

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	REFIT 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		
LEAD DG RESPONSIBLE UNIT	DG MOVE D3	DATE OF THIS ROADMAP	09 / 2015
TYPE OF EVALUATION	Evaluation	PLANNED START DATE	11 / 2014
	Ex-post	PLANNED COMPLETION DATE	9 / 2015
	Mixed	PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

A. Purpose
(A.1) Purpose
<p>The general objective of the study is to provide the Commission with an independent evaluation of the Regulations, covering their implementation and the effectiveness of the measures they introduced. Depending on the results of the evaluation, which may show positive results but also problem areas, the evaluation may form the basis for a review of the Regulations. Therefore, the results of the evaluation may feed into an Impact Assessment study.</p>
(A.2) Justification
<p>The Annex to the Communication Regulatory Fitness and Performance (REFIT): Results and Next Steps¹ identifies a revision of Regulations (EC) No 1071/2009 and 1072/2009 as a priority item for simplification.</p> <p>Regulations (EC) No 1071/2009 and 1072/2009 were adopted as part of a package to advance the completion of the internal market in road transport. They apply in their entirety since 4 December 2011. However since then, Member States and stakeholders have reported problems in their implementation, in particular with regard to the clarity of provisions and ineffective enforcement of the rules. Moreover, stakeholders also signalled cases of possible non-compliance by some Member States with the provisions of the Regulations, such as the adoption of additional disproportionate requirements for the establishment of undertakings under Regulation (EC) No 1071/2009 or restriction of the provisions on cabotage in Regulation (EC) No 1072/2009. The Commission is currently investigating these complaints (see below). As a result, the Commission made a preliminary assessment in its Report on the State of the Union Road Transport Market (COM(2014)222) that the Regulations are applied inconsistently throughout Member States and that the implementation is hindered by factors linked to their design. In view of the information received, it is appropriate to investigate these issues in further detail.</p>

B. Content and subject of the evaluation

¹ COM (2013) 685

(B.1) Subject area
<p>Regulation (EC) No 1071/2009 sets the provisions that undertakings must comply with, in order to access the occupation of road transport operator. It also lays down certain provisions to regulate and facilitate enforcement by Member States, including by establishing a European Register of Road Transport Undertakings (ERRU). Regulation (EC) No 1072/2009 lays down the provisions to be complied with by undertakings that wish to operate on the international road haulage market and on national markets other than their own (cabotage). It includes provisions relative to the documents to be issued to such undertakings by the Member State of registration (Community License), as well as to drivers from third countries (driver attestation). Finally it also sets down provisions regarding the sanctioning of infringements and cooperation between Member States in such cases.</p> <p>Both Regulations contribute to the aim of a more efficient functioning of the road haulage market, as confirmed by the White Paper on Transport (COM(2011)144). In its initiative 6, the White Paper identified the need to remove the remaining restrictions on cabotage as a priority. This need was confirmed by a High Level Group on the development of the internal market for road haulage, which was mandated by Vice-President Kallas and handed in its report in June 2012. Finally, in the Report on the State of the Union Transport Market (COM(2014)222), the Commission identifies a possible need to revise Regulations (EC) No 1071/2009 and 1072/2009 to make their enforcement easier.</p>
(B.2) Original objectives of the intervention
<p>The Regulations were adopted as part of a package aiming to advance the completion of the internal market in road transport. While this is made clear in the recitals of the Regulations, this section also uses the analysis provided in the Impact Assessment carried out for the whole package² to better define the objectives of the Regulations.</p> <p>As a global objective, both Regulations aim to support the completion of the internal market in road transport, by ensuring a level-playing field between resident and non-resident hauliers. In particular, Regulation (EC) No 1071/2009 in its recitals identifies the need to rationalise the market and increase market efficiency. Furthermore, the Regulations also aimed to improve the level of road safety and to improve social conditions (i.e. compliance with EU road transport social legislation) in the profession.</p> <p>As specific objectives, both Regulations aimed to reduce the administrative burden both for transport undertakings and national authorities. In addition, Regulation (EC) No 1071/2009 aimed to enhance compliance with road safety rules, such as roadworthiness of vehicles and road traffic rules, and social legislation (e.g. working time, driving time and rest period provisions). By setting higher standards for the examination granting access to the occupation and conditions for good repute, it also aimed to achieve a higher level of professional qualification of road transport operators. Finally, Regulation (EC) No 1072/2009 also aimed to better define the temporary nature of cabotage operations.</p> <p>As operational objectives, the Regulations aimed at laying down common simplified and clearer rules on the admission to occupation of road haulage operators, along with access to the market in the international carriage of goods by road and the conditions under which non-resident hauliers may operate within a Member State. Finally, the Regulations also aimed to propose instruments to ensure the enforcement of these rules.</p>
(B.3) How the objectives were to be achieved
See diagram with the intervention logic in annex I.

