

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of social legislation in road transport (Regulation (EC) No 561/2006 on driving times and rest periods, Directive 2002/15/EC on working time of mobile workers, Directive 2006/22/EC on enforcement)		
LEAD DG RESPONSIBLE UNIT	DG MOVE/D3	DATE OF THIS ROADMAP	10/2015
TYPE OF EVALUATION	Evaluation	PLANNED START DATE	3 / 2014
	Ex-post	PLANNED COMPLETION DATE	1 / 2016
	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 evidence-based assessment of the implementation of the social legislation in road transport over the period of 2007-2014 as well as of its effects on the road transport market and the needs it aim to satisfy. It should assess if it is still a relevant tool in view of the changes in the road transport market. The evaluation should include the assessment of accuracy of application, developments in compliance, the efficacy of enforcement and the effectiveness of the legislation with regard to three main policy objectives of improving road safety, working conditions and ensuring fair competition. In addition, the evaluation should contain the assessment of developments in compliance levels and in the efficacy of enforcement, identifying the main factors affecting these developments, and it should provide for lessons learned and recommendations for the future. Depending on the results of the evaluation, which may show positive results and also problem areas, the evaluation may inspire good practices in enforcement or form the basis for a review of the legislative framework. Therefore, the results of the evaluation may either contribute to improving implementation of the rules or feed into an impact assessment study.</p>
(A.2) Justification
<p>Regulation (EC) No 561/2006 on driving times, breaks and rest periods of drivers was adopted to clarify, simplify and update the social rules that had been in place for over twenty years. Accompanied by the enforcement Directive 2006/22/EC on minimum requirements for checking compliance with its provisions, the Regulation aimed at enhancing road safety, preventing the distortion of competition and improving working conditions of drivers. Its provisions have been complemented by the rules on the organisation of the working time of road transport mobile workers laid down in Directive 2002/15/EC. All three inter-related legislative acts indicate that the Commission should monitor the implementation of the provisions and developments in the field. This monitoring has revealed difficulties and differences in application and enforcement of the provisions in force, as well as certain loopholes and inconsistencies in the current provisions. The Commission together with the Member States and the EU stakeholders established guidelines and recommendations to ensure consistent understanding and application of the rules and to reduce discrepancies in enforcement practices. Yet, as these guidelines are not legally binding, some Member States' control authorities do not necessarily apply them in daily enforcement. Moreover, in the course of the negotiations on the new tachograph Regulation (EU) No 165/2014, the European Parliament adopted the legislative resolution of 15 January 2014 with the annex containing the Commission statement concerning Regulation (EC) 561/2006: "In order to ensure an effective and uniform implementation of the legislation on driving times and rest periods, the Commission will continue to monitor closely the implementation of that legislation and, where necessary, take the appropriate initiatives"</p> <p>The number of infringements by drivers and road transport operators against the social provisions remains high: 3.9 million offences were detected in the reporting period 2011-2012 (4.5 million offences reported in 2009-2010 and 3.3 million in 2007-2008). According to the preliminary analysis of the Commission this could be due to: a lack of awareness or understanding of the existing rules, their diverging interpretation and application in Member States, inconsistent enforcement practices across the EU, circumvention of EU requirements to gain competitive advantage, building business models based on differences of effectiveness and severity of the enforcement and</p>

penalty systems of Member States. Therefore, it deems appropriate to identify the main factors affecting positively and negatively compliance with the rules in force and analyse whether, in the context of the developments in the sector, the provisions remain fit for purpose.

Moreover, over the seven year period (2007-2014) of implementation of the legislation, the EU road transport market has been affected by some overarching trends, such as the economic crisis, continued enlargement of the EU, internationalisation of transport operations. New business models have emerged, which led to new employment arrangements, complex contractual relations between hauliers, freight forwarders and third party logistics providers and also to changes in working conditions of drivers.

In the light of this, an ex-post evaluation appears necessary to make an overall comprehensive assessment of the effectiveness of the social legislation in force with regard to three main policy objectives of improving road safety, working conditions of drivers and ensuring undistorted competition. It is also crucial to assess whether the current rules are still fit for purpose and meet the specificities of the main actors of the road transport sector taking into account the main changes in the road transport market that have occurred over last 7 years.

