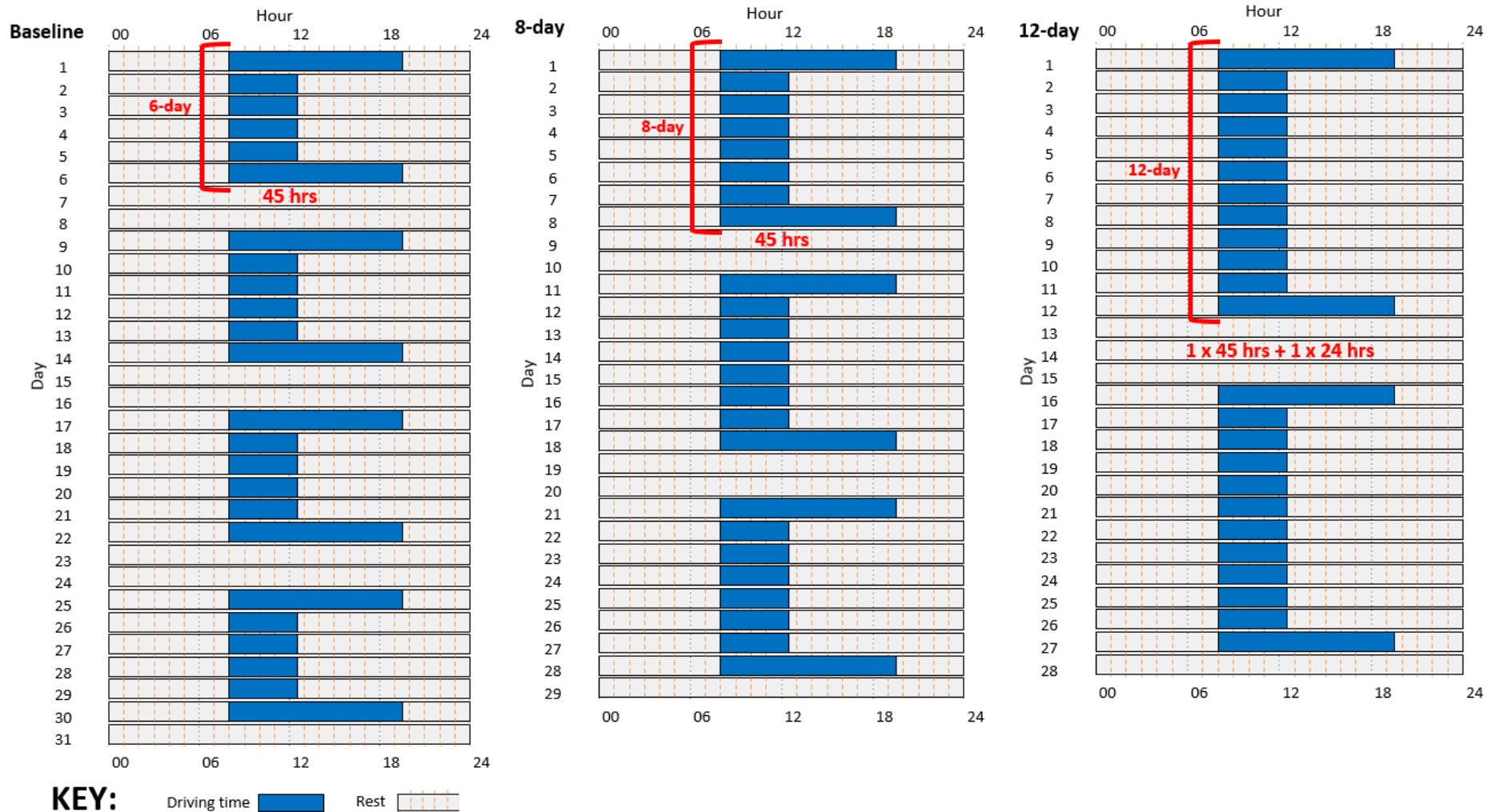


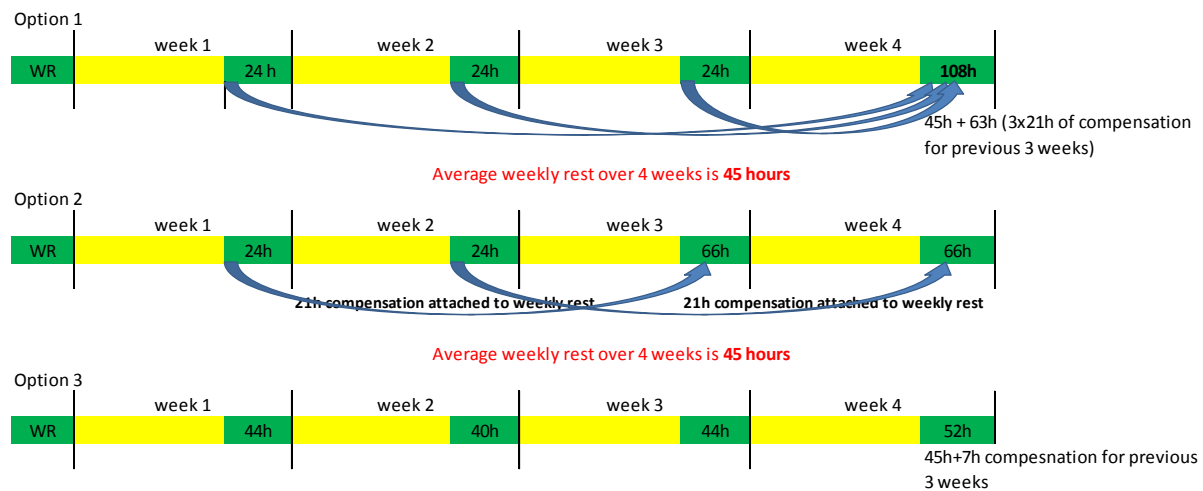
Figure D-6: Work schedules for domestic occasional passenger transport for 8-day and 12-day derogations (repeated for 2 months)



D.3.1 Changes to required regular weekly rest – measure (1)

The proposed changes to required regular weekly rest would enable more flexibility for work schedules, while also increasing the average weekly rest over a 4-week reference period. The practical implications will result in operators being able to make changes to the lengths of regular weekly rests, and any compensation taken as a result of reduced weekly rest. As mentioned when calculating the baseline, there are many possible variations for taking regular weekly rest, and so the three representative options have been reflected in the modelling of the policy measure as shown in Figure D-7.

Figure D-7: New options for weekly rest that are possible under proposed measure



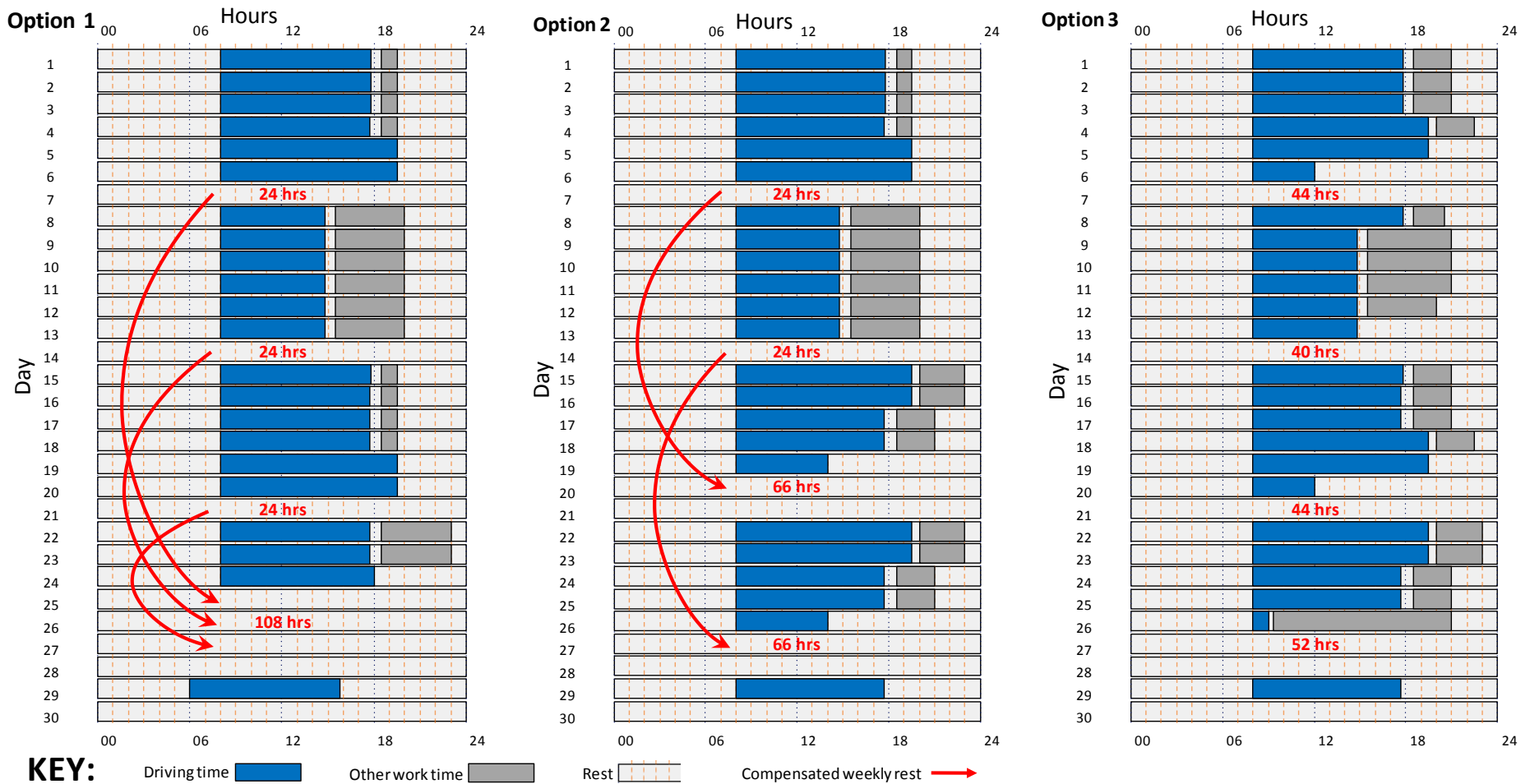
In order to evaluate the impact of this policy option, the regular weekly rest will be changed while keeping all other variables constant. The change in regular weekly rest will affect the days worked, but not the hours worked.

Table D-4: Rules for driving, working, and rest times used to create work schedules under the changes to regular weekly rest

Variables	Current rules	Proposed rules
Daily driving time	10 hrs a day with 1.5 hr break, 2 times a week (extended driving time)	10 hrs a day with 1.5 hr break, 2 times a week (extended driving time)
	9 hrs a day with a 45-min break, all other times	9 hrs a day with a 45-min break, all other times
Weekly driving time	Maximum 56 driving hrs a week, maximum 90 driving hrs bi-weekly	Maximum 56 driving hrs a week, maximum 90 driving hrs bi-weekly
Weekly working time	Maximum 60 working hrs a week (for all 4 weeks)	Maximum 60 working hrs a week (for all 4 weeks)
Regular daily rest	Reduced 9 hrs daily rest, 3 times a week	Reduced 9 hrs daily rest, 3 times a week
	11 hrs regular daily rest all other times	11 hrs regular daily rest all other times
Regular weekly rest	Reduced weekly rest of 24 hrs, compensated by 21 hrs taken within 3 weeks and attached to any rest of 9 hrs	An average of 45 hrs regular weekly rest, calculated over 4 weeks, with a minimum of 24 hrs regular weekly rest each week

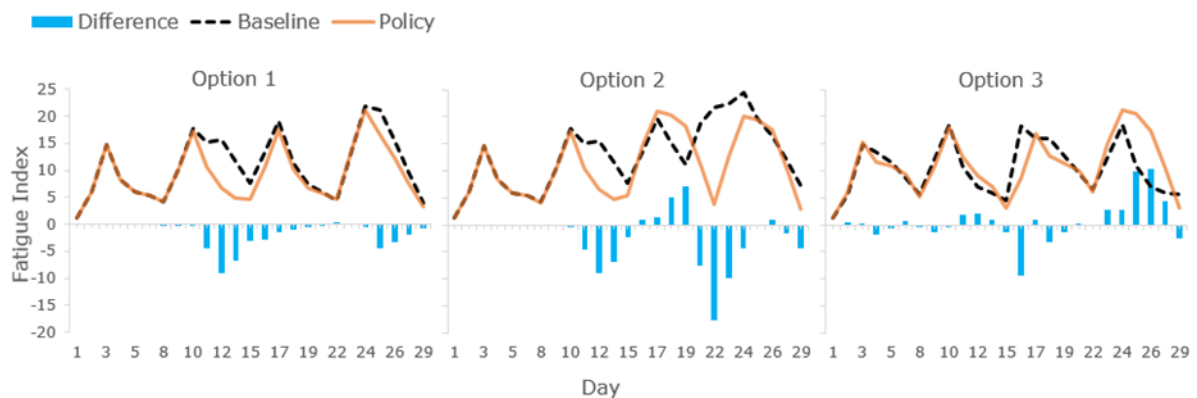
This resulted in the creation of three indicative options for work schedules under the changes to regular weekly rest, shown in Figure D-8.

Figure D-8: Work schedules covering three options for proposed changes to regular weekly rest



As shown in Figure D-9, the proposed policy measure could result in positive changes (reductions) in fatigue levels. Under the policy measures, schedules have a higher average weekly rest length than the baseline options, which result in a lower average fatigue index over the 4-week reference period. The peaks in each option correspond to the middle of the week when fatigue is at its highest, while the troughs correspond to the weekly rest periods. At their highest points, the schedules under the policy measures reach a maximum of 18.6-24.4, which is below the “good practice” benchmark level of 35 (Highways England, 2016). The difference between the policy and baseline fatigue indexes varies in magnitude at specific points as a result of the different schedules, and it can be seen that fatigue levels are elevated compared to the baseline at some points for both options 2 and 3. However, it is the change in **average fatigue** that is the more important result, rather than differences at single points in time (see discussion below).

Figure D-9: Evolution of fatigue index under baseline and policy scenarios



Source: author calculations, HSE tool (HSE, 2006)

The average fatigue index is improved (reduced) in options 1 and 2 compared to the baseline (by 17% and 16% respectively). Conversely, option 3 results in a slight increase compared to the baseline (6%). Over all three options, the schedules under the policy measure resulted in a decrease in the average fatigue index by 1.1, or 10%, suggesting that the measure is likely to have a net positive impact on driver fatigue.

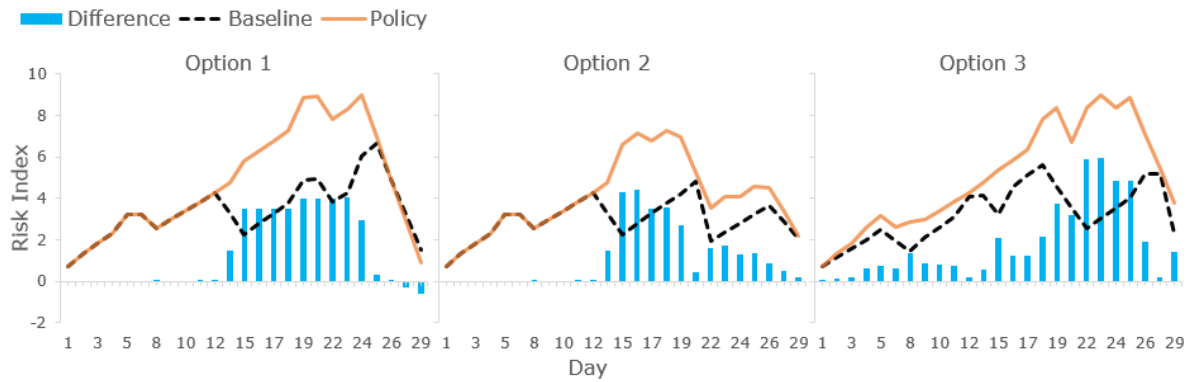
Table D-5: Evolution of fatigue index over time and average

	Option 1		Option 2		Option 3	
	Baseline	Policy	Baseline	Policy	Baseline	Policy
Average	10.6	8.8	13.0	10.9	10.4	11.0
Change from baseline	1.8 decrease (-17%)		2.1 decrease (-16%)		0.6 increase (+6%)	

Source: author calculations, HSE tool (HSE, 2006)

Figure D-10 presents the results of the analysis of the impact on the risk index for changes to weekly rest. For all three options, the risk index is higher for the policy schedules compared to the baseline schedules.

Figure D-10: Evolution of risk index under baseline and policy scenarios



Source: author calculations, HSE tool (HSE, 2006)

Table D-6 presents the detailed results. All three policy schedules had higher average risk indexes than the baseline. Option 1, 2 and 3 saw an increase respectively of 1.3 (38%); 1.1 (38%) and 1.8 (56%). Over all three options, the overall increase in the average risk index was 1.4 (44%).

Table D-6: Evolution of risk index over time and average

	Option 1		Option 2		Option 3	
Average	3.4	4.7	2.9	4	3.2	5
Change from baseline	1.3 increase (+38%)		1.1 increase (+38%)		1.8 increase (+56%)	

Source: author calculations, HSE tool (HSE, 2006)

D.3.2 Changes to the requirements on calculation of the working time provisions – measure (13)

The changes to the calculation of the working time provisions would prevent drivers from working multiple consecutive 60 hour working weeks, by reducing the reference period.

In order to evaluate the impact of this policy option, the weekly working time has been changed. As explained above, this will also affect the regular daily rest (in order to maintain respect of the social legislation. All other variables have been kept constant in order to isolate the impact of the policy measure, shown in Table D-7.

Table D-7: Rules for driving, working, and rest times used to create work schedules under the changes to working time

Variables	Current rules	Proposed rules
Daily driving time	10 hrs a day with 1.5 hr break, 2 times a week (extended driving time)	10 hrs a day with 1.5 hr break, 2 times a week (extended driving time)
	9 hrs a day with a 45-min break, all other times	9 hrs a day with a 45-min break, all other times
Weekly driving time	Maximum 56 driving hrs a week, maximum 90 driving hrs bi-weekly	Maximum 56 driving hrs a week, maximum 90 driving hrs bi-weekly
Weekly working time	Maximum 60 working hrs a week, with average 48 working hrs over 4 or 6 months	Maximum 60 working hrs a week, with average 48 working hrs a week over 4 weeks

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Regular daily rest	Reduced 9 hrs daily rest, 3 times a week	Reduced 9 hrs daily rest, 3 times a week
	11 hrs regular daily rest all other times	11 hrs regular daily rest all other times
Regular weekly rest	Reduced weekly rest of 24 hrs, compensated by 21 hrs taken within 3 weeks and attached to any rest of 9 hrs	Reduced weekly rest of 24 hrs, compensated by 21 hrs taken within 3 weeks and attached to any rest of 9 hrs

To ensure comparability between the baseline and the proposed changes, the regular weekly rest must be kept constant and **the three options for the different arrangements of weekly rest under the baseline** (as shown in Figure D-2) **become irrelevant for this measure**. Furthermore, taking a reduced weekly rest requires compensation within 3 weeks, but results in less than 60 working hours the week the compensation is taken. Therefore, to maximise the working hours, only regular weekly rest is taken.

Baseline schedules were created for 4 and 6 month periods (16.8 and 25.2 weeks respectively). While an average of 48 working hours is maintained over this period, the schedules were created with the maximum number of consecutive 60 working hour weeks possible. For the 4-month period, 60 working hour weeks are taken for 13 weeks, with the remaining 26 hours taken in the 14th week, and no work being carried out in weeks 15, 16 and 17. For the 6-month period, 60 working hour weeks are taken for 20 weeks, with 10 hours taken in the 21st week, and no work being carried out in weeks 22 to 26.

Under measure (13), a 4-week reference period is applied. As a result, in both the 4 and 6 month schedules, a 4-week pattern is repeated with three 60 working hour weeks, followed by a 12 working hours week.

To add further sensitivity, option 1 has been modelled in two forms:

- Day scenario: with regular shifts starting at 8am;
- Night scenario: with varying shift times that result in some night work.

The following work schedules were created for the baseline Day and Night scenarios, shown in Figure D-11 and Figure D-12.

Figure D-11: Baseline 4-month work schedules for Day and Night scenarios

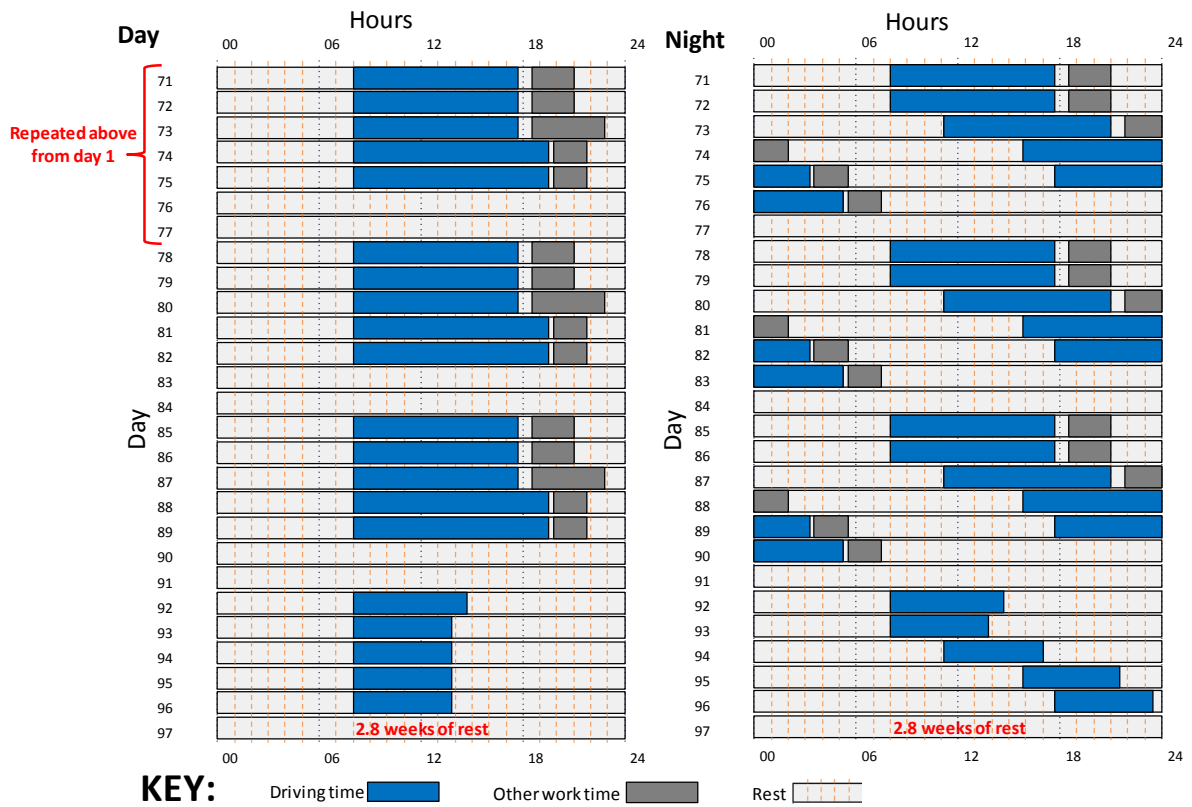
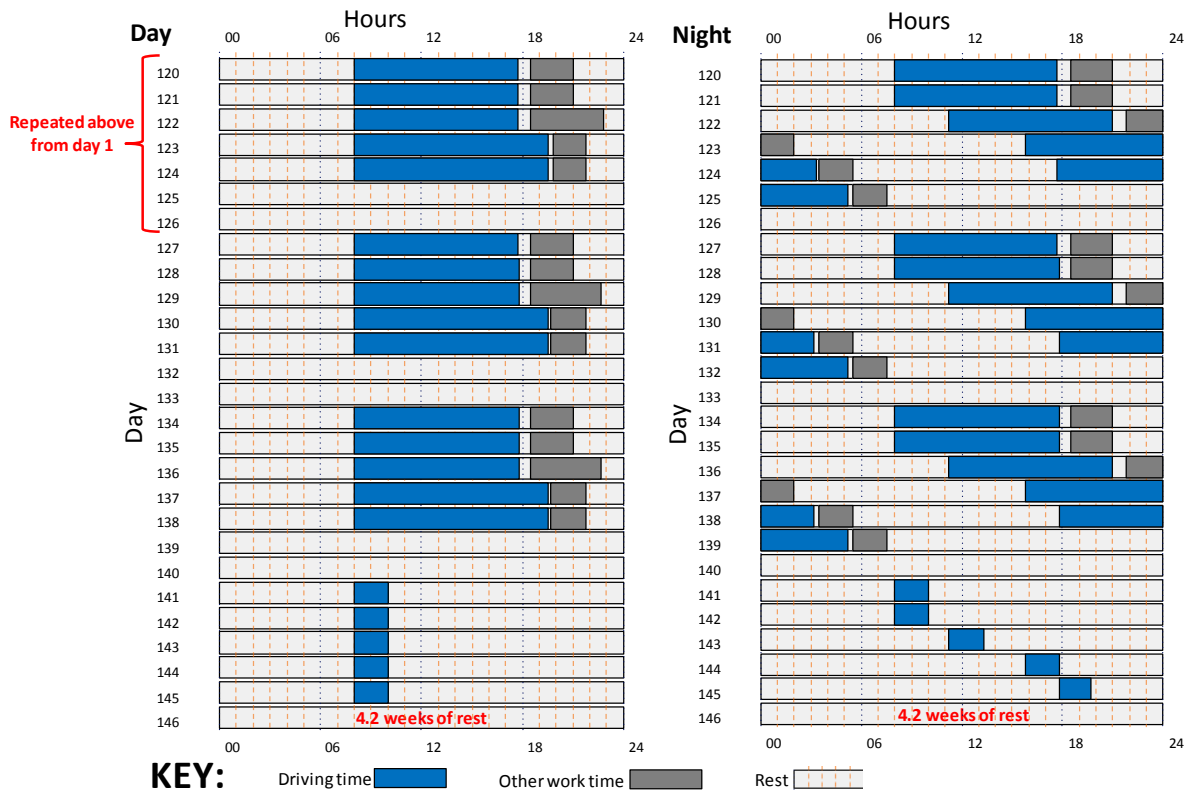


Figure D-12: Baseline 6-month work schedules for Day and Night scenarios



These schedules resulted in the levels of fatigue for day and night scenarios shown in Figure D-13 and Figure D-14. The average level of fatigue over the 4-month reference period is 12.0 in the day scenario and 31.7 in the night scenario. Similarly, for the 6-month reference period, the average level of fatigue index is 12.3 in the day scenario and 32.5 in the night scenario.

Figure D-13: Baseline 4-month fatigue index for day and night work scenarios

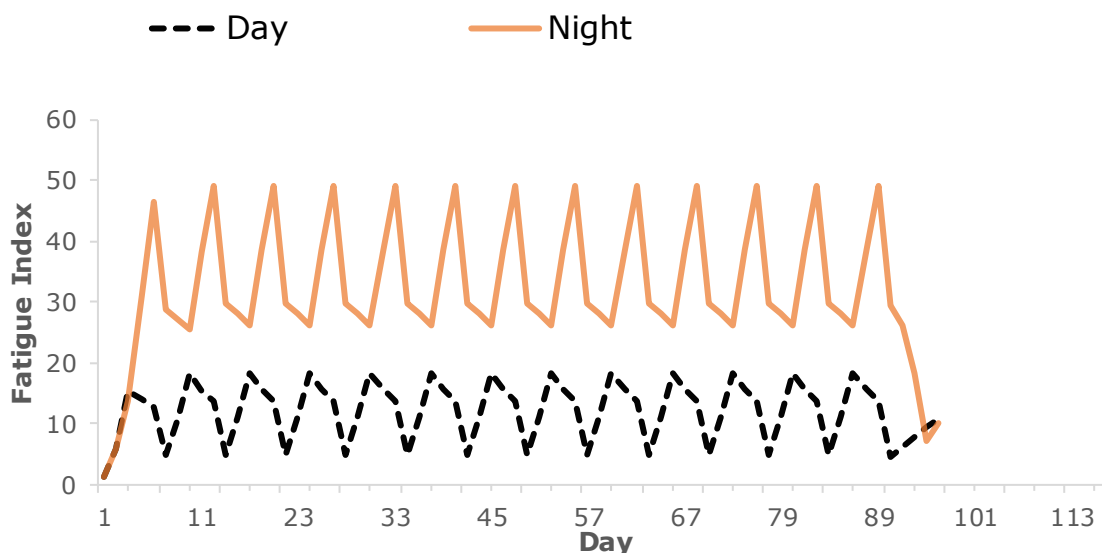
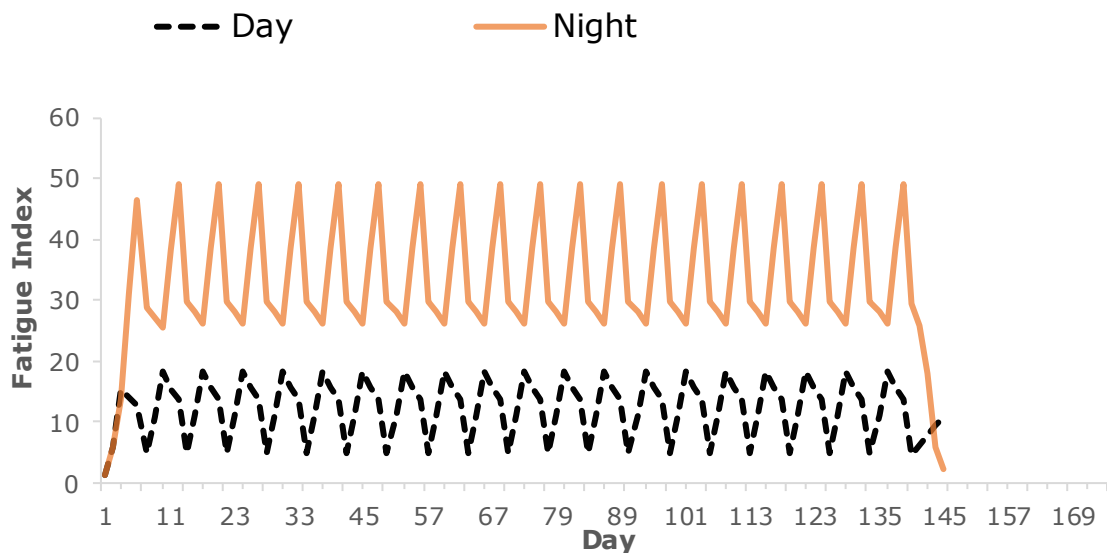


Figure D-14: Baseline 6-month fatigue index for day and night work scenarios



Source: author calculations, HSE tool (HSE, 2006)

Figure D-15 and Figure D-16 shows the baseline risk index: for the 4-month reference period, the day scenario has an average level of 3.0 and in the night scenario has an average level of 20.1. Similarly, for the 6-month reference period, the day scenario has an average level of 3.0, and the night scenario has an average level of 30.1.

