

Report on the State of the EU Road Haulage Market

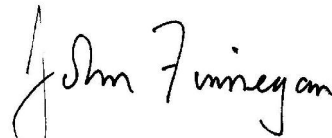
Task B: Analyse the State of the European Road Haulage Market, Including an Evaluation of the Effectiveness of Controls and the Degree of Harmonisation

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Introduction

1 Introduction

1.1 Background

The EU Road Haulage sector has been progressively liberalised by a series of legislative initiatives. The most recent of these was the adoption of Regulation (EC) No 1072/2009¹. This Regulation fully came into effect in December 2011. It aims to modernise, simplify and streamline the rules applicable to the sector. In particular it harmonises the rules on cabotage and minimises administrative burdens on road hauliers.

As in other sectors that are subject to EU led liberalisation, this has had the effect of opening up an EU wide market for all EU firms in the sector. Any EU registered haulier now has the right to:

- Carry out domestic road haulage within their home Member State
- Carry out road haulage operations between any two Member States
- Carry out limited amounts of road haulage within another Member State in conjunction with an international haulage operation to that Member State. This limited right to carry out “domestic” haulage in a Member State other than one’s home Member State is referred to as cabotage

This liberalisation is a central element of EU policy on road haulage. The movement towards a single internal market for the provision of this service will intensify competition in the sector, leading to improved economic performance by the road haulage sector and the industries it serves, and ultimately to a more efficient and productive economy for the benefit of the public at large. The most efficient and innovative suppliers of this service will be able to grow and offer their services to users across all of the EU. This will lead to a cost efficient and innovative road haulage sector and will reduce the costs and increase the quality of the haulage services used by all EU manufacturers and distributors. This in turn will reduce the cost and improve the service received by EU consumers. This pursuit of efficiency and quality through liberalisation is a central theme of EU policy in a wide range of other sectors such as telecommunications, energy and rail transport.

As described above, the liberalisation of the road haulage industry is not yet complete. The carriage of goods by road within a single Member State is partially reserved for road hauliers registered in that Member State. These domestic hauliers only face competition from road hauliers registered in other Member States to the extent that these “foreign” hauliers enter the market to make an international delivery and exercise their limited cabotage rights.

The legislation in the area requires the European Commission to consider whether the market should be further liberalised. In particular, article 17(3) of Regulation (EC) No 1072/2009² requires the Commission to draw up a report on the state of the Community road transport market by the end of 2013. This report from the Commission must contain:

- An analysis of the market situation
- An evaluation of the effectiveness of controls
- An evaluation of the evolution of employment conditions in the profession

In addition it must assess whether harmonisation of enforcement, road user charges, social legislation, and safety legislation have progressed to the stage where domestic road transport markets in the EU could be further opened to competition, in particular through the further opening up of cabotage.

On the basis of this report a decision can be made as to the appropriate mix of harmonisation and liberalisation measures that should be taken at this stage of the development of the EU Road Haulage market.

¹ Regulation (EC) No 1072/2009 – of the European Parliament and of the Council of 21 October 2009, on the common rules for access to the international road haulage market, *Official Journal L 300*, 14/11/2009 P. 0072 - 0087

² Regulation (EC) No 1072/2009 – of the European Parliament and of the Council of 21 October 2009, on the common rules for access to the international road haulage market, *Official Journal L 300*, 14/11/2009 P. 0072 - 0087

1.2 Terms of Reference for this Report

Task B of this study, which this report documents, consists of investigation and analysis to support the Commission in the preparation of the report called for by Article 17(3) of Regulation 1072/2009. The invitation to tender specified that the consultants were to analyse the state of the European Union (EU) road haulage market, including carrying out an evaluation of the effectiveness of controls and the degree of harmonisation. The analysis is to include an assessment of:

- The market situation
- The evolution of the effectiveness of controls in the road haulage sector, in particular checks of compliance with the cabotage rules
- The evolution of employment conditions in the road haulage profession
- The level of harmonisation in enforcement
- The level of harmonisation in road user charges
- The level of harmonisation in social legislation
- The level of harmonisation in safety legislation

AECOM has planned and carried out its work for Task B so as to meet the Commission's needs as it prepares the Report required by Article 17(3) in this respect. Task B will inform the Commission as to the state of the road haulage market and the progress of harmonisation as it decides whether this market situation and level of harmonisation is such that a further step towards full liberalisation can be considered.

This Task is concerned with the relationship between harmonisation and liberalisation.

Much EU legislation is concerned with harmonisation of the rules under which different products and services are supplied. Areas where the regulation of business activity has been harmonised by the EU range from general rules on the treatment of employees such as provisions on working time, to detailed rules on the use of certain chemicals in final products. This harmonisation establishes minimum standards in these areas of activity. These standards protect the people who work in these industry and the people who consume the products and services affected. Ensuring that minimum standards of regulation are observed across the EU is a valuable exercise in itself.

Of more relevance to this study is the crucial role of regulatory harmonisation in an industry that is being liberalised. The potential benefits of liberalisation, as alluded to above, are well known and have been observed in many sectors from telecommunications to air transport. These benefits of liberalisation come from giving the most efficient and innovative suppliers of a good or service access to a large EU wide market. These efficient and innovative suppliers win market share and grow. This may lead to further economies of scale and will fund further investment in development and innovation on their part. Customers for these goods or services benefit from lower prices, higher quality and innovation in products and services.

However if the regulations that apply to the production and delivery of a good or service are not fully harmonised then liberalisation can have undesirable effects. Liberalisation removes legal barriers to trade across Member State borders. Anomalies in the regulation of activities in different Member State may create incentives for trade to take place that does not promote efficient and innovative production of goods and services, but rather undermines the regulation of business activity in Member States. The ways in which this can happen in road haulage are discussed in more detail in this report, however two examples of instances where it was feared that this was happening may illustrate the point:

- In the United Kingdom road users are not, in general, charged distance based tolls or time based user charges (“vignettes”)³. The United Kingdom uses excise charges on fuel as one method of recovering the cost of providing road infrastructure. Neighbouring Member States such as France and The Netherlands make more extensive use of road user charging and charge lower levels of excise on fuel. In the past, fears were expressed that a haulier who purchased their fuel in France or The Netherlands and provided haulage services in the United Kingdom would effectively not be contributing to the cost of providing the road infrastructure that they used in the United Kingdom. This could place them at a cost advantage relative to UK registered hauliers paying higher fuel excise that reflects the full cost of providing the UKs road infrastrucutre. To the extent that the domestic road haulage of the United Kingdom was open to such a haulier, and they won market share as a result of this anomaly, this would represent an undermining of the system for financing road infrastrcture in the United Kingdom rather than the success of more efficient hauliers at the expense of less efficient hauliers, which is the aim of liberalisation⁴. From April 2014, the UK is introducing a vignette system (to be called the HGV road user levy) which will see all HGVs travelling on UK roads purchasing a vignette. UK based hauliers would have the cost of this vignette discounted against their Vehicle Excise Duty (VED) charge. The vignette is another measure being used by the UK to pay for the cost of providing road infrastructure.
- The wages paid to drivers in different Member States vary. This reflects different standards and costs of living and can be considered a normal feature of an economy as large and diverse as that of the EU. In every Member State drivers are guaranteed a minimum wage for their work. This could be set by statute or could be the outcome of a collective bargaining process that enjoys legal recognition and enforcement. This minimum wage will reflect the local cost and standards of living. The High Level Group on EU Road Haulage⁵ pointed out that, unless appropriate protections were in place, this protection of the living standards of drivers could be undermined by further liberalisation of road haulage. This would happen if liberalisation led to hauliers from Member States with low wages for drivers providing domestic haulage services in Member States with higher wages for drivers, without paying those higher wages. In this situation liberalisation would be followed by cross border provision of services, in this case the service in question would be domestic road haulage. This cross border provision would not represent a more efficient or higher quality supplier winning extra market share following liberalisation. Rather, the driver in question is working in a part of an EU for a wage below the minimum that is considered necessary in that part of the EU. The long term solution to this is to ensure that social protection in each part of the EU are extended to everyone working in relevant parts of the EU. Significant progress is being made in this area. Until this process of harmonisation of social protection is complete, this type of cross border activity could lead to an undermining of the protection of the living standard of drivers in a Member State with high living costs through an anomaly in the regulation of drivers wages and working conditions.

To determine whether any such anomalies exist at this stage in the evolution of the EU road haulage sector this task must investigate:

- The evolution of the effectiveness of controls in the road haulage sector, in particular checks of compliance with the cabotage rules
- The evolution of employment conditions in the road haulage profession
- The level of harmonisation in enforcement
- The level of harmonisation in road user charges

³ The terms toll and user charge or vignette have the meaning given in Directive (EC) No 1999/62 of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, OJ L 187, 20.7.1999, as amended. A toll is a specified amount payable for a vehicle based on the distance travelled on a given infrastructure and on the type of the vehicle. An infrastructure charge or vignette is charge granted a vehicle access to road infrastructure for a set period of time such as a week or a month.

⁴ These concerns led to an extensive investigation by the UK government into this issue. See The Burns Freight Taxes Enquiry Report. November 2005.

⁵ “Report of the High Level Group on the Development of the EU Road Haulage Market, June 2012” Available at http://ec.europa.eu/transport/modes/road/index_en.htm

- The level of harmonisation in social legislation
- The level of harmonisation in safety legislation

In the event that no such anomalies exist the Commission can unhesitatingly propose full liberalisation of the sector. In the event that such anomalies exist, any further liberalisation of the sector would have to be accompanied by appropriate harmonisation measures.

The various sections of this report assess the current state of the haulage industry and the legal and regulatory system in which it operates under the above headings to assess whether further action is needed to regulate, or harmonise the regulation of the road haulage industry before full liberalisation can be completed.

The study was commissioned shortly before the full implementation of Regulation (EC) No1072/1999 and it assesses the current state of the sector after full implementation of this Regulation and the other provisions adopted at the same time. It draws on the wide ranging fact finding carried out as Task A of this study. This report concentrates on material relevant to the analysis described here of whether harmonisation of the sector has advanced to a point where full liberalisation would be possible. The Task A report sets out a comprehensive picture of the road haulage sector.

1.3 Report Structure

This report makes reference to EU-27, EU-15 and EU-12.

EU-27 means all 27 Member States of the European Union. The report is based on statistics gathered before the accession of Croatia to the EU in 2013.

EU-15 means the collection of 15 Member States of the EU prior to the accession of 10 new Member States on 1st May 2004. Member States belonging to the group of EU-15 are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

EU-12 means the collection of 12 Member States that all joined the EU after the 1st of May 2004. Member States belonging to the group of EU-12 are: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia.

Throughout the report we have cited comments relevant to a particular topic area (and indicated by a footnote) made by hauliers interviewed by AECOM as part of the study process. It is recognised that whilst these haulier comments provide valuable insight, the comments made are the opinion of the haulier/company and differing opinions may exist. As such these individual comments are not used as main references for the study conclusions.

The remainder of this report is laid out as follows:

1.3.1 Overview of Market Situation – Chapter 2

Task A has incorporated a wide ranging review of the current situation in the EU market for road freight services. This material has been completed and refined and is set out in Chapter 2 of this report.

1.3.2 Harmonisation of Admission to the Profession of Transport Manager and Driver – Chapter 3

As was explained in our proposal the employment conditions to be examined here are the conditions to qualify as a licensed road haulage driver, including the freedom to employ drivers from outside a Member State, and the conditions for entry into the profession of “Transport Manager”.

Basic rules for both of these aspects of the conditions for being employed in road freight are set out in EU legislation. In principle they should be harmonised across the EU. If the legislation is not being applied correctly this could create an artificial cost advantage for hauliers in a Member State where entry into the professions of driver and transport manager were easier and cheaper than the EU rules require. If domestic freight was liberalised, hauliers from countries with lower standards for entry to the professions of driver and transport manager would enjoy an artificial cost advantage and would be able to gain market share from domestic hauliers in Member States where the full requirements of the legislation are in force. This type of cross border trade in

freight services would have the effect of undermining the requirements of the legislation rather than encouraging and rewarding efficiency and innovation in the road transport market. Chapter 3 sets out our evaluation of whether this is happening.

1.3.3 Harmonisation of Enforcement – Chapter 4

As is noted in the draft report of the High Level Group (HLG), many of the regulatory requirements that could affect the costs and competitiveness of road hauliers are harmonised by a series of EU Directives on driving time, vehicles standards etc. Anomalies that could lead to artificial differences in costs between hauliers in different Member States that could, in turn, lead to harmful competition if domestic freight markets were liberalised should only arise from differences in the enforcement of these rules in Member States.

In addition discrimination in the enforcement of rules on road freight can be used as a barrier to the cross border provision of freight services. If this type of discrimination is taking place it would undermine any initiative to further liberalise the road freight market that the Commission might be considering.

The invitation to tender specifies that we are to evaluate the effectiveness of controls, in particular checks of compliance with the cabotage rules. The current rules on cabotage are set out in Regulation (EC) No 1072/2009⁶. Prior to this EU hauliers had a general right to undertake cabotage in another Member State provided that this was “on a temporary basis”. This provision was interpreted in different ways by different Member States. This created uncertainty among hauliers and limited the amount of cabotage that could take place in practice. One of the problems that Regulation (EC) No 1072/2009 was intended to address was this lack of a clear single definition of the cabotage right. Our key task here is to assess whether all Member States are now using and applying the same definition of cabotage.

The results of this work are set out in Chapter 4 of this report.

1.3.4 Harmonisation of Taxation and Infrastructure Charging – Chapter 5

In each Member State road hauliers pay some combination of:

- Taxes on the purchase and operation of their vehicles (for example VAT on purchases and road taxes) which are fixed in nature, i.e. do not vary with the volume of activity of the haulier
- Taxes, in particular fuel excise, on the fuel that they use
- Tolls or user charges for the use of the road network

The balance between these three costs will depend on the policy of each Member State on the taxation of road use and the funding of road constructions and maintenance. EU law encourages the use of cost and externality based road user charges. Certain Member States, such as Germany with the “Maut” system, impose road use charges to cover a significant proportion of the cost of providing road infrastructure. Other Member States, notably the UK, make very little use of road user charges and raise revenue from road users through taxes on vehicles and fuel, the UK has relatively few road tolls and the highest rates of fuel excise in the EU.

Differences in approach between Member States can create an anomaly in the market for road haulage. In particular, a situation can arise where hauliers from a Member State that levies relatively low vehicle and fuel taxes and relatively high road user charges can be at an artificial cost advantage if they operate in another Member State where road user charges are low and vehicle and fuel taxes are high.

Chapter 5 sets out our evaluation of the extent to which this type of anomaly arises in practice.

⁶ Regulation (EC) No 1072/2009 – of the European Parliament and of the Council of 21 October 2009, on the common rules for access to the international road haulage market, *Official Journal L 300*, 14/11/2009 P. 0072 - 0087

1.3.5 Social Harmonisation – Chapter 6

The basic social legislation affecting drivers is the Working Time Directive (Directive 2002/15/EC⁷) and Regulation (EC) No 561/2006⁸ on driving times and rest periods. This chapter explains that their implementation, checks, enforcement and sanctions for breaking them, although converging, are not fully harmonised. The implementation of the rules can differ from one Member State to the next both in the time taken to implement the rules and to what degree that they are implemented. Some Member States will supplement the new rules with additional national rules in order to mitigate or manage their impact.

1.3.6 Harmonisation of Road Safety and Security – Chapter 7

Task A has identified areas where non standardisation of safety legislation is creating a barrier to cross border trade in road haulage services. This Chapter explores further the extent to which safety legislation is inconsistent across Member States and examines the various ways in which different countries address road freight safety issues.

1.3.7 Conclusion – Chapter 8

Chapter 8 concludes the report by drawing together the results of these strands of work to reach a preliminary conclusion as to whether market conditions have reached a situation where further liberalisation of domestic freight could be considered.

⁷ Directive 2002/15/EC - of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, *OJ L 80, 23.3.2002, p. 35–39*

⁸ Regulation (EC) No 561/2006 – of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, *OJ L 102, 11.4.2006, p. 1–14*

Overview of Market Situation



2 Overview of Market Situation

2.1 Introduction

Establishing a fair but competitive market across Europe is essential in providing the basis for an efficient, modern industry. This chapter gives an overview of the structure of the road haulage sector on an European Union wide basis and details the levels of trade movements by road freight in various markets: domestic, international and cabotage. It identifies various strengths and weaknesses in the structure of the sector and where possible the causes of these.

The international road freight (haulage) sector dominates the provision of bilateral and cross-trade goods movement across Europe. It provides responsive and cost effective out-sourced transport solutions for shippers across the EU and beyond. Access to the road haulage market, and certain social and safety conditions (such as drivers' hours) are regulated at an EU level. There are variations in operational cost structures, most notably fuel and driver wages. Whilst this provides competitive advantages for some hauliers, and preferential freight rates for the shipper, the opportunity for further market liberalisation in the form of relaxation of cabotage controls is not universally welcomed by the haulage community.



Figure 2.1 Dutch 5 Axle Temperature Controlled Trailer

2.2 Liberalisation and Harmonisation

From the beginning of common market policy in the European Union it was clear that the common market principle would necessitate a liberalised market structure that allowed for an unrestricted movement of people, goods, services and capital amongst all member countries.

From the late 1980s, the liberalisation of the road haulage market has progressed, as market access has been extended to remove quantity limitations; driving/rest times, quality regulations and technical standards have been subject to harmonisation; and partial cabotage has been introduced.

At present, EU legislation exists that:

- Establishes common rules on access to the international road haulage market
- Establishes common rules on access to the road haulage profession
- Sets minimal standards for working time, driving time and rest periods (including enforcement and the use of tachograph) for road haulage operators
- Harmonises the maximum weights and dimensions of road vehicles
- Sets vehicle excise duty, as well as common rules for tolls and user charges for heavy goods vehicles

Since 1993, when Regulation (EC) No 881/1992⁹ on access to the market in the carriage of goods replaced existing bilateral and multilateral permit requirements, Community Licences are required for companies wishing to conduct international transport within the EU. Vehicles may be used for any international movement between the Member State where the vehicle is registered and any other "bilateral", and "Cross-trade" between two Member States where the vehicle is not registered.

Regulation (EC) No 3118/1993¹⁰ allowed the provision of a road haulage service within a Member State by a haulier established in another Member State under the condition that this service is provided on a temporary basis. The interpretation of the term

⁹ Regulation (EC) No 881/1992 of the European Parliament and of the Council of 26 March 1992 - on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States, *Official Journal L 095, 09/04/1992 P. 0001-0007*

¹⁰ Regulation (EC) No 3118/1993 - of the European Parliament and of the Council of 25 October 1993 - on laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State, *OJ L 279, 12.11.1993, p. 1-16*

‘temporary’ however, created difficulty in that Member States saw the need to adopt their own guidelines and national rules. This meant that cabotage rules differed between Member States and this was a significant barrier to further harmonisation and liberalisation.

In December 2009 new regulations governing the international carriage of goods by road for hire or reward for journeys carried out within the territory of the Community were adopted, including Regulation (EC) No 1072/2009¹¹. This regulation sets out the criteria an operator must meet in order to have access to the market and sets out provisions for cabotage. The road transport package adopted in 2009¹² was in large parts a recast of already existing measures and includes new cabotage rules and access to the profession. The most notable innovation was Regulation (EC) No 1072/2009 of 21 October 2009 (Article 8(2))¹³ which abandoned the concept of general cabotage and adopted the more restrictive formula of consecutive cabotage (allowing up to three cabotage operations within the seven days following an international journey to the cabotage host country).

In addition the EU has grown with the addition of 10 new Member States in 2004 and Romania and Bulgaria in 2007, followed by Croatia in 2013. The hauliers from Member States that joined in 2004 had limited accession rights for up to a four/five year period whereas the hauliers based in Romania or Bulgaria had limited cabotage rights until January 2012 when they were granted the same right to access as all other Member States. The hauliers based in Croatia are also subject to restricted cabotage rights until 2015.

2.3 Levels of Trade

It is important to consider that some markets are more open to competition than others. General haulage, for example that conducted by curtain-siders or box trailers carrying palletised or general goods is very open to competition. This makes it a more addressable market for international hauliers in cross trade and cabotage operations. Niche markets including those requiring more specialised vehicles such as hazardous goods are less addressable, in addition own account operations and operations with a high language requirement are less addressable.

As Figure 2.4 shows, road freight accounts for 73% of all inland freight in the EU, rail 16%, inland waterway 6% and pipelines 5% account for the remaining transport by land, calculated on a tonne km basis. As such, the effective and efficient operating of

the road haulage market is critical to European economy.

the



Figure 2.2 Standard Curtainsider



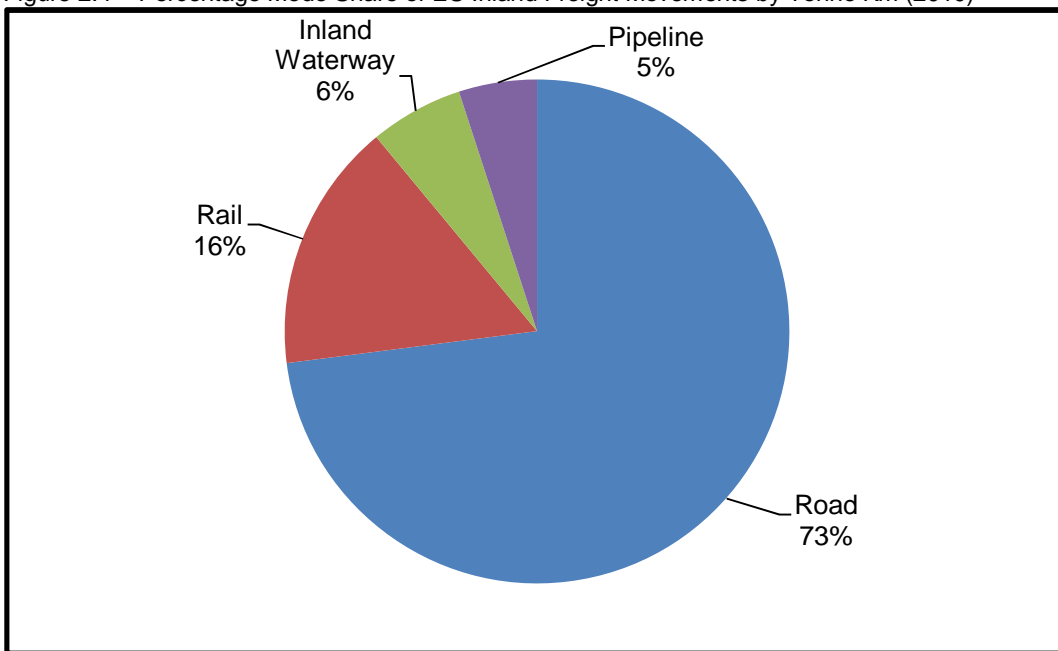
Figure 2.3 Dutch Special Pressurised Powder Tanker

¹¹ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - on the common rules for access to the international road haulage market, *OJ L 300, 14.11.2009, p. 72–87*

¹² *FACT Sheet on International and Cabotage Road Transport, 2013, European Union*

¹³ Regulation (EC) No 1072/2009 of the European Parliament and of the council of 21 October 2009 on common rules for access to the international road haulage market, *OJ L 300, 14.11.2009, p. 72–87*

Figure 2.4 – Percentage Mode Share of EU Inland Freight Movements by Tonne Km (2010)¹⁴



2.3.1 International

International transport is fully open to competition. Only domestic transport is still subject to restrictions. International transport is divided into “bilateral” and “Cross-Trade”. In 2010, international road freight transport between EU-27 countries totalled 490,134 M tkm lifting 780 Million tonnes.

The five largest flows in terms of M tkm and Million Tonnes are:

Table 2.1 – Five Largest Flows in the EU in 2012¹⁵

Million Tonne Kilometres	Thousand Tonnes
Germany to Poland – 16,078	Germany to Netherlands – 37,320
Poland to Germany – 15,150	Netherlands to Germany – 35,779
Spain to France – 14,233	Belgium to France – 31,109
Germany to France – 13,135	Germany to France – 26,620
France to Spain – 13,018	France to Belgium – 24,003

¹⁴ Eurostat, [tran_hv_fmod], 2013, Eurostat

¹⁵ Eurostat, [road_go_ia_tc], 2012, Eurostat

Table 2.2 shows the change in international traffic within the EU. There was a sharp decline in 2009 followed by a slight recovery in 2010. Over the five year period there is growth in traffic from the EU-12 but a decline in traffic from the EU-15 and overall.

Table 2.2 – International Trade Growth, Million Tonne Kilometres – EU Total (2006 – 2011)¹⁶

		2006	2007	2008	2009	2010	2011	2006-2011 Growth %
From	EU-27	542,772	561,181	547,839	479,687	508,830	490,134	-10%
	EU-15	443,963	453,872	441,120	384,237	403,622	379,765	-14%
	EU-12	98,809	107,309	106,719	95,450	105,208	110,369	12%

Table 2.3 shows transport conducted by EU-12 hauliers and indicated strong growth across the period in all markets with a slight decline in 2009. This is due partly to growth in the EU-12 economies and competitiveness compared to EU-15 hauliers. Furthermore, it is evident that the work conducted by EU-12 hauliers is growing three times quicker (42%) in the older EU-15 Member States than in the newer Member States (14%).

Table 2.3 – International Trade Growth, Million Tonne Kilometres – EU-12 Hauliers (2006 – 2011)¹⁷

		2006	2007	2008	2009	2010	2011	2006-2011 Growth %
From	EU-27	190,968	219,473	230,734	212,400	236,107	244,041	28%
	EU-15	96,504	115,785	127,360	120,431	134,388	136,758	42%
	EU12	94,464	103,688	103,374	91,969	101,719	107,283	14%

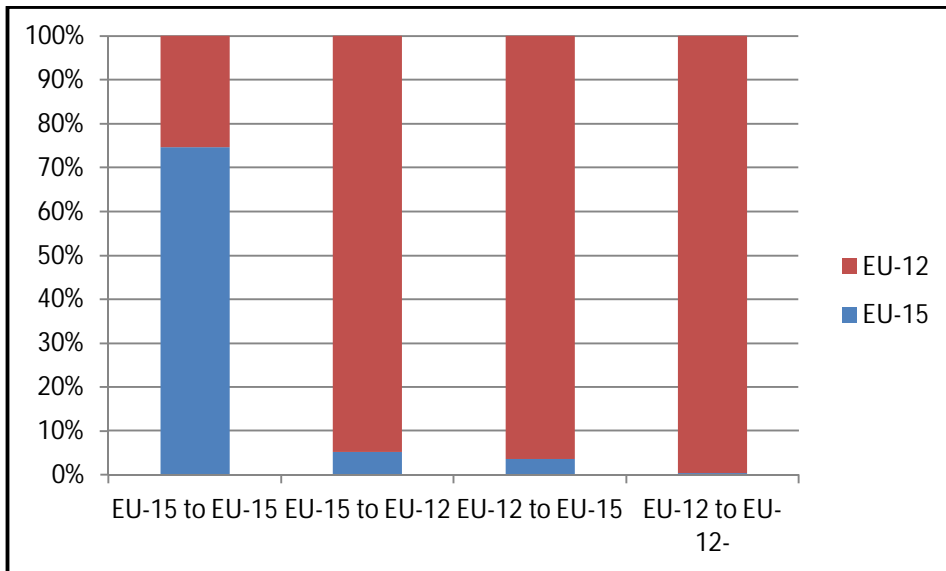
It is clear that more goods are being transported from the EU-12 Member States almost exclusively by EU-12 hauliers. However, the amount of backloads available is not sufficient to secure full loads for return journeys and cross-trade and cabotage are important sources of work for these hauliers.

Figure 2.5 shows who is responsible for which international flows. In the biggest market, between EU-15 Member States, the majority of work is conducted by EU-15 hauliers, however in each of the other markets EU-12 hauliers conduct the majority of the work. This is due to a range of factors including those relating to operating costs (explored further Chapter 7 of the Task A report).

¹⁶ AECOM analysis of Eurostat, [road_go_ia_tc], 2013, Eurostat

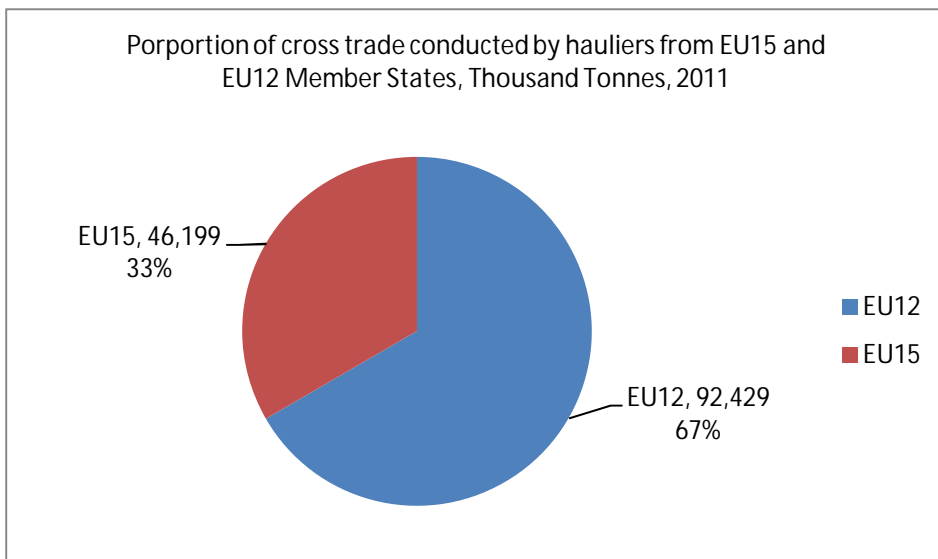
¹⁷ AECOM analysis of Eurostat, [road_go_ia_tc], 2013, Eurostat

Figure 2.5 – Role of EU-12 Member States in International Movements - % of Tonne Kilometres (2011)¹⁸



EU-15 to EU-15 trade conducted by EU-12 hauliers through cross trade is a valuable source of income for these hauliers. Figure 2.6 shows that the 92,492 thousand tonnes lifted by EU-12 hauliers in 2011 as part of a cross trade movement represented 67% of all cross trade. The Member States conducting the most cross trade are Poland, Netherlands, Luxembourg, Czech Republic, Hungary and Slovakia.

Figure 2.6 - Proportion of Cross Trade Conducted by EU-15 and EU-12 Member States (2011)¹⁹



¹⁸ AECOM analysis of Eurostat, [road_go_ia_tc], 2013, Eurostat

¹⁹ Eurostat, road_go_ctq_tt, 2013, Eurostat

Figure 2.7 shows that a significant proportion (24%) of cross trade is conducted by Polish hauliers. Hauliers from the EU-12 conducted the majority of cross trade at 67% of the total cross trade conducted in the EU.

Figure 2.7 - Amount of Cross Trade Conducted by Hauliers from Member States (2011)²⁰

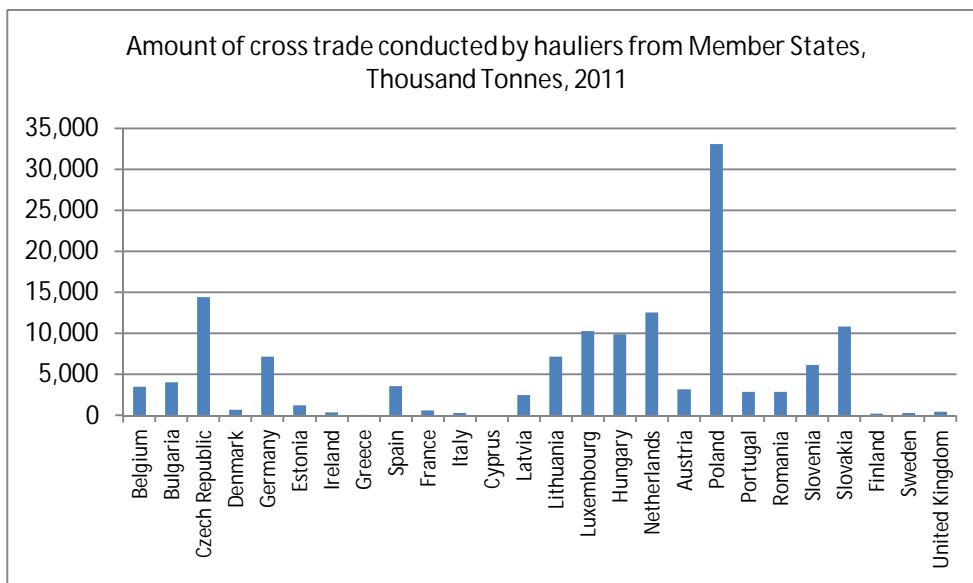


Table 2.4 shows traffic to EU-15 Member States conducted by EU-12 hauliers. These hauliers have seen strong growth in this valuable source of cross trade. This cross trade market was resilient to the economic crisis in 2008 and 2009.

Table 2.4 - International Trade with EU-15, Million Tonne Kilometres – EU-12 Hauliers (2006 – 2011)²¹

		2006	2007	2008	2009	2010	2011	2006-2011 Growth %
From	EU-27	102,538	117,319	125,206	122,334	135,215	138,454	35%
	EU-15	27,572	35,984	44,687	52,492	57,254	57,607	109%
	EU-12	74,966	81,335	80,519	69,842	77,961	80,847	8%

EU-12 haulier market share in the EU-15-EU-15 market has grown from 7% in 2006 to 18% in 2010.

2.3.2 Third Country Traffic

Certain non-EU countries are part of the European Economic Area (EEA) or are signatories to agreements such as the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) under which they must respect certain provisions of EU law. These 'third countries' are important and should be considered. Third country traffic, trade between EU states and non-EU states such as Russia, Switzerland and Norway is also important for EU hauliers. In terms of exports, the biggest partners are Russia 40%, Switzerland 24%, Norway 11% and Turkey 6%. For imports the biggest partners are Switzerland 32%, Norway 21%, Turkey 14% and Russia 13%. Trade with these partners is particularly important for EU

²⁰ Eurostat, road_go_ctq_tt, 2013, Eurostat

²¹ AECOM analysis of Eurostat, [road_go_ia_tc], 2013, Eurostat

countries that neighbour third countries such as Finland, Bulgaria and the Baltic States. Haulier interviews revealed that the majority of trade with Russia is carried by Russian vehicles, as this reduces the chance of delays and difficulties with customs. This is confirmed indirectly by figures from Eurostat. Information for the number of transports conducted by Russian vehicles is not available on this database but what is available is the information for the number of transports conducted by the rest of the EU-27 into Russia. This was found to be 2,041 tonnes for 2011. When this figure is compared to the UK for instance (5,830 tonnes) it seems very low for such a large economy. This suggests that the shortfall in transports is therefore covered by Russian vehicles.

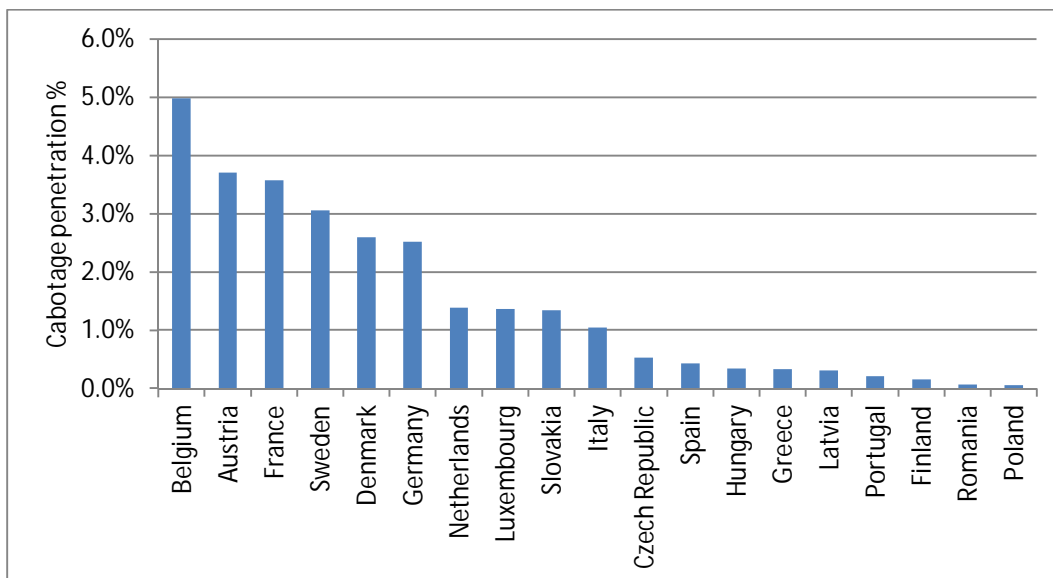
Norway is well integrated with the rest of Europe particularly because it is part of the EEA agreement and the EFTA. In addition to this it also has close links with other Scandinavian countries, particularly in terms of enforcement, however observations have shown that road tolls are significantly greater in Norway than Sweden.

The growth of third country traffic, in particular from Turkey and Russia is dependent on a number of factors, firstly the growth in the economies and trade but also the regulatory regime enforced. As part of the long term accession plan Turkey is required to make significant steps towards adhering to EU rules for road hauliers and this will improve standards and ensure that EU hauliers are not unfairly undercut by Turkish hauliers operating to lower quality standards.

2.3.3 Cabotage

Cabotage is discussed at length in Chapter 4, however given its importance both in terms of the market and in political terms it is discussed briefly here. All heavily cabotaged countries belong to the Western part of Europe: 86% of total cabotage takes place in Germany, France, Italy, United Kingdom, Belgium and Sweden. When comparing the level of cabotage to the total domestic market as a percentage illustrates that cabotage is a small proportion. This is shown in Figure 2.8. Cabotage is used by operators to make their vehicle journeys more efficient when a direct backload is not available, and as a way of accessing the commercial potential of domestic markets.

Figure 2.8 – Percentage Market Penetration of Cabotage, Million Tonne Kilometres (2011)²²



Cabotage divides opinion both between Member States and types of operators. Notably, responses to the High Level Group's questionnaire highlighted respondent's reaction to the May 2010 rule changes regarding cabotage. This indicated that just over

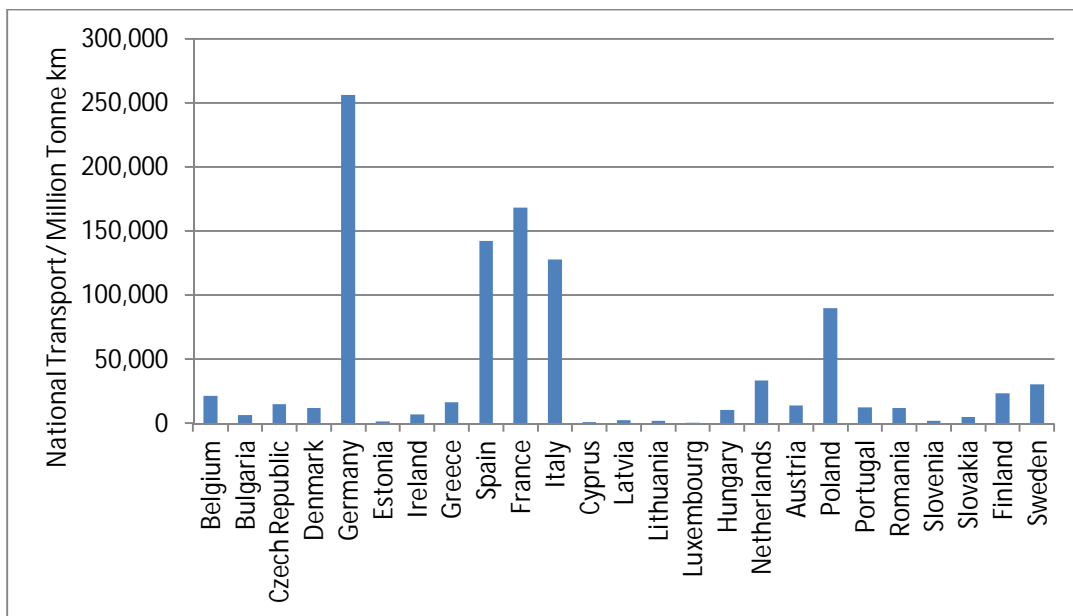
²² AECOM analysis of Eurostat, [road_go_ca_hac] and [road_go_na_tgt], 2013, Eurostat

half thought the changes were not valuable to them. Furthermore, over 60% of respondents indicated that the current cabotage rules limited the flexibility of hauliers.

2.3.4 Domestic

In 2011, national transport accounted for two thirds of all road haulage in the European Union. The relative importance of national freight is greater in the EU-15, older members than in the EU-12 newer members. National transport constitutes 78% and 34% in these states respectively. The majority of national transport is undertaken by domestic hauliers based within that state, with only minor amounts of cabotage performed by hauliers from other states.

Figure 2.9 – Size of Domestic Market of Member States, Figures not Available for UK (2011)²³



EU domestic markets were affected by the economic downturn but have seen a slight recovery. Romania saw tonne-kms drop by 60% in 2009 but Poland, Hungary and Bulgaria all saw growth in their domestic markets over the same period. Domestic markets can be expected to grow in line with economic growth. Overall, road freight in the EU has returned to growth. Growth within the newer Member States is more rapid than in the older Member States and work carried out by the newer Member State hauliers. These hauliers dominate bilateral trade between old and new Member States in both directions and have grown to control almost 20% of the EU-15 cross-trade market. In addition the economic crisis significantly impacted on domestic demand in most EU countries, Romania was hit particularly hard. This means that there is significant spare capacity within the road haulage industry. In the longer term it is likely that costs will increase in the EU-12 Member States as their economies grow reducing the cost differential between Member States. This is already happening as



Figure 2.10 German tanker

²³ Eurostat, [road_go_na_tggt], 2013, Eurostat

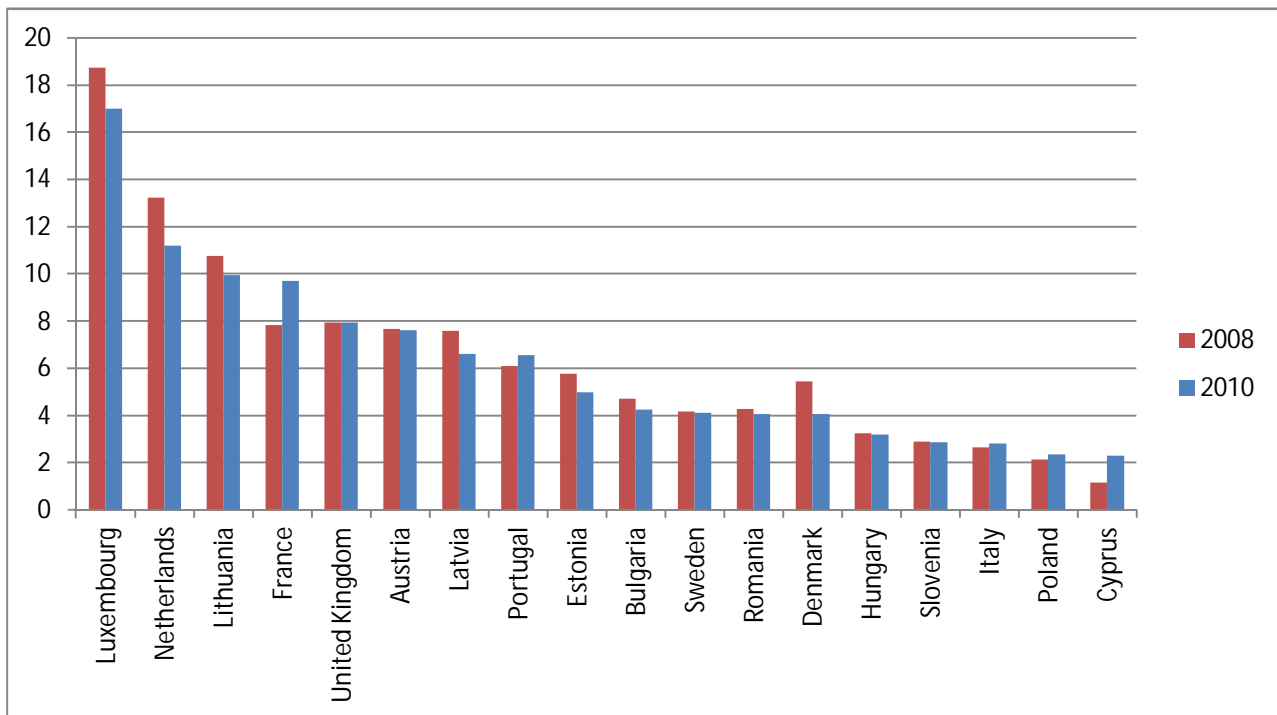
differences in international haulage wage rates are significantly narrower than domestic wage rates when comparing between Member States. For example, a Bulgarian driver working internationally can expect to be paid three to four times more than a domestic driver.

