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**REFIT EX-POST EVALUATION**

**OF REGULATION (EC) No 1071/2009 ON ACCESS TO THE OCCUPATION OF  
ROAD TRANSPORT OPERATOR AND REGULATION (EC) No 1072/2009 ON  
ACCESS TO THE INTERNATIONAL ROAD HAULAGE MARKET**

**FINAL REPORT**

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# 1 INTRODUCTION

## 1.1 Purpose of the evaluation

Regulation (EC) No 1071/2009 on access to the occupation of road transport operator<sup>1</sup> and Regulation (EC) No 1072/2009 on access to the international road haulage market<sup>2</sup> (hereafter "the Regulations") were adopted in 2009 as part of the package of measures aimed at modernising the rules governing admission to the occupation of road transport operator and access to the road transport market. As a global objective, they aimed to support the completion of the internal market in road transport, its efficiency and competitiveness.

A broad review of the road freight market was undertaken by the Commission in 2012-2014, resulting in the adoption of the Report on the State of the Union Road Transport Market in April 2014. The Commission came to the preliminary conclusion that there were significant enforcement problems with the Regulations, a wide divergence between Member States in terms of implementation and a lack of clarity in its provisions. These issues were considered to be hindering the Single European Transport Area in road transport.

In this light, it was considered important to assess if the measures in place are achieving their objectives and whether there are any inconsistencies, obsolete or unclear provisions or gaps in terms of guidance.

The results of this evaluation may be used as an input for possible future policy development, including for impact assessments.

## 1.2 Scope of the evaluation

The evaluation assesses the implementation and effects of the Regulations from 4 December 2011, when the Regulations became applicable in full, with the exception of the provisions on cabotage in Articles 8 and 9 of Regulation (EC) No 1072/2009, which became applicable from 14 May 2010<sup>3</sup> and are assessed as from that date. The transitional periods concerning cabotage for hauliers from the Member States that joined the EU in 2004 and later are also taken into account<sup>4</sup>. The evaluation covers all Member States.

The Regulations were adopted as part of a package along with Regulation (EC) No 1073/2009 on access to the international market for bus and coach services<sup>5</sup>. The evaluation concerns only the road haulage sector and therefore the provisions of Regulation (EC) No 1071/2009 on passengers transport are excluded from the scope of the ex-post evaluation. The assessment of the legislation related to the international market for bus and coach services forms a self-standing and separate evaluation.

The Regulations replaced previous legislation and therefore the evaluation focuses on the new features introduced in 2009, notably the cabotage provisions of Regulation (EC) No 1072/2009 and the revised provisions on access to the occupation of road haulier of Regulation (EC) No 1071/2009 (see section 2.1 below).

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<sup>1</sup> OJ L 300, 14.11.2009, p. 51.

<sup>2</sup> OJ L 300, 14.11.2009, p. 72.

<sup>3</sup> The cabotage provisions in Articles 8 and 9 of Regulation (EC) No 1072/2009 entered into force in May 2010 (before the remaining provisions of the Regulation) and this longer period of application is included in the evaluation.

<sup>4</sup> Hauliers from the Member States that joined the EU in 2007 were subject to a transition period of up to five years during which they could not carry out cabotage in other Member States. This transition period ended on 1 January 2012. Hauliers from Croatia are subject to a similar transition period that will end at the latest in 2017.

<sup>5</sup> OJ L 300, 14.11.2009, p. 88.

## **2 BACKGROUND TO THE REGULATIONS**

### **2.1 Description of the initiative and objectives**

The Regulations were proposed in order to address the lack of clear principles for consistently applying the rules laying down the requirements for accessing the profession and the international road transport market, and for performing the associated controls and monitoring. The main problems that were identified as a basis to justify EU-level action at the time were as follows:

- Heterogeneous requirements for stable and effective establishment;
- Unclear definition and control of temporary cabotage;
- Uneven monitoring of compliance and lack of provisions on cooperation between Member States;
- Non-comparability of certificates of professional competence and requirements for financial standing;
- Unclear link between the holder of a certificate of professional capacity (“transport manager”) and the undertaking using its certificate to obtain the licence giving access to the market;
- Heterogeneity of a number of control documents.

As specific objectives, both Regulations aimed to reduce the administrative burden for transport undertakings and national authorities, by having uniform and easily enforceable rules across Member States. Through setting higher standards for the examination granting access to the occupation and conditions for good repute, Regulation (EC) No 1071/2009 aimed to achieve a higher level of professional qualification of road transport operators. In turn, enhanced requirements regarding knowledge of legislation and good repute of operators, as well as the intended improvements in the enforcement of the rules, were meant to lead to higher rates of compliance with social legislation. In addition, Regulation (EC) No 1072/2009 aimed at better defining the temporary nature of cabotage operations, in order to improve the clarity and eliminate legal uncertainty for Community hauliers.

As operational objectives, the Regulations aimed to lay down common, simplified and clearer rules that would improve enforceability. Another objective was to better regulate certain aspects of the previous regime by reformulating provisions on cabotage and community licences. Finally, the Regulations also contain certain provisions regarding the enforcement of the substantive rules, through measures to simplify administration, as well as measures to ensure administrative cooperation between Member States.

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

In order to achieve their objectives, the Regulations introduced the following main changes in relation to their predecessors:

- A new requirement on access to the occupation of road transport operator, i.e. the requirement to have a stable and effective establishment in a Member State;
- More detailed guidance on the type of infringements leading to the loss of good repute;
- New detailed provisions concerning the “transport manager” and how he relates to the transport operator;

- A higher financial threshold for meeting the financial standing requirement and wider possibilities to use bank guarantees or insurances and professional liability insurances, rather than cash;
- More detailed guidance on the content and organisation of the examination required as proof of professional competence and a standardised model for the certificate of professional competence;
- A new requirement to organise periodic checks of compliance with the rules on access to the occupation of road transport operator based on a risk rating system;
- A new requirement for Member States to set up an electronic register of road transport undertakings and to interlink this register with those of the other Member States;
- New provisions on administrative cooperation and mutual assistance between Member States in respect of the application of both Regulations;
- New restrictions to cabotage operations based on a maximum number of operations during a given time period, replacing the previous fixed quota system based on cabotage authorisations issued by the Commission;
- An increase in the maximum period of validity of the Community licence from 5 to 10 years;
- New provisions on a "driver attestation" intended to recognise the employment of third country drivers and to provide for their mutual recognition by Member States.

## 2.2 Baseline

The problems identified before adoption of the Regulations affected stakeholders throughout the transport chain. Road transport operators were confronted with distortion of competition and additional administrative burdens due to the unclear rules. Some operators were able to exploit the loopholes in the rules, with a possible negative impact in social conditions and road safety. Enforcement authorities had to cope with complex rules, heterogeneous control documents and time-consuming procedures related to processing information from various sources. Final consumers may also have been affected by the poor functioning of the internal market, leading to less efficient transport and higher costs.

Prior to the introduction of Regulation (EC) No 1071/2009, each Member State imposed its own conditions on road undertakings wishing to establish themselves in its territory. The previous level of variation created a risk that undertakings would choose to locate in Member States where the requirements were less strict, but without having a real operational base and office in the country of registration (establishment country). This led to competitive distortion, difficulties with checking compliance with road safety and social rules and tax evasion<sup>6</sup>

As such, the identified problems could undermine market efficiency, the quality and safety of road transport in general and prevent customers from reaping the full benefits of the internal market in road transport. Intervention at the EU-level was justified on the grounds that it would be impossible for Member States acting alone to satisfactorily solve the identified problems.

It was anticipated, absent an appropriate revision of the rules, that problems of inconsistent enforcement, uneven compliance, uneven playing field and high administrative costs would persist and even become worse as cabotage was opened up to all Member States.

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<sup>6</sup> European Commission, 2007a.

### **3 EVALUATION QUESTIONS**

The evaluation has addressed the five following evaluation criteria: effectiveness, efficiency, relevance, coherence and EU added value. The evaluation questions were defined on the basis of the intervention logic presented above. In particular they aimed to assess the various identified links between problems and needs, objectives, inputs and effects. The answers to the detailed evaluation questions are analysed in Section 6.

- **Effectiveness**

The effectiveness of the road haulage legislation refers to the realisation of the expected effects. The evaluation has looked at whether the Regulations have contributed to increased safety, to the better functioning of the internal market for road haulage and better social conditions to the transport workers. Under this criterion, the contribution of various inputs to these overall objectives has also been assessed (e.g. enforcement measures and monitoring provisions). Unintended impacts have also been investigated.

- **Efficiency**

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

- **Relevance**

The evaluation has looked at whether the current framework is adequate to address the social, safety and internal market issues identified.

- **Coherence**

The evaluation has looked at the coherence of the road haulage framework, both internally (e.g. gaps or overlaps with other road transport legislation) and externally in terms of coherence with EU challenges and objectives.

- **European Added Value**

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

### **4 METHODOLOGY**

#### **4.1 Division of tasks**

The evaluation has been carried out with the support of an external contractor for data collection and analysis and cost-benefit analysis.

#### **4.2 Quantitative data collection, its reliability and robustness**

The external study carried out by the contractor has permitted the gathering of extensive quantitative data for the first time. It includes all data that could have been gathered in a reliable and proportionate manner at this point in time. Although the available data did not allow a fully-fledged cost-benefit analysis of every single regulatory requirement and the range of uncertainty is rather high, it provides an informative input to the evaluation analysis and a sufficient basis for the subsequent review and monitoring processes.

The contractor prepared tailor-made questionnaires for the main stakeholder groups, i.e. national transport ministries, enforcement authorities and transport companies, containing questions on data/statistics. The surveys for enforcement authorities in particular focussed on

quantitative information (especially regarding the number of checks, number of infringements and costs).

**Table 1 - Summary of survey responses<sup>7</sup>**

Type of stakeholder	Approached	Responded	% response rate
National transport ministries	47	20	43%
Enforcement authorities	78	20	26%
Undertakings survey	N/A <sup>8</sup>	122	-
High level (general) survey	154	37 <sup>9</sup>	24%
<b>TOTAL (surveys)</b>		<b>199</b>	<b>-</b>

*Source: Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 – Final report*

The response rate to the questionnaire on quantitative data was moderate, both in terms of the number of respondents and of the amount of questions answered by the stakeholders. Thus, the data collected in this procedural step presents some limitations. For example, the transport undertakings which participated could not always answer all of the questions, especially the ones where specific data was requested. Data about the costs brought about by the Regulations, for instance, is very specific and generally not available. This challenge to provide detailed quantitative data affected the quality of the replies to the questionnaires by enforcers and ministries. Hence, part of this analysis relied on a qualitative assessment.

Case studies were carried out by the contractor, with support from the Commission, for 5 Member States (Denmark, Spain, Germany, Poland and Romania) and bilateral contacts were arranged with national stakeholders to get additional input. The design of the case studies aimed to achieve a minimum of 4 interviews with stakeholders in each country. This was achieved for all countries (10 interviews for Germany, 6 for Denmark, 9 for Spain and 4 for Romania), with the exception of Poland (3 interviews).

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

Secondary data was also used in support of the evaluation. Available statistics were reviewed and used where appropriate. In particular, use was made of Eurostat data and monitoring data available under both Regulations. The quality and availability of the official monitoring data is often limited, despite efforts to substantiate publicly available statistics with stakeholder engagement via surveys and interviews. This is notably due to the relatively recent implementation of Regulation (EC) No 1071/2009, for which there has only been one reporting period so far (from 4 December 2011 to 31 December 2012). Moreover, there is usually no breakdown of the relevant statistics (such as identifying the different reasons for withdrawals of licences to operate). To help improve the quality of data, representatives of the relevant authorities of Member States were asked to provide further breakdowns in interviews and surveys, but typically they reported that they do not monitor this more detailed information. Where possible, the partial data collected was used to infer conclusions for the EU as a whole, with the limitations that result therefrom.

<sup>7</sup> Stakeholder engagement activities were conducted from October 2014 until July 2015. Response rates are approximate, as some organisations forwarded the request to participate to other organisations on behalf of the consultant.

<sup>8</sup> Undertakings surveys were distributed via national associations, hence it is not known how many organisations were contacted.

<sup>9</sup> A number of coordinated responses were received from trade unions and transport operator associations.

Other publications available on the topic have also been reviewed. Desk research was carried out both by the Commission and by the contractor. Almost 150 pieces of literature were used to supplement responses from stakeholders and official data sources. Key findings from desk research of the contractor are detailed in the contractor's final report.

### 4.3 Qualitative data and stakeholders' opinions

Throughout this evaluation process, the Commission services discussed the implementation and effects of the Regulations with stakeholders both through regular contacts and targeted consultations. Stakeholders were informed about the on-going evaluation on numerous occasions, in order to incentivise them to respond to the questionnaires, to provide their views and to bring forward any relevant evidence. Such occasions include ad-hoc meetings with national authorities and representatives of the employers and employees, seminars and conferences.

Targeted consultations aiming at collecting stakeholders opinions took place within the context of this evaluation. They took the form of the above-mentioned tailor-made questionnaires and a total of 54 interviews carried out by the external contractor.

**Table 2 - Summary of interviews**

Type of stakeholder	Approached	Responded	% response rate
National transport ministries	6	5	67%
Enforcement authorities	18	13	72%
Industry associations	20	14	70%
Trade unions	12	6	50%
Undertakings	72	16	22%
<b>TOTAL (interviews)</b>	<b>128</b>	<b>54</b>	<b>42%</b>

*Source: Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 – Final report*

In addition to surveys targeting specific stakeholders groups (as discussed above), a high level (general) survey was run to capture opinions from stakeholders for which there was not targeted survey. This high level survey was answered by 37 organisations, mainly associations of transport operators (14) and trade unions (12), with a small number of Non-Governmental Organisations and other types of associations.

The main purpose of the high level (general) consultation was to identify high level, cross-cutting views on the main evaluation criteria and issues for the sector. All of the respondents<sup>10</sup> identified as the main issues for the road haulage sector illegal practices of letterbox companies and the lack of capabilities to enforce the provisions of the Regulations. Moreover, a majority of respondents considered the following as significant problems: unclear definition of cabotage, as well as defective enforcement of the corresponding rules, uneven approaches to monitoring of compliance between different Member States and the lack of provisions on administrative cooperation between Member States.

The survey to national transport ministries focussed on national implementation and interpretation of the Regulations. As regards Regulation (EC) No 1071/2009, half of the respondents consider that there are no specific problems with the interpretation of the provisions, while others see a lack of guidance in particular on the specific criteria for a stable and effective establishment. In relation to Regulation (EC) No 1072/2009, several Member States identified ambiguities, in particular: how to count the number of operations when there are

<sup>10</sup> The high level survey was answered by 37 organisations, mainly associations of transport operators (14) and trade unions (12), with a small number of non-governmental organisations and other types of associations.

several loading and unloading points (44% of respondents); the interaction with the Combined Transport Directive<sup>11</sup> (33% of respondents); the three day limit when performing cabotage operations in several Member States (32% of respondents); and the provisions regarding what documentary proof is required of the operator doing cabotage and what use enforcers are permitted to make of other evidence (22% of respondents).

The survey for enforcement authorities focussed on enforcement practice and challenges and interpretation of the provisions. The majority of respondents reported that most provisions of Regulation (EC) No 1071/2009 did not cause difficulties with enforcement<sup>12</sup>. The main area of contention appears to be the obligations for cooperation across borders, with 50% of enforcement authorities from the EU-15 and 80% of enforcement authorities from the EU-13 having at least some or significant difficulties in this area. The main contributing factor to the difficulties was reported to be a lack of manpower to carry out enforcement. The most significant difficulties with enforcement of Regulation (EC) No 1072/2009 are around how to count the number of operations when there are several loading and unloading points, similarly to the responses received from national ministries, with around 42% of the enforcement authorities having significant difficulties in this respect.

Transport undertakings were consulted to consider the direct effect of the Regulations on their activities and issues for the sector. While most of the respondents<sup>13</sup> believe that the requirements of Regulation (EC) No 1071/2009 did not have any significant adverse effects on them, hauliers from Germany and Denmark were more likely to disagree that the requirement for stable and effective establishment had led to fair competition and/or a reduction in the number of letterbox companies. As regards Regulation (EC) No 1072/2009, hauliers believe that the effectiveness of the cabotage rules is undermined by a lack of controls. However, around 65% of undertakings consider that checks of cabotage (when they do take place) are adequate to detect companies that break the rules. Hauliers also identified the main issues contributing to difficulties in demonstrating compliance with the rules as being language barriers, i.e. enforcement officers being unable to interpret the required documents or a loss or misplacing of the required documents.

