

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Review of Regulation (EC) No 1071/2009 on access to the occupation of road transport operator and of Regulation (EC) No 1072/2009 on access to the international road haulage market		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG MOVE, UNIT D3	DATE OF ROADMAP	21/11/2016
LIKELY TYPE OF INITIATIVE	Legislative (revision of Regulations) and/or non-legislative (e.g. Communication)		
INDICATIVE PLANNING	Q2 2017		
ADDITIONAL INFORMATION	-		
<p>This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Inception Impact Assessment does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content.</p>			

A. Context, Problem definition and Subsidiarity Check
<p>Context</p> <p>Regulations 1071/2009 and 1072/2009 have been subject to a broad review of the road freight market which the Commission has undertaken in 2012-2014. This culminated in the adoption of the Report on the State of the Union Road Transport Market in April 2014. In that report, the Commission came to the conclusion that a reform of market access rules focusing on simplification, clarification and enhanced enforcement would benefit the sector.</p> <p>The Annex to the Communication "Regulatory Fitness and Performance (REFIT): Results and Next Steps" identifies a revision of Regulations 1071/2009 and 1072/2009 as a priority item for simplification.</p> <p>In the context of the ex post evaluation of Regulations 1071/2009 and 1072/2009, the Commission has commissioned a study, which comes to the conclusion that the Regulations have failed to deliver in certain areas, such as strengthening enforcement and providing a common interpretation of cabotage rules and of the provisions on access to the occupation. Therefore, the study concludes that there is scope for improvement.</p> <p>This initiative is related to other ongoing road transport initiatives, notably linked to social rules and road charging.</p>
<p>Problem the initiative aims to tackle</p> <p>According to the evaluation support study, the main problems hindering the achievement of the original objectives of the Regulations appear to be the absence of a level playing field for resident and non-resident transport operators and the excessive regulatory costs for Member States and operators linked to the Regulations.</p> <p>These problems affect above all road transport operators, but also freight forwarders and shippers (upstream) and, ultimately, consumers (downstream). Road transport workers are also affected by these problems, as well as Member States and national enforcement authorities.</p> <p>The main drivers behind the identified problems are the following:</p> <ul style="list-style-type: none"> • The inconsistent and ineffective enforcement of existing rules. The main reasons for this are: the different levels of control by Member States (notably of illegal cabotage and of the good repute of hauliers); the lack of cooperation between (at least some) Member States, notably as regards compliance with the stable and effective establishment criterion for access to the occupation of road transport operator. • Differences in Member States' interpretation and implementation of the rules. The main problematic areas are related to: <ul style="list-style-type: none"> ○ The lack of clarity of certain definitions, such as cabotage, stable and effective establishment and operating centre; ○ Additional rules set by some member States, such as applying (some of) the provisions of Regulation 1071/2009 and Regulation 1072/2009 to vehicles below 3.5 tonnes and imposing additional conditions on access to the occupation of road haulier, for example linked to the minimum number of vehicles; ○ High variation of the penalties for infringements of the Regulations, such as cabotage infringements.

There is also a lack of clarity as to which infringements should lead to loss of good repute and rehabilitation procedures differ widely between Member States.

Subsidiarity check (and legal basis)

The legal basis underlying the two regulations and a possible revision thereof is Article 91 TFEU.

The international road haulage market represents one third of all road freight transport in the EU (the rest being national traffic), which itself represents around 72% of total inland freight transport in the EU. This is an economic sector with a clear EU dimension, which was considered to justify action at EU level. The evaluation has confirmed that EU law instruments have been more suitable to regulate the sector than classic international law instruments, namely the multilateral and bilateral quota systems in place prior to Regulation 1072/2009.

The existing differences in the enforcement practices and in the application of the Regulations tend to increase, leading to larger disparities between Member States and hindering the internal market. The EU is therefore in a better position than Member States to encourage measures leading to a more coherent application of the legislation, improving its enforcement practices and enhancing cooperation between the national authorities.

B. Objectives and Policy options

The specific objectives of the intervention are to ensure effective and consistent monitoring and enforcement of the existing rules in Member States and to ensure coherent interpretation and application of the rules.

The baseline scenario would be to maintain the existing rules as they are today. The Commission would continue to deal with complaints about incorrect implementation of the rules when required to do so and would, whenever necessary, start infringement procedures against Member States.

Three broad groups of potential individual measures have been identified (only the main measures are indicated):

Measures liable to improve enforcement: reviewing reference points for effective and stable establishments, so as to ensure that the establishment in a given Member State is indeed effective and stable; introducing a minimum number of checks of compliance with the cabotage provisions; removing the possibility for Member States to add additional requirements for establishment; improving the European Register of Road Transport Undertakings (ERRU), by opening it to enforcement officers and adding information (e.g. on establishment).

Simplification and clarification: removing the maximum number of cabotage operations (currently 3), while reducing the maximum period for cabotage operations (currently 7 days); clarifying the possibility of "groupage" transport in cabotage (i.e. one cabotage operation can include several loading and unloading operations).