B. Content and subject of the evaluation

(B.1) Subject area

The White Paper on Transport (COM(2011)144) deals extensively with social aspects. It makes clear that the creation of a Single European Transport Area should go together with a higher degree of convergence and enforcement of social rules. It adds that market opening needs to go hand in hand with quality jobs and working conditions.

The EU has developed an extensive framework of social rules for goods and passenger road transport operators. These rules aim at: improving working conditions, enhancing road safety and ensuring fair competition. They apply to all professional drivers (employed and self-employed) driving goods vehicles above 3.5 tons and passenger vehicles for more than 9 persons. The relevant legislative acts are:

1. Regulation (EC) 561/2006 – establishes minimum requirements on daily and weekly driving times, breaks and daily and weekly rest periods. It repealed and took over a number of provisions of Regulation (EEC) 3820/85 as well as updated the list of exemptions and national derogations. New provisions were added to the Regulation, such as an obligation of a transport undertaking to organise the driver's work in such a way that he/she is able to comply with the Regulation's provisions, or the co-liability principle throughout the transport chain for infringements committed against the Regulation.
2. Directive 2002/15/EC – on the organisation of the working time for road transport mobile workers, including the night work provisions. The Directive takes precedence over the horizontal working time directive 2003/88/EC as it sets out the requirements specific to the road transport sector.

It is to be noted that the social rules in road transport do not cover other issues than those related to working time, driving time, breaks, rest periods and night work. The legislation in force sets out only minimum requirements. Member States retain their right to apply national provisions more favourable to the health and safety of drivers, taking account of collective agreements and other social partners' agreements. As regards the EU driving times provisions such national measures should not be applicable to the international transport operations. Compliance with the EU social provisions is controlled by the national enforcement authorities across the European Union by means of the tachograph and other working time records that drivers and transport undertakings are obliged to make and keep. Directive 2006/22/EC – sets out minimum requirements for enforcement of the driving times' Regulation by establishing minimum levels of roadside checks and controls at the premises of transport undertakings, providing for system for targeting the checks to companies at risk as well as for categorisation of infringements of the social rules and tachograph provisions according to the infringement's gravity.

The Commission is committed, in cooperation with the Member States and the EU stakeholders, to enhance the efficiency and effectiveness of enforcement of the current social rules. To this end a number of non-legislative initiatives as well as legislative measures have been undertaken, such as: guidance notes on implementation and enforcement¹, Commission Directive on categorisation of infringements (Directive 2009/5/EC) or Commission Recommendation on guidelines for best enforcement practice concerning checks at roadside (2009/60/EC).

¹ Six guidance notes have been endorsed by the Committee on Road Transport and available in all EU languages on the EUROPA website: http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/guidance_notes_en.htm

(B.2) Original objectives of the intervention
<p>The three legislative acts constituting the EU social legislation framework in road transport share the same policy objectives: (1) improving working conditions of drivers, (2) enhancing road safety by averting driver's fatigue and (3) ensuring undistorted competition among companies. As a global cross-cutting objective, these legal acts aim to support the completion of common market for road transport services, which should be accompanied by measures ensuring adequate working conditions and effective enforcement of the rules in force. In particular, Directive 2002/15/EC identifies the need to protect workers against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working pattern.</p> <p>As specific objectives, the social legislation aimed at ensuring adequate work organisation of drivers in terms of driving times, periods of other work, breaks and rest. It also aimed at preventing infringements and ensuring that the existing social provisions are interpreted, applied and enforced in a uniform manner in all Member States. In particular, Regulation (EC) No 561/2006 identifies in its recitals that effective and uniform enforcement of the provisions is crucial if the objectives are to be achieved and the application of the rules is not to be brought into disrepute. By setting minimum common standards for checking compliance with the Regulation's provisions (via Directive 2006/22/EC) and introducing co-liability and exteriority of infringements principles it also aimed to create a common enforcement space and promote compliance culture.</p> <p>As operational objectives, the legislative acts aimed at laying down common simplified, clearer and enforceable rules, determining the responsibilities of Member States authorities, transport operators and of drivers with regard to compliance with the provisions and introducing measures to facilitate more effective and uniform checks and sanctions throughout the European Union as well as to promote cooperation between the Member States in this regard.</p>
(B.3) How the objectives were to be achieved
Annex I contains intervention logic, which illustrates the context in which the social legislation was originally drafted.