C. Scope of the evaluation/FC

(C.1) Topics covered
The evaluation will assess 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, which

became applicable from 14 May 2010 and will be assessed as from that date. In assessing these provisions, attention will be given to the transition period adopted for hauliers from the Member States that joined the EU in 2004 and later³.

The evaluation will cover all Member States. The two 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. As there are no notable problems with the implementation of the measures related to the bus and coach services, the provisions of Regulation (EC) No 1071/2009 on passengers transport are excluded from the scope of the ex-post evaluation. It will provide specific attention to aspects related to cabotage and the stable and effective establishment of road transport undertakings, and in particular to the enforcement of these provisions (identified as problematic under the REFIT exercise).

(C.2) Issues to be examined

The following evaluation questions will be analysed:

Relevance

1. To what extent are the operational objectives of the Regulations (i.e. to lay down sets of common rules on i.a. documentation, cabotage and requirements for access to the occupation, and the effective enforcement of these rules) relevant and proportionate to address the problems of:
 - distorted competition between resident and non-resident hauliers;
 - non-compliance with EU road transport social legislation ;
 - the road safety concerns identified at the time.

Effectiveness

For all effectiveness questions, both effectiveness and ineffectiveness should be assessed. If the conclusion is that the Regulations are ineffective, the main reasons for this should be analysed. If so, it would be relevant to determine how the situation and the current arrangement may be improved and at what costs. Furthermore, it should be determined whether these costs would be proportionate to the expected gains

2. To what extent are the new provisions relative to stable and effective establishment of undertakings (Regulation (EC) No 1071/2009) and cabotage (Regulation (EC) No 1072/2009) adequate vis-à-vis the underlying objectives of the Regulations?
3. 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 persuasive?
4. To what extent the measures on administrative cooperation are effective? Is there a need for better administrative co-operation and administrative coordination (e.g. checks) between Member States and/or the Commission?

³ Hauliers from the Member States that joined the EU in 2004 were subject to a transition period of up to five years, during which they could not carry out cabotage in other Member States. This period ended in April 2009. Hauliers from the Member States that joined the EU in 2007 were subject to a similar transition period that ended on 1 January 2012. Finally hauliers from Croatia are subject to a similar transition period that will end at the latest in 2017.

5. To what extent have the Regulations contributed to the smooth functioning of the internal market for road transport, and the establishment of a level-playing field between transport operators? Inter alia 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 EU12)? 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?
6. 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 EU12)? Have the Regulations lead to any unintended negative and/ or positive social effects?
7. 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 EU12)?
8. Have the Regulations lead to any positive and/or negative unintended effects (both in terms of impacts and results) other than mentioned in previous questions? If so, what is the extent of these effects and which stakeholders groups are affected the most?

Efficiency

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)?
10. To what extent have the Regulations helped to reduce costs (i.e. compliance and administrative) both for transport undertakings and national authorities? In particular, were the expected impacts in terms of administrative simplification (€190 million⁴) achieved? Have the Regulations created any unintended additional costs?
11. 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?

Coherence:

12. In general, one of the objectives of the Regulations (and more specifically of Regulation (EC) No 1071/2009) is to achieve better compliance with social provisions in road transport. At the same time, the Regulations cross-reference Directive 96/71/EC (which applies to cabotage) and Directive 92/106/EC (the road legs of combined transport operations are exempted from the

⁴ SEC(2007)635 Impact Assessment accompanying the proposal for a Regulation of the European Parliament and of the Council on common rules concerning the conditions to be complied with to pursue the occupation of road transport operator proposal for a Regulation of the European Parliament and of the Council on common rules for access to the international road haulage market (recast) proposal for a Regulation of the European Parliament and of the Council on common rules for access to the market in coach and bus services (recast)

provisions relative to cabotage). Finally, although it is not referenced in Regulations (EC) No 1071/2009 and 1072/2009, Regulation (EC) No 593/2008 applies to employment contracts and may therefore be relevant to the analysis of the overall effects achieved. How do the Regulations interact with the following acts:

- Directive 96/71/EC on posting of workers;
- Regulation (EC) No 593/2008 on contractual obligations ('Rome I Regulation');
- Directive 92/106/EC on combined transport;
- 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, which will replace Regulation (EEC) No 3821/85)?

Can inconsistencies of references and definitions, and overlaps of provisions be identified? Is there scope to streamline the existing regulatory framework in the transport sector?

13. In terms of their effects, how do 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 policies? Have they contributed to these policy objectives? In particular, do Regulations contribute towards the 2020 Road Safety aims and to the general objective to reduce the GHG emissions (if so, to what extent)?