Figure D-15: Baseline 4-month risk index for day and night work scenarios

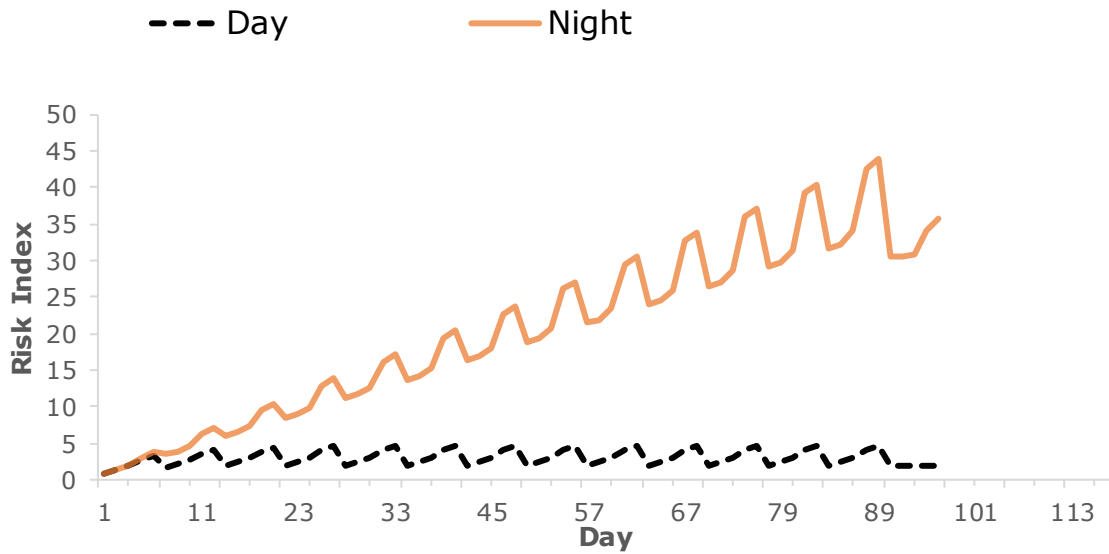
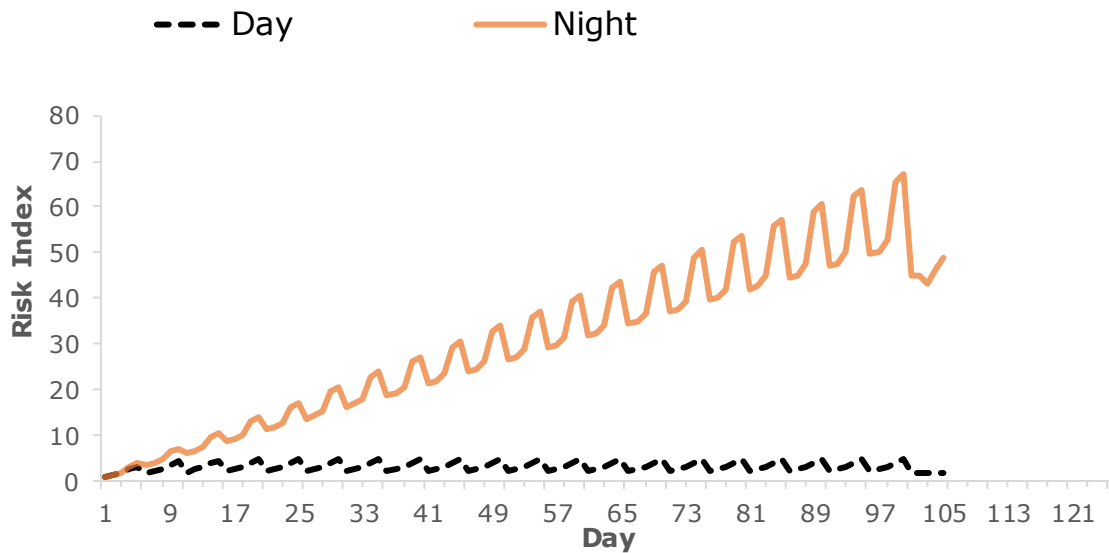


Figure D-16: Baseline 6-month risk index for day and night work scenarios



Source: author calculations, HSE tool (HSE, 2006)

Figure D-17 shows the schedules used to represent the policy measures. There is no reduction in total working time over the reference period, as a 48-working hour average is maintained. However, the policy schedules have reduced working hours every 4th week, compared to the weeks of no work seen in the baseline schedules.

Figure D-17: Work schedules for 4 and 6-month reference periods with proposed changes to working time, for Day and Night scenarios

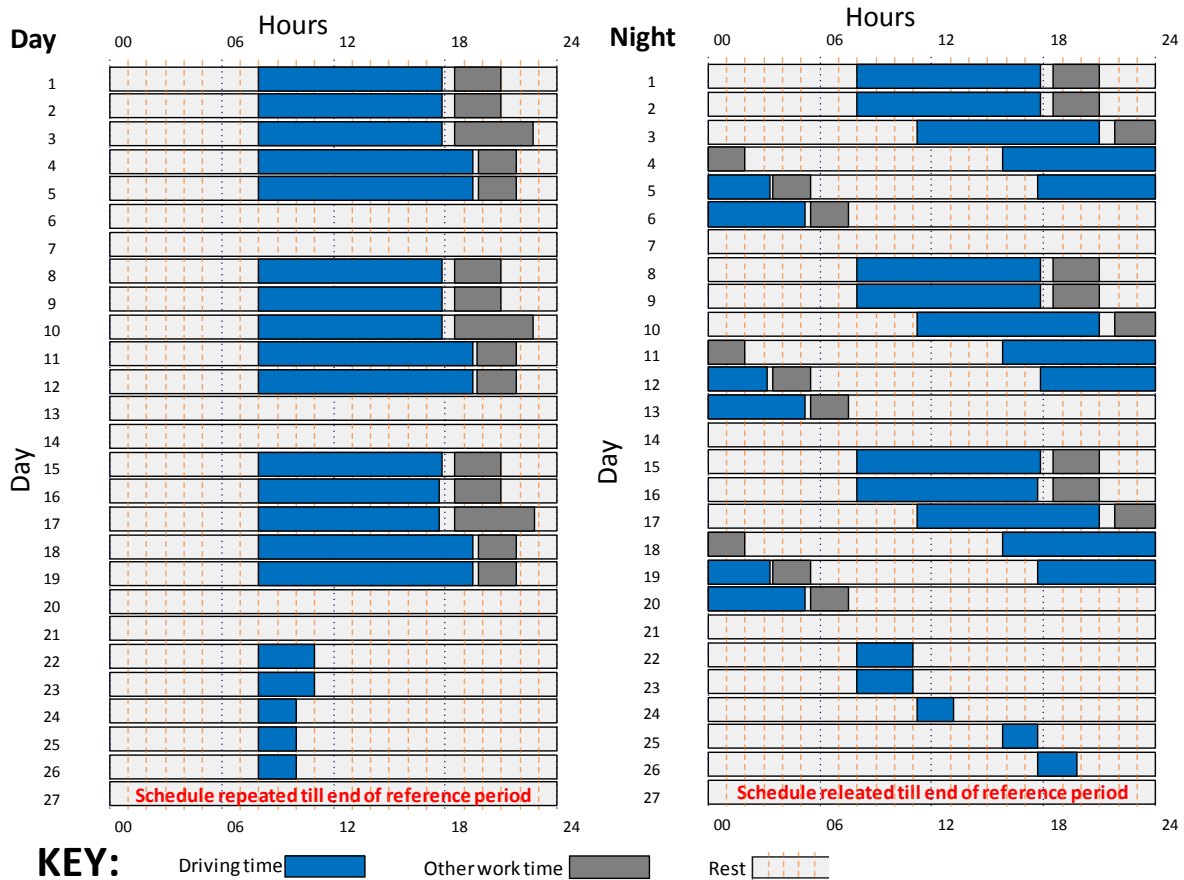


Figure D-18 and Figure D-19 presents the results of the analysis of the impact on the fatigue index from the changes to the calculation of working time. For both 4-month and 6-month schedules, and for both Day and Night scenarios, every 4th week has a lower fatigue index for the schedule under the proposed policy measure compared to the baseline which is a result of the reduced working hours for those weeks. As a result of the reduced fatigue in week 4 (and every other least week within a 4 week period), there is a marginally reduced fatigue index in the following week (week 5 or multiples). However, this difference disappears by the following (6th) week. The reason the reduced fatigue index gradually decays, is a result of the daily and weekly rest periods having a proportionate reduction on the fatigue index. This causes the initially higher fatigue index in the baseline to decrease faster than the initially lower fatigue index in the policy options, until parity is achieved. The fatigue index does not exceed the “good practice” benchmark of 35 under the day scenario for either baseline or the policy, however does exceed this for the night scenario. But, most importantly, both day and night scenarios show a significantly lower average fatigue index.

Figure D-18: Evolution of fatigue index for changes to the calculation of working time, 4-month reference period

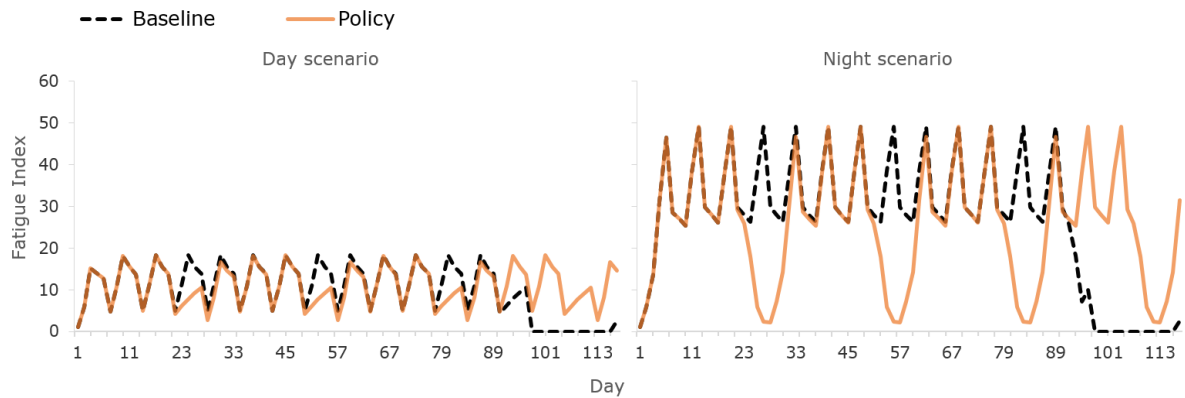
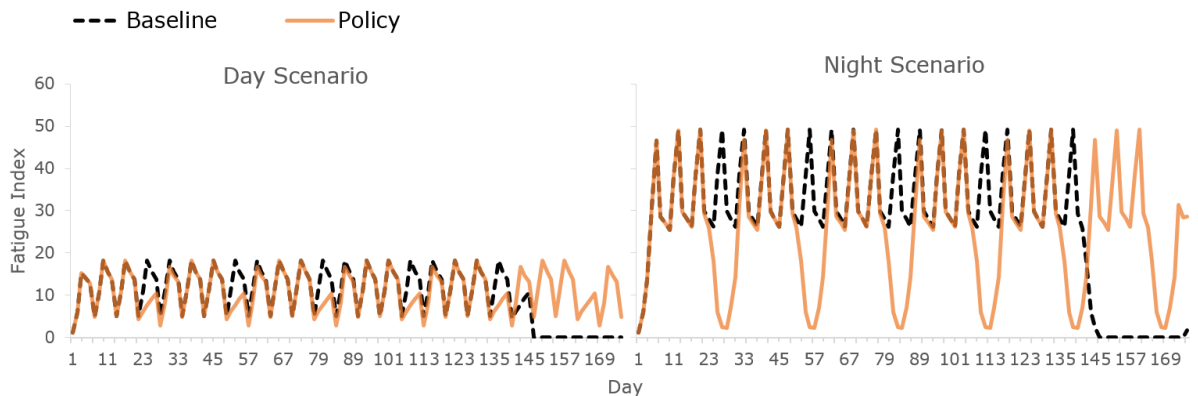


Figure D-19: Evolution of fatigue index for changes to the calculation of working time, 6-month reference period



Source: author calculations, HSE tool (HSE, 2006)

Table D-8 shows that average fatigue index for both day and night scenarios is lower in the schedules under the policy measure compared to the baseline. For the 4-month reference period, the day scenario baseline has an average fatigue index of 12.0, compared to 10.9 for the policy, giving a reduction of 1.1 (-9%). For the night scenario, an even bigger difference is seen, with a baseline average fatigue index of 31.7, compared to 25.5 for the policy, giving a reduction of 6.2 (-19%). For the 6-month reference period, the day scenario baseline has an average fatigue index of 12.3, compared to 10.9 for the policy, giving a reduction of 1.4 (-12%). For the night scenario, an even bigger difference is seen, with a baseline average fatigue index of 32.5, compared to 25.8 for the policy, giving a reduction of 6.7 (-21%).

Table D-8: Evolution of fatigue index over time and average

	Day		Night	
	Baseline	Policy	Baseline	Policy
4-month Average	12.0	10.9	31.7	25.5
Change from baseline	1.1 decrease (-9%)		6.2 decrease (-19%)	
6-month Average	12.3	10.9	32.5	25.8

	Day		Night	
	Baseline	Policy	Baseline	Policy
Change from baseline	1.4 decrease (-12%)		6.7 decrease (-21%)	

Source: author calculations, HSE tool (HSE, 2006)

Figure D-20 and Figure D-21 presents the results of the analysis of the impact on the risk index from the changes to the calculation of working time. The shorter working hours every 4th week reduces the risk index, and has a small reduction in risk index the following week. For the night scenario, the change is significantly larger as a result of the increased risk of night work, which amplifies over the length of the schedule. Overall, the index under the policy schedules remains lower than the baseline index at all times for both scenarios.

Figure D-20: Evolution of risk index for changes to the calculation of working time, 4-month reference period

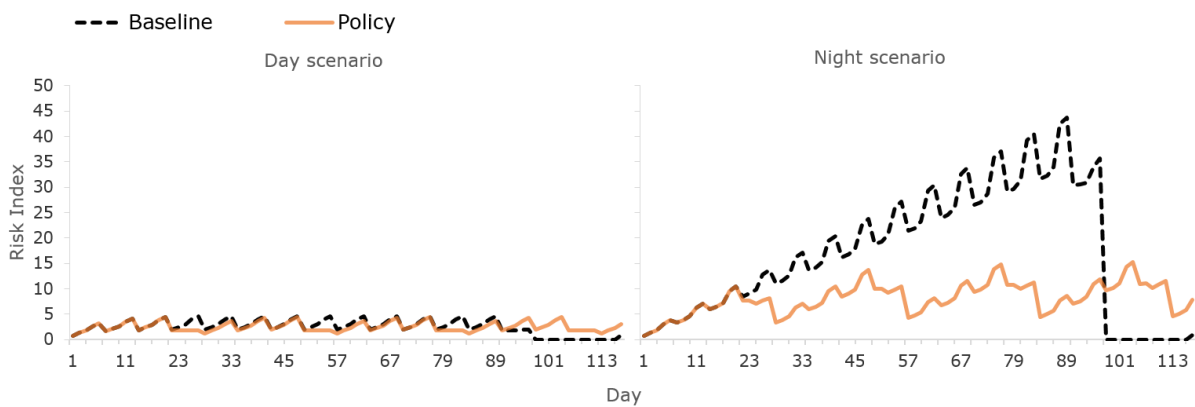
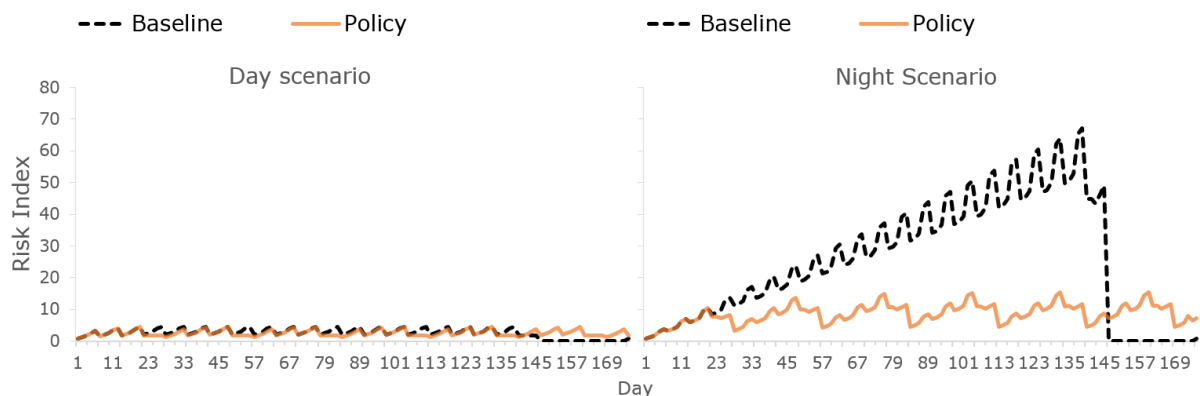


Figure D-21: Evolution of risk index for changes to the calculation of working time, 6-month reference period



Source: author calculations, HSE tool (HSE, 2006)

Table D-9 presents the quantitative results. The average risk index for the policy measures was lower than the baseline for both day and night scenarios. In the case of **the 4-month reference period**, the day scenario had a baseline average index of 3.0, which is reduced to 2.5 for the policy, a change of -0.4 (-14.9%). The difference was even greater for the night scenario, with a baseline average risk index of 20.1, reduced to 8.2 for the policy, a change of -12.0 (59.5%). Over both scenarios, the average risk index decreased by -6.2 (-53.8%).

For **the 6-month reference period**, the day scenario had a baseline average index of 3.0, which reduced to 2.5 for the policy, with a change of -0.5 (-16.4%). Again, the difference was even greater for the night scenario, with a baseline average risk index of 30.1, reduced to 8.6 for the policy, a change of -21.5 (71.3%). Over both scenarios, the average risk index decreased by -11.0 (-66.3%).

Table D-9: Evolution of risk index over time and average

	Day		Night	
	Baseline	Policy	Baseline	Policy
4-month average	3.0	2.5	20.1	8.2
Change from baseline	0.4 decrease (-14.9%)		12.0 decrease (-59.5%)	
6-month average	3.0	2.5	30.1	8.6
Change from baseline	0.5 decrease (-16.4%)		21.5 decrease (-71.3%)	

Source: author calculations, HSE tool (HSE, 2006)

D.3.3 Changes to breaks – measure (5)

In order to evaluate the impact of this policy option, the break times have been changed. All other variables have been kept constant, in order to isolate the impact of the policy measure. Furthermore, as with the changes to working time, the regular weekly rest must be kept constant, so these changes will be evaluated using the baseline Day and Night scenarios to add sensitivity, as in the previous section.

Table D-10: Rules for break times used to create work schedules under the changes to the break times

Break times	Baseline setting	Proposed rules
Typical frequency of breaks	Breaks taken every 2.5 hrs, with an average length of 30 minutes	Breaks taken every 1.5 hrs, with an average length of 15 minutes
Typical longest work period before a break	Breaks taken at most every 4.5 hrs, with a longest break of 45 minutes	Breaks taken at most every 1.5 hrs, with an average length of 15 minutes.

Figure D-22 presents the results of the analysis of the impact on the fatigue index from changes to break time. The fatigue index under the proposed policy was nearly identical

to the fatigue index in the baseline. A very small increase in the fatigue index was observed.

Figure D-22: Evolution of fatigue index from changes to break time

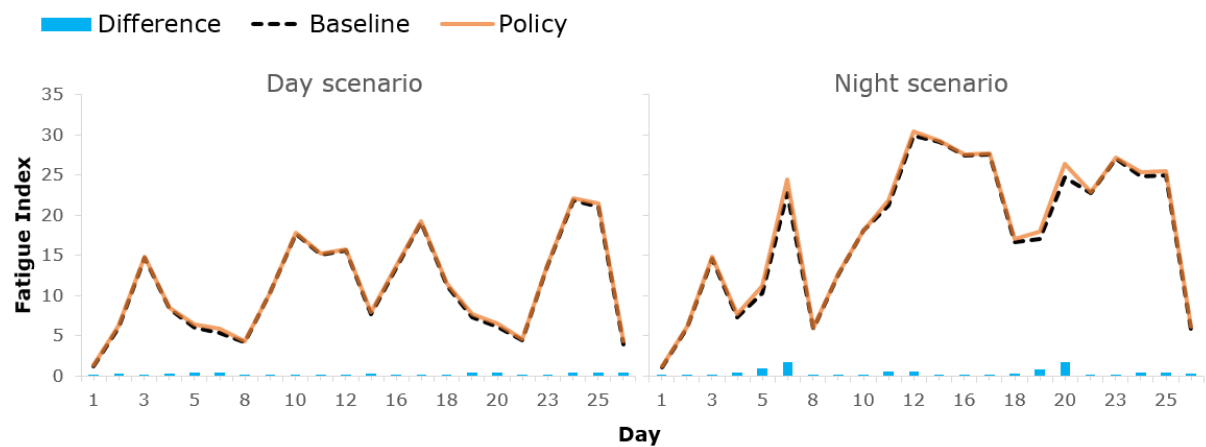


Table D-11 presents the numerical results. The average fatigue index for the policy measures was marginally higher than the baseline for both day and night scenarios. The day scenario had a baseline average index of 10.6, which increased to 10.9 for the policy, with a change of +0.3 (2.2%). The difference was slightly greater for the night scenario, with a baseline average risk index of 18.1, increasing to 18.6 for the policy, with a change of +0.5 (2.5%). Over both scenarios, the average risk index decreased by +0.7 (2.4%).

Table D-11: Evolution of fatigue index from changes to break time

	Day		Night	
	Baseline	Policy	Baseline	Policy
Average	10.6	10.9	18.1	18.6
Change from baseline	0.3 increase (2.2%)		0.5 increase (2.5%)	

Figure D-23 presents the results of the analysis of the impact on the risk index from changes to break time. The risk index under the proposed policy was nearly identical to the risk index in the baseline. A small reduction in the risk index was observed that increased over the working week. Under the proposed policy, shorter, more regular breaks result in shorter periods between breaks, and therefore a lower risk index.

Figure D-23: Evolution of risk index from changes to break time

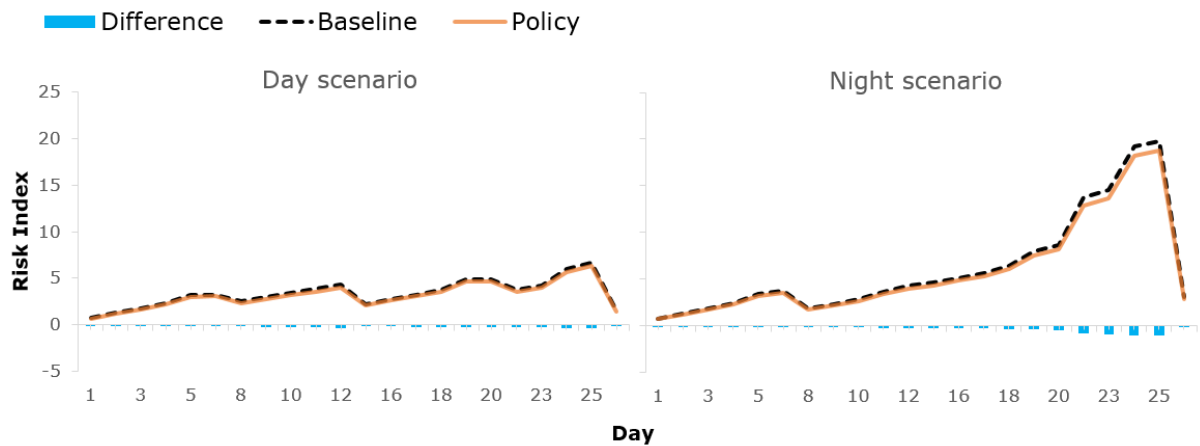


Table 0-12 presents the quantitative results. The average risk index for the policy measures was marginally lower than the baseline for both day and night scenarios. The day scenario had a baseline average index of 3.4, which reduced to 3.2 for the policy, with a change of -0.2 (-5.8%). The difference was slightly greater for the night scenario, with a baseline average risk index of 6.2, reduced to 5.9 for the policy, with a change of -0.3 (5.7%). Over both scenarios, the average risk index decreased by -0.5 (-5.7%).

Table 0-12: Evolution of risk index from changes to break time

	Day		Night	
	Baseline	Policy	Baseline	Policy
Average	3.4	2.2	6.2	5.9
Change from baseline	0.2 decrease (-5.8%)		0.3 decrease (-5.7%)	

D.3.4 Adaptation of 12-day derogation – measure (6)

Figure D-24 shows the impact on the fatigue index from changes to the 12-day derogation for occasional passenger transport. The main change between the baseline and policy measure is that 4 derogations are possible in a shorter period of time. An increase in the fatigue index was observed at the start of each derogation, as a result of the shorter weekly rest (69 hours compared to 90 hours).

Figure D-24: Evolution in fatigue index from changes to 12-day derogation for occasional passenger transport

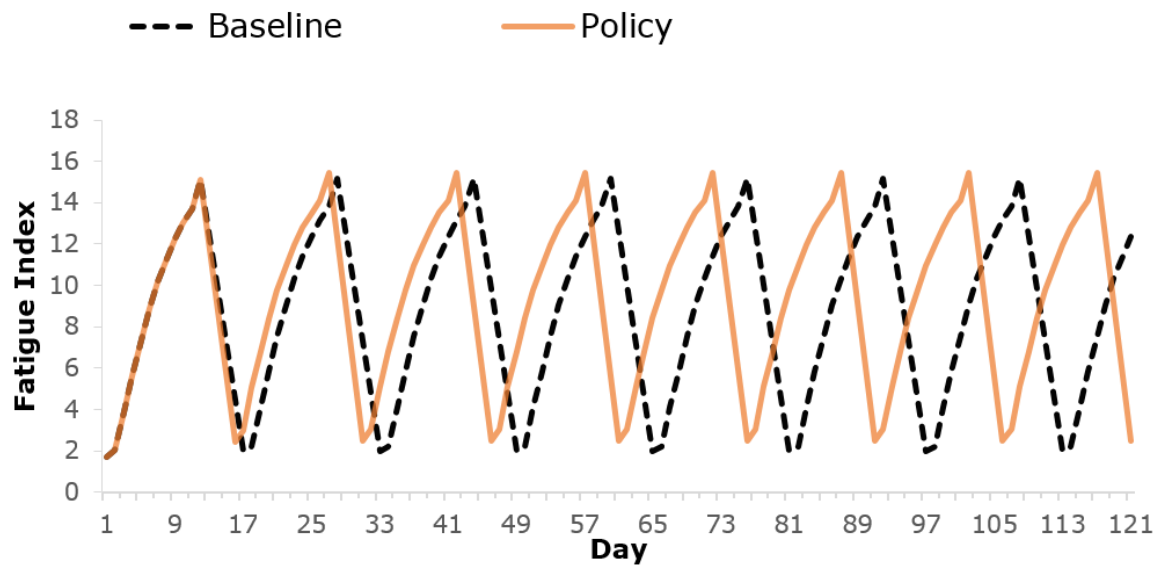


Table D-13 presents the detailed results. The average fatigue index for the policy measures was marginally higher than the baseline. The baseline had a baseline average index of 8.7, which increased to 9.4 for the policy, with a change of +0.7 (5.3%). The difference in fatigue index is highest at the beginning of the 12-day derogation (other than the first derogation), with a difference of 0.4 (derogation 2) or 0.5 (derogation 3 and 4) between baseline and policy, but decreases to a difference of 0.2 (derogation 2) or 0.3 (derogation 3 and 4) by the 12th day of the derogation.

Table D-13: Evolution in fatigue index from changes to 12-day derogation for occasional passenger transport

	Fatigue Index	
	Baseline	Policy
Average	8.7	9.4
Change from baseline	0.6 increase (7.3%)	

Figure D-25 presents the results of the analysis of the impact on the risk index from changes to the 12-day derogation for occasional passenger transport. The main change between the baseline and policy measure is that 4 derogations are possible in a shorter period of time. An increase in the risk index was observed at the start of each derogation, as a result of the shorter weekly rest (69 hours compared to 90 hours). However, this higher starting point has a diminishing impact over the 12-day derogation, resulting in only a small increase in the peak risk index on the 12th working day. The impact diminishes as the regular daily rest has a proportional effect on the risk index, so a higher risk index is reduced more each day than a lower risk index. The risk index is also significantly lower overall than the figures seen for freight transport, due to the reduced driving time and other work.

Figure D-25: Evolution in risk index from changes to 12-day derogation for occasional passenger transport

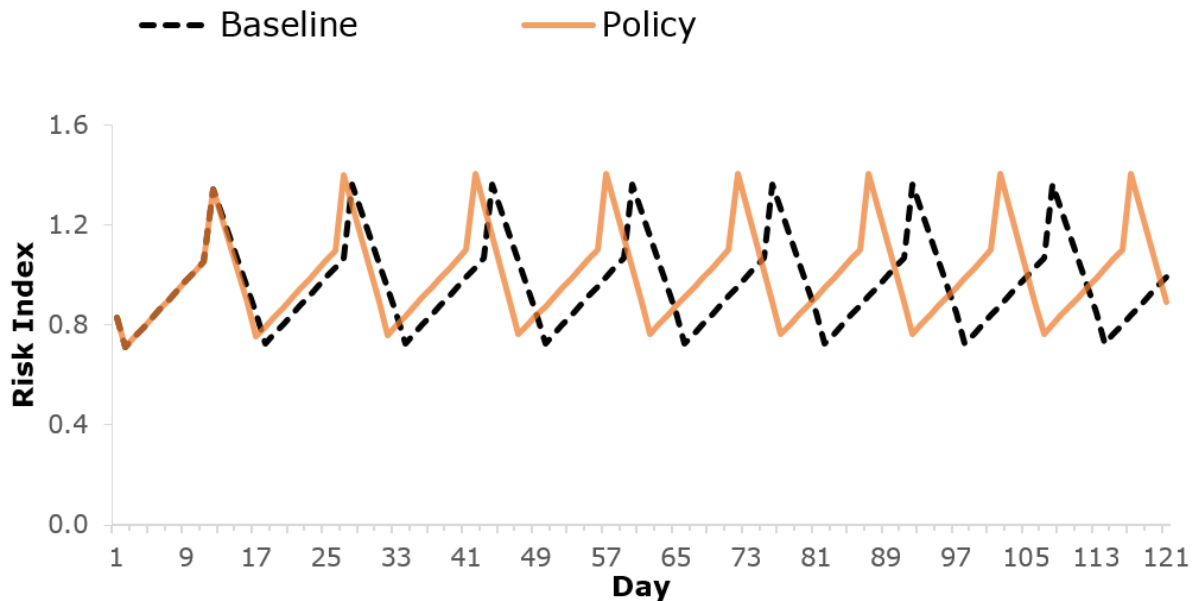


Table D-14 presents the numerical results. The average risk index for the policy measures was marginally higher than the baseline. The baseline had a baseline average risk index of 0.92, which increased to 0.96 for the policy, with a change of +0.04 (4.1%). The difference in risk index remains fairly constant throughout the derogation, with slightly higher differences for the first and last day when the driving time is much longer.

Table D-14: Evolution in risk index from changes to 12-day derogation for occasional passenger transport

Day	Risk Index	
	Baseline	Policy
Average	0.92	0.96
Change from baseline	0.04 increase (4.1%)	

D.3.5 Extension to domestic occasional passenger transport – measure (7)

Figure D-26 presents the results of the analysis of the impact on the fatigue index from extension of the 12-day derogation to domestic occasional passenger transport, and the inclusion of an 8-day derogation. The baseline assumes a normal 6-day week followed by a regular weekly rest, while the 8-day derogation allows for two extra days' work with the same weekly rest allowance. The 12-day derogation is the same work schedule used in the policy measure above.