Finally, during the country case studies, stakeholders were also able to provide their views on various elements of the Regulations.

The results of these different consultations are available in the final report of the consultant's support study and are reflected in this evaluation.

#### **4.4 Data analysis and judgment**

The evaluation results from a combination of legal and economic analysis performed by the contractor with guidance and support by the Commission.

The legal analysis assessed gaps, overlaps, inconsistencies and overall coherence of the legislative framework. This analysis has also fed into the economic analysis.

The economic analysis covered the following elements:

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<sup>11</sup> Directive 92/106/EC.

<sup>12</sup> For example, none of the enforcement authorities which replied to the survey had significant difficulties in enforcing the requirements of financial standing, good repute and professional competence and only 20% of the enforcement authorities from the EU-13 had significant difficulties in enforcing the requirements for checks of stable and effective establishment (0% for enforcement authorities of the EU-15).

<sup>13</sup> Less than 30% of all respondents considered that the requirements of Regulation (EC) No 1071/2009 had significant adverse effects on their business.

- On the basis of the findings from the different questionnaires and from additional interviews and desk research, the contractor provided an analysis of the road haulage market.
- The contractor also carried out a cost-benefit analysis. This includes the assessment of regulatory costs and benefits under the Regulations and potential costs and savings from modernisation of the current framework.

The results of this analysis are presented in sections **Error! Reference source not found.** and 6 below.

## 5 MARKET CONTEXT AND DEVELOPMENT AND STATE OF PLAY

### 5.1 Market context and development

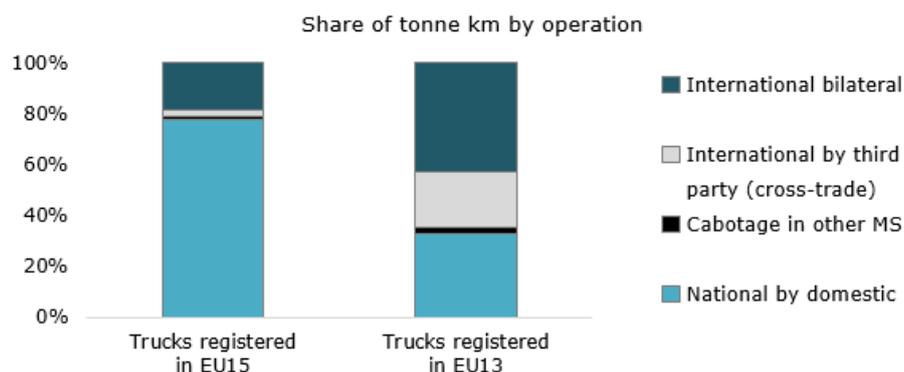
#### Road haulage activity and levels of trade

Overall, road freight transport accounts for around 45% of freight moved in the EU-28, a share which has remained largely unchanged over the past decade. Around two thirds of road freight movements are within Member States and one third is between Member States.

The total volume of road freight transport in the EU-28 was around 1,720 billion t-km in 2013, some 10% less than during its peak in 2007, but showing a small increase compared to 2009 (1,700 billion t-km). This development has been shaped by the global financial and economic crisis, which has had severe impacts on the EU. Cross-trade<sup>14</sup> has grown significantly in recent years due to the fact that international transport activities are completely liberalised within the EU.

Vehicles registered in the EU-13 perform a far greater share of international operations (as measured in tonne km), including cross-trade and cabotage than vehicles registered in the EU-15, which haul almost 80% of their freight within their national boundaries.

**Figure 1: Split between national and international road freight movements: EU15 vs EU13 vehicle park (2013)**



Source: Eurostat Dataset road\_go\_ta\_tott

Note: While it has been suggested that Eurostat data underestimates actual levels of cabotage, they are the most comprehensive and most comparable data available, as they are the result of an official data collection carried out by National Statistical Offices and reported to Eurostat according to agreed standards.

Cabotage accounted for just over 2% of national transport activity in 2013. The share of cabotage has roughly doubled between 2004 and 2013, but this seems to be mainly due to the lifting of special transitional restrictions in 2009 and 2012 on hauliers from most countries

<sup>14</sup> Freight carried by vehicles registered in third countries, i.e. neither the loading nor the unloading country.

that joined the EU in 2004 and 2007<sup>15</sup>, respectively, rather than by the adoption of Regulation (EC) No 1072/2009. Cabotage grew by 20% between 2012 and 2013 alone. Germany, France, Italy, the UK, Belgium and Sweden are the mainly affected by cabotage, accounting for 86% of total cabotage taking place. Two thirds of all EU-28 cabotage is carried out in Germany and France. The share of cabotage carried out in EU-13 states is virtually zero. Around 28% of all cabotage activity is carried out by Polish operators.

Data on the level of illegal cabotage suggests that the rates of infringements detected by the national enforcement authorities are relatively low in most countries (e.g. Denmark and Eastern European Member States), although the presence of illegal cabotage is confirmed in others (e.g. France).

**Table 3: Number of violations of cabotage rules in different Member States**

Country	Period	Number of detected infringements	Infringement rate
DE	2014	1,520 out of 183,200 checks	0.83%
UK	March 2012 – March 2013	229	0.2%
PL	2013	12 infringements out of 233,118 inspections	0.01%
IT	January 2012 – October 2012	205 infringements issued following 220,965 roadside checks	0.1% referring to infringements of rules on international transport, including cabotage
FR	2010-2011	50,928	7% of vehicles stopped for cabotage controls were issued a sanction
DK	2014 2012-July 2013	1 case out of 78 checks	0.5% 1.3%
IE	2013	3 breaches out of 185 checks	1.3%
NL	2013	163 inspections	6.1% (official monitoring data)

*Source: European Parliament (2013a); (Sternberg et al, 2014) - Denmark; (Dáil debates, 2013) - Ireland; survey of enforcement authorities - Netherlands official monitoring data; (Francke, 2014) – Netherlands estimated data. Statistics for Germany provided by BAG.*

Based on Eurostat data from 24 out of 28 EU countries<sup>16</sup>, the share of empty runs has slightly gone down from 25% in 2008 to 23% in 2014. In national transport, it went down from 28% to below 27% and in international transport it went down from 15% to below 14%. However, there is no data supporting the view that the provisions of the Regulation on cabotage led to a reduction in the level of empty runs.

### Market structure

In total, there are around 600,000 registered road freight transport and removal enterprises in Europe<sup>17</sup>, employing around three million people<sup>18</sup>. This figure has remained largely unchanged since 2009.

The market is broadly divided into two main segments. The first are small firms that account for the vast majority of the total number of hauliers - 90% of enterprises in the sector have fewer than 10 employees and account for close to 30% of the sector's turnover in the EU, including self-employed, while 99% have less than 50 employees. These firms tend to compete mainly on price, with labour costs being a key determinant of competitiveness.

<sup>15</sup> See footnote no. 4.

<sup>16</sup> No data available for Belgium, Italy, Malta and Romania.

<sup>17</sup> See section 2.2 of the Report from the Commission on the State of the Union Road Transport Market (COM(2014)222final, 14/4/2014). Note that the Eurostat business indicators only cover hire and reward road transport businesses. These account for around 85% of all tkm, while own account transportation (transportation carried out by other businesses for their own purposes) accounts for 15%.

<sup>18</sup> European Commission, 2014b.

Currently, the vast majority of heavy truck drivers are still employees (on average, 92%), with the remainder being self-employed<sup>19</sup>.

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

In more recent years, growing cost pressures in the transport sector have led to an increased use of complex employment arrangements, such as (cross-border) sub-contracting chains or temporary contracts<sup>20</sup>. The actual extent of such arrangements remains however largely unknown<sup>21</sup> (Ricardo Energy & Environment et al, 2015).

Overall, the European road haulage market can be characterised by a chain of hire and reward companies with large pan-European logistics companies at the top controlling the largest contracts but subcontracting a large part of these down the chain. Small enterprises and owner drivers either form small consortiums to obtain work, rely on subcontracting from larger firms or move loads identified through freight exchanges.

### Letterbox companies

There is some evidence that there are still companies without stable and effective establishment being detected in the EU today. Besides from specific cases brought to the attention of the Commission<sup>22</sup>, in the context of the support study for the evaluation enforcement authorities reported several letterbox companies detected during checks.

**Table 4: Estimated number of letterbox companies in selected Member States (2013 or 2014)**

Member State	Number of checks of stable and effective establishment	Number of letterbox companies detected
Denmark	All applications	1
Poland	2,351	30
Bulgaria	5,640	35 for 2013; 49 for 2014
Romania	7,110	0
Netherlands	N/A	15 for 2014

Source: survey of enforcement authorities

### Cost structure

During the economic downturn, profit margins have contracted within the logistics sector as well as in the road haulage sector. A key effect has been the substantially increased price competition created within road transport, which has then extended to the entire freight market. On the main European corridors, freight rates have fallen even below pre-boom prices in the years up to 2006 to as low as €0.7 per vehicle-km or less. This corresponds to a reduction of some 30% compared to previous market prices of about €0.9 to €1.0 per vehicle-

<sup>19</sup> Broughton et al, 2015.

<sup>20</sup> Broughton et al., 2015, Tassinari et al. 2014, TRT, 2013.

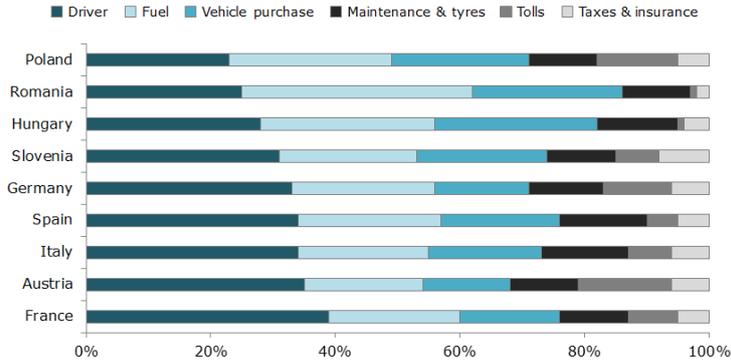
<sup>21</sup> Ricardo Energy & Environment et al, 2015.

<sup>22</sup> For example, in 2014 the Belgian authorities requested the Commission to intervene on their behalf in order for the Slovak authorities to investigate suspected letterbox subsidiaries set up by Belgian hauliers in Slovakia. The Slovak authorities carried out on-site inspections concerning 42 companies. Several companies were found not to comply with the establishment provisions of Regulation 1071/2009. In one case the authorisation had already been withdrawn and for nine other companies the respective authorisations were withdrawn.

km, which barely covers the variable costs of haulage, let alone the full cost of vehicle utilisation.

Cost levels are one of the key factors determining competitiveness in the road haulage sector. As shown in figure 2 below, the most important cost components are the driver’s wages and fuel, followed by vehicle purchase costs. While in absolute terms labour costs in the Member States that joined the EU in 2004 and 2007 remain lower than in the EU-15, the gap is steadily narrowing.

**Figure 2: Percentage of operating costs per hour in selected Member States**



Notes: Driver costs indicate wages; maintenance includes general vehicle maintenance and tyre replacement  
 Source: (Bayliss, 2012)

**5.2 State of play<sup>23</sup>**

The Regulations brought about several innovations in relation to their predecessors. This section analyses how the new provisions of the Regulations have been implemented by Member States, what problems have been encountered and what the situation of the road haulage market looks like today.

*5.2.1 Regulation (EC) No 1071/2009 on access to the occupation of road transport operator*

Regulation (EC) No 1071/2009 lays down four requirements for access to the occupation of road transport operator, notably (a) have an effective and stable establishment, (b) be of good repute, (c) have appropriate financial standing, (d) have the requisite professional competence. The Regulation also contains rules on enforcement and penalties for infringements of its provisions, as well as rules covering administrative cooperation between Member States. The requirement for a stable and effective establishment was newly introduced in Regulation (EC) No 1071/2009, while the remaining criteria already existed previously, but were amended (see section 2.1 above).

Overall, more than 50% of enforcement authorities reported in the survey that they faced no or few difficulties to enforce and implement the majority of the requirements of Regulation (EC) No 1071/2009, with most respondents indicating that they faced some difficulties in one or two areas only. The main areas where some difficulties were encountered were the obligation to cooperate across borders (mostly linked to investigations of letterbox companies), followed by the use of a risk rating system, which were both new features introduced by Regulation (EC) No 1071/2009.

<sup>23</sup> To the extent that the present document reports on certain interpretations defended by one or the other Member State or on national rules and practices, such report is for information purposes only. It does not prejudice the Commission’s views about any of those interpretations, rules or practices.

Implementation and enforcement of the new provisions of the Regulation by Member States is assessed below in more detail.

#### 5.2.1.1 Requirement of effective and stable establishment

The new requirements on stable and effective establishment enshrined in Regulation (EC) No 1071/2009 were one of the key innovations of the Regulation. The Regulation specifies that an undertaking must have an office in which it keeps its core business documents and an operating centre with the appropriate technical equipment and facilities in the Member State of establishment. Moreover, once an authorisation is granted, they need to have at least one vehicle at their disposal which is registered in that Member State.

Difficulties encountered in respect of this requirement have been of two orders.

The first concerns the fact that the notion of "operating centre" is not explicitly defined in the Regulation.

Most Member States have simply applied that notion, without additional rules at the national level. However, some Member States have resorted to additional, specific requirements. The most common one pertains to parking space, for which Austria, Bulgaria, Ireland, Slovakia and the UK pose specific requirements. In Luxembourg, the respondent to the survey of ministries indicates that the establishment has to be appropriate to the size of the company; the manager has to be present on a regular basis; and the existence of a parking space is checked although it is not a legal requirement. Few Member States set specific requirements to own certain property – only in the UK are licence holders required to provide a self-declaration that either they themselves own the premises they intend to use as an operating centre or have permission from the site owner. An additional requirement in Finland is that an undertaking must be registered in the Finnish Trade Register and its municipality of residence must be in Finland. This leads to reported difficulties in defining when an undertaking does not satisfy the requirement of stable and effective establishment.

Without it being necessary to determine whether such requirements are compatible with the nature and the terms of the Regulation, their existence indicates that the above-mentioned lack of a precise definition raises difficulties.

Secondly, enforcers reported difficulties in gaining support from authorities in different Member States to investigate suspected letterbox companies, claiming that it is often not possible to gain clarity as to whether the entity in question represents an effective and stable establishment. As mentioned above, 50% of enforcement authorities from the EU-15 and 80% of enforcement authorities from the EU-13 reported at least some or significant difficulties related to the obligation to cooperate across borders (mostly linked to cross-border investigations of letterbox companies). The Commission also has, at several instances, received requests from Member States to intervene on their behalf towards other Member States where they suspect letterbox companies<sup>24</sup> to exist, after obtaining no results from their bilateral contacts with the latter Member States.

It is difficult to directly identify changes over time in the number of companies infringing the requirement regarding the existence of an effective and stable establishment (letterbox companies), given the paucity of data. Therefore, the development of market forces, namely cost differentials between Member States, is considered as a proxy to capture the potential

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<sup>24</sup> For example, the Commission has been asked by Denmark to request that the German authorities investigate possible letterbox subsidiaries created by Danish companies in Germany.

incentives for setting them up. Although there are some signs of labour cost convergence across Europe, there are still considerable differences between Member States. For example, the cost of a French driver is 2.4 times higher than a Polish driver spending three weeks per month outside their respective domestic markets<sup>25</sup>. Even taking into account possible differences in terms of skills and productivity, the pay gaps are sufficiently high to conclude that there are still substantial differences in the labour costs. Also differences in social insurance contributions can be quite substantial. As an example, the estimated amount of the employers' mandatory (net) social security contributions for a driver is €736 per month in France, €446-630 in Germany, €481-584 in Spain, as compared to €316 in Slovakia and €111 in Poland<sup>26</sup>. These continuing cost differentials between countries create strong incentives for the establishment of letterbox companies. The cost advantage that letterbox companies have compared to companies which fully comply with all transport rules has been estimated at 31% across all countries, on the basis of the responses from transport undertakings. While the data is not conclusive, it is still clear that the problem has not been fully solved and that letterbox companies still persist today.