2.4 Transport Companies

Recent years has seen the rise in size and importance of pan European logistics ‘integrators’ such as DHL, Schenker and Norbert Dentressangle. Large multimodal third party logistics providers (3PLs) help to meet the demand for high quality, reliable and predictable door-to-door truck services. Furthermore, shippers are forming consortiums and alliances which increase supply chain concentration.²⁴ However, the cost pressures for logistics providers means that many rely heavily on subcontracting²⁵ work to small enterprises and owner-drivers who provide low margin traction only services. This has a tendency to shift the responsibility for social security payments and employment benefits to the sub-contractor and some self-employed drivers are indeed working as ‘hidden’ employees.²⁶ Indeed, with the notable exceptions of logistics-centric countries such as the Netherlands and Luxembourg, the market is typified, especially in southern and Eastern Europe, by small enterprises of one to five employees²⁷.

Figure 2.11 shows the average number of employees for various Member States between 2008 and 2010. Only Luxembourg and the Netherlands have an average size of more than 10 employees indicates the dominances of small enterprises in the market.

Figure 2.11 – Average Number of Employees of Freight Transport by Road Enterprises (2008 and 2010)²⁸



²⁴ Freight Transport research summary, 2010, DG Energy and Transport, Transport Research Knowledge Centre

²⁵ Haulier interview with major pan European logistics provider, Poland, 2012, AECOM (Opinion of haulier/company, different opinions may exist)

²⁶ Haulier interview with Polish operator, 2012, AECOM (Opinion of haulier/company, different opinions may exist)

²⁷ Average number of employees of freight transport by road enterprises, 2009, Eurostat

²⁸ Eurostat, [sbs_na_1a_se_r2], 2012, Eurostat

Whilst hauliers have been adopting web based technology to find loads and optimise efficiency, freight integrators and forwarding 'agents' play an important role in the organisation of international road freight movements. CLECAT, the European association for forwarding, transport, logistics and customs services, has 19,000 member organisations responsible for 65% of cargo transported by road²⁹. Although hauliers may work efficiently individually, a freight forwarder or 3PL can optimise the entire supply chain, improving vehicle usage and reducing empty running. Greater consolidation of the market through the use of 3PLs and 4PLs (an integrator that organises resources to design and run a comprehensive supply chain solution with the use of technology) can be expected as they take advantage of economies of scale and maintain downward pressure of rates.

"The use of subcontractors is still cheaper by 15-20% than running our own fleet in many Eastern European countries so it's a most common way of running our type of business and all our major competitors do the same."

German based international integrator

Thus subcontracting is a significant feature of the market, and serves to reduce the overheads of larger companies, extend geographical reach, meet periods of peak demand and increase supply chain efficiency. It is known that some companies will outsource non-profitable work to smaller companies, particularly to the EU-12 Member States although it should be noted and as previously mentioned in previous paragraphs in this report, subcontracting happens throughout logistics chains in all countries.³⁰ They are able to do this because these companies may have lower operating costs which in turn allow them to turn a profit on the cheaper job.

Therefore, the road haulage market can be characterised by a chain of hire and reward companies with large pan-European logistics companies at the top controlling the largest contracts but subcontracting much of that down the chain. At the bottom are small enterprises and owner drivers who either form small consortiums to obtain work, rely on subcontracting from larger firms or move loads identified through freight exchanges. In between these two groups are medium sized enterprises, generally operating in niche markets that also utilise subcontracting to meet peak demand. As such the road haulage market is very inter-related but also very flexible, having the ability to quickly adjust to market demands.

2.5 Number of Vehicles

In 2010, international road haulage between EU countries totalled some 494,832 M tkm with over 250,000 Community Licences issued to international haulage operations authorising 1.4 million vehicles. From 1993, when Regulation (EC) No 881/1992³¹ on access to the market in the carriage of goods replaced existing bilateral and multilateral permit requirements, Community Licences are now required for companies wishing to conduct international transport within the EU. Vehicles may be used for any international movement between the Member State where the vehicle is registered and any other "bilateral", and "cross-trade" between two Member States where the vehicle is not registered.

Figure 2.12 shows the number of road tractor units registered in Member States. This shows that numbers have remained relatively stable in Netherlands, numbers have contracted in Spain and Poland and Bulgaria have shown strong growth.

²⁹ CLECAT, 2012 www.CLECAT.org

³⁰ International Road Freight Transport in France – Driver Cost Analysis, 2009, *Lumiere University*

³¹ Regulation (EC) No 881/1992 of 26 March - on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States, *Official Journal L 095*, 09/04/1992 P. 0001 - 0007

Figure 2.12 – Number of Road Tractors Registered in Selected Member States³²

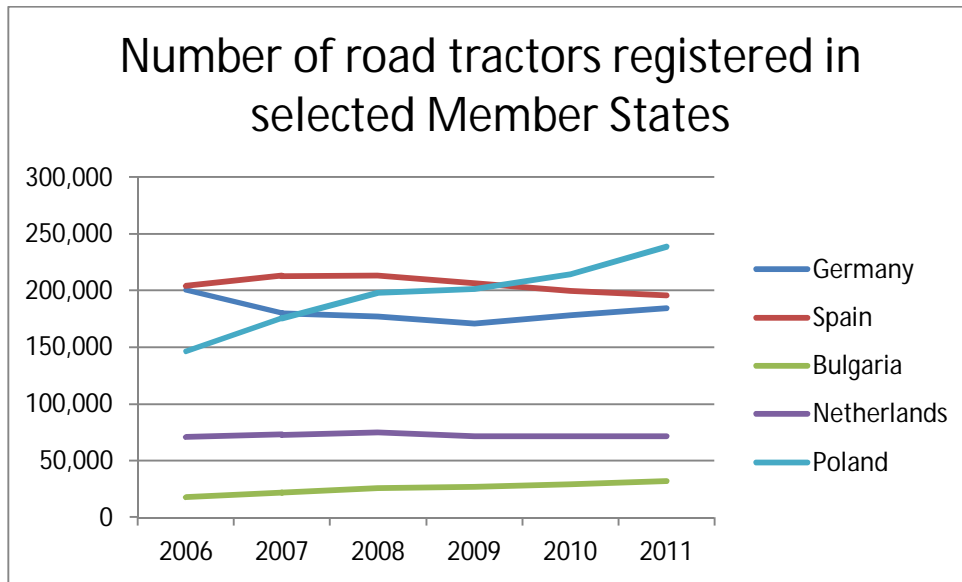
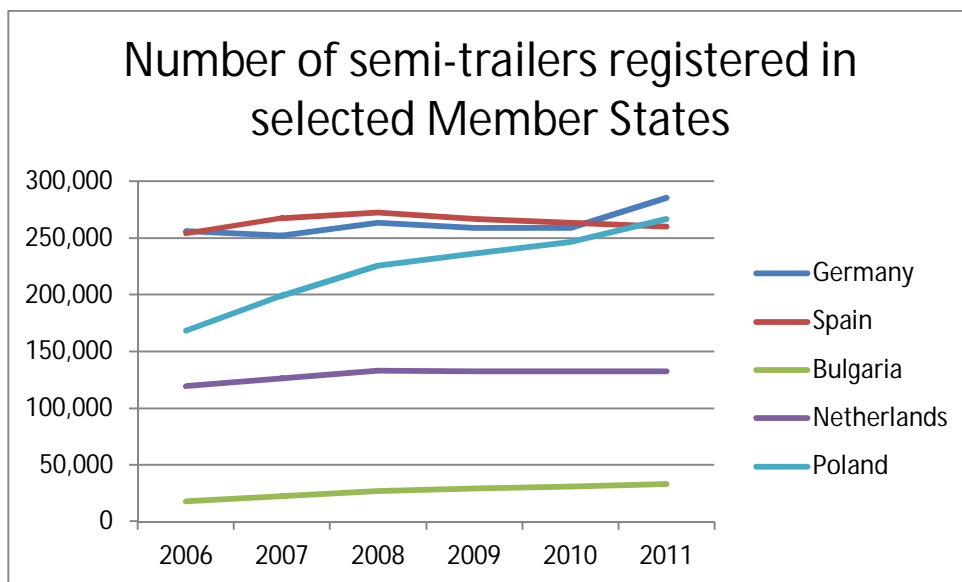


Figure 2.13 shows the number of semi-trailers registered in Member States, shows a similar trend to tractor units, although Germany shows a modest increase.

Figure 2.13 – Number of Semi-Trailers Registered in Selected Member States (data not provided by France in 2010 or Hungary in 2009 and 2010)³³



³² Eurostat: [road_eqs_lrstn], 2013, Eurostat

³³ Eurostat: [road_eqs_lrstn], 2013, Eurostat

In Germany there has been a decrease in the number of road tractors and a small increase in the number of semi-trailers. This is explained by hauliers attempting to utilise their road tractors more efficiently. There is an approximately 4:1 cost ratio between tractor and trailer and as such, making the best use of the tractor seems to be key to an efficient operation. By increasing the ratio of trailers to tractors there can be greater flexibility to either leave semi-trailers for loading or swapping tractors midway through a journey to reduce the number of nights a driver would have to spend away from the base of operation. Haulier interviews indicated a trend to increase the ratio of trailers to tractors, for example a Portuguese haulier has increased the number of semi-trailers to avoid empty running on one route. In addition, a UK based parcel company operates a 3:1 trailer to tractor ratio. Table 2.5 provides a comparison of the overall semi-trailer to tractor ratio in a number of Member States, this shows that the older Member States generally have a higher ratio.

Table 2.5 –Tractor to Semi-Trailer Ratio³⁴

Member State	Ratio
Germany	1:1.55
Spain	1:1.33
Bulgaria	1:1.04
Netherlands	1:1.85
Poland	1:1.12

The growth in overall vehicle numbers is present across most of the newer Member States with the exception of Estonia. This growth in Eastern European vehicle fleets is driven partly by domestic demand and partly by international demand. Whilst the economic crisis has dampened growth in both of these markets, the competitiveness of Eastern European fleets in the international markets suggests that the number of vehicles registered in these countries may continue to grow faster than Western Europe. Fleets across Europe appear to be increasing their trailer to tractor ratio to improve efficiency and reduce empty running.

Table 2.6 shows the proportion of semi-trailers that are in the largest weight categories for a variety of Member States. This shows that the majority vehicles in the majority of countries are designed to carry close to the legal limit. Latvia and Poland have seen a considerable growth in the proportion of vehicles operating in this category. Furthermore, a number of countries have been trialling and using heavier vehicles for domestic transport.

³⁴ AECOM, derived from Eurostat, 2013

Table 2.6 – Proportion of Semi-trailers with Greater than 20 Tonne Load Capacity³⁵

Member State	Proportion	Year	Proportion	Year	2005-2009 % Change GDP
Czech Republic	59%	2005	55%	2009	36%
Spain	93%	2006	94%	2009	15%
France	94%	2005	95%	2009	10%
Latvia	85%	2005	97%	2010	43%
Lithuania	48%	2005	46%	2010	27%
Luxembourg	98%	2005	98%	2009	18%
Netherlands	89%	2005	89%	2010	12%
Austria	92%	2006	93%	2010	13%
Poland	76%	2005	86%	2010	27%
Romania	94%	2008	95%	2010	48%
Slovenia	96%	2005	99%	2010	23%
Finland	6%	2005	7%	2010	9%
Sweden	94%	2005	95%	2009	-2%

The number of vehicles is expected to increase in the EU and this growth is most likely to be concentrated across the EU-12 countries. Table 2.6 shows that EU-12 countries have seen larger percentage growth than other EU Member States. Studies have shown a strong link between economic growth and infrastructure supply³⁶ and therefore, as road infrastructure improves and domestic and international demand increases vehicle numbers will also increase. At the same time vehicles are being used more productively, this trend will continue as operators attempt to remain competitive by increasing efficiency, to that end, the number of semi-trailers is expected to grow at a faster rate than tractors.

2.6 Conclusion

Our review of the road freight sector showed that there is increasing consolidation in the market but that there is extensive use of sub-contracting to smaller companies. Operators based in the newer Member States (EU-12) have expanded to reach a dominant position in bilateral trade and a growing share in EU-15 cross-trade. The number of vehicles and trade continues to grow, albeit slower in some areas than others.

³⁵ Eurostat [road_eqs_semitn], 2012, *Eurostat*

³⁶ Hungary Sustainable Road, National Report, 2007, *Istvan University*

Harmonisation of Admission to the Profession of Transport Manager & Driver

3 Harmonisation of Admission to the Profession of Transport Manager & Driver

3.1 Introduction

EU legislation defines the requirements to be met in pursuing an occupation as a road haulage operator and as a haulage driver. Specifically, Regulation (EC) No 1071/2009³⁷ sets down the requirements for pursuing an occupation as road haulage operator while Directive 2003/59/EC³⁸ defines the requirements for drivers.

In principle Directive 2003/59/EC and Regulation (EC) No 1071/2009 should be applied uniformly across the EU. If they are not being applied correctly this could create an artificial cost advantage for hauliers in a Member State where pursuing the professions of driver and transport operator were easier and cheaper than the legislation would require. There are of course other implications of incorrect application for other road users (road safety), for the industry (quality of services provided) and the internal market (possible barriers to entry in stricter Member States).

If domestic freight was liberalised, hauliers from countries with lower standards for pursuing the professions of driver and transport operator would enjoy an artificial cost advantage and would be able to gain market share from domestic and International hauliers in Member States where the full requirements of the legislation are in force. This type of cross border trade in freight services would have the effect of undermining the requirements of the legislation rather than encouraging and rewarding efficiency and innovation in the road transport market.

In order to assess the evolution of employment conditions in the road haulage profession, particular attention is being paid to Regulation (EC) No 1071/2009 and Directive 2003/59/EC and specifically on:

- Conditions to be complied with to pursue the occupation of road transport operator, and provisions on enforcement and administrative cooperation as required by Regulation (EC) No 1071/2009
- Conditions to qualify as a licensed road haulage driver as set down in Directive 2003/59/EC

3.2 Access to the Occupation of Road Transport Operator

With effect from December 2011 holders of Standard National operators licenses will have to have a Transport Manager with either:

- An international CPC, or
- A national CPC obtained before 4 December 2011, or
- An exemption through continuously having managed a transport undertaking for a period of ten years before 4 December 2009, or
- An existing recognised third party qualification

Since December 2011 admission to the occupation of road haulage operator in the European Union has been governed by Regulation (EC) No 1071/2009. Under Regulation (EC) No 1071/2009 operators must fulfill four **criteria** to access the haulier profession, namely:

- Good repute: undertakings must be of good repute, where good repute relates to appropriate entrepreneurial and ethical conduct. Fraudulent practices, such as systematically manipulating a tachograph, could be considered an infringement that would lead to the loss of good repute
- Professional competence: undertakings accessing the profession must first demonstrate possessing the practical knowledge and aptitude required to participate in the sector, by means of an obligatory exam

³⁷ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 – establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 1996/26/EC, *OJ L 300, 14.11.2009, p. 51–71*

³⁸ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 - on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC, *OJ L 226, 10.9.2003, p. 4–17*

- Financial standing: undertakings must demonstrate proof of being able to meet their financial obligations. To this end audited accounts must demonstrate the undertaking has at its disposal capital and reserves totaling at least €9,000 where one vehicle is used and €5,000 for each additional vehicle used
- Stable establishment: the undertaking must have an establishment in the Member State which is authorising their participation in the profession. An establishment refers to premises where the undertaking keeps its core business documents

Furthermore Member States may add additional requirements to these four criteria as long as they are proportionate and non-discriminatory (Art. 3(2)).

In satisfying the conditions of good repute and professional competency an undertaking must designate a natural person as transport manager who will fulfill these requirements. It is at the Member State's discretion to determine the conditions which must be met by transport managers so as to meet the 'good repute' criteria. Regulation (EC) No 1071/2009 does however, set out minimum conditions associated with good repute. These conditions include that there be no compelling grounds for doubting that the individual has committed any serious infringements of national rules in the fields of: commercial law; insolvency law; pay and employment conditions; road traffic; professional liability; and trafficking in human beings or drugs. Also, the individual should not have been convicted of a serious criminal offence, or incurred a penalty for a serious infringement of Community Rules relating to: driving times and rest periods; vehicle weights and dimensions; the qualification levels of drivers; the roadworthiness of vehicles; access to the international road haulage market; safety; the installation and use of speed-limiting devices; driving licences; admission to the occupation; and/or animal transport.

In the area of professional competence, the Regulation sets out the minimum areas where transport managers must demonstrate knowledge by means of an exam. These areas include: civil law; commercial law; social law; fiscal law; business and financial management; access to the market; technical standards; and road safety, where road haulage is relevant to each area.

The requirement of a stable establishment as detailed in Regulation (EC) No 1071/2009 has only been applied since December 2011 and would therefore require further investigation as to the uptake of checks in this field.

National authorities are required to carry out regular checks to ensure that undertakings active within the sector continue to satisfy these four criteria. In order to facilitate the monitoring of the road transport undertakings, Member States are required to set up national electronic registers which, from 2013 will be interconnected thereby enabling the cooperation and exchange of information at European level.

3.3 Repealing Directive 1996/26/EC³⁹

Prior to the introduction of Regulation (EC) No 1071/2009, Directive 1996/26/EC⁴⁰ set out the standards to be met for admission to the occupation of haulier. However, following consultations among EU Member States in 2006 regarding the provisions set down in applying Directive 1996/26/EC, it became apparent that Member States were having problems in transposing the Directive and disparities had resulted in the application of Directive 1996/26/EC among Member States.

As a consequence of these disparities, there was a recognised risk of distortion of competition between transport operators. In particular, there was a risk of distortion between an operator with a real establishment that was capable of being subject to

³⁹ Directive 1996/26/EC of the European Parliament and of the Council of 29 April 1996 - on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, *OJ L 124*, 23.5.1996, p. 1

⁴⁰ Directive 1996/26/EC of the European Parliament and of the Council of 29 April 1996 - on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, *OJ L 124*, 23.5.1996, p. 1

monitoring by authorities charged with checking compliance with minimum standards for admission to the occupation and on the other hand letter box companies which could avoid proper monitoring.

As a result of these distortions, Regulation (EC) No 1071/2009 repealed Directive 1996/26/EC and specifically sought that the conditions to be complied with in order to pursue the occupation of road operator were set out in terms of exercise of the profession rather than access to the profession. In this way, Regulation (EC) No 1071/2009 required that a haulier authorised to carry on the profession of road operator by a State have an establishment in that State.

3.4 Directive 2003/59/EC

This Directive is concerned with the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers. It amended Council Regulation (EC) No 3820/85 and Council Directive 91/439/EC and repealed Council Directive 76/914/EC.

From September 2009 it became illegal for any driver to drive a vehicle without an up to date Drivers Certificate of Professional Competence (CPC). One of the requirements of the Directive is that all professional drivers must complete 35 hours of periodic training every five years, in periods of seven hours or more.

3.5 Detailed Country Analysis of Access to the Occupation of Road Haulage Operator

AECOM sought responses from road haulage associations and ministries in a number of Member States through an emailed survey and undertook a further information gap-filling exercise. In total the exercise resulted in information being received from 15 Member States. The following paragraphs summarise generic information from these 15 Member States.

Some Member States have imposed a quantitative requirement on the access to the market by only granting licenses to companies with more than a certain number of vehicles or over a minimum tonnage per year. In addition, the cost of obtaining a licence to operate varies dramatically between Member States from as much as €1,000 in Bulgaria to only €40 in the Czech Republic.

The requirements for becoming a Transport Manager do show some variation between Member States. In Romania, Italy and Ireland the examination element is a two hour written test. In the UK, Czech Republic, France, Sweden, Netherlands and Belgium the examination is over three hours long. Every Member State required a written examination with Germany and Belgium allowing an oral examination to contribute to the overall mark.

Some Member States have some exemptions for Transport Managers. Netherlands and Estonia allow exemptions based on appropriate Higher Education Qualifications. In addition "Grandfather" rights exist for persons operating as a Transport Manager for 10 years prior to 4th December 2009.

No periodic training is required for Transport Managers in any of Member States surveyed however in the event of loss of repute or being out of the profession for five years then they may be required to undertake their Certificate of Professional Competence again.

The stakeholder workshops held by the High Level Group also highlighted issues around the application of the criterion of good repute.

This Section provides more detailed discussion of the requirements from specific Member States that went into such detail. These Member States are the Netherlands, France, Greece, Spain, Czech Republic, Sweden, Bulgaria and Estonia which demonstrate a good range of EU Member States.

3.5.1 Netherlands

Under the Dutch Road Haulage Act (Wegvervoer Goederen - WWG), to become established as a road haulage operator in the Netherlands, businesses must be in possession of the Community License. The license applies to national and international

transport vehicles with a payload of over 500 kg. In line with Directive 2009/1071/EC⁴¹, the Netherlands impose the following conditions in order to qualify for the Community Licence:

- **Effective and stable establishment**
The company must have access to a real and lasting establishment in the Netherlands. In this regard, it is necessary for the company to have at least one site in which documents can be stored on the company's main activities, including accounting documents, personnel management documents and data on driving and rest periods.
- **Financial standing**
The company must have access to capital and reserves. The capital requirements are set at €9,000 for the first vehicle and €5,000 for each additional vehicle⁴². In order to meet these requirements, the capital must be present in the form of equity or subordinated loan. Furthermore, companies must prove their creditworthiness with an opening balance possibly supplemented by a statement of assets and a statement of an accountant.
- **Professional competence**
In order to meet the criteria of professional competency and thereby be designated transport manager, the Ministry of Infrastructure and Environment requires a professional qualification in commercial domestic and cross-border transport. The CCV division of the CBR conducts the examinations on behalf of the Stichting Examenbureau Beroepsvervoer. In order to be designated as Transport Manager, the individual in question must be continuously and effectively managing the transport operations and have a real link with the company. Furthermore, the transport manager must be resident in the European Union.
- **Good repute**
The requirement to show reliability specifies that a Certificate of Good Behaviour must be obtained from the Ministry of Security and Justice.

An additional requirement in the Netherlands for setting up as a transport haulage operator includes registering with the Chamber of Commerce. Furthermore, a company that transports food and/or food products must register with the Dutch Food Safety Authority (VWA). In the event that the legal form of company changes, then the company must apply for a new license and must again prove that the four conditions outlined are met. A Euro Permit is valid for five years. Six months prior to its expiration an application for renewal is sent which allows the Euro permit to be extended by a period of five years.

3.5.2 France

The French Ministry of Transport sets down the conditions to be met by companies in registering as a haulage operator. At present, the Ministry website identifies the conditions of access to the profession as defined by the European Directive 1996/26/EC of 29 April 1996, as amended by 1st October 1998. Directive 1996/26/EC⁴³ was implemented at a national level, by Decree No. 99-752 of 30th August 1999. This legislation sets out that in order to operate as a haulier, the haulage company or company that leases vehicles for haulage must be registered with the regional prefect/town council where the company's headquarters is based.

⁴¹ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 – establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 1996/26/EC, *OJ L 300*, 14.11.2009, p. 51–71

⁴² A vehicle is defined here as a solo vehicle, a combination of vehicle and trailer or a tractor / trailer combination

⁴³ Directive 1996/26/EC of the European Parliament and of the Council of 26 April 2004 - on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, *OJ L 124*, 23.5.1996, p. 1

In March 2011, the Ministry of Transport in France published an information leaflet regarding the changes to accessing the transport profession brought about by Regulation (EC) No 1071/2009⁴⁴. In it, the Ministry outlined that the new Regulation would apply from the 4th December 2011 and that the French regulations would be adapted accordingly.

In addition, in order to register, the following conditions must be met as follows:

- **Effective and stable establishment**
Every transport company must have an establishment in France where documents relating to the operation of the business are contained. The Ministry also states the companies must also possess the equipment and facilities appropriate for a technical operations centre in France.
- **Financial standing**
This condition requires the company to have a certain amount of equity in relation to the number of vehicles it uses. If applicable, bank guarantees may substitute a lack of financial capacity, provided it does not exceed half the amount of the financial liability. The amounts are €900 for each vehicle not exceeding 3.5 tonnes and for vehicles exceeding that limit of €9,000 for the first vehicle and €5,000 for each subsequent vehicle. For overseas departments of the company, the amounts required are €600, €6,000 and €3,000 respectively.

When applying for registration, the company must keep a financial capacity calculation for determining the amount of equity that is required with respect to its fleet. Each year, the company must contact the *Directions Régionales de l'Équipement* (DRE) with a new calculation sheet to verify that it still meets the requirement of financial standing. In the event that companies do not meet the economic and social regulations applicable to transportation the Ministry has the authority to withdraw licenses, impound vehicles.

- **Professional competence**
Depending on the type of vehicles used by companies there are two routes to obtaining the certificate of qualification for professional competence:
 - Companies using vehicles with a maximum weight limit over 3.5 tonnes:

In this instance the certificate of qualification may be obtained by undertaking examinations, work experience and qualifications. The written examination route accounts for about 15% of certificates. The exam is held annually for a duration of four hours and consists of a multiple choice a test on the management and operation of the business. Professional experience accounts for approximately 10 per cent of qualifications and is available to individuals with five years' work experience in a transport company.
 - Companies using vehicles not exceeding a maximum weight limit of 3.5 tonnes:

In this instance the proof of professional competence can be obtained through the presentation of a qualification or by undertaking an internship.

The introduction of this requirement effectively eliminated the previous exemptions in place whereby one transport manager could apply to subsidiary companies.

⁴⁴ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 – establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 1996/26/EC, *OJ L 300*, 14.11.2009, p. 51–71

- **Good repute**
The company directors and transport manager must satisfy the condition of professional integrity. This condition is deemed to be met provided the individual in question does not have a criminal record in particular in relation to transport regulations, labour and road safety.

3.5.3 Greece

Freight transport in Greece has been regulated since the 1970s, with the government setting minimum tariffs and granting licences to haulage operators. Distortions arising from government intervention include:

- High-price, low-quality transportation services, encouraging firms to internalize transport activities;
- Large private rents accruing to incumbents
- Lack of incentives for investment in the sector, characterized by poor technological innovation and productivity performance
- Excessive fragmentation and low utilization of economies of scale, which would have prevented Greek haulers from developing a wider chain of logistics services and taking a higher market share in the EU transport market. No new licences have been sold since the 1970s

The far-reaching liberalization of road haulage was expected to generate substantial efficiency gains. The liberalisation measures were pushed through Parliament in September 2010 under an emergency procedure as hundreds of striking truck owners staged a demonstration outside the building. Main elements of the reform are:

- **Elimination of quantitative licensing restrictions:** The granting of licences will be automatic upon meeting the objective criteria set by the law, namely certificates of professional qualifications, tax clearance and social security certificates, and criminal record copies.
- **Price of the licences during the transition period:** During a transition period of 2.5 years, new entrants will be required to pay an entry fee equal to the “goodwill” of existing licenses, whose value is acknowledged by the government as “an element of the right of property”. The value of the entry fee will decrease at the rate of 30% in 2011, and 35% in 2012 and 2013. After 2013 the fee shouldered by the new entrants will exclusively cover administrative costs.
- **Freedom to negotiate cargo fares:** Administratively set prices for general cargo are abolished, but not for oil fuel, where the administration can still set maximum prices.

3.5.4 Spain

The Spanish Association of International Road Transport Companies (ASTIC) has provided the following information. “In our country becoming HGV Operator must be under permission of the Central Administration which requires the following requirements:

- Good reputation
- Minimum finance capability
- Professional competence
- Minimum 60 Tonnes (GVW) and three vehicles (new)
- Physical facilities (a postal address, not simply a fiscal entity but a “real state”, no minimum dimensions are required)”

3.5.5 Czech Republic

AECOM received a response from the Head of Freight Transport and State Supervision, Road Transport Department of the Ministry of Transport in Prague. An operator’s licence takes only a couple of minutes to process, if the conditions according to Regulations (EC) No 1071/2009⁴⁵ and (EC) No 1072/2009⁴⁶ are fulfilled. The cost of issuing an operator’s licence (Community

⁴⁵ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 – establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 1996/26/EC, *OJ L 300*, 14.11.2009, p. 51–71

Licence) is 1000 CZK (€40). The Czech Government does not impose any other regulations that need to be followed specifically in their country. The minimum standard of insurance that is required is met by the conditions relating to the requirement of financial standing according to Art. 7 of Regulation (EC) No 1071/2009. The conditions of establishment shall be fulfilled (Art. 7 Reg. (EC) No 1071/2009), a postal address is not enough. The minimum financial standing is according to Art. 7 of Regulation (EC) No 1071/2009. One vehicle is enough to establish a road haulage company.

3.5.6 Bulgaria

According to the Road Haulage Association of Bulgaria the cost of an operator's licence is around €1,000 for domestic and international and €150 for domestic only. This compared to the €40 for the Czech Republic is very expensive the cost of a new EU Licence (for international and national transport) €1000 + €5 for every certified true copy; for extending of the expired validity of a licence (which is five years) €50, the cost of a new licence only for national transport is €150 + €10 for every vehicle included in the licence. It takes about 30 days to process. The legislative compulsory insurances are the third party liability - green card (the costs depend on the vehicle type, engine volume, gross weight etc) and insurance of the employees in road transport in case of accident during their work. There are also other insurances, which are not obligatory but most of the hauliers include such insurance contracts. For example third party liability of the haulier (CMR) is required by the most of the consignors. It is possible to set a company with only one vehicle which fulfils all requirements of the Regulation on access to the profession - financial standing, good repute, professional competence and effective and stable establishment in Bulgaria. In order to obtain an EU licence the company should have (own or rent) and declare an office, in which it keeps its core business documents with postal address; facilities for parking of the vehicles with a postal address; operational centre for maintenance of the vehicles roadworthiness with postal address or a contract with a service station for technical maintenance of the vehicles. The minimum financial capability that is required is €9000 for the first vehicle and €5000 for each other vehicle.

3.5.7 Estonia

The Head of Information at the ERAA said the fee for the Community licence issued to a road transport undertaking according to the Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009⁴⁷ is €127.82 + VAT (20%). The service fee for a certified true copy of the Community licence issued according to Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009 is €12.78 + VAT (20%). The Community licence process takes up to 56 calendar days, which might be extended in justified cases by 28 days. Certified true copy of the Community license takes up to 15 calendar days. Additionally to the Regulation (EC) No 1071/2009⁴⁸, Regulation (EC) No 1072/2009⁴⁹ and Regulation (EC) No 1073/2009⁵⁰ the road transport undertakings established in Estonia have to follow the provisions of Road Transport Act and Public Transport Act in force in the Republic of Estonia. No insurance is required to obtain the Community license according to the Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009. By way of derogation any road transport undertaking may demonstrate its financial standing by means of professional liability insurance (Regulation (EC) No 1071/2009 Article 7). Professional liability insurance cost is not a fixed cost per company or per vehicle, it depends on many different indicators: size of the company (turnover, number of vehicles), type of goods carried, previous activity of a company etc. The insurance company decides about the cost of professional liability insurance.

⁴⁶ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, *OJ L 300, 14.11.2009, p. 72–87*

⁴⁷ Regulation (EC) No. 1073/2009 of the European Parliament and of the Council of 21 October 2009, on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, *OJ L 300, 14.11.2009, p. 88–105*

⁴⁸ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 – establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 1996/26/EC, *OJ L 300, 14.11.2009, p. 51–71*

⁴⁹ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, *OJ L 300, 14.11.2009, p. 72–87*

⁵⁰ Regulation (EC) No 1073/2009 - on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, *OJ L 300, 14.11.2009, p. 88–105*

3.6 Access to the Profession of Road Haulage Driver

3.6.1 Introduction to Driver Qualification

Since July 2003 the training and qualifications required for access to the profession of road haulage driver has been set down in Directive 2003/59/EC⁵¹. The Directive applies to both drivers from EU Member States and nationals of third countries employed by Member States. The Directive obliges drivers to meet certain qualification criteria and undertake periodic training so as to obtain a Certificate of Professional Competency (CPC). The Directive sets out the minimum level of knowledge and subjects to be taken into account when establishing drivers' initial qualifications and periodic training. These subjects include: advanced training in driving based on safety regulations; the application of regulations, and health road and environmental safety, service and logistics.

- **Initial Qualification:** Member States have the options of meeting the requirement for initial qualifications through either a combination of course work and a test or a test only.
 - Initial qualifications incorporating course work and a test must include course work of 280 hours, incorporating 20 hours of driving time, eight of which may be on special terrain or in a simulator. At the end of the course work, a written or oral test must be administered with at least one question addressing each of the objectives set out in the subject areas outlined
 - Initial qualifications incorporating a test only must incorporate both a theoretical and practical test. The theoretical test must consist of questions and case studies and have a minimum duration of four hours. The practical element of the test must consist of a driving test with a minimum duration of 90 minutes and a minimum of a 30 minute test covering the ability to load the vehicle with due regard for safety and proper vehicle use, the ability to prevent criminality and trafficking and physical risks along with the ability to assess emergency situations. The practical element must be at a minimum 30 minutes.
- **Periodic Training:** Requires holders of a CPC and drivers with acquired rights to CPC to update their knowledge on issues essential to their work. Particular emphasis is given to road safety and the minimising fuel consumption; however the training will expand and revise the subjects required for initial qualification of CPC. The legislation requires that periodic training takes place within five years of issue of CPC; however Member States may reduce or extend the period provided it is not shorter than three years or longer than seven years. Thereafter periodic training should take place every five years for a duration of 35 hours.

In some instances, Member States may authorise drivers to drive in their territory for a maximum period of three years, provided the driver is undertaking a national training programme of at least six months. In other cases, Member States may exempt drivers from the initial qualification criteria, provided they have previously obtained a certificate of professional competency under Directive 1996/26/EC⁵² or for drivers of category C and E vehicles provided their license was issued no later than three years after the final date of transposition of the Directive.

Directive 1996/26/EC has since been repealed by Regulation (EC) No 1071/2009, although Directive 2003/59/EC predates the Regulation.

Table 3.1 shows the type of testing that is required in each member state, based on AECOM's email survey of haulage associations and ministries. It appears that a combination of two from coursework, written and in-cab testing is the most common testing framework.

⁵¹ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 - on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers amending Council, *OJ L 226, 10.9.2003, p. 4-17*

⁵² Directive 1996/26/EC - on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, *OJ L 124, 23.5.1996, p. 1*

Table 3.1 - Testing Regime in Surveyed Member States⁵³

Member State	Coursework	Written Test	Oral Test	In-cab test
Bulgaria	✓	✓		
Germany	✓			✓
Czech Republic		✓		
Denmark	✓	✓		
Estonia	✓	✓		
Italy			✓*	
France	✓	✓		✓
UK		✓		✓
Romania	✓	✓		
Sweden	✓	✓		
Netherlands		✓		✓
Belgium		✓	✓	✓
Ireland		✓		✓

*Oral tests are provisional until written tests are operational

There appears to be a large variation in the cost of the initial driver CPC training with a new driver paying €6,000 in Finland but only €125 in Hungary or €68.34 in Cyprus. A large difference in cost between Member States could lead to market distortions as well as questions being raised about the quality of the cheaper courses. In fact Denmark, Hungary, Lithuania and Sweden do not recognise the Initial Driver CPC done in other EU countries and eight states including Czech Republic, Hungary, France and Sweden to not accept partial periodic training completed in other EU countries. This would mean a driver receiving either initial or periodic training in, for example, Germany may not be able to find employment in another EU state without re-completing their training, adding further costs for the drivers or operators. A list of initial driver CPC costs is shown in Table 3.2.

Table 3.2 - Initial Driver CPC Cost (2010)⁵⁴

Member State	Item	Cost Breakdown	Approximate Cost (EUR)
Belgium			400
	Theory test		
	<i>Multiple choice questions</i>	52 EUR	
	<i>Case studies</i>	44 EUR	
	<i>Oral exam</i>	91 EUR	
	Practical test		
	<i>Manoeuvres test</i>	37 EUR	
	<i>Basic qualification test</i>	54 EUR	
Cyprus	<i>Manoeuvres / basic qualification combined</i>	73 EUR	
	<i>Practical on-road test</i>	128 EUR	
	Option 1: initial qualification combined with driving test		68.34
	<i>Full theory test</i>	34.17 EUR	
	<i>Full practical test</i>	34.17 EUR	
	Option 2: initial accelerated qualification		Fee set by training

⁵³ AECOM Survey, 2012

⁵⁴ Cieca Survey on the implementation of the Directive 2003/59/EC laying down the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, 2010, IRU

Member State	Item	Cost Breakdown	Approximate Cost (EUR)
	(140h + in house test)		centre
Czech Republic			1 575
	<i>Complete initial qualification course (approx.)</i>	<i>40 000 CZK (approx 1 540 EUR)</i>	
	<i>Administrative costs including the issue of the qualification card</i>	<i>900 CZK (approx 34.70 EUR)</i>	
Finland			6 000
	<i>Initial qualification combined with driving test</i>	<i>6 000 EUR</i>	
France			2 500 - 4 500
	<i>Initial qualification 14h combined with driving licence cat C or D</i>	<i>4 500 EUR</i>	
	<i>Initial qualification without driving licence cat C or D</i>	<i>2 500 EUR</i>	
	<i>Issue of qualification card</i>	<i>27 EUR</i>	
Germany			1 190 - 3 500
	<i>Initial qualification (only theoretical and practical test)</i>	<i>1 190 EUR</i>	
	<i>Accelerated qualification (theoretical test)</i>	<i>100 EUR</i>	
	<i>Course accelerated qualifications</i>	<i>2 200 to 3 500 EUR</i>	
	<i>Qualification licence (Code 95 in the driving license)</i>	<i>28,60 EUR</i>	
UK			275
	<i>Cat C or D theory test (Module 1)</i>	<i>38 EUR</i>	
	<i>Hazard perception test</i>	<i>16 EUR</i>	
	<i>Driver CPC Case studies (Module 2)</i>	<i>33 EUR</i>	
	<i>Driver CPC Show me tell me (Module 4)</i>	<i>61 EUR</i>	
	<i>Practical driving test (Module 3)</i>	<i>127 EUR</i>	
Hungary			125
	<i>Theory test subject 1</i>	<i>1600 HUF (approx 6 EUR)</i>	
	<i>Theory test subject 2</i>	<i>1600 HUF (approx 6 EUR)</i>	
	<i>Theory test subject 3</i>	<i>1600 HUF (approx 6 EUR)</i>	
	<i>Case study</i>	<i>7680 HUF (approx 29 EUR)</i>	
	<i>30' practical test</i>	<i>4390 HUF (approx 16 EUR)</i>	
	<i>30' special terrain or simulator test</i>	<i>4390 HUF (approx 16 EUR)</i>	
	<i>60' on road test</i>	<i>4390 HUF (approx 16 EUR)</i>	
	<i>Issue of qualification card</i>	<i>7700 HUF (approx 29 EUR)</i>	
Ireland			307
	<i>Driver CPC theory test 1</i>	<i>70 EUR</i>	
	<i>Driver CPC theory test 2</i>	<i>70 EUR</i>	
	<i>Cat C or D practical driving test</i>	<i>110 EUR</i>	
	<i>Driver CPC practical test</i>	<i>32 EUR</i>	
	<i>Issue of C or D driving licence</i>	<i>25 EUR</i>	
Latvia			189
	<i>Driver CPC theory test 1</i>	<i>8.88 LVL (approx 13 EUR)</i>	
	<i>Driver CPC theory test 2</i>	<i>8.88 LVL (approx 13 EUR)</i>	
	<i>Cat C or D practical driving test</i>	<i>50 LVL (approx 71 EUR)</i>	
	<i>Issue of C or D driving licence</i>	<i>15.50 LVL (approx 22 EUR)</i>	
	<i>Medical certificate</i>	<i>25 LVL (approx 35 EUR)</i>	
	<i>First aid course</i>	<i>25 LVL (approx 35 EUR)</i>	
Lithuania			579 - 868
	<i>Between 2 000 and 3 000 Litai, depending</i>		

Member State	Item	Cost Breakdown	Approximate Cost (EUR)
	<i>on the training institute</i>		
Poland			218 (170 – accelerate qualification)
	<i>Driving licence compulsory training</i>	<i>2 500 PLN (approx 60 EUR)</i>	
	<i>Driving licence test</i>	<i>180 PLN (approx 4 EUR)</i>	
	<i>Initial qualification</i>	<i>6 000 PLN (approx 144 EUR)</i>	
	<i>Accelerate qualification</i>	<i>4 000 PLN (approx 96 EUR)</i>	
	<i>Medical and psychological test</i>	<i>350 PLN (approx 8 EUR)</i>	
	<i>Issuing driving licence</i>	<i>71 PLN (approx 2 EUR)</i>	
Slovenia			500 - 600
	<i>Price for the initial qualification is set by the market and not regulated. Currently prices range between 500 and 600 EUR</i>		
Sweden			3800
	<i>Training costs Cat C or D</i>	<i>15 000 SEK (approx 1 413 EUR)</i>	
	<i>CPC training costs 140 hours</i>	<i>25 000 SEK (approx 2 355 EUR)</i>	
	<i>CPC card and administrative cost</i>	<i>340 SEK (approx 32 EUR)</i>	

However there are different funding mechanisms in place which reduce the cost burden on the individual or company in some member states. In Denmark, Estonia and Finland the majority of initial driver CPCs are paid for by public funding, in Sweden this is 50%.⁵⁵ In other member states the availability of public funding for initial driver CPC is far more limited.

The cost of periodic training is considerably more harmonised as demonstrated in Table 3.3. The Member States with lower costs tend to be those with lower living costs in general.