Both the 8-day and the 12-day derogation have higher peak fatigue indexes than the baseline, as would be expected from working extra days without a rest day. The 8-day derogation has a recovery to nearly the same fatigue index as the baseline following regular weekly rest, however, the 12-day derogation recovers to a lower fatigue index as

a result of the longer weekly rest period. The average fatigue index is higher for both the 8-day and 12-day derogations, but less so for the 8-day.

Figure D-26: Evolution in fatigue index from extension of the 12-day derogation and 8-day derogation for domestic occasional passenger transport

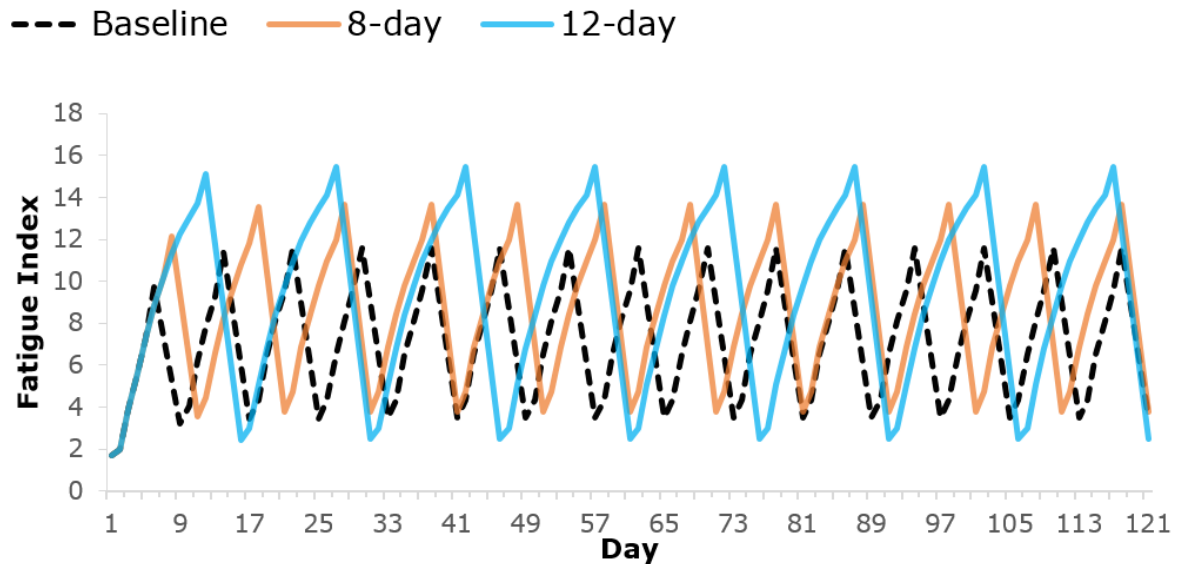


Table D-15 presents the detailed results. The average fatigue index for the policy measures was higher than for the baseline. The baseline had a baseline average index of 7.1, which increased to 8.5 for the 8-day derogation, with a change of +1.5 (20.8%), and to 9.4 for the 12-day derogation, with a change of +2.3 (32.6%).

Table D-15: Evolution in fatigue index from extension of the 12-day derogation and 8-day derogation for domestic occasional passenger transport

	Fatigue Index		
	Baseline	8-day	12-day
Average	7.1	8.5	9.4
Change	1.5 increase (20.8%)		2.3 increase (32.6%)

Figure D-27 presents the results of the analysis of the impact on the risk index from extension of the 12-day derogation to domestic occasional passenger transport, and the inclusion of an 8-day derogation. The baseline assumes a normal 6-day week followed by a regular weekly rest, while the 8-day derogation allows for two extra days' work with the same weekly rest allowance. The 12-day derogation is the same work schedule used in the policy measure above.

Both the 8-day and the 12-day derogation have higher peak risk indexes than the baseline, as would be expected from working extra days without a rest day. The 8-day derogation has a recovery to nearly the same risk index as the baseline following regular weekly rest, however, the 12-day derogation recovers to a lower starting risk index as a result of the longer weekly rest period. The average risk index is marginally higher for both the 8-day and 12-day derogations, but less so for the 8-day. Overall, the average

risk index is considerably lower than the indexes seen for freight transport, which has longer driving and other work hours.

Figure D-27: Evolution in risk index from extension of the 12-day derogation and 8-day derogation for domestic occasional passenger transport

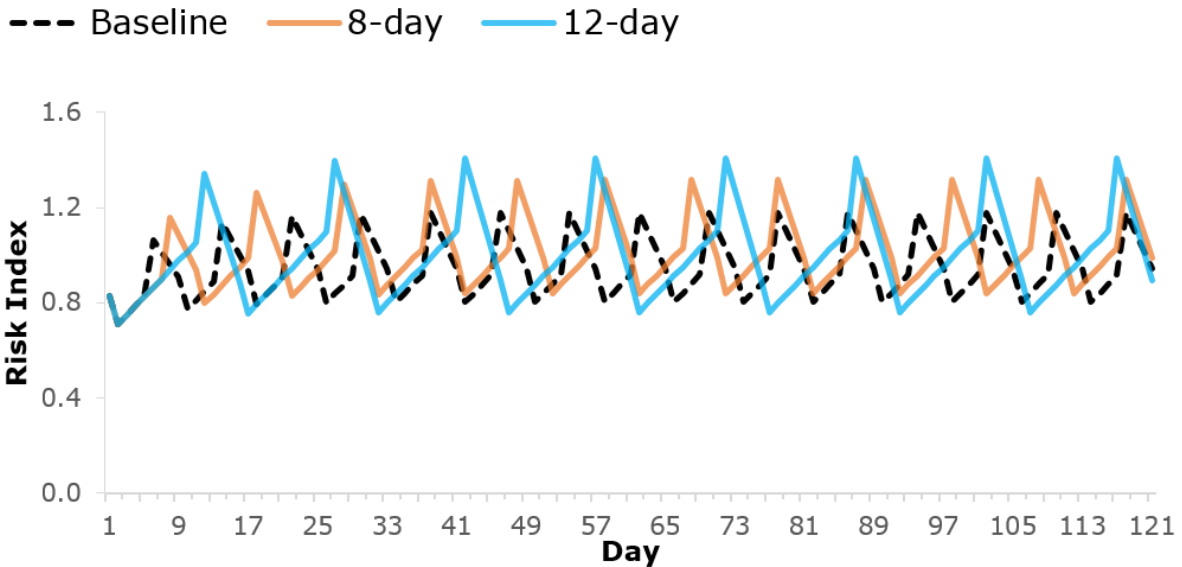


Table D-16 presents the numerical results. The average risk index for the policy measures was higher than for the baseline. The baseline had a baseline average index of 0.92, which increased to 0.97 for the 8-day derogation, with a change of +0.06 (6.0%), and to 0.96 for the 12-day derogation, with a change of +0.04 (4.6%). The average risk index is higher for the 8-day derogation than the 12-day derogation as the 8-day derogation has a greater share of days with longer driving hours, even though the total number of driving and resting days are the same.

Table D-16: Evolution in risk index from changes to 12-day derogation for occasional passenger transport

Day	Risk Index		
	Baseline	8-day	12-day
Average	0.92	0.97	0.96
Change from baseline	0.06 increase (6.0%)		0.04 increase (4.6%)

Annex E SME test

E.1 Consultation with SME representatives

Consultation with SMEs took place throughout the following processes:

- The open public consultation (14 weeks from 11th December 2016) gave SMEs the opportunity to respond directly to the questionnaire. It also included questions to all respondents on the expected impacts on the economic situation of small transport operators.
- The SME panel survey (9 weeks from 4th November 2016) was specifically targeted at SMEs. There were 109 responses received, 35 to the questionnaire on posting of workers in road transport sector, 42 to the questionnaire on driving times, working times and rest periods in road transport, and 24 to both. 51 responses came from SMEs with less than 10 employees, and a further 39 from firms with 10-49 employees.
- The survey of hauliers made available on the Commission's EU Survey Portal (3 weeks from 17th February 2017) was open to companies of all sizes, including SMEs. 73 responses were received; one from a firm with fewer than 10 employees, 24 from companies with 50-100 employees, and a further 14 were from companies with more than 100 employees.
- Two representatives of SMEs in the haulage sector (UETR and UEAPME) were specifically interviewed. UETR primarily promotes the interests of micro- small and medium enterprises in the road transport sector, and represents more than 200,000 road transport undertakings in Europe. UEAPME represents the interests of European crafts, trades and SMEs at an EU level, representing 12 million enterprises across Europe.
- Two SMEs were interviewed directly, a Bulgarian firm (less than 10 employees), and a Slovakian firm (50-100 employees).
- During all other consultations (interviews, surveys), we have asked specific questions on the expected impact (positive or negative) on SMEs from the proposed policy measures.

E.2 Assessment of businesses likely to be affected

The latest available Eurostat data indicates that in total there were 563,598 registered road freight transport enterprises in Europe with an average size of 5.2 employees per company (Eurostat, 2016b). 90% of companies count less than 10 employees, whereas 99% have less than 50 employees (Eurostat, 2016b). According Eurostat data, 54% of companies had either 0 or 1 employees (Eurostat, 2016b), although obviously not all of them are self-employed. According to (IES and Ecorys, 2015) based on data from the labour force survey, 5.6% of heavy truck and lorry drivers are self-employed but have no employees and 2.6% are self-employed and have employees. This number could also include "bogus self-employed", namely drivers who, though not contractually bound to an employer, nonetheless work regular hours for the same shipper over prolonged periods of time, and are hence financially dependent on that shipper.

As a direct consequence of the large share of SMEs in the sector, most of the impacts analysed for transport operators are essentially representative of SMEs. In general, measures that introduce additional administrative costs may have a relatively higher cost burdens and in certain circumstances may represent a barrier to entry in a market or a reason that can push SMEs outside the market. In contrast, measures that simplify

requirements and reduce costs can have a relatively greater positive impact on SMEs. SMEs may also experience relatively greater benefits from increased flexibility, as they have lower ability to manage driving schedules and workloads across multiple drivers or vehicles.

E.3 Identification of measures that could impact SMEs

Table E-1 presents an initial analysis of the measures where impacts on SMEs are expected. It mainly includes measures related to changes to working and rest time and also the posting of workers.

Table E-1: Measures with possible SME relevance

Proposed measure	PP	Relevance to SMEs
Requirements concerning the weekly rest⁸⁴		
1. Calculating the required regular weekly rest period of 45 hours as a minimum average resting time over a reference period of rolling 4 weeks. The weekly rest period of less than 45 hours should not, however, be less than 24 hours and the reduction should be compensated by an equivalent period taken <i>en bloc</i> and attached to another weekly rest period.	2, 3	No difference depending on size, however expected greater difficulties for SMEs to plan and monitor drivers' schedules
2. The weekly rest of 45 hours and more must not be taken in the vehicle. It should be taken either at the suitable accommodation provided/paid by the employer, or at the home base or at another private place of rest. Include a definition of 'adequate accommodation'.	2, 3	No/very limited increase in costs for SMEs
3. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances, such as lack of resting facilities (all other weekly rest requirements remain unchanged).	1,2	Possible additional flexibility for SMEs in countries that currently forbid spending weekly rest in the vehicle, with no/limited evidence of increased relative costs for SMEs.
Requirements on breaks, resting and driving times		
4. Clarify that breaks, resting and driving time arrangements may be adapted (without changing time limits) to address specific exceptional circumstances under which transport operation is carried out and/or to enable reaching home/base	1, 2, 3	Possible reduction in administrative costs for SMEs from greater clarity of national rules
5. For all drivers: a break of minimum 45 minutes may be split into maximum 3 portions of at least 15 minutes each. Basic provision on breaks remains unchanged	2, 3	Possible small benefits for SMEs from increased flexibility, but not disproportionately so
6. Adapt '12-day rule' in international occasional passenger transport by coach by abolishing obligation of take two regular weekly rest periods after the use of derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest (minimum 69 hours), to be taken <i>en bloc</i> ,	2, 3	Small positive impact on flexibility for SMEs

⁸⁴ Measures addressing an issue of requirements concerning the weekly rest are not cumulative and their distribution varies depending on the PP

Proposed measure	PP	Relevance to SMEs
without obligatory compensation for the reduced rest.		
7. Allow for flexibility for domestic occasional transport of passengers by coach ⁸⁵ : (a) '12-day rule' – allowing to postpone weekly rest for up to 12 periods of 24 h, provided that a driver takes regular weekly rest of minimum 45 h before and 69 h after the use of the derogation (b) '8-day rule' – allowing postpone weekly rest for up to 8 periods of 24 h provided that a driver takes regular weekly rest of minimum 45 h before and after the use of the derogation	2, 3	
Enforcement		
8. Allow controllers to access the risk-rating system in real-time of control (both for roadside and premises checks)	2, 3	No difference depending on size
9. Establish the (recommended or obligatory) EU uniform formula for calculating risk rating, which would also include the results of so called "clean" checks (no infringement detected)	1V, 2, 3	
10. Enhance administrative cooperation of national control authorities by introducing a (recommended or obligatory) time to respond to requests of one MS within a certain time period: (i) 2 working days in urgent cases (e.g. in case of very serious infringements and (ii) 25 working days in non-urgent cases unless a shorter time limit is mutually agreed	1V, 2, 3	
11. Abolish attestation forms on top or instead of tachograph records to demonstrate the activities/inactivity periods when away from vehicle, and define a solution as to how 'other' work is best controlled.	2, 3	Possible small benefits for SMEs due to reductions in administrative burdens
12. Clarify links between Regulation 561/2006 and Directive 2002/15 in terms of derogations: (a) derogations from the driving and resting times rules granted in exceptional circumstances <u>may also</u> result in derogation from the weekly working time thresholds; (b) derogations from the driving and resting times rules granted in exceptional circumstances <u>may not</u> result in derogation from the weekly working time thresholds;	1, 2, 3	No difference depending on size
Working time requirements and control		
13. Reduce the reference period used for a calculation of the maximum average weekly working time (of 48h) from 4 months (or 6 months according to national law) to 4 weeks in order to avoid	2, 3	Possible reduced flexibility for calculation of working time may have negative impact on SMEs

⁸⁵ Two scenarios are analysed for each policy option

Proposed measure	PP	Relevance to SMEs
accumulated fatigue and to enable the controls of working time at roadside via tachograph records and hence render enforcement more efficient.		
14. Establish (recommended or obligatory) minimum threshold for controlling compliance with working time provisions in line with requirements for checks at the premises under Directive 2006/22 (extend roadside checks and checks at premises to include also control of compliance with working time, which should be made easy if the calculation of the maximum average working time is done over 4-weeks reference period)	1V, 2, 3	Possibly additional administrative costs will be higher for SMEs but impact is not expected to be significant since the checks can be carried out as part of controls that are already conducted. Therefore, no significant impact depending on size
15. Establish (recommended or obligatory) reporting template for biennial national reports on results of controls of compliance with WTD similar to reporting template for checks on Regulation 561/2006.	1V, 2, 3	No difference depending on size
Scope of the road transport social legislation		
16. Define operations of occasional non-professional driver for private purposes and exclude them from the scope of the Regulation 561/2006	1, 2, 3	No difference depending on size
Performance-based pay		
17. a. Allow Member States to forbid (on their territories) all performance based payment (based on distances travelled / amount of goods carried);	1	Possible increase in administrative and legal costs to understand different regulatory regimes
b. Forbid all performance based payment (based on distances travelled / amount of goods carried)	3	Possible reduction in administrative costs as a result of harmonised rules for all Member States
Application of posting of workers rules to road transport		
18. Set time-thresholds (measured as the number of days and nights spent in a host Member State over a month). The time will be measured as the number of days and nights spent in a host Member State over a month. A definition of time spent should include driving times, other work, periods of availability and breaks as well as daily and weekly rest periods. If a driver has spent the majority of his time during one day in a Member State, this should be accounted as a "full day" for the purpose of application of the PWD.	4	Possible reduced administrative costs for most SMEs
19. Introduce a two-step enforcement process, where the first step is the roadside check carried out by the controllers on the territory of the 'host' Member State and the second step is the check at the premises of a company (driver's employer) by the enforcement authorities of the country of establishment of that company. This implies derogation to some	4	No difference depending on size

Proposed measure	PP	Relevance to SMEs
requirements imposed by Directive 2014/67/EU and application of more adapted and specific requirements for road transport operations.		
20. Oblige the driver to record in the tachograph the country code of the country where they are, each time they stop a vehicle.	4	No difference depending on size

E.4 Assessment of alternative, mitigating measures

The policy measures presented above are expected to have a small disproportionate negative impact on SMEs. Some policy measures result in an increase in administrative burden, which self-employed drivers and micro-firms would be less capable of absorbing compared to larger firms. PP1 has a slightly negative impact, while PP2 and PP3 are considered to be more strongly negative. PP4 has a positive impact on SMEs from reduced administrative costs.

The changes to the calculation of regular weekly rest and working time rules in PP2 are both expected to require IT software investment and staff training, which could present a barrier to enter the market, or push existing SMEs out of the market. The time-thresholds for the posting of workers in PP4 is expected to have a positive impact on SMEs who would have a relatively larger reduction in administrative costs from this measure.

Several options could help mitigate these impacts:

- a) **Allow for spending regular weekly rest in the vehicle, provided it is the free choice of the driver, including a clear and simple method of proving this requirement.** Allowing regular weekly rest to be spent in the vehicle is necessary especially for SMEs who would have to absorb the costs of accommodation which can be significant. Several stakeholders were concerned about the administrative requirements to prove free choice, or lack of adequate accommodation, so to avoid this impact the measure must have clear and simple rules on providing proof. For example, during an interview conducted for this study, UETR gave the example of the Belgian approach by which drivers do not need to prove where they spend their regular weekly rest, but enforcers can enforce this rule if they catch a driver breaching the rule.
- b) **Remove changes to calculation of weekly rest and working time.** Both of these measures are expected to have a significant and disproportionate administrative cost on SMEs. Many stakeholders considered the existing rules to be adequate and removing these measures would limit the negative impact on SMEs relative to larger firms.
- c) **Implementation of the habitual workplace principle, instead of time-thresholds for the posting of workers' directive.** Interviews conducted for this study with NFV, a Dutch trade union, UETR, and UEAPME, gave the suggestion of the introduction of the habitual workplace principle (Recital 23 and Article 8.1 of Rome I Regulation (Regulation (EC) No 593/2008), as clarified by the ECJ ruling on the Koelzsch⁸⁶ case. This option would be enforced through the use of smart tachographs, and therefore have a minimal administrative impact, which would remove the disproportionate effect on SMEs. NFV claimed that ETF are also proponents of this option.

⁸⁶ Heiko Koelzsch v État du Grand Duchy of Luxemburg, 2011. Available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-29/10>.

Annex F Stakeholder consultation summary report

F.1 Introduction

This report provides a summary of the outcomes of the stakeholder consultation activities that were carried out as part of the study to support the impact assessment for the revision of the social legislation in road transport. It provides a basic analysis of the range of stakeholder groups that have engaged in those activities and a summary of the main issues raised by stakeholders. The objective of the consultation activities was to:

- provide to the wide public and stakeholders an opportunity to express their views on the importance and severity of problems and issues related to the current legal framework – as these were identified in the relevant ex-post evaluation study - in order to help formulate the problem definition;
- gather specialised input (data and factual information, expert views) on specific aspects of the legislation from the enforcement community and from the industry; and
- gather input (data and/or estimates, expert views) on the expected impact and level of support of a set of measures intended to address issues and problems of the current legal framework.

The consultation activities undertaken included:

- An open public consultation organised by the Commission services that was launched on 5th September 2016 and was open for responses until 11th December 2016 (14 weeks);
- An SME panel survey organised by the Commission services launched on 4th November 2016 and open for responses until 4th January 2017 (8.5 weeks);
- A survey of drivers organised by Ricardo that was launched on 20th January 2017 and remained open until 10th March 2017 (7 weeks);
- A survey of national authorities responsible for implementation and enforcement of the legal framework organised by Ricardo that was launched on 20th January 2017 and remained open until 26th February 2017 (5 weeks);
- A direct information request from hauliers by Ricardo that was launched on 17th February 2017 and remained open until 10th March 2017 (3 weeks); and
- 35 phone interviews with a selected number of stakeholders including industry representatives, trade unions, national authorities and individual hauliers conducted by Ricardo and its partners (Milieu) that took place during the period 10th January 2017 to 10th March 2017.

More details on each of the consultation activities are presented in Section F.2 below.

F.2 Methodology

F.2.1 Open public consultation

The open public consultation (OPC) was launched on 5th September 2016 and was open for responses until 11th December 2016 (14 weeks). The OPC was held in a context of a back-to-back evaluation and impact assessment process.

The OPC comprised two questionnaires: one specialised questionnaire targeting EU and national authorities, NGOs, industry associations, trade unions and enforcement authorities, and one non-specialised questionnaire targeting drivers, road hauliers,

passenger transport companies and individual citizens. The objectives of the consultation were to help verify the problems faced by the sector – as identified in the ex-post evaluation, validate the objectives of a proposed interventions, and obtain the opinion of stakeholders on the appropriateness and expected impact of the possible policy measures to address those problems. The questionnaires were translated into 24 EU official languages.

A total of 1,377 responses were received; 1,209 responses to the non-specialised questionnaire and 168 to the specialised questionnaire. Responses covered a variety of stakeholder groups, as shown in Table F-1 and Table F-2.

Responses to the non-specialised questionnaire were received from respondents residing in, or organisations based in, 23 EU Member States (Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Poland, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom). 512 out of 1,209 (42%) responses were from Sweden, and were therefore analysed for divergent views from the rest of the respondents.

A number of coordinated responses were identified where respondents followed a template for answers. Eight different groups were identified from the analysis of the survey results, representing 126 responses to the survey (10% of total). Given the small number of coordinated responses relative to the sample size, these groups were not analysed separately.

Table F-1 Classification of stakeholders responding to the non-specialised questionnaire of the public consultation

Stakeholder category	No. of responses	% of total
Driver or other road transport worker (employee)	372	31%
Road haulier	269	22%
Passenger transport company	211	17%
Self-employed driver	206	17%
Other company in the transport chain (shipper, forwarder)	45	4%
Private individual	38	3%
Other	68	6%
Grand Total	1,209	100%

Responses to the specialised questionnaire were received from respondents residing in, or organisations based in, 24 EU Member States (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Portugal, Poland, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom). 45 out of 169 (27%) responses were from Germany, which was the largest response from a single Member State.

A number of coordinated responses were identified where respondents followed a template for answers. Nine different groups were identified from the analysis of the survey results, representing 32 responses to the survey (19% of total). Given the small number of coordinated responses relative to the sample size, these groups were not analysed separately.

Table F-2 Classification of stakeholders responding to the specialised questionnaire of the public consultation

Stakeholder category	No. of responses	% of total
Industry association	92	54%
Workers' organisation (e.g. trade union)	22	13%
National enforcement authority	7	4%
EU governmental authority	6	4%
Regulatory authority (e.g. national transport regulator, national competition authority)	5	3%
Academic body (e.g. research institute, training organisation)	3	2%
Enforcement authorities' organisation	1	1%
Intergovernmental organisation	1	1%
Other	32	19%
Grand total	169	100%

Furthermore, as part of the public consultation 29 position papers of relevance to this study were received from a variety of stakeholders including industry associations, workers' organisations, national authorities, enforcement organisations, NGOs and experts.

F.2.2 SME panel survey

An SME Survey was launched on 4th November 2016 and was open for responses until 4th January 2017 (8.5 weeks). The SME panel survey was split into two questionnaires; one focusing on the posting of workers in the road transport sector, and one focusing on driving times, working times and rest periods in road transport. Respondents had the option of answering either or both questionnaires.

A total of 109 responses were received to this survey. Of these, 35 were to the questionnaire on posting of workers in road transport, 42 were to the questionnaire on driving times, working times and rest periods, and 24 respondents answered both questionnaires. The remaining 8 responses did not complete either questionnaire, and so were not counted in either of the analyses. The distribution of respondents by type of operation is shown in Table F-3 and Table F-4.

Responses to the questionnaire on posting of workers were received from respondents residing in, or organisations based in, 12 EU Member States (Belgium, Czech Republic, Estonia, Finland, France, Germany, Italy, Luxembourg, Portugal, Poland, Romania, and Spain). The largest share of responses was from Romania, with 14 out of 59 (24%) responses.

Table F-3- Distribution of responses to the questionnaire on posting of workers in the road transport sector, by type of operation

Stakeholder category	No. of responses	% of total
Road haulage operator	17	29%
Passenger transport operator	14	24%
Driver or other road transport worker (employee)	13	22%
Self-employed driver	6	10%
Other	7	12%

No response	2	3%
Grand Total	59	100%

Responses to the questionnaire on driving times, working times and rest periods were received from respondents residing in, or organisations based in, 14 EU Member States (Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Italy, Luxembourg, Portugal, Poland, Romania, Slovakia, Spain, and the United Kingdom). The largest share of responses was from Poland, with 22 out of 66 (33%) responses.

Table F-4 Distribution of responses to the questionnaire on driving times, working times and rest periods in road transport, by type of operation

Stakeholder category	No. of responses	% of total
Road haulage operator	22	33%
Self-employed driver	16	24%
Driver or other road transport worker (employee)	13	20%
Passenger transport operator	7	11%
Other	8	12%
Grand Total	66	100%

F.2.3 National authority and drivers' surveys

In the course of the study, Ricardo carried out two surveys: one of national transport ministries and national enforcers, and one of drivers. The former was open for a total period of 5 weeks (deadline of 26th February 2017), while the survey of drivers was kept open for a longer period until the 10th March 2017. Late responses to the survey of MS authorities were still accepted.

The **survey of authorities** was structured around the different pieces of legislation that are relevant to this study (i.e. Regulation (EC) No 561/2006, Directive 2002/15/EC, Directive 2006/22/EC and Posting of Workers Directive (PWD)). For each section we asked respondents' feedback on a number of proposed policy measures and the impact they are likely to have on the legislation, enforcement, compliance, costs and, last but not least, social and working conditions of drivers. Such structure allowed both MS's competent authorities as well as enforcement authorities to provide feedback to each policy measure separately and to focus on those that are most relevant to their position.

A total of 42 responses were received from all 28 Member States (with the exception of Poland), as well as Norway and Switzerland (see Table F-5). In a number of cases separate responses were received by authorities in different aspects of the implementation or enforcement of the legislation. In cases where respondents from the same Member State have given different answers, the specific respondent is listed in the footnotes. Furthermore, in many cases the respondents from the same Member State answered different sections of the questionnaire, and therefore the total for each question is given in terms of the number of responses, rather than total respondents.

Table F-5: Responses to the national authorities' survey

Member State	Authority type	No. of responses
EU-15		

Member State	Authority type	No. of responses
Austria	Multiple ⁸⁷	3
Belgium	Multiple ⁸⁸	3
Denmark	Ministry of Transport	1 ⁸⁹
Finland	Multiple ⁹⁰	2
France	Ministry of Transport	1
Germany	Multiple ⁹¹	2
Greece	Multiple ⁹²	3
Ireland	Road Safety Authority	1
Italy	Combined ⁹³	1
Luxembourg	Customs and Excise	1
Netherlands	Human Environment and Transport Inspectorate	1
Portugal	National Labour Authority	1
Spain	Ministry of Public Works	1
Sweden	Multiple ⁹⁴	2
UK	Driver and Vehicle Standards Agency	1
Total		24
<i>EU-13</i>		
Bulgaria	Multiple ⁹⁵	2
Croatia	Ministry of Transport	1
Cyprus	Ministry of Labour, Welfare and Social Insurance	1
Czech Republic	Multiple ⁹⁶	2
Estonia	Multiple ⁹⁷	2
Hungary	Multiple ⁹⁸	2
Lithuania	Ministry of Transport	1
Latvia	Multiple ⁹⁹	2
Malta	Department of Industrial & Employment Relations	1
Poland	-	0 ¹⁰⁰
Romania	Ministry of Transport	1
Slovenia	Ministry of Infrastructure	1
Slovakia	Labour Inspectorate	1
Total		17
<i>EEA</i>		
Switzerland	Federal Roads Office	1
Norway	Public Roads Administration	1
Total		2

⁸⁷ Federal Ministry of the Interior, Federal Ministry of Labour, Social Affairs and Consumer Protection, Federal Ministry of Transport

⁸⁸ Labour Inspectorate, Federal Public Service Employment, Labour and Social Dialogue, and Directorate General Individual Labour Relations

⁸⁹ Denmark submitted a memorandum which was not possible to include in the survey analysis.

⁹⁰ Ministry of Social Affairs and Health, Ministry of Transport and Communications/Transport Safety Agency

⁹¹ Federal Ministry of Labour and Social Affairs, Federal Ministry of Transport

⁹² Labour Inspectorate, Ministry of Labour, Social Security and Social Solidarity

⁹³ Ministry of Labour and Social Policies; National Labour Inspectorate; Ministry of Infrastructures and Transportation; Ministry of Interior

⁹⁴ Ministry of Enterprise Energy and Communications, Transport Authority

⁹⁵ Ministry of Transport Information Technology and Communications, Labour Inspectorate

⁹⁶ General Directorate of Customs, Ministry of Transport

⁹⁷ Police and Border Guard Board, Ministry of Economic Affairs and Communications

⁹⁸ Ministry for National Economy - Department of Labour Inspections, Ministry of National Development

⁹⁹ Road Transport Administration - Ministry of Transport, State Police of Latvia

¹⁰⁰ Poland was the only country invited to respond who did not submit a response to the survey.

The **survey of drivers** intended to obtain relevant data from drivers on costs and characteristics of operations that could be used in the assessment of the impact (as part of the baseline) and also their views, estimates on the costs and cost savings of the policy measures under consideration. The survey was translated into five additional languages: French, German, Polish, Bulgarian, and Romanian.

A total of 345 responses were received from drivers. However, a large majority of the responses came from drivers from the Netherlands (140, 44%) and the United Kingdom (127, 40%) as shown in Table F-6.

Table F-6: Responses to the drivers' survey

Member State	No. of responses	% of total
<i>EU13</i>	22	6%
Poland	8	36%
Bulgaria	5	23%
Romania	5	23%
Czech Republic	2	9%
Lithuania	1	5%
Slovenia	1	5%
<i>EU15</i>	317	92%
Netherlands	140	44%
United Kingdom	127	40%
France	28	9%
Germany	11	3%
Sweden	4	1%
Spain	2	1%
Ireland	2	1%
Belgium	2	1%
Luxembourg	1	1%
<i>Other</i>	6	2%
Total	345	100%

F.2.4 Direct information requests – hauliers' data request

Direct information requests were used to obtain information from transport operators on specific aspects affected by the proposed measures and cost estimates. The information requests were useful to develop the baseline, particularly they were used to assess costs to business from the current legislation and assessing the impacts.

Information request forms were distributed to transport operators that responded to the public consultation and the SME panel. Requests were sent by email on the 17th February 2017 and respondents were given 3 weeks to respond. The data request template is included in Annex E.2.

As Table F-7 shows, in total we received 73 responses to data requests, 58 of these were from Hungary; however, 41 responses of these were part of a coordinated response.

Table F-7: Responses to the hauliers' data request, by geographical location

Member State	Total		Excluding coordinated responses	
	Number of responses	Percentage	Number of responses	Percentage
Total	73	100%	32	100%
<i>EU13</i>	67	92%	26	81%
Hungary	58 ¹⁰¹	79%	17 ¹⁰²	53%
Czech Republic	4	5%	4	13%
Bulgaria	3	4%	3	9%
Romania	1	1%	1	3%
Poland	1	1%	1	3%
<i>EU15</i>	6	8%	6	19%
Austria	1	1%	1	3%
Denmark	1	1%	1	3%
France	1	1%	1	3%
Ireland	1	1%	1	3%
Spain	1	1%	1	3%
Sweden	1	1%	1	3%

F.2.5 Stakeholder interviews

A dedicated team worked on the interview programme. Interview targets were adjusted according to the responses received and by sending regular reminders. The interview programme run until the 10th March 2017. However, it was extended by 3 more weeks to accommodate requests from some stakeholders and to complete interviews with authorities.