Reinforced cooperation between Member States: establishing minimum requirements for cross-border checks on establishment provisions; opening the national risk-rating systems to other Member States.

These different measures can be implemented through a variety of instruments, such as the publication of clarification or guidance notes, the creation of working groups to share best practices ("soft law") and the revision of the Regulations ("hard law"). Both types of instruments will be considered in the assessment.

The above measures and instruments can be combined in order to build different policy packages. Four coherent policy packages (excluding the baseline scenario) with varying levels of intervention will be defined and assessed.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

Most measures are intended to ensure that operators cannot unfairly compete by exploiting the limitations of these Regulations (e.g. reviewing criteria on establishment in order to reduce the number of letterbox companies, easier to enforce cabotage rules to avoid illegal cabotage). Their main economic effect would therefore be to contribute to a more level playing in the road haulage market. Some of the measures are expected to have a significant economic impact on operators and the respective workers, such as reviewing the criteria for establishment or the cabotage provisions. A possible change of the scope of the legislation (e.g. extending the Regulation(s) to vehicles below 3.5t) is expected to have a significant economic impact on small operators.

Likely social impacts

By promoting a more level playing field, some measures could be expected to improve social conditions overall (e.g. less illegal cabotage could lead to improved working conditions for the concerned drivers), but the impact on the level of employment and working conditions of operators established in different Member States (e.g. EU-15 Member States and EU-13 Member States) is uncertain at this stage.

Likely environmental impacts

The impact of most of the measures on the volume of road traffic, the number of empty runs and therefore on the environment is unclear at this stage.

Likely impacts on fundamental rights

The planned measures are not expected to have any impact on fundamental rights.

Likely impacts on simplification and/or administrative burden

Some measures (e.g. minimum number of checks of illegal cabotage, cross-border checks on establishment

provisions) would require further resources from national control bodies in the short term, but would be expected to decrease administrative burden in the medium or long term, through more effective and efficient enforcement. As regards operators, more effective and efficient enforcement should reduce the time spent in control activities, both in road side checks (e.g. control of cabotage) and in out of road controls (e.g. financial standing, good repute).

D. Data Collection and Better Regulation Instruments

Impact assessment

An impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision. It will be supported by an external study to be carried out by a consultant.

Data collection

The data supporting the problem definition has been mainly collected during [the ex post evaluation support study](#). This information will be further analysed and processed in order to fine-tune the description of the problems. The assessment will also benefit from other sources, notably: Report on the State of the Union Road Transport Market (COM(2014)222); Draft Impact Assessment accompanying a possible proposal for a Regulation amending Regulations (EC) No 1071/2009 and (EC) No 1072/2009 (April 2013); Reports by AECOM in preparation of the Impact Assessment above and the Report on the EU Road Transport Market (February 2014); EP study "Development and implementation of EU road cabotage" of March 2013; Report of High-Level Group of June 2012; Results of public consultation by High-Level Group in 2011. Also, Eurostat data will be used to the extent possible¹.

The impact assessment support study will help the Commission to identify possible missing elements in the identified problems and policy measures and to quantify the impacts. For example, it will look at:

- Increases (or decreases) in the volume of transport activity (in terms of tonne kilometres)
- Potential relocation of businesses from some Member States to others and economic effects on particular Member States and/or regions;
- Transport costs for users (haulage prices) and effect on consumer prices;
- Regulatory costs for road hauliers, shippers, freight forwarders, etc.
- Operating costs for hauliers (e.g. impact on the level of empty running);
- Economic effects for SMEs, notably in terms of regulatory costs and their competitive position;
- Regulatory costs (administrative, compliance, enforcement costs) incurred by the national authorities;
- Overall level of employment and distribution across Member States;
- Level of greenhouse gas emissions;
- Energy use and efficiency;
- Share of road transport in modal split.

Any additional information needs which might arise will in principle be met by the consultant in the support study. The Commission may also use its network of contacts in this sector to solicit further information.

Consultation strategy

A 12-week [open public consultation](#) took place from June-September 2016. This contained two sections, one for the general public and a more specialised section for key stakeholders, such as road transport authorities in the Member States, road haulage operators, undertakings carrying out own account transport operations, drivers and other road transport workers and customers of road haulage operators (e.g. shippers and freight forwarders).

Apart from the open public consultation, a combination of other methods will be used, including targeted consultations of stakeholders. The tools used for these targeted consultations will include stakeholder questionnaires and oral interviews and possibly hearings and/or other events. These consultation activities will take place in the course of the impact assessment support study.

All relevant information regarding the consultation strategy can be found on the consultation website. Results of the consultation will be published in a synopsis report to be uploaded on that website.

Will an Implementation plan be established?

This initiative concerns the possible revision of two regulations, which are directly applicable in Member States and do not need to be transposed into national law. The potential revisions at stake would involve amending only a limited number of legal obligations of existing legal acts and therefore an implementation plan is not required.

¹ For example, Eurostat statistical data is available for the number of empty runs in international and national transport.