In its report on the implementation of Directive 2003/59/EC⁵⁶ it is noted that whilst the exemptions permitted under Article 2 are largely applied by all Member States, there are discrepancies. For example Romania does not apply any exemptions. Furthermore the report calls for guidance on the scope and meaning of some exemptions, for example the carriage of material or equipment used in connection with the driver's work.

⁵⁵ Cieca Survey on the implementation of Directive 2003/59/EC laying down the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, 2010, *IRU*

⁵⁶ Report from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions on the Implementation of Directive 2003/59/EC Relating to the Initial Qualification and periodic Training of Drivers of Certain Road Vehicles for the Carriage of Goods or Passengers, 2012, *European Commission*

Table 3.3 - Periodic Driver CPC Total Cost (2010)⁵⁷

Member State	Approximate Cost (Euros)
Czech Republic	180
Estonia	180
Finland	400
France	427
Germany	600
United Kingdom	680
Hungary	320
Ireland	500
Lithuania	215
Luxembourg	1000
Poland	250
Slovenia	150-200
Sweden	480

3.7 Detailed Country Analysis of Access to the Profession of Road Haulage Driver

3.7.1 Netherlands

The implementation and monitoring of Directive 2003/59/EC⁵⁸ in the Netherlands is undertaken by the Ministry of Transport.

In the Netherlands the minimum age for driving a lorry is 18. Furthermore, lorry drivers must be in possession of a lorry driving license (Driving License C) and possess the necessary professional skills. Drivers can demonstrate their professional skills via what is known as the Professional Competence Code (PCC) on their driving licence.

In order to obtain the PCC, it is necessary to acquire a basic qualification from the Central Office for Motor Vehicle Driver Testing (*Centraal Bureau Rijvaardigheidsbewijzen, CBR*). The basic qualification is valid for five years and is obtained through testing only. The practical element of the test is for a duration of 30 minutes and takes place at the approved training institute under supervision of CCV.

In order to continue practising the profession, drivers are required to participate in mandatory five-yearly training courses, with a total duration of 35 hours.

Individuals with a PCC from another EU country or an EU driver qualification card are not required to obtain the basic qualification in the Netherlands but can exchange the proof of professional competence at the Government Road Transport Agency (*Rijksdienst voor het Wegverkeer, RDW*).

3.7.2 Hungary

In Hungary, Directive 2003/59/EC is implemented by National Transport Authority and specifies that the initial qualification can be obtained through test only while the periodic training can only be obtained through a test at the end of 35 hours training. In implementing the Directive, Hungary allowed various deadlines depending on the type of driver. Specifically, the following deadlines were in place:

- Truck drivers who finished their initial qualification before the deadline of 09.09.2009 and only had a license for working in Hungary have to do a first periodic training at the latest before 09.09.2014

⁵⁷ Cieca Survey on the implementation of Directive 2003/59/EC laying down the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, 2010, *IRU*

⁵⁸ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 - on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers amending Council, *OJ L 226, 10.9.2003, p. 4-17*

- Truck drivers who finished their initial qualification before the deadline of 09.09.2009 and were active on national and international level are only required to do 35 hours periodic trainings within five years
- Truck drivers who only did transport for company purposes only (works traffic) and did not have any initial qualification yet, are required to do a first periodic training at the latest before 09.09.2012

Initial Qualification

The initial qualification test incorporates a theory and practical element. The theory element examines the three subjects set down in the Directive: driving based on safety regulations; the application of regulations; and, health, driving safety, service, logistics. The practical element examines on-road driving; practical knowledge relating to driving; driving on a special terrain or on simulators. Candidates are deemed to have passed the test if they obtain 60%.

The theory test incorporates a written test containing 40 questions per subject, with maximal failed points of 10 per subject as well as a case study test. In the event that an individual fails a test subject, then only the failed test of that subject has to be repeated.

The practical test only has to be done for the acquisition of the initial qualification and incorporates three separate tests. The knowledge element incorporates “tell me or show me” type questions that are answered orally or shown by the candidate. The first practical element incorporates driving on a special terrain or by the use of a top-of-the-range simulator. The second practical element of the practical test involves on-road driving. In the event that a candidate fails one test element then only that element needs to be repeated.

Periodic Training

The period training required by Hungary incorporates a mandatory written test after the 35 hours of periodic training course. The requirement for a written test exceeds the requirements set down in the Directive and reflects the previous system that was in place in Hungary.

3.8 Conclusion

3.8.1 Access to Profession of Road Haulage Operator

The survey and country analysis results in this chapter indicate that Regulation (EC) No 1071/2009 setting the conditions for access to the profession of road haulage operator is not yet being implemented in a correct and consistent way across Member States. While hauliers based in every Member State are all subject to the requirements of the Regulation, some states impose additional requirements such a minimum tonnage or number of vehicles. In addition, the cost of obtaining an operator license or Community Licence varies significantly between Member States. There is also some variance observed in the requirements for an individual to qualify as a “Transport Manager”. These were minor variants in the length and type of examination required of candidates wishing to qualify as transport managers. Overall, these differences could materially affect the costs and the conditions of access to the profession, and so have a distortive effect on the single market for haulage services.

3.8.2 Access to Profession of Road Haulage Driver

The Commission report on the implementation of Directive 2003/59/EC concludes that whilst the Directive allows Member States latitude in respect of testing versus course work to attain qualification and that training courses and teaching methods are not standardised, the equivalence of the qualifications systems and the efficiency in ensuring the required qualification is guaranteed by the national training systems which have to meet the requirements of Annex 1 regarding subject matter and the structure of tests.

Similarly, the survey and country analysis results in this chapter indicate that Directive 2003/59/EC on access to the profession of road haulage driver is being implemented in a correct and consistent way across Member States. It is notable that the cost of the training necessary to qualify as a driver varies greatly between Member States. The cost of initial driver training to obtain a Certificate of Professional Competency ranges from as little as €125 in Hungary and €68 in Cyprus to as much as €6,000 in Finland and up to €3,500 in Germany. In some states, in particular Finland, public funding is available for all or part of the cost of

training as a haulage driver. There are also significant gaps in the mutual recognition of Certificate of Professional Competency by Member States.

The high cost of qualifying as a driver in some Member States will restrict the supply of new drivers at a time when shortages of qualified drivers are an acknowledged problem for the industry. Gaps in the mutual recognition restrict the free movement of qualified drivers to work in different parts of the EU. However these distortions in the labour market are not sufficiently material to road hauliers to create a distortion on the market for road haulage services. In particular, they do not create a cost advantage for hauliers from a particular Member State which would allow hauliers from that Member State to compete “unfairly” if the market for road haulage services was liberalised further.

Harmonisation of Enforcement

4 Harmonisation of Enforcement

4.1 Introduction

As is discussed in the introduction to this report, there are a number of reasons why the regulations that apply to road haulage are, at least partially, harmonised. These include a need to ensure minimum standards for those who use road haulage services, safety and social protection for those who work in the sector and the safety of other road users. In addition, there may be a need to ensure that regulations that might affect the costs of road haulage firms are harmonised to ensure that the ongoing liberalisation of the sector has its intended effect. Harmonisation of regulations must be accompanied by measures to ensure that these regulations are enforced in a consistent manner if it is to be effective.

If common regulations are not effectively enforced in some parts of the EU they will clearly not have their desired effect in at least part of the Community. In addition, if there are flaws or differences in the way that common regulations are enforced in different Member States this will lead to distortions of competition between hauliers from different Member States. As described in the Introduction to this study, this could lead to hauliers gaining market share due to a cost advantage arising from not having to comply with certain regulations. This would undermine the standards of safety and quality that the regulations are designed to achieve, particularly if the market for road transport is liberalised further.

Within a Member State, enforcement activity that discriminates between hauliers established in that Member State and those coming from outside that Member State will also have negative effects. If hauliers registered in the Member State are not subject to effective enforcement activity, regulations will not have their desired effects on quality standards, driver conditions etc. In addition, discrimination between domestic and foreign vehicles by the enforcement authority of a Member State would create an effective barrier to cross border trade in transport services. Domestic hauliers from such a Member State would enjoy a protected home market, while having access to the markets of other Member States. Competition between hauliers from different Member States would be distorted by this barrier to trade and would not achieve the benefits that normally come from open competition on a single internal market. If such distortions were taking place, further liberalisation of road freight would increase their effect.

This section of the report:

- Outlines the concerns that are expressed by some stakeholders that enforcement of regulations in the road haulage sector may not be effectively harmonised across the EU
- Describes the Commission initiatives in place to harmonise the enforcement of regulations in the road haulage sector and to monitor this enforcement
- Sets out the objective evidence available from this monitoring activity on how effectively enforcement is harmonised in the EU
- Describes in detail the enforcement of the cabotage rules across the EU
- Concludes on the effectiveness with which regulations are enforced across the EU and the degree of harmonisation of this enforcement

4.2 Industry Concerns about Enforcement

There are concerns in the road haulage industry that the common EU rules on the conduct of road haulage are enforced differently in different Member States and may be enforced in a discriminatory way in some Member States. These concerns are reflected in the responses to a web survey carried out for the High Level Group on road haulage, AECOM's interviews with road hauliers carried out for this study and the hearing conducted by the High Level Group.

The Commission High Level Group on Road Freight Transport carried out hearings with industry stakeholders. These hearings deal with enforcement issues, amongst other issues. Many of the comments related to the issue of allocating responsibility for infringements between hauliers, shippers and freight forwarders. However concerns about anomalies in the enforcement of rules by different Member States were also widespread among participants. A number of industry associations, including the Spanish Association highlighted the problem of different interpretation of the basic rules and different levels of penalties in different Member States. In a related issue participants also called for more training for Member State officials enforcing the social protection rules. (In relation to cabotage a number of associations, including the Finnish Association, highlighted the difficulty of enforcing limits on cabotage in much of continental Europe where there are no border controls). The European Transport

Workers Federation stated that the UK enforcement authority (VOSA) carries out the majority of its checks at ports, and characterised a discrimination against non-UK vehicles in the enforcement of regulations.

The International Transport Forum collates information from each of its members on how they enforce rules on road haulage. The information provided by the members of the forum is made available on the forum's website⁵⁹. This information concerned the identity of those carrying out inspections across 11 different items that required controls, such as traffic regulations and licences, authorisation for international road transport, special authorisation for carriage of passengers and other related documents, T1 documents or TIR Carnets, weights and dimensions, certification for carriage of perishable foodstuffs and special equipment, documents on veterinary and phytosanitary control, road user charges, technical conditions of vehicles, regulations on driving hours and regulations on transport of dangerous goods. This information was revised in September 2011 and is summarised in Table 4.1 for relevant EU Member States. As can be seen in Table 4.1, there is a wide degree in the variation of resources deployed by Member States. A significant number of Member States rely on the state and local police force to carry out inspections with relatively little reliance on roads administration or authorized technical experts. For example in Austria, the Local Police are responsible for enforcing 11 laws and regulations whereas Customs are responsible for enforcing three. The number of items controlled by other authorities varies greatly across Member States. For instance Hungary relies on 19 other authorities to carry out inspections indicating that across the 11 categories of items to be controlled in many cases there is more than one body responsible. A similar trend was seen amongst Lithuania and Malta who had 14 and 12 other authorities respectively carry out inspections across the 11 items to be controlled. Such a trend reinforces the need for extensive data sharing among agencies to ensure more effective enforcement targeting. It also raises the risk that the level of effective enforcement varies between Member States.

The Freight Transport Association (FTA) in the UK promotes the use of interconnected electronic registers to develop a Europe-wide Operator Compliance Risk Score (OCRS) so that even at the roadside, enforcers have instant access to the history of the vehicle they are tracking. Also, the Flemish transport and logistics association (TLV – Transport en Logistiek Vlaanderen) promotes the development of guidebooks to aid uniform interpretation of EU regulations. So there is industry support to see the development of a fairer system that is understandable to operators, drivers and enforcement agents alike.

Additionally, in an effort to encourage greater harmonisation of enforcement practices, the Transport Regulators Align Control Enforcement (TRACE) was completed in 2012 and a follow-up project (CLOSER) was launched in 2014. The TRACE project was led by the Vehicle and Operator Services Agency (VOSA of the UK) and is supported by the Confederation of Organisations in Road Transport Enforcement (CORTE), Euro Controle Route (ECR), several other organisations provide advisory support. TRACE aims to provide a uniform training framework for enforcers. It also aims to identify where further clarification is required in terms of the legislation.

⁵⁹ <http://www.internationaltransportforum.org/IntOrg/road/ctrlbodies.html>

Table 4.1 - Enforcement Agencies and the Number of Rules within their Remit across EU Member States (2011)

	State Police	Local Police	Customs	Transport Ministry	Road Administration	Authorised Technical Experts	Other
Austria	-	11	3	1	1	-	2
Belgium	8	8	9	8	-	-	7
Bulgaria	2	2	1	6	2	-	1
Czech Republic	9	1	10	7	-	-	5
Denmark	10	10	1	-	-	2	-
Estonia	7	7	3	7	2	-	10
Finland	11	11	11			-	3
France	10	11	8	1	2	-	-
Germany	3	10	4	-	8	-	-
Greece	5	-	4	-	-	-	8
Hungary	6	-	9	1	1	-	19
Ireland	1	-	1	5		-	9
Italy	8	9	6	8	1	1	9
Latvia	6	2	7	7	2	1	8
Lithuania	7	-	6	-	-	1	14
Luxembourg	11	-	10	2	-	-	2
Malta	3	-	1	6	-	1	12
Netherland	6	3	4	6	-	3	2
Poland	11	7	-	-	-	1	11
Portugal	11	4	2	8	-	1	2
Romania	5	-	1	7	4	1	2
Slovakia	10	-	6	5	2	3	2
Slovenia	6	6	7	-	-	-	7
Spain	11	-	1	6	2	-	3
Sweden	-	8	3	-	-	-	1
UK	-	7	1	7	1	4	1

Source: International Transport Forum, 2011

4.3 Commission Action to Harmonise Enforcement

Harmonisation of enforcement is a priority of the Commission. The White Paper on Transport⁶⁰ states that “A higher degree of convergence and enforcement of social, safety, security and environmental rules, minimum service standards and users’ rights” is necessary to avoid “tensions and distortions” as the Single European Transport Area is completed. The Commission staff working document accompanying the White Paper⁶¹ specifically discusses the harmonised enforcement of rules for professional road transport. The working document acknowledges that “Road transport undertakings face unequal treatment in different

⁶⁰ White Paper Roadmap To A Single European Transport Area – Towards A Competitive And Resource Efficient Transport System Brussels, 28.3.2011 COM(2011) 144 Final

⁶¹ Commission Staff Working Document Accompanying The White Paper - Roadmap To A Single European Transport Area – Towards A Competitive And Resource Efficient Transport System Brussels, 28.3.2011 SEC(2011) 391 Final

Member States owing to divergences in the control and sanction systems". A number of obligations and initiatives are in place to ensure uniform enforcement of these regulations in the EU.

Member States are obliged to carry out minimum levels of enforcement checks on freight vehicles in order to identify infringements to social provisions in road transport, and report on this activity to the Commission⁶². These rules were reinforced in 2009 and Member States are now obliged to carry out checks of at least 3 per cent of the days worked by freight drivers. Each Member State enforcement authority is also obliged to carry out at least six joint operations with other Member State enforcement authorities in each year. Measures are also in place to establish joint training programmes, standardise equipment and establish information and intelligence exchange systems.

Starting in 2009 the Commission has taken further actions to ensure effective and harmonised enforcement of the rules. These include:

- A Commission Implementing Decision in 2011⁶³ establishing a common approach to calculating driving times
- A package of measures to prevent manipulation of tachographs⁶⁴
- Each Member State has designated a body for intercommunity liaison on these matters as required by Article 7 of Directive 2006/22/EC
- The "TRACE" project has produced a comprehensive guide to how this enforcement activity should be carried out

4.4 Evidence of the Degree of Harmonisation

Findings from the latest report from 2009-2010 on the implementation of Regulation (EC) No. 561/2006⁶⁵ details improvements in enforcement by Member States, in particular as regards, performance of reaching the thresholds set in the legislation, data collection and reporting discipline. It also states that there have been improvements in application of the rules by professional drivers and transport undertakings. The number of checks performed had increased and the threshold of minimum working days to be checked rose from 2% in 2009 to 3% in 2010. All except five Member States reached or even exceeded the minimum number of checks. The harmonisation of enforcement practices can also be affected indirectly in terms of wages, safety and penalties. Furthermore, the report mentions that even though the information provided to the commission services does not allow for in-depth analysis of impacts of the legislation on health and safety, a general conclusion could be drawn that better enforcement of and compliance with the social rules can indirectly contribute to the well-being of drivers and to improving road safety.

Harmonisation with regards to the amounts of penalties in each Member State varies significantly and this can be partially explained by the socio-economic differences between the Member States. In order to improve harmonisation in this area Commission Directive 2009/5/EC⁶⁶ is tasked with minimising these discrepancies by categorising the infringements according to their gravity. Although the Commission can define the level of seriousness it does not however have the authority to set the levels of fines.

⁶² Directive 2006/22/EC of the European Parliament and Council of 15th March 2006 on minimum conditions for the implementation of Council Regulation (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/59/EEC as amended by Commission Directive 2009/4/EC of 23rd January 2009 on counter measures to prevent and detect manipulation of records of tachographs and Commission Directive 2009/5/EC amending Annex III to Directive 2006/22/EC

⁶³ Commission Implementing Decision C(2011) 3759

⁶⁴ Commission Directive 2009/4/EC of 23rd January 2009 on counter measures to prevent and detect manipulation of records of tachographs, Commission Directive 2009/5/EC amending Annex III to Directive 2006/22/EC and Commission Recommendation C(2009) 108 providing guidelines for best enforcement practice

⁶⁵ Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation

+ of the working time of persons performing mobile road transport activities, 2011, European Commission

⁶⁶ Commission Directive 2009/5/EC of 30 January 2009 amending Annex III to Directive 2006/22/EC of the European parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities OJ L29, 31.1.2009 p. 45-50).

In 2009 the Commission carried out an analysis of the penalties imposed for infringement of social legislation in road transport by different Member States⁶⁷. This analysis led to clear findings that although Member States had all implemented the EU social rules for road transport in their domestic legislation, there were clear divergences in the way in which this had been done⁶⁸. In particular Member States differed on:

How they categorised infringements of the EU rules between “Very Serious”, “Serious” and “Minor” infringements
The type of penalty they applied for infringements, with different combinations of:

- Fines
- Withdrawal of a drivers licence or driver card
- Immobilisation of vehicles
- Imprisonment
- The level of penalty applied by different Member States for infringements

At that stage, the Commission was concerned that drivers and haulage firms did not receive a clear and consistent message as to the relative importance of different elements of the EU rules on road haulage. The legislation adopted in 2009 was, at least in part, a response to this situation.

As mentioned in Section 4.3, the Commission itself monitors the enforcement of the social rules for road haulage⁶⁹ using information gathering powers incorporated into the rules⁷⁰. Member States are required to report to the Commission on the enforcement of these rules every two years. The Commission publishes its analysis of these reports from Member States. The most recent Commission analysis of these returns from Member States was published in 2012 and refers to returns covering the years 2009 and 2010⁷¹. The Commission has experienced considerable delays in receiving these returns from Member States, leading to this time lag. This monitoring report covers:

- The level of driver checks in each Member State
- The split between roadside and on-premises checks

4.4.1 Level of Driver Checks

Member States are required to achieve a minimum level of checking of compliance with the social rules for road haulage. According to Directive 2006/22/EC⁷², the minimum number of checks in 2009 should have covered at least 2% of days worked by

⁶⁷ Report from the Commission “Analysing the penalties for serious infringements against the social rules in road transport, as provided for in the legislation of the Member States.” COM (2009) 225 15th May, 2009.

⁶⁸ COMMISSION STAFF WORKING DOCUMENT Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities (26th report from the Commission on the implementation of the social legislation relating to road transport), SWD(2012) 270final 19th September, 2012

⁶⁹ The legislation in question is Regulation (EC) No 561/2006, which establishes rules on driving times, breaks and rest periods for professional drivers; Directive 2006/22/EC, which determines minimum requirements for enforcement of these rules; Regulation (EEC) No 3821/85 on recording equipment and Directive 2002/15/EC (hereinafter “the Working Time Directive”), which sets out complementary provisions on the organisation of the working time of persons performing mobile road transport activities.

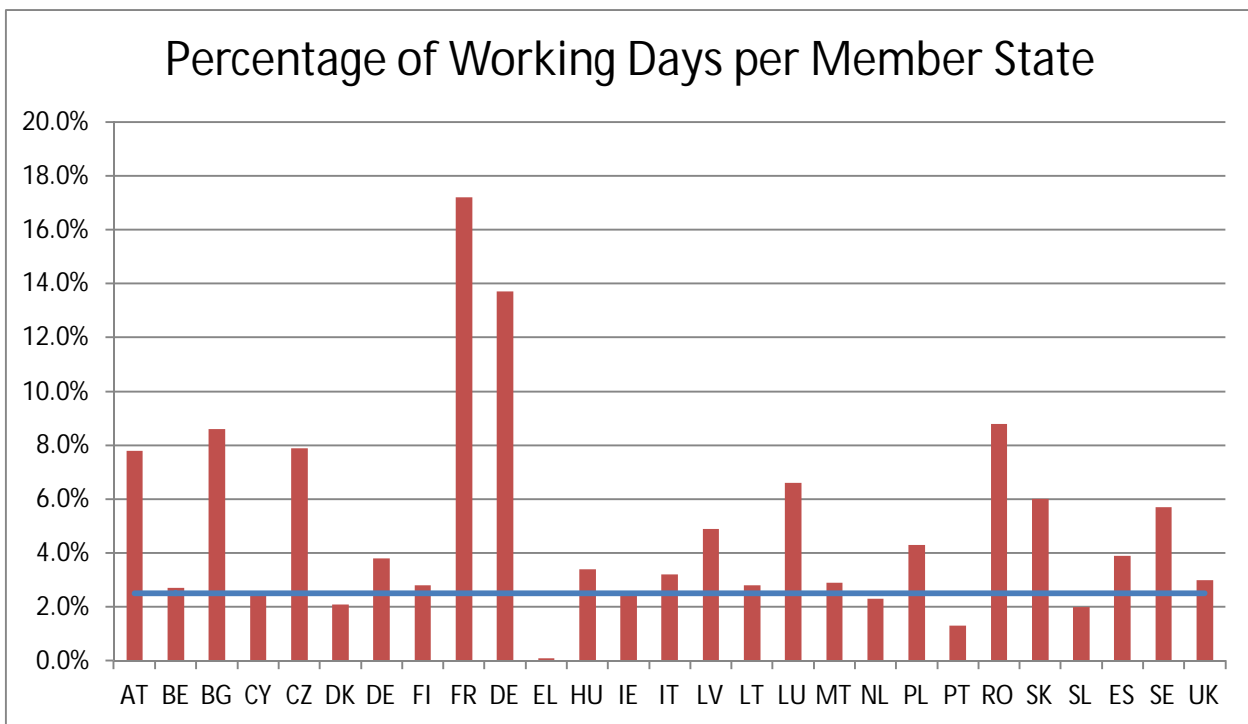
⁷⁰ Article 17 of Regulation (EC) No 561/2006 provides that Member States shall communicate every two years the necessary information to enable the Commission to draw up a report on the application of the Regulation and developments in the fields in question.

⁷¹ Commission Staff Working Document “Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006...and Directive 2002/15/EC” SEC(2012)270 12th September 2012.

⁷² Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 - on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 1988/599/EC, OJ L 102, 11.4.2006, p. 35–44

drivers of vehicles falling within the scope of Regulations (EC) No 3821/1985⁷³ and (EC) No 561/2006⁷⁴. In 2007 Member States were required to carry out checks equivalent to 1% of the days worked by drivers in that Member State. This percentage rose to 2% for 2008 and again to 3% in 2010. Due to data difficulties the Commission combined the numbers of checks for the two years and compared this number to a threshold of 2.5% of days worked in each Member State. There are clear differences between the actual intensity of checking activity by different Member States. Belgium and Greece failed to meet the minimum threshold of checks while other Member States exceeded the minimum by a wide variety of margins. The Commission receives reports from Member States on their checking activity, and compares this with data on the total number of driver days worked in each Member State. The results reported by the Commission are analysed in Figure 4.1.

Figure 4.1 - Driver Checks by Member States as a % of Days Worked (2009-2010)



Source: European Commission⁷⁵

It is clear from this analysis of the returns to the Commission that some Member States, notably Austria, Bulgaria, the Czech Republic, France, Germany, Luxembourg and Romania carry out a number of checks that is much higher as a percentage of driver activity in those Member States than is required by the legislation. The majority of other Member States carry out approximately as many checks as are required by the legislation. Greece, Netherlands, Portugal and Slovenia all carry out fewer

⁷³ Regulation (EC) No 3821/1985 of the European Parliament and of the Council of 24 July 2009 - on adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny, *OJ L 370*, 31.12.1985, p. 8-21

⁷⁴ Regulation (EC) No 561/2006 – of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, *OJ L 102*, 11.4.2006, p. 1-14

⁷⁵ http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/doc/swd-2012-270.pdf

checks than the minimum 2.5% threshold. This will lead to noticeably different levels of enforcement activity between Member States.

These figures may suggest that hauliers operating in Austria, Bulgaria, Czech Republic, France, Germany, Latvia or Romania may notice a higher level of enforcement, particularly if they operate mainly in countries where enforcement is lower.

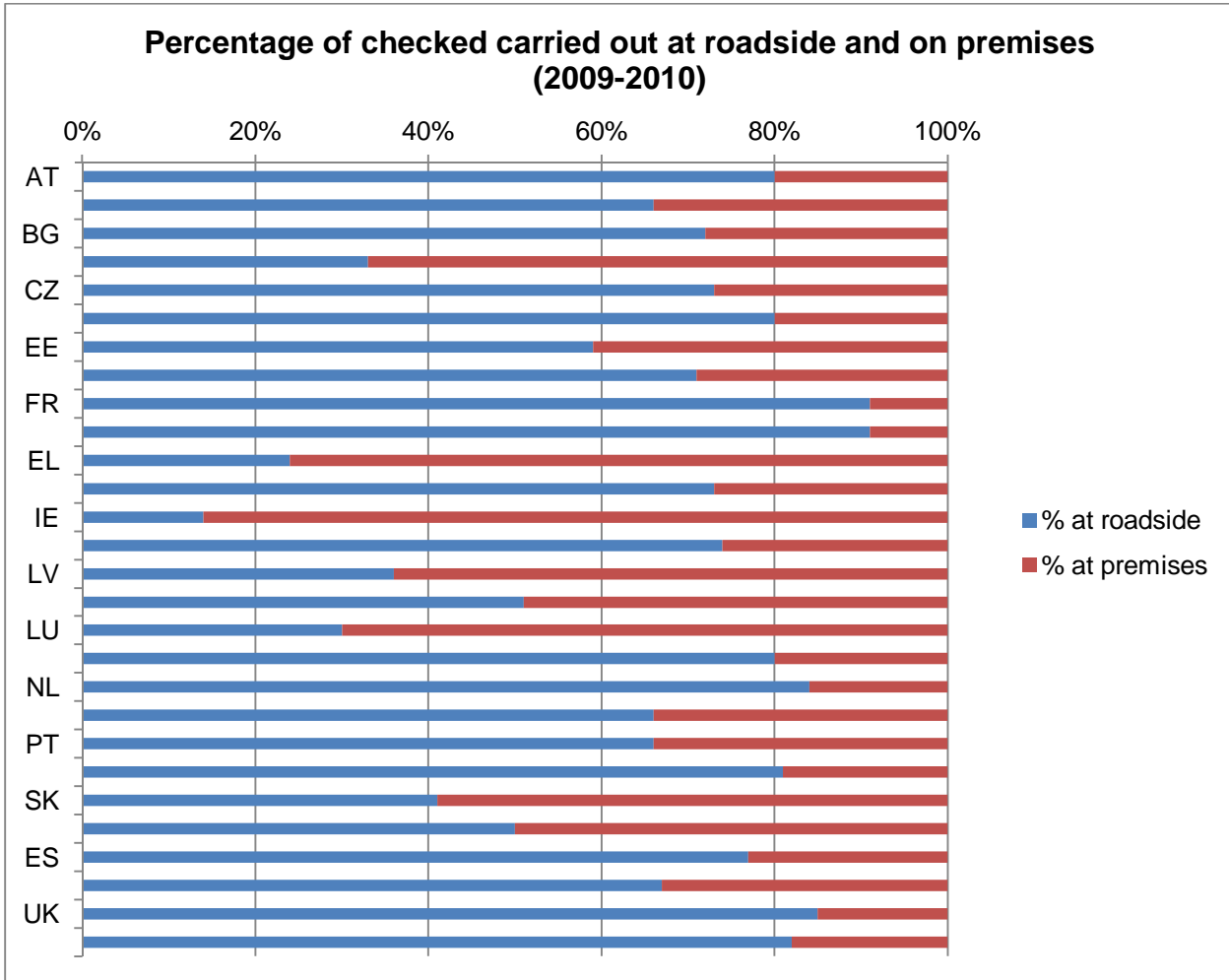
4.4.2 Split between roadside and on-premises checks

Member States must carry out checks of compliance with these rules either at the roadside, or at the premises of haulage firms. Drivers from outside a given Member State will only be subject to roadside checks in that Member State. An emphasis on roadside checks by a Member State will lead to greater visibility of its enforcement effort to drivers from outside the Member State. At an extreme it could lead to a suspicion that the Member State is targeting its enforcement activities on foreign vehicles.

The Commission report splits the checks carried out by each Member State between roadside checks and “on premises” checks. These figures are analysed in Figure 4.2. It appears that many of the same Member States who carry out the most intense level of checking also place the greatest emphasis on road side checks.

Figure 4.2 - Share of “Roadside” and “On Premises” Checks (2009 and 2010 combined)⁷⁶

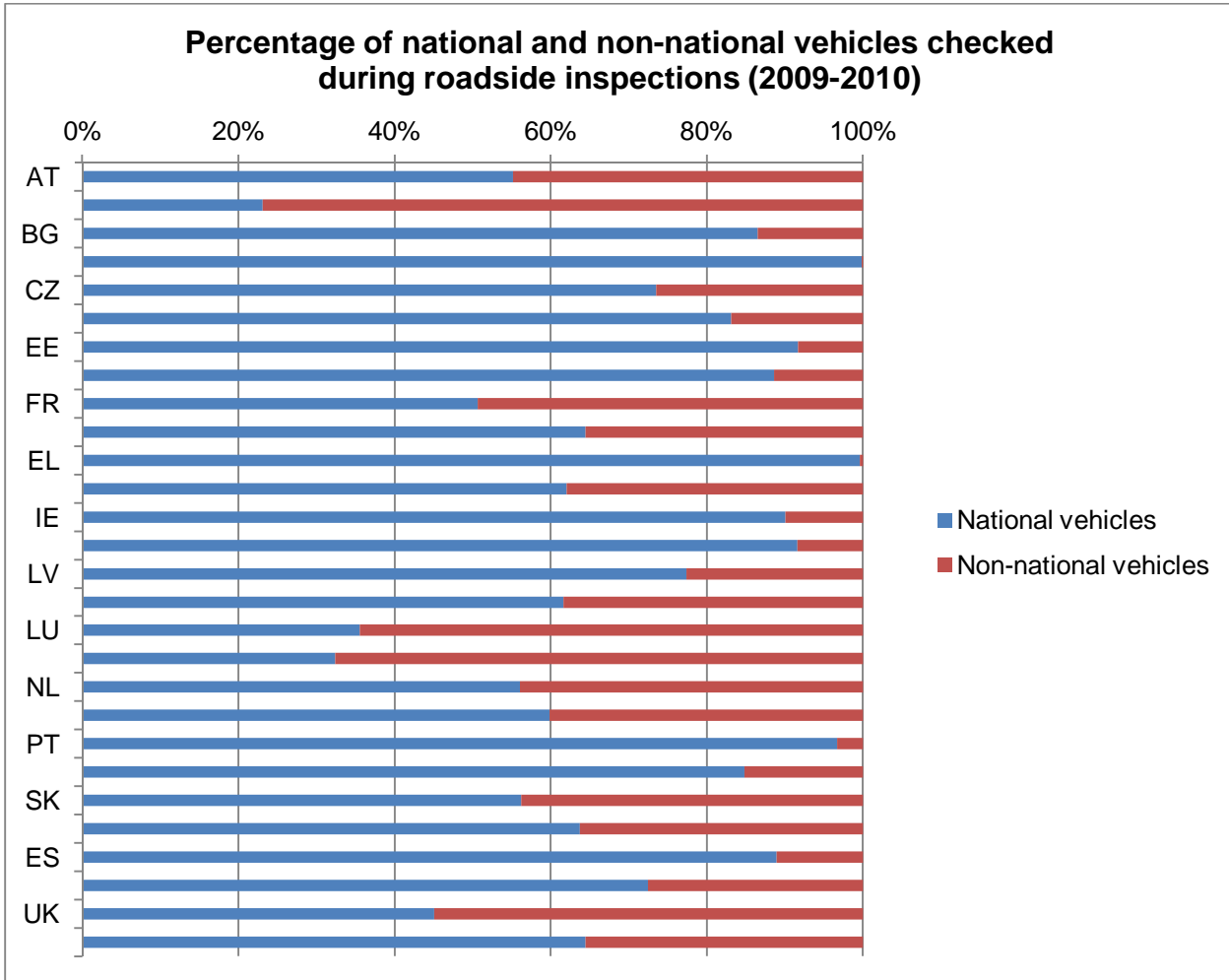
⁷⁶ European Commission working document, 2012, *European Commission*



Member States are required to report the split of the road side checks that they carry out between checks of nationals and checks of non-nationals. These figures are analysed in Figure 4.3.

Figure 4.3 - Split of Roadside Checks between Nationals and Non-Nationals (2009 and 2010 combined)⁷⁷

⁷⁷ European Commission working document, 2012, *European Commission*



This confirms a high degree of variation between Member States in the proportion of their enforcement activity that ends up directed at non-nationals. This will be a result of priorities set by the enforcement authorities in question, and the mix of traffic using the roads in the Member State. The results of these two factors vary from Luxembourg and Malta where more than 70% of roadside checks are of non-nationals to Cyprus, Estonia and Ireland, where fewer than 5% of roadside checks are of non-national drivers. This may be a result of these Member States being on extremities of the Union, so limiting the amount of through traffic. In most cases the majority of checks performed on non-nationals are related to the fact that the country is a typical transit one.

4.4.3 Enforcement of Drivers' Hours Rules

There is considerable evidence to suggest that drivers' hours infringements are widespread. For example, in the European Transport Safety Council report *Tackling Fatigue: EU Social Rules and Heavy Goods Vehicle Drivers*⁷⁸, the organisation cites the European Commission's own findings in that at any one time, around 45,000 vehicles are found in breach of EU tachograph rules.

⁷⁸ Report on "Tackling Fatigue: EU Social Rules and Heavy Goods Vehicle Drivers, October 2011, *European Transport Safety Council*

Table 4.2 details the number of vehicles examined for tachograph records by VOSA in the UK. It demonstrates that prohibition rates have shown improvement over the last three years, whilst the number examined rose. The prohibition rate for UK and non-UK based vehicles were largely consistent.

Table 4.2 - Roadside Inspections by VOSA for Prohibitions of Drivers' Hours, Tachograph & Records⁷⁹

	Number examined (inc the number weighed)	Prohibited for drivers' hours, tachograph & records	Prohibition rate
2010/11			
UK	54,757	9,272	16.9%
non-UK	67,316	10,162	15.1%
Total	122,073	19,434	15.9%
2009/2010			
UK	61,908	9,536	15.4%
non-UK	77,953	12,445	16.0%
Total	139,861	21,981	15.7%
2008/2009			
UK	53,219	9,158	17.2%
non-UK	46,335	9,913	21.4%
Total	99,554	19,071	19.2%

Table 4.3 shows that the probation rate detailed by VOSA related to drivers' hours among the various Member States varies considerably. Irish HGV drivers had the highest prohibition rate of drivers from the top ten countries checked, whilst Polish and Czech drivers were particularly compliant in this regard. Again, Polish drivers were the most frequently checked, reflecting their common presence on the UK roads.

⁷⁹ <http://www.dft.gov.uk/vosa/publications/corporatereports/2010-2011reportsuite/corporatereports-2010-2011vosaeffectivenessreport.htm>

Table 4.3 - Top Ten non-UK Drivers Hours Checks by Country of Origin (2010/2011)⁸⁰

Country	Number of checks	Prohibitions (drivers' hours)	Prohibition rate
Poland	11,502	1,112	9.7%
Eire	6,915	1,718	24.8%
Spain	5,449	638	11.7%
Netherlands	5,200	928	17.8%
Germany	5,117	994	19.4%
Romania	3,924	615	15.7%
Hungary	3,570	386	10.8%
Czech Republic	3,433	327	9.5%
Lithuania	3,060	412	13.5%
Italy	2,822	513	18.2%



Figure 4.4: Digital Tachograph

Regarding the level of sanctions and fines the Commission has adopted a Directive 2009/5/EC amending Annex III of Directive 2006/22/EC regarding driving times, rest times and the digital tachograph. The annex proposed that infringements be classified into three categories according to their degree of seriousness. It simply makes it mandatory for Member States to issue a classification of minor, serious and very serious infringements. In addition, the Commission, through Commission Directive 2009/5/EC⁸¹, has developed guidelines on a common range of infringements, divided into categories according to their gravity.

Furthermore, Article 9 of Directive 2006/22/EC⁸² 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. However, there is evidence to suggest that failure to comply with driving and rest time regulations is not sanctioned with the same severity from one Member State to another. For example, serious breaches of the regulations can result in punishments shown in Table 4.4 for the selected Member States.

⁸⁰ <http://www.dft.gov.uk/vosa/publications/corporatereports/2010-2011reportsuite/corporatereports-2010-2011vosaeffectivenessreport.htm>

⁸¹ Directive 2009/5/EC of 30 January 2009 - amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities, *OJ L 29, 31.1.2009, p. 45–50*

⁸² Directive 2006/22/EC of the European Parliament and the Council of 15 March 2006 - on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, *OJ L 102, 11.4.2006, p. 35–44*

Table 4.4 - Maximum Fine for Daily Driver Hour's Infringements⁸³

Member State	Fine (Euros)
Belgium	1600
Estonia	766
Greece	400
Spain	4600
France	1500
Hungary	1677
Netherlands	1320
Romania	1470
Slovakia	991

4.5 The Evolution of the Effectiveness of Cabotage Controls in the Road Haulage Sector

This section examines the effectiveness of the current controls on the performance of cabotage operations in respect of the current limits set out in Regulation (EC) No 1072/2009⁸⁴ on common rules for access to the international road haulage market. We look at the clarity and interpretation in various Member States of the requirements laid down by the Commission as well as some of the practical difficulties that have already arisen in the relatively short time that the current regime has been in place. In unpicking some of these issues a number of possible routes for resolution are identified for further consideration.

Table 4.5 provides a summary of the enforcement bodies responsible for the enforcement of cabotage rules in the some of the Member States⁸⁵. The table also indicate the Member States where other institutions are in charge of roadside checks relation to social legislation.

Table 4.5 – Cabotage Enforcement Bodies in Selected Member States⁸⁶

Member State	Dedicated Enforcement Bodies	Presence of other bodies for road checks for social legislation.
Austria	Local Police	✓
Belgium	National and Local Police	✓
France	Controleurs des transports terrestres – specialised body within the Ministry of Transport	✓
Germany	BAG – Federal office for Goods Transport BAG – Federal Office for Goods Transport Police and Customs	
Hungary	National and Local Police	✓
Italy	National and Local Police, Customs	✓
Lithuania	Road Transport Inspectorate National Police	
Netherlands	Inspectorate for Transport and the Environment	
Poland	General Road Transport Inspectorate	
Spain	National and Local Police	
United Kingdom	Vehicles and Operator Services Agency (VOSA)	

⁸³ COM(2009) 225 final, Report from the commission, Analysing the penalties for serious infringements against the social rules in road transport, as provided for in the legislation of the Member States, 2009, *European Commission*

⁸⁴ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, *OJ L 300, 14.11.2009, p. 72–87*

⁸⁵ Development and Implementation of EU Road Haulage, 2013, *European Parliament*

⁸⁶ Development and Implementation of EU Road Haulage, 2013, *European Parliament*

The presence of multiple enforcement bodies within one Member State is often seen as a potential barrier to effective controls in some Member States. In Belgium, six different bodies can in principle carry out cabotage enforcement, with the risk of duplicating efforts and overlapping responsibilities. In Hungary and Spain, as a result of recent devolution reforms, regional police bodies are tasked with roadside checks, however the interface between the local bodies and national authorities can prove to be problematic, for example in the communication of data.

4.5.1 Cabotage – Recent Regulatory History

The definition of cabotage according to Regulation (EC) No 1072/2009⁸⁷ is "national carriage for hire or reward carried out on a temporary basis in a host Member State." This makes it distinct from international traffic which is from one country to another country by a HGV registered in either of those countries or cross trade which is from one country to another country by a HGV registered in another EU Member State.

Whilst the development of the current regime of cabotage control has been well documented and has understandably been the subject of much public and political scrutiny, it is worth recounting the steps that have led us to the current system.

Regulation (EC) No 3118/1993⁸⁸ laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State allowed the provision of a road haulage service within a Member State by a haulier established in another Member State under the condition that this service is provided on a temporary basis. In practice it became quickly evident that it was difficult to assess the temporary character of a transport operation and thus whether such transport is legal.

This prompted the Commission to adopt an interpretative communication on the temporary nature of cabotage and it concluded that continuous, systematic or regular activities without leaving the country by a haulier who is not established in the host State on the territory of that State are considered not to be in line with Regulation (EC) No 3118/1993. However, despite this clarification some Member States still saw a need to develop their own guidance or national rules on road cabotage. This legal framework left hauliers without legal certainty that the cabotage operations they are carrying out in a Member State other than their own are lawful and it impedes effective enforcement by national authorities.

In developing its policies on cabotage a range of options were proposed for consideration by the Commission:

- No change
- New interpretative communication:
 - This would confirm that Member States are free to allow cabotage for up to one to two months and require a logbook (book of record sheets) in vehicles carrying out cabotage, and to take a restrictive stance (e.g. forbidding vehicles to come back within a year).
- Limited consecutive cabotage:
 - A maximum of three cabotage operations could be carried out within seven days following an international transport operation. All journeys (incoming plus the cabotage operations) would be clearly documented using the existing consignment letters (CMR document). Information from the tachograph could be used in order to check the maximum number of consecutive cabotage operations following the international transport trip.
 - Based on a survey of a limited sample of hauliers, it was estimated that the average frequency of cabotage trips is 10 per year, the number of cabotage trips consecutive to international transport does not usually exceed three and the

⁸⁷ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, *OJ L 300, 14.11.2009, p. 72–87*

⁸⁸ Regulation (EC) No 3118/1993 of the European Parliament and of the Council of 12 November 1993 - laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State, *OJ L 279, 12.11.1993, p. 1–16*

average duration of cabotage trips is between six and 12 hours. Hauliers making regular international trips would be allowed to return to the host Member State on a weekly basis to perform cabotage transport operations again.