C. Scope of the evaluation/FC
(C.1) Topics covered
<p>The evaluation will assess the implementation and effects of the social legislation in road transport in all 28 Member States. It will cover the 7-years period² starting from 11 April 2007, when Regulation (EC) No 561/2006 entered into force, until 31 December 2014. The assessment of the implementation of two other related legislative acts (Directive 2002/15/EC and Directive 2006/22/EC) will cover the same period, regardless the different dates of entry into force. This is to ensure a comprehensiveness of evaluation, in particular as regards effects of the complementing social provisions and enforcement regime on achievement of the shared policy objectives of enhancing road safety, improving working conditions and preventing distortions of competition.</p> <p>The evaluation will provide specific attention to aspects related to different national interpretations of the rules in force and diverging enforcement systems and practices in controlling compliance with these rules. In particular, the evaluation will look into the assessment of the adequateness and relevance of the current social rules in view of the changes on the road transport market. It will include an assessment of developments in compliance and in efficacy of enforcement over the 7-year period, an identification of main factors affecting compliance and effectiveness of enforcement, impacts on the road transport market, including an administrative costs issues (compliance and non-compliance costs).</p>
(C.2) Issues to be examined
<p>Relevance</p> <ol style="list-style-type: none"> 1. To what extent a set of uniform rules for drivers' work organisation and their uniform enforcement is a relevant and proportionate tool to address the risk, identified at the time, of: a) an unlevelled playing field for drivers and transport operators; b) deterioration in the driver's working conditions; c) deterioration in road safety? 2. Are the minimum requirements for enforcement accompanied by other measures undertaken to enhance and harmonize enforcement (such as risk rating system, guidelines for enforcers, co-liability, concerted checks, etc.) relevant and sufficient to address a risk of low compliance with the existing social rules in road transport? 3. Is the current scope of application of the legislative framework (including a system of exemptions and

² The assessment of the implementation in Croatia will start as of the date of its accession to the European Union on 1 July 2013.

national derogations) relevant, necessary and sufficient in the context of the road transport market developments, including modern complex employment arrangements? If not, what are the points of concern and why?

4. Do the current EU provisions still respond, and to what extent, to the current needs of the freight transport sector? Do they satisfy, and to what extent, the needs of passengers transport sector? If not, which provisions appear not relevant for the sector and why?

Effectiveness

For all effectiveness questions, both effectiveness and ineffectiveness should be assessed. If the conclusion is that the legislative framework is ineffective, the main reasons for this should be analysed. In such case, it would be appropriate to determine how the situation and the current arrangements may be improved.

5. To what extent has the clarification of the provisions on driving times, rest periods and organisation of working time of drivers helped to improve the legal certainty of the rules and their uniform application? To what extent has it resulted in increased compliance with the social legislation in road transport?

6. To what extent is the current system of exemptions and national derogations contributing or hindering the achievement of specific objectives? What differences exist in the implementation by Member States and how do these differences affect the achievement of common objectives, in particular as regards level playing field?

7. To what extent has the package of enforcement measures contributed to improving the application of the social rules in road transport in a uniform manner throughout the EU and to increasing compliance with these rules? How do the results compare between different EU Member States? How do results compare for provisions under Driving Time Regulation and Working Time Directive? How do the results compare with the state of play prior to the adoption of the enforcement Directive? What are the main drivers and hindrances to the effectiveness of enforcement?

8. To what extent the introduction of the principle of co-liability for infringements has contributed to the achievement of specific objectives?

9. To what extent the measures on administrative cooperation (e.g.: body for intercommunity liaison, obligation of exchange of data and experience, concerted checks, joint training programmes) are sufficient and effective in ensuring uniform application and enforcement? If not, how could it be improved?

10. Do the monitoring and reporting arrangements in place allow for adequate checking and follow-up of the legislation? If not how could it be improved?

11. Has the EU legislative framework on social rules in road transport resulted in improved working conditions of drivers, increased road safety level and contributed to a level playing field? What are the main drivers and hindrances to its effectiveness?