#### 5.2.1.2 Requirement of good repute

Regulation (EC) No 1071/2009 sets out that the good repute of transport managers (or undertakings) is conditional on their not having been convicted of a serious criminal offence or having incurred a "penalty" for one of the most serious infringements of road transport rules. In practice, Member States vary in whether they treat administrative fines, arrangements out of court and on-the-spot payments as "penalties". For example, Bulgaria, Croatia, Cyprus and Luxembourg do not consider any of these as penalties. Administrative fines are considered in the assessment of good repute in Austria, Sweden, Lithuania, Belgium, Estonia, Germany, Poland and Latvia. Arrangements out of court are considered in Denmark, Germany, Poland and Estonia. On-the-spot payments are considered in France, Belgium, Finland, Germany and Poland.

The Regulation also calls for Member States to take steps to ensure that undertakings have the possibility of appealing against the loss of good repute. Indications from enforcement authorities are that appeals may take place in court (e.g. Denmark, Netherlands) or with the enforcers (Poland, Romania).

Procedures for rehabilitation after a loss of good repute are not prescribed in the Regulation, but Member States are required to specify the measures applicable in the event of the suspension of an authorisation or a declaration of unfitness (Article 15). Some Member States do not have specific procedures (e.g. Ireland, Latvia, and Bulgaria). Several Member States may require a person to follow specific training, pass an examination, or otherwise satisfy the competent authorities that they are rehabilitated (UK, Sweden, Denmark). The period of time that must elapse before good repute is reinstated also varies greatly between Member States, from 6 months in Spain to 10 years in Luxembourg.

Consequently, the assessment of good repute diverges in practice between Member States.

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<sup>25</sup> Converted on a PPP (purchasing power parity) basis, the wage differentials of French drivers reduce to 1.27 for Poland and to 1.25 compared to Spain, indicating that there are still differences. Source: SDG, 2013a.

<sup>26</sup> On a PPP basis: approximately €800 per month in France, €500-700 in Germany, €650-800 in Spain, as compared to €550 in Slovakia and €250 in Poland. Source: CNR, 2013.

### 5.2.1.3 Requirement of appropriate financial standing

Regulation (EC) No 1071/2009 sets minimum requirements for operators to demonstrate that they have a sufficient level of capital and reserves at their disposal to support their enterprise (€9,000 for the first vehicle and €5,000 for each subsequent vehicle). The previous Directive set lower financial thresholds than the Regulation (€3,000 per vehicle). The Regulation also introduced wider possibilities to use bank guarantees or insurances and professional liability insurances, rather than cash, as proof of financial standing.

The main changes to national rules that resulted from the Regulation appear to have involved relatively small adjustments to the minimum capital and reserve requirements per vehicle. For example, in Finland, prior to Regulation (EC) No 1071/2009 the requirement for financial standing was €10,000 for the first vehicle and €4,000 for every additional vehicle. In Italy, €50,000 was previously required for the first vehicle and €5,000 for each additional vehicle. Both countries now have requirements in line with the thresholds in the Regulation. Also, even if the Regulation introduced wider possibilities to use bank guarantees or insurances and professional liability insurances, rather than cash, the fact is that Member States were already using bank guarantees widely.

According to a number of national authorities, a number of issues remain unclear. When asked about any provisions that could lead to difficulties or inconsistencies in interpretation, a range of issues were identified by ministry respondents as follows:

- The following points were considered unclear:
  - What exactly is meant by professional insurance (Austria);
  - What should be understood by the notion of capital and reserves (Belgium, Finland, Germany);
  - Who could be the duly accredited person having a right to certify the annual accounts of transport undertakings as mentioned in the Regulation (Estonia);
  - With regard to the bank guarantee, it is not clear who is to be declared on the guarantee (Germany, Italy, Slovakia);
  - What liability needs to be covered by insurance (Latvia, Slovakia).
- Article 13.1(c)<sup>27</sup> needs to be clarified and the derogation in Article 7.2 (i.e. permitting the use of bank guarantees, liability insurance, etc. as proof of financial standing) is unclear. (Ireland).
- It is undefined how a newly established enterprise has to prove its financial standing (Lithuania, Germany).
- Italy also reports that some of the difficulty is due to the divergent legal concepts of a guarantee laid down in national law and a lack of corporate insurance policies at early stages.

The diverse responses above suggest that the terms of the Regulation relevant to the above-mentioned issues cause problems of interpretation for at least a few Member States. The consequence of these differing interpretations is that the requirement of financial standing is not strictly harmonised across the EU.

One possible side effect of the requirement of appropriate financial standing could be that it may have led to greater firm exit. Only partial data are available on the extent of the problem. Most withdrawals of authorisations were caused by not meeting the requirement on

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<sup>27</sup> Article 13.1(c) provides that when an undertaking no longer fulfils the financial standing criterion, the competent authority may set a time limit of no more than 6 months for the transport undertaking to demonstrate that the requirement will again be satisfied on a permanent basis.

appropriate financial standing in France, Austria, the Netherlands and Finland. This might indicate that the requirement could be difficult to meet. The French authorities elaborated on this issue, suggesting that it is difficult for undertakings to obtain certificates of financial standing due to the low profitability of the sector. Trends over time could also indicate whether the requirement is becoming harder to meet (i.e. in case the number of detected infringements would be increasing). This data was requested from enforcement authorities, but the results are inconclusive. Qualitatively, it appears that difficulties in meeting the requirement have been exacerbated especially following the recession and for smaller operators, for example in cases where payment of invoices has been delayed, leaving them with insufficient reserves (as demonstrated by examples in France and the UK). This is also supported by comments from the German ministry.

On this basis, there is no clear evidence that the current thresholds for appropriate financial standing are excessive or have led to increased firm exit. What does appear from the information gathered in Member States is the persistence of problems of interpretation of some notions linked to this criterion.

#### 5.2.1.4 Requirement of requisite professional competence

Regulation (EC) No 1071/2009 sets out the minimum areas in which operators must demonstrate their knowledge via a written examination, including those with professional experience and those holding a diploma. There is still some degree of variance observed in the requirements for an individual to gain professional competence, including minor differences in the length and type of examination required of candidates wishing to qualify as transport managers. Certain conditions listed in the Regulation (EC) No 1071/2009 are not mandatory by virtue of the Regulation itself, but the Regulation empowers Member States to make them mandatory. The following additional requirements have been introduced by Member States:

- Organisation of oral exam to supplement the written exam (Slovakia, Hungary, Austria, Belgium, Germany);
- Organisation of training for applicants prior to the exam (Hungary, Denmark, Ireland).

Hence, due to these voluntary requirements Member States are entitled to add, there are some variations between the requirements in different Member States. The main issue regarding these different practices is that it may lead to variations in the difficulty of the exam and hence could lead to diverging standards. This was raised as a concern by the ministries from Spain and France. The pass rate can be used as a proxy for the difficulty of the exam, although it is not a perfect indicator due to, for example, differences in the underlying capabilities of the candidates. The pass rate prior to the Regulation varied from 10% in France to 100% in Cyprus in 2005. Compared to this, it appears that the pass rate in recent years varies less widely between Member States, from 20-25% in some regions in Spain to 96% in Estonia. Whereas this might suggest a more even level of difficulty compared to the previous situation, the difference is not significant and therefore it cannot be concluded that the Regulation led to a more harmonised level of difficulty of the exams. In addition, there is no strong evidence of any systematic differences between EU-15 and EU-13 countries: the average pass rate for the EU-15 countries is 59% (57% weighted average) and for EU-13 is 63% (54% weighted average).

In considering whether “diploma tourism” due to variations in the difficulty of the exams is an issue, it could be expected that if such practices were occurring systematically, a much larger number of applicants would be found in Member States that had a high pass rate (i.e. as a proxy for “easier” exams). However, the data does not reveal any trends suggesting that the number of applicants relative to the size of the transport market is disproportionately higher in

countries with a higher pass rate. This is most probably due to language barriers, as it would be difficult if not impossible for a national of a Member State to pass an exam in another Member State in a language which he does not master.

Member States are permitted to grant certain exemptions if they so choose, as follows:

- Exemption from exam for holders of certain higher education qualifications or technical education qualifications issued in that Member State (Austria, Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Luxembourg, Sweden and the UK).
- Exemption from the examinations of persons who provide proof that they have continuously managed a road undertaking in one or more Member States for the period of 10 years before 4 December 2009 (Estonia, France, Germany, Luxembourg, Slovakia, Sweden and the UK).

Several Member States report that they do not give any exemptions from the examination for any reason (Cyprus, Czech Republic, Denmark, Ireland, Latvia and Lithuania). Of the Member States that do grant exemptions, for the most part the total number of exemptions granted is relatively small. Hence, granted exemptions cannot be considered a significant cause of any market distortions and there do not appear to be significant consequences for the internal market.

Overall, there is no evidence showing significant differences or difficulties in the application of this requirement among Member States.

#### 5.2.1.5 Enforcement, penalties and administrative cooperation between Member States

Effective enforcement of the rules on access to the occupation of road haulier was expected to contribute to the correct application of the Regulation.

##### Enforcement of compliance with the four requirements

From the information collected, it appears that the requirements on access to the profession are verified for all new applicants in the Member States that reported information, whereas additional checks are conducted on the basis of a risk rating system in some Member States (e.g. in Denmark). All countries (with the exception of Bulgaria) have extended this risk rating system regarding social legislation established under Directive 2006/22/EC, in order to carry out checks targeting undertakings that are classified as posing an increased risk. The functioning of the risk rating system varies across different countries (e.g. it focuses on good repute in Finland or includes other requirements such as financial standing in the Netherlands).

Besides from the lack of clarity of some provisions regarding financial standing (see section 5.2.1.3 above), enforcers did not report substantial difficulties in enforcing the requirement of financial standing. The requirement of professional competence and the provisions relating to the transport manager also did not raise major enforcement issues. However, there are significant problems with enforcing the requirements of stable and effective establishment and good repute.

As regards the requirement of stable and effective establishment, effective enforcement is said to be difficult due to a number of factors: the absence of an explicit definition of the term "operating centre", the lack of cooperation between Member States which makes cross-border investigations more challenging (see sub-section below "cooperation between Member States") and the lack of resources and administrative capacity, combined with the more

demanding nature of the checks when compared to other requirements for access to the profession. At present, several Member States (i.e. Bulgaria, Germany and Finland) report that they find it difficult to carry out the required checks of stable and effective establishment.

As regards the requirement of good repute, data strongly suggests that there is variation in terms of the stringency with which good repute is checked. That data concerns the reported number of licences withdrawn due to loss of good repute, which in some Member States is extremely low or even nil (e.g. in seven Member States<sup>28</sup> there were no reported licence withdrawals on the basis of loss of good repute). This result suggests that in some Member States the enforcement of the provisions may not be effective, since loss of good repute is unlikely to be established regardless of the operators' conduct. This interpretation of the data tends to be supported by the comments received from both associations and trade unions during the survey, in which these actors complained about the lack of effective enforcement of the requirement of good repute.

In this context, two main issues concerning the requirement of good repute were raised. The first consists in a perceived lack of clarity as to which infringements precisely should lead to the loss of good repute (mentioned by ministries in Finland, Germany, Ireland, Estonia, Poland, Slovakia, Slovenia and Bulgaria). Notably, the current categorisation of the seriousness of infringements which may lead to loss of good repute issued by the Commission covers only safety-related infringements and therefore there is no guidance at the EU level on which, if any, non-safety related infringements (e.g. infringements of the cabotage rules) should lead to a loss of good repute. The second resides in differences between the Member States' administrative procedures within which it is determined whether good repute has been lost and, in this context, whether finding such loss would be disproportionate.

#### Cooperation between Member States

Regulation (EC) No 1071/2009 requires Member States to cooperate for the purpose of applying the Regulation. This is particularly relevant when it comes to monitoring undertakings that operate in several Member States. The Regulation also requires that the national competent authorities set up national electronic registers of road transport undertakings. Member States shall take all necessary measures to ensure that the national electronic registers are interconnected and accessible throughout the EU through the national contact points referred to in Article 18. The entirety of the data available thanks to this interconnection and mutual accessibility is known as the European Register of Road Transport Undertakings (ERRU).

From the information gathered, it is clear that administrative cooperation as required by the Regulation is in many ways not yet reality. As of 2015, all Member States except Portugal had defined a national contact point and reported this to the Commission. With regard to ERRU, by the end of May 2016 three Member States had still not interconnected their national electronic registers of road transport undertakings<sup>29</sup>, despite the legal requirement to do so by the end of 2012. Many of the difficulties that have been reported are technical. The extent of information exchanges between Member States taking place within ERRU varies significantly. A significant amount of information exchanges regarding serious infringements and good repute has been registered in Bulgaria, Denmark, Spain, Estonia, Latvia, Poland, Slovenia, Sweden and the United Kingdom, while less use was made of ERRU by Croatia and France.

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<sup>28</sup> Austria, Czech Republic, Greece, Malta, Netherlands, Poland and Slovakia.

<sup>29</sup> Poland, Luxembourg and Portugal. Infringement procedures against these Member States have been started in this respect.

Quantitative indicators of the status of cooperation suggest that information exchange between Member States taking place outside of ERRU is also lacking. Most enforcement authorities were not able to provide data on the number of checks which they carried out as a result of information provided by other Member States, or indicated that it was rather low (Denmark, Germany). The situation appears to be more positive in Bulgaria, the Netherlands and Luxembourg, which have actively engaged in exchange of information, with the effect that additional infringements were detected.

**Table 5: Estimated number of checks of compliance with Regulation (EC) No 1071/2009 conducted due to information provided by other Member States**

Member State	% of total number of checks that were conducted as a result of information from other Member States	Detected infringements as a result of information from other Member States
Romania	7%	No data
Bulgaria	17%	16% of all infringements
Netherlands	16%	22 additional infringements found
Luxembourg	33%	5% of all infringements
Germany	1%	3 additional infringements found

*5.2.2 Regulation (EC) No 1072/2009 on access to the international road haulage market*

Regulation (EC) No 1072/2009 lays down the rules to be respected in cabotage operations<sup>30</sup>. The Regulation also contains rules on enforcement and penalties for infringements of its provisions, as well as rules covering administrative cooperation between Member States. The state of implementation of the new provisions brought about by Regulation (EC) No 1072/2009 is analysed below.

*5.2.2.1 Attribution of Community licences and driver attestations*

Regulation (EC) No 1072/2009 puts in place a new harmonised standard format of Community licenses (previously called "Community authorisations"). It also introduces for the first time the concept of "driver attestation", which is required when the driver is a national of a third country. The Regulation determines that international carriage shall be carried out subject to possession of a Community licence and, if needed, driver attestations for third-country drivers. The Community licences shall be issued for renewable periods of up to 10 years (previously 5 years was the maximum duration of the Community authorisations). Member States typically issue licences for periods of 5 years or 10 years.

The Regulation lays down requirements for reporting. Every two years, Member States must inform the Commission of the number of hauliers possessing Community licences, the number of certified true copies corresponding to the vehicles in circulation and the number of driver attestations issued and in circulation. The total number of Community licences in the EU has been slightly fluctuating around 270,000 over the past few years<sup>31</sup> without a clear negative or positive trend. At the end of 2014 there were a total of 286,883 hauliers possessing Community licences in the EU-28 (an increase of 5.3% compared to 2013) and

<sup>30</sup> The term "cabotage" refers to the national carriage of goods by road undertaken on a temporary basis by a non-resident haulier in a host Member State.

<sup>31</sup> Figures are available for the period between 2007 and 2013.

1,839,711 certified true copies in circulation (an increase of 4.2% compared to 2013). The number of driver attestations issued in 2014 was 33,618 (an increase of 23.8% compared to 2013) and there were 41,602 in circulation (a reduction of 0.5% compared to 2013).

Overall, no relevant problems were raised by Member States in relation to the new format of the Community licence and the introduction of driver attestations, the implementation of which was meant to make it easier (and therefore quicker) to check licenses of non-resident hauliers. Half of the respondents to the survey of enforcement authorities confirmed that checks were faster now (mainly EU-13 respondents), whereas the remaining half noted that there was no material change (mainly EU-15 respondents).

#### 5.2.2.2 Rules applicable to cabotage operations

The main feature introduced by Regulation (EC) No 1072/2009 was the revision of the restrictions to cabotage operations based on a maximum number of operations during a given time period, which replaced the previous fixed quota system based on cabotage authorisations issued by the Commission. Regulation (EC) No 1072/2009 allows hauliers to carry out three cabotage operations in the host Member State within seven days following an international journey into that Member State (known shorthand as the “3 in 7 rule”). Within that period, hauliers may carry out the three cabotage operations in any Member State transited on their return journey, under the condition that they are limited to one operation per Member State transited, within three days of the unladen entry into its territory. In any case, cabotage must always be limited to three operations within seven days.