In total, 56 stakeholders were invited to interview and 35 interviews were conducted. The target of 40 interviews was nearly met while respecting a balance between EU13 and EU 15 countries (see Table F-8).

Table F-8: Overview of interview progress

Type of Stakeholder	Interviews		
	Invited	Declined	Carried out
Transport Company (BG, CZ, DE, HU, PL, SK, EU-wide)	15	5	7
National Industry Associations (AT, BG, CZ, DE, DK, ES, FR, PL, RO)	11	2	9
National Authorities (Transport Ministries and Enforcement Authorities) (AT, BE, BG, NL, DE, LV, RO, SE)	15	1	9
National workers' unions (BE, IT, NL, SI)	7	2	4
Other (International Association of Transport Companies) (ETF, UETR, NLA, UEAPME, EEA, CORTE, ECR)	7	0	6
<i>EU-15</i>	<i>30</i>	<i>6</i>	<i>15</i>

¹⁰¹ 42 responses from Hungary were part of Coordinated Group 1, as well as 1 Polish response

¹⁰² Includes 1 response counting the 42 Hungarian responses from Coordinated group 1

<i>EU-13</i>	<i>19</i>	<i>4</i>	<i>14</i>
<i>EU-Wide</i>	<i>7</i>	<i>0</i>	<i>6</i>
Total	56	10	35

F.2.6 Conclusions and limitations

The objectives of the consultation activities have been largely achieved, as all relevant stakeholder groups representing all EU Member States have been consulted, providing their views and some quantitative information, where available, related to existing issues and the measures considered to improve the legislative framework.

The survey of drivers and data requests to individual transport undertakings are considered the most limited due to the biased sample of respondents. For example, although the total number of responses to the survey of drivers is considered quite high (e.g. 345) the majority of responses were received by the Netherlands and the UK (44% and 40% of the responses respectively). Therefore, the overall sample is not representative from a geographic perspective, and does not present a balanced split between EU13 and EU15 countries.

Similarly, with regard to the data requests to transport undertakings, the sample of respondents is not representative geographically. Indeed, a strong majority (i.e. 87%) of the responses were coordinated and submitted by Hungary, whereas the spread across the other countries participating was unbalanced and low. While the survey of drivers was dominated by EU-15 responses, the data requests to transport undertakings was similarly dominated by EU-13 responses. While it has not been possible to use statistical techniques to correct this type of bias, we have attempted to address this limitation by discussing how the results vary among the different subgroups.

By contrast, the overall number of interviews undertaken was quite satisfactory. With a total of 35 interviews conducted, the target of 40 was nearly met, while respecting the balance between EU13 and EU15 countries overall. The outcome from the national authorities' survey was also positive as we were able to gather responses from nearly every Member State (Poland was the only exception).

Taking into account the limitations of individual research tools described above, the fact that the study makes use of multiple resource tools reflecting the views of different stakeholders can help cross-check and, where possible, triangulate specific data or other evidence provided.

F.3 Summary of inputs

F.3.1 Stakeholder input on problems with current legislation

Stakeholders provided significant input that helped validate and elaborate the definition of the problem and the areas where changes are considered necessary. Input in this area came primarily from the OPC and the SME panel survey and to lesser extent from the other stakeholder engagement tools used. The figures given always represent the largest share of respondents to a given question, unless multiple figures are given to a single question.

The sections below summarise the inputs provided that covered the problems and what are considered to be the underlying causes and drivers of these problems.

- Distortion of competition among transport operators

- Different application of the social rules by the Member States/diverging enforcement practices
- Complexity of social rules in transport
- Lack of flexibility in applying the EU road transport social rules
- Costs of compliance with rules
- Disproportionate penalties
- Fierce competition based on costs/pressure from clients/pressure from supervisor
- Inadequate working and social conditions of drivers
 - Long periods away from home/base
 - Poor infrastructure, resting and sanitation facilities
 - Illegal employment practices

F.3.1.1 Distortion of competition among transport operators

OPC non-specialised questionnaire respondents considered fierce competition to be the most important market challenge in road transport, with 673 out of 1,007 (67%) respondents scoring it a 1 or a 2 out of 5 (with 1 being most important). Respondents to the specialised questionnaire also considered fierce competition to be the **most important market challenge in road transport**, with 104 out of 147 (71%) respondents scoring it a 1 or a 2.

OPC non-specialised respondents also scored the importance of the main legislative challenges of this problem (different application of the social rules by Member States, lack of flexibility in applying the EU road transport social rules, disproportionate penalties, complexity of the social rules in road transport, and costs of compliance with the rules). All of the challenges had broadly similar profiles with respondents considering them all to be important. Costs of compliance with the rules had a significantly larger number of respondents scoring it 5 (331 out of 1,012 (33%) compared to 95 out of 899 to 135 out of 923 (11-15%) for the other challenges). The different application of the social rules by the Member States or diverging enforcement practices was considered slightly more important than the other challenges by the respondents, with 487 out of 879 (55%) respondents scoring a 1 or 2.

When disaggregated by stakeholder group, responses from other companies in the transport chain (shipper, forwarder) were notably different from the overall trend. This group had 15 out of 39 (38%) respondents indicate that disproportionate penalties were highly important, scoring it a 1, while lack of flexibility in applying the EU road transport social rules was considered less important than the overall trend suggested. Responses from private individuals also differed from the overall trend, with the costs of compliance with the rules being considered of similar importance to different application of the social rules. When disaggregated by geographical location, EU-15 based respondents mostly followed the overall trend, while EU-13 based respondents showed several differences. EU-13 based respondents considered the lack of flexibility in applying the EU road transport social rules are much less important than EU-15 based respondents, while the different application of the social rules by the Member States/diverging enforcement practices as much more important than EU-15 based respondents.

Similar to the non-specialised questionnaire, OPC specialised questionnaire respondents indicated the importance of the main legislative challenges, scoring all challenges highly. Different application of the social rules in different Member States (86 out of 154 (56%)), diverging enforcement practices within and among Member States (76 out of

150 (51%)), complexity of EU social rules for road transport (71 out of 165 (43%)), diverging levels and types of penalties among Member States (63 out of 146 (43%)), and high regulatory costs of complying with EU social rules (54 out of 160 (34%)) had a large share of respondents scoring these challenges a 1 in importance. All the stakeholder groups had similar response profiles, however when split by geographical location, EU-13 based respondents assigned lower importance to all challenges compared to EU-15 based respondents.

Respondents to the OPC non-specialised questionnaire did not consider the existing social legislation to contribute to combatting distortions of competition between operators. 599 out of 1,148 (52%) respondents indicated that the legislation had provided no contribution to this objective, with a further 264 (23%) indicating only a minor contribution. Self-employed drivers were more likely to indicate a minor or no contribution, while forwarders and shippers were more likely to indicate a more significant contribution. Similarly, EU-13 based respondents considered the current legislation to have a larger contribution than EU-15 based respondents.

Furthermore, OPC non-specialised questionnaire respondents also did not agree that the provisions on posting of workers provided fair competition between operators in the EU. 509 out of 1,105 (46%) respondents fully disagreed with this benefit, while a further 152 (14%) somewhat disagreed. EU-15 based respondents disagreed more strongly than EU-13 based respondents. SME panel respondents, however, agreed more than disagreed, with 31 out of 57 (54%) somewhat or fully agreeing and 24 (42%) somewhat or fully disagreeing. EU-15 based respondents were more likely to disagree than EU-13 based respondents.

Respondents to the OPC specialised questionnaire also felt that the current social legislation was not appropriate to ensure fair competition between operators, but to a lesser degree. 73 out of 164 (45%) respondents considered the current rules not to be appropriate, while 68 (41%) considered them appropriate. There was little difference in the response profile when the results were split by stakeholder group or geographical location. Similarly, respondents gave mixed opinions on whether the current social legislation had contributed to achieving the goal of combatting distortions of competition between operators. 27 out of 156 (17%) respondents identified a major contribution, 41 (26%) a moderate contribution, 39 (25%) a minor contribution, and 38 (24%) no contribution. A larger share of respondents from workers' organisations indicated no contribution, while no respondents from national authorities indicated as such.

Furthermore, OPC specialised questionnaire respondents did not agree that the provisions on posting of workers provided fair competition between operators in the EU. 55 out of 131 (42%) respondents did not agree at all with this benefit. This view was expressed more strongly by EU-13 based respondents, compared to EU-15 based respondents.

Overall, the OPC non-specialised questionnaire respondents indicated that most cost aspects have increased as a result of implementation of the EU social rules. In particular, administrative expenses and software and hardware equipment saw 747 out of 1,124 (66%) and 647 out of 1,123 (58%) respondents respectively indicate there had been at least a slight increase in costs. Costs resulting from penalties incurred was considered to have had the smallest increase, with only 477 out of 1,109 (43%) respondents indicating at least a slight increase. None of the cost aspects had more than 6% (66 out of 1,111) of respondents indicate the cost had reduced by any degree. The responses to this question also had a more significant number of respondents indicate no opinion or no response, generally accounting for 20-30% of each cost aspect.

When disaggregated by stakeholder group, self-employed drivers and employees were much more likely to indicate no opinion. Approximately half of all employee respondents indicated no opinion for each cost. All other stakeholder groups expressed similar response profiles. Similarly, EU-15 based respondents were much more likely to indicate no opinion, and therefore EU-13 based respondents expressed more significant increases in costs.

Furthermore, most of the OPC non-specialised questionnaire respondents (749 out of 1,079 (69%)) felt that the costs of compliance with EU rules are not justified by the benefits they bring. However, this view varied between each stakeholder category. Others (25 out of 57 (44%)), drivers or other transport workers (129 out of 300 (43%)), and self-employed drivers (61 out of 193 (32%)) all had a higher percentage of respondents indicate that the costs are justified by the benefits. These groups are often individuals, who would see the biggest benefit from the rules, compared to companies who see more of the costs. This logic is confirmed as road hauliers (201 out of 253 (79%)), passenger transport companies (32 out of 41 (78%)), and other companies in the transport chain (shippers, forwarders) (155 out of 201 (77%)) had the highest percentage of respondents indicate that the costs are not justified by the benefits. When split by geography, 219 out of 274 (80%) respondents from EU-13 countries indicated that the costs were not justified by the benefits, compared to 528 out of 799 (66%) of respondents from EU-15 countries.

OPC specialised questionnaire respondents largely (43-56%) had no opinion on the cost implications of implementing the EU social rules, although those that did, mostly indicated an increase in costs to some degree. Respondents from industry associations had the largest share indicate no opinion, while respondents from national authorities mostly indicated significantly or slightly increased costs for all cost implications. A higher share of EU-15 based respondents indicated no opinion, compared to EU-13 based respondents who were more likely to indicate a significant increase for all cost implications.

The majority of OPC non-specialised questionnaire respondents (561 out of 1,181 (55%)), across all stakeholder groups, indicated that it was not easy at all to understand and comply with the EU social provisions. Most of the stakeholder categories shared similar views, with the exception of other companies in the transport chain (shippers and forwarders), of which 30 out of 45 (67%) indicated that they felt it was somewhat easy or easy, and stakeholders who identified as other of which 32 out of 65 (49%) indicated it was somewhat easy, easy or very easy. When split by EU-15 and EU-13 Member States, there was little difference in responses.

The EU transport social legislation was seen as providing no contribution to the degree of flexibility offered by 496 out of 1,104 (45%) OPC non-specialised questionnaire respondents.

Most of the OPC non-specialised questionnaire respondents considered the fact that rules are interpreted and enforced differently in different countries to be a major obstacle (765 out of 1,152 (66%)). The issue that rules do not offer sufficient flexibility and that rules do not fit the specific needs of the respondent's sector/area also had more than half (661 out of 1,153 (57%) and 619 out of 1,152 (54%) respectively) of the respondents' state these were major obstacles. Furthermore, 582 out of 1,148 (51%) respondents thought that the fact that the rules are complex was a major obstacle to the effectiveness of the rules.

When disaggregated by stakeholder group, road hauliers generally considered the obstacles to be more significant than other stakeholder groups. However, passenger

transport companies, forwarders and shippers, and self-employed drivers were less likely to consider the obstacles significant, especially for those obstacles that had the lowest overall number of respondents indicate them to be major obstacles. When split by geographical location, EU-13 based respondents were more likely to indicate a major obstacle, compared to EU-15 based respondents.

OPC non-specialised questionnaire respondents gave their opinion on what should be the main objectives of a revision of the current EU legislation. The objective to clarify and simplify the existing rules was considered the most important, with 1,017 out of 1,147 (89%) respondents indicating it as important. This was closely followed by the objective to ensure uniform application and enforcement of the social rules in Member States which was considered important by 997 out of 1,140 (87%) of the respondents. All of the other main objectives (further harmonising working conditions in the sector, enhancing cooperation between Member States to allow for more effective-cross-border enforcement, further harmonising conditions of competition between operators, and ensuring balance between the freedom to provide cross-border services and social protection rights of road transport workers) were considered important by 73-76% of the respondents.

When disaggregated by stakeholder group, little variation was seen. Fewer private individual respondents considered the objectives important, with only about 50% of respondents indicating as such. When split by geographical location, EU-13 based respondents considered all of the objectives less important than the overall trend.

Similarly, 138 out of 154 (90%) OPC specialised questionnaire respondents also thought that clarifying and simplifying the existing rules was the most important objective of a revision of the current EU legislation. This was followed by ensuring uniform application and enforcement of the social rules in Member States, with 132 out of 152 (87%) indicating this important. There was very little difference when disaggregated by stakeholder group, but when split by geographical location EU-13 based respondents had a higher share of respondents indicate that the objectives were not important, compared to EU-15 based respondents.

F.3.1.2 Inadequate working and social conditions of drivers

Illegal employment practices were considered the second most important market challenge in road transport by OPC non-specialised questionnaire respondents, with 419 out of 844 (50%) respondents scoring it a 1 or 2, with poor infrastructure, resting and sanitation facilities closely following with 384 (45%). Long periods away from home/base was considered the least important challenges by respondents, with 571 out of 1,026 (56%) respondents respectively scoring them a 4 or 5.

The challenges of improved road safety and social protection rights of road transport workers had similar response profiles, with 417 out of 1,137 (37%) and 385 out of 1,148 (34%) OPC non-specialised respondents respectively noting that the legislation was appropriate, while 547 (48%) and 575 (50%) respondents felt the same challenges were not addressed appropriately. When disaggregated by stakeholder group, other companies in the transport chain (shipper, forwarder) much more strongly indicated that the legislation was appropriate to address improved road safety and fair competition of workers, with 29 out of 44 (66%) of respondents indicating so. All other stakeholder groups were largely in line with the overall trends.

Respondents to the OPC specialised questionnaire were more positive, with 116 out of 165 (70%) indicating that the current rules were appropriate for addressing the social protection rights of road transport workers, and 110 out of 166 (66%) indicating similarly for improved road safety. All stakeholder groups had similar response profiles,

with the exception of national authorities, where 9 out of 18 respondents indicated that the social protection rights for road transport workers were not appropriate. EU-13 and EU-15 based respondents gave similar answers.

More than half of the OPC non-specialised questionnaire respondents felt that the legislation had at least a minor contribution to achieving the objectives of improved road safety by reducing driver fatigue (708 out of 1,150 (62%)) and improving working conditions of drivers (669 out of 1,153 (58%)).

When disaggregated by stakeholder group, self-employed drivers indicated a smaller contribution to these objectives by social legislation compared to the overall trend. On the other hand, other companies involved in the transport chain (shippers, forwarders) considered the contribution to achieving the objectives of improving road safety by reducing driver fatigue to be higher than the overall trend. When disaggregated by geographical location, EU-13 based respondents considered the social legislation to have a slightly more significant contribution to improving road safety by reducing driver fatigue than EU-15 based respondents. Otherwise, EU-13 and EU-15 based respondents provided largely similar responses.

OPC specialised questionnaire respondents considered current social legislation to contribute to improving road safety by reducing driver fatigue and improving working conditions for drivers, as 114 out of 158 (72%) and 114 out of 156 (73%) respondents respectively viewed it as making a major or moderate contribution towards this objective. When disaggregated by stakeholder group, workers' organisations had a much larger share of respondents indicate no contribution from the social rules. Comparatively, respondents from national authorities had no respondents indicate no contribution, presenting by far the most positive view of the stakeholder groups. Other stakeholders and industry associations had similar response profiles that were close to the overall trend. EU-13 based respondents were slightly more negative about the contribution made, with a larger share of respondents indicating no contribution, compared to EU-15 based respondents.

318 out of 1,099 (29%) of OPC non-specialised questionnaire respondents somewhat agreed that the benefits of better social protection of drivers and reduction of illicit employment practices were met by the application of the EU provisions on posting of workers, but 441 (40%) didn't agree. When disaggregated by stakeholder group, shippers and forwarders more strongly agreed with the benefits than the overall trend. However, self-employed drivers were more likely to express that they did not know if they agreed with these benefits.

Similarly, 46 out of 129 (36%) of OPC specialised questionnaire respondents didn't agree with the benefit of reduction of illicit employment practices were met by the application of the EU provisions on posting of workers.

SME panel respondents agreed more than disagreed with the benefit of reduction of illicit employment practices from the application of EU rules on posting of workers. 33 out of 57 (58%) respondents somewhat or fully agreed, while 23 out of 57 (40%) somewhat or fully disagreed.

F.3.2 Stakeholder input on policy measures considered

Stakeholders also provided input on the level of support and expected impacts of the policy measures under consideration. Input came from the OPC, the SME panel, the surveys of hauliers, national authorities and drivers, and interviews.

F.3.2.1 Posting of Workers Directive (PWD)

Respondents to the OPC non-specialised questionnaire thought that adapting the administrative formalities for posted workers to the specificities of road transport and establishing criteria for the posting situation in road transport would have a significant contribution to the functioning of the social rules in road transport. 429 out of 1,117 (38%) and 382 out of 1,133 (34%) respondents respectively indicated that these measures would have a major contribution, and a further 227 (20%) and 239 (21%) respectively thought this measure would have a moderate contribution. EU-13 based respondents identified a greater contribution from adapting administrative formalities than EU-15 based respondents, while the geographical distribution regarding establishing criteria for the posting situation was fairly even.

Respondents to the OPC specialised questionnaire also thought that adapting the administrative formalities for posted workers to the specificities of road transport and establishing criteria for the posting situation in road transport would have a significant contribution to the functioning of the social rules in road transport. 79 out of 142 (56%) and 89 out of 144 (62%) respondents respectively indicated that these measures would have a major contribution. There was no significant difference in response between EU-13 and EU-15 based respondents.

SME panel respondents (31 to 41 out of 56 to 57 (54% to 73%)) agreed with all of the suggested benefits from the application of the rules on posting of workers, especially the benefit of better social protection for workers (41 out of 56 (73%)). Most respondents (43 to 53 out of 56 to 57 (77 to 93%)) also agreed with all of the problems suggested. However, EU-13 based respondents considering the restriction of freedom to provide cross-border services and application of national minimum wages of the host state to be the most significant problems, while EU-15 based respondents considered the burden of administrative requirements, the lack of awareness about the provisions on posting of workers, and the fact that the provisions are not adapted to the specificities of road transport to be the most significant problems. The respondents also agreed that complying with the posting provisions resulted in an increase in costs (33 to 34 out of 56 (59 to 61%) of respondents). Slightly more respondents indicated that the benefits did not outweigh the costs (20 out of 50 (40%) of respondents) than the reverse, although nearly as many indicated that they didn't know (18 out of 50 (36%) respondents). There was little agreement between respondents in the perceived impacts of the proposed measures¹⁰³, although 27 out of 56 (48%) respondents indicated that establishing criteria for posting in road transport determining when the rules should apply would result in better clarity. Respondents also expressed mixed views on the criteria that should be used to establish when posting provisions should apply, with 19 out of 55 (35%) suggesting using the minimum number of days a driver is present per month in a Member State, and 16 out of 55 (29%) suggesting the use of total accumulated minimum number of kilometres driven during one month by a driver in a Member State.

The largest share of respondents to the drivers' survey considered these measures to result in no change to their monthly pay (111 out of 316 (35%)), their overall working conditions (100 out of 316 (32%)), and their ability to spend weekly rest periods at home (126 out of 320 (39%)). Furthermore, 119 out of 302 (39%) respondents considered 5 days to be the most appropriate period in excess of which posting of workers rules should apply. Among the further written responses on this topic, there was a wide range of opinions, with many respondents supporting this measure, and opposing it. Similarly regarding the appropriate period for application of the rules, the written

¹⁰³ Proposed measures were: Reduce administrative formalities for posted workers, establish criteria for posting in road transport determining when posting rules should or should not apply, and exclude entirely road transport from the provisions on posting.

responses ranged extensively, with respondents suggesting significantly shorter periods, and others opposing such a period completely. There was no significant difference when disaggregated by geographical location.

Respondents to the hauliers' data request indicated that they would have to make very little changes as a result of this measure to maintain the same level of turnover. Respondents indicated that the number of total trips (47 out of 69 (68%)), number of drivers employed (48 out of 68 (71%)), number of vehicles used (51 out of 66 (77%)), and average time spent away from home base for drivers (50 out of 68 (74%)) would be about the same. However, the written responses regarding this measure suggested that most hauliers are opposed to the application of posting of workers rules to road transport.

As above, interview respondents had a wide range of opinions on this matter. Several industry associations, a trade union and a national authority¹⁰⁴ considered 5 days too short, and proposed longer time periods ranging from 7 days to 15 days. However, three trade unions¹⁰⁵ and an EU-wide industry association suggested that posting of workers rules should apply from the moment of entry into a Member State, and therefore disagreed with all of the proposed options. Other interviewees suggested shorter periods of time, or that posting of workers should not be applied to road transport. One EU-wide industry association suggested using the principles set out in the Koelzsch case¹⁰⁶.

F.3.2.1.1 Applicability of posting of workers provisions to road transport

Respondents to the national authorities' survey gave a mixed response to the most appropriate minimum period during which posting of workers rules should apply. 8¹⁰⁷ out of 15 respondents suggested a different amount to the three options available (5 days, 7, days, 9 days). The written suggestions varied significantly, from the first hour (French authority), to no minimum at all due to the lack of applicability of the posting of workers to the transport sector (authorities from Czech Republic, Hungary, Netherlands, and Slovakia).

There was a mixed response to the national authorities' survey regarding the impact on the effectiveness of enforcement from the application of the posting of workers provisions based on a number of days per month. 7¹⁰⁸ out of 19 respondents suggested this would result in more effective enforcement, while 5¹⁰⁹ suggested an impact of significantly less effective enforcement. 6¹¹⁰ out of 15 respondents thought that reporting of activities would be a significant problem, and a further 6¹¹¹ a small problem. Comparatively, only 3¹¹² out of 15 respondents thought that reporting costs would be a major problem, but 11¹¹³ thought it would be a small problem.

F.3.2.1.2 Definition of time spent in a Member State

Respondents to the national authorities' survey considered that proposed definitions of day/time spent in Member States would have positive effects on enforcement. While considering four different definitions of a proposed measure, the range of effect was assessed at the same level. Defining the amount of time spent in a host Member State as including driving times, other work, periods of availability and breaks, and defining a

¹⁰⁴ Industry associations – PL, RO, AT, EU-wide. National authority from Bulgaria and a trade union from Slovenia.

¹⁰⁵ Trade unions from NL, IT, and EU-wide.

¹⁰⁶ Application of the habitual workplace principle (Recital 23 and Article 8.1 of Rome I Regulation (Regulation (EC) No 593/2008), as clarified in *Heiko Koelzsch v État du Grand Duchy of Luxembourg*, 2011. Available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-29/10>.

¹⁰⁷ 8 Member States (BG, CZ, DE, FI, FR, HU, IT, LV)

¹⁰⁸ 7 Member States (BE, BG, BG, EE, HR, IT, SK)

¹⁰⁹ 5 Member States (CZ, DE, FI, FR, HU)

¹¹⁰ 6 Member States (CZ, DE, EE, HU, LV, NL)

¹¹¹ 5 Member States (AT, BE, BG, FI, EL, SK)

¹¹² 3 Member States (CZ, HU, LV)

¹¹³ 11 Member States (AT, BE, BG, DE, EE, FI, EL, IT, LU, NL, SK)

driver spending the majority of his day in a Member State as counting as a “full day” for the purpose of this Directive, both had 9¹¹⁴ out of 24 and 23 respondents respectively consider these definitions to have a positive effect on enforcement. Similarly, defining a calendar month as the appropriate reference period, and defining time spent during daily and weekly rest periods as accounted for, as the driver is exposed to the cost of living of the host Member State, had 8¹¹⁵ and 7¹¹⁶ out of 23 respondents respectively indicate a positive effect on enforcement.

Interviews carried out with stakeholders expressed mixed views on the definitions of time spent in a Member State. A Belgian trade union and an Italian trade union expressed support for all of the definitions of time given, along with a Bulgarian national authority. However, an EU-wide and a Dutch trade union, as well as a German and a Romanian national authority were against all of the definitions. For those against, the reasons differed significantly, with the Romanian national authority arguing that the posting of workers should not apply to transport, while the Dutch trade union and the German authority argued that the current rules apply from the moment of entry into another Member State and any of these definitions would only make the situation worse for the worker. Interviews with industry associations gave a similarly divided response, with some associations agreeing that the added definitions would provide further clarity, while other associations felt that the Posting of Workers’ Directive is not applicable to transport and therefore did not agree with any of the proposed definitions.

F.3.2.1.3 Enforceability of posting of workers provisions

National authorities’ survey respondents gave a mixed response to the impact on the effectiveness of enforcement of the posting provisions from four proposed measures: two-step enforcement, establishing frequency of presence of a driver at roadside checks, requiring verification (including premise checks) of operators’ compliance with posting of workers’ directive by control authorities, and deadlines to verify compliance of operators with the Directive. All four measures had more respondents indicate that the measures would result in more effective enforcement than indicate any other options. Most significantly, 8¹¹⁷ out of 19 respondents considered establishing frequency of presence of a driver at roadside checks to result in more effective enforcement. Comparatively, 6¹¹⁸ respondents indicated more effective enforcement from deadlines to verify compliance of operators with the Directive, only 5¹¹⁹ indicated similarly for two-step enforcement, and 4¹²⁰ for requiring verification of operators’ compliance with the Directive by control authorities. The remaining respondents for each measure were split fairly evenly over the other options.

In the context of Posting of Workers Directive, all of the undertakings interviewed expressed concerns that the use of smart tachographs would not reduce costs for compliance with the posting of workers rules, as the administration costs of managing the data would still be present. Several undertakings¹²¹ also felt that the Posting of Workers’ Directive does not take into consideration the complexity of transport operations. Trade unions interviewed were in general supportive of the measures suggested for better enforcement of the posting of workers’ directive. The exception was the EU-wide trade union (i.e. ETF) who had concerns that the measures would shift the burden of compliance onto the drivers, rather than making it easier to enforce.

¹¹⁴ 9 Member States (AT, BE, BG, EE, FI, HR, IT, LU, SK), and (AT, BE, BG, FI, HR, IT, MT, NL, SK) respectively

¹¹⁵ 8 Member States (AT, BE, BG, EE, HR, IT, LV, MT)

¹¹⁶ 7 Member States (AT, BE, BG, EE, FI, HR, IT)

¹¹⁷ 8 Member States (BE, BG, EE, FI, HR, IT, NL, SK)

¹¹⁸ 6 Member States (BE, BG, EE, HR, IT, SK)

¹¹⁹ 5 Member States (BE, BG, HR, IT, SK)

¹²⁰ 4 Member States (BE, BG, HR, IT)

¹²¹ 4 Member states (HU, BG, PL, CZ)

Furthermore, the risk rating system is only a data collection tool, but does not make it easier to identify posting situations.

Interviews with national authorities also presented a mixed set of views on the proposed measures. A Belgian national authority was in favour of two-step enforcement and both measures regarding verification (operators' compliance and deadlines for this). However, a German national authority did not support the two-step approach, arguing that enforcement is ideally carried out through roadside checks.

F.3.2.2 Directive 2006/22/EC

F.3.2.2.1 Measures regarding the enhancement of enforcement

The measures considered regarding the enhancement of enforcement included allowing controllers access to the risk rating system (RRS) in real-time for roadside and premise checks, establishing a uniform EU-level formula for calculating risk ratings, and enhance administrative cooperation of national control authorities by requiring 2 working day response times for urgent cases, and 25 working day response times for non-urgent cases.

Respondents to the national authorities' survey considered all three measures to result in more effective enforcement. 23¹²² out of 32 respondents thought that access to RRS at the roadside and premise checks would result in more effective enforcement, while 23¹²³ out of 33 responded similarly to a uniform EU-level formula for calculating risk rating. 22¹²⁴ out of 33 respondents thought that a 25 working day response time for non-urgent cases would result in more effective enforcement, and 19¹²⁵ thought similarly regarding the 2 working day response time for urgent cases. Most respondents¹²⁶ thought that introducing these measures would have no practical enforcement problems, but did not know what the change in enforcement costs would be. There was no significant difference in responses when disaggregated by geographical location.

Interviews with national authorities were on the whole positive about these measures. Any criticism came in the form of national differences in how the RSS system is used (and therefore how beneficial extending access would be), or how risk rating is calculated. All national authorities were supportive of the maximum response times for information sharing.

F.3.2.2.2 Clarification and simplification of current rules

The measures considered regarded clarification and simplification of the current rules included establishing national penalty systems to ensure proportionate penalties to the level of seriousness of infringements, removing the requirement for attestation forms, and explicitly stating whether Article 14.2 of Directive 2006/22/EC does or does not apply to Directive 2002/15/EC.

Respondents to the national authorities' survey were supportive of harmonising criteria to ensure proportionate penalties (22¹²⁷ out of 33 respondents) and the same positive views were expressed during interviews with national authorities from Romania, Sweden, Belgium (only proportionate penalties and clarification of Art. 14.2) and Latvia, as well as ECR considered these measures to be effective.

¹²² 18 Member States (EL, CY, CZ x2, EE, FI x2, FR, HR, IE, LT, LV x2, RO, SI, SK, UK, HU, LU, NL, PT, BE) plus NO

¹²³ 17 Member States (EL x2, CZ x2, FI x2, HR, IE, LT, LV x2, NL, RO, SE, SI, SK, EE x2, HU, LU, PT, BE) plus NO

¹²⁴ 17 Member States (EL x2, CZ, EE x2, FI, HR, LV x2, RO, SE, SI, SK, CZ, DE, ES, HU, LU, NL, PT) plus CH and NO

¹²⁵ 16 Member States (EL, CZ x2, EE, FI, HR, IE, LV x2, RO, SE, SI, CZ, DE, HU, LU, NL, PT) plus CH and NO

¹²⁶ Access to RRS (15 Member States, i.e. BG, CY, CZ, EE, FI, FI, HR, IE, LT, LV, LV, NL, RO, SE, SI) plus NO; Uniform EU Formula (18 Member states, i.e. GR, BG, CH, CZ, CZ, EE, ES, FI, FI, EL, HR, IE, LV, LV, PT, RO, SE, SI, SK plus CH and NO); MS authority request requirement (2 working days) (10 Member States, i.e. BG, CY, DE, EE, ES, FI, HR, HU, LU, PT plus CH); MS authority request requirement (25 working days) (18 member states GR, BG, CY, DE, EE, ES, FI, FI, EL, HR, HU, IE, LT, LU, PT, RO, SE, SK plus CH and NO).