EU added value

14. 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?

15. Is there any evidence that in certain cases a different level of regulation (e.g. at national level) could have been more relevant and/or effective and/or efficient than the applicable one to achieve objectives of:

- Reducing distortions of competition between resident and non-resident hauliers;
- Increasing compliance with EU road transport social legislation ;
- Improving road safety levels

(C.3) Other tasks

None

D. Evidence base

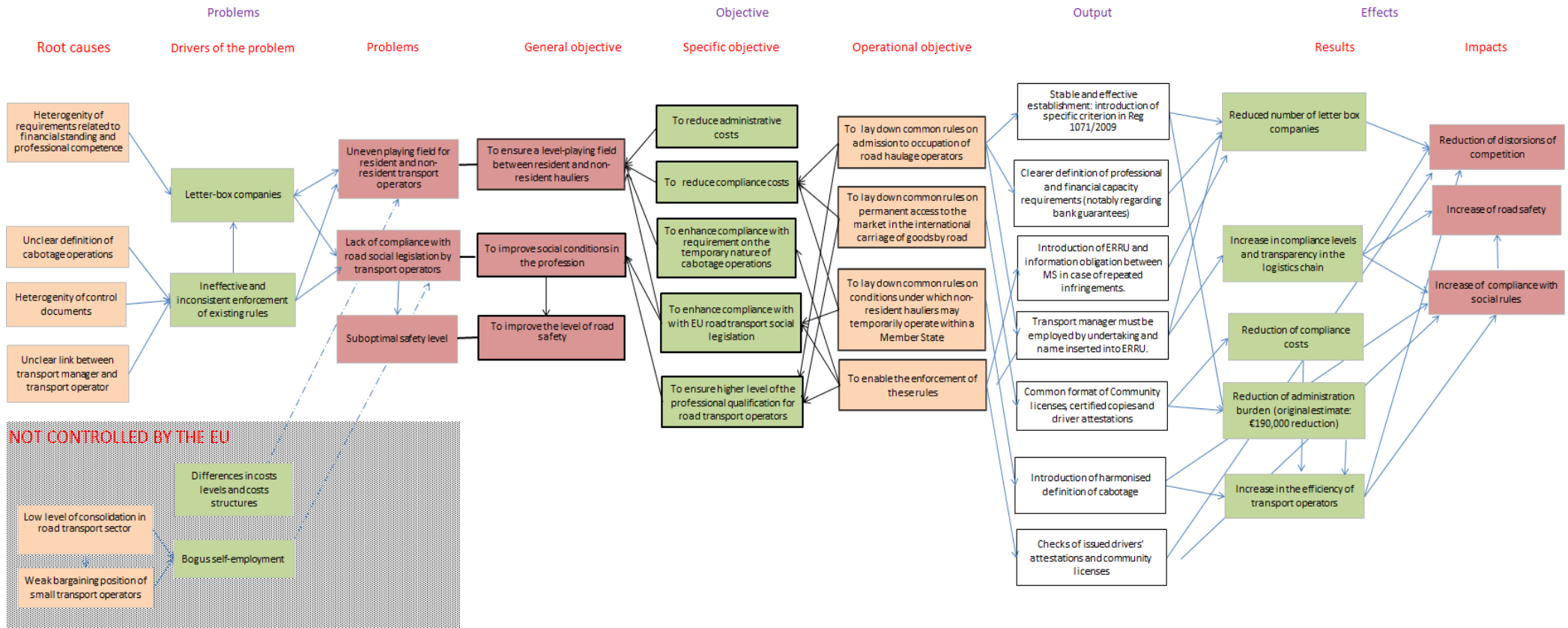
(D.1) Evidence from monitoring

Under Article 26 of Regulation (EC) No 1071/2009, Member States must report every two years to the Commission on the activities of their competent authorities. At present all Member States have reported to the Commission, which will draw up a report on the basis of Member States' contributions.