Despite the changes introduced by Regulation (EC) No 1072/2009, there are still different interpretations on specific issues. This is the case in particular for the counting of the number of cabotage operations when there are several loading and unloading points<sup>32</sup>, but also several other areas have been mentioned including the calculation of the seven day period, whether transport of empty pallets counts as an international trip giving the right to perform 3 cabotage operations and the documentation needed to prove the lawfulness of the cabotage operations.

#### 5.2.2.3 Enforcement, penalties and cooperation between Member States

##### Enforcement of compliance

Consistent information on the number of checks performed under Regulation (EC) No 1072/2009 was very difficult to gather, despite requests for this information sent to all of the Member States' enforcement authorities in the surveys and a literature review. Reporting required under the Regulation only concerns the number of hauliers possessing Community licences and the number of driver attestations issued by Member States and not the respective enforcement practices.

However, the Regulation requires verification whenever an application for a Community Licence (or a renewal) is made, to ensure that the requirements of access to the occupation are still met. All enforcement authorities were asked to estimate the number of Community Licences checks, but consistent information was very difficult to obtain. Only information from Slovenia shed some light on the national implementation. The Slovenian enforcer indicated that in 2013 around 13,000 Community Licences were checked (out of 13,135 licences granted in the period from 4 December 2011 to 13 December 2012).

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<sup>32</sup> For example, in Finland each loading or unloading operation amounts to one cabotage operation, while in Denmark one cabotage operation can include either several loading or several unloading operations, but not both. Infringement procedures against these Member States have been started in this respect.

Regulation (EC) No 1072/2009 requires checks each year covering at least 20% of the valid driver attestations issued in each Member State. The Member States with the highest number of driver attestations at the end of 2014 were Spain (8,321), Italy (4,098), Poland (6,809), Slovenia (6,056) and Lithuania (4,098). All enforcement authorities were asked about the number of driver attestations checked. Only Slovenia provided this data, estimating that 1,000 checks were carried out in 2013 (around 18% of attestations in circulation in 2013). The implementation of this requirement in other Member States is not known.

Checks of cabotage are organised differently in different Member States, with checks primarily carried out at the roadside, although these may be supplemented by other checks at the premises of the operators in order to verify documentation. Moreover, there are often multiple enforcement bodies involved and their degree of specialisation varies depending on the Member State. For instance, it can take form of controls at the roadside by the local police (e.g. Austria, the UK) or a specialised control body of “road transport controllers” at roadside checks as well as checks in depots (France) or by authorities responsible for goods transport, supported by customs and the police (Germany).

### Cross-border cooperation

Regulation (EC) No 1072/2009 introduced new provisions on mutual assistance between Member States. While the principle of loyal cooperation was already enshrined in its predecessor, Regulation (EC) No 1072/2009 introduced a new requirement for Member States to grant reciprocal assistance in the application and monitoring of the Regulation and to exchange information via the national contact points. It also introduced detailed procedures for the sanctioning of infringements by the Member State of establishment and by the host Member State whenever one Member State informs the other about infringements of the Regulation. For example, the Regulation sets a precise timeline by which a host Member State where an infringement was committed by a non-resident operator must inform the Member State of establishment of the operator about this infringement (6 weeks).

Statistics were sought from enforcement authorities as to the frequency of contacts made with other Member States concerning the enforcement of Regulation (EC) No 1072/2009. The Polish authorities noted that in 2014, one of the Euro Control Route “coordinated control weeks” was devoted to performing checks of cabotage involving enforcement authorities from different Member States. The Irish authority estimated that there had been 10 contacts in the last year and the Dutch authority stated that no contacts had been made. All other authorities could not provide information. It is not clear whether this indicates that there were no contacts or that the data is simply not available. In any event, it seems to be difficult for the authorities of the countries of establishment of road hauliers to impose sanctions for violations of EU rules committed abroad, as they need first to get information from the enforcement bodies of Member States hosting cabotage operations and this relies only on the willingness of each single enforcement body to share their information with similar bodies from other countries.

Overall, the available data shows that cooperation is not being conducted in a systematic way.

### Penalty systems

The level of fines applicable to cabotage infringements varies greatly across Member States, as well as the possibility of other penalties (such as immobilisation of the vehicle in Belgium, UK, Netherlands, France, Poland, Germany and Italy) and liability of other actors in the transport chain. For example, infringements for non-respect of the cabotage rules are fined

less than €2,500 in the UK, Bulgaria and Lithuania, while they can be fined more than €15,000 in the Czech Republic and in Germany.

As regards sanctions for other infringements of the Regulation, Member States have generally laid out a regime of sanctions which varies according to the type of infringement. In most cases, the lack of a community licence is sanctioned with a lower fine than the breaking of the “three operations within 7 days” rule. For example in Italy, if the relevant documentation has not been completed correctly, sanctions range between €600 and €1,800. However, infringements relating to the maximum number of operations can be fined up to €15,000. By contrast, in some Member States a fixed fine has been introduced (e.g. a fixed fine of €1,800 is in place in Belgium). Converting the fines on a Purchasing Power Parity basis makes the discrepancies larger, indicating that socioeconomic differences between the Member States cannot explain the differences.

## 6 ANSWERS TO THE EVALUATION QUESTIONS

### 6.1 Effectiveness

***Question 1: To what extent are compliance levels with the new provisions relative to stable and effective establishment of undertakings (Regulation (EC) No 1071/2009) and cabotage (Regulation (EC) No 1072/2009) satisfactory vis-à-vis the objectives of the Regulations?***

This question is fully replied to under evaluation question no. 4 below.

***Question 2: To what extent are the new enforcement measures effective? Are the checks performed by the competent authorities carried out at an effective frequency and level of thoroughness? Are the requirements set in the two Regulations related to checks relevant and sufficient to ensure compliance? Are the penalty systems in place designed by Member States proportionate and dissuasive?***

#### Regulation (EC) No 1071/2009

The number of checks carried out in each Member State with regard to the four criteria on access to the occupation of road transport operator varies widely. For example, in Bulgaria 5,640 undertakings were checked for stable and effective establishment in 2014, whereas in Estonia 120 checks were carried out in the period 2013-2014. In Estonia, 50 checks of good repute and 50 checks of professional competence were carried out in the period 2013-2014. In Romania, 2,543 checks of good repute were carried out in 2013 and 2,760 in 2014. In Spain, 12,415 investigations were carried out regarding the four criteria on access to the occupation of road transport operator during the period 2013-2014 (10,495 regarding freight operators and 1,920 regarding passenger transport operators).

The Regulation does not impose a strict minimum number of checks of compliance with its provisions apart from the requirement to conduct checks every 5 years. Most Member States check compliance with the four criteria on access to the profession at the time of application for an authorisation and then each time the hauliers apply for a renewal of the authorisation when it expires. On top of this, several Member States use a risk rating system to target checks on particularly risky companies (e.g. Estonia, Ireland, Germany, UK, Denmark, Romania, Netherlands and Finland).

Whereas the Regulation establishes minimum checks every 5 years, it still leaves a large margin of discretion to Member States on how often to check companies, how to conduct the checks and how to target them. Thus, whereas the provisions of the Regulation on checks

appear relevant, it is difficult to conclude on whether they are sufficient to ensure compliance. This depends on the way in which each Member State conducts the required checks.

An alternative indicator of how well the enforcement systems are operating is the rate of recidivism (re-offending within 2 years) among offenders. That is, if the enforcement system is effective and dissuasive, the rate of re-offending should be low. All enforcement authorities were asked about this, but only two were able to provide data. The respondent from Finland indicated that the rate of recidivism had fallen from 10-15% prior to the entry into force of Regulation (EC) No 1071/2009, to around 8% currently, which indicates a positive trend. Conversely, the respondent from Denmark estimated that the rate had not changed from around 5%. All other authorities reported that they did not have data. The limited sample does not allow drawing robust conclusions.

A more qualitative indicator of the effectiveness of enforcement measures is to understand whether there are any areas that are widely considered to be “difficult” to enforce, since this may give an indication of areas that may not be working effectively or not, and/or be possible areas for improvement. Overall, as discussed in section 5.2.1.5 above enforcement authorities faced no or few difficulties to enforce most of the requirements of Regulation (EC) No 1071/2009. However, as discussed in the same section, there are specific problems with enforcing the requirements of stable and effective establishment and good repute, rendering this enforcement less effective.

As regards the requirement of stable and effective establishment, effective enforcement is reported to be difficult due to the fact that the term "operating centre" is not explicitly defined, to poor cooperation between Member States (as discussed below under evaluation question no. 3) and to the lack of resources and administrative capacity.

As regards the requirement of good repute, there are two main issues reported by authorities at least from 8 Member States, namely a perceived lack of clarity in definitions of precisely which infringements should lead to the loss of good repute and inconsistent approaches and incomplete implementation concerning administrative procedures to determine whether loss of good repute would be disproportionate.

In terms of the penalties in place for infringements referred to in Regulation (EC) No 1071/2009, the proportionality and dissuasive effect of sanctions differs enormously between Member States. This is confirmed by the disparity between the level of the fines imposed for most serious infringements (approximately €1,650-9,850 in Spain, €5,700-7,600 in Romania and up to €282,400 in Germany). The proportionality and dissuasive effect of the penalties also depend on whether Member States apply only administrative sanctions, both administrative and criminal sanctions or only criminal sanctions. Whereas it is difficult to take a definitive conclusion on the proportionality and dissuasive effect of the penalties in each Member State, the available evidence shows that, in any event, these differ quite strongly between Member States.

#### Regulation (EC) No 1072/2009

The Regulation does not impose a minimum number of checks of compliance with the cabotage provisions. As a consequence, as shown in table 3 above the level of cabotage checks varies greatly between Member States.

Overall, evidence from the literature, petitions submitted to the European Parliament and stakeholder consultations conducted both for the purpose of the support study and others (e.g. the 2011 questionnaire of the High Level Group) indicate concerns over the effectiveness of controls of cabotage. For instance, over two thirds of stakeholders from the road haulage

industry answering the 2011 questionnaire of the High Level Group considered that controls aimed at ensuring compliance with the current cabotage rules, which entered into force in May 2010, were not effective<sup>33</sup>. This is a problem in particular in the most cabotaged Member States (Germany, France, Italy, the UK, Belgium and Sweden).

Based on the opinions of national enforcement authorities, the most important contributing factor to difficulties in enforcement of Regulation (EC) No 1072/2009 was identified as a lack of manpower, which was reported in Bulgaria, Sweden, Ireland, Romania, the Netherlands and Latvia in the support study, as well as Italy, Spain and Austria reported in the literature. Data shows that a lack of manpower (closely linked to financial constraints) affected many Member States. Conversely, a few Member States felt that staffing levels were adequate, including Poland (400), UK (300) and France (500 controllers in the transport ministry and more than 7,000 in total). Overall, there is strong variation in the number, type, size and resources of national bodies responsible for enforcement. The presence of multiple enforcement bodies highlighted above was also considered in the literature<sup>34</sup> as one of the contributing factors to enforcement difficulties. The responses from enforcement authorities in the survey for the support study did not indicate significant problems with cooperation between national bodies.

However, besides from these factors which are external to the Regulation, many other factors also contributed to difficulties in enforcement, including a lack of clarity in the legal provisions and differing interpretations across Member States. Differences between Member States' interpretations could lead to difficulties for hauliers in providing the required documentation to prove that cabotage is lawful, resulting in fines for operations that would be considered legal in other Member States. For example, one cabotage operation involving five loadings and five unloadings would be considered illegal in Denmark, while it would be considered legal in the other Member States. Other reasons put forward by transport undertakings for the difficulties in proving the lawfulness of cabotage operations are language barriers (the enforcement officers cannot interpret the required documents because they do not understand the language in which they are written) and the fact that drivers sometimes lose the required documents.

As regards penalties, the Regulation only sets the principle that they must be effective, proportionate and dissuasive. It is entirely up to the Member States to determine the level of the fines. As indicated in section 5.2.2.3 above, the level of fines applicable to cabotage infringements varies greatly across Member States, as well as the possibility of other penalties (such as immobilisation of the vehicle) and liability of other actors in the transport chain.

Overall, the review of penalties shows that the dissuasiveness (and consequently the effectiveness of enforcement) is not the same across the EU. In particular, in some countries the level of sanctions could be considered so modest that it fails to effectively deter from infringements of the relevant rules. In other cases, the level of the fines is high and has a significant dissuasive effect. For example, in Denmark, infringements to the cabotage provisions can be fined up to DKK 35,000. In determining this amount, the Danish authorities took into account the need to ensure that infringement of the rules does not lead to a financial gain for the haulier and therefore the amount of the fine is considered proportionate to the potential financial gain to the haulier of performing the illegal operation.

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<sup>33</sup> European Commission, 2013a.

<sup>34</sup> AECOM (2014a) and SDG (2013a).

Whereas it is difficult to take a definitive conclusion on the proportionality and dissuasive effect of the penalties in each Member State, the available evidence shows that, in any event, these differ quite strongly between Member States.

***Question 3: To what extent are the measures on administrative cooperation effective? Is there a need for better administrative co-operation and administrative coordination (e.g. checks) between Member States and/or the Commission?***

The provisions of the Regulations on administrative cooperation have been only partly effective. Qualitative responses received from the ministries survey in the context of the support study indicate that more than half (55%) of respondents consider that there had been a significant or slight positive impact of the Regulations on cooperation between enforcement authorities in different Member States, whereas no respondents considered that the Regulations had worsened cooperation. Respondents from the EU-13 returned somewhat more positive responses overall. The Belgian ministry commented positively that there was almost no cooperation prior to the Regulation (EC) No 1071/2009 and considers that the Regulation has contributed to improvements in this area.

However, it is important to acknowledge that as mentioned in sections 5.2.1.5 and 5.2.2.3 above, measures on administrative cooperation introduced in the Regulations are still incomplete. This is especially the case as regards the interconnection of the national electronic registers (ERRU), with three Member States still not being connected at the end of May 2016. The incomplete implementation contributes to the current low usage levels and hence the effectiveness of ERRU in achieving the objectives of Regulation (EC) No 1071/2009 has been limited.

Besides from lack of interconnection, usage levels by some of the Member States which are interconnected is also not very high, namely in those Member States which have only recently connected to ERRU. However, several Member States use ERRU regularly in order to exchange information with other Member States, in particular on good repute and serious infringements. For example, since October 2013, when Romania connected to the ERRU Production Central Hub, there were 166,709 requests with regard to good repute and 964 requests with regard to infringements. As mentioned in section 5.2.1.5 above, most enforcement authorities were not able to provide data on the number of checks which they carried out as a result of information provided by other Member States or indicated that it was rather low. The percentage of the total number of checks regarding the provisions of Regulation (EC) No 1071/2009 that were conducted as a result of information from other Member States ranged from 1% in Germany to 33% in Luxembourg.

It is generally considered that ERRU is a useful tool, but there are two main problems with its effectiveness. On the one hand, there is a lack of interconnection by all Member States, which still constitutes a major handicap for its effective and efficient use. Nevertheless, qualitative survey responses received from ministries indicate that there is wide support for full interconnection. Most ministries were hopeful that improvements in control should be achieved (Bulgaria, Denmark, Estonia, Finland, France and Sweden) with full interconnection. Responses from trade unions and industry associations also urged the completion of ERRU in order to facilitate control. On the other hand, there is great variability in the use of ERRU among Member States which are already connected. Some Member States use the system regularly and intensively, while others do not, notably those which have only recently interconnected their national electronic registers.

This shows that in some Member States the effectiveness of enforcement has been improved due to cooperation and there has been some progress towards achieving the objective of the

Regulation in this respect. At the same time, the evidence strongly suggests that implementation and progress is unequal across the Member States. Nevertheless, qualitative responses from national ministries indicate that they consider the current situation to be an improvement compared to the situation prior to the adoption of the Regulation.

As regards Regulation (EC) No 1072/2009, as explained in section 5.2.2.3 above, the available data shows that cooperation is not being conducted in a systematic way. There are only few instances of cross-border cooperation in this area. In 2014, one of the Euro Control Route “coordinated control weeks” was devoted to performing checks of cabotage. The Irish authority estimated that there had been ten contacts in the last year and the Dutch authority stated that no contacts had been made.