12. To what extent has legislative framework created unintended negative/positive effects (both in terms of impacts and results)? If so, which stakeholders groups are affected the most?

Efficiency

13. To what extent has the legislation been efficient in its objective of enabling effective and uniform enforcement of the existing rules? What are the enforcement costs of the road transport social rules (both for the Driving Time Regulation and for the Road Transport Working Time Directive)? Are these costs proportionate to the benefits linked to the better compliance with the rules, such as improved working conditions, improved road safety and reduced distortion of competition?

14. Have the enforcement measures put in place by Member States created any additional savings or costs for national authorities and for transport operators? Would it be possible to achieve the same level of compliance more efficiently by other means?

15. Are there substantial costs involved in compliance with the road social legislation (both for transport undertakings and drivers)? To what extent are they reasonable and proportionate to the benefits of better compliance (if any) with the rules, such as enhanced working conditions and level playing field? Would it be possible to achieve the same level of compliance more efficiently by other means?

16. What would be the related administrative costs of monitoring and reporting arrangements both for authorities and operators/drivers? Would they be proportionate to related benefits? If not, to what extent can current arrangements be streamlined so that the costs to authorities and operators/drivers are reduced?

Coherence:

³ The Charter of Fundamental Rights of the European Union recognises the right to equality before the law (Article 20), non-discrimination (Article 21), as well as a number of labour rights, in particular the right to fair and just working conditions (Article 31) which includes the right of every worker to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. According to the Official explanations to the Charter (Official Journal of the European Union C 303/17 14.12.2007 (2007/C 303/02)), Article 31 is based in particular on the general EU Working Time directive. The Charter includes also provisions (in its Article 52) on the limitations on the exercise of the rights and freedoms recognised by the Charter. Such limitations must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

17. Are the provisions (including the scope of applications and exemptions) and definitions related to the organisation of the working time of drivers (Directive 2002/15/EC) consistent with those on driving times, breaks and rest periods (Regulation 561/2006)? If not entirely, what are the differences, overlaps or inconsistencies? How do these shortcomings impact the compliance level?

18. The social legislation in road transport co-exist with different pieces of legislation, such as: tachograph regulation (Regulation (EU) No 165/2014), road package Regulations (Regulation (EC) No 1071/2009 on access to occupation of transport operator, Regulation 1072/2009 on access to the road haulage market and Regulation 1073/2009 on access to the passengers transport market), directive on training of drivers (Directive 2003/59/EC) and recently adopted roadworthiness package (Directive 2014/45/EU on periodic roadworthiness tests and Directive 2014/47/EU on technical roadside inspections). How do these legislative acts interact in terms of road safety, working conditions of drivers and harmonised conditions of competition? Can inconsistencies of references and definitions, and overlaps of provisions be identified and remedied?

19. How does the social legislation in road transport relate to the goals of EU transport policy (as set out in the 2011 White Paper), the Charter of Fundamental Rights of the European Union³ and EU Social Acquis and the wider economic, social or environmental challenges of EU policies? Has it contributed (and to what extent) to the general policy objectives?

EU added value

20. What is the added value of setting the road social legislation at the EU level? To what extent could a different level of regulation (e.g. at national level, soft-law measures) be more relevant and/or effective and/or efficient than the applicable one to ensure common rules for: (a) the adequate organisation of working time of drivers; (b) the effective and efficient enforcement of the legal provisions; (c) the clear liabilities of transport operators and of drivers; (d) harmonisation of conditions of competition between operators in terms of organisation of driver's work.

21. Is there any evidence that in certain cases a different level of regulation (e.g. national regulation, soft-law measures) could have been more relevant and/or effective and/or efficient (and to what extent) than the applicable one to achieve the objectives of improving road safety, reducing distortions of competition between operators, enhancing working conditions of drivers and increasing effectiveness of enforcement and a level of compliance?
Coordination

22. To what extent are the three legal measures working together as a framework for the road social legislation and how is this perceived by stakeholders? Is the framework in practice benefiting from economies of scale by minimising the inputs (e.g. enforcement measures) and maximising their joint effects?