<p>Under Article 17 of Regulation (EC) No 1072/2009, Member States must report every two years on the number of hauliers possessing Community licenses, on the number of certified copies in circulation, and on the number of driver attestations issued. The latest reporting period ended on 4 December 2013.</p>
<p>(D.2) Previous evaluations and other reports</p>
<p>Report on the State of the Union Road Transport Market (COM(2014)222) Study on the situation and harmonisation of the EU road haulage market, AECOM 2014 (to be published shortly). Study on the development and implementation of road cabotage, European Parliament 2013. Report of the High Level Group on the Development of the EU Road Haulage Market, 2012.</p>
<p>(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)</p>
<p>Infringement or pre-infringement cases are on-going relative to:</p> <ul style="list-style-type: none"> - Non-interconnection of national registers with ERRU (Ireland, Cyprus, the Czech Republic, Greece, Luxembourg, Poland and Portugal) - Implementation of cabotage provisions (Denmark, Finland and Sweden – these Member States have added to the cabotage provisions in ways that may restrict the access of non-resident hauliers to domestic markets. In addition, this may suggest that the cabotage provisions are unclear). - Restriction of establishment in Spain to companies operating with more than three vehicles. While Member States are entitled to add additional requirements for the establishment of undertakings, it is not clear whether this requirement is proportionate to the aims of the Regulation. - Excessively loose interpretation of the notion of non-commercial services under Article 1(4)(b) of Regulation (EC) No 1071/2009, allowing companies to be exempted from the requirements on access to the profession. Some of the exempted services seem to be in competition with commercial services. - Linking the attribution of a Community licence to respect of the national collective labour agreements in Denmark; while this is not a requirement for establishment under Article 3 of Regulation (EC) No 1071/2009.
<p>(D.4) Consultation</p>
<p>Several layers of external consultation have been carried out:</p> <ul style="list-style-type: none"> • In November 2014 pilot questionnaires were tested with key stakeholders in order to ensure that all relevant areas were covered; • In February-May 2015 surveys were conducted with the Member States' transport ministries and with enforcement authorities; • In March-June 2015 targeted surveys were carried out with stakeholders for the purpose of the case studies included in the ex post evaluation, complemented by individual interviews; • In January-April 2015 a high level survey was carried out to capture responses from stakeholders for which there was no targeted survey. <p>All of the main stakeholders were consulted during the ex post evaluation, notably road transport operators, freight forwarders, shippers, road transport workers, Member States and national enforcement authorities, as well as all of the main associations representing these stakeholders.</p>
<p>(D.5) Further evidence to be gathered</p>
<p>None</p>

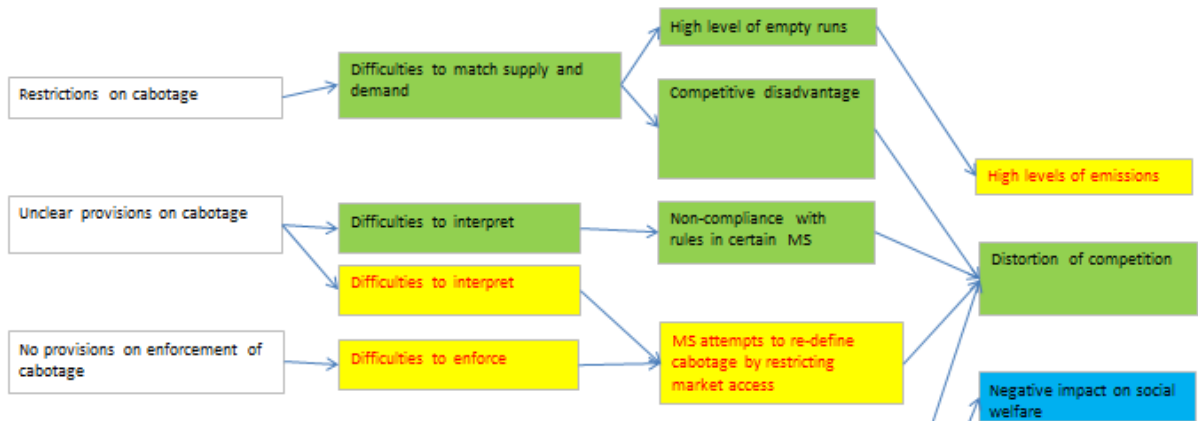
E. Other relevant information/ remarks
Annex II: negative impacts preliminary diagram

Annex I - Intervention logic of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009

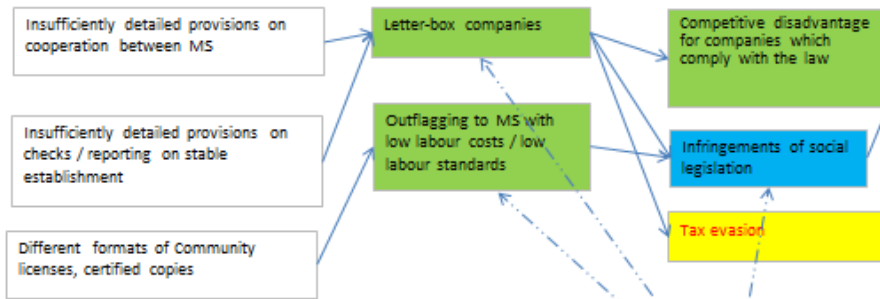


Annex II - Negative impacts preliminary diagram

Regulation 1072/2009



Regulation 1071/2009



Out of scope of EU competence