¹²⁷ 18 Member States (EL x2, EE, FI x2, HR, IE, LT, NL, RO, SE, SI, CZ, ES, HU, IT, LV x2, PT, SK, BE) plus NO

In terms of the removal of attestation forms, 18¹²⁸ out of 34 respondents to the national authorities' survey considered that it should result in more effective or significantly more effective enforcement. During interviews, authorities from Romania, Sweden and Latvia, and the ECR also indicated that these measures should be effective. From their side, respondents to the hauliers' data request considered the removal of the requirement for attestation forms to have very little impact on their annual operating costs. 13 out of 69 (19%) respondents suggested that the costs would be about the same, however 41 (59%) indicated that this question was not applicable as they did not use attestation forms.

There was a more mixed response in relation to the clarification of Article 14.2 had a mixed response. 10¹²⁹ out of 31 respondents to the authorities' survey suggested that they expect a more effective enforcement in the case of its application, while 6¹³⁰ out of 30 stated the same without application. Most respondents to the national authorities' survey (12 to 17 out of 30 to 23) thought that introducing these measures would have no practical enforcement problems, but did not know what the change in enforcement costs would be (11 to 16 out of 30 to 32). There was also no significant difference when disaggregated by geographical location. A Latvian national authority commented that Article 14.2 is currently enforced at national level as with all working time rules, but suggested that it would be more appropriate and effective to move the specific article to move into Regulation 561.

F.3.2.2.3 Additional enforcement support measures considered

Additional measures considered to enhance enforcement were: (1) making training for new enforcers compulsory and according to a common curriculum; (2) the creation of a European Road Transport Agency with the task of observing the phenomenon and interstate offenses, monitoring national legislation, formulating proposals for improving European regulation and improving the system of sharing administrative information between Member States.

In terms of the former, respondents to the national authorities' survey indicated that they expect a more effective enforcement from compulsory training and a common curriculum for enforcers, with 24¹³¹ out of 33 respondents indicating as such. During interviews, Romanian, Swedish and Belgian national authorities also expressed support for the specific measure while only the Bulgarian national authority interviewed suggested that the proposed measures would make enforcement less effective, but did not explain why. Only 4 out of 34 respondents¹³² to the authorities' survey thought that these measures would have significant problems while more than half respondents (16 out of 31) stated that they do not expect any problem¹³³. Large share, 14 out of 34 did not have a view¹³⁴ on the expected impact on costs while 10 respondents¹³⁵ considered that it would lead to an increase of costs.

Concerning the creation of a European Road Transport Agency, only 15¹³⁶ out of 35 respondents to the national authorities' survey indicated that they expect to lead to more or significantly more effective enforcement. During interviews, the Swedish and Austrian authorities expressed concerns about the practicalities of a European Road

¹²⁸ 16 Member States (EL, FI, HR, IE, LU, LV x2, NL, SE, SI, SK, CZ, HU, LT, PT, RO) plus CH and NO

¹²⁹ 7 Member States (EL x3, HR, IE, RO, SE, HU, PT) plus NO

¹³⁰ 4 Member States (FI x2, EL, HR, RO) plus CH

¹³¹ 18 Member States (EL x2, CZ x2, ES, FI x2, FR, LT, NL, RO, SE, EE x2, HR, HU, IE, LV x2, PT, SI, SK, BE) plus NO

¹³² 4 Member States (CY, DE, LU, UK)

¹³³ 13 Member States (CZ, EE*2, ES, FI*2, FR, EL*2, HR, IE, LT, NL, SI, SK) plus NO

¹³⁴ 11 Member States (AT, AT, GR, BG, CZ, CZ, EE, HR, IE, IT, LU, LV, LV, UK)

¹³⁵ 9 Member States (CH, CY, FI, EL, RO, SE, SK, ES, PT, BE) plus CH,

¹³⁶ 13 Member States (CZ, EE x2, ES, HU, LT, RO, FR, EL, HR, LV x2, PT, SK, BE)

Transport Agency when Member States often have different methods for carrying out checks. 12 out of the 29¹³⁷ respondents indicated that introducing a European Road Transport Agency would have no practical enforcement problems although 9¹³⁸ thought there could be minor problems and 8 more rather major problems¹³⁹. Asked to indicate the expected impact on costs, most (20 out of 33¹⁴⁰) indicated that they did not know what the change in enforcement costs would be with 8¹⁴¹ expecting additional costs and only 2¹⁴² expecting an increase. There was no significant difference when disaggregated by geographical location.

The Bulgarian national authority interviewed suggested that these measures would make enforcement less effective, but did not explain why.

F.3.2.3 Clarification and scope of Regulation (EC) No 561/2006

Respondents to the OPC non-specialised questionnaire thought that extending the driving and working time rules to cover drivers of vehicles below 3.5 tonnes would have a significant contribution to the functioning of the social rules in road transport. 339 out of 1,146 (35%) respondents indicated that this measure would have a major contribution, and a further 215 (19%) thought this measure would have a moderate contribution. However, respondents to the OPC specialised questionnaire gave a more mixed response. 62 out of 166 (37%) respondents considered this measure to have a major contribution, while 52 (31%) considered it to have no contribution at all.

Respondents to the OPC non-specialised questionnaire thought that excluding self-employed drivers and occasional non-professional drivers from the working time rules would have no contribution at all to the functioning of the social rules in road transport. 485 out of 1,139 (43%) respondents indicated that excluding self-employed drivers would have no contribution, while 467 out of 1,133 (41%) indicated similarly for excluding occasional professional drivers. OPC specialised questionnaire respondents only responded to this regarding self-employed drivers, however gave a similar response with 60 out of 148 (40%) indicating no contribution at all.

Most of the SME panel respondents (32 to 42 out of 60 to 66 (52% to 64%)) agreed that the EU requirements on driving, working and resting times should cover and be the same for all companies and all drivers. However, many respondents (11 to 30 out of 59 to 63 (18 to 50%)) did not know, or were not in agreement with what the benefits would be of the measures and changes suggested in the questionnaire, or what the disadvantages would be. Most respondents (43 to 49 out of 63 (68 to 78%)) agreed that the measures and changes would result in an increase in costs, and the respondents were evenly split (between yes (20 out of 59 (34%)), no (19 out of 59 (32%)) and do not know (20 out of 59 (34%))) on whether the benefits/advantages would outweigh the costs/disadvantages.

Respondents to the OPC non-specialised questionnaire were divided over the magnitude of the contribution from discontinuing the attestation form for driver's activities when away from vehicle. 312 out of 1,105 (28%) thought this would result in a major contribution to the enforcement of the social legislation, while 203 (18%) thought this would have no contribution. Employees, self-employed drivers, and private individuals were more likely to indicate a major contribution than other stakeholder groups. OPC specialised questionnaire respondents were similarly divided, with 44 out of 148 (30%) indicating a major contribution, while 28 (19%) indicated no contribution at all.

¹³⁷ 11 Member States (CZ, EE*2, ES, FI, FR, EL, HR, LT, LU, NL, SK)

¹³⁸ 8 Member States (EL, BG, HU, IE, LV*2, PT, SI, BE)

¹³⁹ 6 Member States (AT, CZ, DE, IT, RO, UK) plus CH and NO

¹⁴⁰ 17 Member States (AT*2, EL, BG, CY, CZ*2, EE, FI*2, HR, IE, IT, LT, LV*2, SE, SI, SK, UK)

¹⁴¹ 6 Member States (EL, ES, NL, PT, RO, BE) plus CH and NO

¹⁴² 2 Member States (DE, HU)

National authority survey respondents gave a mixed opinion on the impact on effectiveness of enforcement regarding defining occasional driver and operations for private purposes and excluding these groups from the scope. 14¹⁴³ out of 34 respondents felt this measure would result in less or significantly less effective enforcement, while 10¹⁴⁴ felt that it would result in more or significantly more effective enforcement.

When interviewed for this study, six industry associations and three trade unions¹⁴⁵ objected to the exclusion of occasional driver from the scope of the regulations. Most interviewees argued that occasional drivers must follow the rules to ensure road safety. However, four other industry associations¹⁴⁶ were supportive of this measure and felt that excluding these drivers and providing definitions would improve the clarity of the regulation. National authorities interviewed were also divided on this issue. The Romanian authority supported the exclusion, while authorities from Sweden, Netherlands, Austria and ECR were opposed to the exclusion arguing it would further complicate enforcement. The Belgian authority raised concerns about ensuring that occasional drivers be examined carefully as to the scope of their works before excluding them.

F.3.2.4 Working Time Directive (WTD)

Three measures were proposed regarding the calculation and enforcement of working time provisions; establishing reporting templates for biennial national reports, minimum thresholds for controlling compliance with working time provisions through roadside and premise checks, and reducing the reference period for calculations of average weekly working time from 4 or 6 months, to 4 weeks.

All three measures were considered by respondents to the national authorities' survey to result in more effective enforcement. In particular, the measures establishing minimum thresholds and reducing the reference period were considered to result in more effective enforcement by 17¹⁴⁷ out of 31 and 16¹⁴⁸ out of 32 respondents respectively. The measure regarding establishing reporting templates was considered to result in a positive effect on enforcement by 12¹⁴⁹ respondents, but to have no impact by another 12¹⁵⁰. EU-13 based respondents were generally slightly more positive regarding these measures than EU-15 based respondents. All three measures were not considered to result in any practical enforcement problems by most respondents. The measure to reduce the reference period was thought to have the largest contribution to reducing accumulated fatigue, with 12¹⁵¹ out of 30 respondents indicating a major contribution, and a further 13¹⁵² indicating a small contribution. Most respondents did not know what the change in enforcement costs would be from these measures.

When interviewed regarding changes to the calculation of working time, the respondents were split by their stakeholder type. Undertakings¹⁵³ and industry associations¹⁵⁴ were generally against this measure, due to reduced flexibility and increased administrative burden. However, trade unions¹⁵⁵ were in favour of this measure as it would reduce

¹⁴³ 12 Member States (CY, CZ (General Directorate of Customs), EL x2, EE, FI x2, IE, LT, NL, RO, SE) plus CH and NO

¹⁴⁴ 10 Member States (AT, BG, CZ (Ministry of Transport), EE, ES, HR, HU, LV, PT, SK)

¹⁴⁵ Industry Associations – AT x2, ES, PL., EU-wide x2, Trade Unions – BE, NL, SI

¹⁴⁶ Industry Associations – BG, CZ, RO, EU-wide

¹⁴⁷ 14 Member States (AT, BE x2, BG x2, EE, FI, HR, HU, IE, IT, LU, LV, RO, SE, SK) plus NO

¹⁴⁸ 12 Member States (BE x2, BG x2, CY, EE x2, FI, HR, IE, LT, LV, NL, RO, SK) plus CH

¹⁴⁹ 9 Member States (BE x2, BG x2, FI, HR, LU, RO, SE, SI, PT) plus NO

¹⁵⁰ 11 Member States (AT, CY, DE, EE, FR, HU, IE, IT, LT, LV, SK) plus CH

¹⁵¹ 11 Member States (AT, DE, EE, FR, EL, HR, HU, IT, PT, RO, SE) plus CH

¹⁵² 11 Member States (BE x2, BG, CY, EE, FI x2, IE, LT, LV, SI, SK, UK)

¹⁵³ 4 member States (BG, HU, PL, CZ)

¹⁵⁴ 6 Member States (RO, PL, DE, CZ, BG, AT)

¹⁵⁵ 3 member States (NL, BE, SI) and ETF.

driver fatigue. National authorities¹⁵⁶ were also positive about how these measures would impact enforcement. There was some uncertainty as to exactly what the practical impact would be, but most agreed there would be more effective enforcement.

F.3.2.5 Flexibility of transport operations

F.3.2.5.1 Multi-manning¹⁵⁷

Respondents to the drivers' survey gave a mixed response to the impact of changes to the multi-manning regulations. 81 out of 306 (27%) respondents thought that their overall working conditions would significantly decrease as a result, while 89 out of 311 (29%) felt that safety conditions would significantly decrease, and 78 out of 308 (25%) felt that their ability to avoid fatigue and get adequate rest would significantly decrease. However, 76 out of 308 (25%) respondents thought that the flexibility in organising multi-manning operations would slightly increase. When disaggregated by geographical location, there was a number of differences. EU-13 based respondents were much more positive than the overall trend, with more respondents indicating an increase in safety, overall working conditions and ability to avoid fatigue. However, respondents from the Netherlands, who accounted for 115-117 of the responses to this question, considered these aspects to significantly decrease more so than the overall trend. Respondents from the UK, who accounted for 117-119 of the respondents to this question, were more likely to indicate no change in these aspects as a result of this measure.

Interview respondents to this study were supportive of a change to the multi-manning rules. Undertakings interviewed were all supportive of this measure as it would increase flexibility. National authorities in general did not see a problem with this measure; however, some indicated¹⁵⁸ that added flexibility would probably cause an increase in costs of enforcement. Industry associations¹⁵⁹ were mostly positive regarding this measure as a result of increased flexibility; however, trade unions¹⁶⁰ felt that the current multi-manning rules are acceptable as they ensure road safety, and so should not be changed.

F.3.2.5.2 Adaptation of breaks

Respondents to the OPC non-specialised questionnaire thought that allowing for flexible distribution of minimum breaks would have a significant contribution to the functioning of the social rules in road transport. 606 out of 1,146 (53%) respondents indicated that this measure would have a major contribution, and a further 226 (20%) thought this measure would have a moderate contribution. EU-15 based respondents identified a greater contribution from this measure than EU-13 based respondents. OPC specialised questionnaire respondents were even more positive regarding this measure, with 88 out of 147 (60%) indicating a major contribution.

Respondents to the national authorities' survey mostly indicated that this measure would have no impact. 15¹⁶¹ out of 32 respondents indicated as such, while a further 10¹⁶² indicated that the adaptation of breaks would make for more effective enforcement. The largest share of respondents (23¹⁶³ out of 34) also indicated that the practical

¹⁵⁶ 3 Member States (RO, SE, BG)

¹⁵⁷ The analysis of stakeholder input regarding measures on multi-manning were here analysed as included in the OPC, however they were not considered in the analysis of impacts.

¹⁵⁸ 2 Member States (NL, AT)

¹⁵⁹ 7 member States (AT, BG, CZ, ES, PL, RO, DK,) and 4 EU-wide IA organisations (NLA, UETR, EEA and UEAPME)

¹⁶⁰ 3 Member States (IT, BE, NL).

¹⁶¹ 12 Member States (AT x3, EL, CZ, EE, FI (Ministry of Social Affairs and Health), HU, LU, LV, SI, SK, UK, BE) plus NO

¹⁶² 9 Member States (BG, CY, FI (Ministry of Transport and Communications/Transport Safety Agency), EL, HR, IE, LT, PT, RO) plus CH

¹⁶³ 18 Member States (AT x3, BG, CY, CZ, EE, ES, FI x2, EL x2, HR, HU, IE, LT, LU, LV, RO, SI, SK, BE) plus NO

enforcement of this measure would be no problem, and 16¹⁶⁴ out of 33 indicated that the enforcement costs would stay about the same.

Respondents to the drivers' survey gave mixed responses to this measure. 251 out of 326 (77%) respondents felt that their monthly pay would not change. However, most respondents felt that overall working conditions (99 out of 327 (30%)), safety conditions (116 out of 328 (35%)), and their ability to avoid fatigue and get adequate rest (114 out of 331 (34%)), would significantly decrease. Despite this, a large share of respondents considered there to be no change in these aspects from the measure (76 (23%), 78 (24%), and 63 (19%) respectively), while at least 84 (26%) indicated that these aspects would either slightly or significantly increase. Overall, the responses present a mixed opinion that slightly leans towards a decrease in working conditions, safety and ability to avoid fatigue. However, when disaggregated by geographical location, EU-13 based respondents gave an evenly split response between decrease, no change and increase, compared to EU-15 based respondents who were more negative on these aspects.

The interview responses to this measure were divided, partly by stakeholder group. Four undertakings, eleven industry associations¹⁶⁵, and the Bulgarian national authority were all in favour of this measure as it would increase flexibility. However, four trade unions, three national authorities¹⁶⁶, a Slovakian undertaking and a German association were all against this measure, arguing that the current measure works well and further splitting of breaks would affect road safety.

F.3.2.5.3 Derogation for passenger transport by coach

Respondents to the national authorities' survey considered abolishing compensation for reduced rest after a 12-day derogation to result in more effective enforcement, with the largest share of respondents (12¹⁶⁷ out of 33) indicating as such. 10¹⁶⁸ out of 29 respondents thought that extending the 12-day derogation to domestic occasional passenger transport would have no impact, and 12¹⁶⁹ out of 29 thought that adding an 8-day derogation for domestic occasional transport would result in less effective enforcement. However, all three measures were considered to lead to major problems with practical enforcement.

Respondents to the drivers' survey gave written responses regarding this measure. There was a wide range of opinions, however for all three measures around two out of three respondents stated that they considered the measure to be problematic¹⁷⁰. The rationale given centred on the added number of working days that a driver would have to carry out given either the 8-day derogation, or the removal of compensation following a 12-day derogation.

There was a very low response rate (5 responses) to the hauliers' data request regarding the derogation for passenger transport by coach. This was likely a result of very few of the respondents being involved in passenger transport.

Interview responses to the derogations for passenger transport were again split by stakeholder type. Six industry associations and four national authorities¹⁷¹ were supportive of the derogations, as they would add flexibility and potentially reduce

¹⁶⁴ 12 Member States (CZ x2, EE, FI x2, HU, LT, LU, LV, NL, RO, SE, SK, BE) plus CH and NO

¹⁶⁵ Undertakings – HU, PL, CZ, EU-wide. Industry associations – AT x2, BG, CZ, ES, PL, RO, DK, and 3x EU-wide

¹⁶⁶ Trade Unions – BE, NL, SI, IT. National authorities – BE, AT, ECR

¹⁶⁷ 10 Member States (CZ x2, ES, HR, IE, LT, PT, RO, SE, SK, BE) plus NO

¹⁶⁸ 9 Member States (AT, BG, CY, EE, FI, LT, LU, SI, BE) plus NO

¹⁶⁹ 9 Member States (AT x2, EE, ES, IE, LT, LV, RO, SE, BE) plus CH and NO

¹⁷⁰ 106 drivers out of 148 that provided comments were clearly against the measure on extending the 12-days derogation to domestic coach tour journeys; 100 out of 143 were against introducing a 8-day derogation in the case of domestic occasional transport of passengers by coach and 98 out of 138 were against abolishing compensation for reduced rest after 12-day derogation. The remaining responses did not provided a clear view as to whether they were supportive or not.

¹⁷¹ National authorities – AT, BG, SE, RO. Industry associations – BG, CZ, ES, PL, AT, EU-wide

enforcement costs. However, three other authorities and all four trade unions¹⁷² were against the derogations as they would further jeopardise road safety.

F.3.2.6 Requirements related to spending regular weekly rest in the vehicle

Respondents to the OPC non-specialised questionnaire gave mixed opinions on measures related to the location where they can spend their weekly rest.. 336 out of 1,142 (29%) respondents thought establishing maximum periods away from home/based would have a major contribution to the functioning of the social rules, while 336 (29%) thought this would have no contribution at all. Similarly, 336 out of 1,140 (29%) respondents thought explicitly forbidding spending regular weekly rest in the vehicle would have a major contribution, but 371 (33%) thought this would have no contribution at all. Furthermore, 316 out of 1,137 (28%) respondents thought that allowing drivers to spend a regular weekly rest in a vehicle provided that it is their free choice would have a major contribution, but 335 (30%) thought this would have no contribution at all. EU-13 based respondents identified a more significant contribution from the measures allowing drivers to spend a weekly rest in the vehicle, while EU-15 based respondents identified a more significant contribution from forbidding weekly rest in the vehicle.

Respondents to the OPC specialised questionnaire gave similarly mixed views to the OPC non-specialised questionnaire responses. Allowing for drivers to spend the regular weekly rest in the vehicle, provided it is their free choice, was the most positively received, with 55 out of 148 (37%) indicating a major contribution, compared to only 31 (21%) who indicated no contribution. Explicitly forbidding spending a regular weekly rest in the vehicle, establishing maximum periods away from home/base, and allowing for drivers to take every second regular weekly rest in the vehicle, were considered by the largest share of respondents to this question to have no contribution, with 52 out of 149 (35%), 48 out of 148 (32%) and 38 out of 145 (26%) indicating as such. EU-13 based respondents were more likely to consider these measure to have a major contribution, compared to EU-15 based respondents. Respondents from workers' organisations identified a greater contribution from these measures, while national authorities identified less contribution.

SME panel respondents felt that establishing maximum periods away from home/base for drivers (18 out of 59 (30%) and forbidding spending a regular weekly rest of 45 hour or more in the vehicle (17 out of 62 (27%) to have the benefit of improving working conditions for drivers. However, 17 (29%) and 24 (39%) respondents respectively indicated that they did not know what the benefits would be, suggesting some uncertainty on the impacts.

In response to the national authorities' survey, respondents gave a very mixed view of the three proposed measures regarding spending weekly rest in the vehicle. Forbidding spending regular weekly rest periods of more than 45 hours in the vehicle had the most positive response, with 15¹⁷³ out of 32 respondents indicating a positive effect of some magnitude on clarity, compared to 10¹⁷⁴ who indicated a negative effect. Allowing for spending a regular weekly rest in the vehicle provided that it is the free choice of the driver saw a split response, with 12¹⁷⁵ out of 32 indicating a positive effect, and 14¹⁷⁶ indicating a negative effect. Allowing for spending up to every second weekly rest in the vehicle saw only 7¹⁷⁷ out of 32 respondents indicate a positive effect, while 18¹⁷⁸

¹⁷² National authorities – BE, NL, ECR. Trade unions – BE, NL, SI, EU-wide

¹⁷³ 12 Member States (AT x3, CZ, EE (Estonian Police and Border Guard Board), FI, HR, HU, PT, EL, CZ, DE, SE, SK) plus CH

¹⁷⁴ 9 Member States (BG, EE (Ministry of Economic Affairs and Communication), IE, NL, BE, EL, LV, RO, SI) plus NO

¹⁷⁵ 12 Member States (BG, CZ (General Directorate of Customs), FI (Ministry of Transport and Communications/ Transport Safety Agency), EL, HR, IE, LT, LU, LV, RO, EE, PT)

¹⁷⁶ 10 Member States (AT x3, CZ (Ministry of Transport), FI (Ministry of Social Affairs and Health), SE, EL, DE, EE, FR, NL, BE) plus CH and NO

¹⁷⁷ 7 Member States (CZ, HR, HU, LV, RO, SE, LU)

¹⁷⁸ 12 Member States (AT x3, FI, EL x2, SI, CZ, DE, EE x2, FR, IE, NL, PT, BE) plus CH and NO

indicated a negative effect. Respondents mostly considered these measures to lead to major practical enforcement problems, and to have either about the same or higher costs of enforcement. When split by geographical location, EU-13 respondents were slightly more positive regarding allowing drivers to spend a regular weekly rest in the vehicle if it is the driver's free choice, while the other measures had similar responses from EU-13 and EU-15 based respondents.

Respondents to the drivers' survey gave a mixed response on the effects of this measure. Respondents were split between indicating that overall working conditions (104 out of 320 (33%)), safety conditions (109 out of 321 (34%)), ability to avoid fatigue (115 out of 320 (36%)) and ability to spend weekly rest at home (154 out of 325 (47%)) would not change as a result of this measure and indicating that they would increase (116 (36%), 130 (40%), 123 (38%), 100 (31%) respectively). EU-13 based respondents were slightly more positive about the impact of this measure than EU-15 based respondents.

Respondents to the hauliers' data request indicated that forbidding spending regular weekly rests in the vehicle would result in an increase by greater than 15% on the total number of trips (42 out of 68 (62%)), number of drivers employed (46 out of 69 (67%)), and number of vehicles used (35 out of 68 (51%)). Respondents also indicated through written input that drivers should be able to decide where they spend their rest. Disaggregation by geographical location was not possible as the sample size for EU-15 based respondents was too small.

Interview respondents were asked about their experiences in Belgium and France where weekly rest in the vehicle is forbidden. Almost all undertakings and industry associations identified problems complying with this rule, mostly as a result of a lack of suitable accommodation (lack thereof, no safe parking, available but off route, etc.). All undertakings interviewed also agreed that drivers should be allowed to spend their regular weekly rest in the vehicle if it is their free choice. One undertaking suggested this could be proven by written consent of the driver. Industry associations mostly considered the proposed measures to be helpful in clarifying the situation and preventing differing applications of the rules in some Member States. Overall, industry associations were against forbidding weekly rest in the vehicle, as it is not practical to do so in many cases due to the lack of adequate accommodation.

Trade unions interviewed on this matter were all in agreement that employers should be obliged to provide or pay for adequate accommodation for drivers to take their weekly rest when not spent at home or in another private place of rest. National authorities were asked how these measures would impact enforcement, and generally felt that these measures would be difficult to enforce, especially forbidding weekly rest in the vehicle and proving free choice if a driver chooses to spend their weekly rest in the vehicle.

F.3.2.7 Calculation of regular weekly rest

In response to the national authorities' survey, 12¹⁷⁹ out of 33 respondents considered the changes to the calculation of regular weekly rest to have no impact, while 10¹⁸⁰ indicated that the measure would result in more effective enforcement, and 7¹⁸¹ indicated less effective enforcement. The need for new equipment/software was identified as a practical application problem, with 19¹⁸² out of 33 respondents considering it a small problem, and a further 9¹⁸³ considering it a major problem. However, the

¹⁷⁹ 11 Member States (AT (Ministry of Interior), EL, CZ, EE, HU, LU, LV, RO, SI, SK, UK) plus NO

¹⁸⁰ 9 Member States (AT (Ministry of Labour, Social Affairs and Consumer Protection, and Ministry of Transport), BE, CZ, EE, FI, HR, LT, PT, SE)

¹⁸¹ 6 Member States (AT, DE, NL, CY, FI, IE) plus CH

¹⁸² 15 Member States (AT x2, BG, CZ, DE, EE (Ministry of Economic Affairs and Communications), FI x2, HU, IE, LT, LU, LV, RO, SE, UK, BE) plus CH and NO

¹⁸³ 9 Member States (EL, CY, EE (Police and Border Guard Board), ES, FR, IT, NL, PT, SI)

respondents were mostly unsure how this measure would change enforcement costs, with 13¹⁸⁴ out of 33 indicating as such. There was little difference between EU-13 and EU-15 based respondents.

Respondents to the hauliers' data request indicated that this measure would result in an increase by greater than 15% of the total number of trips (41 out of 69 (59%)), the number of drivers employed (44 out of 70 (63%)), and the number of vehicles used (32 out of 69 (46%)). 64 out of 122 (52%) respondents identified the training of staff as an additional cost from this measure. Overall, 49 out of 70 (70%) respondents felt that this measure would increase annual operating costs by at least 15%.

Changes to the calculation of regular weekly rest was discussed at length with interview respondents, however there was significant disagreement on the benefits of this measure. Three undertakings, national authorities from Romania and Belgium, and seven industry associations¹⁸⁵ were in favour of this measure as it would increase flexibility and simplify the calculations made by operators. However, three undertakings, five trade unions, an Austrian national authority and ECR, and four industry associations¹⁸⁶ felt that the measure would worsen conditions for drivers and make calculating weekly rest more complicated and therefore result in higher administrative costs. Furthermore, Swedish and Dutch national authorities and three industry associations¹⁸⁷ did not fully understand the proposed measures. This view is supported by the diverse opinions given, and the issues raised by interviewees which sometimes suggested a lack of understanding of the proposed changes.

F.3.2.8 Performance based pay

Respondents to the OPC non-specialised questionnaire thought that forbidding performance-based pay for drivers would have a significant contribution to the functioning of the social rules in road transport. 505 out of 1,133 (45%) respondents indicated that this measure would have a major contribution, and a further 239 (12%) thought this measure would have a moderate contribution. OPC specialised questionnaire respondents were equally positive regarding this measure, with 66 out of 148 (45%) respondents indicated that this measure would have a major contribution.

14 out of 63 (22%) SME panel respondents thought that forbidding performance-based pay would result in improved road safety, a further 8 (13%) thought it would result in improved working conditions for drivers, 7 (11%) thought it would improve job attractiveness, 5 (8%) thought it reduce costs, and a further 5 (8%) thought it would reduce distortions of competition between operators. However, 24 (38%) respondents did not know what the benefits would be, suggesting uncertainty of the impacts of this measure.

Respondents to the national authorities' survey indicated either no impact or more effective enforcement from this measure. 13¹⁸⁸ out of 31 respondents suggested there would be no impact, while 14¹⁸⁹ suggested either more or significantly more effective enforcement. 19¹⁹⁰ out of 31 respondents also indicated that there were no problems with the practical enforcement of this measure. 13¹⁹¹ out of 33 respondents indicated

¹⁸⁴ 12 Member States (AT x2, EL, BG, CZ, FI, EL, HR, IE, IT, LV, SI, UK)

¹⁸⁵ Undertakings – PL, CZ, EU-wide. Industry associations – AT, CZ, DE, PL, RO, EU-wide x2.

¹⁸⁶ Undertakings – BG, HU, SV. Trade unions – BE, NL, SI, IT, EU-wide. Industry associations – ES, AT, EU-wide x2.

¹⁸⁷ Industry associations – BG, DK, FR

¹⁸⁸ 11 Member States (AT x2, CY, DE, HU, IE, LT, LU, LV, NL, SI, UK) plus CH

¹⁸⁹ 11 Member States (BE, BG, EE x2, EL, FR, FI x2, HR, IT, PT, RO, SE)

¹⁹⁰ 16 Member States (AT x2, EL x2, BG, EE, FI, FR, HR, HU, IT, LU, PT, SE, SI, SK, UK, BE) plus CH

¹⁹¹ 10 Member States (CY, CZ, EE x2, FI x2, FR, HU, NL, SE, SI, BE) plus CH

that the enforcement costs would be about the same compared to the current situation, and a further 11¹⁹² did not know what the change in costs would be.

Respondents to the drivers' survey were asked how this measure would affect their monthly pay. 128 out of 315 (41%) respondents indicated that there would be no change in their monthly pay, although another 73 (23%) indicated a slight or significant decrease. When disaggregated by geographical location, EU-13 based respondents had a larger share indicate an increase in pay (7 out of 23 (30%)), although the sample size for this group is rather small.

Interview respondents overall considered this a positive measure as performance based pay is considered to have a negative impact on road safety. This view was expressed by nearly all interviewees from all stakeholder groups. The exception to this was an industry association from Czech Republic and an industry association from Spain who objected to this measure as they felt that there needed to be a mechanism to motivate drivers beyond minimum wage.