(C.3) Other tasks

To support the interim evaluation the following tasks should be carried out:

1. Desk research so as to provide mapping of Member States' administrative arrangements for implementation, monitoring and enforcing of the social legislation;
2. Field research to collect additional data from Member States' authorities and the EU stakeholders via targeted interviews, surveys and field visits;
3. Analysis of developments in compliance levels and analysis of developments in cost-effectiveness of enforcement;
4. Development of case studies regarding the implementation of the social legislation in several Member States (or by clusters of countries which share similarities as regards the functioning of transport markets and/or enforcement schemes);
5. Possible suggestions for follow-up to improve the implementation of the social legislation in road transport;
6. Development of a dissemination strategy.

Based on these tasks, a qualitative analysis supported by quantitative data should be completed. The latter should be based for instance on data from Member States related to administrative costs of compliance and non-compliance, the enforcement capacities, number and type of controls, number and type of infringements ascertained and sanctions imposed, developments of the transport market, road safety data as well as from stakeholders, in particular on working patterns, other working conditions, administrative costs, etc.

D. Evidence base

(D.1) Evidence from monitoring

Article 17 of Regulation (EC) No 561/2006 requires Member States to communicate to the Commission every two years on the application of that Regulation, including enforcement activities carried out as required by Directive 2006/22/EC and the developments in the fields in question. Article 13 of Directive 2002/15/EC provides that Member States should report to the Commission on the implementation of the Directive, indicating the views of the

two sides of the industry. Based on the analyses of these national submissions the Commission draws up a regular biennial report for the European parliament and for the Council. The current report (under adoption) covers the years 2011-2012. It provides an overview of how Member States have implemented the relevant legislative acts and highlights the key challenges in enforcement and application of the rules in force. The report contains both quantitative and qualitative data on checks carried out at roadside and premises, offences detected.

In addition, the Commission monitors on regular basis the implementation of the driving time legislation in the framework of the Committee on Road Transport (in line with Articles 24 and 25 of the Regulation) as well as working groups composed of Member States experts, representatives of the EU stakeholders, including the enforcement community. The Committee discusses issues that raise some interpretative questions, examines causes of different interpretations among Member States and drafts guidance notes establishing a common approach to application and enforcement of the issues in question.

(D.2) Previous evaluations and other reports

- 1) Report on the implementation in 2011-2012 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on minimum requirements with relation to the organisation of working time of persons performing mobile road transport activities, (to be published shortly)
- 2) Study on the harmonisation of sanctions in the field of commercial road transport, February 2013
- 3) Report on the State of the Union Road Transport Market (COM(2014)222)
- 4) Analysis of penalties for serious infringements against the social rules in road transport [COM(2009)225, 15/05/2009]
- 5) Report on the application of the derogation provided in Article 8(6a) of Regulation (EC) No561/2006 of the European Parliament and of the Council (12-day rule), (COM(2014) 337 final)
- 6) Social and working conditions of rod transport hauliers, European Parliament, 2013
- 7) Overview of evaluation of enforcement in the EU social legislation for the professional road transport sector, European parliament, 2012.

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

There has been a number of ECJ rulings related to the social legislation in road transport. The overview of the relevant Court rulings is available on the EUROPA website:
http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/doc/european-court-judgements.pdf

There are no currently open infringement cases in relation to any of the three legislative acts. There is an on-going EU-Pilot case with France (and with Belgium to be opened soon) concerning the new national measures imposing severe sanctions for spending the regular weekly rest in the vehicle. The legality of the national provisions in the context of Regulation (EC) No 561/2006 as well as compliance with principles of proportionality and non-discrimination of sanctions are being assessed.

Complaints have been received regarding restrictive, discriminatory enforcement practices and disproportionate sanctions in some Member States. The cases of misuse of the form attesting the driver's activities have also been reported. The analyses of these cases are on-going.

(D.4) Consultation

In the framework of stakeholders' consultations the representatives of Member States, industry organisations and sectorial social partners will be consulted.

Experts from Member States' road transport and enforcement authorities, representatives of the EU enforcement community and other relevant EU stakeholders will be regularly consulted during meetings of Road Transport Committee and Enforcement Working Group, which is established under the Committee's auspices.

(D.5) Further evidence to be gathered

[Provide information on what further evidence is needed and how it will be gathered.]

E. Other relevant information/ remarks

Annex I: Intervention logic of the ex-post evaluation

Annex I