- Unlimited consecutive cabotage:
 - Cabotage would be allowed following an international trip for an unlimited number of operations and during a period of one month.

A fact sheet on the European Commission's website⁸⁹ details the European Union has gradually created the conditions needed to allow a liberalised internal road transport market to be introduced. However, to create fair conditions for competition, further harmonisation was needed on social, technical and fiscal conditions. The road package adopted in October 2009 incorporated two EU Regulations ((EC) No 1071/2009⁹⁰ and (EC) No 1072/2009⁹¹) relevant to international and cabotage road haulage services. This package provides an enforceable definition of the temporary nature of cabotage operations, a simplified format for the Community License, and enhanced procedures to facilitate the exchange of information between Member States about infringements by carriers and conveys the obligation of a Member State to take action against a carrier who has committed an offence in another Member State.

Regulation (EC) No 1071/2009 was concerned with introducing stricter rules on entry to the road haulage business and sought to modernise the road transport industry's image. As we now know, through Regulation (EC) No 1072/2009⁹² the option for limited consecutive cabotage was adopted as this was seen as a simple and enforceable definition of cabotage and it was believed that it would lead to more clarity, less uncertainty and more equality as regards competitive conditions. It was felt that this approach would not significantly change the volume of cabotage and the envisaged legal limitations seemed to be consistent with current practices.

This measure was believed to encourage more efficient controls and time spent during roadside checks would be reduced as the obligation to carry logbooks in the Member States was removed.

Whilst there are agreements to open cabotage between the Benelux states (linked to the Benelux Agreement and predating EU legislation), longer stays than the seven day limit are not generally possible. Exceptionally, very limited alternative arrangements are in place, for example between the UK and Ireland to deal with exceptional peaks in demand for the transportation of cars. However, whilst tolerated due to limited duration and specific nature, such arrangements are not foreseen by legislation.

Following the publication in June 2012 of the High Level Group's Report on the Development of the EU Road Haulage Market the Commission has now developed the following cabotage policy packages:

- Opening of cabotage without time extension
- Opening of cabotage with time extension and the application of local Labour law
- Opening of cabotage through a two-way system
- Liberalisation of cabotage and application of local labour law

4.5.2 Current Stakeholder Opinion

⁸⁹ http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuld=FTU_4.6.2.html?fluid_FTU_4.6.2.html – International and Cabotage Road Transport, Piero Soave, 05/2013

⁹⁰ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 – establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 1996/26/EC

⁹¹ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, *OJ L 300, 14.11.2009, p. 72–87*

⁹² Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, *OJ L 300, 14.11.2009, p. 72–87*

Transport Logistics Netherlands

Although TLN certainly understands the purpose of the change in cabotage rules (a clear EU definition on cabotage instead of different Member States' interpretations concerning "temporarily") the change has caused a huge set back in transport efficiency, environmental achievements and also politically seen a step back in the creation and functioning of the internal market. Instead of fulfilling the final step in the liberalization process, the EU sets a step back by limiting cabotage.

HLG Questionnaire 2011

A wide-ranging questionnaire and subsequent public hearings of stakeholder groups, undertaken by the High Level Group appointed by the Commission to assess the state of the EU road haulage market and make published recommendations about what course of actions should be pursued to further integrate the market, has been extremely helpful in providing a gauge of opinion on a number of critical issues, including the benefits of the current system of cabotage facilitation and the effectiveness of controls. The HLG's questionnaire was conducted in December 2011 sought to identify policy, views and opinion on the following; quality in the road haulage sector; social issues; enforcement; road user charging; driving restrictions and cabotage. This questionnaire received 87 responses which have been analysed and reported to the HLG for the development of their Report on the Development of the EU Road Haulage Market.

European Express Association

The new rules have not given the transparency and legal assurance as expected. Too many countries interpret and apply rules in different ways. Furthermore, it is not acceptable that in some countries complex local regulations have been introduced on top of the EU regulation that virtually makes cabotage impossible. Those local restrictions include tax registration, fiscal declarations, pre-announcement of truck numbers etc.

HLG Questionnaire 2011

Some 41 respondees stated that the change in cabotage rules introduced in 2010 had not be valuable to them. 32 respondees indicated that it had been of value to them. When looking only at responses from haulage organisations and hauliers, 18 respondees said the change had been not been valuable, verses 15 who has said it had. Operationally one may conclude therefore that there have been 'winners' with the new rules but there are rather more for whom the change has not been helpful.

This balance of opinion is reinforced by the fact in answering a subsequent question some 50 respondents indicated that the rules on cabotage limited flexibility and efficiency, with less than 30 saying that it did not. This level of opinion was most strongly expressed by the shipper community.

Of greater relevance to this chapter is the additional question posed in the questionnaire:

Do you think that the controls aimed at ensuring compliance with the current cabotage rules are effective?

Some 45 respondees said 'no' in comparison with 33 positive responses. In deeper analysis of the figure-work, whilst those organisations from a shipper/forwarding background were rather more positive about the effectiveness of the compliance controls, when looking at responses from the haulage community, some two and a half times more responded that that controls were not effective than responded that they were effective – 25 responses versus 10 (See Figure 4.5).

International Road Transport Union

The new rules have established a clearer definition of "cabotage", but there are indications that Member States still interpret the rules in different ways. So, the legal certainty for road freight transport operators could still be improved.

HLG Questionnaire 2011

Figure 4.5 - Cabotage Controls. HLG Questionnaire 2011, Road Haulage responses analysed by AECOM

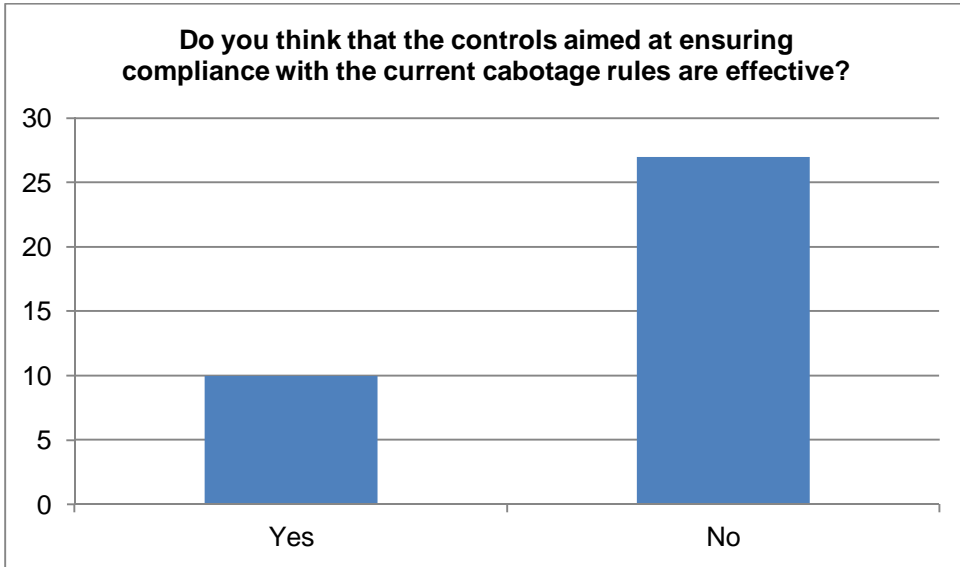
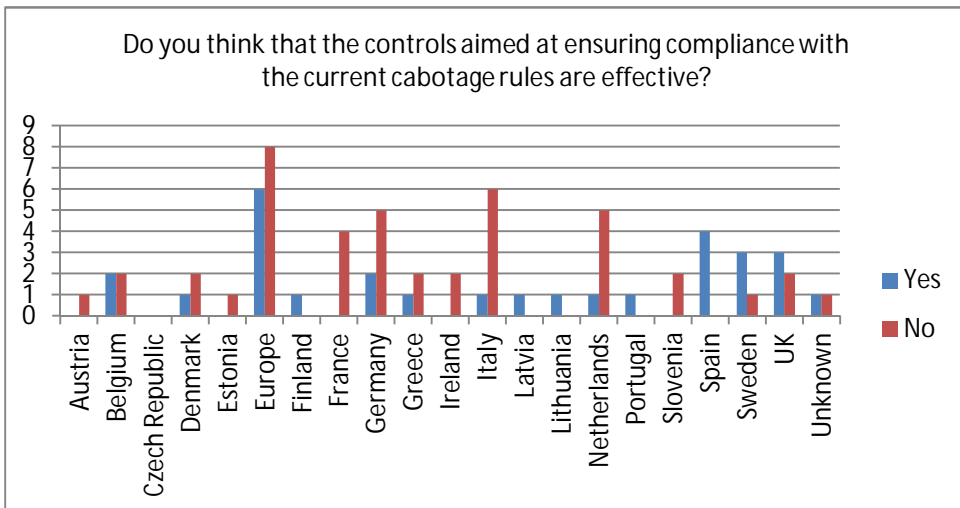


Figure 4.6 breaks these responses down by country of respondee and it can be seen that a number of countries sole response to the question posed is negative, and for multiple responses France, Germany, Italy and the Netherlands are showing a particularly high level of opinion that the controls on cabotage are not effective.

Figure 4.6 - Cabotage Control Country Responses. HLG Questionnaire 2011, analysed by AECOM



AFTRI (French International Road Haulage Association)

The new rules on cabotage are more precise, control documents are planned but do not allow reliable control of transactions.

We believe that it has no impact on reducing empty returns and the rate of filling of vehicles because in principle there is no fundamental change.

On the other hand, despite more precise definitions, there are different interpretations across Member States

HLG Questionnaire 2011

Examples illustrating problems from each of these countries are detailed later in this chapter. The general theme however centres around commentary from respondents that the rules cannot be controlled (20 comments) and that a uniform approach to enforcement is not taken (16 comments). A repeated theme is also noticeable with regard to a call for the use of vehicle location technology such as Global Navigation Satellite Systems (GNSS) to record the start and end of each cabotage operations. In summary then, whilst we have to be careful in drawing concrete conclusions from what was a limited questionnaire, we can say that on the balance of evidence provided to the HLG, there is noticeable dissatisfaction within the freight community about the cabotage limits themselves, their implementation and enforcement.

4.5.3 Implementation and Interpretation by Member States

Austrian Federal Economic Chamber

From our point of view, cabotage controls are highly ineffective, and according to the authorities cabotage has become nearly impossible to control.

HLG Questionnaire 2011

A 'Questions and Answers' note, addressing the key aspects of the current cabotage rules was adopted in 2011 by the Road Transport Committee set by Regulation (EC) No 3821/1985⁹³. A copy of this report is provided in Appendix 2. Despite its quest for legal clarity, some aspects of the current cabotage rules do however seem to be causing interpretive issues – in particular the application of the rules to groupage traffic and to unaccompanied trailer traffic. Perhaps this is not surprising given that they have only been operative across the EU for less than two years and an inevitable 'bedding in period' is required.

The European Parliament report on the development and implementation of EU Road cabotage⁹⁴ provides some commentary on the regulatory changes some Member States have had to take in order to implement the Regulation. In Hungary, it was necessary to amend existing regulations in order to remove the need for registration to a national register by foreign vehicles. This was incompatible with Article 8 of Regulation (EC) No 1072/2009. Similarly in the UK the introduction of the new regulation led to some changes, such as the removal of the requirement contained in the Goods Vehicles (Licensing of Operators) Act of 1995 to have a UK licence to operate in the UK where a company has a Community licence. At the time of writing the report the Netherlands was in process of drafting complimentary legislation and the Austrian government amended its own Freight Transport Act only in February 2013.

Danish Transport and Logistics

The new rules are still being tested, but firstly there seems to be a question of the willingness to assign resources to carry out the checks. Secondly, there seems to be confusion on which documents etc can serve as the basis for controls and sanctioning. Thirdly authorities of member states need to work better together to ensure that infringements are prosecuted and sanctioned.

HLG Questionnaire 2011

⁹³ Regulation (EC) No 3821/1985 of the European Parliament and of the Council of 24 July 2009 - on adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny, *OJ L 370*, 31.12.1985, p. 8–21

⁹⁴ European Parliament Directorate-General For Internal Policies, Development and Implementation of EU Road Cabotage Study 2013

UK Cabotage Enforcement Clampdown

In the six months following the introduction of the new cabotage system in May 2010 UK's enforcement agency - the Vehicle and Operator Standards Agency (VOSA) checked more than 6,000 foreign vehicles a month since the regime's introduction in mid May 323 £200 fixed penalty notices, having found 449 offences. Interestingly a number of foreign operators subsequently applied for UK licences so they can operate legitimately.

In the European Parliament report it is concluded amongst other things that the Regulation has:

- Led to a reduction in the uncertainties around different national interpretations of the previous rules.
- Clarified the temporary nature of cabotage by introducing quantitative criteria
- Harmonised the requirements for documentation that were previously very diversified across the EU

However, the report also describes a number of shortcomings in relation to the interpretation of current rules including the different practices adopted by Member States with respect to partial unloading of cabotage operations (multidrops), and differences between the type and level of sanctions applied for infringements.

It also notes that the harmonised functioning of the cabotage market in the EU is also challenged by other regulatory issues which are out of the scope of Regulation (EC) No 1072/2009. For example the 'patchwork' of provisions regulating labour aspects of road haulage operations and there is no uniform application of the Posting of Workers Directive in the cabotage market. At the same time, the extent to which clients of road haulage operations are co-responsible for the fulfilment of existing rules (including the cabotage ones) or the insurance requirements imposed on vehicles circulating on the national networks varies widely across the EU. The report recommends that some actions could be considered to further harmonise labour laws applying to the cabotage sector as well as the way companies commissioning haulage operations are responsible for their legacy.

These issues plus a number of others are further explored in the following sections.

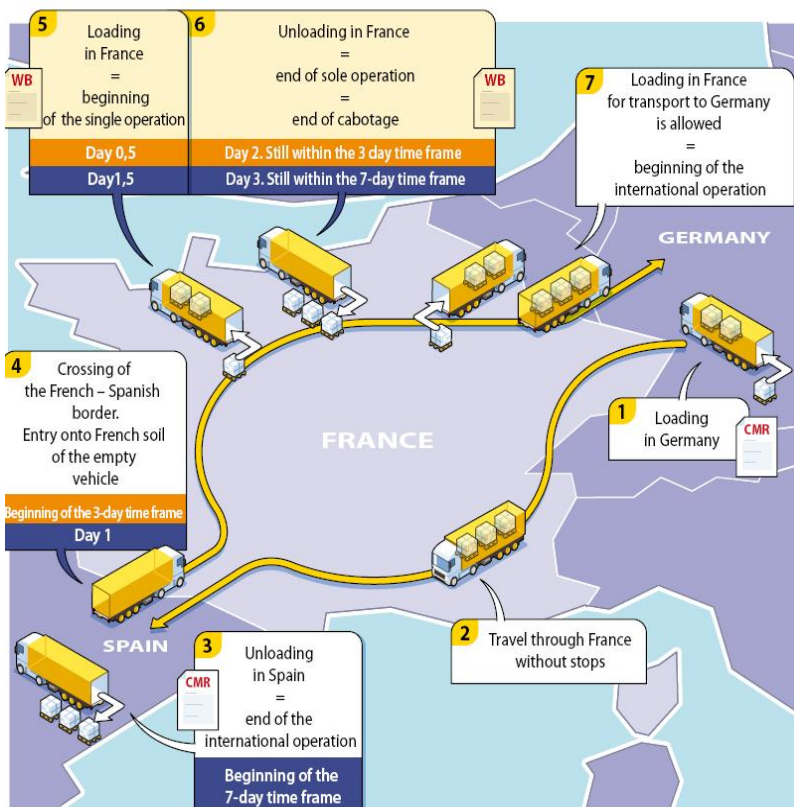
4.5.3.1 Cabotage Guidance

Not all Member States provide cabotage guidance, although best practice examples such as France may exist. In an example of international best practice the French Ministry of Ecology, Sustainability, Transport and Housing has produced a guide to the regulations entitled 'Freight Cabotage Transport – the French Regulation'⁹⁵. A copy is shown in Appendix 3 of this report. This guide is available in a number of languages and covers the following topics:

- Cabotage conditions
- Documentation
- Penalties
- Circumstances where a non resident haulier must be set up in France
- Liability of the principle
- VAT

⁹⁵ 'Freight Cabotage Transport – the French Regulation' - March 2011. French Ministry of Ecology, Sustainability, Transport and Housing. www.developpement-durable.gouv.fr

Figure 4.7 - 'Freight Cabotage Transport – the French Regulation' March 2011 French Ministry of Ecology, Sustainability, Transport and Housing



In our work to investigate cabotage controls across Europe the AECOM study team has identified a number of references to cabotage controls, and a certain amount of guidance is available on Ministry web sites and commercial guides such as Croner's Road Transport Guide⁹⁶. This guide includes guidance from the Danish Transport Authority and the Italian Ministry of Transport. However, to date we have not found guidance as elaborate or well presented as the French example, and as such it should be seen as a best practice example and something for other Member States to consider.

However, such information must be effectively communicated up and down the supply chain, to make all parties to a transport contract aware of their cabotage obligations and this includes truck drivers themselves. Interestingly and rather worryingly the European Transport Workers Federation has stated in its response to the HLG questionnaire that field visits it organises to interview freight drivers in parking areas has revealed that 'professional' drivers are not always aware of the cabotage rules and as a result carry out illegal operations on a 'large scale'.

4.5.4 Documentation Issues

Article 8(3) of Regulation (EC) No. 1072/2009 on cabotage states which evidence the haulier must be able to provide of the incoming international carriage and of each consecutive cabotage operation carried out. For each operation it shall comprise:

⁹⁶ www.croner.co.uk

- (a) the name, address and signature of the sender;
- (b) the name, address and signature of the haulier;
- (c) the name and address of the consignee as well as his signature and the date of delivery once the goods have been delivered;
- (d) the place and the date of taking over of the goods and the place designated for delivery;
- (e) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognised description, as well as the number of packages and their special marks and numbers;
- (f) the gross mass of the goods or their quantity otherwise expressed;
- (g) the number plates of the motor vehicle and trailer.

The Regulation does not prescribe the means by which this information must be recorded. Typically they will be included in a CMR consignment note, however other formats of consignment notes exist, a number of different documents may be used to provide the information or the CMR may be partly or incorrectly filled in.

The French cabotage guidance for example, seeks to elaborate on the documents that must be carried to evidence cabotage operations. Interestingly in addition to an international waybill (CMR) for the international leg of the journey and a waybill for each national leg, the guidance also requires operators to show additional information, namely the date of unloading of the freight and the registration number of the vehicle.

Whilst in theory these documentation requirements are easily enforceable at the roadside, the burden of proof of compliance has now shifted to the driver from the enforcer and there is some debate about the efficacy of the documentation requirements. Where there is a lack of complete information enforcement authorities may use other information (such as tachograph data) to determine whether the haulier is operating in line with the Regulation.

Under the previous cabotage regime set out in Regulation (EC) No 3118/1993⁹⁷ laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State, the idea of a 'cabotage book' was raised, and indeed in attempts to control cabotage, countries such as Italy required a book of cabotage sheets to be carried on board the vehicle. Under the High Level Group's consultation with industry, many representatives voiced the opinion that the road-side presentation of consignment note evidence is not reliable because documents can be hidden by drivers. AFTRI the French International Road Haulage Association indeed supports the establishment of a cabotage book, along the lines of the of the ECMT book.

LVS the Road Haulage Trade Association of Saarland and BGL the German Haulage Association report that cabotage operations cannot be effectively controlled by means of roadside checks and can be 'passed off' as international journeys by the use of a CMR note. In addition they state that there is no provision for efficient controls with the principals – in other words forwarders and shippers.

4.5.4.1 Chain of Command Responsibility

Regulation (EC) No 1072/2009 defines the conditions for access to the international road haulage market for road hauliers as such chain of command responsibility is excluded from its scope. However, with the increasingly strong role of the shipper and forwarder in determining the conditions under which haulage contracts are performed (See Chapter 8 of Task A report on Contracting), the matter of chain of command responsibility is potentially an important aspect of the effective control and enforcement of cabotage activities.

The principle of 'chain of command' responsibility is that all parties to a transport contract have a duties regarding compliance and can be held liable for infringements that they have in some way contributed to causing. Whilst this concept is not universally

⁹⁷ Regulation (EC) No 3118/1993 of the European Parliament and of the Council of 12 November 1993 - laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State, *OJ L 279*, 12.11.1993, p. 1–16

enshrined as a matter of course in the laws of all Member States, a number have been active with this regard. They include Ireland where regulations implementing European rules on driving time can hold consignors, freight forwarders, driving agencies, contractors and sub-contractors, vehicle operators and drivers legally responsible for breaches of driving time, breaks and rest periods. The Finnish Road Haulage Association has adopted a joint liability provision⁹⁸. This has increased the responsibility of the customer and they are now obliged to verify that the haulage companies they work with have a clean record. In addition the transport company they are using must have a valid operators' license and proof that its employer and taxation obligations have been met.

French decree 2010-389 on Road and Water Freight Cabotage of April 19th 2010 sets out the cabotage obligations including those of transport principals. In essence the principal must ensure that its contracted haulier does not carry out more than three cabotage operations in any seven day period. BUT the company does not need to verify that the requisite international transport journey has been carried out or if other cabotage operations have been made. However, the principal must maintain a record of all supporting documents for two years. In this way, transport principals are therefore obliged not to instigate transport operations that they know will be unlawful, and they are required to keep documentation that could be collated along with instructions from other shippers to form a picture of a particular operator's activities.

It is understood from BGL that German implementing legislation similarly encapsulates this notion of consignor responsibility, with an accompanying penalty of €2,000. However, BGL has stated at the HLG public hearing that the legal text is complicated to understand and that in any case there is no inspectorate specifically tasked to deal with loading companies. As such it may be concluded that in the case of German regulations on chain of command responsibility, the legislation is rather 'toothless'.

4.5.4.2 Groupage and Multi-drop Traffic

The ability for operators to undertake three 'cabotage operations' appears to be clear cut and Article 2 of Regulation (EC) No 1072/2009⁹⁹ defined 'cabotage operation' as follows:

'Cabotage operations' means national carriage for hire or reward carried out on a temporary basis in a host Member State, in conformity with this Regulation'.

However, this definition does not amplify the situation where an 'operation' involves multiple points of collection or of delivery for the same principal.

In its response to the HLG questionnaire the Dutch Ministry of Transport has highlighted that it believes in many cases the interpretation remains unclear and gives many difficulties. For example when does the second or third journey start when there is cargo still onboard loaded at the start of the journey?

Transport Logistics Netherlands has also reiterated this view that there is not a clear definition of cabotage and in its response to the questionnaire highlights the groupage problem as follows:

⁹⁸ <http://bit.ly/149X4m4> - SKAL News, Finland's new transportation legislation tightens up cabotage regulations and extends customer responsibility, 15th April 2013

⁹⁹ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, OJ L 300, 14.11.2009, p. 72–87

Denmark states that a cabotage operation can consist either of several loading point or several unloading points.

France states that cabotage must be restricted to 1 loading place and 1 unloading place.

The Netherlands considers groupage as a kind of transport where, due to the nature of groupage, there can be more loading and unloading points.

These different interpretations lead to difficulties in control practice as operators, despite a common definition, have to deal with individual Member State views on cabotage operations.

TLN HLG Questionnaire, analysed by AECOM 2011

In an official circular concerning cabotage in goods transport by road, the Norwegian government has helpfully provided the following guidance on what it regards as a single cabotage operation:

Clarifications of the rules – and special issues

What is regarded as a single cabotage operation?

A single cabotage operation is considered to be a national transport operation that starts when the goods are loaded and ends when the goods are unloaded.

The basis for assessing what constitutes a single operation is the information contained in the consignment note. The assignment described in the consignment note is regarded as one operation.

A single operation may comprise two or more loadings and two or more unloadings if this is stated in the consignment document.

Three cabotage operations may be carried out in accordance with the above.

Norway Circular Concerning Cabotage 2011

As part of the haulier interviews conducted by AECOM, a Polish operator specialising in the movement of new and pre-owned cars across the EU and Russia expressed an opinion by citing the following as an issue:

'One of the problems is that if we have one load but it has three delivery points and hence three delivery documents. This apparently counts as our three loads under cabotage rules. This is the interpretation that our Trade Association; The European Car Carrier Group says it could be adopted by enforcement agencies and hence to be careful'¹⁰⁰.

Note that this is one opinion and as such others may exist. This opinion cannot be considered in isolation.

However, as we have documented here, some Member States and EEA countries take a slightly different and indeed potentially more flexible view, rendering the trade association's advice at best over-cautious but at worst misleading.

¹⁰⁰ Interview, Polish Haulier, 2012, AECOM (Opinion of haulier/company, different opinions may exist)

A further interpretation is provided in a recent decision on the impounding of Irish vehicles in the UK, where the UK Department for Transport submitted the following written evidence in order to clarify the rules on groupage.

If there are multiple collections and multiple deliveries within the UK it can be considered to be multiple jobs. We have determined, for the purpose of enforcement of cabotage, that in such circumstances we will take the number of collections made or the number of deliveries made — whichever is lowest.

“Example: two collection points/seven delivery points would be considered to be two jobs.”

One of the conclusions of the enquiry was that any claim by a haulier that groupage was used must be established by the operator or haulier. Effectively, this means that the driver of the vehicle must be in a position to establish that any journey or part of a journey was groupage.

UK DfT written Evidence to Welsh Traffic Commissioner September 2011

The AECOM study team asked 14 organisations from 13 member states whether a single load with three delivery locations for a single customer within their state would constitute a single cabotage movement, three cabotage movements or something else. In 10 member states this would constitute one cabotage movement, in France it would constitute three cabotage movements if there are three consignment notes. The Association of Estonia International Road Carriers (ERAA) stated that it depended on the number of consignment notes. The Romanian road haulage association states that this was not specified by any legal requirement.

A cabotage guidance document produced by the Danish Transport Authority states: ‘A cabotage operation can consist either of several loading points or several unloading points.’ This indicates that multi-load, multi-drop operations would count as multiple cabotage operations in Denmark.

Therefore it appears that in some member states the number of consignment notes is seen as equivalent to the number of cabotage movements where as in others the number of loading or unloading points is seen as defining the number of cabotage movements. This may be understandable given the Questions & Answers note published by the European Commission in relation to Regulation (EC) No 3821/1985¹⁰² (as amended by Regulation (EC) No 219/2009) which provides some clarity on the issue of multiple drops as follows:

‘What constitutes a “cabotage operation”? Can there be several loading and/or unloading points? The term “operation” needs to be defined according to the common practice in the road transport industry. It means the carriage of a consignment from the picking up of the goods until their delivery at the consignee as specified in the consignment note. An operation can involve several loading points or several deliveries as the case may be.’

It seems inevitable that in what is in effect still a bedding-in period for the current cabotage system, countries are already stating divergent opinions of the status of groupage transport, and without intervention these are likely to diverge further rather than converge.

¹⁰² Regulation (EC) No 3821/1985 of the European Parliament and of the Council of 24 July 2009 - on adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny, *OJ L 370, 31.12.1985, p. 8–21*

4.5.4.3 Empty Pallets and Crates

There have been issues of inconsistent treatment of the movement of empty pallets and crates that have been used as part of an inbound international transport into a member state and then moved to another location within that member state. It was recently clarified that the carriage of empty pallets and crates may be considered as a carriage of goods in the sense of the Treaties - the meaning of goods has been clarified by the European Court of Justice (Case 7/68 Commission v Italy [1968] ECR 423) as any type of goods with an economic value: *'by goods, within the meaning of the ... Treaty, there must be understood products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions'*. This definition could therefore include the carriage of containers, pallets or packaging, as long as these are the subject of a commercial transaction, as demonstrated by a contract or transport document such as a consignment letter.

Of the 14 organisations asked by the AECOM study team organisations from the UK and Denmark stated that it did count as cabotage. Transport en Logistiek Vlaanderen (TLV – Belgium) felt that if the movement was to order then it should count as cabotage, if it was owned by the transport company or as part of a pallet exchange then it should not. This view is shared by Transport en Logistiek Nederland (TLN - Netherlands). AEBTRI of Bulgaria and FNTR of France stated that this situation was interpreted as meaning the inbound international operation had not yet finished so would not count as cabotage but a cabotage load could not be taken until this operation had finished. Sveriges Åkeriföretag (The Swedish Association of Road Transport Companies) felt that they were not sure but could see no reason as to why this wouldn't be treated as a cabotage operation. Respondents from Romania, Germany, Czech Republic and Ireland felt that this did not constitute a cabotage movement.

The cabotage Questions & Answers note published by the European Commission in relation to Regulation (EC) No 3821/1985 (on recording equipment in road transport and as amended by Regulation (EC) No 219/2009) explains that a cabotage operation can start only once the inbound international operation is complete. Taking this into account there are a number of scenarios:

- The CMR note ends when the initial load is delivered, the pallets or crates are delivered without a CMR note (or equivalent). The load would not be a cabotage movement
- The CMR note ends when the empty pallets or crates are delivered. This load would not be a cabotage movement
- The CMR note ends when the initial load is delivered, the pallets or crates are delivered with a CMR note (or equivalent). The load would be a cabotage movement

In the latter two scenarios the vehicle could not be loaded with another cabotage load until the pallets or crates were unloaded. It is not clear whether this would be allowed in the first scenario.

4.5.4.4 Automotive Sector

In the previous sub-section we detailed the opinion of a single Polish automotive carrier with regards to groupage loads.

This sector has also raised issues concerning the apparent lack of flexibility within the current cabotage controls to meet seasonal peaks in demand.

A north European car transporting company has provided commentary in its HLG questionnaire response to the effect that the current provisions failed to make provisions for their specialist sector needs, where peaks occur in domestic markets and finite capacity of specialist equipment in the home market creates a need for it to be supported by operators registered in another EU Member State for periods of up to several weeks at a time.

It cites one case to be the UK car transporter market where bi-annual peaks, lasting six weeks at a time, require the support of foreign car transporters and drivers to carry out continuous cabotage operations in order to provide sufficient car transporter capacity to meet transport requirements.

It states:

'Operating under the current restrictions and having to ship transporters 'unladen' back and forth between their home country and the UK after every third cabotage operation, in order to comply with Regulations, is a gross absurdity, halving productivity, doubling cost and GHG emissions and increasing congestion'.

Recently the UK government have approved a legislative change to allow relaxation of cabotage rules for car transporters at peak times¹⁰³. The new rules are set out in The Goods Vehicles (Licensing of Operators) (Amendment) Regulation 2013¹⁰⁴. Normal cabotage restrictions still apply outside these periods to the use of all goods vehicles, including EU operated car transporters in GB, and the users and operators of EU operated car transporters must comply with all other regulatory requirements at all times.

4.5.4.5 Unaccompanied Traffic

The control of unaccompanied trailer traffic has been the subject of some scrutiny by the European Commission's Committee on Road Transport and to a degree a satisfactory outcome in terms of cabotage control has been established.

Whilst some operators, and indeed the Irish Government have held the view that unaccompanied trailer traffic (where the prime-mover does not travel with the trailer for example on a ferry journey) represents international carriage and is thus not subject to cabotage control, this is not the position held by the Commission. Minutes of the 25th October 2010 Committee on Road Transport meeting read:

'The Commission confirmed its reading that the picking up of a semi-trailer from the port to a destination within the same country does not constitute an international transport in the sense of the Regulation (EC) No1072/2009'.

However, whilst this clarity of control has been used to uphold UK enforcement on an Irish operator undertaking the collection unaccompanied traffic for onward carriage within UK, at the HLG public hearings and in representations made to the group by the IRU, there are a number of ongoing disputes about such traffic entering the port of Trieste in Italy and into a number of French ports.

4.5.4.6 Un-laden Entry – Cross Border Work

Stakeholders in the HLG's consultative process have also raised concerns regarding the application of the rules on un-laden entry. Unlike the previous example of non-resident hauliers registered in another Member State unaccompanied trailer traffic, these issues are about the conservative nature of the current rules that prohibit un-laden entry and thus, as recounted by the Dutch Shippers' Council, a Dutch operator cannot serve a factory 1Km over the German border. Discussions further revealed that if cabotage was opened up not entirely but for a limited distance to allow border territory work, to be reasonably effective the control distance would have to be as much as 200-300Km to make it effective for industry.

4.5.4.7 Heavy Haulage – Time Limits

Through the project research and the HLG stakeholder engagement process the AECOM study team has identified a two specific 'complaints' regarding the seven day control measure. However these two complaints refer to both sides of the same coin.

On the one hand, in August 2010 the UK's Heavy Transport Association voiced concerns to the UK enforcement agency VOSA that Danish heavy hauliers were based in the UK for months to undertake transport for the increasing volume of wind-farm installations¹⁰⁵.

On the other hand, as part of the IRU delegation to the HLG in January 2011, Dutch heavy haulier Van der Vlist Logistics expressed the need for a longer time period to undertake cabotage operations because of the specialist nature of the heavy haul business, extended journey times and general pace at which loads are trips were organised and commissioned. The company noted that as a 'work around' it would load from a port in the south of France, travel to the Netherlands and then to the actual port of destination in the north of France, in effect performing two international journeys rather than one cabotage journey.

This seems clearly a case of inappropriate control, or at least control leading to significant distortion of traffic.

¹⁰³ Car transporter cabotage to be relaxed in September 2013, 20th February 2013, Commercial Motor Magazine

¹⁰⁴ The Goods Vehicles (Licensing of Operators) (Amendment) Regulation 2013

¹⁰⁵ ref. HTA Newsletter issue 21 September 2010

One further consideration in relation to the day limit is that it is consecutive days and not 'working days'. Under EU social measures, it is most likely that drivers will have at least a minimum break of 24 hours within a seven day cabotage period, and more likely 36 or 48 hours off.

4.5.4.8 The Posting of Workers Directive

Directive 1996/71/EC¹⁰⁶ applies to businesses that post workers temporarily to a Member State other than the one whose laws govern the employment relationship. The main aim of the directive is to provide cross-border services with appropriate protection of the rights of workers temporarily posted abroad for that purpose. It sets out mandatory rules at EU level that must be applied to posted workers in the host country. It establishes a core set of clearly defined terms and conditions of work and employment that must be complied with by the service provider in the host country to ensure the minimum protection of workers.

It is important to note that the cabotage controls set out in Article 9 of Regulation (EC) No 1072/2009¹⁰⁷ cover the wide ranging factors that need to be adhered to as follows:

- the conditions governing the transport contract
- the weights and dimensions of road vehicles
- the requirements relating to the carriage of certain categories of goods, in particular dangerous goods, perishable foodstuffs and live animals
- the driving time and rest periods
- the value added tax (VAT) on transport services

Thus, in conjunction with the trip and time limits and documentation requirements set out in Article 9, the main focus of the control regime is on the vehicle, its load and the trips undertaken and (with the exception of hours/rest) not on the conditions attached to the driver or their employment conditions. The increase of cabotage levels is due in part to the absolute increase in the number of drivers from other Member States following the 2004 and 2007 enlargements and the introduction of harmonised rules in Regulation (EC) No 1072/2009.

Thus any fundamental revision of the way in which cabotage might be opened up or controlled in the future needs to recognise this thorny problem and indeed it seems likely that the HLG's report to the Commission will fundamentally re-focus controlling mechanisms on the driver rather than the vehicle.

The aim of the Posting of Workers Directive is not to prevent unfair competition but rather to ensure a minimum level of protection to certain types of workers (posted workers in the sense of the Directive) when they are working in a Member State other than their own. The directive should assist in the protection of domestic transport markets from 'unfair' competition, in practice it would appear that the interpretation and application of the Directive in the context of freight transport is extremely complicated.

Road transport is not excluded from the scope of Directive 1996/71/EC¹⁰⁸ (concerning the posting of workers in the framework of the provision of services). Recital 17 of Regulation (EC) No 1072/2009 refers to Directive 1996/71/EC on the posting of workers in the framework of the provision of services as for cabotage only (the same provision is reported by Recital 13 of Regulation (EC) No 1073/2009¹⁰⁹ for the transport of people). Directive 1996/71/EC applies in cases where its conditions for scope are met. Therefore although it applies to cabotage as a sector, not all drivers carrying out cabotage fall within its scope.

¹⁰⁶ Directive 1996/71/EC of the European Parliament and of the Council of 16 December 1996, concerning the posting of workers in the framework of the provision of services *Official Journal L 018*, 21/01/1997 P. 0001 - 0006

¹⁰⁷ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, *OJ L 300*, 14.11.2009, p. 72-87

¹⁰⁸ Directive 1996/71/EC of the European Parliament and of the Council of 16 December 1996 - on concerning the posting of workers in the framework of the provision of services, *OJ L 18*, 21.1.1997, p. 1-6

¹⁰⁹ Regulation (EC) No 1073/2009 - on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, *OJ L 300*, 14.11.2009, p. 88-105

Cabotage is necessarily subsequent to an international transport movement. One can wonder what are the rules that could be applied to international transport drivers? Are they excluded from the scope of Directive 1996/71/EC when they do not drive in the case of a cabotage transport? Does international transport, especially if regularly repeated, fall in the provisions of Directive 1996/71/EC?

Helpfully on the 21st of March 2012 the Commission has announced measures to boost protection for posted workers in the form of a proposal for a Directive on the enforcement of Directive 96/71/EC. This is concerned with the posting of workers in the framework of the provision of services. Subjects to be addressed will be the free movement of services and freedom to provide, social protection and social security, workforce, occupational mobility, job conversion, working conditions, workers protection and rights and labour law.

4.5.4.9 Enforcement of Cabotage Controls

Industry respondees to the HLG consultative process have indicated both the difficulty in effectively controlling cabotage operations and the lack of uniformity in enforcement.

There are cases of Member States making use of the new regulatory regime to 'clamp down' on illegal cabotage operations, for example the UK's Vehicle and Operator Standards Agency (VOSA) and in this regard it can only be said that the rules have proved to be an effective form of control.

However, variable interpretation of the controls by different Member States and inconsistent enforcement activities mean that there is still confusion and 'legal uncertainty' with the current controls.

The French cabotage guidance, discussed earlier, seeks to elaborate on the documents that must be carried to evidence cabotage operations. Whilst this is in theory easily enforceable at the roadside and the burden of proof of compliance has now shifted to the driver from the enforcer, there is some debate about the efficacy of the documentation requirements.

UK Cabotage Enforcement Clampdown

In the 6 months following the introduction of the new cabotage system in May 2010 UK's enforcement agency - the Vehicle and Operator Standards Agency (VOSA) checked more than 6,000 foreign vehicles a month since the regime's introduction in mid May 323 £200 fixed penalty notices, having found 449 offences. Interestingly a number of foreign operators subsequently applied for UK licences so they can operate legitimately.

have their vehicle impounded. Carriers from countries that are not allowed to undertake cabotage at all are subject to a prison term of up to one year, failure to show correct documentation is subject to a level 5 fine of €1,500.

Furthermore, there is a liability on the 'principal' to ensure that its carrier does not carry out more than three cabotage operations in the seven day period and it must keep a record of supporting documentation for two years.

It is clear that the French authorities have gone to great length to make clear and communicate their cabotage regulations, and set pecuniary fines to act as a deterrent to potential offenders. This seems in stark contrast to the typical fixed penalty of around €210 offered by the UK authorities.

Industry views on cabotage enforcement are largely reflected in the European Parliament report on the development and implementation of EU Road cabotage in which it considers that there are substantial differences in the way different Member

It is interesting to note that in France hauliers flouting the cabotage rules are subject to a penalty of up to €15,000,

Danish Transport and Logistics

The new rules are still being tested, but firstly there seems to be a question of the willingness to assign resources to carry out the checks. Secondly, there seems to be confusion on which documents etc can serve as the basis for controls and sanctioning. Thirdly authorities of member states need to work better together to ensure that infringements are prosecuted and sanctioned.

States enact sanctions for infringements. It considers these differences relate to organisational and procedural aspects - such as the way enforcement tasks are delegated to (one or more) national enforcement authorities, the efforts these bodies can put in place and how these can be coordinated – as well as the type and level of sanctions.

The report goes on to say that its analysis shows that the control of cabotage operations can often be too fragmented in Member States. The reasons for this fragmentation are twofold. First, national laws have extended the responsibility for roadside checks to a variety of bodies without planning for coordination at different institutional and geographical levels. Second, some functions are duplicated as Member States need to control both the implementation of international transport regulations and social legislation. It finds that each Member State has adopted a different approach to enforcement with sanctions ranging from a minimum fine of €100 in Hungary to a maximum fine of €200,000 in Germany. This leads to a different risk level associated with cabotage infringements in different Member States. However it also notes that in Germany and UK cabotage related infringements are not significant and have been identified in no more than 0.2% of all roadside checks.

In summary therefore, in relation to cabotage controls the study team concludes that where enforcement agencies are so minded, successful prosecutions can be brought against errant operators, but there are a number of enforcement issues, most notably; the ease of which documentation can be falsified; chain of command responsibility is not a feature of most control regimes; penalty regimes are inconsistent even between neighbouring countries; There are variable interpretations of the rules in particular with respect to groupage loads, the definition of ‘cabotage operations’ and unaccompanied traffic.

4.5.4.10 Specific case - Turkish traffic in France

It is understood by the AECOM study team that as of February 2012 the Commission is examining long-running claims from the French Association of International Road Hauliers (AFTRI) that its Turkish counterparts are engaging in illegal cabotage. The allegations focus on a twice-weekly ro-ro service run by Turkish operator UN Ro-Ro, carrying unaccompanied semi-trailers between the Turkish port of Pendik and the port of Toulon-La Seyne-sur-Mer, in south-east France. Launched in January 2011, the service succeeded one operated by another Turkish company, UND Deniz, between Tekirdag and Toulon, which was withdrawn in late 2010. This service saw Turkish drivers waiting for the semi-trailers as they docked in Toulon and transporting them to their final destination in the EU.

However, under the terms of a reciprocal agreement between AFTRI and its Turkish counterpart, UND, brokered by the French Ministry of Transport and which came into effect in November 2010, French hauliers were to handle the on-forwarding of the semi-trailers on their arrival in France. But AFTRI believes that this agreement is being flouted and that Turkish hauliers are continuing to engage in illegal cabotage in France and behaving as if Turkey was part of the European Union.

AFTRI has stated that there was no systematic inspection by the French authorities of Turkish-registered HGVs carrying semi-trailers from Toulon. The Turkey-France ro-ro service has boosted freight traffic at Toulon considerably with over 18,000 semi-trailers transiting through the port in 2011. Perhaps not unsurprisingly the port is reported to be more than happy to see this traffic coming through its ro-ro terminal.

The progress of this dispute and its ultimate resolution should be closely followed by Commission staff engaged in the future development of cabotage policy and controls, as this French example will test both the robustness of the strength of the system and the resolve of Member States on whose territory allegations of illegal behaviour are made.