¹⁹² 9 Member States (AT x2, EL x2, BG, CZ, HR, IE, IT, SK, UK)

Annex G Stakeholder engagement tools

G.1 Interview programme

Type of Stakeholder	MS	Organisation's name	Status
Transport companies	EU	Continental	Interview carried out
	AT	Lagermax	Declined
	DE	Deutsche Post DHL	Interview carried out
	HU	Waberer's International	Interview carried out
	IT	Euronord International	No response
	PL	Raben Group	Interview carried out
	SE	Borjes Logistik & Spedition	Declined
	SK	Albatros spol. s r.o.	Declined
	SK	A-TRANS	Declined
	UK	The Swain Group	No response
	SK	TOP NAD	No response
	BG	DEM GROUP EOOD	Interview carried out
	SK	HERMES	Interview carried out
	CZ	CS Cargo	Interview carried out
	DK	DFDS Logistics	Declined
National industry associations	AT	AISÖ	Interview carried out
	BG	AEBTRI	Interview carried out
	CZ	CESMAD Bohemia	Interview carried out
	DE	BGL	Interview carried out
	DK	DTL	Interview carried out
	DK	DASP	Declined
	ES	ASTIC	Interview carried out
	FR	FNTR	Interview carried out
	HU	MKFE	Declined
	PL	ZMPD	Interview carried out
	RO	ARTRI	Interview carried out
	National authorities (National ministries of transport or enforcement authorities)	AT	Federal Office for Transport
BE		Federal Public Service Mobility and Transport	Interview carried out
BG		Executive Agency Road Transport Administration within the Ministry of Transport, Information, Technology and Communication	Interview carried out
DE		Federal Ministry of Transport and Digital Infrastructure - Unit LA 24 - professional road transport, social legislation	No response
DE		Federal Office for Goods Transport (Bundesamt für Güterverkehr)	Interview carried out

Type of Stakeholder	MS	Organisation's name	Status
	DE	Federal Ministry of Labour and Social Affairs	Interview carried out
	DK	Ministry of Justice, Road Traffic Division	No survey response
	DK	Danish National Traffic Police - roadside checks	No response
	FI	Finnish Transport Safety Agency	No response
	FR	Ministry of Ecology, Sustainable Development and Energy - Department for Transport	No survey response
	IE	Road Safety Authority	No response
	LV	Traffic Surveillance Bureau of the State Police	Interview carried out
	NL	Ministry of Infrastructure and the Environment - Human Environment and Transport Inspectorate	Interview carried out
	PL	General Inspectorate of Road Transport	No survey response
	PT	Inspector Geral da Autoridade para as Condicoes de Traballo	No response
	RO	State Inspectorate for Road Transport Control	Interview carried out
	DK	Ministry of transport, Building and Housing	No response
	SE	Transportstyrelsen - Swedish Transport Agency	Interview carried out
National workers' unions	BE	ACV TRANSCOM	Interview carried out
	CZ	OSD	Declined
	FR	FGTE	Declined
	FR	UNOSTRA	Declined
	IT	FILT-CGIL	Interview carried out
	NL	FNV Bondgenoten	Interview carried out
	SI	ZSSS	Interview carried out
Other	EU	ETF	Interview carried out
	EU	ECR	Interview carried out
	EU	CORTE	Interview carried out
	EU	UETR	Interview carried out
	EU	NLA	Interview carried out
	EU	European Express Association Tec	Interview carried out
	EU	UEAPME	Interview carried out

G.2 Interview checklists

G.2.1 Industry Associations

Objectives of the study

An evaluation of the social legislation carried out by Ricardo in 2016 revealed certain problems, and consequently the Commission is considering whether policy intervention is justified to address these problems.

Furthermore, following the Commission proposal for sector-specific legislation to address the challenges faced by transport sector regarding the application of the Posting of Workers Directive (Directive 96/71/EC), the Commission now intends to conduct an impact assessment for a possible revision of this legislative framework.

The aims are to assess the potential impacts of a number of policy options and measures. Your responses will be used to help us assess the effectiveness, possible costs and feasibility of the policy options considered. It is therefore important that you complete this questionnaire as fully as possible. If you have any queries, please contact social.legislation@Ricardo.com

Use of your input

The study team will keep detailed notes of the discussion and will make use of your contribution (information/data provided) only for the needs of this study. Please indicate how you would like us to present the information provided during our discussion and any other information or data you provide to us:

- Publication of your contribution indicating the name of the organisation;
- Anonymised publication of statements made (without the name/ name of the organization);
- No publication but use of the contribution for statistical and analytical purposes

Contact information

Organisation name:	Click here to enter text
Member State/EU wide:	Click here to enter text
Contact name:	Click here to enter text
Email address:	Click here to enter text
Telephone number:	Click here to enter text

Analysis of proposed policy options

Regular weekly rest

Required regular weekly rest (calculation system and organisation of work) (Art.8 561/2006)

The ex-post evaluation found issues regarding (i) uncertainty over whether or not the regular weekly rest can be taken in the vehicle; (ii) long periods away from home base (phenomenon of 'nomadic' drivers); (iii) lack of flexibility in organising driving and resting periods.

The table below outlines the changes to the current Regulation as proposed by the new measure on regular weekly rest..

	Current provisions	New provisions considered
Standard minimum weekly rest periods	In any two consecutive weeks a driver shall take at least two regular weekly rest periods of minimum 45 h OR one regular weekly rest period and one reduced of minimum 24 h.	A minimum of 45 h regular weekly rest to be taken, calculated as a minimum average weekly resting time over a reference period of rolling 4 weeks.
Definition of Compensation for reduced weekly rest	The reduction should be compensated by an equivalent period of time taken <i>en bloc</i> and attached to another rest of at least 9 hours.	A reduced weekly rest period of less than 45 h in any week should not be less than 24 h and any reduction should be compensated by an equivalent period taken <i>en bloc</i> and attached to another weekly rest period.
Maximum period during which compensation should be taken	Within 3 weeks from taking that reduced weekly rest	Within the reference period of 4 weeks

3. Do you think the proposed additional requirements will help in more efficient planning of long distance transport operations?
4. Do you see any issues for undertakings/your members to comply with the above?
 - a. What are the main issues/problems?
 - b. How can they be overcome (if any)?
5. Do you expect any significant costs/benefits?
 - a. Software costs?
 - b. Other costs/benefits
 - c. Do you expect the costs to outweigh the benefits?

Requirements on spending regular weekly rest on the vehicle

The ex-post evaluation suggested that the current rules are considered unclear as to whether driver is allowed or not to spend the regular weekly rest on board of the vehicle.

The proposed measures below intend to clarify such rules and also to ensure that decent accommodation is available when taking a regular weekly rest:

1. Forbid spending the regular weekly rest periods **of more than 45 h** in the vehicle. It should be taken either at adequate accommodation provided/paid by

- the employer, or at the home base or at another private place of rest. Include a definition of 'adequate accommodation' in the legislation.
2. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances, such as lack of resting facilities;
 3. Allow for spending (up to) every second regular weekly rest in the vehicle;
6. Do you consider that the proposed measures can help clarify the current rules concerning whether or not the regular weekly rest can be spent in the vehicle?
 7. Would there be any issues/problems for transport undertakings/your members to comply with such additional requirements? (e.g. forbid spending weekly rest in the vehicle, provision of adequate accommodation) What are these? How can they be overcome?
 8. In some countries (e.g. France and Belgium), it is forbidden for drivers to spend their weekly rest in the vehicle.
 - a. Are there any issues/problems for you in complying with this requirement?
 - b. If Member States are obliged to provide enough rest areas, would there still be an issue?
 - c. How can any other issues be overcome?
 9. In your view, what criteria could be used to define "adequate accommodation"? For example:
 - a. What amenities?
 - b. Type of location?
 - c. Are there any quality rating systems that you use / are aware of?
 10. What related costs and benefits that you would expect? Are any of them expected to be significant?
 - a. Additional costs to operators to provide adequate accommodation?
 - b. Do you expect the costs to outweigh the benefits?
 11. Do you expect that hauliers will need to take any measures in order to maintain the current level of turnover compared to before the adoption of the new rule:
 - a. Purchase or lease more/fewer vehicles
 - b. Make changes to distribution patterns
 - c. Hire additional/fewer drivers
 - d. No changes needed

Posting of workers

Definition of time spent in a Member State (Posting of Workers Directive- PWD)

The proposed measures intend to define clear rules based on the time spent by drivers in a given country as a basis for determining when a situation of posting occurs and the PWD rules should apply.

For the purposes of calculations, clear definitions of day/time spent in a Member State are necessary. The proposed definitions are:

1. The amount of time (constituting the reference period) spent in a host Member State should include driving times, other work, periods of availability and breaks).
2. Time spent during daily and weekly rest periods should also be accounted for, since during this time the driver is exposed to the cost of living of the host Member State.
3. If a driver has spent the majority of his time during one day in a Member State, this should be accounted as a "full day" for the purpose of application of the PWD
4. A calendar month should constitute the appropriate reference period, as it is the usual time period for establishing a driver's salary.

8. Do you consider that the proposed definitions are appropriate and help clarify the rules related to the application of the PWD?

9. Do you see any issues for undertakings/your members to comply with the above? What would be the main issues/problems (if any)?

10. Are there any additional criteria you would propose?

Applicability of posting of workers provisions

The current PWD already envisages the possibility that Member States exclude from the application of the minimum rates of pay those activities whose duration does not exceed a certain amount of time (1 month per year) or where the amount of work to be done is not significant. Clear rules based on the time spent by drivers in a given country should be the basis for determining when a situation of posting occurs. Whenever that would be the case, employers would have to pay their drivers according to the conditions of the place of work for the time spent there.

The following time periods are being considered:

- 5 days/month
- 7 days/month
- 9 days/month

In order to enforce this rule, the **driver would need to record in the tachograph the country code of the country where he is, each time he stops a vehicle and not only at the start and the end of his daily working period.** Checks by enforcers would then take place first at the roadside, then at the premises.

11. What do you think would be the most appropriate time threshold (in days) for PWD operations to be applied to the transport sector? (i.e. 5 days? 7 days? 9 days?) Please explain your answer.

12. Do you expect any issues/problems from the adoption of any of the above time thresholds? How can they be overcome?

13. Do you expect the proposed additional requirements to assist transport undertakings/your members in avoiding burdensome pre-notifications for each operation and costs of translating all work related documents into all relevant EU languages?
14. What are the related costs and benefits that you would expect? Are any of them expected to be significant? E.g.
 - a. Additional costs to operators to meet the criteria? (Please select among the following ranges: <EUR 1k/year, EUR 1k-10k/year, EUR 10k-100k, EUR 100k – 1 million/year, EUR, > 1 million/year)
 - b. Do you expect the costs to outweigh the benefits?
 - c. Do you expect any specific impact on SMEs?

Performance-based pay

The ex-post evaluation study found issues concerning the interpretation of performance-based payments that could "endanger road safety". However, variable payments make up a large part of drivers' salaries in many cases. The following option is considered:

- Forbid all performance based payment (strict prohibition of payments based on distances travelled / amount of goods carried)

15. What will be the impact of such a measure on transport undertakings with regard to the payment system in place?
 - a. Would drivers be compensated partially or fully through changes in fixed pay?
 - b. Would there be additional costs overall?
16. Would there be any impact in terms of the number of drivers or vehicles used (increase/decrease)?
17. Do you see any issues for undertakings/your members to comply with the above? What would be the main issues/problems (if any)?

Flexibility of transport operations

Adaptation of breaks

To address the problem of intended or unintended non-compliance with requirements on breaks 'forced' by circumstances, and to better adapt to the needs of the sector, more flexibility in arranging for obligatory breaks could be foreseen:

1. For all drivers - a break of minimum 45 minutes may be split into maximum 3 periods of at least 15 minutes each. Basic provision on breaks remains unchanged.

18. Do you think that the proposed changes allow for more flexibility to transport undertakings in arranging the daily work of drivers?
19. Do you expect any significant impacts on the costs of passenger transport by coach? What are they?
20. Do you see any issues for undertakings/your members to make use of this provision? What would be the main issues/problems (if any)?

Derogation for passenger transport by coach

The current rules allow for a 12-day derogation for international occasional passenger transport by coach. However, there have been calls to increase the flexibility of passenger transport operations further.

The proposed measures below intend to address these issues:

1. Abolish the obligation of taking two regular weekly rest periods after the use of a 12-day derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest to be taken *en bloc*, (minimum 69 hours), without any compensation for the reduced rest (**abolish compensation for reduced rest after 12-day derogation**);
2. Extend the current 12-day derogation to domestic occasional transport of passengers by coach, under the current conditions. (**12-day derogation to domestic occasional transport of passengers by coach**)
3. Only in the case of domestic occasional transport of passengers by coach, introduce a 8-day derogation provided that a driver takes regular weekly rest of minimum 45h before and after the use of the derogation. Other conditions remain unchanged. (**8 day derogation for domestic occasional transport of passengers by coach**)

21. Do you think that the proposed measures requirements will provide adequate flexibility to occasional passengers transport operators (international or domestic)?
22. Do you expect any significant impacts on the costs of passenger transport by coach? What are they?
23. Do you see any issues for undertakings/your members to comply with the above? What would be the main issues/problems (if any)? How could they be overcome?
24. Do you expect that the adoption of the derogations will have an impact on any of the following (on the basis of maintaining the same level of turnover). Please provide an estimate of the impact
 - a. Purchase or lease more/fewer vehicles
 - b. Make changes to distribution patterns
 - c. Hire additional/fewer drivers

Multi-manning

A number of organisations have suggested changes to the definition of multi-manning in Regulation (EC) No 561/2006 and where multi-manning may not be mandatory. The change considered is:

- Allow one driver for the first two hours or the last one hour of the journey.

25. Do you expect the proposed additional requirements to allow for more flexibility in organising multi-manning operations?
26. Would there be any impact in terms of the number of drivers used (increase/decrease)?
27. Do you expect any significant impact on costs of operations? What are they?
28. Do you see any issues for undertakings/your members to comply with the above? What would be the main issues/problems (if any)?

Clarification of the scope of the social legislation

The following clarifications of existing or additional definitions, as well as suggestions on revising the scope of Regulation (EC) No 561/2006 are proposed:

1. Define "occasional driver" and "operations for private purposes", and exclude these from the scope of Regulation 561/2006;
2. Include a Review Clause: i.e., an obligation on the EC to review in 5 years' time the scope of the legislation to verify whether or not it would be justified and

proportionate to include drivers of Light Commercial Vehicles (of below 3,5t), to exclude self-employed, to update derogations and exemptions.

29. To what extent do you expect the proposed definition (point 1) to help clarify the scope of Regulation 561/ 2006?
30. Do you think the proposed definition will reduce the differences in interpretation of the Regulation and consequent low-compliance?
 1. Do you expect the proposed exclusion "occasional driver" and "operations for private purposes" to have any impact on transport operators?
29. Do you consider that the proposed review clause is appropriate and necessary? Are there any possible issues? (e.g. expected data availability?)
30. Are there any other aspects that you think should be covered under the proposed review clause?

Working time directive (WTD)

Requirements on calculations and enforcement of working time provisions

Beyond the measures already discussed, a number of additional measures are proposed to improve the implementation of the working time directive 2002/15/EC, its coherence with the Regulation (EC) No 561/2006, and improve the working condition of drivers by reducing accumulated fatigue.

1. Reduce the reference period used for the calculation of the maximum average weekly working time (of 48h) from 4 months (or 6 months according to national law) to 4 weeks in order to avoid accumulated fatigue and to enable the controls of working time at roadside via tachograph records and hence render enforcement more efficient. (Reduce the reference period used for the calculation of the maximum average weekly working time);
2. Establish minimum threshold for controlling compliance with working time provisions in line with requirements for checks at the premises under Directive 2006/22 (extend roadside checks and checks at premises to include also control of compliance with working time, which should be made easy if the calculation of the maximum average working time is done over 4-weeks reference period) (Minimum threshold for controlling compliance with working time provisions);
3. Establish reporting template for biennial national reports on results of controls of compliance with WTD similar to reporting template for checks on Regulation 561/2006. (Establish reporting template for biennial national reports)

31. Do you expect any issues/problems for transport operators in the country from their adoption?
32. Do you expect the proposed change to impact on:
 - a. the level of fatigue of drivers?
 - b. the health and safety of drivers?
 - c. the overall working conditions?
 - d. the amount of time spent away from home?
33. What, if any, do you think will be the impact on transport operations?
 - a. Costs for hauliers including
 - a. Purchase or lease more/fewer vehicles
 - b. Need to hire additional/fewer drivers
 - c. Other costs?

- b. Flexibility of operations
- c. Other impact?

G.2.1.1 Other comments

Please discuss any other issues you feel are relevant. [Click here to enter text.](#)

Thank you for your participation.

G.2.2 *Trade Unions*

Objectives of the study

An evaluation of the social legislation carried out by Ricardo in 2016 revealed certain problems, and consequently the Commission is considering whether policy intervention is justified to address these problems.

Furthermore, following the Commission proposal for sector-specific legislation to address the challenges faced by transport sector regarding the application of the Posting of Workers Directive (Directive 96/71/EC), the Commission now intends to conduct an impact assessment for a possible revision of this legislative framework.

The aims are to assess the potential impacts of a number of policy options and measures. Your responses will be used to help us assess the effectiveness, possible costs and feasibility of the policy options considered. It is therefore important that you complete this questionnaire as fully as possible. If you have any queries, please contact social.legislation@Ricardo.com

Use of your input

The study team will keep detailed notes of the discussion and will make use of your contribution (information/data provided) only for the needs of this study. Please indicate how you would like us to present the information provided during our discussion and any other information or data you provide to us:

- Publication of your contribution indicating the name of the organisation;
- Anonymised publication of statements made (without the name/ name of the organization);
- No publication but use of the contribution for statistical and analytical purposes

Contact information

Organisation name:	Click here to enter text
Contact name:	Click here to enter text
Role in the organisation	Click here to enter text
Email address:	Click here to enter text
Telephone number:	Click here to enter text

Background information

1. Which Member State does your organisation operate in?

Member State(s):	Click here to enter text
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2. In what type of transport activities are your members involved? (please indicate all that apply)

Domestic freight transport	
International freight transport	
Domestic passenger transport	
International passenger transport	
Other Click here to enter text	

Analysis of proposed policy options

Posting of Workers (PWD)

Applicability of posting of workers provisions to road transport

The current PWD already envisages the possibility that Member States exclude from the application of the minimum rates of pay those activities whose duration does not exceed a certain amount of time (1 month per year) or where the amount of work to be done is not significant. Therefore, clear rules based on the time spent by drivers in a given country should be the basis for determining when a situation of posting occurs. Whenever that would be the case, employers would have to pay their drivers according to the conditions of the place of work for the time spent there.

The following time periods are being considered:

- 5 days/month
- 7 days/month
- 9 days/month

3. What do you think would be the most appropriate time threshold (in days) for PWD operations to be applied? (i.e. 5 days? 7 days? 9 days?) Please explain your answer.
4. Do you expect any issues/problems from the adoption of any of the above time thresholds? How can they be overcome?
5. How will drivers be affected (positively or negatively) by the suggested measures concerning the application of PWD in relation to:
 - a. Their working conditions
 - b. Their salary
 - c. Competition among drivers from different Member States
 - d. Attractiveness of the profession?
 - e. Other impact?
6. What, if any, do you think will be the impact on the organisation of transport operations?
 - a. Reduction in driver's work;
 - b. Reduction of periods away from home;
 - c. Drivers compliance with PWD;

d. Other impact?

Definition of time spent in a Member State

The proposed measures intend to define clear rules based on the time spent by drivers in a given country as a basis for determining when a situation of posting occurs and the PWD rules should apply.

For the purposes of calculations, clear definitions of day/time spent in a Member State are necessary. The proposed definitions are:

5. The amount of time (constituting the reference period) spent in a host Member State should include driving times, other work, periods of availability and breaks).
6. Time spent during daily and weekly rest periods should also be accounted for, since during this time the driver is exposed to the cost of living of the host Member State.
7. If a driver has spent the majority of his time during one day in a Member State, this should be accounted as a "full day" for the purpose of application of the PWD
8. A calendar month should constitute the appropriate reference period, as it is the usual time period for establishing a driver's salary.

To enforce such rules, it would be necessary that the driver is obliged to record in the tachograph the country code of the country where he is, each time he stops a vehicle and not only at the start and the end of his daily working period.

7. Do you believe the proposed criteria will help to ensure a more proportionate and a broader application of the PWD to the road transport sector **than currently**? What other criteria do you consider that should be included?
8. Do you expect any issues/problems from the adoption and practical implementation of any of the above definition? How can they be overcome?

Enforceability of posting of workers provisions

In order to improve the enforcement of the Posting of Workers Directive for transport, measures on making a better use of existing control and communication tools (e.g. tachograph, risk rating system, ERRU – European Register of Road Transport Undertakings) while minimising relevant administrative burden are being considered. More specifically:

1. Adopt a two-step enforcement approach (similar to what applies Regulation 561/2006 on driving times), where the first step is the roadside check carried out by the controllers on the territory of the 'host' Member State and the second step is the check at the premises of a company (driver's employer) by the enforcement authorities of the country of establishment of that company (**Two-step enforcement**)
2. At the roadside, enable the controller to establish the frequency of presence of a driver in the territory of a given Member State over a rolling period of 29 days, by **obliging drivers to record in the tachograph the country code of the country where they are , each time they stop a vehicle and not only at the start and the end of the daily working period**. This would also require a slight revision in the current tachograph Regulation 165/2014 on the smart

tachograph. **(Establishing frequency of presence of a driver at roadside checks)**¹⁹³

3. At the roadside, having established a sufficient presence which means that the driver should be subject to the minimum wage of the 'host' Member State, enable 'host' MS enforcement authorities to request the control authorities in the MS where the employer is established a verification of compliance with the minimum wage, which may include carrying out checks at premises. **(Enable premise checks at control authorities in MS of establishment of employers)**
4. Apply fixed deadlines on relevant MS authorities (as in the current enforcement Directive 2014/67/EU) to verify compliance by the operator with the PWD (in particular with application of the minimum wage of the 'host' Member State) and to inform the authorities of the requesting 'host' Member State accordingly. **(Deadlines to verify compliance of operators with PWD)**
9. Do you believe that the proposed criteria will help to ensure a more effective and broader application of the PWD to the road transport sector than currently?
10. Do you foresee any problems for drivers with the obligation to record in the tachograph the country code of the country where they are, each time they stop a vehicle? What are they? How could they be overcome?
11. Do you foresee any other problems with the practical enforcement of the suggested measures? Could you elaborate on what these are and any possible solutions?

Weekly rest

Required regular weekly rest (calculation system and organisation of work) (Art.8 561/2006)

The ex-post evaluation found issues regarding (i) uncertainty over whether or not the regular weekly rest can be taken in the vehicle; (ii) long periods away from home base (phenomenon of 'nomadic' drivers); (iii) lack of flexibility in organising driving and resting periods.

The table below outlines the changes to the current Regulation as proposed by the new measure on regular weekly rest.

	Current provisions	New provisions considered
Standard minimum weekly rest periods	In any two consecutive weeks a driver shall take at least two regular weekly rest periods of minimum 45 h OR one regular weekly rest period and one reduced of minimum 24 h.	A minimum of 45 h regular weekly rest to be taken, calculated as a minimum average weekly resting time over a reference period of rolling 4 weeks.

¹⁹³ Note, the driver would be obliged to enter the country code only the next time when he/she stops the vehicle, and not necessarily at the moment of crossing the border (this would be too burdensome). This obligation will not show the exact duration of presence of a driver on the territory of the host MS, but at least a number of presences/frequency. The rest period can be verified by controlling other document related to transport operation.

Definition of Compensation for reduced weekly rest	The reduction should be compensated by an equivalent period of time taken <i>en bloc</i> and attached to another rest of at least 9 hours.	A reduced weekly rest period of less than 45 h in any week should not be less than 24 h and any reduction should be compensated by an equivalent period taken <i>en bloc</i> and attached to another weekly rest period.
Maximum period during which compensation should be taken	Within 3 weeks from taking that reduced weekly rest	Within the reference period of 4 weeks

2. Do you expect any issues/problems from the proposed changes? How can they be overcome?
3. Do you expect the proposed change to have an impact (positive/negative) on:
 - the level of fatigue of drivers?
 - the health and safety of drivers?
 - the overall working conditions?
 - the amount of time spent away from home?
 - the level of pay?
 - the overall attractiveness of the driver's profession?
 - other impact?
14. What, if any, do you think will be the impact on transport operations?
 - a. Reduction in driver's work;
 - b. Reduction of periods away from home;
 - c. Drivers compliance with PWD;
 - d. Other impact?

Requirements on spending regular weekly rest on the vehicle (art.8.8 561/2006).

The ex-post evaluation suggested that the current rules are considered unclear as to whether driver is allowed or not to spend the regular weekly rest on board of the vehicle.

The proposed measures below intend to clarify such rules and also to ensure that decent accommodation is available when taking a regular weekly rest:

4. Forbid spending the regular weekly rest periods **of more than 45 h** in the vehicle. It should be taken either at adequate accommodation provided/paid by the employer, or at the home base or at another private place of rest. Include a definition of 'adequate accommodation' in the legislation.
5. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances, such as lack of resting facilities;

6. Allow for spending (up to) every second regular weekly rest in the vehicle;

15. Do you think that employers should be **obliged to provide (or pay for) adequate accommodation where drivers can take their regular weekly rest** when this is not spent at home or at another private place of rest.
16. What do you consider to be an "adequate accommodation" to spend the weekly rest?
17. Do you expect any issues/problems as a result of obliging employers to provide (or pay for) adequate accommodation?
18. Do you expect the proposed change to impact on:
- the level of fatigue of drivers?
 - the health and safety of drivers?
 - the overall working conditions?
 - the amount of time spent away from home?
 - the level of pay
 - the overall attractiveness of the driver's profession?
19. What, if any, do you think will be the impact on transport operations?
- Costs for employers (operators)
 - Flexibility of operations
 - Other impact?

Working time directive (WTD)

Requirements on calculations and enforcement of working time provisions

Beyond the measures already discussed, a number of additional measures are proposed to improve the implementation of the working time directive 2002/15/EC, its coherence with the Regulation (EC) No 561/2006, and improve the working condition of drivers by reducing accumulated fatigue resulting from long working hours over long period of time (4-6 months) .

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

20. Do you expect the proposed change to impact on:
- the level of fatigue of drivers?
 - the health and safety of drivers?
 - the overall working conditions?

j. the amount of time spent away from home?

21. What, if any, do you think will be the impact on transport operations?

- a. Reduction in driver's work;
- b. Reduction of periods away from home;
- c. Drivers compliance with PWD;
- d. Other impact?

Performance-based pay

The ex-post evaluation study found issues concerning the interpretation of performance-based payments that could "endanger road safety". However, variable payments make up a large part of drivers' salaries in many cases. The following option is considered:

- Forbid all performance based payment (strict prohibition of payments based on distances travelled / amount of goods carried).

22. To what extent do you think the suggested measure is appropriate to limit the risk of endangering road safety?

23. What implementation barriers do you expect and how can they be overcome?

24. To what extent do you think the suggested measure will impact on the drivers' pay? In what way?

25. Are there any other possible impacts on drivers from this measure?

26. What, if any, do you think will be the impact on transport operations in terms of?

- Costs for employers
- Flexibility of operations
- Other impact?

Adaptation of requirements on resting and driving times

Adaptation of breaks

To address the problem of intended or unintended non-compliance with requirements on breaks 'forced' by circumstances, and to better adapt to the needs of the sector, more flexibility in arranging for obligatory breaks could be foreseen:

- For all drivers - a break of minimum 45 minutes may be split into maximum 3 periods of at least 15 minutes each. Basic provision on breaks remains unchanged.

27. To what extent do you expect the proposed additional requirements to give drivers more flexibility to deal with unforeseen circumstances?

28. Are there any possible issues/problems or limitations to take advantage of this additional flexibility. How can they be overcome?

29. Do you expect the proposed change to impact the ability of drivers to rest sufficiently?

30. What, if any, do you think will be the impact on transport operations in terms of?

- Costs of operations
- Flexibility of operations
- Other impact?

Multi-manning

A number of organisations have suggested changes to the definition of multi-manning in Regulation (EC) No 561/2006 and where multi-manning may not be mandatory. The change considered is:

- Allow one driver for the first two hours or the last one hour of the journey

31. Do you expect that the proposed additional requirements will provide for sufficient flexibility in organising multi-manning operations without posing any health and safety risks?

32. What implementation barriers do you expect and how can they be overcome?

33. Are there any other possible impacts on drivers from this measure?

34. What, if any, do you think will be the impact on transport operations in terms of?

- Costs of operations
- Flexibility of operations
- Other impact?

Derogation for passenger transport by coach

The current rules allow for a 12-day derogation for international occasional passenger transport by coach. However, there have been calls to increase the flexibility of passenger transport operations further.

The proposed measures below intend to address these issues:

- a. Abolish the obligation of taking two regular weekly rest periods after the use of a 12-day derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest to be taken *en bloc*, (minimum 69 hours), without any compensation for the reduced rest (**abolish compensation for reduced rest after 12-day derogation**);
1. Extend the current 12-day derogation to domestic occasional transport of passengers by coach, under the current conditions. (**12-day derogation to domestic occasional transport of passengers by coach**)
2. Only in the case of domestic occasional transport of passengers by coach, introduce a 8-day derogation provided that a driver takes regular weekly rest of minimum 45h before and after the use of the derogation. Other conditions remain unchanged. (**8 day derogation for domestic occasional transport of passengers by coach**)

35. Do you think the suggested changes in relation to occasional passenger transport by coach provide adequate flexibility without posing any risk to the health and safety of drivers?

36. Are there any other possible impacts on drivers from this measure?

37. What implementation barriers do you expect and how can they be overcome?

Clarification and scope of social legislation

The following clarifications of existing or additional definitions, as well as suggestions on revising the scope of Regulation (EC) No 561/2006 are proposed:

3. Define "occasional driver" and "operations for private purposes", and exclude these from the scope of Regulation 561/2006;

4. Include a Review Clause: i.e., an obligation on the EC to review in 5 years' time the scope of the legislation to verify whether or not it would be justified and proportionate to include drivers of Light Commercial Vehicles (of below 3,5t), to exclude self-employed, to update derogations and exemptions.

38. To what extent do you expect the proposed measure (point 1) to clarify the scope of Regulation 561/ 2006?

39. Are there any possible issues/problems from the proposed measure? How can they be overcome?

40. Do you expect the proposed change to impact on:

- The level of competition among drivers
- the overall working conditions?
- the level of pay
- the overall attractiveness of the driver's profession?
-

41. What is your view in terms of the appropriateness of proposed review clause? What should be the scope of the review clause? Are there other aspects that should be included?

G.2.1.2 Other comments

Please discuss any other issues you feel are relevant. [Click here to enter text.](#)

Thank you for your participation.

G.2.3 *Interview checklist- National transport ministries and enforcing authorities*

Objectives of the study

An evaluation of the social legislation carried out by Ricardo in 2016 revealed certain problems, and consequently the Commission is considering whether policy intervention is justified to address these problems.

Furthermore, following the Commission proposal for sector-specific legislation to address the challenges faced by transport sector regarding the application of the Posting of Workers Directive (Directive 96/71/EC), the Commission now intends to conduct an impact assessment for a possible revision of this legislative framework.

The aims are to assess the potential impacts of a number of policy options and measures. Your responses will be used to help us assess the effectiveness, possible costs and feasibility of the policy options considered. It is therefore important that you complete this questionnaire as fully as possible. If you have any queries, please contact social.legislation@Ricardo.com

Use of your input

The study team will keep detailed notes of the discussion and will make use of your contribution (information/data provided) only for the needs of this study. Please indicate how you would like us to present the information provided during our discussion and any other information or data you provide to us:

- Publication of their contribution indicating the name of the organisation;
- Anonymised publication of statements made (without the name/ name of the organization);

- No publication but use of the contribution for statistical and analytical purposes

Contact information

Member State:	Click here to enter text
Organisation name:	Click here to enter text
Contact name:	Click here to enter text
Position/role in the organisation	Click here to enter text
Email address:	Click here to enter text
Telephone number:	Click here to enter text

Analysis of policy options

Posting of Workers

Definition of time spent in a Member State

The proposed measures intend to define clear rules based on the time spent by drivers in a given country as a basis for determining when a situation of posting occurs and the PWD rules should apply.