***Question 4: To what extent have the Regulations contributed to the smooth functioning of the internal market for road transport? Among others, to what extent have the provisions on cabotage helped to integrate the internal market for road transport and facilitate the access of non-resident hauliers to national markets? To what extent have the Regulations contributed to reducing the number of letterbox companies? How do the results compare between different EU Member States and regions (i.e. EU15 and EU13)? How do the results compare to the state of play prior to the adoption of the Regulations? Have the Regulations lead to any unintended negative and/ or positive effects with regards to competition on the road transport market?***

#### *Cabotage provisions*

As discussed above in section 5.1, the share of cabotage has roughly doubled between 2004 and 2013. However, this seems to be mainly due to the lifting of special transitional restrictions in 2009 and 2012 on hauliers from most countries that joined the EU in 2004 and 2007<sup>35</sup>, respectively, rather than to the adoption of Regulation (EC) No 1072/2009. This is because the increase in cabotage operations concerned mostly operators from the Member States which joined the EU in 2004 and 2007 performing cabotage in several Member States which were already members of the EU, notably Germany, France, Italy, the UK, Belgium and Sweden.

The provisions on cabotage introduced in Regulation (EC) No 1072/2009 were meant to circumscribe such operations, so as to ensure that they remain temporary in nature. Their implementation is discussed in section 5.2.2.2 above.

The level of detected illegal cabotage operations varies quite significantly between Member States. The rates of infringements detected by the national enforcement authorities are relatively low in most countries (e.g. Denmark and Eastern European Member States), although the presence of illegal cabotage is confirmed in others (e.g. France). Overall, illegal cabotage seems to be an issue, but only in the EU-15 Member States where most cabotage operations take place.

On the basis of the available data, it is difficult to establish trends over time and to conclude on the contribution of the Regulation to reducing illegal cabotage. There is little evidence in the literature or provided by stakeholders that could be used to develop robust conclusions. Indications from a small sample of countries (Denmark, Germany, Poland) show that the compliance rate has slightly improved or remained consistently high in recent years, but it is difficult to extrapolate from these cases to the rest of the EU.

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<sup>35</sup> See footnote no. 4.

In the absence of direct indicators of trends in illegal cabotage, factors that might lead to increased risks of illegal cabotage were considered. The main underlying driver for non-compliance and problems of illegal cabotage resides in cost differentials between Member States, which make non-resident hauliers more competitive in the national market of a host Member State than resident operators.

For the rest, many penalties imposed appear to be due to confusion on the part of operators, bearing in mind that Member States interpret the cabotage rules differently (e.g. in some Member States one cabotage operation can include several loading and/or unloading operations, while in others not). This creates complications for hauliers trying to comply with the rules, especially if information is difficult to find or if there are language barriers

The changes brought about by the Regulation are widely considered to be an improvement on the previous situation by national ministries in terms of clarifying the definition of the temporary nature of cabotage. Over 80% of respondents considered that they had a significant or slight positive effect in this respect. Trade unions also agreed that Regulation (EC) No 1072/2009 clarified the rules applicable to cabotage. Previously, no formal definition existed, whereas Regulation (EC) No 1072/2009 clarified the temporary nature of cabotage as being up to three cabotage operations within a seven-day period starting the day after the unloading of the international transport.

The occurrence of “systematic” cabotage, where hauliers spend the majority of their time doing national transport in another EU country, appears to affect some Member States more than others. In particular, this activity has been reported in Denmark and to a lesser extent in Norway<sup>36</sup>. This practice occurs because systematic cabotage is not forbidden by Regulation (EC) No 1072/2009, as long as the haulier is leaving the country every week. The relatively high wage of drivers in Denmark appears to be a key factor in making it more vulnerable to systematic cabotage as a business model, although the extent to which this occurs in other Member States is unknown. Thus, the fact that Regulation (EC) No 1072/2009 does not prohibit systematic cabotage is likely to have contributed to the emergence and persistence of the above-mentioned business model in only certain Member States, given their geography and the wage differentials in relation to other countries. Overall, these practices do not appear to be widespread in the EU and to endanger the temporary nature of cabotage as defined in Regulation (EC) No 1072/2009.

Despite the changes introduced, there are still different interpretations, which impede the smooth functioning of the internal market by creating fragmentation. This is the case in particular for the counting of the number of cabotage operations when there are several loading and unloading points, but also several other areas, including the calculation of the seven day period, what constitutes a cabotage trip, transport of empty pallets, coexistence with other legislation and the need for improved documentation to verify the legality of cabotage operations.

#### *Stable and effective establishment*

The new provisions on stable and effective establishment enshrined in Regulation (EC) No 1071/2009 were meant to reduce the number of letterbox companies. Their implementation is covered in section 5.2.1 above. By establishing minimum requirements for stable and effective establishment, the Regulation reduced the variation in establishment conditions and is likely to have reduced the incentive for hauliers to “shop around” for less strict

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<sup>36</sup> Sternberg et al, 2015.

establishment conditions. Nevertheless, Member States apply in practice differing requirements on some points (e.g. the above-mentioned requirements for a parking space).

The absolute number of companies infringing the requirement of stable and effective establishment, so-called letterbox companies, being detected is relatively low. However, as discussed in section 5.1 above, there is evidence that several companies without stable and effective establishment are being detected in the EU today, both in EU15 and EU13 Member States. This is also supported by specific cases brought to the attention of the Commission<sup>37</sup>. While the extent of the problem cannot be measured accurately, the significant cost advantage brought about by letterbox companies (around 31%, as mentioned above in section 5.1.1.1) indicates that their economic impact on compliant competitors can be highly detrimental. Therefore, even if the number of detected companies is relatively low and the evolution of the number of letterbox companies attributable to the adoption of Regulation (EC) No 1071/2009 is not clear, the existence of these companies remains a significant problem affecting the level playing field, in particular because of their detrimental effect on other operators arising from the significant cost advantage. There is however limited evidence showing that Regulation (EC) No 1071/2009 has been effective in dealing with this issue.

The prevailing labour cost differentials between Member States, which are outside the scope of the Regulation, remain the main factor behind the existence of letterbox companies. However, two main problem areas were identified which are directly related to the Regulation as discussed in section 5.2.1.1 above, i.e. the lack of an explicit definition as to what constitutes an operating centre and the insufficient cooperation between Member States in the investigation of suspected letterbox companies.

Therefore, the Regulations were only partly effective in promoting an internal market for road transport.

***Question 5: To what extent has the legislation helped to increase the level of compliance with EU road transport social legislation? How do the results compare to the state of play prior to the adoption of the Regulations? How do the results compare between different EU Member States and regions (i.e. EU15 and EU13)? Have the Regulations led to any unintended negative and/ or positive social effects?***

Regulation (EC) No 1071/2009 was expected to improve compliance with the social rules, i.e. reduction of the number of offenses against the rules on driving times, breaks, rest periods and working time under Regulation (EC) No 561/2006 and Directive 2002/15/EC.

Regulation (EC) No 1071/2009 was expected to have an impact on the level of compliance with the EU road transport social legislation firstly through increasing the effectiveness of controls at the roadside and/or at the premises of the hauliers and ensuring that hauliers that are not complying with the social legislation can be detected. However, few Member States (Poland, Luxembourg and Romania) were able to estimate the additional cases of non-compliance with the social legislation that were detected thanks to the requirements of Regulation (EC) No 1071/2009. In Poland, the authority estimated that an additional 5% of infringements of road social legislation were detected as a result of the entry into force of the Regulation. The Romanian authorities indicated that 58 additional infringements were found (or 0.002% of the total). The respondent from Luxembourg indicated a positive effect, but could not provide quantitative data. Conversely, the UK authorities reported that there was little impact on detection rates because the vast majority of requirements were already in place.

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<sup>37</sup> See footnote no. 14 above.

Secondly, the evaluation looked into whether the level of compliance with road social legislation had improved due to the Regulations, that is whether the rate of detected infringements compared to the number of controls had gone down since the entry into force of the Regulations and whether this trend could be attributed to the adoption of the Regulations. Even if there has been a decrease in the number of infringements of the social rules since the adoption of the Regulations, there is no data showing a possible effect of the entry into force of the Regulations on the observed trend. Instead, qualitative responses from stakeholders were used. Respondents to the high level survey from the groups of trade unions and industry associations largely felt that there had been no material impact of Regulation (EC) No 1071/2009 on improving compliance with the road social legislation, mostly due to poor enforcement and the existence of letterbox companies. Nevertheless, from the survey of ministries, 21% indicated a significant positive effect, and 38% indicated a slight positive effect compared to the situation prior to the Regulation. The remaining respondents indicated no material impact or that they did not know, but no respondents felt that there had been any negative impacts. However, none of the respondents were able to provide quantitative data to support their views. Systematic differences between EU15 and EU13 countries were difficult to identify, since only five EU13 countries responded, but it appears that overall the EU13 respondents rated all requirements more positively in terms of the impacts on the application of social rules. The possible limited positive effects appear to have been slightly greater in EU13 countries compared to EU15 countries, largely because similar requirements on access to the occupation of road transport operator were in general already in place in EU15 countries prior to the adoption of Regulation (EC) No 1071/2009.

The most positive effect is considered to have come from the requirement of stable and effective establishment, with one third of enforcement authorities indicating a strong positive effect and a further 20% indicating a somewhat positive effect. The reasons for this were explored further and appear to relate to the issue of letterbox companies. Such companies are often (although not always) associated with criminal or dubious activities<sup>38</sup>. The interaction here arises because undertakings without stable and effective establishment (i.e. letterbox companies) cannot be properly checked to the same extent as other undertakings, increasing the risk of businesses being able to infringe the road social legislation without detection and/or penalties. This effect is also reflected in the monitoring data provided under Regulation (EC) No 561/2006, which shows that checks at the premises are more effective than roadside controls. Thus, it can be seen that the requirement for stable and effective establishment can complement the enforcement of social legislation, as well as monitoring of the other provisions in Regulation (EC) No 1071/2009. Information on the number of simultaneous infringements (i.e. whether undertakings without stable and effective establishment are also more likely to commit infringements of the social rules) was not available.

The link between Regulation (EC) No 1072/2009 and compliance with the social legislation is indirect and its adoption was not expected to have any impact in this respect. Respondents to the surveys (i.e. trade unions, associations and ministries) agreed that there had not been any material impact.

Nevertheless, the evaluation assessed possible indirect effects of the current provisions on cabotage on rules overseeing labour and social law. Qualitative responses from the trade unions highlight their concerns that the poor enforcement of cabotage can allow the non-respect of Community rules overseeing labour and social law. Most industry associations felt that there was no impact, although several indicated a highly detrimental effect due to unfair and low-price competition. Respondents to the ministries survey largely felt that there had

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<sup>38</sup> Sørensen, 2015.

been no material effect or that there had been positive effects. Only the respondent from Germany indicated a slight negative effect, but did not substantiate the reply further.

A literature review was carried out of studies<sup>39</sup> on the current cabotage rules, as well as previous liberalisation in the EU and overseas. There was consistent agreement between the studies that the mechanism by which cabotage liberalisation could affect social conditions is via increased competition in the sector, combined with diverse wage levels and national labour/tax rules. This leads to hauliers trying to remain competitive by lowering salaries for drivers and creates greater incentives to circumvent the rules. Nevertheless, none of the studies found could quantify the extent to which the problems occur.

***Question 6: To what extent have the Regulations had an impact on road safety, particularly in terms of fatigue of drivers, and helped to address the road safety concerns identified at the time of adoption? How do the results compare between different EU Member States and regions (i.e. EU15 and EU13)?***

The effect of the Regulations on driver fatigue is of indirect nature. Driver fatigue is an important risk factor for accidents involving truck drivers, hence improved compliance with the social rules should ensure that fatigue-related accidents are reduced. The mechanisms by which the Regulations were intended to improve road safety are therefore identical to those expected to improve compliance with social legislation and the conclusions from the previous evaluation question apply here also with respect to impacts on safety.

As regards Regulation (EC) No 1071/2009, the possible limited positive effects appear to have been slightly greater in EU13 countries compared to EU15 countries, largely because similar requirements on access to the occupation of road transport operator were in general already in place in EU15 countries prior to the adoption of Regulation (EC) No 1071/2009 (see evaluation question no. 5). Overall there is no evidence to suggest that (EC) No Regulation 1071/2009 has had any effect on road safety aside from indirectly via the social legislation.

Regulation (EC) No 1072/2009 was not expected to have any effect on compliance with road social rules, nor could any evidence of an effect be found. The other main safety-related concern raised by respondents to the high level survey is that greater penetration of foreign drivers (in connection with increased cabotage) without the requisite knowledge and skills can have harmful effects on safety. Overall, data relating to safety and accident risks is poor, which prevents a statistical analysis of the safety impacts. As such, the extent to which the accident rate of drivers has been affected is not clear. However, research suggests that foreign-registered heavy goods vehicles may be more at risk of accidents due to factors such as unfamiliar road layout and road user behaviour<sup>40</sup>. Concerning possible differences between EU Member States, these impacts are most likely to affect EU13 hauliers (who carry out a large share of cabotage).

***Question 7: Have the Regulations led to any positive and/or negative unintended effects (both in terms of impacts and results) other than those mentioned in the previous questions? If so, what is the extent of these effects and which stakeholders groups are affected the most?***

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<sup>39</sup> For example, Hamelin (1999), Hermann (2003) and Henstra et al (1999).

<sup>40</sup> Nævestad et al. (2014) found that the accident risk of foreign heavy goods vehicles is approximately two times higher than that of domestic heavy goods vehicles.

Several stakeholders voiced concerns over the potential for operators to switch to vehicles of less than 3.5t in order to avoid the application of Regulation (EC) No 1071/2009 (as well as many other legal acts concerning road transport). There is little concrete data at this stage to support claims of operators switching massively to lighter vehicles. This in is part due to a lack of monitoring, as well as the difficulty in attributing switching behaviour to Regulation (EC) No 1071/2009 (as opposed to Regulation (EC) No 1072/2009 or other road transport legislation, such as the social rules or the tachograph legislation). A large share of Member State ministries' participating in the survey felt that there was no or very little impact due to switching so far or potential to create impacts in the future (47%). A significant minority (12%) however felt that there was already a significant impact due to switching or at least potential to create impacts in the future. An indication of the potential incentive for switching can be obtained by analysing the cost differentials between transport with lighter and heavier vehicles. This shows that heavy goods vehicles have a substantial cost advantage over light goods vehicles, around 16% per ton of cargo and 60% per cubic metre<sup>41</sup>. However, they have a significant cost disadvantage through the higher combined regulatory burden from the relevant legislation. Overall, there is at this stage no substantive evidence of unfair competition between light goods vehicles and heavier freight vehicles in international commercial road freight transport.

The Regulation allows Member States to impose additional requirements on top of the four requirements discussed above, as long as these are proportionate and non-discriminatory. In specific cases, Member States have introduced additional requirements, for example a minimum age limit for the licence applicant or the transport manager or a minimum number of vehicles. In Spain there is an additional requirement that applicants must have three vehicles representing at least one payload of 60 tonnes. Such vehicles may not exceed a maximum age of five months from their first registration at the time of the application. One of the main obstacles is to acquire sufficient capital to purchase three nearly new trucks. This additional requirement has the potential to exclude small undertakings from the occupation of road transport operator and may therefore be disproportionate. The Commission has therefore initiated an infringement procedure against Spain in this respect.

Like for Regulation (EC) No 1071/2009, several stakeholders voiced concerns over the potential for operators to switch to vehicles of less than 3.5t in order to avoid the application of Regulation (EC) No 1072/2009 (as well as many other legal acts concerning road transport). However, there is very little concrete data at this stage to support claims of operators switching to lighter vehicles.

As mentioned in section 5.2.1.3 above, there is no evidence that the provisions of Regulation (EC) No 1071/2009 on financial standing have led to an increase in the number of firm exits, by imposing more restrictive financial conditions on transport operators.

Finally, there is no strong evidence showing that the adoption of Regulation (EC) No 1072/2009 has had an impact (positive or negative) on the level of empty running. This being said, as mentioned in section 5.2 above the share of empty runs has slightly gone down from 25% in 2008 to 23% in 2014.

## **6.2 Efficiency**

***Question 8: To what extent have the Regulations helped to reduce costs (i.e. compliance and administrative) both for transport undertakings and national authorities? In***

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<sup>41</sup> NEA, 2010.

*particular, were the expected impacts in terms of administrative simplification (€190 million) achieved? Have the Regulations created any unintended additional costs?*

The ex-ante savings of €190 million were expected to arise from administrative simplification<sup>42</sup>. This figure includes impacts on the passenger transport sector, which are outside of the scope of this study.

The total amount of **administrative and compliance costs** savings expected from improved monitoring, financial standing and harmonised control documents was €175 million. Overall, the benefits experienced to date due to reductions in administrative costs are much lower (92-95% lower) than the amount originally anticipated, at around €8 million to €14 million per annum.