4.6 Conclusions

The level of enforcement by Member States, and the consistency with which it is carried out has been increasing at least since 2007 due to a number of developments being adopted and coming into force. The measures adopted in 2009 have had a significant effect. The number of checks has increased as has the threshold of minimum days to be checked. However, consultation with the road haulage industry and other feedback from industry figures demonstrates a widely held perception in the industry that the enforcement of rules on the road haulage industry is not yet effectively harmonised across all Member States.

The industry believes that two types of distortion are widespread:

- Relatively lax enforcement in some Member States giving a cost advantage to hauliers from that Member State
- Discrimination in enforcement in some Member States, with enforcement authorities targeting hauliers from outside the Member State in question. This creates a restriction on cross-border trade in these services

The evidence available suggests that this perception may come from the reliance on some Member States on road side checks rather than a mix on roadside and on-premises checks.

Other differences in enforcement that could arise are:

- Differences in the categorisation of, and penalties for, various infringements between Member States
- Significant variances in the resources devoted to enforcement in different Member States
- Significant differences in the level of driver checking, and the balance between on premises and roadside checks in different Member States
- Continuing confusion and uncertainty on the cabotage rules and their correct enforcement

Since 2009 the Commission and Member State authorities have been undertaking a series of measures to eliminate these anomalies and distortions. These include:

- Proposals to harmonise enforcement policies across Member States
- Standardising the approach to training of enforcement officers
- Improving the exchange and distribution of information between enforcement agencies
- Guidance notes established by the Committee on Road Transport
- Clarification notes issued by the Commission
- Regular meeting with experts from Member States and stakeholders (including enforcers) to discuss the application and enforcement issues

In this chapter we have also examined the control requirements driven by the current cabotage regime and the issues that this has presented in the relatively short time the rules have been properly in place. We have seen that a range of stakeholders have commented that whilst the new cabotage rules may or may not be useful to them, there is a level of concern that their control is not effective, and in some cases that it is defective.

Notwithstanding the fact that the conditions set out in Regulation (EC) No 1072/2009¹¹⁰ largely leaves employment conditions to the auspices of the Posting of Workers Directive, there is a clear opinion formed across haulier, shipper, social and governmental groupings that implementation and enforcement of the controls is at best variable. Indeed the findings of the study team are very much in line with the conclusions drawn in the European Parliament's report on the implementation of the new cabotage controls summarised as follows:

- The new Regulation has clarified the temporary nature of cabotage operations potentially making the monitoring and enforcement of cabotage regulations simpler
- Each Member State has adopted a different approach to enforcement with sanctions ranging from a minimum fine of €100 in Hungary to a maximum fine of €200,000 in Germany. This leads to a different risk level associated with cabotage infringements in different Member States
- In some Member States there are multiple authorities in charge of monitoring and enforcing the requirements of the Regulation that leads to difficulties in coordination. In addition, a number of stakeholders have explained that often the enforcement bodies across Europe lack to monitor and enforce the cabotage provisions effectively

¹¹⁰ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 - common rules for access to the international road haulage market, *OJ L 300*, 14.11.2009, p. 72–87

- In addition to the national coordination issues there is little evidence of effective international cooperation in enforcing the provisions
- Statistics in Germany and the UK show that cabotage related infringements are not significant and have been identified in no more than 0.2% of all roadside checks
- The introduction of a system similar to that used in the UK (the OCRS) could facilitate enforcement within Member States
- There are other potential improvements to enforcement that have been suggested by the High Level Group and other stakeholders. These need to be analysed in more detail and on a case-by-case basis to assess the cost-benefit of the impact of each proposal

We have seen that where enforcement agencies are so minded, successful prosecutions can be brought against errant operators, but there are a number of issues including:

- The burden of proof rests with the driver and the documentation on board the vehicle. This documentation can easily be falsified
- 'Chain of command' responsibility (shipper/principal liability) is not a feature of most control regimes
- Penalties applied are inconsistent, even between neighbouring countries
- In the context of international transport and cabotage the application of the Posting of Workers Directive is problematical

Despite the Road Transport Committee's cabotage Questions and Answer's note, there are variable interpretations of the rules, in particular with respect to groupage loads and the definition of 'cabotage operations' and there are ongoing 'disputes' regarding the position of unaccompanied traffic.

It is perhaps too early to judge with certainty whether the current cabotage control regime can be made to work more effectively. Certainly further harmonisation and cross-border co-operation of enforcement activity would be a major step forwards. The rules are of course a big improvement on previous regimes. However, there is an obvious conclusion from our research to date and that is for the development of centrally led, clear guidance and interpretation, cascaded across Member States and effectively communicated to enforcement agencies and the transport industry. Whilst delivering a restrictive position on groupage traffic, the French guidance (Appendix 2) provides a good model for the production of clear and understandable material.

In considering additional or alternative control models, it is evident that any progress that can be made in the clarification and unified application of the Posting of Workers Directive, will be helpful in creating a fairer cabotage market. The guidance currently being developed by the Commission on enforcement should thus be carefully scrutinised and an assessment made of how it may support and inform the development of future cabotage policy.

The HLG itself has explored different aspects of cabotage control, including quality thresholds, in particular for drivers, but with mixed reactions from stakeholders. A central register of caboteurs has also been mooted, and a recurrent theme from stakeholders is the greater use of technology for the tracking and recording of cabotage operations.

Telematics, global navigation satellite systems (GNSS) and digital tachograph technology already provides the capability for the remote tracking and recording of cabotage activity. The Commission is currently developing further proposals on digital tachographs. It seems sensible therefore, that in order to future-proof the likely on-going need to control and enforce the cabotage market, measures to better monitor activity in relation to cabotage are properly represented in the Commission's revisions to digital tachograph requirements. This might for example oblige drivers to record their location by GNSS at the start and end of each transport operation.

In summary significant progress has been made towards the goal of effective and consistent enforcement of the rules on driver time and cabotage throughout the EU, and this progress is ongoing.

Harmonisation of Taxation and Infrastructure Charging

5 Harmonisation of Taxation and Infrastructure Charging

5.1 Introduction

This section seeks to assess the level of harmonisation in road user charges across the EU Member States. Charges levied on hauliers can incorporate a combination of:

- Excise duty on the fuel that they use
- Tolls or user charges for the use of the road network
- Taxes on the purchase and operation of their vehicles (tax on registering a vehicle and road taxes) which are fixed in nature, i.e. do not vary with the volume of activity of the haulier

Road user charging is only one component of the total operating cost of road hauliers. For example, fuel costs account for on average around a quarter of European hauliers' direct operating costs. As a result the fluctuations in fuel prices between the years of 2006 and 2012 had significant impacts on the performance of road hauliers. This is important as any impacts on the EU Haulage market cannot solely be attributed to road user charging. Impacts need to be considered against the background of other changes in operating costs for the hauliers.

In order to assess the level of harmonisation across these charges, each element will be examined in turn, addressing the legislative basis for the charge, the structure of the charge and how the charges vary across Member States. Particular attention will also be given to whether the harmonisation of road user charges has progressed to the stage where domestic road transport markets in the EU could be further opened to competition, in particular through the further opening up of cabotage.

The key issue to be addressed in undertaking the aforementioned analysis is to determine the potential for distortion of competition. The potential for distortion is particularly significant where two Member States have adopted two differing approaches to the charges levied on hauliers. In particular, a haulier operating in a country with low taxes on purchase and operation of vehicles and high road user charges would be at a significant cost advantage should they undertake cabotage in a country with high taxes on purchase and operation of vehicles and low road user charges. Such a situation would also result in the haulier not contributing to the cost of utilising the road network in that particular country. If liberalisation were allowed to occur in such circumstances, this would result in a situation where the cost advantage of hauliers would be a product of the tax and road charging system rather than efficiency gains and so would have only limited benefits for the economy as a whole. Such a situation would further act to undermine the fiscal systems employed in collecting the cost of roads.

5.2 Fuel Excise Tax

Fuel Excise Tax is a fixed charge on every litre of petrol or diesel. This represents a variable tax since the revenue collected is directly related to activity by a haulier. While the energy taxation Directive 2003/96/EC¹¹¹ was adopted in 2003 and defines the fiscal structures and the levels of taxation to be imposed on energy products and electricity, the Directive only sets a minimum level of fuel excise. Thus, the fuel duties applied across the EU Member States do vary.

Figure 5.1 illustrates the fuel excise rates per 1000 litres of diesel as of 1st January 2013. As can be seen from the graph, the EU minimum rate of fuel duty is set at €330 per 1000 litres; however the vast majority of countries levy duties in excess of this rate. At the high end of the scale, the UK levies fuel duties at €674 per 1000 litres. This represents more than double the minimum rate.

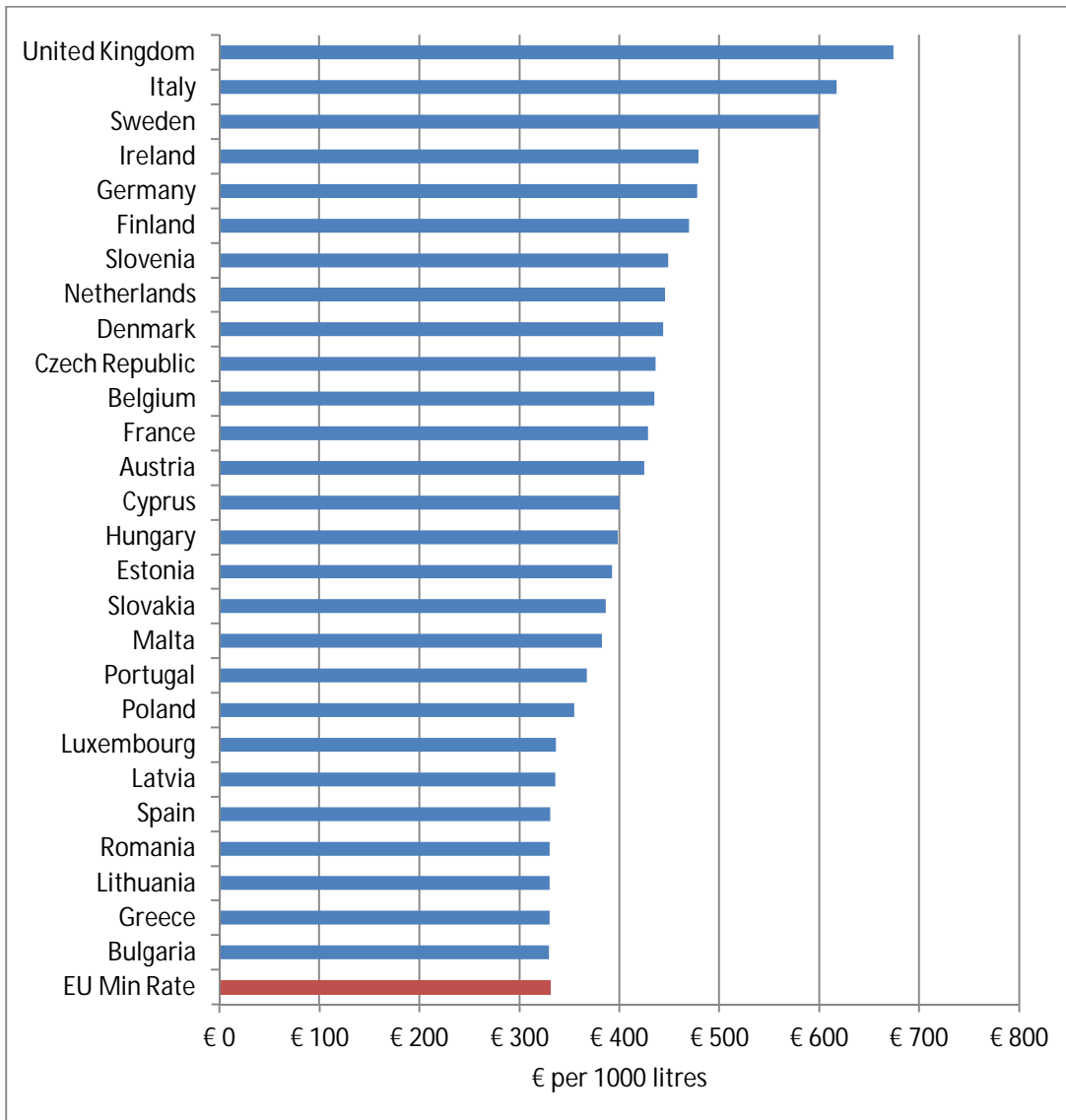
At the other extreme, the lowest duty is applied by Lithuania, Romania, Greece and Bulgaria at €330 per 1000 litres. Council Directive 2004/74/EC¹¹² and Directive 2004/75/EC¹¹³ adopted on 29 April 2004 allows for the possibility for the accession

¹¹¹ Directive 2003/96/EC of the European Parliament and of the Council of 27 October 2003 - restructuring the Community framework for the taxation of energy products and electricity, *OJ L 283, 31.10.2003, p. 51–70*

¹¹² Directive 2004/74/EC of the European Parliament and of the Council of 29 April 2004 - amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation, *OJ L 157, 30.4.2004, p. 87–99*

countries to apply temporary exemptions or reductions in the levels of taxation. However these countries all adhere to current EU policy. There is currently a difference of €344 per 1000 litres between the highest duty (UK) and the lowest (Lithuania, Romania, Greece and Bulgaria).

Figure 5.1 - Diesel Fuel Excise Rates per 1000 Litres (2012)*



Source: European Commission Fuel Excise Duties (Jan 2013)

*Rates for Sweden, Germany, Netherlands, Slovakia, Luxembourg, Austria and Belgium represent an average of rates.

¹¹³ Directive 2004/75/EC of the European Parliament and of the Council of 29 April 2004 - amending Directive 2003/96/EC as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation, *OJ L 157, 30.4.2004, p. 100-105*

When factoring in the production cost of diesel to obtain the total cost of diesel, the UK has the highest diesel price at €1.654 per litre (although this may be due in part to the sterling to euro exchange rate) and the cheapest diesel price is Luxembourg at €1.187 per litre. Luxembourg has had a historically low diesel price that hauliers throughout Europe are known to take advantage of. This is shown in Table 5.1.

Table 5.1 – Typical Diesel Price in Euro per Litre for Each Member State (Apr-2013)¹¹⁴

Member State	Diesel Price (€/litre)
Austria	1.386
Belgium	1.438
Bulgaria	1.340
Cyprus	1.433
Czech Republic	1.404
Denmark	1.448
Estonia	1.361
Finland	1.571
France	1.387
Germany	1.440
Greece	1.414
Hungary	1.469
Ireland	1.547
Italy	1.667
Latvia	1.329
Lithuania	1.353
Luxembourg	1.244
Malta	1.400
Netherlands	1.440
Poland	1.345
Portugal	1.411
Romania	1.330
Slovakia	1.414
Slovenia	1.381
Spain	1.374
Sweden	1.690
United Kingdom	1.682
EU-27	1.468

This level of difference has the potential to materially affect the relative costs of road hauliers from different Member States.

¹¹⁴ Market Observatory Oil Bulletin, 2013, European Commission http://ec.europa.eu/energy/observatory/oil/bulletin_en.htm

5.3 Road User Charging

Road User Charges are levied based on either the distance or time spent on the road network. Distance based charges are represented by manually collected tolls and distance based electronic tolling systems with a Global Navigation Satellite System (GNSS) or Dedicated Short Range Communication (DSRC) function, while time based charges are levied through vignettes (paper or electronic). The “Eurovignette Directive” 1999/62/EC¹¹⁵, as amended by Directive 2006/38/EC¹¹⁶ and Directive 2011/76/EC¹¹⁷, was introduced to create a road charging regime across the EU to allow HGVs to operate across borders. In short, the Directives set a cap on road charging, by regulation on how to calculate the distance based tolls; and by setting a maximum level for the time-based charges. However, the legislation does not provide specific directions in the development of road user charges. Consequently, the methodology employed by Member States in developing charges can vary on a range of issues such as vehicle weight, emissions and road type and this has resulted in significant variation in the charges applied across Member States.

Figure 5.2 illustrates the road user charges applied across EU Member States in 2010. As can be seen there is significant variation across countries in relation to the charges applied. The figure illustrates that nine Member States are using vignettes, 12 are using distance-based systems (two GNSS, 10 DSRC and manual). Six Member States; the UK¹¹⁸, Estonia, Finland, Cyprus, Malta and Latvia have no road user charges. It also shows that several Member States are considering changes to their road user charging regime, this includes: France, Hungary, Latvia and the UK. Denmark was considering a change but has since reversed its thinking. It is worth noting that even with these proposed charging regimes there are two Member States which are changing from time based to distance based, one changing from distance based with physical barriers to a network wide approach and two changing from no tolls to time based charges. At the time of writing, May 2013 the situation is that there are still 21 countries with some form of road charging, nine with vignettes, six with electronic-only nationwide tolls and seven with conventional tolls.

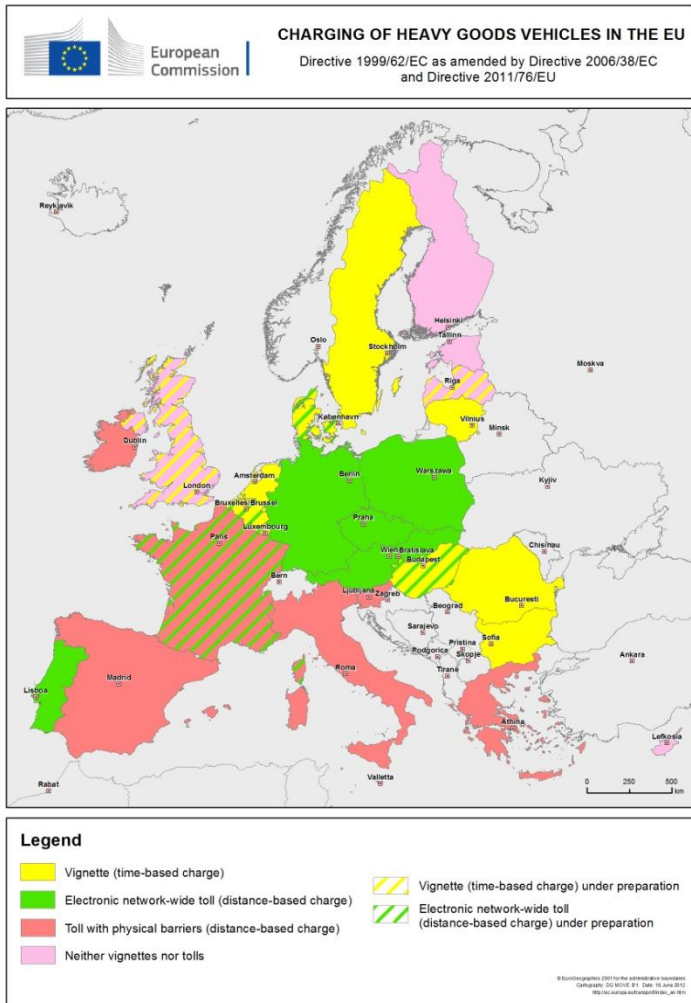
¹¹⁵ Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 - on the charging of heavy goods vehicles for the use of certain infrastructures, *OJ L 187, 20.7.1999, p. 42–50*

¹¹⁶ Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 - amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, *OJ L 157, 9.6.2006, p. 8–23*

¹¹⁷ Directive 2011/76/EC the European Parliament and of the Council of 27 September 2011 - amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, *OJ L 269, 14.10.2011, p. 1–16*

¹¹⁸ The UK is operating one Toll on the M6 Motorway. (plus some tolls for bridges and tunnels)

Figure 5.2 - EU Member States Road Charges (2010)



Source: European Commission

The AECOM study team have found that the different charging regimes and technology employed has created a barrier to international transport. Directive 2004/52/EC¹¹⁹ lays down the conditions for the interoperability of electronic road toll systems in the European Union. The requirements are that all new electronic toll systems brought into service shall use one or more of the following technologies:

- Satellite positioning (GNSS)
- Mobile communications (GSM-GPRS)
- Microwave technology (DSRC)

¹¹⁹ Directive 2004/52/EC - of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community (Text with EEA relevance), OJ L 166, 30.4.2004, p. 124–143

The Directive also sets out a European Electronic Toll Service (EETS). This enables road users to pay the tolls related to any road charging scheme (requiring on-board equipment) by simply subscribing to a single contract with an EETS provider. However, it should be noted that currently vehicles require multiple in-vehicle units to operate in different countries. In addition, haulage companies back of house staff sometimes have a difficult task to work out charges from different countries. This indicates that further work is required regarding interoperability of systems. Table 5.2 gives a breakdown of the Member States according to road user charge applied.

Table 5.2 - Road User Charges by Member State (2012)

Country	Distance Based	Vignettes	Tolls	No Charges
Austria	✓			
Belgium	FC	✓		
Bulgaria		✓		
Cyprus				✓
Czech	✓			
Denmark		✓		
Estonia				✓
Finland				✓
France	FC		✓	
Germany	✓			
Greece			✓	
Netherlands	FC	✓		
Hungary	FC	✓		
Ireland			✓	
Italy			✓	
Latvia		FC		✓
Lithuania		✓		
Luxembourg		✓		
Malta				✓
Poland	✓		✓	
Portugal			✓	
Romania		✓		
Slovakia	✓			
Slovenia	✓		✓	
Spain			✓	
Sweden		✓		
Switzerland	✓			
UK		FC		✓

*FC Forthcoming

Source: AECOM, 2012

As Table 5.2 indicates there are different systems in place for road user charging across Member States. These varying systems have resulted in very different average effective charges per kilometre. To better illustrate the differences in charges across Member States, indicative figures were calculated for the average charge per kilometre for a Euro V, 40 Tonne, 5 Axle Articulated HGV where possible. Deriving an average charge per kilometre proved particularly difficult given the different approaches to road user charges adopted by Member States. This was further exacerbated by the fact that in the case of tolled roads only a certain proportion of the road network is covered by charges. Similarly, in the case of vignettes there are often a number of different options available in relation to the validity period for vignettes.

In an attempt to overcome these issues the following approaches were adopted:

- For countries with distance based road user charges, the average charge per kilometre was obtained from literature¹²⁰
- For countries with tolls, the average charge was calculated based on the cost of a typical journey. This calculation took account of the proportion of the road network covered by tolls for that journey
- For countries with vignettes, the annual cost of the vignette which represents a mandatory cost for a domestic haulier was divided by an estimate of 50,000 annual domestic kilometres

Table 5.3 illustrates indicative figures for the average cost per kilometre. While the figures calculated are only estimates, they do give an indication of the general trend in charges across Member States and the potential differences. As can be seen there are significant differences in the charges across Member States and within and between the different charging bases. For instance, HGVs travelling in Austria are subject to a distance based charge of approximately 33 cents per kilometre compared to Germany where the distance based charge is approximately half this at 16 cents per kilometre. The variations in the charges are even starker when looking across Member States regardless of the charging structure.

¹²⁰ A Practical Approach to Road User Charging, Arena Report 2011.06

Table 5.3 - Average Road User Charge per Km across EU Member States (2012)

Country	Basis of Charge	Average Charge Cent/Km
Austria	Distance Based	33
Czech	Distance Based	22
Slovakia	Distance Based	19
Germany	Distance Based	16
Ireland	Tolls	30
Slovenia	Tolls	29
Croatia	Tolls	18
Italy	Tolls	15
France	Tolls	12
Spain	Tolls	8
Poland	Tolls	6
Portugal	Tolls	5
Greece	Tolls	3
Denmark	Vignettes	3
Netherlands	Vignettes	3
Belgium	Vignettes	3
Luxembourg	Vignettes	3
Hungary	Vignettes	2
Romania	Vignettes	2
Lithuania	Vignettes	1
Bulgaria	Vignettes	1

Source: AECOM, 2012

5.4 Recent European Commission Reports on Road Use Charging

Early 2013 Ricardo AEA produced two reports for the European Commission related to road user charging. The purpose of the reports was to identify and analyse the experience of Member States with respect to road user charging and the impact of various policy options.

These two reports are:

- Evaluation of the implementation and effects of EU infrastructure charging policy since 1995¹²¹
- Impact Assessment: Possible Commission proposal for further revisions of Directive 1999/62/EC¹²²

¹²¹ Report on the evaluation of the implementation and effects of EU infrastructure charging policy since 1995, (not published at time of writing), *European Commission*

¹²² Report on the impact assessment: possible Commission proposals for further revision of Directive 1999/62/EC, (not published at time of writing), *European Commission*

An additional report was published by the European Commission in the form of a Staff Working Document.¹²³

The outcomes of these reports are summarised here.

5.4.1 Evaluation of the implementation and effects of EU infrastructure charging policy since 1995

This report has two main components:

- An ex-post evaluation of previous EU road-user charging policies since 1995, up to and including the effects of Directive 2006/38/EC¹²⁴.
- An ex-ante analysis of the impacts of the recent revisions to the Eurovignette Directive as enshrined in Directive 2011/76/EC¹²⁵.

5.4.1.1 Ex-Post Evaluation

The ex-post evaluation comprised an assessment against nine key evaluation questions and these are the important findings:

- The majority of Member States have now implemented some form of road user charging and this is now in place in 21 EU Member States
- Differentiation in charges according to time of travel remains largely unexplored. Of the Member States with road charging in place, only six apply time-of-day charge differentiation (only two apply time-differentiation widely across the network)
- Of the Member States with road charging in place, 14 differentiate charges by Euro class (67%)
- Despite the apparent fragmented nature of road user charging in Europe when viewed as a snapshot, significant progress has been made since 1995. There is a clear trend towards greater use of electronic network-wide tolling across Europe
- All Member States, except those belonging to the Eurovignette agreement, earmark revenues at least in part to transport. Despite the voluntary nature of earmarking revenues to transport, most Member States have chosen to do so, although the precise use of the revenues is not clear. For Eurovignette countries, revenues go to the general budget
- Violation rates generally appear low and Member States impose penalty fees that are broadly comparable. In all Member States the minimum penalty for non-compliance does not exceed €375
- For toll roads, there are likely to be some savings in administrative costs for frequent users over occasional users. Directive 1999/62/EC¹²⁶ did not specify provisions for frequent user rebates, but the amended Directive 2006/38/EC capped them at a maximum of 13%. Only Spain gives larger discounts
- There are emerging several successful examples of interoperable systems in Europe, between France and Norway (with potential to also include Spain, Austria and Slovenia); Germany and Austria; Norway, Sweden and Denmark

¹²³ Ex-post evaluation of Directive 1999/62/EC, as amended, on the charging of heavy goods vehicles for the use of certain infrastructures, SWD(2013)1

¹²⁴ Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 - amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, *OJ L 157, 9.6.2006, p. 8–23*

¹²⁵ Directive 2011/76/EC of the European Parliament and of the Council of 27 September 2011 - amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, *OJ L 269, 14.10.2011, p. 1–16*

¹²⁶ Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 - on the charging of heavy goods vehicles for the use of certain infrastructures, *OJ L 187, 20.7.1999, p. 42–50*

- Most EU Member States have transposed the Directive and its amendment. However, only a few Member States have systematically implemented and applied all the provisions of the Directive
- Most Member States do not recover full infrastructure costs from road charging due to lack of methods to relate charges to costs or where charges are set by political decisions. Germany and Austria to some extent are the only two countries that are currently reflecting charges to recover investment and operating costs across the national network
- Most Member States apply charge differentiation by Euro class at levels significantly below the maximum permitted. The maximum differentiation to control air pollution was extended from 50% (Directive 1999/62/EC) to 100% (Directive 2006/38/EC). The range of charge differentiation applied in Member States is between 6% (France) and 50% (Poland and Czech Republic). Only Austria and Spain apply the maximum differentiation of 100% according to time of travel, whereas the remaining countries apply variations of 50% or less
- Charge differentiation by Euro class has been found to have an effect on behaviour change only in the case of nation-wide tolls. Network-wide tolls differentiated by Euro class have had a significant effect on the use of cleaner vehicles
- No significant evidence of modal shift was found
- Any negative impacts on peripheral Member States are expected to be small

5.4.1.2 Ex-ante evaluation

- The provisions have not yet been implemented; however, stakeholders expressed some concern over the complexity of the charge structure. The main concern was that further differentiation of tolls (in addition to those already applied) could lead to complex tariffs and a lack of transparency
- Several Member States are planning to introduce Euro class differentiation in the next few years, but a significant barrier to wider implementation stems from existing concession contracts. The majority of contracts will not be renewed until after 2025: 60% of contracts in Italy expire after 2025; 75% in Spain; 86% in Portugal and 94% in France. This is likely to delay any implementation of the provisions of the Eurovignette Directive on the conceded network
- Most Member States are not currently planning to introduce differentiation of charges by time of day
- The potential for modal shift is generally thought to be low. Freight transport is likely to continue to rely on road haulage over short distances even if policies for modal shift are introduced, as other modes cannot compete in terms of speed, flexibility and reliability
- The likely impacts of the new provisions of the Directive on the allocation of revenues are not clear at this point in time

5.4.2 Impact Assessment: Possible Commission proposals for further revisions of Directive 1999/62/EC

The Eurovignette Directive 1999/62/EC has subsequently been amended by Directives 2006/38/EC and 2011/76/EC as follows:

- **Directive 2006/38/EC:** introduced greater possibilities to vary tolls away from the average level to achieve policy objectives linked to the environment, congestion and management of traffic flows, albeit with a maximum ceiling on the degree of variation upwards. The scope was extended to cover commercial vehicles over 3.5 tonnes (a requirement that became mandatory from 2012)
- **Directive 2011/76/EC:** allows Member States to levy an external cost charge which is related to air pollution and/or noise pollution from road traffic. It also allows Member States to vary charges for the purpose of reducing congestion and optimising the use of infrastructure

- Additionally, **Directive 2004/52/EC** (the “Interoperability Directive”) and the related Decision 2009/750/EC aim to achieve interoperability of all the electronic road toll systems in the European Union. Therefore, the Directive required that a European Electronic Toll Service (EETS) should be established, while Commission Decision 2009/750/EC went on to define EETS. The main objective of the EETS was to reduce administrative burdens and costs by streamlining the process for the payment of tolls. Any tolls implemented under the Eurovignette Directive that require on-board equipment fall under the scope of Directive 2004/52/EC, except for small, strictly local toll systems for which the costs of compliance would be disproportionate to the benefits

The European Commission has identified five key problems in the area of road infrastructure pricing that are assessed in this study, as follows:

- Poor maintenance of road transport infrastructure
- Inefficient use of existing road infrastructure
- Inconsistent price signals to road users along trans-European corridors
- High operation and compliance costs of the patchwork of road charging systems in the EU
- Insufficient protection of the rights of the motorists which are subject to road charges

At the time of compiling this report the Impact Assessment has not been finalised and hence the results have not been included.

5.5 Vehicle Tax Regimes

Vehicle taxes in the EU incorporate both taxes on acquisition also known as registration tax and taxes on ownership, generally referred to as vehicle excise duty. Registration taxes are a one off charge on vehicles and do not represent a substantial element of the operating costs of the freight sector, typically 1% to 2% of total costs.

Vehicle Excise Duties (VED) as distinct from registration taxes represent an ongoing and often substantial cost to the Haulage sector. The EU Council Directive 1999/62/EC¹²⁷ sets down the minimum levels of Vehicle Excise Duty required across the EU. The Directive also stipulates a lower minimum level of VED for vehicles that are fitted with air suspension (or recognised equivalents). This is justified by the lower amount of damage a vehicle fitted with this technology causes to the road infrastructure. However not all Member States distinguish between the two categories.

However, the Directive gives Member States discretion in terms of the procedures for levying and collecting the taxes as well as the structure of the taxes and only specifies that rates set are not lower than the minimum laid down in the Directive. Consequently, vehicle excise duties vary significantly across EU Member States.

Table 5.4 indicates the varying basis for calculating annual vehicle excise duty (VED) across Member States. As can be seen the basis for calculating VED can be determined solely on weight or a combination of weight and axles, while others use weight, axles and suspension. The other category combines a number of different methodologies including combinations of weight, axles, emissions, noise and payload. Only three Member States, Cyprus, Malta and Slovenia do not apply any VED to commercial vehicles. The lack of VED by these States is permitted by the EU through Council Directives 2004/74/EC¹²⁸ and 2004/75/EC¹²⁹ which allows the possibility for the accession countries to apply temporary exemptions or reductions in the levels of taxation.

¹²⁷ Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 - on the charging of heavy goods vehicles for the use of certain infrastructures, *OJ L 187, 20.7.1999, p. 42–50*

¹²⁸ Directive 2004/74/EC of the European Parliament and of the Council of 29 April 2004 - amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation, *OJ L 157, 30.4.2004, p. 87–99*

¹²⁹ Directive 2004/75/EC of the European Parliament and of the Council of 29 April 2004 - amending Directive 2003/96/EC as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation, *OJ L 157, 30.4.2004, p. 100–105*

Table 5.4 - Commercial Vehicle Excise Duty Calculation Basis (2013)

Member State	Weight Axles Suspension	Weight Axles	Weight	NA	Other
Austria			✓		
Belgium		✓			
Bulgaria		✓			
Cyprus				✓	
Czech Republic		✓			
Germany			✓		✓
Denmark			✓		✓
Estonia	✓				
Spain					✓
Finland					✓
France	✓				
Greece			✓		
Hungary			✓		
Ireland			✓		
Italy	✓				
Latvia			✓		
Lithuania	✓				
Luxembourg		✓			
Malta				✓	
Netherlands			✓		
Poland		✓			
Portugal	✓				
Romania		✓			
Slovakia		✓			
Slovenia				✓	
Spain					
Sweden		✓			✓
United Kingdom		✓			✓

Source: AECA Tax Guide 2013

*Other incorporates combinations of: Weight, Axles, Emissions, Noise, Fuel Consumption and Payload

In order to determine the cost impact of the variability in VED structures across Member States figures provided by Member States to the European Commission have been analysed. Table 5.5 illustrates the findings from this exercise. As can be seen substantial differences exist in the VED imposed on vehicles in different Member States. The tax rate in the Member State that charges the highest rate can be up to eight times higher than in the Member State that charges the lowest rate. Latvia has the lowest level of taxation of ownership at €366 per year and Ireland the highest with taxation of over €3441 per year. These findings are in line with a similar exercise in the 2005 Burns report which cited the occurrence of 'flagging out' or moving vehicles abroad by UK hauliers in an attempt to avoid the VED in the UK.

Table 5.5 – Percentage Change for Annual Vehicle Tax (€) for Standard Tractor Semitrailer Combination (2008-2012)

Member State	2008 Annual vehicle tax (€)	2012 Annual vehicle tax (€)	Percentage change
IE	4496	3441	-23.47%
SE	2523	Data not available	
FI	2183	1460	-33.12%
UK	2151	2233	3.81%
SK6	1948	Data not available	
CZ	1793	2054	14.56%
AT	1512	887	-41.34%
EL	1200	1320	10.00%
HU	1101	1851	68.12%
DE	826	826	0.00%
ES8	797	Data not available	
NL	763	568	-25.56%
PL	729	535	-26.61%
PT	706	367	-48.02%
LT	655	655	0.00%
DK	632	691	9.34%
EE	630	630	0.00%
LU	630	630	0.00%
BE	628	571	-9.08%
BG	628	942	50.00%
CY	628	Data not available	
FR	628	628	0.00%
IT	628	640	1.91%
MT	628	628	0.00%
SI	628	Data not available	
LV	618	366	-40.78%
RO	602	523	-13.12%

Source: ACEA Tax Guide 2012¹³⁰

Assumes 3 axle, 9 tonne, fitted with air suspension, EURO III engine tractor with a 2 axle, 31 tonne maximum permissible gross laden weight semitrailer.

Table 5.5 shows the percentage change in Annual Vehicle Tax between 2008 and 2012. It is clear that there are still differences between the various Member States. Hungary experienced the highest increase in tax, while Portugal experienced the highest decrease over the time period.

¹³⁰ ACEA Tax Guide, 2012, ACEA

5.6 Harmonisation of Cost Structures

Driver costs make up a significant proportion of the total operating costs. There is variation in driver wages, social charges and other costs to the employer. Figure 5.3 provides driver costs from a range of Member States.

Figure 5.3 - Hourly Labour Cost (Euros) including uplift for allowances (2012)¹³¹

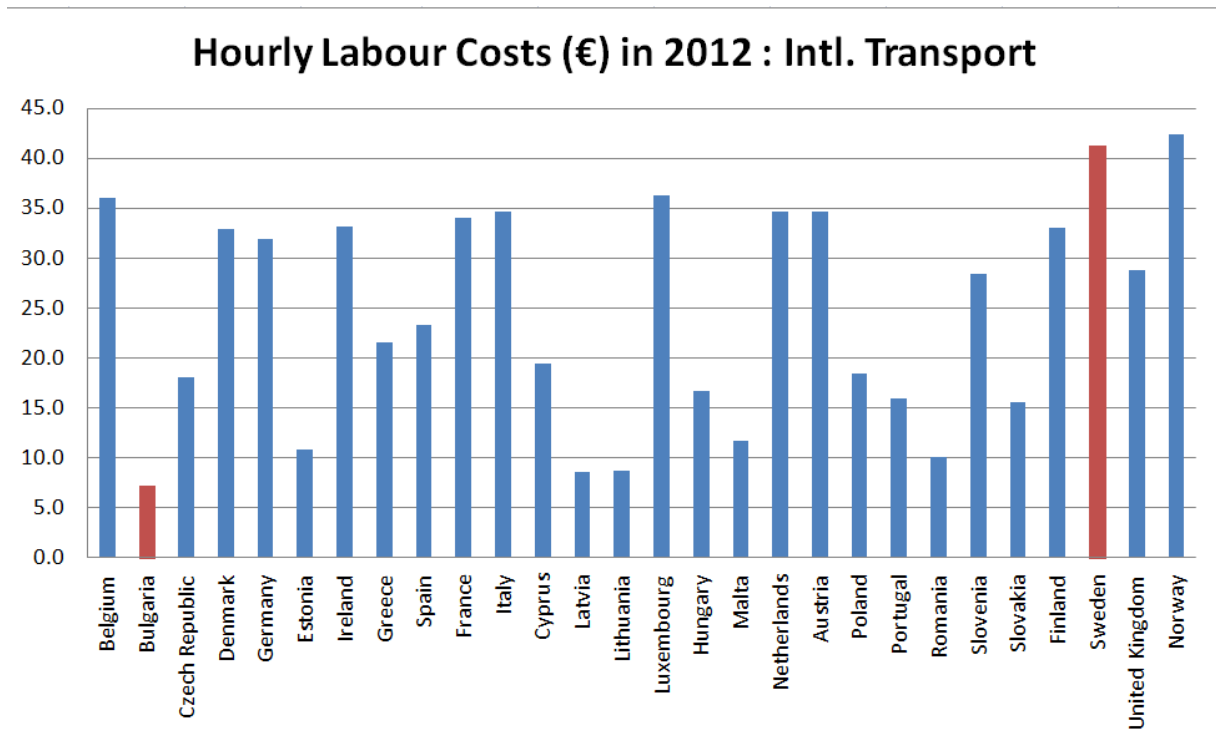


Figure 5.3 shows a factor of approximately six between the lowest cost country (Bulgaria/Romania) and the highest cost country (Norway/Sweden/Denmark). These disparities in cost are in line with disparities in average wages throughout the EU. There is also a trend towards Eastern European drivers' costs being lower than Western European costs.

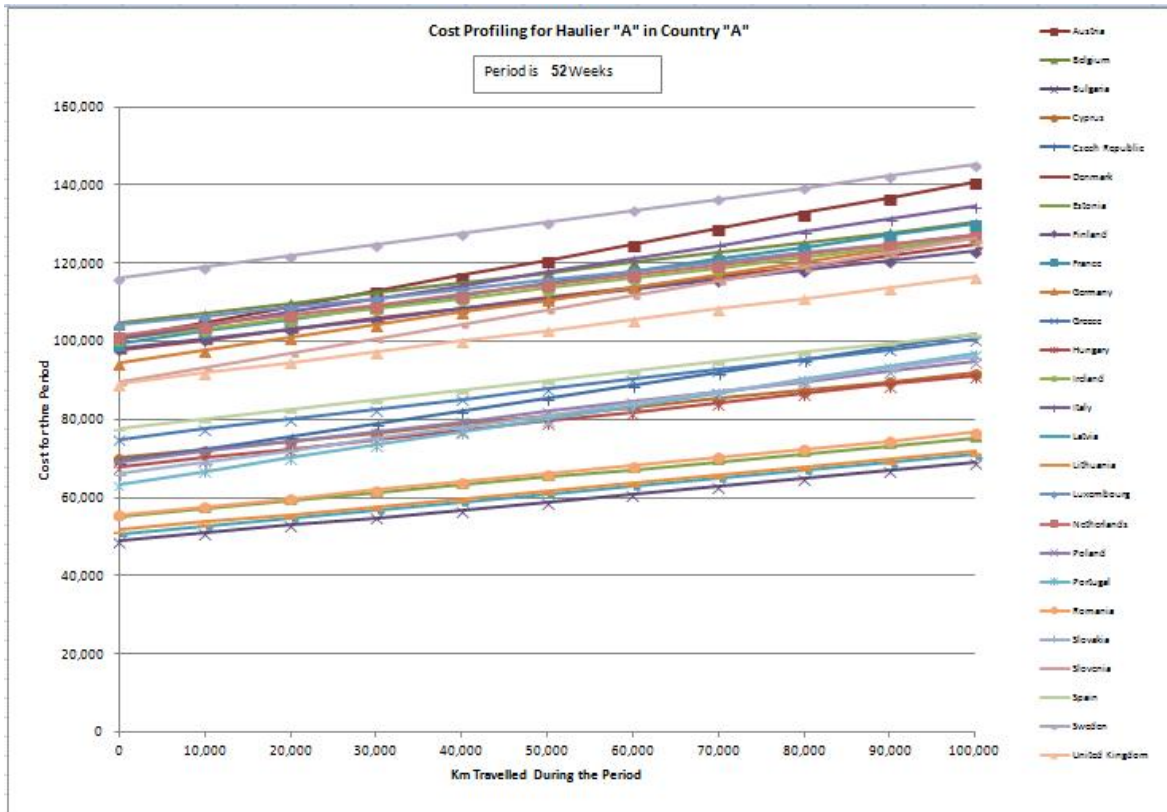
5.6.1 Potential Market Distortions

Figure 5.4 that AECOM developed presents the results of an analysis of the cost of haulage over a period of one year as a function of the total km travelled during that year. The data includes all fixed and variable costs, and shows a clear cost differential between Member States, with the higher cost economies accruing approximately twice the cost of the lowest cost economy, regardless of the distance travelled.

Figure 5.5 presents the same analysis, but excludes labour costs. This analysis shows that differences are very small at low levels of travel over the period, but that costs accrue at different rates – essentially these are user costs which reflect fuel costs, road charges and vehicle maintenance costs which all differ by Member State. The cost differential between the highest and lowest costs Member State is in the region of 25%.