For the purposes of calculations, clear definitions of day/time spent in a Member State are necessary. The proposed definitions are:

1. The amount of time (constituting the reference period) spent in a host Member State should include driving times, other work, periods of availability and breaks).
2. Time spent during daily and weekly rest periods should also be accounted for, since during this time the driver is exposed to the cost of living of the host Member State.
3. If a driver has spent the majority of his time during one day in a Member State, this should be accounted as a "full day" for the purpose of application of the PWD
4. A calendar month should constitute the appropriate reference period, as it is the usual time period for establishing a driver's salary.

1. To what extent do you believe the proposed criteria will help to ensure the application of the PWD to the road transport sector than currently? What other criteria do you consider that should be included?
2. Do you expect any issues/problems from the adoption and practical implementation of any of the above definitions? How can they be overcome?

Applicability of posting of workers provisions

The current PWD already envisages the possibility that Member States exclude from the application of the minimum rates of pay those activities whose duration does not exceed a certain amount of time (1 month per year) or where the amount of work to be done is not significant. Therefore, clear rules based on the time spent by drivers in a given country should be the basis for determining when a situation of posting occurs.

Whenever that would be the case, employers would have to pay their drivers according to the conditions of the place of work for the time spent there.

The following time periods are being considered:

- 5 days/month
- 7 days/month
- 9 days/month

3. What do you think would be the most appropriate time threshold (in days) for PWD operations to be applied to the transport sector? (i.e. 5 days? 7 days? 9 days?) Please explain your answer.
4. Do you expect any issues/problems from the adoption of any of the above time thresholds? How can they be overcome?
5. Do you expect any **significant** costs or benefits from the introduction of these measures? Please explain the nature of them and the stakeholders affected?

Enforceability of posting of workers provisions

In order to improve the enforcement of the Posting of Workers Directive for transport, measures on making a better use of existing control and communication tools (e.g. tachograph, risk rating system, ERRU – European Register of Road Transport Undertakings) while minimising relevant administrative burden are being considered. More specifically:

5. Adopt a two-step enforcement approach (similar to what applies Regulation 561/2006 on driving times), where the first step is the roadside check carried out by the controllers on the territory of the 'host' Member State and the second step is the check at the premises of a company (driver's employer) by the enforcement authorities of the country of establishment of that company (**Two-step enforcement**)
6. At the roadside, enable the controller to establish the frequency of presence of a driver in the territory of a given Member State over a rolling period of 29 days, by **obliging drivers to record in the tachograph the country code of the country where they are each time they stop a vehicle and not only at the start and the end of the daily working period**. This would also require a slight revision in the current tachograph Regulation 165/2014 on the smart tachograph. (**Establishing frequency of presence of a driver at roadside checks**)¹⁹⁴
7. At the roadside, having established a sufficient presence which means that the driver should be subject to the minimum wage of the 'host' Member State, enable 'host' MS enforcement authorities to request the control authorities in the MS where the employer is established a verification of compliance with the minimum wage, which may include carrying out checks at premises. (**Enable premise checks by control authorities in MS of establishment of employers**);
8. Apply fixed deadlines on relevant MS authorities (as in the current enforcement Directive 2014/67/EU) to verify compliance by the operator with the PWD (in particular with application of the minimum wage of the 'host' Member State) and to

¹⁹⁴ Note, the driver would be obliged to enter the country code only the next time when he/she stops the vehicle, and not necessarily at the moment of crossing the border (this would be too burdensome). This obligation will not show the exact duration of presence of a driver on the territory of the host MS, but at least a number of presences/frequency. The rest period can be verified by controlling other document related to transport operation.

inform the authorities of the requesting 'host' Member State accordingly. (**Deadlines to verify compliance of operators with PWD**)

6. Do you expect the proposed measures and procedures to help improve the enforcement of the PWD? Please explain your answer?
7. Are there any issues/problems/obstacles from the implementation of any of the proposed options in your country? Please explain.
8. What are the related costs and benefits that you would expect for your organisations? Are any of them expected to be significant?
 - a. Additional costs for enforcement?
 - b. Additional costs for any other stakeholder groups?
 - c. Any benefits?
 - d. Do you expect the costs to outweigh the benefits?

Directive 2006/22/EC

Measures regarding the enhancement of enforcement

The ex-post evaluation indicated a number of issues regarding the enforcement of Regulation (EC) No 561/2006. The proposed measures aim to improve enforcement activities both at roadside and premises checks.

1. Allow controllers to access the risk-rating system (RRS) in real-time of control (both for roadside and premises checks) (**Access to RRS at roadside and premises**);
2. Establish a uniform EU-level formula for calculating risk rating, which would also include the results of so called "clean" checks where no infringements are detected. (**Uniform EU formula for calculating risk rating**);
3. Enhance administrative cooperation of national control authorities by introducing a requirement to respond to requests of one MS within a certain time period:
 - (a) **2 working days** in urgent cases (e.g. in case of very serious infringements);
 - (b) **25 working days** in non-urgent cases unless a shorter time limit is mutually agreed;

9. Do you expect the proposed measures to contribute to the effectiveness of enforcement of the Regulation?
10. Do you expect any issues/problems from the adoption of the above measures? How can they be overcome?
11. Would there be any impact to the costs and benefits to your organisation from implementing any of these measures?
 - a. Enforcement costs (e.g. additional ICT infrastructure, staff time).
 - b. Costs for other stakeholders?
 - c. Benefits (cost saving, more effective/target enforcement)?
 - d. Do you expect the costs to outweigh the benefits?

Clarification and simplification of current rules

The following clarifications and simplification to the current provision of Directive 2006/22/EC are proposed:

1. Include additional criteria for establishing national penalty systems to ensure that the level and type of penalties are proportionate to the level of seriousness of infringements (**harmonise criteria to ensure proportionate penalties**)
2. Remove requirement for attestation forms on top or instead of tachograph records to demonstrate the activities/inactivity periods when away from vehicle, while defining a solution as to how out-of-scope work is best controlled. (**Remove requirement for attestation forms**)
3. Explicitly state that article 14.2 DOES APPLY to the Directive 2002/15/EC to improve legal clarity / harmonised application (i.e: derogation from the driving and resting times rules granted in exceptional circumstances may result in derogation from the maximum weekly working time threshold) (**Clarification of Art. 14.2 – application to 2002/15/EC**)
4. Explicitly state that article 14.2 DOES NOT APPLY to the Directive 2002/15/EC to improve legal clarity / harmonised application (i.e: derogation from the driving and resting times rules granted in exceptional circumstances may result in derogation from the maximum weekly working time threshold) (**Clarification of Art. 14.2 – no application to 2002/15/EC**)

12. Do you consider that the proposed measures adequately clarify and simplify the Regulation? Are there any other clarifications/simplifications needed?

13. Do you expect any issues/problems from the introduction of the above provisions? How can they be overcome?

14. Do you expect any **significant** costs or benefits from the introduction of these measures? Please explain the nature of them and which stakeholders are affected

Other enforcement measures considered

Additional measures intended to improve the effectiveness of enforcement are considered. These include:

1. Make training for new enforcers' compulsory and according to common curriculum.
2. Creation of a **European Road Transport Agency** - with the task of observing the phenomenon and interstate offenses, monitoring national legislation, formulating proposals for improving European regulation and improving the system administrative information between Member States;

15. Do you expect the proposed measures to contribute to effectiveness of enforcement of the regulation?

16. Do you expect any issues/problems from the introduction of the above provisions? How can they be overcome?

17. Do you expect any **significant** costs or benefits from the introduction of these measures? Please explain the nature of them and which stakeholders are affected.

Regulation (EC) No 561/2006

Required regular weekly rest (calculation system and organisation of work) (Art.8 561/2006)

The ex-post evaluation found issues regarding (i) uncertainty over whether or not the regular weekly rest can be taken in the vehicle; (ii) long periods away from home base (phenomenon of 'nomadic' drivers); (iii) lack of flexibility in organising driving and resting periods.

The table below outlines the changes to the current Regulation as proposed by the new measure on regular weekly rest. Annex 1 gives a further explanation of the new calculation approach.

	Current provisions	New provisions considered
Standard minimum weekly rest periods	In any two consecutive weeks a driver shall take at least two regular weekly rest periods of minimum 45 h OR one regular weekly rest period and one reduced of minimum 24 h.	A minimum of 45 h regular weekly rest to be taken, calculated as a minimum average weekly resting time over a reference period of rolling 4 weeks.
Definition of Compensation for reduced weekly rest	The reduction should be compensated by an equivalent period of time taken <i>en bloc</i> and attached to another rest of at least 9 hours.	A reduced weekly rest period of less than 45 h in any week should not be less than 24 h and any reduction should be compensated by an equivalent period taken <i>en bloc</i> and attached to another weekly rest period.
Maximum period during which compensation should be taken	Within 3 weeks from taking that reduced weekly rest	Within the reference period of 4 weeks

18. Do you expect the proposed measures to contribute to the effectiveness of enforcement of the regulation?

19. Do you believe enforcers will be able to effectively and consistently control the duration of weekly rest periods and compensations according to these criteria?

20. Do you expect any practical implementation/enforcement issues? How can they be overcome?

21. Do you expect any **significant** costs or benefits from such provisions? E.g.

- a. Additional costs for implementation/enforcement for your organisation (e.g equipment; cost for increased staff time allocation)?
- b. Would new software be needed?
- c. Other costs?

Requirements on spending regular weekly rest on the vehicle (art.8.8 561/2006).

The ex-post evaluation suggested that the current rules are considered unclear as to whether driver is allowed or not to spend the regular weekly rest on board of the vehicle.

The proposed measures below intend to clarify such rules and also to ensure that decent accommodation is available when taking a regular weekly rest:

7. Forbid spending the regular weekly rest periods **of more than 45 h** in the vehicle. It should be taken either at adequate accommodation provided/paid by the employer, or at the home base or at another private place of rest. Include a definition of 'adequate accommodation' in the legislation.
8. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances, such as lack of resting facilities;
9. Allow for spending (up to) every second regular weekly rest in the vehicle;

21. What do you think should be included in the definition of "adequate accommodation" to ensure clarity and enforceability of the rules and access to decent accommodation by drivers?
22. Do you expect the proposed measures to impact the effectiveness of enforcement regarding the location for regular weekly rest?
23. Do you expect any practical implementation/enforcement issues? How can they be overcome?
24. Do you expect any **significant** costs or benefits from such provisions? Please explain the nature of them. Please explain the nature of them and which stakeholders are affected.

Performance-based pay

The ex-post evaluation study found issues concerning the interpretation of performance-based payments that could "*endanger road safety*". However, variable payments make up a large part of drivers' salaries in many cases. The following option is considered:

- Forbid all performance based payment (strict prohibition of payments based on distances travelled / amount of goods carried)

25. Are there any practical or other issues for enforcing the proposed measure? How can they be overcome?
26. Do you expect the proposed change could help simplify the enforcement related to performance-based payment? (This question is addressed to enforcement authorities)
27. Do you expect any **significant** costs or benefits for your organisation from the introduction of these measures? Please explain the nature of them and which stakeholders are affected...
28. Do you expect the proposed measure to receive political acceptance? this question is addressed to MS national authorities).

Clarifications of the scope of social legislation

The following clarifications of existing or additional definitions, as well as suggestions

on revising the scope of Regulation (EC) No 561/2006 are proposed:

1. Define "occasional driver" and "operations for private purposes", and exclude these from the scope of Regulation 561/2006;
2. Include a Review Clause: i.e., an obligation on the EC to review in 5 years' time the scope of the legislation to verify whether or not it would be justified and proportionate to include drivers of LGVs (of below 3,5t), to exclude self-employed, to update derogations and exemptions.

29. What do you think would need to be included in the definition of "occasional driver" and "operations for private purposes" to ensure enforceability of the rules?

30. Do you foresee any possible problems with the proposed **review clause** regarding the inclusion of LCVs in 5 years' time? Please explain your answer and any possible solutions. [Click here to enter text](#)

Increasing flexibility of transport operations

Derogation for passenger transport by coach

The current rules allow for a 12-day derogation for international occasional passenger transport by coach. However, there have been calls to increase the flexibility of passenger transport operations further.

The proposed measures below intend to address these issues:

3. Abolish the obligation of taking two regular weekly rest periods after the use of a 12-day derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest to be taken *en bloc*, (minimum 69 hours), without any compensation for the reduced rest (**abolish compensation for reduced rest after 12-day derogation**);
4. Extend the current 12-day derogation to domestic occasional transport of passengers by coach, under the current conditions. (**12-day derogation to domestic occasional transport of passengers by coach**)
5. Only in the case of domestic occasional transport of passengers by coach, introduce a 8-day derogation provided that a driver takes regular weekly rest of minimum 45h before and after the use of the derogation. Other conditions remain unchanged. (**8 day derogation for domestic occasional transport of passengers by coach**)

31. Do you expect the proposed measures to impact the effectiveness of enforcement of the legislation in relation to occasional passenger transport by coach?

32. Are there any practical or other issues for implementing any of these options? How can they be overcome?

33. Do you expect any **significant** costs or benefits from the introduction of these measures? Please explain the nature of them and which stakeholders are affected.

Adaptation of breaks

To address the problem of intended or unintended non-compliance with requirements on breaks 'forced' by circumstances, and to better adapt to the needs of the sector, more flexibility in arranging for obligatory breaks could be foreseen:

2. For all drivers - a break of minimum 45 minutes may be split into maximum 3 periods of at least 15 minutes each. Basic provision on breaks remains unchanged.

34. To what extent do you believe the proposed additional provision will make the enforcement of the legislation in relation to breaks more effective?
35. Are there any practical or other issues for implementing and enforcing the proposed provision? How can they be overcome?
36. Do you expect any **significant** costs or benefits from the proposed provision? Please explain the nature of them and which stakeholders are affected..

Multi-manning

A number of organisations have suggested changes to the definition of multi-manning in Regulation (EC) No 561/2006 and where multi-manning may not be mandatory. The change considered is:

- Allow one driver for the first two hours or the last one hour of the journey

37. Are there any practical or other issues for enforcing the proposed measure? How can they be overcome?
38. Do you expect any **significant** costs or benefits from the introduction of these measures? Please explain the nature of them and which stakeholders are affected.

Directive 2002/15/EC

Enforceability of working time directive (WTD)

The ex post evaluation found issues with the enforceability of Directive 2002/15/EC (Working Time Directive, WTD). The proposed measures aim to make enforcement more effective/coherent across Member States as well as improving working conditions by reducing accumulated fatigue.

1. Reduce the reference period used for the calculation of the maximum average weekly working time (of 48h) from 4 months (or 6 months according to national law) to 4 weeks in order to avoid accumulated fatigue and to enable the controls of working time at roadside via tachograph records and hence render enforcement more efficient. (**Reduce the reference period used for the calculation of the maximum average weekly working time**)
2. Establish minimum threshold for controlling compliance with working time provisions in line with requirements for checks at the premises under Directive 2006/22 (extend roadside checks and checks at premises to include also control of compliance with working time, which should be made easy if the calculation of the maximum average working time is done over 4-weeks reference period) (**Minimum threshold for controlling compliance with working time provisions**).
3. Establish reporting template for biennial national reports on results of controls of compliance with WTD similar to reporting template for checks on Regulation 561/2006. (**Establish reporting template for biennial national reports**)

39. Do you expect the proposed measures to ensure coherent and consistent monitoring and enforcement of Directive 2002/15/EC among Member States?
40. Do you envisage any issues/problems from the adoption of the above measures? How can they be overcome?
41. Do you expect the proposed measures to reduce accumulated fatigue of drivers and improve working conditions?
42. What are the related costs and benefits that you would expect for your organisations? Are any of them expected to be significant?
 - a. Additional costs for enforcement?
 - b. Any benefits?
 - c. Do you expect the costs to outweigh the benefits?

Other comments

Please discuss any other issues you feel are relevant. [Click here to enter text.](#)

Thank you for your participation.

G.3 Transport operators Data Request

G.3.1 Objectives of the study

An evaluation of the social legislation in road transport (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) was carried out by Ricardo in 2016 and an Open Public Consultation identified certain problems. The Commission is currently assessing whether policy intervention is justified to address these problems.

Following the Commission's proposal for sector-specific legislation to address the challenges faced by the transport sector regarding the application of the Posting of Workers Directive (Directive 96/71/EC), the Commission now intends to conduct an impact assessment for a possible revision of this legislative framework.

The aim of this study is to assess the potential impacts of a number of policy options and measures that are being considered. Your responses and input will be very useful in helping us to assess the effectiveness, the possible costs and the feasibility/enforceability of the various policy options considered. It is therefore important that you complete this questionnaire as much as possible and to share your practical knowledge with us. If you have any queries, please contact social.legislation@Ricardo.com

Use of your input

- Please note that your responses will be anonymised and will only be used for statistical and analytical purposes

Please send your responses to social.legislation@Ricardo.com by March 10th.

G.3.2 Contact information

Organisation name:	Click here to enter text
Contact name:	Click here to enter text
Email address:	Click here to enter text

G.3.3 Background information

1. Which Member State is your company based in?

Member State:	Click here to enter text
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2. If your company is a subsidiary of another company, where is the parent company based?

Member State:	Click here to enter text
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3. How many people do you employ?

	I am self employed	<10	10-20	20-50	50-100	100-250	250-1000	1000+	Do not know
Total employees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drivers									

4. Please indicate that type of transport operations that your firm is involved in? Select all that apply.

A. Domestic freight transport (within your country of registration)	<input type="checkbox"/>
B. Domestic passenger transport (within your country of registration)	<input type="checkbox"/>
C. International (cross border) freight	<input type="checkbox"/>
D. International (cross border) passenger transport	<input type="checkbox"/>
Other, please specify Click here to enter text	<input type="checkbox"/>

G.3.4 Implications of proposed policy measures

1.1 Changes to provisions related to regular weekly rest (calculation system and organisation of work) (Art.8 561/20)

One of the changes under consideration is related to the definition of regular weekly rest. The table below outlines the changes to the current Regulation as proposed by the new measure on regular weekly rest.

	Current provisions	New provisions considered
Standard minimum weekly rest periods	In any two consecutive weeks a driver shall take at least two regular weekly rest periods of minimum 45 h OR one regular weekly rest period and one reduced of minimum 24 h.	A minimum of 45 h regular weekly rest to be taken, calculated as a minimum average weekly resting time over a reference period of rolling 4 weeks.

Definition of Compensation for reduced weekly rest	The reduction should be compensated by an equivalent period of time taken <i>en bloc</i> and attached to another rest of at least 9 hours.	A reduced weekly rest period of less than 45 h in any week should not be less than 24 h and any reduction should be compensated by an equivalent period taken <i>en bloc</i> and attached to another weekly rest period.
Maximum period during which compensation should be taken	Within 3 weeks from taking that reduced weekly rest	Within the reference period of 4 weeks

5. What changes do you expect to make in order to maintain the same level of turnover if the proposed changes are adopted?

	Lower by >15%	Lower by 5-15%	About the same (±5%)	Higher by 5-15%	Higher by >15%	Do not know	Not applicable
Total number of trips	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of drivers employed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of vehicles used (owned/hired)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other changes (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other changes: [Click here to enter text](#)

6. Do you expect any other costs to adapt to the proposed measures? Please indicate and provide an estimate of the additional cost.

	Select if applicable	Estimate
Software update to monitor/record weekly rest	<input type="checkbox"/>	Click here to enter text
Training of staff	<input type="checkbox"/>	Click here to enter text
Other costs of operations Click here to enter text	<input type="checkbox"/>	Click here to enter text

7. What will be the impact on annual operating costs for your organisation as a result of the proposed measures (compared to current costs)?

Lower by >15%	Lower by 5-15%	About the same (±5%)	Higher by 5-15%	Higher by >15%	Do not know	Not applicable
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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1.2 Requirement on spending regular weekly rest on the vehicle

Current rules as to whether a driver is allowed or not allowed to spend the regular weekly rest on board of the vehicle are considered unclear. Among the measures considered is to forbid spending the regular weekly rest periods of **more than 45 h** in the vehicle. It should be taken either at an adequate accommodation provided/paid by the employer, or at the home base or at another private place of rest. A definition of 'adequate accommodation' will be provided in the legislation.

In the case that spending the regular weekly rest periods of more than 45 h in the vehicle is forbidden, which resting places do you expect to give preference to?

	Never	Rarely (<25% of the time)	Often (25%- 50% of the time)	Quite often (50- 75% of the time)	Very often (>75% of the time)	Always	Do not know	Not applicable
Return driver to home base or other private place of rest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provide accommodation paid for by the firm	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other approach, please explain Click here to enter text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. Would the proposed measure have an impact on any of the parameters indicated below?

	Lower by >15%	Lower by 5- 15%	About the same (±5%)	Higher by 5- 15%	Higher by >15%	Do not know	Not applicable
Total number of trips	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of drivers employed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of vehicles used (owned/hired)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other: Click here to enter text

1.3 Posting of Workers Directive (PWD) - Definition of time spent in a Member State

The proposed measures intend to define clear rules based on the time spent by drivers in a given country as a basis for determining when a situation of posting occurs and the PWD rules should apply.

In terms of determining when a situation of posting occurs and the posting of workers rules should apply the following minimum periods are considered:

- 5 days/month
- 7 days/month
- 9 days/month

9. What changes do you expect to make in order to maintain the same level of turnover if the proposed changes are adopted?

	Lower by >15%	Lower by 5-15%	About the same (±5%)	Higher by 5-15%	Higher by >15%	Do not know	Not applicable
Total number of trips	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of drivers employed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of vehicles used (owned/hired)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The average time spent away from home base for drivers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other: [Click here to enter text](#)

1.4 Attestation forms

It is proposed to remove requirement for attestation forms on top or instead of tachograph records to demonstrate the activities/inactivity periods when a driver is away from vehicle

10. Approximately, how many attestation forms do you submit per year (please provide an estimate):

0	<50	50-100	100-250	250-500	500-1000	>1000	Do not know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. What do you expect to be the impact of the proposed measure on the annual operating costs for your organisation (in relation to the current costs)?

Lower by >15%	Lower by 5-15%	About the same (±5%)	Higher by 5-15%	Higher by >15%	Do not know	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1.5 Derogation for passenger transport operations (only respond if you are involved in passenger transport operations)

The current rules allow for a 12-day derogation for international occasional passenger transport by coach. However, there have been calls to increase the flexibility of passenger transport operations further. The proposed measures below intend to address these issues:

1. **Abolish compensation for reduced rest after 12-day derogation** - Abolish the obligation of taking two regular weekly rest periods after the use of a 12-day derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest to be taken *en bloc*, (minimum 69 hours), without any compensation for the reduced rest
2. **Extend 12-day derogation to domestic occasional transport of passengers by coach** - Extend the current 12-day derogation to **domestic occasional transport of passengers** by coach, under the current conditions.
3. **8-day derogation for domestic occasional transport of passengers by coach** - Only in the case of domestic occasional transport of passengers by coach, introduce an 8-day derogation provided that a driver takes regular weekly rest of minimum 45h before and after the use of the derogation. Other conditions remain unchanged.

12. How do you expect the proposed change to contribute to the flexibility in planning work for passenger passport drivers?

	Significant decrease	Slight decrease	No impact	Slight increase	Significant increase	Do not know	Not applicable
Abolish compensation for reduced rest after 12-day derogation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Extend 12-day derogation to domestic occasional transport of passengers by coach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8-day derogation for domestic occasional transport of passengers by coach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

13. What will be the impact on annual operating costs for your organisation (compared to current costs) from the proposed derogations?

	Decrease by >15%	Decrease by 5-15%	About the same (±5%)	Increase by 5-15%	Increase by >15%	Do not know	Not applicable
Abolish compensation for reduced rest after 12-day derogation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Extend 12-day derogation to domestic occasional transport of passengers by coach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8-day derogation for domestic occasional transport of passengers by coach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

G.3.5 Other comments

Please discuss any other issues you feel are relevant. [Click here to enter text.](#)

Thank you for your participation.

G.4 Survey of drivers

G.4.1 Objectives of the study

The European Commission is carrying out a review of the EU road social rules on driving times and rest periods, as well as the rules on posting of workers in transport.

A study of the social legislation carried out in 2016 revealed certain problems, and consequently the Commission is considering whether policy intervention is justified to address these problems.

The aims of this new study are to assess the potential impacts of a number of policy measures aiming to address the identified problems. Your responses will be used to help us propose ways to improve these rules in order to ensure fair competition between road transport companies.

Use of your input

Please note that all answers provided will be kept anonymous and confidential and will only be used for statistical and analytical purposes.

G.4.2 Background information

4. Nationality:	Click here to enter text
5. Member State of establishment of your employer (if not self-employed)	Click here to enter text

6. What type of transport operations are you involved in?

	Yes, this is the most frequent type of my transport operations	Yes, sometimes	No, never
Domestic freight (within your country of employment)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Domestic passenger transport (within your country of employment)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
International (cross border) freight	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
International (cross border) passenger transport	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

G.4.3 Regular weekly rest

7. Most often, where do you take your **regular weekly rest**?

Never	Rarely, less than 25% of the time	Sometimes, 25%-50% of the time	Often, 50% - 75% of the time	More than 75% of the time	Don't know	Not applicable
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At home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
On board of the vehicle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In accommodation paid for by the driver (myself)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In accommodation provided/paid for by the employer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. Do you think that employers should be **obliged to provide (or pay for) adequate accommodation where drivers when drivers cannot take their regular weekly rest** at home or at another private place of rest.

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Do not know
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9. Do you expect any issues/problems as a result of obliging employers to provide (or pay for) adequate accommodation?

10. What do you consider to be an "adequate accommodation" to spend the weekly rest? Please provide you views in relation to the following:

a. What amenities should be available?	Click here to enter text
b. Type of location, e.g. hotel/motel?	Click here to enter text
c. Are there any existing quality rating systems that you use / are aware of?	Click here to enter text
d. Other, please indicate: <input type="checkbox"/> Click here to enter text	Click here to enter text

11. How do you expect to be affected in the case that new rules forbid spending weekly rest in the vehicle **AND** the employer is required to provide (or pay for) adequate accommodation?

	<i>Significantly decreased</i>	<i>Slightly decreased</i>	<i>No change</i>	<i>Slightly increased</i>	<i>Significantly increased</i>	<i>No opinion / Don't know</i>
Your ability to spent weekly rest periods at home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Your ability to avoid fatigue and get adequate rest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Your safety conditions, (including road safety)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall working conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Your monthly pay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other impact, please indicate: Click here to enter text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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12. Do you have any other comments in relation to the rules governing weekly rest?

G.4.4 Adaptation of breaks

It is proposed to increase flexibility in arranging for obligatory breaks:

- a break of minimum 45 minutes may be split into maximum 3 periods of at least 15 minutes each (instead of the current rules that require to take a break of at least 15 minutes followed by a break of at least 30 minutes).

13. What do you expect to be the impact of the proposed change to the following?

	Significantly decreased	Slightly decreased	No change	Slightly increased	Significantly increased	No opinion / Don't know
Flexibility to deal with unexpected circumstances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to avoid fatigue and get adequate rest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Safety conditions, (including road safety)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall working conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Your monthly pay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other impact, please indicate: Click here to enter text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14. Please explain your answer / any other comments in relation to the proposed changes to arrangement concerning obligatory breaks?

G.4.5 Time spent in other Member States – Posting of workers

15. What is the typical amount of time that you spend in a country other than your home country when you are engaged in international transport operations?

Never	Rarely, less than 25% of the time	Sometimes 25%-50% of the time	Often, 50% - 75% of the time	More than 75% of the time	Not applicable
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< 5 days per month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 – 7 days per month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 – 9 days per month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
>9 days per month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, please indicate: Click here to enter text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

In accordance with requirements related to the posting of workers, it is proposed that employers should be obliged to pay drivers according to the rules of the Member State of work (and not of the Member State of establishment of the employer) whenever the time spent there exceeds a number of days per month.

16. How do you expect the introduction of such rules on payments will affect the following aspects?

	<i>Significantly decreased</i>	<i>Slightly decreased</i>	<i>No change</i>	<i>Slightly increased</i>	<i>Significantly increased</i>	<i>No opinion / Don't know</i>
Your ability to spent weekly rest periods at home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall working conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monthly pay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other impact, please indicate: Click here to enter text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

17. What do you consider as the most appropriate period which, when exceeded, posting of workers rules should apply? (i.e. employers will be obliged to pay drivers according to the rules of the Member State of work (and not of the Member State of establishment of the employer) (please select one)

5 days	<input type="checkbox"/>
7 days	<input type="checkbox"/>
9 days	<input type="checkbox"/>
Other, please indicate: Click here to enter text	<input type="checkbox"/>

18. Do you have experience of working under the minimum wage requirements applied to cross-border transport activities in France (FR) and Germany (DE)? If yes, did you experience any problem/issue? Please describe your experience below.

Click here to enter text.

There have been reported problems of drivers having to carry on board the vehicle's employment contracts translated into all EU languages, payslips, notification forms etc., and being fined on the spot. To avoid these problems, it is proposed to rely on tachograph data. This would require drivers to **record the country code of the country where they are, each time they make a stop and not only at the start and the end of their daily working period.**

19. Do you see any problems/issues with drivers being obliged to **record the country code of the country where they are is, each time they make a stop and not only at the start and the end of his daily working period?** Please explain

G.4.6 Performance-based pay

It is considered that performance based payments (e.g. on the basis of distance driven or amount of goods carried) can endanger road safety. However, variable payments make up a large part of drivers' salaries in many cases. The following measure is considered:

- Forbid all performance based payment

20. How do you expect the introduction of a ban on performance based payments will affect your monthly pay?

Significantly decrease (>15%)	Slightly decrease (5-15%)	No change (±5%)	Slightly increase (5-15%)	Significantly increase (>15%)	No opinion / Don't know	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

21. Do you expect any problems/issues with the proposed change? Please explain

G.4.7 Multi-manning

It is proposed to change existing provisions concerning multi-manning (i.e. the presence of at least two drivers in the vehicle in between rest periods) to allow the presence of only one driver for the first two hours or the last one hour of the journey

22. Do you see any problems/issues for drivers with the proposed change? Please explain

23. What do you expect to be the impact of the proposed change to the following?

	Significantly decreased	Slightly decreased	No change	Slightly increased	Significantly increased	No opinion / Don't know
Flexibility in organising multi-manning operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Ability to avoid fatigue and get adequate rest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Safety conditions, (including road safety)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall working conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other impact, please indicate: Click here to enter text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

G.4.8 Changes to weekly rest rules applicable to passenger transport by coach

(Please only respond if you are involved in passenger transport by coach)

The current rules allow coach **drivers involved in international occasional coach tour journeys** to work up to 12 consecutive days under certain conditions (12 day derogation). The following changes are considered:

4. Extend the 12-day derogation rule to **domestic coach tour journeys**
5. Introduce a 8-day derogation in the case of **domestic occasional transport of passengers by coach**, provided that a driver takes regular weekly rest of minimum 45h before and after the use of the derogation. (**8 day derogation for domestic occasional transport of passengers by coach**)
6. Abolish the obligation of taking two regular weekly rest periods after the use of a 12-day derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest to be taken *en bloc*, (minimum 69 hours), without any compensation for the reduced rest (**abolish compensation for reduced rest after 12-day derogation**);

24. Do you see any problems/issues for drivers **involved in coach tour journeys** with any of the proposed changes? Please explain

a. Extend the 12-day derogation rule to domestic coach tour journeys	Click here to enter text
b. Introduce a 8-day derogation in the case of domestic occasional transport of passengers by coach	Click here to enter text
c. Abolish compensation for reduced rest after 12-day derogation	Click here to enter text

G.4.9 Other comments

25. Please discuss any other issues you feel are relevant. [Click here to enter text.](#)

G.5 Study Visit – Enforcing Authorities - Questionnaire

G.5.1 Objectives of the study

An evaluation of the social legislation in road transport (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) was carried out by Ricardo in 2016 and an Open Public Consultation identified certain problems. The Commission is currently assessing whether policy intervention is justified to address these problems.