**Table 6 -Comparison of cost savings (€ millions)**

	Industry		Public authorities		Total		Difference
	Ex-ante <sup>43</sup>	Ex-post <sup>44</sup>	Ex-ante	Ex-post	Ex-ante	Ex-post	
Improved monitoring	33	Negligible	42	1	75	1	-74
Financial standing	33	-8 to -6	27	unknown	60	-8 to -6	- 66 to - 68
Control documents	20	11 to 18	20	2 to 3	40	13 to 21	- 27 to - 19
Total savings	86	5 to 10	89	3 to 4	175	8 to 14	- 167 to - 161

Source: Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 – Final report

The main source of cost reduction stemming from the adoption of the Regulations was expected to be the **improved monitoring** due to the interconnection of the national electronic registers through ERRU. This would allow enforcement authorities to have direct access to the database of transport undertakings of other Member States and, for example, to determine whether they have a Community licence and what number, category and type of serious infringements they have committed. However, the ERRU system is not fully functional (see section 5.2.1.5 and evaluation question no. 3 above) and therefore no substantial cost reductions have been achieved so far in this respect. Stakeholders are however optimistic that the system will eventually lead to cost savings once the interconnection is complete, although the possible savings once this is achieved could not be estimated or quantified.

The other main area of shortfall was the requirement of **financial standing**, which was expected to lead to savings for industry arising due to the wider use of bank guarantees, which would avoid the need for time-consuming regular reporting and checks. Since most countries had already allowed the use of bank guarantees, only a portion of undertakings were liable to be affected. The ex-ante estimate assumed that 270,000 firms would opt to use bank guarantees, with a saving of €122 per annum per firm for industry and €100 per annum per firm for public authorities. The ex-post estimation is based on the number of community licences in countries that changed their system to meet the Regulations, which appears to be much lower than the ex-ante assumption, at 107,525-156,051. Responses to the undertakings survey indicate that in most cases there was no cost or saving, but a small portion of firms experienced some impact. The weighted average impact is a cost of €53 per firm. As for public authorities, no more up-to-date estimates were available of the costs or savings, so no ex-post estimate could be developed.

<sup>42</sup> European Commission, 2007a

<sup>43</sup> Savings which were initially expected.

<sup>44</sup> Savings which have actually materialised.

Feedback from stakeholders indicates that **harmonised control documents** have significantly speeded up checks. Quantitative estimates obtained in interviews found estimates that checks had speeded up by 15 minutes on the road for enforcement officers and hauliers (plus 45 minutes of back office time for hauliers). The number of checks EU-wide is estimated at 1.2 million. Assuming that around half of all checks are now quicker gives the upper-bound, whereas the lower-bound assumes that only 29% of checks are now quicker (these shares are in line with survey responses from undertakings).

**Compliance costs** were thought to arise mainly from the requirement of professional competence and the requirement for a designated transport manager. The ex-post costs have been calculated to be broadly in line with the ex-ante estimates (within the range of uncertainty).

**Table 7: Comparison of additional compliance costs (€ millions)**

	Industry		Public authorities		Total		Difference
	Ex-ante	Ex-post	Ex-ante	Ex-post	Ex-ante	Ex-post	
Professional competence	12	15 - 21	2	0.1	14	15 to 21.1	+ 1 to +7.1
Transport manager	6	Negligible to 13	0	0	6	0 to 13	- 6 to 0
Total costs	18	15 to 34	2	0 to 0.1	20	15 to 34.1	- 5 to +7.1

Source: Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 – Final report

Costs linked to the **professional competence** arise due to the need for training of transport managers, who must pass an examination in order to prove their professional competence. The Regulation also introduced more detailed guidance on the content and organisation of the examination required as proof of professional competence and thereby might have an impact on the costs of the required training. The actual average cost of training was slightly lower than the ex-ante estimate (€1,030 compared to €1,200<sup>45</sup>), whereas the number of applicants was slightly higher (around 14,500 compared to 10,000), leading overall to a roughly comparable cost. The cost of accrediting a training centre was estimated to be substantially lower in practice by enforcement authorities compared to what was originally assumed.

The Regulation introduced new detailed provisions concerning the "**transport manager**" and how he relates to the transport operator. The vast majority of undertakings consulted indicated that employing a transport manager did not imply any significant change in costs, largely because they already fulfilled this requirement. Hence, overall costs to the industry are assumed to be negligible in the lower bound case. The upper bound case assumes that around 1% of all firms incur additional costs.

There were no other additional costs or benefits identified as being significant in the survey of undertakings.

Therefore, on the basis of the available data, it can be concluded that the Regulations have not helped to reduce costs for transport undertakings and national authorities to the extent that was foreseen before the adoption. However, after the completion of ERRU further cost savings are anticipated. It should however be noted that the availability of the underlying data is extremely poor and hence the cost estimates should be interpreted as a very rough estimation of the magnitude of impacts, rather than an exact calculation.

<sup>45</sup> Machenil, 2014.

**Question 9: Are there costs related to the implementation of the new provisions, such as those related to stable and effective establishment, the European Register of Road Transport Undertakings and cabotage? If so, are they proportionate to the benefits achieved, in relation to the measures set out in the Regulations (e.g. setting up and interconnection of electronic registers, harmonisation of transport documents and checks of the establishment and cabotage provisions)?**

The only provision that made a significant contribution to the implementation costs was the setting up of national electronic registers and their interconnection with ERRU. Overall, the estimated ex-post cost for all 28 Member States is €18.2 million for the setting up / upgrading of national registers (excluding any costs incurred prior to the adoption of the Regulation) and €2.83 million for their interconnection (a process that is still ongoing with only 20 Member States being interconnected to date). The total cost of setting up national electronic registers and interconnecting them with ERRU is therefore €22.1 million, which is around 70% lower than the ex-ante cost estimates of €73 million.

**Table 8: Comparison between ex-ante and ex-post costs for set up / upgrading of national registers**

Register size	Number of Member States	Member States	Ex-ante set up cost (€ millions)	Ex-post set up cost (€ millions)
Small	9	HR, CY, DK, EE, FI, LT, LU, MT	0.75	0.37
Medium	12	AT, BE, BG, CZ, EL, HU, IE, PT, RO, SE, SI, SK	1.5	0.51
Large	7	FR, DE, IT, NL, PL, ES, UK	4.0	1.25
Total	28		52.75	18.20

Source: Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 – Final report

The costs for setting up / upgrading of national registers appear to broadly follow the size of the national registers. The average set-up costs for registers in each size category (small/medium/large) were then calculated as the average of the estimates provided by countries in each category. For example, the set-up costs for a small register were estimated as the average of the figures provided by Estonia, Cyprus, Latvia and Lithuania. Similar calculations were carried out for the medium and large size categories.

As regards the interconnection costs, they depend more on the ease of the implementation process. A straightforward interconnection would require that<sup>46</sup>:

- National registers are in place with high degrees of automation;
- Information required by the Regulations is already available;
- Good Information and Communications Technology infrastructure is already in place.

Conversely, if these conditions are not met, the interconnection process would be more difficult. The number of Member States with easy, medium and difficult implementation was processed from the TUNER project<sup>47</sup>. Only the overall numbers were identified in the report and difficulty levels were not assigned to individual countries.

<sup>46</sup> Wilson et al, 2009

<sup>47</sup> Wilson et al, 2009.

**Table 9: Comparison of ex-ante and ex-post cost estimates for interconnection**

Ease of implementation	Number of Member States ex-ante (ex-post)	Ex-ante interconnection cost (€ millions)	Ex-post interconnection cost (€ millions)
Easy	10 (7)	0.58 (medium) - (0.4 - 0.7)	0.05
Medium	11 (8)	0.68 (medium) (0.5 - 0.8)	0.12
Difficult	7 (5)	0.98 (medium) (0.8 - 1)	0.31
Total	28 (20)	20.14 (medium) (15.1 - 22.8)	2.83

Source: Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 – Final report

The overall costs associated with interconnection (€2.83 million) were relatively insignificant when compared to the costs of setting up/upgrading the national registers (€18.20 million).

The primary benefits of setting up the ERRU were intended to be in terms of allowing more efficient and effective enforcement. However, there have been limited benefits to date since the system is not currently fully functioning. The ex-post benefits are estimated to be €1 million per year for public authorities and negligible for businesses.

The cost-benefit analysis must take one further cost into account - the activities involved in maintenance, management and operation of the interconnected registers represent an ongoing cost of enforcement. The ex-ante cost estimate for ongoing maintenance at the EU level was €6 million per year<sup>48</sup>, although this was not broken down at a Member State level. To estimate the ex-post costs it is assumed that the maintenance costs scale with the complexity of the national registers. The ex-post cost outcomes are around 73% lower than the ex-ante estimates, with the total for all 28 Member States estimated at €1.6 million. The main reason for this discrepancy appears to be the lower than expected staffing levels in enforcement bodies.

Since the system has not been completed to date, the benefits achieved at the moment are also much lower than the ex-ante estimates. Current estimates of the benefit-cost ratio are around 0.2 (assuming a discount rate of 4% and a time period of 10 years), indicating that the system has not been cost-effective so far.

In summary, the new provisions of Regulation (EC) No 1071/2009 concerning the setting up of national electronic registers and their interconnection with ERRU brought about implementation costs. These costs were much lower than expected, but the benefits achieved were also significantly below expectations, since not all Member States have so far complied with their obligations. The other new provisions of the Regulations did not entail any significant implementation costs.

***Question 10: To what extent have the Regulations been efficient in their objective of enabling enforcement of the existing rules? Have the enforcement practices put in place by Member States created any savings or costs for national authorities and transport operators?***

For Regulation (EC) No 1071/2009, indications from both the survey responses and literature are that there have not been any significant changes in enforcement costs, since most of the activities were already being carried out. A neutral cost impact was therefore indicated for the

<sup>48</sup> European Commission, 2007a

requirements of stable and effective establishment, financial standing, good reputation and professional competence.

The requirement that returned the most uncertain responses with regard to its impact was the establishment of a risk rating system for targeting checks, possibly due to the different functioning of these systems at the national level.

In the UK, the Operator Compliance Risk Score (OCRS) system is used to decide which vehicles should be inspected at the roadside. The scoring includes data on roadworthiness test history information, data relating to when the vehicle fleet was checked and actual checks undertaken at the roadside, as well as traffic enforcement data based on a score relating to the number of infringements relating to driver hours and the number of infringements relating to overloading and other infringements. The effectiveness of the risk targeting has been demonstrated in the enforcement statistics – the prohibition rate of targeted checks was 26.6% on average in 2013-2014, compared to a rate of 12.5% found for random checks<sup>49</sup>.

In the Netherlands company inspections are carried out on the basis of risk factors, which should render them more efficient. However, the Dutch respondents to the survey for the support study indicated a “significant increase” in costs in connection with the risk-rating system, mainly due to the need to have at least one extra full time employee that executes the system. They were not able to estimate the extent of savings,

For Regulation (EC) No 1072/2009, again there do not appear to be any significant changes (positive or negative) in the enforcement costs indicated via surveys, interviews and literature review.

A possible efficiency issue is whether or not hauliers are required to show documentation during roadside checks. In cases where the driver does not have the documentation in the vehicle, it was pointed out that this increases administrative burdens and impedes the work of control officers. To combat this, some Member States require that documentation is available in the vehicle or provided within a short time (e.g. Denmark, Finland, Netherlands), which should lead to a cost reduction for enforcement bodies.

Therefore, on the basis of the available evidence it can be concluded that the Regulations have had little impact on enforcement costs. In terms of savings, the more notable factor seems to be the introduction of risk rating systems, but there is also some evidence that these systems attract higher administrative costs. On the basis of the available evidence no definitive conclusion can be drawn on whether the Regulations have been efficient in their objective of enabling enforcement of the existing rules.

### 6.3 Relevance

***Question 11: To what extent are the operational objectives of the Regulations (i.e. to lay down sets of common rules on, inter alia, documentation, cabotage and requirements for access to the occupation, and the effective enforcement of these rules) relevant and proportionate to address the problems of: a) Distorted competition between resident and non-resident hauliers; b) Non-compliance with EU road transport social legislation and the road safety concerns identified at the time. c) High levels of empty running?***

The problem of **competitive distortion** between resident and non-resident hauliers relates primarily to the issues of letterbox companies and different treatment of resident/non-resident

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<sup>49</sup> VOSA, 2015.

hauliers through inconsistent enforcement. Prior to the adoption of Regulation (EC) No 1071/2009, there was a lack of minimum and common requirements ensuring stable and effective establishment. Therefore, one of the objectives of the Regulation was to tackle this problem driver and to ensure common rules for a stable and effective establishment. As explained above in evaluation question no. 4, by establishing minimum requirements for stable and effective establishment, the Regulation reduced the variation in establishment conditions and is likely to have reduced the incentive for hauliers to "shop around" for less strict establishment conditions. Therefore, the objectives in this area remain relevant. Moreover, the rules are not considered to be excessive by most respondents to the high level consultation, national transport ministries, enforcement authorities and undertakings, while the main problem of their implementation is linked to their enforcement. Therefore, the objectives of the Regulation in this area also seem to be proportionate.

Secondly, as regards equal treatment of resident and non-resident hauliers, the Regulations have contributed to clearer rules and easier enforcement (see evaluation question no. 4 above). However, as emerges from the points made in respect of evaluation questions no. 2 and 3 above, the quality and intensity of the monitoring and the enforcement of the rules differ between Member States. Moreover, Member States interpret certain rules in different ways, which according to many stakeholders, is due to the fact that the terms of those rules are unclear. This indicates that further clarification and harmonisation may bring about additional benefits. All in all, the objective to reach a coherent and consistent application, monitoring and enforcement of the rules by Member States remains relevant today.

Improving **compliance with EU road transport social legislation and road safety** remain priorities for road transport policy and these are primary objectives notably for the rules on working time, rest periods and driving times<sup>50</sup>. However, the evaluation has shown (see evaluation questions no. 5 and 6 above) that there was no or very little discernible impact of the Regulations on ensuring a high level of compliance with the social legislation and of road safety due to the indirect nature of these impacts. It can be concluded that the operational objectives of the Regulations to improve compliance in this area were not adequately set before the adoption of the Regulations. In terms of the targeting and proportionality of the objectives, it is worth noting that the Regulations were intended to play only a supporting role in enhancing compliance with the separate road transport legislation on social and safety issues, which is coherent with the wider EU transport goals. However, the available evidence does not support the view that these objectives were well targeted.

While the share of **empty runs** has slightly gone down from 25% in 2008 to 23% in 2014, it remains significant at EU level. Targeting this problem is important, considering that the EU has committed itself to substantial, long-term CO2 reductions in order to address climate change<sup>51</sup>. The way in which the Regulations could have an impact on the level of empty running is through the rules on cabotage. However, the level of the analysis carried out at this point in time could not attribute the reduction in empty runs to the provisions of Regulation (EC) No 1072/2009. Thus, based on the available evidence the operational objective of laying down common rules on cabotage would not seem relevant or proportionate to address the problem of empty running, even though addressing this problem and increasing efficiency remain relevant objectives of EU transport policy.

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<sup>50</sup> Directive 2002/15/EC on working time of mobile workers, Regulation (EC) No 561/2006 on driving time and rest periods and Directive 2006/22/EC on enforcement of social provisions in road transport.

<sup>51</sup> The Commission's most recent Transport White Paper sets a target reduction for transport of 60% in 2050 compared to 1990 levels (European Commission, 2011a).

## 6.4 Coherence

***Question 12: How do the Regulations interact with and if relevant, have an impact on the objectives of the following acts: Directive 96/71/EC; Regulation (EC) No 593/2008; Directive 92/106/EC; Directive 2002/15/EC, Regulation (EC) No 561/2006, Directive 2006/22/EC, Regulation (EC) No 165/2014? Can inconsistencies of references and definitions, and overlaps of provisions be identified? Is there scope to streamline the regulatory framework in the transport sector?***

### **Directive 96/71/EC on posting of workers**

Whereas the Posting of Workers Directive 96/71/EC in principle applies to cabotage operations<sup>52</sup> and possibly to some international operations, in practice it is difficult to enforce it. Notably, there is an inherent difficulty in checking whether drivers performing cabotage are granted the minimum conditions of the workers in the country where they perform cabotage and for the part of their trip where they are performing such cabotage. Also, the application of the Directive to cabotage operations may result in an excessive and disproportionate burden on operators. Thus, although legally there does not seem to be any inconsistency between Regulation (EC) No 1072/2009 and the Posting of Workers Directive, there are practical difficulties in enforcing the latter directive in relation to cabotage operations.