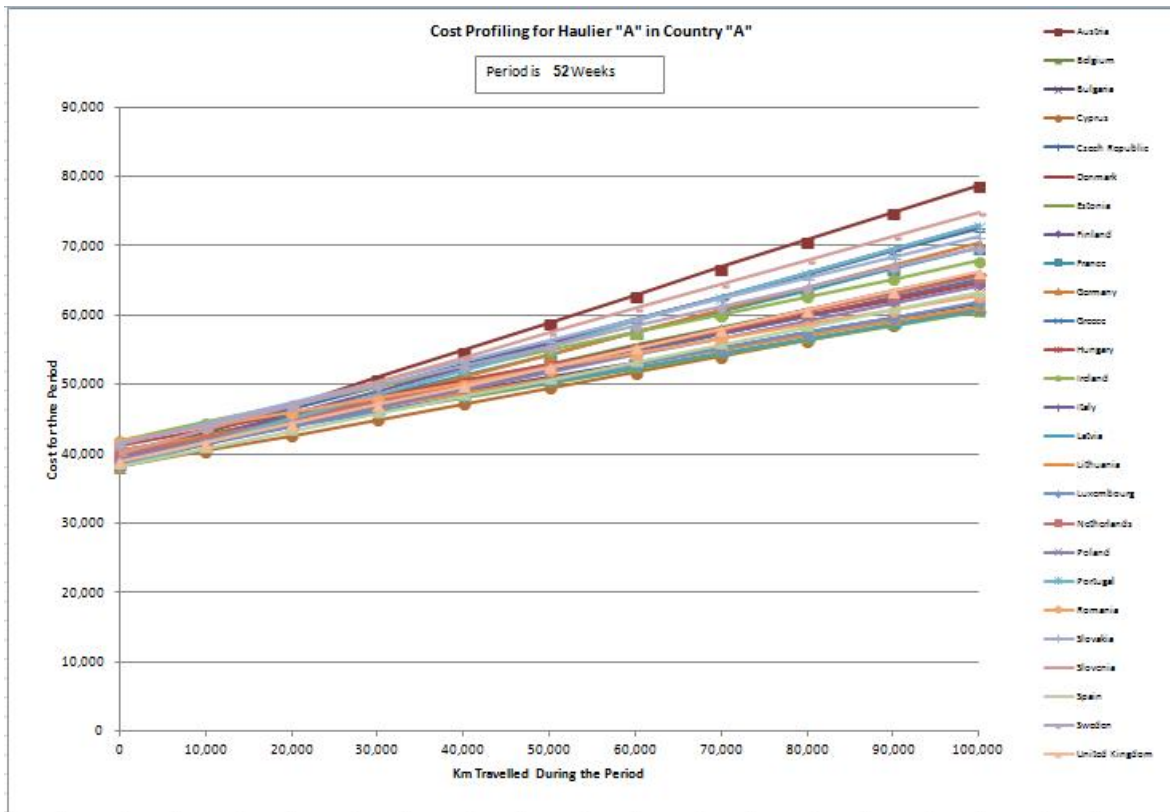
¹³¹ AECOM Modelling, 2013, AECOM

Figure 5.4 - Cost of Operation by Haulier 'A' in Country 'A'¹³²



¹³² AECOM Modelling, 2012, AECOM

Figure 5.5 - Cost of Operation by Haulier 'A' in Country 'A': Excluding Labour Costs¹³³



Examining the data behind Figure 5.5 shows that the key differential is driven by variability in costs associated with road user charges. It is noted that further harmonisation of charges across the EU-27 are focused on progressing towards a user-pays approach, which in turn is intended to bring more parity in the fixed-cost element. Nevertheless, such harmonisation might not necessarily lead to consistent per-km charge rates across all Member States, and hence the above profile might remain.

Against the background of a very high labour cost differential it is not considered that progress in road user charge harmonisation will lead to a significant change in rates of cabotage/outflagging.

Whilst we demonstrated that labour cost is a key differential and that when this is excluded the road user charges are the remaining key cost differential, hauliers will use these and other cost differentials e.g. fuel to gain competitive advantage whilst still operating within legal parameters. However there is evidence that operators may gain market advantage through non-compliance of other types of legislation. Matters of compliance and enforcement have been explored in Chapters 4 of this report. The modelling methodology that AECOM used is set out in Appendix 2.

¹³³ AECOM Modelling, 2013, AECOM

5.7 Impacts of the Road User Charging

5.7.1 Change of HGV Fleet Composition and Reduction of Harmful Emissions

The Germany MAUT system has incorporated varying rates for the different EURO emissions classes from the very beginning. The electronic tolling system used has allowed for the vehicle kilometres travelled by each EURO class to be accurately recorded. Over a five year period the combined share of EURO V and EEV (enhanced environmentally friendly vehicle) vehicles has increased from less than 1% to over 60%. Over the same period the share of EURO II or more polluting classes reduced from 33.8% to 2.3%. These results show that hauliers bought trucks after the introduction of the EURO V norm.

However, anecdotal evidence collected by the AECOM study team¹³⁴ found that operators were sending newer vehicles to areas where they benefitted from favourable charging regimes and using older, more polluting vehicles in areas which do not have the same penalties applied to these older vehicles. If this problem is widespread then it would indicate that the system is not sufficiently harmonised.

5.7.2 Detours

Tolling roads may result in traffic diverting to parallel roads with no charges. This is particularly negative with respect to HGV movements as these roads are normally secondary and less safe than the tolled roads. Furthermore they may cross through areas that are more sensitive to air and noise pollution. This diversion of freight traffic has occurred on concession motorways between Zaragoza and Barcelona. Furthermore it has occurred on un-tolled motorways in Alsace bordering the German tolled network. This is an example of differing systems impacting negatively on neighbouring Member States.

In France a tolling system known as "Ecotaxe" is being developed for introduction in 2013. This scheme is going to charge for 10,500 kilometres of currently toll-free highways, on national roads and on about 500 kilometres of secondary roads. This is to try and avoid this re-routing from occurring.

However, interestingly, in Germany a detour effect was initially experienced however this was only for the first month. After that traffic on the tolled roads began to increase again. This is thought to be due to the secondary roads not being of a good enough quality.

5.7.3 Effect on Peripheral Regions

At an aggregate EU level the net welfare implications of road user charging are positive. However these benefits are not equally distributed at regional level and a clear pattern can be identified. Regions that experience a high proportion of through traffic from trade between regions that dissects them will experience increases in toll revenues. However peripheral regions may experience a very slight increase in the costs of transport. Despite this the revenues from road user charging, if hypothesised for improving transport infrastructure may result in the periphery regions becoming more accessible and aiding their economic integration.

5.8 Potential Market Liberalisation

Further liberalisation of the EU road freight market could provide further opportunities for hauliers from a Member State that levies relatively low vehicle and fuel taxes and relatively high road user charges to be at a cost advantage if they operate in another Member State where road user charges are low and vehicle and fuel taxes are high. As discussed in the introduction this type of cross border trade is not the intended result of liberalisation and does not lead to the benefits that normally come with liberalisation of trade in a good or service. In addition large scale activity of this type could undermine the systems for recovering the cost of road infrastructure in certain Member States.

However the analysis of the total cost of hauliers described above indicates that this is likely to be a relatively minor factor in the decision of hauliers to provide services in other markets once these are legally opened to them.

¹³⁴ Haulier Interviews, 2012, AECOM (Opinion of haulier/company, different opinions may exist)

5.9 Conclusions

This section assesses the level of harmonisation in road user charges (tolls or vignettes) and other costs across the EU Member States by examining the legislative basis for the charges, the structure of the charges and how the charges vary across Member States. Furthermore this section assesses what impacts road user charging has had on the EU haulage market.

Directive 2003/96/EC sets down the EU minimum rate of fuel duty at €330 per 1000 litres. However the degree of variability in duties across Member States is significant. While the vast majority of countries levy duties in excess of this rate, some countries are still availing of rates below this level due to exemptions for accession states set down in Council Directives 2004/74/EC and 2004/75/EC. At the extremes the UK levies fuel duties at €674 per 1000 litres, in excess of 100% on the minimum rate while Lithuania has the lowest duty at €302 per 1000 litres.

The "Eurovignette Directive" 1999/62/EC as amended by Directive 2006/38/EC and Directive 2011/76/EC sets down the basis for road user charges across Member States. 21 states have some form of road charging but significant variation exists across Member States in relation to the charges nine States levying charges by vignettes, five countries have nationwide electronic tolls and seven have conventional tolls. Six Member States; the UK¹³⁵, Cyprus, Estonia, Finland, Malta and Latvia currently have no road user charges. It should be noted that the UK is introducing a vignette system in 2014.

Vehicle taxes in the EU incorporate both taxes on acquisition also known as registration tax and taxes on ownership, generally referred to as vehicle excise duty. Registration taxes are a one off charge on vehicles and so do not represent a substantial element of the operating costs of the freight sector.

Directive 1999/62/EC sets down the minimum levels of Vehicle Excise Duty required across the EU. However, Member States have discretion in terms of the procedures for levying and collecting the taxes as well as the structure of the taxes.

The basis for calculating annual vehicle excise duty (VED) across Member States varies significantly, and can include a combination of factors including weight, axles, emissions, suspension, noise and payload. In 2011, three Member States, Cyprus, Malta and Slovenia did not apply any VED to commercial vehicles. The variability in VED structures across Member States can result in significant cost differentials for hauliers. An analysis undertaken based on a Euro V, 40 Tonne, 5 Axle Articulated HGV shows how the cost of VED can vary up to 80 per cent.

In summary, significant differences remain in the costs faced by road hauliers in different Member States, despite the progress made since the 2009 legislative package. Fuel excise rates vary. The level and basis of road user charges (tolls or vignettes) also vary between Member States. Wage rates also continue to vary. The analysis of costs carried out and summarised above indicates that the remaining differences between excise rates and road user charges will not be a significant factor in the response of hauliers to any further market liberalisation.

¹³⁵ The UK is operating one Toll on the M6 Motorway.

Social Harmonisation



6 Social Harmonisation

6.1 Introduction

Many of the rules governing the conditions of work of road haulage drivers (the so called “social rules”) are set by EU legislation. The main pieces of legislation are:

- Working Time Directive (Directive 2002/15/EC¹³⁶)
- Drivers’ Hours Regulation (Regulation (EC) No 561/2006¹³⁷)
- Posting Directive (Directive 1996/71/EC¹³⁸)
- Tachograph Regulation (Regulation (EC) No 561/2006¹³⁹)

The European Community has acted in the area of drivers’ working conditions, in terms of driving and rest times and adopted the digital tachograph, which made it possible to check whether drivers were complying with the established rules.

Legislation is subject to interpretation, which might not necessarily be the same in all countries. For example, in relation to an earlier version of the Driver’s Hour Regulation the Commission stated that “Difficulties have been experienced in interpreting, applying, enforcing and monitoring certain provisions of Regulation (EC) No 3820/1985¹⁴⁰ relating to driving time, break and rest period rules for drivers engaged in national and international road transport within the Community in a uniform manner in all Member States, because of the broad terms in which they are drafted”. While the drafting of the subsequent Regulation is both clearer and more precise, this does not mean to say that there will be or are no more differences in interpretation.

6.2 Working Time Directive

The Working Time Directive, Directive 2002/15/EC, sets down the rules on the organisation of working time of persons performing mobile road transport activities. This evolved from the 1993 Working Time Directive and covered the sectors excluded from this original basic Directive. COM(2008) 650 proposed to amend Directive 2002/15/EC in order to clarify and redefine some of its provisions, particularly on the exclusion of the self-employed from the Directive. The Directive has applied to all drivers, including self-employed. However, this was withdrawn and the ‘sunset clause’ in Directive 2002/15/EC extended its scope to self-employed workers from 2009.

The main provisions of the Directive are a maximum weekly working time of 48 hours, with a maximum of six hours continuous working without a break. It also references rest periods, night work, derogations, required information and records and penalties.

The Directive came into force in March 2005 and a report (Road Transport Working Time Directive – TNO¹⁴¹) stated that in October 2006, six Member States had not implemented the Directive into national rules. This shows that there is a lag between a Directive coming into effect and it making its way into national rules, which will affect enforcement of the Directive. So despite a Directive applying to all Member States, it is possible for there to be a lack of harmonisation in the application and enforcement of the rules. It has been shown that where the level of enforcement is raised the number of detected infringements related to driving and rest time also increases¹⁴². The French Ministry reports the use of a “fine classification” system, with minor offences

¹³⁶ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, *OJ L 80, 23.3.2002, p. 35–39*

¹³⁷ Regulation (EC) No 561/2006 – of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, *OJ L 102, 11.4.2006, p. 1–14*

¹³⁸ Directive 1996/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, *OJ L 18, 21.1.1997, p. 1–6*

¹³⁹ Regulation (EC) No 561/2006 – of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, *OJ L 102, 11.4.2006, p. 1–14*

¹⁴⁰ Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport, *OJ L 370, 31.12.1985, p. 1–7*

¹⁴¹ http://ec.europa.eu/transport/road/studies/doc/2006_12_road_working_time_annexes.pdf

¹⁴² Report of the High Level Group on the Development of the EU Road Haulage Market, 2012,

punishable by third or fourth class fines whilst serious offences are punishable by fourth or fifth class fines. Very serious offences are punishable by fifth class fines or crimes specified in Ordinance No.58-1310 of 23 December 1958.

The High Level Group assembled for this project stated that there appears to be a disparity between enforcement of the working time directive between Member States. It was also reported that there were differences in the way authorities responded to the evasion of West European collective labour agreements. The severity of sanctions differs, obstructing harmonization.

The latest biennial report on the implementation of the Working Time Directive¹⁴³ states that all member states submitted the relevant reports on time, overall the timeliness of submission has improved significantly compared the last reporting period. Furthermore, thanks to new interactive reporting format the data has become more consistent, making it possible to draw more reliable conclusions. This implies that the Directive is being implemented correctly which in turn suggests a gradual harmonisation in enforcement.

The latest report also states that the number checks has increased and that the threshold of minimum working days to be checked rose from 2% in 2009 to 3% in 2010. All except five Member States reached on even exceeded the required minimum number of checks.

The increasingly widespread use of the digital tachograph and the package of measures adopted by the Commission in 2009 aimed at detecting and preventing abuses of the tachograph system has played a significant role in such positive developments.

There are a variety of types of organisations with different training practices responsible for monitoring of the working time rules and their enforcement is complex, burdensome and labour intensive which does not guarantee the checks are reliable and comprehensive¹⁴⁴. The duration of training varies considerably from five hours for the initial training in Estonia to 100 hours in Slovakia. Furthermore the study highlighted that in some Member States untrained enforcement officers are being used to check digital tachographs.¹⁴⁵

In some Member States the offences detected do not lead to the immediate imposition of penalties. This could mean that a foreign operator might be able to get away with working time breaches by leaving the country where the offence took place. A report from the Commission – Analysing the Penalties for Serious Infringements Against Social Rules in Road Transport COM (2009) 225 found that whilst most Member States have established penalties for infringements, the penalties differ from State to State and there are several types such as fixed or day fines, vehicle immobilisation, criminal penalties in cases of recurrent offences and penalties for undertakings¹⁴⁶.

¹⁴³ Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities, 2011, European Commission

¹⁴⁴ Price Waterhouse Cooper, Analysis of the technical and organisational measures employed by Member States in the Application of the Work Time Directive 2006/22/EC, 2009

¹⁴⁵ Price Waterhouse Cooper, Analysis of the technical and organisational measures employed by Member States in the Application of the Work Time Directive 2006/22/EC, 2009

¹⁴⁶ http://europa.eu/legislation_summaries/transport/road_transport/c10818_en.htm

6.3 Drivers' Hours Regulation

Drivers' Hours Regulation – Regulation (EC) No 561/2006¹⁴⁷ sets down detailed rules in relation to required daily and weekly rest periods, as well as maximum permissible driving times for all drivers of road haulage. It amended Regulations (EC) No 3821/1985¹⁴⁸ and (EC) No 2135/1998¹⁴⁹ (amending Regulation (EC) No 3821/1985 on recording equipment in road transport and Directive 1988/599/EC¹⁵⁰ concerning the application of Regulations (EC) No 3820/1984 and (EC) No 3821/1985) and repealed Council Regulation (EC) No 3820/1985.

Drivers' hours regulations cover crews, driving times, breaks and rest periods, liability of undertakings, and control procedures and sanctions for those not adhering to the regulation. In simple terms it stated the maximum daily driving time of nine hours, weekly limit of 56 hours and the requirement to take a break every four and a half hours for 45 minutes. However the driving duration allowed is different from one country to another, as there are many ways of calculating it (driving / waiting time / rest). Some countries for example the UK, have domestic hours rules for certain categories of vehicles that are exempt from EU rules. The domestic rules allow 10 hours driving and an 11 hour maximum daily duty.

As discussed in the enforcement chapter, in the case of Regulation (EC) No 561/2006, the Commission is required to produce a report every two years on its implementation. Article 13 of the Regulation sets out a list of possible national derogations from application. There are some 17 national derogations permissible and include activities such as agriculture, flood protection, non-competing public services and island operations. It is up to each Member State to decide whether or not they wish to grant the derogations or not. Table 6.1 shows the general level of derogations invoked by each Member State.

Table 6.1 – Current Derogations on Drivers' Hours Regulations (2012)

	No Exemptions	Some Exemptions	Select all Exemptions
Austria		X	
Belgium		X	
Bulgaria		X	
Cyprus	X		
Czech Republic			X
Denmark			X
Estonia		X	
Finland	X		
France		X	
Germany			X
Greece	X		
Hungary		X	
Ireland	X		
Italy		X	
Latvia		X	
Lithuania		X	
Luxembourg		X	

¹⁴⁷ Regulation (EC) No 561/2006 – of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, *OJ L 102, 11.4.2006, p. 1–14*

¹⁴⁸ Regulation (EC) No 3821/1985 of the European Parliament and of the Council of 24 July 2009 - on adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny, *OJ L 370, 31.12.1985, p. 8–21*

¹⁴⁹ Regulations (EC) No 2135/98 amending Regulation (EEC) No 3821/85 on recording equipment in road transport and Directive 88/599/EEC concerning the application of Regulations (EEC) No 3820/84 and (EEC) No 3821/85, *OJ L 274, 9.10.1998, p. 1*

¹⁵⁰ Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport, *OJ L 325, 29.11.1988, p. 55–57*

	No Exemptions	Some Exemptions	Select all Exemptions
Malta	x		
Netherlands		x	
Poland			x
Portugal	x		
Romania		x	
Slovakia		x	
Slovenia		x	
Spain		x	
Sweden		x	
United Kingdom		x	

The complete list of selected exemptions is demonstrated in the source¹⁵¹.

6.4 Posting Directive and the Rome I Regulation

This sub-section examines the issues surrounding the application of the Posting of Workers Directive to the road haulage sector. Recent case law is noted, in particular the ECJ's 2011 Koelzsch judgement and the relevance of the Rome Convention and also the Rome I Regulation which applies to employment agreements concluded on or after 17 December 2009.

6.4.1 Posting of Workers Directive (PWD)

Posting Directive – Directive 1996/71/EC¹⁵² covers employees being sent to another Member State in three situations:

- When an employer posts a worker to another Member State on his own account and under his direction, under a contract which the employer has concluded with the party in the State for whom the services are intended
- When an employer posts a worker to an establishment or to an undertaking owned by the group in the territory of a Member State
- When the employer, being a temporary employment undertaking or placement agency, hires out a worker to a user undertaking established or operating in other Member States

Member States must ensure that undertakings guarantee posted workers a central core of mandatory protective legislation laid down in the Member State in which the work is carried out:

- By law, regulation or administrative provision and/or
- By collective agreements or arbitration awards which have been declared universally applicable, in so far as they concern the activities set out in the Directive's annex

Conditions of work and employment to be covered are:

- Maximum work periods and minimum rest periods
- Minimum paid annual holidays
- Minimum rates of pay, including overtime rates
- The conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings
- Health, safety and hygiene at work
- Protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people
- Equality of treatment between men and women and other provisions on non-discrimination

¹⁵¹ http://ec.europa.eu/transport/road/social_provisions/doc/2008_national_exceptions_regulation_2006_0561.pdf, 2012

¹⁵² Directive 1996/71/EC of the European Parliament and of the Council of 16 December 1996 - on concerning the posting of workers in the framework of the provision of services, *OJ L 18, 21.1.1997, p. 1–6*

6.4.2 Implementation in the Road Transport Sector

Debate about the implementation, application and enforcement of the PWD has been regular and intense. In 2007 a second Commission Communication¹⁵³ highlighted several shortcomings as regards the way controls were carried out in some Member States and the poor quality of administrative cooperation and access to information.

Four instances of case-law have been particularly important in informing the debate on controls. The judgments of the European Court of Justice in the Viking-Line, Laval, Ruffert and Commission against Luxembourg cases in 2007 and 2008¹⁵⁴ focused on two major issues.

The first concerned how to set the right balance between the exercise by trade unions of their right to take collective action, including the right to strike, and the economic freedoms enshrined in the Treaty on the Functionality of the EU, in particular the freedom of establishment and the freedom to provide services.

The second was how to interpret some key provisions in Directive 96/71/EC, such as the concept of public policy, the material scope of the terms and conditions of employment imposed by the Directive and the nature of mandatory rules, in particular the minimum wage.

The European Parliament briefing note entitled *The Impact of the ECJ Judgments on Viking, Laval, Ruffert and Luxembourg on The Practice of Collective Bargaining and the Effectiveness of Social Action*¹⁵⁵ gives a short overview of the impacts of the Laval-case, the Ruffert-case, the Commission vs. Luxembourg, and the Viking-case on the practice of collective bargaining and the effectiveness of social action in the European Union, with the aim of giving the broadest possible update on the consequences of these important judgments on the social dimension of the Internal Market.

Extensive case law and media examples are examined in the report *Complementary Study on the Legal Aspects of the Posting of Workers*¹⁵⁶. The report notes that if the reported cases are organized by sector, three sectors stand out: temporary worker agencies, construction and transport by road. Road transport examples include the Kralowetz case, an international road haulage company with its registered in Luxembourg¹⁵⁷. The case, dating back to 2002 uncovered serious shortcomings in Luxembourg's system for monitoring international transport companies registered there.

6.4.3 The Rome Convention and the Rome I Regulations

On March 15th 2011 the European Court of Justice has delivered a judgment¹⁵⁸ concerning Mr Heilo Koelzch, an international truck driver domiciled in Germany and engaged by Gasa Spedition established in Luxembourg and specializing in the transport of flowers from Denmark to Germany and other European countries.

The Rome Convention sets out rules for determining which law applies to a contract. In summary, it says: The parties are free to determine the applicable law when making the agreement. But that choice must not deprive the employee of protection of the "mandatory rules" that would otherwise apply. In such a case, the law of the country in which the employee "habitually works" applies. If the employee does not habitually work in any one country, the law of the country in which the business that hired the

¹⁵³ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers, COM(2007) 304 final.

¹⁵⁴ CJEU cases of 11 December 2007, Viking (C-438/05), 18 December 2007, Laval (C-341/05), 3 April 2008, Ruffert (C-346/06), 19 June 2008, Commission v Luxembourg (C-319/06).

¹⁵⁵ *The Impact Of The ECJ Judgments On Viking, Laval, Ruffert And Luxembourg On The Practice Of Collective Bargaining And The Effectiveness Of Social Action* IP/A/EMPL/ST/2009-11, MAY 2010, PE 440.275 EN.

¹⁵⁶ *Complementary Study on the Legal Aspects of the Posting of Workers in the Framework of the Provision of Services in the European Union To the European Commission Contract VC/2011/0096*, Aukje van Hoek / Mijke Houwerzijl, November 2011.

¹⁵⁷ Kralowetz Case – transport by road, employer registered in Luxembourg, operations based in Austria, truck drivers from central and eastern European countries. <http://www.eurofound.europa.eu/eiro/2002/02/feature/lu0202104f.htm>

¹⁵⁸ ECJ judgment on the interpretation of Article 6 of the Rome Convention on individual contracts of employment (15 March 2011, C-29/10 (Koelzsch v. Luxembourg)).

employee is situated applies. According to some legal commentators, the fact that an employee worked in more than one country meant there could be no country of habitual employment – so the applicable law would be that of the country of the business that hired the employee. However, the ECJ has now firmly rejected that approach, ruling that the law of the place of habitual employment should in principle apply. The employer's country of business only comes into play if it is impossible for the judge to determine the country with which the work has a significant connection.

This case-law is in line with the ECJ's previous case-law in the field of judicial competence and with the Rome I Regulation¹⁵⁹, which now expressly mentions that in the absence of a choice of law, the law of the country where or from where the employee habitually works applies. The Rome I Regulation applies to employment agreements concluded on or after 17 December 2009.

6.4.4 The Complementary Study on the Legal Aspects of the Posting of Workers Conclusions

The Complementary Study on the Legal Aspects of the Posting of Workers concludes that the Posting of Workers Directive does apply to transport workers (with the exception of seagoing personnel of the merchant navy), but the system under the Directive is ill fitted to dealing with workers who do not work in a specific country but rather from a specific country. Although the PWD is generally thought to apply to cabotage activities, the exact criteria for application of host state rules is as yet unclear (France is a notable exception). Moreover, other forms of posting that are used in the transport sector may not be covered by the PWD. This creates uncertainty as to the application of the posting regime to transport workers and may lead to under-protection of transport workers. This risk is further increased by the fact that the practical enforcement of host state rules to transport workers is generally identified as problematic.

The report concludes the following recommendation regarding transport workers:

- There is reason to formulate a sub-rule for applying the PWD to transport workers
- This should be the subject of further research and should be formulated in cooperation with the relevant stakeholders and experts in the field of transport regulation. In the absence of and while awaiting a European solution, Member States may involve the national social partners in the sector to determine the proper application of the PWD to this sector

6.4.5 TRANSPO Guide for Control Authorities

The TRANSPO project (Road Transport Sector and Posting of Workers) is co-funded by the European Union (European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities). In March 2012 it published "The Inspection Activity within Posting of Workers in the Road Transport: A Guide for Control Authorities".¹⁶⁰

The project activities involved Labour Inspectors and other Control Authorities (Ministries of Transport, Road Transport Authorities, Road Police, Financial Authorities). The project's main objective was to follow up legal, administrative and practical aspects concerning controls on posted workers in the road transport sector in order to contribute to the effectiveness of inspection activities and to promote administrative cooperation at national and transnational level. It intends to offer an information and practical tool for authorities involved in controls and gives an opportunity to improve mutual knowledge of respective legislations and procedures.

The Guide examines the application of the Directive 1996/71/EC in the road transport sector and provides an outline of the main legal aspects and open issues related to the application of the Directive 1996/71/EC in the road transport sector at an EU level and within France, Italy and Romania.

It offers suggestions on making inspection activities more effective and on improving administrative cooperation in controls at a national level and transnational level. It concludes that since the administration in charge of the control in the host country is not

¹⁵⁹ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

¹⁶⁰ TRANSPO Project (Road Transport Sector And Posting Of Workers). Call For Proposal Vp/2010/011 (Contract Ref. Vs/2010/0624). The Inspection Activity Within Posting Of Workers In The Road Transport: A Guide For Control Authorities. March 2012.

responsible for the country of origin of the worker, the control needs to go through the national liaison offices. The information transmitted in this way allows the authorities of the sending country to carry out the necessary controls, if deemed necessary, at the premises of the employer. Through the automation of exchanges, communication delays between the liaison offices are short, facilitating the conduct of investigations. Main proposed steps are summed up in the following points:

- Setting up a warning system based on information collected during the road inspection or in connection with the reports received (use of the analytical / control frame attached herewith that would help to detect situations of fraud on the posting)
- If such evidence is insufficient to find a circumvention of the posting (which will be the case in most situations), it will be necessary to supplement the initial information gathered by a survey at the point of connection in France of the driver controlled (for example, examine bills of all vehicles or V1b data of all these vehicles and compare them with the accounting, in particular with the billing of company)
- Note that the improvement of control equipment (tachograph) with the possibility to reconstruct the routes through the geo-positioning, would be a way to increase the effectiveness of controls. The proposed reform of Regulation (EC) No 3821/1985 goes in this direction
- Transmission of information collected (specifically, the transmission of the analytical frame and the standard form of referral) to the competent national liaison office that will transmit it to the liaison office of the Member State concerned
- These elements can be integrated where appropriate by the information exchanged by the controllers of road transport network within the ECR network
- The liaison office of the Member State requests the competent authorities for the control in the sending country to obtain the additional checks required at the foreign undertaking that employs the allegedly posted employees. These checks relate to the field of undeclared work and frauds in the posting related to the liaison office originally involved (that remains in connection with the agents who conducted the initial findings)
- It is necessary to list the controls to be carried out in the referral form
- Centralization of information by the national liaison office that transmits the results of the survey to the inspection services for further action

Section 4.5.4.8 refers further to the Posting of Workers Directive and its application to cabotage controls.

6.5 Tachograph

Tachograph – Under Regulation (EC) No 561/2006¹⁶¹ drivers are legally required to accurately record their activities, retain the records and produce them on demand to transport authorities who are charged with enforcing regulations governing driver's working hours. Regulation (EC) No 3821/1985¹⁶² on recording equipment in road transport provided the basis for the tachograph¹⁶³ in the EU. The digital tachograph succeeded the analogue tachograph as a result of Regulation (EC) No 1360/2002¹⁶⁴ that made digital tachographs mandatory for all relevant vehicles manufactured after August 1st, 2005.

¹⁶¹ Regulation (EC) No 561/2006 – of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, *OJ L 102, 11.4.2006, p. 1–14*

¹⁶² Regulation (EC) No 3821/1985 of the European Parliament and of the Council of 24 July 1985 - on adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny, *OJ L 370, 31.12.1985, p. 8–21*

¹⁶³ A tachograph is a device that records the driving time, breaks, rest periods as well as periods of other work undertaken by a vehicle driver.

¹⁶⁴ Regulation (EC) No 1360/2002 of the European Parliament and of the Council of 13 June 2002 - adapting for the seventh time to technical progress Council Regulation (EC) No 3821/1985 on recording equipment in road transport, *OJ L 77, 13.3.2004, p. 71–86*

Commission Regulation (EC) No 1266/2009¹⁶⁵ aimed at modernising digital tachographs.¹⁶⁶ Since the introduction of the Tachograph Regulation it has been adapted to technical progress 10 times, the last in 2009. This regulation, effective October 2011, aimed to address criticisms made against the user friendliness of the digital tachography, concerning manual inputs and time spent not driving. Furthermore it introduced the 'one minute' rule for digital tachographs. Beforehand, any driving, even one second, within a minute was rounded to a whole minute for the purposes of tachograph interpretation. Under the new regulations, the tachograph records the whole minute as the dominant activity during the minute thus even 29 seconds of driving is not recorded as driving. This small change can allow extra driving time. However it is impossible to modify existing digital tachograph units so operators seeking to benefit from the additional driving time must purchase new tachographs. The change via a service exchange of the old digital tachographs is quoted at about €810 per vehicle. This could be a substantial cost for some operators and is an example of the real world effects of legislation change. The reality of this change to the rules means that there are now vehicles running on one of three systems; monologue tachographs, older digital tachographs and the newer digital tachographs.

There are sometimes differences between the legislation and what happens in practice. The way in which the tachograph selector is used by drivers can result in major differences in the times recorded. It has been reported that in some countries drivers only use two selector positions, namely work and rest, with the result that time spent waiting is not counted as work time. Harmonisation is of limited effect if the checks and sanctions in the event of non-compliances with regulatory texts are not effective.

A report on the implementation in 2007-2008 of Regulation (EC) No 561/2006¹⁶⁷ identifies the types of tachograph used by the HGVs. This showed that in 2007/2008 that the majority of HGVs throughout the EU were still using analogue tachographs. Indeed, at that time the EU total was 2:1 in favour of analogue tachographs. A follow up report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 shows that the percentage of digital tachographs found on vehicles checked at the roadside has increased since the report of 2007-2008. See Table 6.2.

Table 6.2 – Split of Analogue and Digital Tachographs from Roadside Checks and Percentage Change of Digital Tachograph

Member State	Figures from 2007-2008		Figures from 2009-2010		% Change of Digital Tachograph Since 2008
	% Analogue	% Digital	% Analogue	% Digital	
Austria	76%	24%	50%	50%	26%
Belgium	87%	13%	2%	98%	85%
Bulgaria	67%	33%	50%	50%	17%
Cyprus	100%	0%	98%	2%	2%
Czech Republic	86%	14%	70%	30%	16%
Denmark	NA	NA	NA	NA	NA
Estonia	86%	14%	69%	31%	17%
Finland	NA	NA	40%	60%	15%
France	55%	45%	12%	88%	43%
Germany	NA	NA	38%	62%	62%
Greece	99%	1%	75%	24%	23%

¹⁶⁵ Regulation (EC) No 1266/2009 of the European Parliament and of the Council of 16 December 2009 - adapting for the tenth time to technical progress Council Regulation (EC) No 3821/85 on recording equipment in road transport, *OJ L 339, 22.12.2009, p. 3–23*

¹⁶⁶ Regulation (EC) No 1266/2009 of the European Parliament and of the Council of 16 December 2009 - adapting for the tenth time to technical progress Council Regulation (EC) No 3821/85 on recording equipment in road transport, *OJ L 339, 22.12.2009, p. 3–23*

¹⁶⁷ Report on the implementation in 2007-2008 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport, 2011, European Commission activities.

Hungary	56%	44%	65%	35%	-9%
Ireland	83%	17%	65%	35%	18%
Italy	NA	NA	73%	27%	27%
Latvia	90%	10%	77%	23%	13%
Lithuania	NA	NA	74%	26%	26%
Luxembourg	68%	32%	46%	54%	22%
Malta	87%	13%	68%	32%	19%
Netherlands	85%	15%	67%	33%	18%
Poland	85%	15%	82%	18%	3%
Portugal	NA	NA	88%	12%	12%
Romania	93%	7%	83%	17%	10%
Slovakia	NA	NA	60%	40%	40%
Slovenia	72%	28%	80%	20%	-8%
Spain	NA	NA	NA	NA	NA
Sweden	NA	NA	52%	48%	48%
United Kingdom	85%	15%	77%	23%	8%
Average	67%	33%	44%	56%	23%

(data for Denmark, Finland, Germany, Italy, Lithuania, Portugal, Slovakia, Spain and Sweden not available for 2007-2008). Data reporting years are 2007, 2008, 2009 and 2010 (European Commission Implementation Report 2011 and 2012)¹⁶⁸

Table 6.2 shows a marked average percentage increase in the number of digital tachographs in vehicles of 23% since the report of 2007-2008. This increase is probably due to the replacement of old vehicles with new ones which have digital tachographs fitted as standard (a requirement of Regulation (EC) No 1360/2002¹⁶⁹). It is estimated that by 2020, 80% of the vehicles covered by the Tachograph Regulation will be fitted with a digital tachograph. The digital tachograph rules currently only apply to new HGVs so purchases on the second hand market are not subject to the rules.

ON 19 July 2011 the European Commission proposed to revise the tachograph legislation to make fraud more difficult and reduce the administrative burden, which is expected to save companies €515 million per year. By ensuring better compliance with rules on driving times and rest periods, drivers will be better protected and fair competition will be assured. The current legislation needs updating to make full use of new technological opportunities like satellite positioning. A political agreement has now been found on the proposal which is currently being reviewed by lawyer-linguists, publication in the Official Journal is expected for end of 2013.

6.6 Driving Restrictions

Driving restrictions and Access Restriction Schemes (ARS) are detailed in the study on urban access restrictions¹⁷⁰ and in the report on driving restrictions for heavy goods vehicles¹⁷¹. The type of restrictions include permanent geographical restrictions such as road closures to HGV traffic, due to infrastructure, temporary restrictions to ease traffic or limit noise/air pollution. These can be further broken down into two fixed date and non-fixed-date restrictions. Fixed date restrictions include night bans, weekend bans, holiday bans (for both holiday traffic in winter and summer and public holidays) and miscellaneous bans (road

¹⁶⁸ Report on the implementation in 2007-2008 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport, 2011, European Commission activities.

¹⁶⁹ Regulation (EC) No 1360/2002 of the European Parliament and of the Council of 13 June 2002 - adapting for the seventh time to technical progress Council Regulation (EC) No 3821/1985 on recording equipment in road transport, *OJ L 77, 13.3.2004, p. 71–86*

¹⁷⁰ Study on Urban Access Restrictions, Final Report, Rome, December 2010

¹⁷¹ Driving Restrictions for Heavy Goods Vehicles in the European Union, Final Report, Aad W. van den Engel, Zoetermeer, July 2010

section restrictions and planned road works). Non-fixed-date restrictions include commodity group bans, extreme weather bans, congestion related bans and “ad hoc” bans (occur as a result of traffic accidents).

Task A Chapter 15 deals with driving and access restrictions in more detail.

Member States are able to further restrict HGV movements by implementing national or even local laws and restrictions. The Task A report examines several restrictions which can include restricting driving time on a Sunday, driving on a public holiday, driving during the summertime and can even, in the case of Bulgaria, lead to restriction during hot weather (restrictions of certain movements during temperatures greater than 35 degrees C), or in the case of Austria, lead to night time restrictions for vehicles that emit too much noise. Greece has seasonal restrictions that are revised annually.

Within Member States, restrictions on HGVs can be made for a variety of local situations. In London for example, there is a Lorry Control Scheme, which restricts the routes a HGV can drive during night time periods. Copenhagen has one of several Low Emission Zone schemes in force throughout Europe. These LEZ schemes are not harmonised between the Member States with different criterion, rules and penalties between them.

The types of HGVs that are restricted are not harmonised between Member States either. For those Member States that do restrict HGV movements, the specific types of HGV restricted are displayed in Table 6.3.

Table 6.3 – Restrictions Applying to Differing HGV Types (2012)

Member State	HGVs Affected
Austria	7.5t+
Bulgaria	More than 2 axles
Czech Republic	7.5t+
France	7.5t+
Germany	7.5t+
Greece	1.5t+
Hungary	7.5t+
Italy	7.5t+
Poland	12t+
Romania	7.5t+
Slovakia	7.5t+
Slovenia	7.5t+

Most Member States that have HGV driving restrictions, with the exception of Bulgaria, restrict by weight although this is spread from 1.5 tonnes or greater in Greece to 12 tonnes in Poland, with 7.5 tonnes the most frequent restriction.

Weekend Driving Limitations

Figure 6.1 shows the weekend driving restrictions for Member States (2012).

Member State	Saturday											Sunday																											
	12h	13h	14h	15h	16h	17h	18h	19h	20h	21h	22h	23h	0h	1h	2h	3h	4h	5h	6h	7h	8h	9h	10h	11h	12h	13h	14h	15h	16h	17h	18h	19h	20h	21h	22h	23h			
Austria				■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Belgium																																							
Bulgaria																																							
Cyprus																																							
Czech Republic																									■	■	■	■	■	■	■	■	■	■	■	■	■	■	
Denmark																																							
Estonia																																							
Finland																																							
France												■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	
Germany												■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	
Greece																																							
Hungary												■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	
Ireland																																							
Italy																									■	■	■	■	■	■	■	■	■	■	■	■	■	■	
Latvia																																							
Lithuania																																							
Luxembourg																																							
Malta																																							
Netherlands																																							
Poland																																							
Portugal																																							
Romania																																							
Slovakia																									■	■	■	■	■	■	■	■	■	■	■	■	■	■	
Slovenia																									■	■	■	■	■	■	■	■	■	■	■	■	■	■	
Spain																																							
Sweden																																							
United Kingdom																																							

Figure 6.1 - Weekend HGV Driving Restrictions throughout Europe

Eight Member States have HGV driving restrictions during the weekend. There are exemptions to this ban, for example in the movement of fresh, perishable food.

Table 6.4 demonstrates the number of hours that each Member State restricts HGVs from driving during a typical week and demonstrates it as a percentage of total potential working time.

Table 6.4 - Weekly Driving Restrictions (2011)¹⁷²

Member State	Restriction	Weekly Hours Restricted	% Restriction
Austria	1500 Saturday to 2200 Sunday	31	18%
Belgium	None	0	0%
Bulgaria	None	0	0%
Cyprus	None	0	0%
Czech Republic	1300 Sunday to 2200 Sunday	9	5%
Denmark	None	0	0%
Estonia	None	0	0%
Finland	None	0	0%
France	2200 Saturday - 2200 Sunday	24	14%
Germany	0000 Sunday - 2200 Sunday	22	13%
Greece	HIGHLY SPECIFIC RESTRICTIONS		
Hungary	2200 Saturday - 2200 Sunday	24	14%
Ireland	None	0	0%
Italy	0800 Sunday to 2200 Sunday	14	8%
Latvia	None	0	0%
Lithuania	None	0	0%
Luxembourg	None	0	0%
Malta	None	0	0%
Netherlands	None	0	0%
Poland	None	0	0%
Portugal	None	0	0%
Romania	None	0	0%
Slovakia	0000 Sunday - 2200 Sunday	22	13%
Slovenia	0800 Sunday to 2100 Sunday	13	8%
Spain	VARYING REGIONAL RESTRICTIONS		
Sweden	None	0	0%
United Kingdom	None	0	0%

It can be seen that Austria is the most restrictive with almost a fifth of potential working time restricted on a weekly basis. It is also noteworthy that despite not having a weekend HGV travel ban in force, Luxembourg does restrict HGVs that are travelling to France or Germany at times when those countries have restrictions in place. These restrictions are designed to avoid vehicles 'waiting up' in Luxembourg until such time as they may cross into France or Germany.

¹⁷² Country Specific Information, 2011, *Croner-i Road Transport Expert*

6.6.1 Annual Driving Restrictions

It is possible to review the total number of hours that HGVs are restricted from one Member State to the next. See Table 6.5.

Table 6.5 - Annual Driving Restrictions (2011)¹⁷³

Member State	Total Hours Restricted per Annum	% of Total Hours Available
Austria	2,116	24%
Belgium	0	0%
Bulgaria	204	2%
Cyprus	0	0%
Czech Republic	836	10%
Denmark	0	0%
Estonia	0	0%
Finland	0	0%
France	1,968	22%
Germany	1,666	19%
Greece	HIGHLY SPECIFIC RESTRICTIONS	
Hungary	1,640	19%
Ireland	0	0%
Italy	1,016	12%
Latvia	0	0%
Lithuania	0	0%
Luxembourg	0	0%
Malta	0	0%
Netherlands	0	0%
Poland	456	5%
Portugal	0	0%
Romania	416	5%
Slovakia	1,600	18%
Slovenia	897	10%
Spain	VARYING REGIONAL RESTRICTIONS	
Sweden	0	0%
United Kingdom	0	0%

Austria has the highest number of hours of restricted HGV driving time with 24% of available hours in a year being unavailable for HGV driving. 14 Member States have no restrictions on HGV driving hours. These are values have been calculated based on 2011 information, the HGV driving restrictions can change from one year to the next.

Historically, HGV driving restrictions were created to socially guarantee a driver some rest from driving. By forcing all HGVs to stop, drivers would be able to be rested and no HGV operator would be able to gain an advantage over another. However, the single market has affected this system as foreign operators, who are able to work their vehicles more, are able to compete with cheaper operating costs. Additionally, the EU Drivers' Hours rules, which are designed to make sure that HGV drivers take compulsory rest periods, have added an extra layer of complexity to these countries' rest requirements. It is possible for the two

¹⁷³ Country Specific Information, 2011, *Croner-i Road Transport Expert*

systems to clash and have drivers resting more than they actually need to, which in turn can create inefficiency. For example, an HGV driver may be scheduled in his working week to rest on a weekday, yet many be forced to rest at the weekend due to the local Member State law. It may be that the EU promote the removal of Member State's local HGV driving restrictions as these historical laws appear to have been superseded by the drivers' hours rules.