Following the Commission's proposal for sector-specific legislation to address the challenges faced by the transport sector regarding the application of the Posting of Workers Directive (Directive 96/71/EC), the Commission now intends to conduct an impact assessment for a possible revision of this legislative framework.

The aim of this study is to assess the potential impacts of a number of policy options and measures that are being considered. Your responses and input will be very useful in helping us to assess the effectiveness, the possible costs and the feasibility/enforceability of the various policy options considered. It is therefore important that you complete this questionnaire as much as possible and to share your practical knowledge with us. If you have any queries, please contact social.legislation@Ricardo.com.

G.5.2 Objective of the study visit

The objective of the study visit is to examine in some detail the practical implications and possible impacts of the proposed measures for enforcement authorities.

Each study visit should be arranged with an enforcement officer willing/able to provide information on practical **aspects** (e.g. time required for specific activities linked to the enforcement of a specific measure, changes in procedures/processes that may be needed), the respective **costs** (e.g. costs of introducing the proposed measure) and to identify possible issues/constraints for their practical implementation.

The interviewee(s) should preferably have experience in carrying out both roadside and premises checks in relation to social legislation.

Use of your input

The study team will keep detailed notes of the discussion and will make use of your contribution (information/data provided) only for the needs of this study. Please indicate how you would like us to present the information provided during our discussion and any other information or data you provide to us:

- Publication of their contribution indicating the name of the organisation;
- Anonymised publication of statements made (without the name/ name of the organization);
- No publication but use of the contribution for statistical and analytical purposes

G.5.3 Contact information

Member State:	Click here to enter text
Organisation name:	Click here to enter text

Contact name:	Click here to enter text
Position/role in the organisation	Click here to enter text
Email address:	Click here to enter text
Telephone number:	Click here to enter text

G.5.4 **Background information about your organisation**

1. Please provide the following information concerning the activities of your organisation related to the enforcement of social legislation in road transport (please refer to the most recent year available)

Type of information	Number	Year
Number of staff (in FTE) involved in:		
- Roadside checks		
- Premises checks		
Number of checks		
- Roadside checks		
- Premises checks		
Budget allocated to the enforcement of social legislation in road transport		

G.5.5 **Implications of the proposed measures for enforcement authorities**

Changes to provisions related to regular weekly rest (calculation system and organisation of work) (Art.8 561/2006)

One of the changes under consideration is related to the definition of regular weekly rest. The table below outlines the changes to the current Regulation as proposed by the new measure on regular weekly rest.

Aspect	Current provisions	New provisions considered
Standard minimum weekly rest periods	In any two consecutive weeks a driver shall take at least two regular weekly rest periods of minimum 45 h OR one regular weekly rest period and one reduced of minimum 24 h.	A minimum of 45 h regular weekly rest is to be taken, which is calculated as a minimum average weekly resting time over a reference period of rolling 4 weeks.
Definition of Compensation for reduced weekly rest	The reduction should be compensated by an equivalent period of time taken <i>en bloc</i> and attached to another rest of at least 9 hours.	A reduced weekly rest period of less than 45 h in any week should not be less than 24 h and any reduction should be compensated by an equivalent period taken <i>en bloc</i> and attached to another weekly rest period.
Maximum period during which compensation should be taken	Within 3 weeks from taking that reduced weekly rest	Within the reference period of 4 weeks

2. As part of enforcement activities, how do you check compliance with the current provisions on regular weekly rest?
 - a) How long does it usually take to conduct the roadside checks?
 - b) Do you have any issues in accessing necessary information to check compliance?
 - c) Are there any other issues/difficulties?
3. Do you expect any changes in the enforcement of the regular weekly rest from the proposed changes?
 - a) Will it help address the issues/difficulties identified above?
 - b) Will roadside checks take more time, less time or about the same? Could you estimate the change (if relevant) in minutes per check?
 - c) Will it affect the time taken for checks at the premises? Could you estimate the change (if relevant) in minutes per check?
 - d) Will you require any additional information to evaluate compliance with the proposed provision on how to calculate the regular weekly rest?
 - e) Would changes to existing tools (e.g. software) be needed? What would be the relevant costs?
 - f) Are there any other costs? (e.g. training)
4. Do you expect any practical implementation/enforcement issues as a result of these changes? How can they be overcome?
5. Do you expect any other benefits from the adoption of the above measure?

Requirements on spending regular weekly rest on the vehicle (art.8.8 561/2006).

Current rules as to whether a driver is allowed or not allowed to spend the regular weekly rest on board of the vehicle are considered unclear. The following alternatives provisions are considered:

10. Forbid spending the regular weekly rest periods **of more than 45 h** in the vehicle. It should be taken either at an adequate accommodation provided/paid by the employer, or at the home base or at another private place of rest. A definition of 'adequate accommodation' will be provided in the legislation.
11. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances, such as lack of resting facilities;
12. Allow for spending (up to) every second regular weekly rest in the vehicle;

6. How do you enforce the current provisions regarding spending the regular weekly rest on the vehicle?
 - a) What type of information do you use to assess compliance?
 - b) How easy is it for you to access the necessary information to assess compliance?
 - c) What are the main practical issues/difficulties?
 - d) How much time do such checks usually take?

7. What, if any, do you expect to be the possible practical challenges for controlling compliance with the proposed alternative provisions?

Provision	Expected changes to current practice	Issues for enforcement (if any)
1. Forbid spending the regular weekly rest periods of more than 45 h in the vehicle. It should be taken either at an adequate accommodation provided/paid by the		

employer, or at the home base or at another private place of rest.		
2. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances		
3. Allow for spending (up to) every second regular weekly rest in the vehicle		

8. Specifically in relation to proposed measure 1 (Forbid spending the regular weekly rest periods of more than 45 h in the vehicle), what type of information will you need to assess compliance?
- How will drivers be able to prove where they spent the night?
 - How will they prove that the accommodation was of "sufficient quality"?
 - Would a list of approved venues be necessary?
 - What do you think should be included in the definition of "adequate accommodation" to ensure clarity and enforceability?
9. In the case of the second option, do you expect any difficulties with assessing that staying in the vehicle is the free choice of a driver or it is justified by the circumstances? What type of evidence you will need?
10. In the case of the third option, what type of evidence will be need?
11. Do you think you will be able to assess compliance retrospectively (e.g. for the previous week/month) or only do so when you find drivers having a weekly rest on the spot? Please explain.
12. In comparison to the current provisions, how much more or less time do you expect that you will need to assess compliance with the proposed alternative provisions?

Possible provision	More/less time needed per check in comparison to current provisions (minutes)
1. Forbid spending the regular weekly rest periods of more than 45 h in the vehicle. It should be taken either at adequate accommodation provided/paid by the employer, or at the home base or at another private place of rest.	
2. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances	
3. Allow for spending (up to) every second regular weekly rest in the vehicle	

13. Would any of the above issues require different checks at the roadside in comparison to checks at premises?
14. Do you expect any other benefits from the adoption of the above possible measure?

Measures regarding the enhancement of enforcement of Directive 2006/22/EC

The following measures are considered to improve enforcement activities both at roadside and premises checks include:

1. Allow controllers to access the risk-rating system (RRS) in real-time of control (both for roadside and premises checks) (**Access to RRS at roadside and premises**);
 2. Establish a uniform EU-level formula for calculating risk rating, which would also include the results of so called "clean" checks where no infringements are detected. (**Uniform EU formula for calculating risk rating**);
-
15. Currently, do controllers in your organisation have access to risk-rating system of operators (RRS) in real-time during controls
 - a) Roadside checks?
 - b) Premises checks?

If NO, move to question 18.
 16. If YES, since when (please indicate year)?
 17. How does access to the RRS in real-time facilitate checks?
 - a) Does it provide additional information that is important during checks? What type?
 - b) Does it make checks faster? If so, how?
 - c) How much time does it takes for each control?
 18. What, if any, are the practical issues/difficulties for using the RRS in real-time during controls?
 19. What are the costs for operating such system?
 - a) One-off for initial setting up of the system
 - b) Annual maintenance costs
 20. What criteria and information do you currently use to calculate risk-rating (if applicable to your organisation)?
 - a) Does the formula include the results of so called "clean" check?
 - b) How easy is for you to access the necessary information?
 - c) What are the main issues/difficulties?
 - d) How long does it usually take to calculate risk-rating?
 21. How do you expect that access to the RSS in real time during controls at the roadside/premises will affect enforcement in terms of:
 - a) Access to additional information that is not currently available and is important for checks?
 1. At the roadside?
 2. At premises?
 - b) Capacity to detect new/more infringements?
 - c) Time required for each control?
 1. At the roadside?
 2. At premises?
 - d) Capacity to better target controls?
 - e) Other aspects of enforcement?
 22. How easy, will it be to change the existing formula to calculate risk rating to include different/additional information (including clean checks)?
 - a) What changes will you need to make to your current approach?
 - b) What could be the costs for changing the current approach?

23. Do you expect any other benefits from the adoption of the above measure?

Enforceability of working time directive 2002/15/EC (WTD)

The following change aims to make enforcement of WTD more effective/coherent across Member States.

- Reduce the reference period used for the calculation of the maximum average weekly working time (of 48h) from 4 months (or 6 months according to national law) to 4 weeks to enable the controls of working time at roadside via tachograph records. (**Reduce the reference period used for the calculation of the maximum average weekly working time**)

24. Currently, what process do you follow for assessing compliance of operators with working time rules?

- a. What type of information is used? Do you rely on tachograph records?
- b. How long does it usually take?
- c. What are the main issues/difficulties?

25. How do you expect the proposed change to enable use of tachograph records during controls will impact on the time needed for these controls?

26. Does the proposed measure address any of the issues/difficulties identified above (if any)?

27. Do you expect any other issues/difficulties from the proposed measure?

28. Do you expect any other benefits from the adoption of the above measure?

Enforceability of Posting of Workers Directive (PWD) provisions

In order to improve the enforcement of the Posting of Workers Directive for transport, measures are being considered that aim to make better use of existing control and communication tools (e.g. tachograph, risk rating system, ERRU – European Register of Road Transport Undertakings) while minimising relevant administrative burden. More specifically, it is considered to adopt a two-step enforcement approach (similar to what applies to driving times according to Regulation 561/2006)

9. At the roadside, to enable controller to establish the frequency of presence of a driver in the territory of a given Member State over a rolling period of 29 days, by **obliging drivers to record in the tachograph the country code of the country where they are each time they stop a vehicle, instead of only at the start and the end of the daily working period.**(**Establishing frequency of presence of a driver at roadside checks**)¹⁹⁵
10. Having established a sufficient presence which means that the driver should be subject to the minimum wage of the 'host' Member State, to enable 'host' MS enforcement authorities to request the control authorities in the MS where the employer is established a verification of compliance with the minimum wage, which may include carrying out checks at premises. (**Enable premise checks by control authorities in MS of establishment of employers**);

29. What is currently the rule on posting of workers in transport that applies in your country?

30. What is the process that you currently follow for enforcing PWD rules on the roadside and in premises?

- a. What is the type of information used?
- b. What are the main issues/difficulties with enforcing PWD rules?
- c. How long does each control usually take?

¹⁹⁵ Note, the driver would be obliged to enter the country code only the next time when he/she stops the vehicle, and not necessarily at the moment of crossing the border (this would be too burdensome). This obligation will not show the exact duration of presence of a driver on the territory of the host MS, but at least a number of presences/frequency. The rest period can be verified by controlling other document related to transport operation.

- d. What is the total number per year of checks/controls related to PWD rules (roadside & premises) performed by your organisation?
31. How do you expect the obligation of drivers to record in the tachograph the country code of the country where they are each time they stop the vehicle to help enforcement of PWD during roadside checks?
- a) How do you expect this obligation to affect the time needed per check?
- b) Do you expect any issues/difficulties?
32. In relation to the second step, how do you expect that the proposed approach will affect checks in premises in relation to PWD?
- a) Do you expect that checks will become more targeted?
- b) Do you expect any issues with carrying out checks of compliance with PWD at premises of the employer?
33. Do you expect any other benefits for your organisation from the adoption of the above measure?

Derogations for passenger transport by coach

The current rules allow for a 12-day derogation for international occasional passenger transport by coach. However, there have been calls to increase the flexibility of passenger transport operations further. The proposed measures below intend to address these issues:

1. Abolish the obligation of taking two regular weekly rest periods after the use of a 12-day derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest *en bloc*, (minimum 69 hours), without any compensation for the reduced rest (**abolish compensation for reduced rest after 12-day derogation**);
2. Extend the current 12-day derogation to domestic occasional transport of passengers by coach, under the current conditions. (**12-day derogation to domestic occasional transport of passengers by coach**)
3. Only in the case of domestic occasional transport of passengers by coach, introduce a 8-day derogation provided that a driver takes regular weekly rest of minimum 45h before and after the use of the derogation. Other conditions remain unchanged. (**8 day derogation for domestic occasional transport of passengers by coach**)

34. How do you currently control compliance with existing rules for international occasional passenger transport (including the 12- day derogation)?
- a. How easy is for you to access relevant information to control compliance?
- b. How long does it usually take to perform such checks?
- c. How many such checks do you perform per year?
- d. What are the main issues/difficulties?
35. What would be the impact of the adoption of the proposed additional derogations?
- a) Will it help address the issues/difficulties identified above?
- b) In the case of the first option, will control of compliance become easier (i.e. faster)? If so, by how much (minutes per check)?
- c) In the case of the extension of derogation to domestic passenger transport, do you expect any problems/issues with controlling compliance? What are they?
36. Do you expect any other benefits for your organisation from the adoption of the above measure?

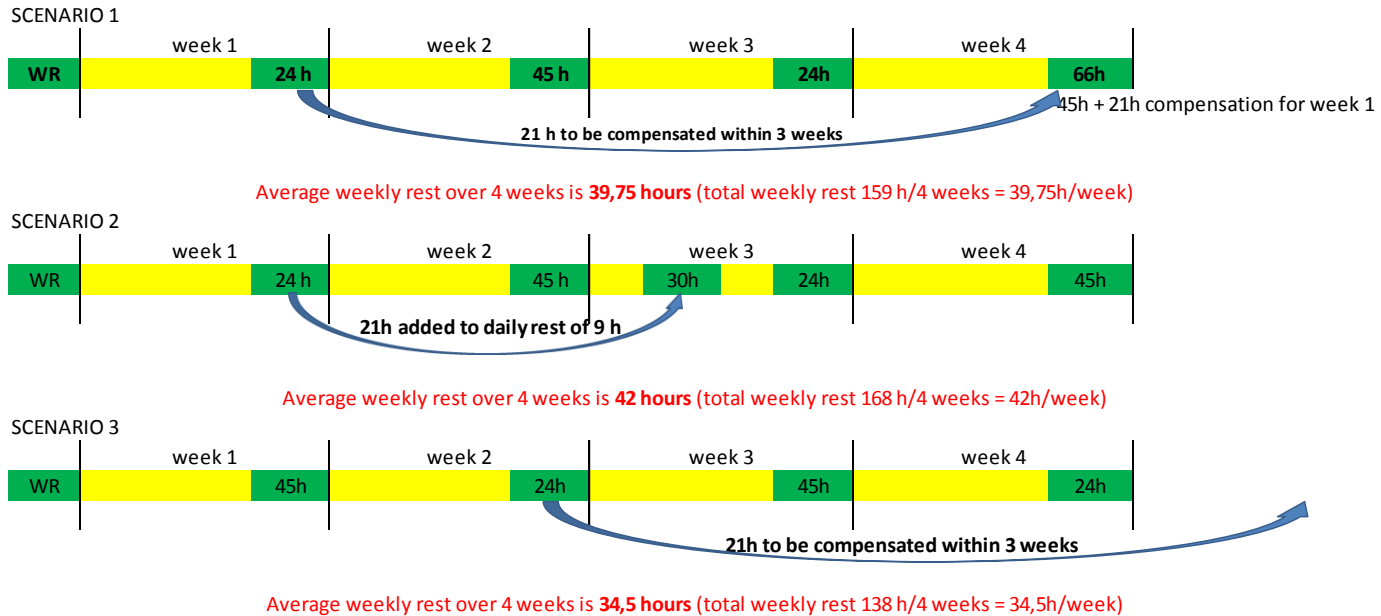
G.5.6 *Other comments*

Please discuss any other issues you feel are relevant. [Click here to enter text.](#)

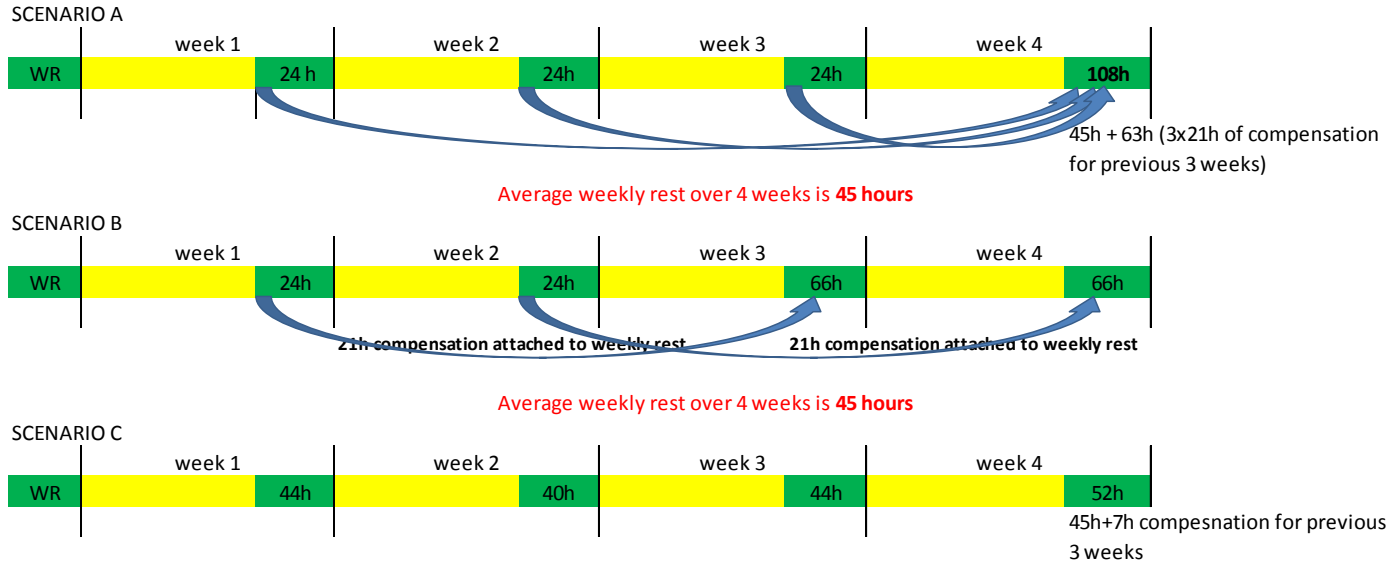
Thank you for your participation.

Annex I - Diagrams illustrating weekly rest scenarios under current and proposed rules

Possible scenarios under the current rules on weekly rest



Possible scenarios under the revised rules on weekly rest



Under revised rules a compliant driver can ALWAYS have average 45 hours of weekly rest over the period of 4 weeks.

The thresholds for weekly rest and for daily, weekly and fortnightly driving times DO NOT CHANGE.

Only the method for calculation of weekly rest, as an average duration over the reference period of 4 rolling weeks, is introduced.

The calculation rules accompanied by additional obligations: (a) min weekly rest must not be shorter than 24h, (b) compensation must be attached en bloc to another weekly rest, (c) weekly rest of 45h and more must be taken at home base or accommodation provided/paid by employer or in other private place of rest

G.6 Study Visit – Undertaking – Questionnaire

G.6.1 Objectives of the study

An evaluation of the social legislation in road transport (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) was carried out by Ricardo in 2016 and an Open Public Consultation identified certain problems. The Commission is currently assessing whether policy intervention is justified to address these problems.

Following the Commission's proposal for sector-specific legislation to address the challenges faced by the transport sector regarding the application of the Posting of Workers Directive (Directive 96/71/EC), the Commission now intends to conduct an impact assessment for a possible revision of this legislative framework.

The aim of this study is to assess the potential impacts of a number of policy options and measures that are being considered. Your responses and input will be very useful in helping us to assess the effectiveness, the possible costs and the feasibility/enforceability of the various policy options considered. It is therefore important that you complete this questionnaire as much as possible and to share your practical knowledge with us. If you have any queries, please contact social.legislation@Ricardo.com

G.6.2 Objective of the study visit

The objective of the study visit is to examine in some detail the practical implications and possible impacts of the proposed measures for transport undertakings.

Each study visit should be arranged with a transport manager or a person responsible for the management/organisation of the operations willing to provide information on **practical aspects** (e.g. time required for specific activities linked to the organisation of transport operations, changes in procedures/processes that may be needed) the **respective costs** (e.g. costs of introducing the proposed measure) and to identify possible issues/constraints for their practical implementation.

Use of your input

The study team will keep detailed notes of the discussion and will make use of your contribution (information/data provided) only for the needs of this study. Please indicate how you would like us to present the information provided during our discussion and any other information or data you provide to us:

- Publication of their contribution indicating the name of the organisation;
- Anonymised publication of statements made (without the name/ name of the organization);
- No publication but use of the contribution for statistical and analytical purposes

G.6.3 Contact information

Organisation name:	Click here to enter text
Contact name:	Click here to enter text
Email address:	Click here to enter text

G.6.4 **Background information**

1. Which Member State is your company based in?

Member State:	Click here to enter text
---------------	--------------------------

2. If your company is a subsidiary of another company, where is the parent company based?

Member State:	Click here to enter text
---------------	--------------------------

12. Please provide the following information concerning your firm (please refer to 2016 or the most recent year available):

Annual revenue associated with the provision of transport services within the EU	
Total number of drivers employed	
Total number of vehicles used in transport operations	
Total number of operations	

13. What share of your total annual turnover comes from the following types of transport operations ?.

	% of annual turnover
Domestic freight (within your country of registration)	
International (cross border) freight	
Cabotage operations with other Member States	
Other (please specify)	
Total	

G.6.5 **Implications of proposed policy measures**

Changes to provisions related to regular weekly rest (calculation system and organisation of work) (Art.8 561/20

One of the changes under consideration is related to the definition of regular weekly rest. The table below outlines the changes to the current Regulation as proposed by the new measure on regular weekly rest. (see Also Annex I with illustrative work schedules)

	Current provisions	New provisions considered
Standard minimum weekly rest periods	In any two consecutive weeks a driver shall take at least two regular weekly rest periods of minimum 45 h OR one regular weekly rest period and one reduced of minimum 24 h.	A minimum of 45 h regular weekly rest to be taken, calculated as a minimum average weekly resting time over a reference period of rolling 4 weeks.

Definition of Compensation for reduced weekly rest	The reduction should be compensated by an equivalent period of time taken <i>en bloc</i> and attached to another rest of at least 9 hours.	A reduced weekly rest period of less than 45 h in any week should not be less than 24 h and any reduction should be compensated by an equivalent period taken <i>en bloc</i> and attached to another weekly rest period.
Maximum period during which compensation should be taken	Within 3 weeks from taking that reduced weekly rest	Within the reference period of 4 weeks

-
- 14. How common is it that drivers have to take reduced weekly rest periods?
 - a. Which of the proposed scenarios (in Annex I) do you typically use in such case?
 - b. What are the issues/problems, if any, of the available options?
- 15. How are regular weekly rest rules taken into consideration when you plan transport operations?
 - a. Are you using a specific software or other support instrument to help with ensuring compliance?
 - b. Are there any issues/difficulties in ensuring that the rules are respected?
- 16. How do the current rules on driver's weekly rest affect the planning and cost of operations?
 - a. Do they pose any limitation on the duration and cost of operations?
 - b. Are there any other issues arising as a results of the current rules?
- 17. How do you expect the proposed changes to impact on transport operations?
 - a. Do the proposed rules increase your flexibility in planning the operations? In what way?
 - b. Having in mind a typical operation (in terms of distance/duration) will the proposed rules impact on the duration and cost of the operation?
 - c. Will the changes result in any need for more/fewer drivers to cover the same transport activity?
- 18. How easy/difficult will it be for you to adapt the existing approach that you use to ensure that weekly rest rules are respected? Are there any possible issues/difficulties?
- 19. Do you expect any issues/problems or limitations for your firm or your drivers to comply with the proposed provisions? What are these?
- 20. Are there any other benefits from the proposed changes?

Requirement on spending regular weekly rest on the vehicle

Current rules as to whether a driver is allowed or not allowed to spend the regular weekly rest on board of the vehicle are considered unclear. The following alternatives provisions are considered:

- 13. Forbid spending the regular weekly rest periods **of more than 45 h** in the vehicle. It should be taken either at an adequate accommodation provided/paid by the employer, or at the home base or at another private place of rest. A definition of 'adequate accommodation' will be provided in the legislation.
- 14. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances, such as lack of resting facilities;
- 15. Allow for spending (up to) every second regular weekly rest in the vehicle;

- 21. Most often, where do your drivers take their regular weekly rest?
 - a) At home
 - b) On board of the vehicle

- c) In accommodation paid for by the driver
 - d) In accommodation provided/paid for by the firm
 - e) Other
22. In some countries (e.g. France and Belgium), under current provisions, it is forbidden for drivers to spend their weekly rest in the vehicle.
- a) How do you ensure that your drivers comply with such requirements?
 - b) Is this taken into consideration when planning the drivers' schedule? How?
 - c) What is the average cost of providing accommodation?
 - d) Are there any issues/problems in complying with this requirement?
23. More generally, how do you currently check that drivers are in an adequate accommodation?
-
24. If, under option 1, drivers are not allowed to spend their weekly rest in the vehicle, they should have access to an "adequate accommodation".
- a) Are there practical ways to ensure that drivers take the weekly rest in specific rest places that meet certain criteria? What are they?
 - b) How may this requirement affect the planning of operations and the driver's schedule?
 - c) Are appropriate resting facilities generally available?
 - d) How would such a requirement affect the cost of a typical operation? (e.g. estimated level of increase/decrease in cost)
-
25. In the case of option 1, which the resting places do you expect to give preference to?
- a) Return driver to home base or other private place of rest
 - b) Provide accommodation paid for by the firm
 - c) Other approach
- -
- 20 What, if any, do you expect to be the possible practical challenges for the second or the third options?

Provision	Expected changes to current practice
1. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances	
2. Allow for spending (up to) every second regular weekly rest in the vehicle	

Posting of Workers Directive (PWD) - Definition of time spent in a Member State

The proposed measures intend to define clear rules based on the time spent by drivers in a given country as a basis for determining when a situation of posting occurs and the PWD rules should apply.

For the purposes of calculations of day/time spent in a Member State, the proposed definitions are:

- 5. The amount of time (constituting the reference period) spent in a host Member State should include driving times, other work, periods of availability and breaks).
- 6. Time spent during daily and weekly rest periods should also be accounted for, since during this time the driver is exposed to the cost of living of the host Member State.
- 7. If a driver has spent the majority of his time during one day in a Member State, this should be accounted as a "full day" for the purpose of application of the PWD
- 8. A calendar month should constitute the appropriate reference period, as it is the usual time period for establishing a driver's salary.

21. What is currently the approach you follow to calculate the duration of a stay of driver in a Member State?
- What is your experience of the procedures and practices required when posting workers cross-border (e.g. pre-notification requirements, collection of the relevant documents)?
 - What are the issues/difficulties?
22. Do you expect any issues/ problems with any of the aspects of the proposed definition? Please explain.

In terms of determining when a situation of posting occurs and the PWD rules should apply the following minimum periods are considered:

- 5 days/month
- 7 days/month
- 9 days/month

22. What is the typical amount of time that your drivers spend in a country other than your home country when engaged in international transport operations (if applicable)?

	Never	Rarely, less than 25% of the time	Sometimes 25%-50% of the time	Often, 50% - 75% of the time	More than 75% of the time	Not applicable
< 5 days per month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 – 7 days per month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 – 9 days per month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
>9 days per month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, please indicate: <input type="text"/> Click here to enter text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

23. How is decided which drivers are involved in international long distance operations? (Are there certain drivers that sign-up, luck of draw, rotation)

24. How many times a year might a driver be out of the home Member State for more than:
- 5 days in a month?
 - 9 days in a month?

25. How do you expect the proposed changes to affect cross-border/cabotage operations:
- Average duration of operations
 - Average distance of operations
 - Cost per operation
 - The average time spent away from home base for drivers?
 - The employment of drivers (job posts in your firm)?

24. Are there any benefits from the proposed changes? What are they?

In order to enforce this rule, the **driver would need to record in the tachograph the country code of the country where he is, each time he stops a vehicle and not only at the start and the end of his daily working period.** Checks by enforcers would then take place first at the roadside, then at the premises.

24. How easy/difficult will be for you to ensure that drivers enter tachograph codes each time he stops a vehicle? Do you envisage any other possible solution?
25. Are there any issues/difficulties in ensuring compliance with this requirement?

Requirements on calculation and enforcement of working time provisions

Among measures to improve the implementation of the working time directive 2002/15/EC, it is proposed to :

- Reduce the reference period used for the calculation of the maximum average weekly working time (of 48h) from 4 months (or 6 months according to national law) to 4 weeks
- Enable the controls of working time at roadside via tachograph records

-
30. How do you currently monitor/ensure compliance with the working time provisions?
31. Do the current rules pose any limitation to your operations? What are they?
32. How will the proposed change affect your operations? In what way?
- Flexibility of operations
 - Cost of operations
 - Duration of operations
 - Other impact?
33. What changes will be needed in order to be able to ensure compliance with the proposed new provisions?
- How easy/difficult will it be?
 - Do you expect any additional cost?
34. Are there any other benefits from the proposed change?

Attestation form

Remove requirement for attestation forms on top or instead of tachograph records to demonstrate the activities/inactivity periods when away from vehicle

35. Approximately, how many attestation forms do you issue:
- Per year?
 - Per operation?
 - Per driver?
36. What is the average time needed for the preparaton of an attestation form?
37. Do you expect the proposed measure to have any impact on overhead costs?
38. Are there any possible issues/problems? What are these?

Performance-based pay

It is proposed to forbid all performance based payment (ie. payments based on distances travelled / amount of goods carried)

39. Do you currently apply performance-based payment criterion to define employee's salary?
40. Would there be any issues/problems for your firm to comply with this change? What are these?
41. What will be the impact with regard to the payment system in place?
- a. Would it be possible to compensate drivers (partially or fully) through changes in fixed pay?
 - b. Would there be any additional costs for your firm?

G.6.6 Other comments

Please discuss any other issues you feel are relevant. [Click here to enter text.](#)

Thank you for your participation.