### **Regulation (EC) No 593/2008 on contractual obligations ('Rome I Regulation')**

The interaction of the Regulations with the Rome I Regulation is not direct. While the Regulations pursue the objectives of modernising the rules governing admission to the occupation of road transport operator and ensuring a coherent framework for international road haulage, the Rome I Regulation is focused on guaranteeing legal certainty as regards the applicable law. However, this does not mean that the objectives are contradictory or incoherent. The Rome I Regulation regulates the law governing contracts in the sector, from employment contracts between drivers and operators to service contracts between the latter and freight-forwarders. In this sense it helps to ensure common rules to boost the correct functioning of the transport activities at EU level.

### **Directive 92/106/EEC on combined transport**

The Combined Transport Directive 92/106/EEC seeks to boost combined transport operations through the exemption of the road legs of these operations from cabotage restrictions, the elimination of authorisation procedures and financial support in the form of fiscal incentives for certain operations. A Commission consultation carried out in 2014<sup>53</sup> indicated that a great number of stakeholders consider that the exemption of the road legs of combined transport operations from cabotage restrictions was particularly helpful and welcomed. However, this consultation has also shown practical difficulties in the application of Directive 92/106/EEC. For instance, 38% of the stakeholders consulted by the Commission indicated that combined transport was not completely free from cabotage restrictions. In practice, questions seem to arise among road transport operators and also enforcement authorities about the distinction between the road legs of combined transport operations and cabotage operations<sup>54</sup>. This is the case in particular around port areas. The Commission has received

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<sup>52</sup> See recital 17 of Regulation (EC) No 1072/2009.

<sup>53</sup> See the Commission Staff Working Document on the REFIT ex-post evaluation of Combined Transport Directive 92/106/EEC - Final Report (SWD(2016) 141 final; 20 April 2016).

<sup>54</sup> For example, 38% of the stakeholders consulted by the Commission in the context of a consultation on the Combined Transport Directive carried out in 2014 indicated that combined transport was not completely free from cabotage restrictions.

several reports of such difficulties from stakeholders. Thus, although legally there does not seem to be any inconsistency between Regulation (EC) No 1072/2009 and the Combined Transport Directive, practical difficulties have been raised, notably as regards the determination of the provisions applicable to certain operations around ports.

**Social provisions in road transport (Directive 2002/15/EC on working time of mobile workers, Regulation (EC) No 561/2006 on driving time and rest periods, Directive 2006/22/EC on enforcement of social provisions in road transport, Regulation (EC) No 165/2014 on the digital tachograph)**

The main interactions between Regulation (EC) No 561/2006 (driving time and rest periods), Directive 2002/15/EC (working time) and Regulation (EC) No 1071/2009 relate to certain obligations imposed on road transport operators as regards the requirement of good repute and the consequences of the infringements of such obligations. In order to satisfy the requirement of good repute in Regulation (EC) No 1071/2009, undertakings and transport managers shall meet, among other conditions, the driving time and rest periods of drivers as well as the working time. In addition, Regulation (EC) No 1071/2009 establishes as “most serious infringements” (that may lead to loss of good repute) the non-respect of several social rules. The references to and definitions of the infringements contained in the Regulations and in the driving and working time rules as described above appear to be consistent. No contradiction has been identified between these legal instruments as regards the definitions of infringements.

Enforcement of Regulation (EC) No 561/2006 is regulated by Directive 2006/22/EC. Both Regulation (EC) No 1071/2009 and Directive 2006/22/EC provide for an obligation for Member States to check the compliance with driving time and rest periods as well as working time. Additionally, Member States must use the same risk rating system for control of compliance with the social rules and control of all possible infringements of the requirements of good repute as defined in Regulation (EC) No 1071/2009. Therefore, the objectives of Directive 2006/22/EC are coherent with those pursued by the Regulations and by the social rules applicable to road transport operations.

Compliance with the road social provisions (i.e. limits on mandatory rest and driving hours) is monitored via the tachograph installed in the vehicles. Non-compliance with tachograph rules can lead to loss of good repute as established in Regulation (EC) No 1071/2009. Also, with the new digital tachographs introduced in Regulation (EC) No 165/2014, it may be possible in the future to use tachographs for the enforcement of the cabotage rules contained in Regulation (EC) No 1072/2009. The objectives pursued by Regulation (EC) No 165/2014 are complementary to the implementation of the Regulations and the social rules applicable to road transport and, therefore, coherent in that they aim to ensure the compliance with the requirements and an effective checking of such compliance.

***Question 13: How do the effects of the two Regulations relate to the goals of EU transport policy (as set out in the 2011 White Paper) and the wider economic, social or environmental challenges of EU policy? Have they contributed to these policy objectives? In particular, do the Regulations contribute towards the 2020 Road Safety aims and to the general objective to reduce the greenhouse gas emissions (if so, to what extent)?***

At the level of policy objectives and the respective provisions, the two Regulations are clearly coherent with goals of EU transport policy such as a higher degree of convergence and enforcement of social and safety rules, since their objectives are to contribute to increased compliance with EU road transport social and safety legislation. However, as discussed in detail above (see evaluation questions no. 5 and 6 above), the actual impact of the Regulations on social conditions and road safety remains largely indirect and difficult to quantify. As

discussed above in section 5.1 and in evaluation question no. 7, evidence attributing the reduction in empty runs to the provisions of Regulation (EC) No 1072/2009 is inconclusive at this point in time.

The Regulations have a direct effect on EU level goals of completing the Single Market and ensuring EU competitiveness. The cabotage provisions, for example, ensured common rules for access to the national road transport markets across the EU and thereby contributed to improving the level playing field. Before Regulation (EC) No 1072/2009 was adopted, practices diverged largely between Member States. The more precise rules on access to the occupation of road transport operator introduced by Regulation (EC) No 1071/2009 also constituted an improvement on the previous situation since they led to better approximation of the national systems.

Therefore, the two Regulations contributed to the EU transport policy and wider EU policy objectives of completing the Single Market and ensuring EU competitiveness, while their impact on road safety and the reduction of greenhouse gas emissions has not been established on the basis of the available evidence.

## 6.5 EU added value

***Question 14: What is the EU added value of the Regulations? To what extent could a different level of regulation (e.g. at national level) be more relevant and/or effective and/or efficient than the applicable one to ensure common rules for: a) Admission to the occupation of road haulage operator, b) Access to the international road haulage market, c) The conditions under which non-resident hauliers may operate within a Member State other than the one of registration? To what extent could a different level of regulation (e.g. national regulation) improve the enforcement of these rules?***

As discussed in the effectiveness evaluation questions above (see section 6.1), the Regulations have led to positive effects compared to the situation prior to when they entered into force, notably in terms of establishing common rules for operation in the EU road freight transport market. It is important to bear in mind though that the road transport market has a strong international character. A third of all freight services in the EU are operated between Member States. As a result, a large share of non-resident drivers is active on national roads. For instance, 38% of the kilometres made on German toll roads by trucks in 2013 were made by foreign vehicles<sup>55</sup>. Therefore, the common rules provided for by the Regulations are intended to ensure, for operators wishing to establish themselves in another Member State, equal conditions as compared to domestic operators and approximation of the conditions under which such establishment may take place in the different Member States. For hauliers operating temporarily within a Member State other than their country of registration and subject to the rules relating to cabotage, the Regulations are meant to ensure competition on an equal footing between all operators.

As described above in evaluation questions no. 2 and 4, the existing divergent enforcement practices in Member States lead to legal uncertainty or unequal competitive conditions. To this extent, rules adopted unilaterally by Member States would fail to achieve a level playing field.

***Question 15: What is the EU added value of the Regulations? Is there any evidence (e.g. at national level) that in certain cases a different level of regulation could have been more relevant and/or effective and/or efficient to achieve the objectives of: a) Reducing***

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<sup>55</sup> Panteia et al, 2014.

*distortions of competition between resident and non-resident hauliers; b) Increasing compliance with EU road transport social legislation; c) Improving road safety levels?*

The potential EU added value of the Regulations in achieving a level playing field has not been reached so far, because certain problems remain (see evaluation question no. 4). Some of these problems pertain to the enforcement and implementation of the Regulations, but none of them calls into question the importance of the substantive principles which the Regulations establish in respect of international road transport (see evaluation question no. 14).

The Regulations appear to have limited added value in terms of achieving higher compliance with EU road transport social legislation and improving road safety levels. As further explained under evaluation questions no. 5 and 6, the Regulations have only possible indirect impact on these objectives through the reduction of letterbox companies and illegal cabotage in the market.

## **7 CONCLUSIONS**

### **Effectiveness**

The analysis above suggests that the Regulations were partly effective in achieving their original objective of creating a level playing field in the market. The main difficulties encountered were linked to the practical application and enforcement of these principles. Differences in interpretation of the provisions of the Regulations by Member States and hauliers, inconsistencies in enforcement practices and lack of cooperation between Member States hindered the effective enforcement of the Regulations and brought about legal uncertainty for transport operators. However, the Regulations did not have any discernible effect in terms of reinforcing the level of compliance with the social and safety rules due to the indirect nature of this relation.

Finally, the evidence is not conclusive as regards the question as to whether the adoption and the implementation of the Regulations brought about unintended effects in the sector, such as providing potential incentives for hauliers to switch to vehicles of less than 3.5t in order to avoid the rules of cabotage or on access to the profession.

### **Efficiency**

Delays in the establishment of the ERRU system and a lack of administrative cooperation between Member States prevented the Regulations from achieving their full potential in terms of reducing the administrative burden to hauliers and national authorities. Concerning the establishment of ERRU, three Member States were still not connected by the end of May 2016. Nevertheless, there is a high level of support among ministries and industry stakeholders for the completion of the interconnection.

The benefits experienced to date with the adoption of the Regulations due to reductions in costs are lower than the amount originally anticipated. Therefore, only negligible benefits in terms of administrative (92-95 % lower than expected) or implementation (around 70% lower) cost reductions have been observed to date. It can be expected, as highlighted by most stakeholders, that the system will eventually lead to cost savings once interconnection is complete.

The additional compliance costs due to the adoption of the Regulations, in the amount of €15 to €34 million per annum, are broadly comparable with the ex-ante estimates of €20 million. As for ongoing enforcement costs, there have not been any significant changes since most of the activities were already being carried out.

Therefore, the efficiency of the Regulations in terms of meeting their objectives has been hampered by the delays in the establishment of ERRU. However, full interconnection of the national electronic registers through ERRU is expected to yield further cost savings and render the implementation of the Regulations more cost efficient.

### **Relevance**

The operational objectives pursued by the Regulations are overall relevant in respect of the existing problems of distorted competition between resident and non-resident hauliers. The remaining issues mainly arise due to issues linked to the effectiveness of the provisions (discussed above), rather than the targeting of the rules themselves.

The objective of ensuring a high level of social protection and road safety is only indirectly furthered by the Regulations. Moreover, while the environmental efficiency of transport operations and a reduction in empty running remain relevant for EU road transport policy, the trend of reduction in empty runs that has occurred in the market cannot be attributed to the provisions of Regulation (EC) No 1072/2009 on cabotage.

### **Coherence**

The Regulations are generally coherent with other road transport legislation and with other EU legislation. No major inconsistencies have been identified.

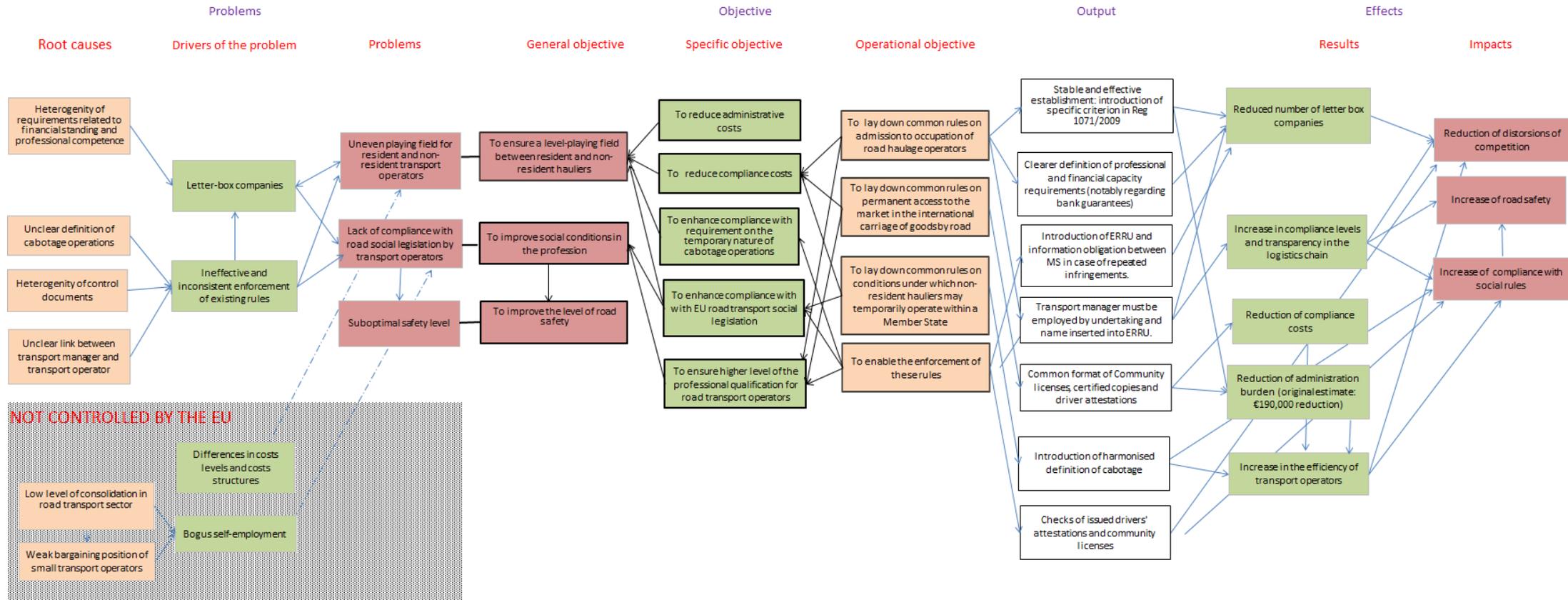
As regards the interaction between, on the one hand, the Regulations and, on the other hand, the Combined Transport Directive, the road transport social legislation, the 'Rome I Regulation' and the Posting of Workers Directive, no major legal inconsistencies were found. However, there are certain practical difficulties in the combined enforcement of these legal acts.

### **EU value added**

Overall, the adoption of the Regulations led to EU-wide positive results compared to the situation prior to their adoption. The road transport market has a strong international character and it is therefore unlikely that regulation at national level would be better suited to reduce distortions of competition between resident and non-resident hauliers or to ensure common EU rules on access to the occupation of road transport operator or access to the international road transport market.

# Annex I: Intervention logic diagram

## Intervention logic of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009



## **Annex II: Procedural information concerning the process to prepare the evaluation**

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

- DG MOVE is the lead Directorate General.
- The evaluation was validated in the Agenda Planning under references 2015/MOVE/109 and 2015/MOVE/110.

### *2. Organisation and timing*

- The evaluation of the Regulations was launched on 12 May 2014 with the first meeting of the Steering Group, to which were invited representatives from the Secretariat General (SG), Legal Service (LS), Directorate-General for Climate Action (DG CLIMA), Directorate-General for Energy (ENER), Directorate-General for Employment, Social Affairs and Inclusion (EMPL), Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (GROW), Directorate-General for Taxation and Customs Union (TAXUD) and Directorate-General for Informatics (DIGIT).
- The evaluation mandate (later in the process converted into the evaluation roadmap following the adoption of the Better Regulation Guidelines), including the evaluation questions, as well as the terms of reference for an external study were discussed and agreed with the Steering Group in June 2014.
- On 8 October 2014 the Commission signed a contract with an external contractor to carry out the ex-post evaluation of Regulations (EC) No 1071/2009 and (EC) No 1072/2009.
- On 19 May 2015 this evaluation was included under the list of REFIT initiatives.
- DG MOVE met the consultant on 30 October 2014 to discuss the Inception Report and on 24 March 2015 to discuss the Intermediate report. The Steering Group was consulted on the Inception Report (December 2014), the Intermediate Report (March 2015), the two versions of the draft final report (July 2015 and September 2015) and the final report (October 2015). On 22 October 2015 the Steering Group met to make the quality assessment of the final report.
- On 22 June 2015 the evaluation was exempt from the requirement on open public consultation due to the state of advancement of the file.
- The consultation of the Regulatory Scrutiny Board did not take place as the evaluation was not preselected by the interim Regulatory Scrutiny Board for the scrutiny.