Indeed, one Polish operator interviewed said 'The biggest problem according to a company director is that of the improper regulation of driver's working time. The law was established a number of years ago and is outdated. We now have new trucks and different problems to encounter in our daily deliveries. The rules were not designed with flexibility in mind for international drivers. Forcing a driver to have to take a break say in Spain after six days of work affects our company's viability. The road ban times also negatively affects our operation forcing a driver to wait regardless of whether he has any driving hours left to use'¹⁷⁴. This sentiment was heard from several hauliers.

6.7 Conclusion

Although Member States have a set of harmonised rules set out by the EU, this chapter has shown that their implementation, checks, enforcement and sanctions for breaking them are not harmonised.

The implementation of the rules can differ from one Member State to the next both in the time taken to implement the rules and to what degree that they are implemented. Some Member States will supplement the new rules with additional national rules in order to mitigate or manage their impact. Of particular note in this respect is the Posting Directive¹⁷⁵, whereby its interpretation, implementation and enforcement is particularly variable. This situation is likely to change with expected adoption of the Enforcement Directive on the Posting of Workers which aims to reconcile the exercise of the freedom to provide cross-border services with appropriate protection of the rights of workers temporarily posted abroad for that purpose. In order to do so, it sets out mandatory rules at EU level that must be applied to posted workers in the host country¹⁷⁶.

Checks are simply one stage in a procedure that starts with the detection of an infringement and ends with a sanction, and there is no evidence that the level of tolerance shown by control services is the same in all countries. Harmonisation of enforcement is addressed in Chapter 4. It should be noted that there are improvements on certain aspects of checks (for instance minimum provision for checks of social provisions in road transport) which are harmonised and levels of enforcement appear to be converging.

Several operators interviewed by the study team reported that the road haulage sector is one of the most regulated business sectors and many of the rules are complicated with different interpretations. There is a wish to see some simplification in the future. Indeed with respect to truck curfews and timed bans, there is distinct lack of cohesion across Member States, resulting in a multiplicity of local, week-end and holiday restrictions that create a 'patchwork' effect across Europe and add cost to operations.

¹⁷⁴ Interview, Polish Haulier, 2012, AECOM (Opinion of haulier/company, different opinions may exist)

¹⁷⁵ Directive 1996/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services

¹⁷⁶ Proposal for a Directive Of The European Parliament And Of The Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services 2012/0061

Harmonisation of Road Safety and Security



7 Harmonisation of Road Safety and Security

7.1 Introduction

7.1.1 Safety

The importance of robust safety and security measures in the road haulage industry is paramount to ensuring the well-being of those employed in the sector, other road users, the wider environment and the security of consignments being transported. It is an important factor in encouraging free trade to have a uniform, safe and secure road network for international operators where drivers are prepared to deliver without fear for their safety.

Enhanced legislation related to road haulage safety in EU Member States has seen significant improvements both in terms of a reduction in the number of fatalities associated with collisions on the roads and also in terms of measures to improve load security. These factors enhance the reputation of the road haulage industry which seeks to deliver on time and in full (OTIF) and creates a competitive sector.

Truck drivers are professionally trained individuals with vocational skills in terms of the Driver CPC and licence acquisition which is much longer and spread over a greater period with several different practical and theory exams, which means that their driving skills and road safety awareness is generally better than that of other driver groups such as car drivers. This chapter considers incident rates between Member States, and the level of harmonisation in the safety legislation between these States.

Vehicle design and new technology is making trucks safer with every new model emerging from the factories. The EU has made it possible to develop safer vehicle parts as a result of more than 50 directives, which include standardisation of braking systems for example¹⁷⁷.

Stakeholders contributing to a research report entitled Technical Assistance in Support of the Preparation of the European Road Safety Action Programme 2011-2020 believed that the EU and national legislation setting minimum standards of safety continues to be necessary and appropriate¹⁷⁸.

7.1.2 Security

Although trucks may be safer than they used to be on the roads, the drivers are still prone to being targeted by criminals that range from individuals siphoning fuel from vehicle tanks whilst the driver is either away from the lorry or asleep in the cab to life threatening attacks by organised criminal gangs. The gangs tend to target higher value loads or different types of vehicle and tend to steal to order. Secure truck parks are one way of helping with this situation but their provision is very patchy across Europe and it is discussed later in this chapter.

7.2 HGV Incidents and Fatalities

The dimensions and overall weight of HGVs in comparison with smaller vehicles such as cars mean that fatalities are more likely to occur when an HGV collides with another road user.

In the EU-27 in 2009, 34,500 people were killed in road incidents, down from 54,000 in 2001. Although the aim of halving deaths by 2010 does not appear to have been achieved, the industry can be pleased with the measures introduced so far but there is still more to be done and the accident rates vary dramatically across Europe. So although many of the road safety laws may be harmonised, the results show a different picture. More than 5,300 people died in road traffic incidents involving HGVs in 2008 (from a group of selected 23 Member States) and 49% of fatalities in an incident involving a HGV are occupants of cars¹⁷⁹.

¹⁷⁷ Communication from the Commission, COM(2003)

¹⁷⁸ Technical Assistance in Support of the Preparation of the European Road Safety Action Programme 2011 – 2020, 2010, *COWI, European Commission*

¹⁷⁹ HGV Traffic Safety Basic Facts, 2010, *European Commission*

Between 2000 and 2009 fatalities of HGV drivers in collisions reduced 46.6% in the EU, against an overall reduction of 35% for all modes of transport. However, fatalities in heavy goods vehicles plus all other associated fatalities increased by 6.6% during the same time period (however this figure masks year on year reductions since 2001). The proportion of fatalities involving HGVs represented 18.6% of all fatalities that occurred on the road in EU-27 countries¹⁸⁰. Member States with the best road safety records, such as Sweden, the UK and the Netherlands, were the first to set quantified targets to reduce the number of victims¹⁸¹. The collection of data on incidents and physical injuries is important to be able to make an evaluation of road safety problems¹⁸².

Non-resident drivers face a number of additional difficulties when driving on unfamiliar roads which may increase their likelihood of being involved in an incident. These include:

- Cultural and behavioural factors
- Poor/restricted view of the road and other road users due to left/right hand drive configurations
- Increased mental load
- Lack of harmonisation of road signs and speed limits
- Different priority at road junctions
- Pedestrian crossing regulations which vary across Europe

Work related stress (drivers concerned about meeting drivers hours rules, required breaks, etc.) can also affect road safety, and this does lead to drivers leaving the industry.

Legislation has been introduced to reduce the risk of certain incidents occurring. For example, driving hours regulations limits the number of hours a driver can drive and stipulates mandatory rest periods. This is to reduce the number of incidents that are caused due to fatigue. However the European Transport Safety Council (ETSC) Report: Tackling Fatigue: EU Social Rules and Heavy Goods Vehicles¹⁸³ states that EU regulations on driving and rest times are not enforced in a harmonised way across Europe, which can have a negative impact on road safety. However since then the 2012 Commission report on enforcement of social rules has shown that the situation is improving as discussed in Chapter 4. Training has been administered to drivers that can help to improve safety. There are technologies available which have the effect of reducing the chance of an incident occurring, or if an incident does occur, reduce the chance of a fatality or improving the chance of survival.

Table 7.1 show fatalities involving trucks by country.



Figure 7.1: Container Trailer following an incident showing severe damage to the box

¹⁸⁰ Annual Statistical Report, 2010, *ERSO*

¹⁸¹ Communication from the Commission, COM(2003)

¹⁸² Communication from the Commission, COM(2003)

¹⁸³ Report on Tackling Fatigue: EU Social Rules and Heavy Goods Vehicles, 2011, *European Transport Safety Council*

Table 7.1 – Fatalities Involving a HGV by Member States (2008 - 2010)¹⁸⁴ (No information is available for the Netherlands and Sweden for 2010)

	2008			2009			2010			2010 change from 2008
	HGV	Total	HGV as % of Total	HGV	Total	HGV as % of Total	HGV	Total	HGV as % of Total	
Belgium	122	944	13%	117	944	12%	111	840	13%	-9%
Czech Republic	169	1076	16%	163	901	18%	175	802	22%	4%
Denmark	62	406	15%	35	303	12%	36	255	14%	-42%
Germany	625	4477	14%	536	4152	13%	534	3648	15%	-15%
Ireland	44	280	16%	22	238	9%	13	212	6%	-70%
Greece	138	1553	9%	113	1456	8%	127	1258	10%	-8%
Spain	452	3099	15%	353	2714	13%	333	2479	13%	-26%
France	596	4275	14%	502	4273	12%	552	3992	14%	-7%
Italy	977	4725	21%	785	4237	19%	835	4090	20%	-15%
Luxembourg	2	35	6%	2	48	4%	9	32	28%	350%
Netherlands	107	677	16%	95	644	15%				
Austria	107	679	16%	81	633	13%	97	552	18%	-9%
Poland	1,155	5437	21%	952	4572	21%	947	3908	24%	-18%
Portugal	112	885	13%	120	840	14%	95	937	10%	-15%
Romania	292	3061	10%	252	2796	9%	191	2377	8%	-35%
Slovenia	7	214	3%	12	171	7%	7	138	5%	0%
Finland	106	344	31%	70	279	25%	92	272	34%	-13%
Sweden	72	397	18%	45	358	13%				
United Kingdom	380	2645	14%	287	2337	12%	282	1965	14%	-26%

In respect of Table 7.1 some Member States did not submit comparable data and are therefore not shown. These Member States are Bulgaria, Hungary, Estonia, Latvia, Lithuania, Slovakia, Malta and Cyprus.

It is interesting to note, with limited exceptions, the marked decrease in the number of truck related fatalities between 2008 and 2010. Figures 7.2 and 7.3 represent HGV fatalities per billion Km for the years 2008 and 2010 respectively. Again, with limited exceptions (notably Romania) the fatality rates have fallen significantly, with the overall average of the countries represented reducing from 33.3 per billion HGV Km in 2008 to 31.5 per billion HGV Km in 2010.

¹⁸⁴ Traffic Safety Basic Facts 2012, Heavy Goods Vehicles and Buses, *European Road Safety Observatory*

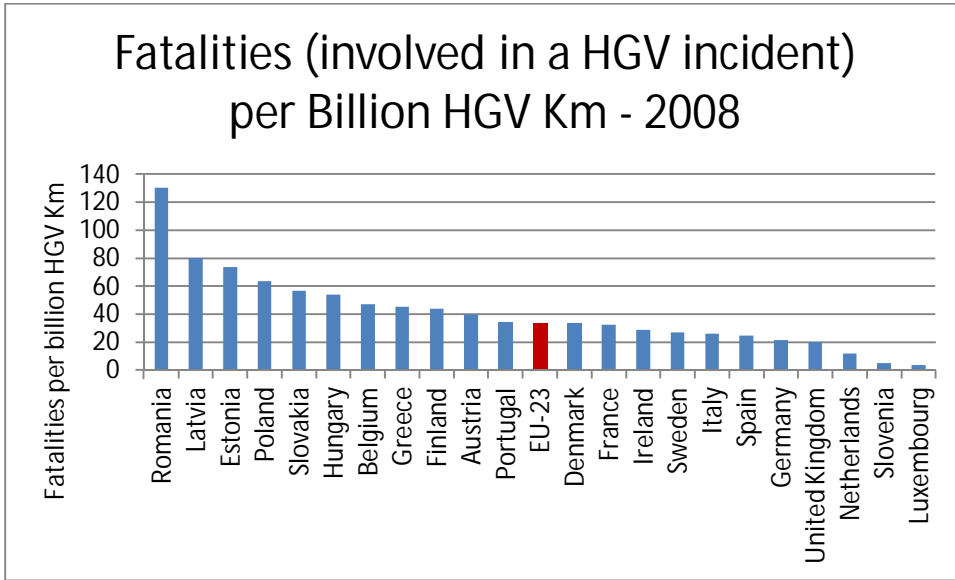


Figure 7.2 – Fatalities Caused by Incidents Involving a HGV per Billion HGV Km Driven in 2008¹⁸⁵

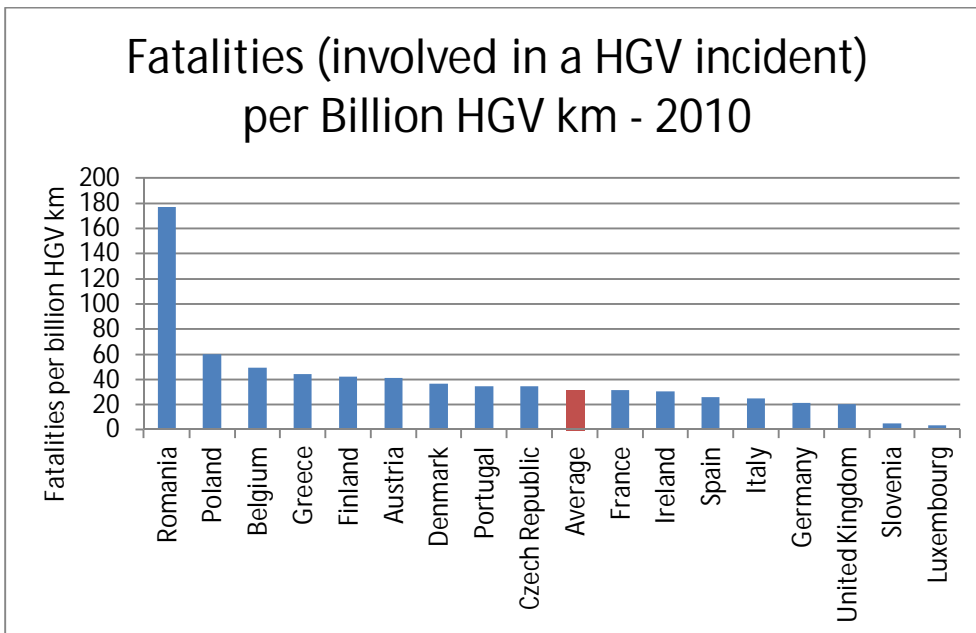


Figure 7.3 – Fatalities Caused by Incidents Involving a HGV per Billion HGV Km Driven (2010)¹⁸⁶

¹⁸⁵ AECOM calculations derived from fatality data from Table 5.1 and HGV km driven from Eurostat

¹⁸⁶ AECOM calculations derived from fatality data from Table 5.1 and HGV km driven from Eurostat

This positive downward trend is likely to be related to a combination of factors such as road improvements, driving standards, enforcement of speed limits and so on. The impact of specific Commission interventions is difficult to isolate, but it seems reasonable to believe that initiatives such as the 2009 Road Transport Package and in particular the strengthened consistency and effectiveness of the rules on access to the occupation of road transport operator have played a part in this overall improving picture. Further monitoring is of course required to demonstrate that the reduction in HGV fatalities is an ongoing trend and not simply a short term feature.

Reviewing drivers' hours checks undertaken by Member States, it is possible to see if there is a link between the checking and failure rates and the number of fatalities involving a HGV. Data and commentary is presented below but we conclude that from the information available we cannot draw statistically robust conclusions and is presented here for information purposes only.

Table 7.2 – Comparison Table of Fatalities Involving HGVs and Drivers' Hours Checks and Infringements (2010)¹⁸⁷

	Fatalities involving a HGV	Infringement Total	Check Total	Infringement Rate	HGV Fatalities per 1,000 infringements	HGV Fatalities per 10,000 checks
Austria	111	64,456	2,065,195	3%	1.72	0.54
Belgium	122	3,762	176,142	2%	32.43	6.93
Czech Republic	169	23,987	4,557,725	1%	7.05	0.37
Denmark	62	182	355,188	0%	340.66	1.75
Estonia	32	1,373	106,147	1%	23.31	3.01
Finland	106		694,555	-		1.53
France	596	280,068	16,989,887	2%	2.13	0.35
Germany	625	688,343	22,752,776	3%	0.91	0.27
Greece	138	514	154,411	0%	268.48	8.94
Hungary	173	17,763	1,711,065	1%	9.74	1.01
Ireland	44	19,157	481,197	4%	2.30	0.91
Italy	280	62,861	8,775,074	1%	4.45	0.32
Latvia	55	4,696	1,876,177	0%	11.71	0.29
Luxembourg	2	601	117,945	1%	3.33	0.17
Netherlands	107	9,013	1,494,777	1%	11.87	0.72
Poland	1,155	139,919	3,280,996	4%	8.25	3.52
Portugal	112			-		
Romania	292	12,858	3,970,277	0%	22.71	0.74
Slovakia	196	50,818	286,282	18%	3.86	6.85
Slovenia	7	7,001	204,981	3%	1.00	0.34
Spain	452	124,996	5,050,776	2%	3.62	0.89
Sweden	72	7,323	1,243,956	1%	9.83	0.58
United Kingdom	380	26,329	3,612,243	1%	14.43	1.05

It can be seen in Table 7.2 that Denmark and Greece have a very high rate of HGV fatalities per 1,000 infringements. Germany and Slovenia have a low rate of HGV fatalities per 1,000 infringements. Considering the rate of HGV fatalities per 10,000 checks, it can be seen that Greece, Belgium and Slovakia have the highest rates, with Luxembourg, Latvia and Germany having the

¹⁸⁷ CARE Database / EC (2010) http://ec.europa.eu/transport/road/social_provisions/doc/sec_2011_0052.pdf

lowest rates. It should be considered that a comparison of the HGV fatality rate with the check rate (and consequently infringement rate) is not necessarily statistically robust. The HGV fatalities are a complete set whereas the check rates are a sample of the HGV movements and therefore infringement rates are also a sample. It may be that a country's infringement rate is higher or lower than that reported from the sample. Sample size may also be an issue, for example with Greece and Denmark the sample size is quite low which may explain the high reported ratios. It should be noted that Greece failed to undertake the required number of checks.

According to the ETSC report on Tackling Fatigue: EU Social Rules and Heavy Goods Vehicle Drivers¹⁸⁸ it is mentioned that there is little data available in terms of collision causations in commercial transport. During the EC SafetyNet project, in-depth data was collected using a common methodology for samples of collisions that occurred in Germany, Italy, the Netherlands, Finland, Sweden and the UK. The most frequent links between causes for HGV and bus drivers/riders are faulty diagnosis and missed observation. Faulty diagnosis is an incorrect or incomplete understanding of road conditions or another road user's actions. It is linked to both information failure (e.g. a driver thinking another vehicle was moving when it was in fact stopped and colliding with it) and communication failure (e.g. pulling out in the continuing path of a driver who has indicated for a turn too early). The frequent cause leading to observation missed is permanent sight obstruction. This refers to vehicle blind spots where drivers cannot see part of the road infrastructure or other road users.

Another study, the "ETAC" European Truck Collision Causation, was conducted by the International Road Transport Union (IRU) and the European Council in 2007¹⁸⁹. The collision expert teams investigated 624 collisions altogether. The main results of the study showed that 85.2% of the collisions were linked to human error on the part of one of the road participants (truck driver, car driver, pedestrians) as opposed to technical or infrastructure related problems.

The study made the following recommendations:

- Improve data collection on the involvement of HGVs in collisions. What is monitored is more likely to be improved
- Increase investigation of collision causation involving HGVs to better understand collision causes and adopt preventative measures
- Work with Police to develop a course on identifying and investigating fatigue collisions
- Undertake a large scale EU driver fatigue survey to gauge current prevalence rates for driving whilst fatigued, the use of effective counter-measures and differences between commercial and non-commercial drivers
- Strengthen the enforcement of the liability clause (Article 10) of EC 561/2006¹⁹⁰ in order to prevent the pressures of just-in-time management contributing to fatigue and stress

7.3 HGV Crime and Security of the Driver and Load

There are cases where HGV crime and the safety of the driver are affected whereby HGVs can be violently hijacked. This section considers the level of HGV crime and how efforts to combat it are currently harmonised or not. There are several types of crime against a truck:



Figure 7.4 Damage Resulting from Theft from a Curtainsider Trailer

¹⁸⁸ Report on Tackling Fatigue: EU Social Rules and Heavy Goods Vehicle Drivers, 2011, *European Transport Safety Council*

¹⁸⁹ Executive Summary on a Scientific Study "ETAC" European Truck Accident Causation, 2007, *International Road Transport Union (IRU)*

¹⁹⁰ Regulation (EC) No 561/2006 – of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, *OJ L 102, 11.4.2006, p. 1–14*

- Siphoning of fuel
- Theft of the vehicle, where the load might be discarded
- Stealing the load and then the truck might later be later abandoned
- All of the above in one incident

Some sophisticated gangs impersonate police or enforcement officers as a way of engaging with the truck driver, others just use force.

In the UK there is a specific arm of the police force that looks purely at HGV crime and is called Truckpol. Truckpol reports annually on HGV crime.

Table 7.3 – UK HGV and Load Theft Values (2006 – 2010)¹⁹¹

	2006	2007	2008	2009	2010	Percentage change between 2006 and 2010
Vehicle Value	€36,268,565	€47,875,688	€47,574,290	N/A	€30,699,793	15%
Load Value	€123,007,575	€59,831,848	€47,456,470	N/A	€29,771,813	76%
Combined Value	€159,282,659	€107,707,536	€95,055,845	N/A	€60,471,606	62%

It can be seen in Table 7.3 that the value of reported HGV crimes drops between 2006-2010. There is currently no specific HGV crime dedicated enforcement unit at EU level within Europol that is publishing its attempts to portray the EU wide picture. Truckpol’s efforts at tackling HGV crime suggest that it has managed to reduce the value of HGV crime by over half. It is estimated that the direct and indirect cost of HGV crime is between €100 and €500 million in the Netherlands¹⁹². The total loss value of HGV crime can be estimated at more than €8.2 billion per year, of which €450 million is not declared by transport operators¹⁹³.

Agencies are required to work together in order to check on drivers’ hours regulations so it is not unreasonable to expect that they could work together in order to reduce HGV crime.

This is important as theft from HGVs can have a significant impact on driver confidence, and result in difficulties in recruiting drivers.

In order to reduce the ability of criminals in their activity of HGV crime, one of the EU’s objectives has been to state that it is the intention to install secure HGV parking every 50km along the strategic road network. It is generally accepted that a securely parked HGV is at less risk of becoming a victim of crime because there are usually barriers, high



Figure 7.5: High quality secure HGV parking facilities at Valenciennes, France

¹⁹¹ Annual Reports, 2006-2010, *Truckpol*

¹⁹² Summary Paper on Criminality in the Road Transport Sector, *Ministry of Transport, Public Works and Water Management, 2006, Netherlands*

¹⁹³ Organised Theft of Commercial of Vehicles and their Loads in the European Union, 2007, *NEA*

fences and CCTV. The EU initiative SETPOS (www.setpos.eu) agreed the minimum standards expected at these HGV parking areas. SETPOS was set up to respond to the growing concern about criminal attacks on high value cargo and vehicles, coupled with the lack of adequate rest facilities for drivers. LABEL (<http://truckparkinglabel.eu/>) is the initiative that established and encouraged a certification system for HGV parking areas in Europe. It lists accredited HGV parking areas throughout Europe. These two initiatives should harmonise HGV parking throughout Europe so that when a HGV approaches a parking area, the driver will know what to expect in terms of facilities, standards and amenities. However many drivers do not want to pay for overnight parking and choose to park in laybys. This can be dangerous for them and for other road users as it removes capacity at the roadside.

7.4 Transportation of Dangerous Goods (ADR)

The European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR)¹⁹⁴ sets out the conditions for the consignment and carriage by road of hazardous materials. ADR is an international convention currently with 48 contracting parties in Europe, Central Asia and North Africa and as such applies to international movements. The provisions of ADR are consistent with the United Nations Recommendations on the Transport of Dangerous Goods¹⁹⁵. The Working Party on the Transport of dangerous Goods (WP15) of the Economic Commission for Europe's Committee on Inland Transport presides over the technical annexes of ADR that contain the detailed rules and provisions.

ADR rules have increasingly been adopted for domestic as well as international transport and Council Directive 94/55/EC and its various amendments on the approximation of the laws of the member States with regard to the transport of dangerous goods by road, required Member States to adopt the provisions of ADR for national transport and put in place the necessary national regulations by 1997.

Directive 1995/50/EC¹⁹⁶ on checks on road transport of dangerous good lays down a standard list of points to be checked and requires a report on the checks to be available to any authorities making further checks, in any EU country

Directive 1998/91/EC¹⁹⁷ on vehicles and trailers deals with the type-approval of vehicles used to carry dangerous goods. It incorporates the technical requirements from the ADR agreement and introduced an EU-wide certificate, to facilitate vehicle registration in every EU country.

Directive 2010/35/EC¹⁹⁸ on transportable pressure equipment (gas cylinders) sets out detailed rules concerning transportable pressure equipment to enhance safety and ensure free movement.

As such the rules for the safe transport of dangerous goods within and between Members States are well aligned and being based on the detailed technical annexes of the international convention are generally well understood by hauliers and regulators alike.

Interestingly Chapter II of Directive 94/55/EC and Articles 5 and 6 of Directive 2008/68/EC permit Member States to implement specific national derogations and restrictions for certain dangerous goods. Table 7.4 provides an overview of these derogations and restrictions.

¹⁹⁴ European Agreement concerning the International Carriage of Dangerous Goods by Road, 2013, *United Nations – Economic Commission for Europe*

¹⁹⁵ Recommendations on the transport of dangerous goods: model regulations, 2011, *United Nations Committee of Experts on the Transport of Dangerous Goods*

¹⁹⁶ Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road, *OJ L 249, 17.10.1995, p. 35–40*

¹⁹⁷ Directive 98/91/EC of the European Parliament and of the Council of 14 December 1998 relating to motor vehicles and their trailers intended for the transport of dangerous goods by road and amending Directive 70/156/EEC relating to the type approval of motor vehicles and their trailers, *OJ L 11, 16.1.1999, p. 25–36*

¹⁹⁸ Directive 2010/35/EC of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC (Text with EEA relevance), *OJ L 165, 30.6.2010, p. 1–18*

Table 7.4 – Summary of Road Haulage Derogations Pursuant to Directive 2008/68/EC (On Inland Transport of Dangerous Goods)

Member state	Number	Type
Belgium	11	Small quantities; Empty containers; Final distribution to retailers/users; Transport of used smoke detectors; Transport in close proximity of industrial sites; Driver training; Hazardous waste; Transport in close proximity of ports; Training of inspectors
Denmark	5	Mixed transport; Transport documents; Training of inspectors; Crossing of public roads
Finland	6	Small quantities; Transport documents; Labelling of vehicles; Tank transport of explosives
France	6	Small quantities; Own-account transport; Multimodal transport; Empty containers; Agricultural transport
Germany	9	Mixed transport; Transport documents; Empty containers; Combined packaging; Bulk transport; Hazardous waste; Transport in close proximity of industrial sites; Transport of nitroglycerine during production
Greece	2	Vehicle construction requirements
Ireland	11	Pipes connected to tankers; Bulk transport; Transport documents; Empty containers; Loading and unloading; Mixed transport; Small quantities; Multimodal transport
Lithuania	3	Vehicle construction requirements; Quantity limits
Netherlands	1	Hazardous waste
Portugal	2	Transport documents; Empty containers
Spain	1	Equipment for distribution of anhydrous ammonia
Sweden	11	Driver licensing; Distribution of fireworks; Empty containers; Local agricultural and construction transport; Tank transport of explosives; Dangerous goods seized by authorities; Transport in close proximity of ports; Training of inspectors; Hazardous waste; Transport documents; Transport in close proximity of industrial sites
UK	15	Final distribution to retailers/users; Carriage of strong alcoholic beverages; Distribution of fireworks; Collection of used batteries; Crossing of public roads; Carriage of low-hazard radioactive material; Transport of small quantities; Quantity limits; Mixed transport

Whilst there are a large number of Member States implementing certain national derogations from ADR, these national conditions apply to both hauliers based in the territory of that country and to foreign operators conducting cabotage.

From evidence collected through the haulier interviews conducted by the study team, there does appear to be differences in enforcement activity. Issues raised included the high levels of fines imposed by some countries and varying interpretation of the rules. The matter of different systems of sanctions is not an EU competence and indeed the ADR agreement itself does not seek to set out a condition of enforcement or penalty frameworks for breaches of the rules.

In conclusion therefore, the various measures taken by the EU to align dangerous good regulations, in particular through Directives 94/55/EC and 2008/68/EC, have set out an effective framework for the approximation of Member States laws on the safe transport of dangerous goods by road. This process has been greatly facilitated by the well established and generally well understood international rules set out in the ADR Agreement.

7.5 Maintenance, Testing and Inspection Regimes

Testing and inspection performs a vital role in ensuring that HGVs are roadworthy, and safety equipment such as brakes and tyres are in good condition.



Figure 7.6: HGVs Being Maintained

Council Directive 2009/40/EC¹⁹⁹ requires all Member States to carry out periodic safety and emission inspections for most types of motor vehicles. It also sets minimum requirements for those inspections and their intervals - for light commercial vehicles (up to 3.5 t) the first inspection shall occur no later than four years and at a frequency of up to two years thereafter. Buses, vans, trucks and trailers shall be subject to a yearly inspection.

Therefore there is consistency in the maximum time allowed between tests, however the nature of the agencies which undertake the annual vehicle inspections and those responsible for roadside ad-hoc tests varies. For example in Germany, the Federal Office for Freight Transport (BAG) directly undertakes roadside checks, which make a substantial contribution towards supervising the legal framework for road freight transport. About 240 inspectors are deployed on Germany's roads every day, and they have around 120 special

vehicles equipped with state-of-the-art IT technology at their disposal. Each year, around 600,000 vehicles are checked. Particular attention is paid to the technical condition of the vehicles and the safety of their loads. Inspectors also check the digital tachographs to check driving times and rest times. In the UK, roadside checks are undertaken by both by the Vehicle and Operator Services Agency (VOSA), an executive agency of the Department for Transport, and by the Police.

In addition the requirements of the test vary above the minimum standards set out by the EU. The Framework Directive which covers the technical requirements of the test was recast in 2009 and introduces a number of mandatory new testable items, mainly as a result of the increased number of electrical safety systems fitted to modern vehicles, but also to further harmonize the test across the EU.

A Roadworthiness Package was presented by the European Commission in 2012²⁰⁰. There are three parts to the package: periodic roadworthiness tests; technical roadside inspections of commercial vehicles; and vehicle registrations. Technical roadside inspections for commercial vehicles should be based on the risk profile of the operator. An initial check of the overall condition of the vehicle and its documentation, such as roadworthiness certificates or previous roadside inspection reports is envisaged. A more detailed roadside inspection may be performed on the basis of the outcome of the initial inspection. More detailed inspections shall be carried out using a mobile inspection unit or at a test centre in the close vicinity. It is anticipated that harmonisation of standards for the assessment of deficiencies, level of knowledge and skills of inspectors performing roadside inspections based on the requirements for periodic roadworthiness test and regularly concerted inspection activities will contribute to avoid unfair treatment.

Harmonising the implementation of safety legislation is an incremental step towards harmonising costs between Member States. Vehicle prices and the cost of vehicle parts are quite similar across Europe. If the average annual vehicle maintenance cost is €3,785 across Europe, then Hungary would have to increase its average annual vehicle maintenance cost by €2,826 and Romania by €3,519. This is an increase in vehicle maintenance costs of 47% and 67% respectively with the increase

¹⁹⁹ Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers, *OJ L 141, 6.6.2009, P. 12*

²⁰⁰ Road Safety: The Roadworthiness Package – Tougher vehicle checks to save lives, 2012, *European Commission*

representing an increase of 3% and 4% on total annual operating costs (respectively). The European Transport Training Association stated that a standard approach to enforcing vehicle maintenance standards (in addition to drivers' hours infringements) should be a priority.

7.6 Conclusions

This chapter has provided an assessment of the current extent of harmonisation in the EU with regard to safety legislation and identified inconsistencies, issues and strengths. The number of fatalities on the roads is improving but there are still major differences across Europe. Given the current situation, where some safety legislation is harmonised and other safety legislation is not, thoughts must be made on future action.

Safety legislation could be considered to be the antithesis of the harmonisation versus liberalisation argument whereby harmonising safety legislation is unlikely to lead to the liberalisation of hauliers from such legislation. This is because it is highly unlikely, from political and moral standpoints that Member States would agree to liberalising laws on alcohol control, vehicle maintenance and operation and so forth, where these laws are designed to save lives and prevent incidents from occurring. So harmonisation leading to the adoption of stronger safety legislation seems a likely outcome.

There are additional benefits of increasing safety harmonisation. HGV drivers would need to learn only one set of rules, the EU rules, and no matter where they were driving, they would be compliant with these rules. It would reduce the chance of situations where a driver is driving legally in one country but when he passes to the next, due to differing rules or tolerances, the driver is no longer legal. Reducing these situations would mean that law enforcement authorities can be allocated to other tasks. So there are potential indirect benefits of harmonising safety legislation. However these benefits will only be realised on the assumption that safety legislation is harmonised in a manner other than choosing the lowest common denominator.

Conclusions

8 Conclusions

8.1 Introduction

This report has set out an assessment of

- The market situation in the EU road haulage sector
- The evolution of the effectiveness of controls in the road haulage sector, in particular checks of compliance with the cabotage rules
- The evolution of employment conditions in the road haulage profession
- The level of harmonisation in enforcement
- The level of harmonisation in road user charges
- The level of harmonisation in social legislation
- The level of harmonisation in safety legislation

On the basis of this assessment AECOM has reached preliminary conclusions as to whether in the current state of the EU market for road haulage one could either:

- Justify further opening of “domestic” road freight markets on the grounds that there is now a “level playing field” between hauliers from different Member States, and that the resulting competition between hauliers from different Member States will be orderly and useful for consumers
- Explain that it cannot recommend further opening of “domestic” road freight markets as the different levels of regulation and other conditions faced by hauliers would lead to “unfair” or undesirable competition between hauliers, e.g. social dumping

The report’s conclusions with respect to each area of enquiry are as follows:

8.2 Market Situation

Our review of the road freight sector showed that there is increasing consolidation in the market but that there is extensive use of sub-contracting to smaller companies. Operators based in the newer Member States (EU-12) have expanded to reach a dominant position in bilateral trade and a growing share in EU-15 cross-trade. The number of vehicles and trade continues to grow, albeit slower in some areas than others.

In the short to medium term EU-12 hauliers can be expected to further increase their market share in all markets, particularly EU-15 cross-trade and this is likely to feature operators from Bulgaria and Romania in larger numbers now restrictions on them have been lifted.

8.3 Evaluation of the Effectiveness of Controls

This study has also examined the control requirements driven by the current cabotage regime and the issues that this has presented in the relatively short time the rules have been properly in place. We have seen that a range of stakeholders have commented that whilst the new cabotage rules may or may not be useful to them, there is a level of concern that their control is not effective, and in some cases that it is defective.

Notwithstanding the fact that the conditions set out in Regulation (EC) No 1072/2009²⁰¹ largely leaves employment conditions to the auspices of the Posting of Workers Directive, there is a clear opinion formed across haulier, shipper, social and governmental groupings that implementation and enforcement of the controls is at best variable.

Where enforcement agencies are so minded, successful prosecutions can be brought against errant operators, but there are a number of issues including:

- The burden of proof rests with the driver and the documentation on board the vehicle. This documentation can easily be falsified
- 'Chain of command' responsibility (shipper/principal liability) is not a feature of most control regimes
- There are variable interpretations of the rules, in particular with respect to groupage loads and the definition of 'cabotage operations' and there are ongoing 'disputes' regarding the position of unaccompanied traffic
- Penalties applied are inconsistent, even between neighbouring countries
- In the context of international transport and cabotage the application of the Posting of Workers Directive is problematical

It is perhaps too early to judge with certainty whether the current cabotage control regime can be made to work more effectively. Certainly further harmonisation and cross-border co-operation of enforcement activity would be a major step forwards. The rules are of course a big improvement on previous regimes. However, there is an obvious conclusion from our research to date and that is for the development of centrally led, clear guidance and interpretation, cascaded across Member States and effectively communicated to enforcement agencies and the transport industry. Whilst delivering a restrictive position on groupage traffic, the French guidance (Appendix 3) provides a good model for the production of clear and understandable material.

In considering additional or alternative control models, it is evident that any progress that can be made in the clarification and unified application of the Posting of Workers Directive, will be helpful in creating a fairer cabotage market. The guidance currently being developed by the Commission on enforcement should thus be carefully scrutinised and an assessment made of how it may support and inform the development of future cabotage policy.

The HLG itself has explored different aspects of cabotage control, including quality thresholds, in particular for drivers, but with mixed reactions from stakeholders. A central register of caboteurs has also been mooted, and a recurrent theme from stakeholders is the greater use of technology for the tracking and recording of cabotage operations.

Telematics, global navigation satellite systems (GNSS) and digital tachograph technology already provides the capability for the remote tracking and recording of cabotage activity. The Commission is currently developing further proposals on digital tachographs. It seems sensible therefore, that in order to future-proof the likely on-going need to control and enforce the cabotage market, measures to better monitor activity in relation to cabotage are properly represented in the Commission's revisions to digital tachograph requirements. This might for example oblige drivers to record their location by GNSS at the start and end of each transport operation.

8.4 Evolution of Employment Conditions

At present we do not have a complete picture of the requirements set down by the various Member States for access to the haulage industry. Initial indications suggest that some countries may still be in the process of deciding on how to implement the

²⁰¹ Regulation (EC) No 1072/2009 – of the European Parliament and of the Council of 21 October 2009, on the common rules for access to the international road haulage market, *OJ L 300*, 14.11.2009, p. 72–87

Regulation. Information forthcoming from the Surveys will give a clearer picture as to the current situation in the chosen Member States.

In addition, we do not have a complete picture of the requirements set down by the various Member States for access to the profession of haulage driver. Initial indications suggest that countries have successfully implemented the Directive. However, it appears that some States have more stringent requirements to those set down in the Directive and so the rules governing access to the profession of road haulage driver are not harmonised across Member States. Information forthcoming from the Surveys will give a clearer picture as to the current situation.

8.5 Harmonisation of Enforcement

The level of enforcement by Member States, and the consistency with which it is carried out has been increasing at least since 2007 due to a number of developments being adopted and coming into force. The measures adopted in 2009 have had a significant effect. The number of checks has increased as has the threshold of minimum days to be checked. However, consultation with the road haulage industry and other feedback from industry figures demonstrates a widely held perception in the industry that the enforcement of rules on the road haulage industry is not yet effectively harmonised across all Member States.

The industry believes that two types of distortion are widespread:

- Relatively lax enforcement in some Member States giving a cost advantage to hauliers from that Member State
- Discrimination in enforcement in some Member States, with enforcement authorities targeting hauliers from outside the Member State in question. This creates a restriction on cross-border trade in these services

The evidence available suggests that this perception may come from the reliance on some Member States on road side checks rather than a mix on roadside and on-premises checks.

Other differences in enforcement that could arise are:

- Differences in the categorisation of, and penalties for, various infringements between Member States
- Significant variances in the resources devoted to enforcement in different Member States
- Significant differences in the level of driver checking, and the balance between on-premises and roadside checks in different Member States
- Continuing confusion and uncertainty on the cabotage rules and their correct enforcement

Since 2009 the Commission and Member State authorities have been undertaking a series of measures to eliminate these anomalies and distortions. These include:

- Proposals to harmonise enforcement policies across Member States
- Standardising the approach to training of enforcement officers
- Improving the exchange and distribution of information between enforcement agencies
- Guidance notes established by the Committee on Road Transport
- Clarification notes issued by the Commission
- Regular meeting with experts from Member States and stakeholders (including enforcers) to discuss the application and enforcement issues

In this chapter we have also examined the control requirements driven by the current cabotage regime and the issues that this has presented in the relatively short time the rules have been properly in place. We have seen that a range of stakeholders have commented that whilst the new cabotage rules may or may not be useful to them, there is a level of concern that their control is not effective, and in some cases that it is defective.

In summary significant progress has been made towards the goal of effective and consistent enforcement of the rules on driver time and cabotage throughout the EU, and this progress is ongoing.

8.6 Harmonisation of Road User Charges

Directive 2003/96/EC sets down the EU minimum rate of fuel duty at €330 per 1000 litres. However the degree of variability in duties across Member states is significant. While the vast majority of countries levy duties in excess of this rate, some countries are still availing of rates below this level due to exemptions for accession states set down in Council Directives 2004/74/EC and 2004/75/EC. At the extremes the UK levies fuel duties at €674 per 1000 litres, in excess of 100% on the minimum rate while Lithuania has the lowest duty at €302 per 1000 litres.

The “Eurovignette Directive” 1999/62/EC as amended by Directive 2006/38/EC and Directive 2011/76/EC sets down the basis for road user charges across Member States. 21 States have some form of road charging but significant variation exists across Member States in relation to the charges. Nine States levy charges by vignettes, five countries have nationwide electronic tolls and seven have conventional tolls. Six Member States (UK²⁰², Cyprus, Estonia, Finland, Malta and Latvia) have no road user charges. An analysis of the average road user charge per kilometre for a Euro V, 40 Tonne, 5 Axle Articulated HGV reveals significant differences in the charges across Member States.

Vehicle taxes in the EU incorporate both taxes on acquisition also known as registration tax and taxes on ownership, generally referred to as vehicle excise duty. Registration taxes are a one off charge on vehicles and so do not represent a substantial element of the operating costs of the freight sector.

Directive 1999/63/EC sets down the minimum levels of Vehicle Excise Duty required across the EU. However, Member States have discretion in terms of the procedures for levying and collecting the taxes as well as the structure of the taxes.

The basis for calculating annual vehicle excise duty (VED) across Member States varies significantly, and can include a combination of factors including weight, axles, emissions, suspension, noise and payload. In 2011, three Member States, Cyprus, Malta and Slovenia did not apply any VED to commercial vehicles. The variability in VED structures across Member States can result in significant cost differentials for hauliers. An analysis undertaken based on a Euro V, 40 Tonne, 5 Axle Articulated HGV shows how the cost of VED can vary up to 80 per cent.

In summary, significant difference remain in the costs faced by road hauliers in different Member States. Fuel excise rates vary. The level and basis of road user charges (tolls or vignettes) also vary between Member States. Wage rates also continue to vary. The analysis of costs carried out and summarised above indicates that the remaining differences between excise rates and road user charged will not be a significant factor in the response of hauliers to any further market liberalisation.

8.7 Harmonisation of Social and Safety Legislation

The number of fatalities on the roads is improving but there are still major differences across Europe. Given the current situation, where some safety legislation is harmonised and other safety legislation is not, thoughts must be made on future action.

Safety legislation could be considered to be the antithesis of the harmonisation versus liberalisation argument whereby harmonising safety legislation is unlikely to lead to the liberalisation of hauliers from such legislation. This is because it is highly unlikely, from political and moral standpoints that Member States would agree to liberalising laws on alcohol control, vehicle maintenance and operation and so forth, where these laws are designed to save lives and prevent incidents from occurring. So harmonisation leading to the adoption of stronger safety legislation seems a likely outcome.