### *3. Evidence used*

- The evaluation relies mostly on the "study on the ex post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009" conducted by an external consultant<sup>56</sup>.

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<sup>56</sup> <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=15850394>

- Evidence was also gathered from the reporting requirements of Member States under Article 26 of Regulation (EC) No 1071/2009 and Article 17 of Regulation (EC) No 1072/2009, from the implementation of the Regulations, i.e. infringement and pre-infringement procedures and also from direct consultations of Member States and stakeholders.

## Annex III: Stakeholder consultation

### Consultation activities

The consultation consisted of targeted surveys distributed to different stakeholder groups, supported by telephone or face-to-face interviews. Questionnaires were drafted by the study team on the basis of desk research and exploratory interviews. Each survey was then pilot-tested with one or two relevant organisations and revised based on the feedback received. After the Commission approved the surveys, they were distributed among the target groups and open for responses for at least 8 weeks, and up 3 months in some cases.

Follow-up interviews were scheduled on the basis of responses to the final question in each survey, where participants could indicate whether or not they were willing to be contacted for further input to the study.

**Table 1 - the stakeholder engagement activities are summarised in the following table**

Type of stakeholder	Approached	Responded	% response rate
<b>Interviews</b>			
National transport ministries	6	4	67%
Enforcement authorities	18	13	72%
Industry associations	20	14	70%
Trade unions	12	6	50%
Undertakings	72	16	22%
<b>TOTAL (interviews)</b>	<b>128</b>	<b>54</b>	<b>42%</b>
<b>Surveys</b>			
National transport ministries	47	20	43%
Enforcement authorities	78	20	26%
Undertakings survey	N/AA	122	-
High level (general) survey	154	37 <sup>B</sup>	24%
<b>TOTAL (surveys)</b>	-	<b>199</b>	-

*Notes: Stakeholder engagement activities were conducted from October 2014 until July 2015. Response rates are approximate, as some organisations forwarded the request to participate to other organisations on our behalf.*

*A) Undertakings surveys were distributed via national associations, hence it is not known how many organisations were contacted. B) A number of coordinated responses were received from trade unions and transport operator associations.*

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

In September and October 2015 the Commission organised seminars with stakeholders and Member States to discuss, among other road transport legal acts, the evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009.

All the relevant stakeholder groups, as indicated above, were targeted in the consultation activities: national transport ministries, national enforcement authorities, the main associations representing road transport operators, freight forwarders, shippers, SMEs and road transport workers.

The consultation of national transport ministries focussed on national implementation of the Regulations, especially on national derogations, flexibilities and additional provisions. It also

requested information about the situation in place prior to the Regulations and how this had changed, as well as national level impacts.

Responses were received from the national transport ministries of 20 Member States as follows: Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Ireland; Italy; Latvia; Lithuania; Luxembourg; Poland; Slovak Republic; Sweden; UK. There was one response per Member State, often submitted as a combination of inputs from different departments. These survey results contained a mixture of qualitative and quantitative information.

The consultation of enforcement authorities aimed to gather much of the quantitative information needed to answer the evaluation questions on efficiency and effectiveness.

A total of 20 different enforcement authorities responded to the survey. The questions were split into separate parts covering the two Regulations, since (multiple) different authorities may have responsibility for one or both Regulations. 15 responses were received to the first part on Regulation (EC) No 1071/2009, including authorities from 14 different Member States, of which nine were EU15 (France; Netherlands; Denmark; Austria; Ireland; UK; Luxembourg; Spain; Finland) and five were EU13 (Poland; Czech Republic; Bulgaria; Romania; Latvia). 15 responses to the second part on Regulation (EC) No 1072/2009, including authorities from 11 different Member States, of which five were EU15 (France; Netherlands; Denmark; Austria; Germany) and six were EU13 (Czech Republic; Poland; Romania; Slovenia; Latvia; Bulgaria).

Undertakings were invited to respond to a confidential survey via national associations. This survey aimed to evaluate how well the Regulations are working and the impacts on transport undertakings. Table 10-6 provides an overview of the number of associations contacted in order to request their participation in the study.

From the 98 associations which were contacted, 23 accepted to distribute the survey among their associated undertakings.

The high level survey and interviews aimed to capture responses from stakeholders for which there is not a targeted survey. It was mainly targeted at associations and trade unions (national and European) who have a high-level overview of the impacts of the Regulations.

The high level survey was answered by a total of 37 organisations, mainly associations of transport operators (14) and trade unions (12), with a small number of NGOs and other types of association. There were nine responses from stakeholders based in the EU-12, eight responses from EU-level organisations, and the remaining respondents were from the EU-15 (20).

The information collected corresponded to the objectives of the consultation activities defined for each stakeholder group. The response rate in general can be considered acceptable and the views expressed by the different stakeholder groups can be considered reliable and representative. Data collected from the consultation activities was complemented by desk research and data gathered from existing studies and reports.

## **Regulation (EC) No 1071/2009**

### *Criterion on stable and effective establishment*

Several stakeholders identified the conditions on stable and effective establishment as the main issue of Regulation (EC) No 1071/2009. Five Member States reported that they suspected letterbox companies were being established on their territory (Germany, Luxembourg, Estonia, Slovakia, Bulgaria). Another five Member States identified the reverse problem - that they suspected companies from their own countries were setting up letterbox companies in other Member States (Belgium, France, Germany, Sweden, Slovakia).

Trade unions reported that establishing letterbox companies allows hauliers to circumvent their labour and social obligations, while making it difficult to track down and hold responsible the real employer in cases such as unpaid wages, unemployment benefit or healthcare benefits. They further claimed that “As long as letterbox companies continue to exist, Regulation (EC) No 1071/2009 will have no material effect on a level playing field between resident and non-resident hauliers” and also that “the existence of letterbox companies has a negative impact on the level of compliance with road social legislation”.

One industry association interviewed for this study highlighted that the application of the stable and effective establishment is "gold plated" in the UK. The standards for establishing a transport undertaking go over and above what is set out in Regulation (EC) No 1071/2009 and include, for example, requirements to publish a notice in the press when intending to set up a new operating centre. These additional requirements were seen positively by the industry association as they help to maintain a more positive image for the industry.

Most undertakings (56%) strongly or slightly agreed that the new provisions on stable and effective establishment had not been any significant adverse effects on them. Respondents from Germany and Denmark were more likely to strongly disagree that the requirement had led to fair competition and/or a reduction in letterbox companies. Comments offered on the types of negative impacts that had resulted mainly referred to the adverse effects of letterbox companies on legitimate businesses arising from increased pressure on prices and loss of business. It was further posited that the additional administrative costs of the legislation would be justified if the intended market impacts had been achieved, but letterbox companies still exist. Some undertakings indicated that their labour costs had been affected by the new requirements, with estimated increases ranging from 5% to 30%, whereas others reported that there had been no impact on labour costs.

As regards the application and enforcement of the provisions on stable and effective establishment, around half of the Member States responded that there were no specific problems with the interpretation of the provisions. Three Member States as well as the trade unions suggested that the provisions should be made clearer and more precise. Enforcement authorities from the EU15 generally faced no or few difficulties while enforcing the requirements for stable and effective establishment (90%), while EU13 enforcement authorities faced more difficulties (60% seeing some or significant difficulties).

### *Other criteria on access to the occupation of road transport operator*

As regards the good repute criterion, in over half of the Member States (13), there are no differences between current rules under Regulation (EC) No 1071/2009 and the previous systems they had in place. Where differences were reported, they concern: differences in the

categorisation of the seriousness of offences (Belgium, Estonia, Finland); differences in the list of relevant persons to be checked (Finland); the conduct of the transport undertaking was not previously taken into account in determining the requirement of good repute (Belgium, Finland); the time period of convictions taken into account (Belgium); other types of infringements led to loss of good repute (Belgium, Czech Republic). Most (14) Member States confirmed that there were no additional requirements for good repute above those in the Regulation. Variations from the core requirements of the Regulation were around the type of offenses taken into consideration and the relevant persons to be checked.

As regards the application and enforcement of the provisions on good repute, no national enforcement authority reported significant difficulties, while some difficulties were reported by 80% of enforcement authorities from EU13 Member States (0% for enforcement authorities from EU15 Member States).

Out of all the core requirements of Regulation (EC) No 1071/2009, good repute was viewed by undertakings as having the strongest positive effect in terms of reducing the potential for operators who break the law to undercut legitimate businesses (59% strongly or slightly agree). The main issues with this part of the legislation were highlighted as being the different treatment across Member States – several undertakings felt that the legislation was not equally controlled and sanctioned in all Member States.

As regards the financial standing criterion, most Member States (17) indicated that there were no additional requirements for financial standing beyond the minimum level set out in the Regulation, and furthermore in the majority of cases the current rules had not changed compared to the previous situation before Regulation (EC) No 1071/2009.

The application and enforcement of the provisions on financial standing did not pose a problem to national enforcement authorities with 90% of enforcement authorities from EU15 and 80% of enforcement authorities from EU13 reporting no or few difficulties.

Around half (48%) of the consulted undertakings slightly or strongly agree that the new financial standing requirements brought no significant adverse impacts on them.

Most Member States (13) report that there are no additional requirements for professional competence above those set out in the Regulation. Other Member States report that they require: supplementary oral exams (Austria, Belgium, Germany, Slovak Republic); preparatory training (Denmark, Estonia, Ireland).

The application and enforcement of the provisions on professional competence did not pose a problem to national enforcement authorities with 80% of enforcement authorities from EU15 and 100% of enforcement authorities from EU13 reporting no or few difficulties.

The majority of undertakings felt that the requirement for professional competence had not impacted them adversely (51% of respondents slightly or strongly agree).

Few Member States reported having put in place additional requirements for access to the profession (allowed under Article 3(2) of the Regulation, provided that these requirements are proportionate and non-discriminatory). The exceptions were Estonia, where a licence applicant and a licence holder must be registered in the commercial register and Sweden, where the competent authority may prescribe additional requirements on a case-by-case basis when the authorisation is awarded or later.

### *Designation of a transport manager*

Regulation (EC) No 1071/2009 sets out that the transport manager may manage the transport activities of up to four different undertakings with a combined maximum total fleet of 50 vehicles. Member States may decide to lower the number of undertakings and/or the size of the total fleet of vehicles which that person may manage. This option has been exercised in some Member States, for example: Finland allows the transport manager to manage only one undertaking with a maximum of 50 vehicles; in France, an external manager is limited to two companies with a total maximum of 20 vehicles.

The requirement for a designated transport manager received broadly neutral responses overall from undertakings, with a relatively higher share of strongly negative views compared to any of the other requirements. The responses indicate a more negative response from self-employed respondents, as well as companies with 50-100 employees.

### *Penalties*

The majority of Member States consulted for this study strongly or slightly agree that the types of offenses considered “most serious” in the Regulation are appropriate (70%) and clear (64%). At the same time, most Member States also strongly or slightly agree that further guidance is required to ensure consistency between Member States in terms of the categorisation of offences by level of seriousness (65%), as well as the way in which their sanctions are aligned (52%).

### *Administrative simplification and cooperation*

Around 40% of Member States reported that setting up the electronic register of road transport undertakings had no material impact on the effectiveness of enforcement (these typically included larger Member States with significant transport volumes). Those that reported improvements in effectiveness (25%) were generally smaller Member States (in terms of transport volumes), which did not have a system already in place. Several Member States (8) reported that participation in the ERRU had a positive impact on the effectiveness of their cooperation with other Member States, whereas others (4) report that they have not noticed any effect.

Enforcement authorities identified the obligations for cross-border cooperation as the requirement that raised most difficulties, with 30% of enforcement authorities from the EU15 reporting significant difficulties (Denmark, Luxembourg and Germany).

## **Regulation (EC) No 1072/2009**

### *Cabotage provisions*

The cabotage provisions of Regulation (EC) No 1072/2009 are seen by most stakeholders as the most important innovation of the Regulation and attracted the most comments. Member States reported generally positive impacts of the Regulation in terms of achieving the objectives, with 89% of respondents saying that it had a significant or slightly positive effect in terms of clarifying the definition of the temporary nature of cabotage. However, Member State ministries participating in the survey opined that the provisions on cabotage are marked by “significant ambiguities” regarding, in particular, the following issues:

- How to count the number of operations when there are several loading and unloading points (44% of respondents);
- Interaction with rules regarding combined transport (as per the Combined Transport Directive, 92/106/EEC) (33% of respondents);
- Concerning the three day limit and performing cabotage operations in several Member States (32% of respondents); and
- Provisions regarding what documentary proof is required of the caboteur and what use enforcers are permitted to make of other evidence (22%).

Around half of the consulted industry associations identified as significant problems the unclear definition and ineffective control of temporary cabotage. An industry association pointed out specific areas of the legislation that, according to it, lack clarity, namely:

- When the 7 day period starts;
- How to count several loading points possible;
- Which documents on board should be treated as a proof of cabotage;
- Whether the EU rules on the posting of workers apply to cabotage;
- Whether road transport in Combined Transport amounts to cabotage or not.

Trade unions felt that the definition of cabotage was sufficiently clear, but the problem lied in the insufficient control of cabotage due to lack of enforcement capacities and lack of political will from the legislators. They suggest: mandatory regular automatic recording of vehicle location (geo-positioning) using the new ‘smart’ tachograph; pre-notification of each cabotage operation by hauliers to a designated contact point in the host Member State; inclusion of illegal cabotage in the list of categorisation of infringements leading to the loss of good repute.

Almost half of the consulted undertakings felt that the cabotage rules had resulted in reduced empty running to at least some extent. There was no clear-cut split between Eastern and Western European respondents on this issue. Comments received on the effectiveness of the cabotage rules identified the lack of effective controls as the major issue. Based on their own experience, around 65% of undertakings consider that checks of cabotage (when they do take place) are adequate to detect companies that break the rules. The main problems contributing to difficulties in demonstrating compliance with the rules were identified as being language barriers, i.e. enforcement officers being unable to interpret the requirement documents. In second place, problems of drivers losing or misplacing the documents were cited.

Enforcement authorities were asked whether there were any specific difficulties with enforcement of Regulation (EC) No 1072/2009. They identified the most significant difficulties around how to count the number of operations when there are several loading and unloading points (over 70% of enforcement authorities reported significant difficulties in this respect), similarly to the responses received from national ministries. The majority of respondents (between 50-60%) identified at least some difficulties with the other provisions, such as how to distinguish between cabotage and combined transport operations, how to determine when the 7-day period starts and the documentary proof needed to verify the legality of cabotage operations. Respondents from EU13 countries reported overall fewer difficulties in enforcement across all of the categories.

*Other issues with Regulation (EC) No 1072/2009*

Around half of the Member States consulted for this study apply the same cabotage rules to vehicles below 3.5 tonnes (Belgium, Czech Republic, Denmark, Finland, France, Latvia, Poland, Slovak Republic, Sweden), whereas the remainder have less restrictive rules for those vehicles. One possible impact of excluding vehicles below 3.5 tonnes from the cabotage rules is that operators may switch to lighter vehicles. There is very little hard data on the extent of this in practice, since it not explicitly monitored in most countries. The majority of Member States participating in the survey felt that there was no or very little impact, but respondents from Germany and France both felt that there was a significant impact on switching to lighter vehicles, whereas an authority from Belgium suggested that this practice was being used especially by Polish hauliers (although no quantitative data was available). A Danish stakeholder suggested that there was a role to play for lighter touch regulation of vehicles below 3.5 tonnes, since Danish businesses using this type of vehicle are becoming concerned about the bad reputation they have.

Around half of the Member States consulted for the study reported that they made changes to the format of the certified true copies of Community Licences in order to comply with Regulation (EC) No 1072/2009 (Austria, Denmark, Finland, Germany, Ireland, Sweden, Italy, Bulgaria, Croatia, Czech Republic). The changes mainly related to adding security features and updating the formatting to be consistent with the requirements in Annex I and II of the Regulation. While the Regulation allows the issuance of Community licences for renewable periods of up to 10 years, Member States typically issue licences for periods of 5 years (Austria, Belgium, Cyprus, Finland, Ireland, UK) or 10 years (Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Latvia, Lithuania, Germany, Slovak Republic, Sweden). One stakeholder remarks that having renewal periods as long as 10 years can complicate the monitoring of companies. While almost 50% of the consulted undertakings strongly or slightly agree that the introduction of more harmonised control documents resulted in faster controls by enforcers, they generally do not consider that the new requirements on documents resulted in cost savings for them or in a reduction of the time spent by their businesses on compliance.