There are additional benefits of increasing safety harmonisation. HGV drivers would need to learn only one set of rules, the EU rules, and no matter where they were driving, they would be compliant with these rules. It would reduce the chance of situations where a driver is driving legally in one country but when he passes to the next, due to differing rules or tolerances, the driver is no longer legal. Reducing these situations would mean that law enforcement authorities can be allocated to other tasks. So there

²⁰² The UK is operating one Toll on the M6 Motorway.

are potential indirect benefits of harmonising safety legislation. However these benefits will only be realised on the assumption that safety legislation is harmonised in a manner other than choosing the lowest common denominator.

8.8 Overall Conclusion

It is clear that differences in legal and regulatory regimes for hauliers arise in different Member States. These affect the costs of hauliers based in different Member States in different ways. As the market for road freight is liberalised, for example through the extension of cabotage rights, hauliers based in different Member States will compete with each other to carry out domestic freight in a given Member State. The anomalies identified in this report will lead to situations where a “foreign” haulier could enjoy cost advantages over a “domestic” haulier in competing for domestic freight business in a given Member State. This cost advantage could arise from a difference in the tax systems between the States in question or from differences in the enforcement of social rules. It would not arise from greater efficiency or higher quality of service from the “foreign” haulier. To the extent that competition takes place on this level, and that hauliers win business based on these anomalies in the tax or enforcement systems, this type of competition will not bring the benefits associated with competition based on efficiency or innovation. In addition this type of competition would risk undermining the tax and road charging systems of Member States and the social and safety objectives of EU legislation.

However future market opening will be possible, and beneficial, as the potential and harmful competition is reduced by improved enforcement of regulation, further harmonisation of employment conditions and costs and future reforms in road charging.

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Appendix 2 – Modelling Tool Methodology

1. Analysis Tools

1.1 Overview

Through the data collection process, and through a series of supporting technical exercises, it was evident that some form of analytical model would be necessary to provide support in responding to the following key questions as outlined in the study requirements:

- Establish the potential size of the cabotage market in each Member State and the EU as a whole if all remaining restrictions on cabotage are lifted.
- Estimate the scope of cabotage opportunities that would have a clear positive effect on the efficiency of road freight transport.
- Identify the scope and practicality of possible rules that could maximise the incentives to carry out only cabotage that is efficient from a resource efficiency point of view taking implementation issues fully into consideration.

The addressing of the above questions presents a significant challenge, and is not possible using traditional transport or economic models. Furthermore, the responses that the models are required to identify (namely the size and nature of the cabotage market) are influenced by a range of factors, only a limited number of which can be incorporated into the analysis.

1.2 Model Architecture

Following a review of available datasets and their compatibility, the following inputs have been identified for the development of the analytical models:

- Observed data, predominantly through Eurostat and the NERA Report¹ which provide data on international and national freight movements, the levels of cabotage, and the various factors that dictate freight operating costs in the various member states;
- Existing transport models – namely TRANSTOOLS, which allow the distances and hence travel time to be calculated for travel between each of the 27 member states, effectively providing a 27x27 matrix of access costs;
- A cost model, which allows freight operating costs to be defined for each haulier of domicile 'A' operating in either their own country, or Country 'B'; and
- A Cabotage Analysis Model, which seeks to relate the levels/quantum of cabotage to international trade, and operating cost differentials.

¹ National Economic Research Associates

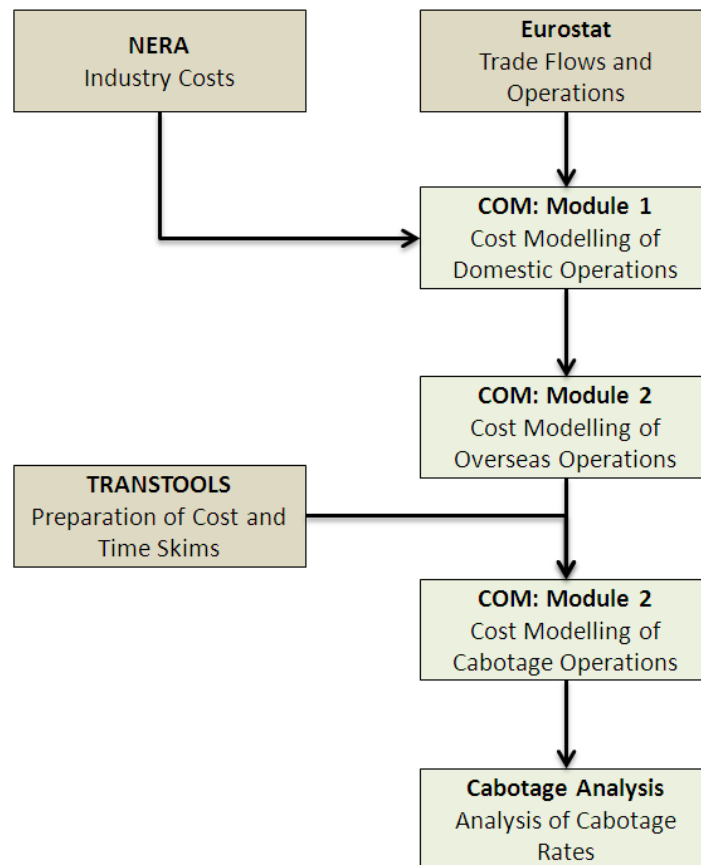


Figure 2-1: Hierarchy of Analysis Tools

The focal element of the modelling is the cost model, which is intended to provide an indication of the cost base for alternatively domiciled hauliers operating in any one jurisdiction. The cost model is fed not only by variables that define operating costs for each haulier, and access costs to the defined jurisdiction, but it also allows variables to be modified to produce different outputs, inter alia:

- The period beyond which driver wages must change to be in line with local pay agreements;
- The allocation of vehicle maintenance costs to the country of domicile or the country of operation;
- Road User charging proposals;
- Vehicular fuel consumption; and
- The length of periods available for cabotage operations (which in turn informs the average distance travelled during that period in cabotage mode).

Whilst the output from the models informs the understanding of the nature and attraction of cabotage in any one member state, the analysis is complicated by a number of factors, such as:

- The tendency of hauliers to 'chase' their country of cabotage, particularly for primary cabotage operations. This may be in response to better revenue prospects in any one country, even though the costs of operation may be no different to another country where there is potential for cabotage. This will be explored later;
- The possibility, again in the case of primary cabotage, that hauliers are managing their business in such a way that single loads are shared amongst multiple vehicles to gain access to cabotage markets. Again, there is some evidence within the preliminary analysis of this occurring.

As such, the outputs of the analysis are intended to act as the basis for a qualitative discussion to derive an understanding of key effects and risks. This approach will yield a wider ability to assess the various policy options under discussion.

1.3 Model Components

The modules of the analysis tools are presented below, followed by a presentation of the functionality of each of the models.

1.3.1 *TRANSTOOLS*

TRANS-TOOLS is a network-based European transport network model covering both passengers and freight, as well as intermodal transport. It is now the largest and most comprehensive European transport model in terms of countries covered, population covered, and geographical scale. TRANSTOOLS outputs data on traffic flow, passenger flow, goods flow, delay due to congestion, travel time and emissions for each transport link throughout the full network (comprising some 50,000 transport links).

Following its initial release in 2008 under the 6th Framework Programme, version 2 of the model was subsequently issued in 2011 under TEN CONNECT. It is this version that has been used for the current analysis². TRANSTOOLS was interrogated to establish travel time between the member states, output as a 27x27 matrix.

1.3.2 *Competition Model (COM) – Module 1: Domestic Operations*

Module 1 has been developed to understand the cost of operating a haulage vehicle by an operator from Country 'A' within Country 'A'. The model seeks to understand the following costs, which are defined as fixed (in that they are constant over a defined period), or variable (in that they relate to the quantum of vehicle usage measured in km). The following parameters are incorporated:

Fixed Costs (fixed within a defined assessment period)

- Vehicle taxation;
- Driver costs (salary and payments);
- Insurance costs;
- Depreciation (although this is somewhat related to vehicle use, it is assumed to be fixed);
- Financing Costs;
- The cost of purchasing a vignette for the period; and
- Other overheads

Variable Costs (variable within a defined assessment period)

- Fuel costs
- Road User Charges (expressed as an equivalent cost per km, and excluding Vignettes);
- Tyres; and
- General vehicle maintenance;

Variables in module 1 comprise:

- The assessment period (in weeks);
- Fuel consumption per vehicle, currently set at 4km per litre of diesel; and
- The distance driven by vehicles during the assessment period

² Although a further significant update to the model was published in spring 2012, this has not been available for the current project

The function of Module 1 is to develop a profile of the fixed costs for a haulage operator over a defined period (say 1 year), and the variable costs that any operator (national or international) might accrue whilst operating in that country. Note that the issue of variable costs being re-based in an operating country (as opposed to a domiciled country) after a defined period are covered in a later module.

The analysis using Module 1 has been undertaken to understand the relative cost positions of operating in the various member states. The result, shown in Figure 2-2 below, shows that for a 1-year assessment period, the various countries accrue costs at different rates as the total distance travelled increases. For example, whilst Sweden has higher costs irrespective of the distance travelled, costs in Austria are more weighted towards a distance-based system, with a lower fixed cost base. In addition, the significantly lower cost base irrespective of distance travelled for Bulgaria, Romania and Latvia is evident.

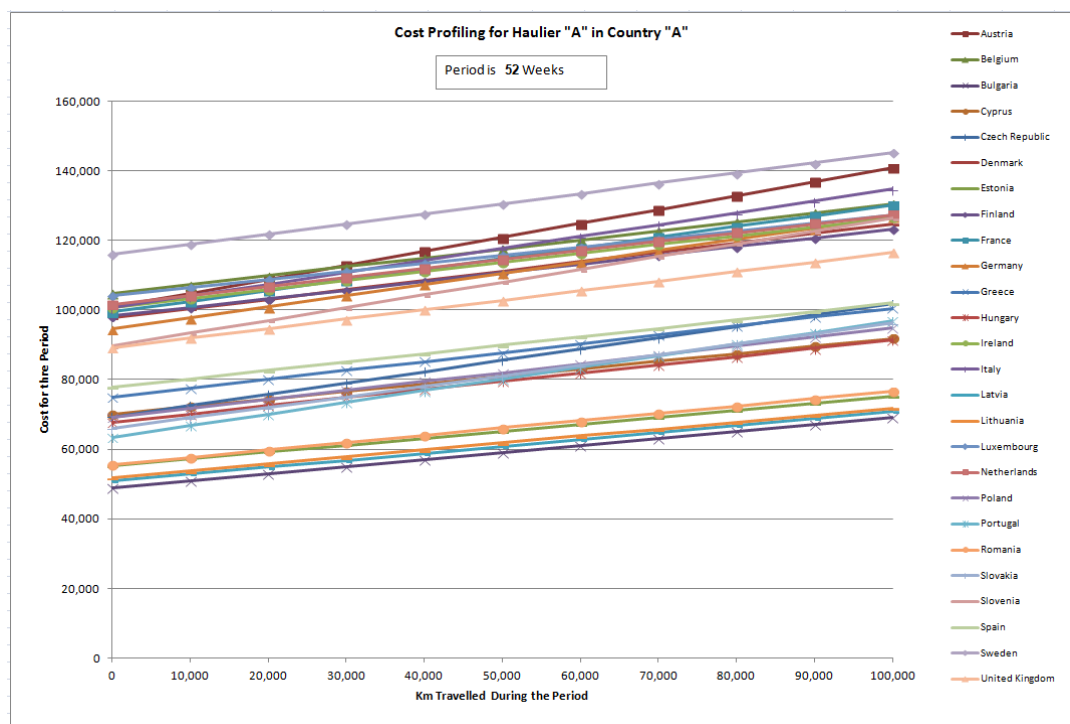


Figure 2-2: Output from COM Module 1 Competition Model (COM) – Module 2: International Operations

In Module 2, the analysis examines the cost base for a haulier from Country 'A', operating in Country 'B'. The analysis here seeks to understand the relative competitive position in the various member states between hauliers of various domicile.

Module 2 uses the fixed and variable costs as calculated in Module 1, but assigns the fixed costs from the domicile country, and the variable costs are assigned in the country of operation, with the following exceptions:

- Driver costs will not always be in line with the country of operation. At present, they are accrued on the basis of the country of domicile. As such, a variable has been included in the model which allows the period (in weeks) after which the driver costs transfer to those applicable in the country of operation;
- Vignette costs will continue to apply to the country of domicile, but the country of operation will also attract vignette and/or Road User Charging costs; and

- It is feasible that, after a period of time, that maintenance and tyre costs will start to accrue in the country of operation, particularly if these are lower than the country of domicile. A variable has been included to allow the impacts of various periods to be understood;

As with Module 1, a number of variables are defined in the models as follows;

- The assessment period (in weeks);
- The period (in weeks) after which driver costs, maintenance costs and tyre costs transfer to those applicable in the country of operation
- Fuel consumption per vehicle, currently set at 4km per litre of diesel; and
- The distance travelled each day in Country 'B' whilst in Cabotage mode

The analysis has been undertaken for each of the 27 Member States, and the cost of operating in a country by a national haulier is compared against the cost for the least-cost Country 'B'. The results are presented in Figure 2-3 as a competitiveness index. The calculation assumes a 52-week assessment period (i.e. no requirement to return to Country A), with a cabotaged distance of 400km per day, accrual of maintenance costs from week 8 and tyre costs in week 26 in the country of operation, and with driver costs remaining in Country A.

A sensitivity value of 100km per day has been used to understand the influence of this assumption on the final data. This test highlighted that where cabotage distances were lower, that the overseas hauliers yielded a further cost advantage in higher cost markets. This is as a result of the lower accumulation of operating cost in the Country 'B' by both the domestic and overseas haulier. In other words, although operating costs will increase at the same level for both the domestic and overseas haulier as vehicle km increase, the proportional difference in total cost between comparable hauliers will narrow, thereby reducing the competitive advantage of the overseas haulier.

At this stage of the analysis, the calculation does not include any cost of access to markets in other member states. The analysis presented here therefore describes a situation whereby loads are delivered into a member state from Country 'A', and the haulier then competes for loads in Country 'B' – but without any cross-subsidy of the entry load into that market. (i.e. secondary cabotage).

The analysis suggests that Bulgarian hauliers provide the lowest cost operation in their own country (Competitiveness Index of 1.0), whilst Estonia, Latvia, Lithuania and Romania are all within 10% of the operating costs of the lowest cost overseas haulier. At the other end, however, Belgium, Luxembourg and Sweden are undercut by overseas hauliers to the order of 30%, suggesting a distinctive competitive advantage for those engaging in long-term cabotage.

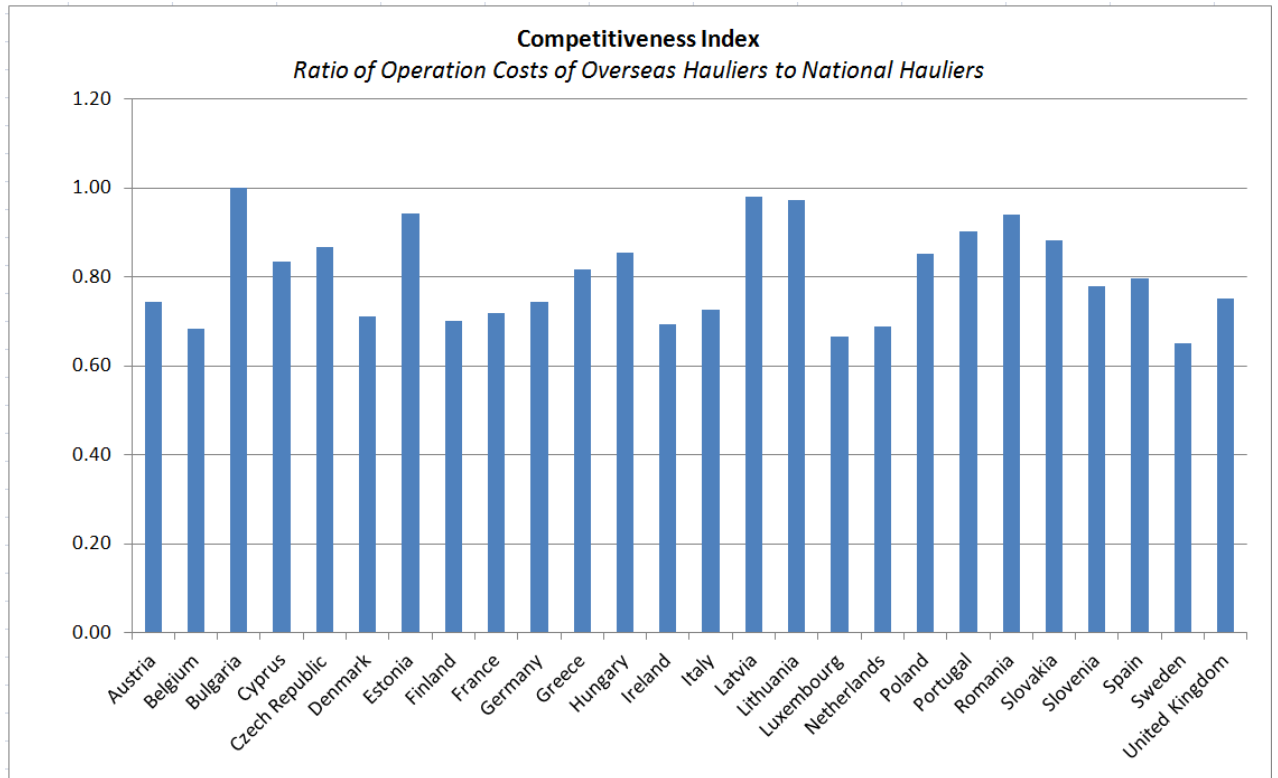


Figure 2-3: Competitiveness Indices (52-week period)

1.3.3 Cabotage Analysis Model (CAM)

The Cabotage Model has been developed as a tool to understand the extent of cabotage that is currently taking place in different member states by overseas hauliers. The model is currently looking at the following:

- The volume of international trade (tonne-km) into each MS by other MS;
- The volume (tonne-km) of cabotage exercised within that state by the overseas haulier
- The ratio of tonne-km cabotaged to tonne-km hauled into the country from each MS; and
- The ratio of tonnage hauled in cabotage to the tonnage hauled into the Member State, using an estimate of average km per cabotage trip within the MS.

In essence, the model seeks to understand the extent to which hauliers from Country 'A' are exercising their right to cabotage within Country 'B'.

As a starting point, the analysis has sought to focus on those country pairs where the access cost and the comparative cost of haulage operations might suggest that predatory cabotage is less likely. For such pairs, we have found that the level of cabotage as a proportion of the international trade is in the region of 5% based on tonne-km. Assuming an average distance of 100km per load within Country 'B', this equates to just under one load per international load carried. Increasing the cabotage distance to 300km yields an average of 0.3 cabotaged loads per international load.

Nevertheless, for country pairs where there is a strong cost differential, the results are substantially different. For such pairs, the level of cabotage as a proportion of the international trade is between 20% and 30% based on tonne-km. Again, assuming an average distance of 300km yields 1 to 2 cabotaged loads per international load. Shorter distances suggest significantly higher cabotaged loads per international load – in excess of the currently permissible limit. This suggests one of a number of effects:

- That international tonnage per vehicle into Country 'B' is lower, potentially through breaking of loads into multiple vehicles to facilitate entry into a cabotage market – this would require further investigation to verify; or
- That cabotaged distances tend to be significantly higher than the average haulage distance for a member state.

Either way, this suggests that cabotage is significantly more active in those member state pairs where there is a cost differential, and which is not offset by the access cost.

This module will be further elaborated with additional country pairs, and used to understand the ultimate level of haulage that might be delivered under cabotage under various policy scenarios. Already, the model suggests that with full harmonisation of costs, that cabotage might represent up to 5% of an international haulier operation, and might only increase beyond that if significant cost reductions can be achieved through efficiency gains.

1.4 Driver Allowances

Through the Task A and B workpackages, it became clear that driver payments were different for those engaging in international work. When considering cabotage activity, it is important that these allowances are included, as they can be a significant part of the total payment to drivers, and hence costs of operating a haulage operation.

Understanding the scale of driver allowances requires an acknowledgement that the proportional uplift in allowances varies considerably across all member states. Nevertheless, a few points of information have been gained through Task A, and through past experience of the project team, as follows:

- The cost differential for hauliers on international duty is a factor of approximately 6 between the highest and lowest cost operator;
- The uplift for hauliers in Romania leads to an effective doubling of driver wages;
- In the UK, the corresponding uplift is in the region of 20%.

Figure 2-4 below outlines Eurostat average labour costs in 2012 in the Transport Sector. Where transport sector costs have not been available, average wage rates have been used.

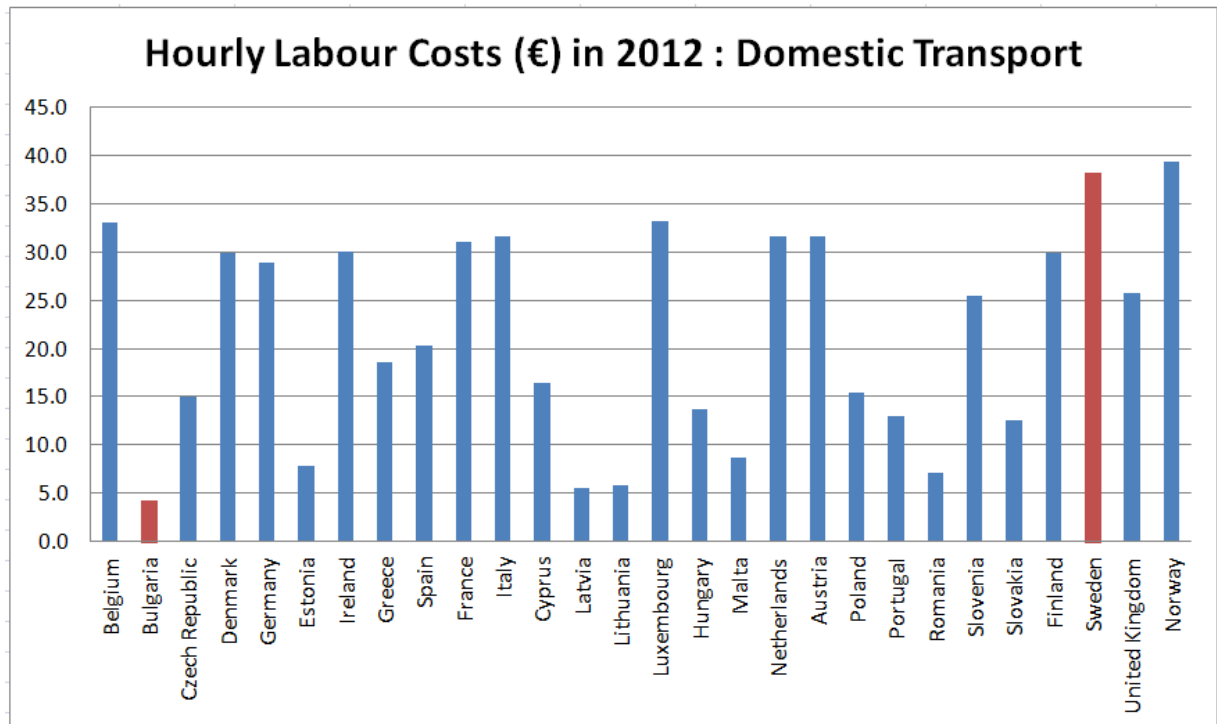


Figure 2-4: Hourly Labour Costs in 2010 (source: NEA)³

This differential equates to a factor of almost 10, and clearly does not reflect the factor of 6 established in Task A.

Taking the data from Romania and the UK suggests that the uplift for international operations might be in the region of €3 per hour. Recasting the analysis as in Figure 2 below shows a uniform uplift of all rates in terms of hourly labour costs. The table shows a factor of approximately 6 between the lowest cost country (Bulgaria/Romania) and the highest cost country (Norway/Sweden/Denmark). This suggests that the proposed level of €3 per hour to reflect hauliers on international duty is appropriate.

³ http://tln.nl/media/1_tln/publicaties/handboeken/transport_in_figures_2012.pdf

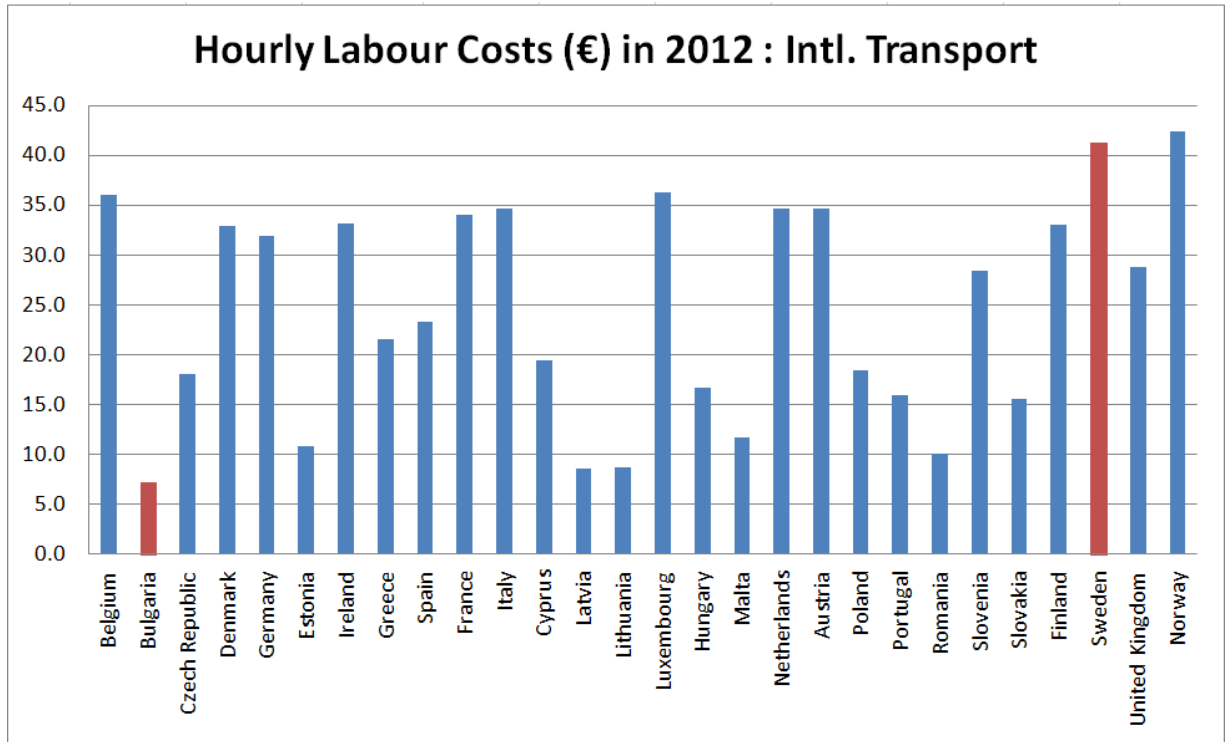
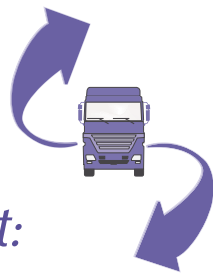


Figure 2-5: Hourly Labour Costs in 2010 including uplift for allowances

Appendix 3 – French Cabotage Implementation Document



Freight cabotage transport: the French regulation



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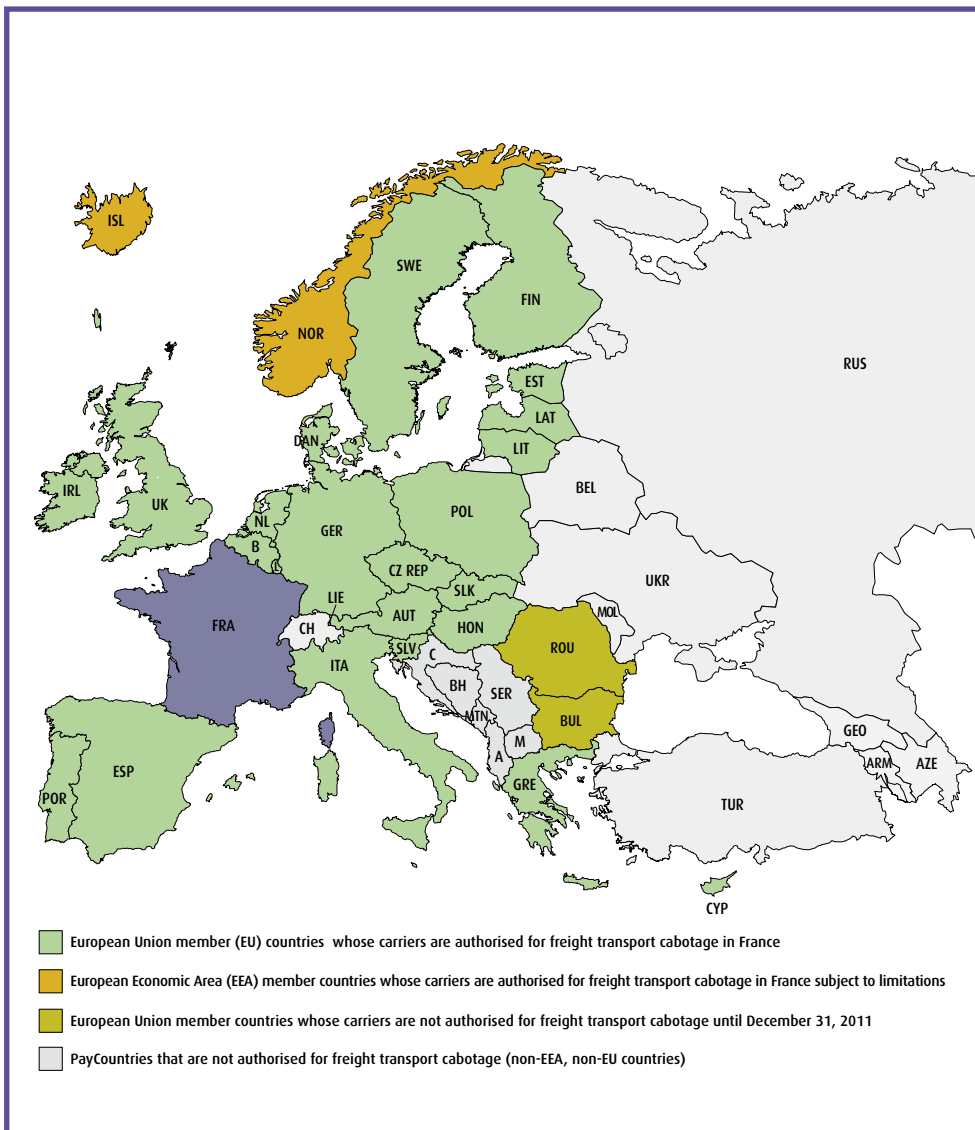


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■ The carriers of which countries are authorised to carry out cabotage transport operations in France?



France is at the heart of European freight transport networks making freight cabotage an issue of utmost importance. The 2009 “Road Transport Package” has meant that a balance has been found between opening markets and ensuring the perennity of the 40,000 French road freight transport companies.

The French Government has also decided to more strictly regulate, monitor and sanction the cabotage activities of non-resident companies in France.

To maintain a level playing field, these new legal provisions are continually controlled and enforced by state authorities.

■ What is cabotage?

Cabotage is any type of road freight transport between two points within a given country, which is carried out by a non-resident foreign carrier. Foreign companies, legally established in a member state of the European Union or of the European Economic Area are authorised to carry out cabotage operations in France subject to certain conditions (see map). The regulation’s provisions aim to reduce the number of empty journeys by authorising cabotage operations as part of longer international transport operations.

■ What does the new French legislation include?

The new French legislation, which came into force on December 10th, 2009¹, implements the provisions of Regulation n°1072/2009 of the European Parliament and the Council of October 21, 2009, published in the Official Journal (OJ) of the European Union (EU). The text sets forth common rules for access to the international road freight transport market.

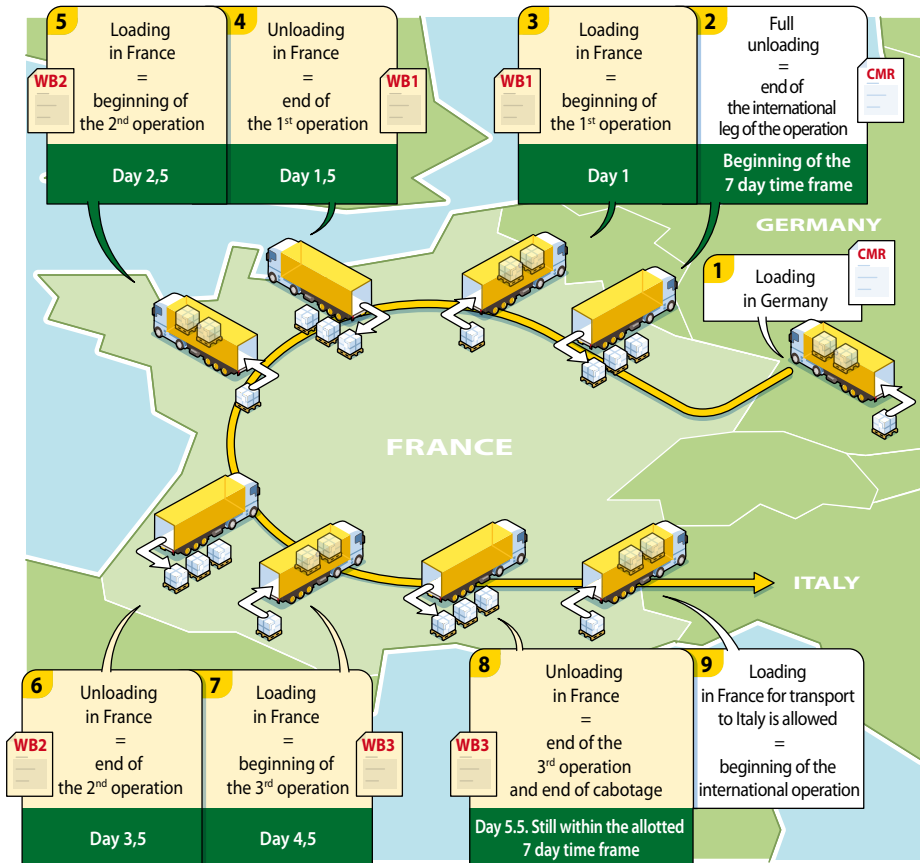
French legislation on road freight transport cabotage is governed by articles L 3421-3 to L 3421-10 of transport code and by decree n° 2010-389 of April 19th, 2010².

¹ Article 33 of act n° 2009-1503 of December 8th, 2009 on the organisation and regulation of rail transport and on the various transport provisions, amending article 6-1 of law n° 82-1153 of December 30th, 1982 on domestic transport.

² Decree n° 2010-389 on road and water freight transport cabotage of April 19th, 2010.

■ Which conditions apply to cabotage operations?

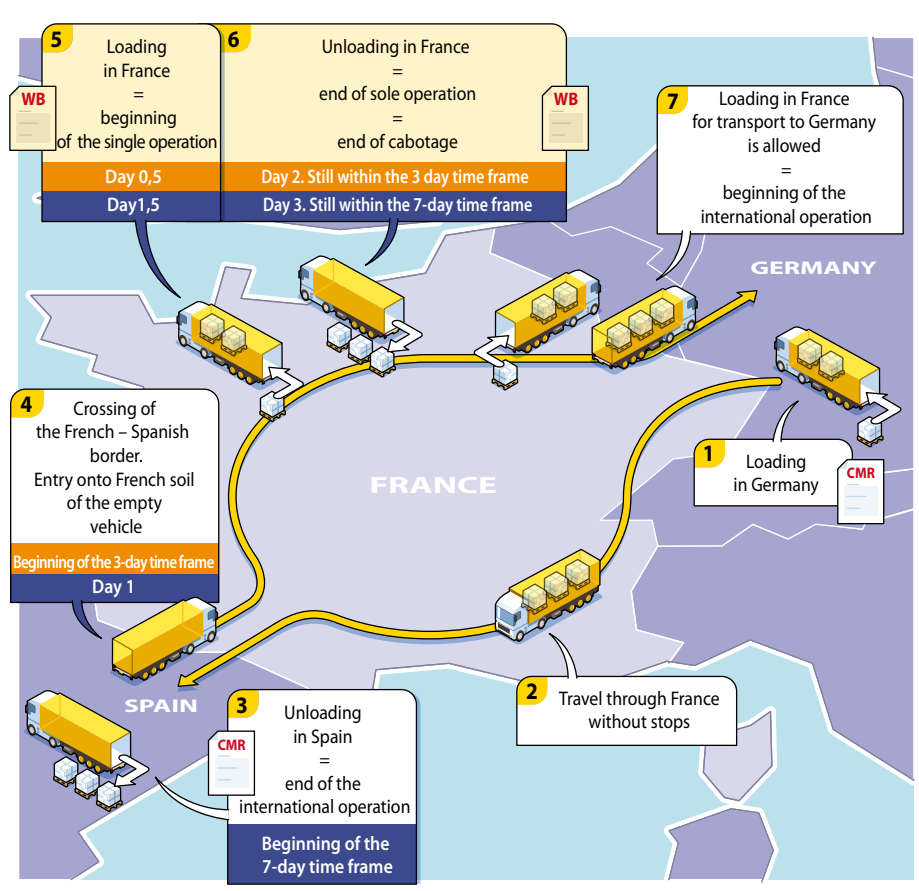
- Cabotage operations may only be carried out as part of an international journey.
- The cabotage operation must be carried out with the same truck as was used for the international transport journey or with the same tractor unit for a combination of vehicles.
- When the final destination of the international journey is France, road cabotage operations are allowed once all of the freight being transported internationally has been unloaded. A maximum of three cabotage operations, with three separate waybills, are allowed. The three cabotage operations must be done within seven days from unloading of the internationally transported freight.



Example 1 – International Transport with France as final destination: a maximum of three cabotage operations are allowed in France.



↳ If the final destination of the preceding international journey is a country other than France, a maximum of one cabotage operation in France is authorised within the three days following entry of the empty vehicle into the country. The cabotage operation must be completed within seven days from the unloading of the internationally transported freight.



Example 2 – France as a transit country in international transport: a maximum of one cabotage operation is allowed.

■ Which documents are required for any cabotage operation?

All drivers of vehicles used in a cabotage operation must have the following documents in their possession³:

- ↳ An international waybill (CMR)⁴ for the preceding international journey, which qualifies the vehicle to carry out a cabotage operation;
- ↳ A waybill (WB) for each cabotage operation carried out.

In addition to the standard compulsory information, each of the aforementioned documents must include:

- ↳ the date when the freight was unloaded;
- ↳ the registration number of vehicle used for the cabotage operation.

This information may be hand written.

Road freight transport cabotage activity is also checked through verification of the information recorded in the tachograph and the information regarding to freight loading.

■ What are the penalties for failure to abide by the rules governing⁵ cabotage operations?

Company vehicles that fail to abide by the cabotage regulation may be impounded until infringement has ceased and may be liable for a fine of 15,000 €.

Transporters of countries that are not authorised for cabotage operations may face up to a one-year prison sentence.

Failure to show the required documents or failure to show documents replete with all of the necessary information is punishable by a class 5 fine of up to 1,500 €.

■ Under which circumstances must a non-resident haulier be legally set up in France?

Cabotage operations are temporary operations. A haulier must be legally established in France, and hold a community licence issued by the French authorities, if the haulier carries out the following activities on French soil:

- ↳ frequent, continued, and regular domestic transport;
- ↳ any activity from premises or facilities that are located in France, which are used, on a permanent, continued and regular basis, for carrying out the said activity.

³ In addition to all other documents required under the legislation in force (copy of community licences, driver's licence, etc.).

⁴ In compliance with the Geneva Convention of May 19, 1956 on contracts related to international road freight transport.

⁵ Articles L 3452-6 and L 3452-7 of transport code.



■ What is the liability of the principal in the area of cabotage operations?

The principal must ensure that its contracted haulier does not carry out more than three cabotage operations in the seven-day period. The company does not need to verify that the requisite international transport journey has been carried out or if other cabotage operations have been made. The principal must maintain a record of all supporting documents for two years.

Principals that fail to abide by the provisions of the legislation may face a fine of 15,000 €⁶. Furthermore, failure to show the necessary supporting documents is punishable by a class 5 fine of up to 1,500 €.

■ VAT: which rules apply to cabotage operators?

In France, the client (with VAT registration in France) must pay all VAT, which applies to cabotage operations carried out on French soil. The client must pay the French VAT to the French tax authorities. Therefore, the foreign haulier must issue invoices exclusive of taxes to the client, which has a VAT registration in France.

Carriers that are legally established outside of France are not required to declare or pay VAT on cabotage operation services. If the aforementioned carriers do not carry out any other operations for which French VAT applies, they are not required to obtain VAT registration in France.



⁶ Article L 3452-8 of transport code.

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**Appendix 4 – The New
Cabotage Regime – Questions
and Answers**

THE NEW CABOTAGE REGIME UNDER REGULATION (EC) NO 1072/2009

Questions & Answers

Regulation (EC) 1072/2009¹ now contains the new rules on road cabotage which will apply as from 14 May 2010. The new regime provided for in Article 8 of the Regulation limits the overall duration of cabotage to 7 days and sets the maximum number of allowed cabotage operations to three. Before cabotage can start the haulier must have entered the host Member State with a laden vehicle and the goods carried in the course of the incoming cross-border transport must have been delivered.

These conditions and rules raise, of course, several questions as regards their precise definition and delimitation.

When can a haulier start with cabotage?

A haulier is only allowed to start performing cabotage, if he has carried out an international, i.e. cross-border transport. This carriage may have its origin in a Member State or in a third country. All goods carried in the course of the incoming transport must have been delivered. In case the incoming carriage consists of several consignments, cabotage can only start once all consignments have been delivered.

What constitutes a "cabotage operation"? Can there be several loading and/or unloading points?

The term "operation" needs to be defined according to the common practice in the road transport industry. It means the carriage of a consignment from the picking up of the goods until their delivery at the consignee as specified in the consignment note. A cabotage operation can involve several loading points, several delivery points or even several loading and delivery points, as the case may be.

When does the 7 days' period start and how is it calculated?

"Days" as contained in the Regulation refers to calendar days and not just a period of 24 hours. Therefore the overall period of 7 days referred to in Article 8(2) starts from 0h00 of the day following the last unloading in the course of the incoming international carriage. The last unloading in the course of the final cabotage operation must consequently take place at 24h of the seventh day at the latest.

What is meant by the 3 days limit in Art. 8(2) 2nd subparagraph?

Within the 7 days period hauliers can either perform cabotage in one Member State only or in one or more Member States. Up to 3 cabotage operations can be performed at the maximum. A haulier may decide to carry out one, two or all three cabotage operations not in the Member State of the incoming international transport but in other Member

¹ Regulation (EC) 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market, OJ L 300, 14.11.2009, p. 72