

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Enhancement of the social legislation in road transport		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG MOVE, UNIT D3	DATE OF ROADMAP	01/09/2016
LIKELY TYPE OF INITIATIVE	Legislative (targeted revision of the Regulation and/or Directives) and/or non-legislative (e.g. Commission Decision, Communication, Recommendation, etc.)		
INDICATIVE PLANNING	See list of planned Commission activities here .		
ADDITIONAL INFORMATION	A specific website for the initiative will be created.		
<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>In order to achieve the Single European Transport Area, with the fair, socially responsible and efficient road transport market, as highlighted in White Paper 2011, the social legislation in road transport; i.e. Regulation (EC) No 561/2006, Directive 2002/15/EC and Directive 2006/22/EC should reach its full potential as regards improving the working conditions, a level playing field between road transport operators and enhancing road safety. Therefore, the social legislation was the subject of an assessment of its functioning and effects in the context of the policy objectives and recent market developments in the framework of the <i>ex post</i> evaluation. The study comes to the conclusion that there are certain difficulties in application and enforcement of this legal framework that prevent the achievement of the road transport objectives.(published on the Europa website : http://ec.europa.eu/transport/facts-fundings/evaluations/annual_en.htm)</p> <p>In its proposal of 8 March 2016 to amend the Posting of Workers Directive, the Commission indicated that in view of the highly mobile nature of work in international road transport, the implementation of the Posting of Workers Directive raises particular legal questions and difficulties (especially where the link with the concerned Member State is insufficient). While some Member States consider that the Directive shall be applicable to all international transport operations, other Member States are of the opinion that the application of the Directive to all international operations, irrespective of the duration and/or frequency in the host Member States, could jeopardize the good functioning of the internal market. Hence it is most opportune to address these issues in the context of the set of road transport initiatives.</p> <p>This initiative is complementary and supportive to other ongoing road transport initiatives, notably linked to internal market rules (in particular Regulation 1071/2009 on access to the occupation of road transport operator and Regulation 1072/2009 on access to the international road haulage market).. A fair balance is necessary between, on the one hand the objective of internal market, aiming at ensuring the competitiveness and efficiency of road transport industry and, on the other hand, the objective of ensuring adequate working conditions to workers.</p> <p>This initiative contributes to two priorities of President's Juncker's political guidelines, namely those on creating "A deeper and fairer internal market" and on "Jobs Growth and Investment".</p>
<p>Problem the initiative aims to tackle</p> <p>Based on the results of the evaluation support study, the main problems having adverse impacts on smooth functioning of the EU road transport sector and hampering the achievement of fair, socially responsible, safe and efficient road transport market appear to be the following: 1) distortions of competition between transport operators, 2) inadequate working conditions for drivers and 3) high regulatory burdens for Member States and stakeholders.</p> <p>The main drivers behind the identified problems are the following:</p> <ul style="list-style-type: none"> • The ambiguous, unfit or unenforceable provisions lead to diverging national interpretations and different application of the common EU rules, resulting often in adoption of uncoordinated national measures. This

creates legal uncertainty and uneven playing field for resident and non-resident transport operators and drivers and contributes to unintentional non-compliance. The provisions, which do not reflect the specificities of certain transport services and evolving needs of the sector, are most likely to be violated, in particular when combined with market pressures and weak enforcement. The main problematic areas concern *inter alia* :

- provisions on regular weekly rest (in particular the question whether the regular weekly rest can be taken in the cabin of the vehicle or not, which is interpreted differently by Member States),
- breaks and rest times,
- remuneration based on performance (which remains common practice in the road transport sector),
- co-liability for infringements (difficulty to identify the legal liability of different actors)
- the scope of the legislation (e.g. drivers of vehicles below 3.5 tons are not covered by EU legislation)
- issues of long periods away from home-base which are not regulated under EU law.

As far as the directive on the posting of workers, its applicability to road transport, more in particular to international operations, have recently raised a number of difficulties and divergences of interpretation between Member States..

- The inconsistent and ineffective cross-border enforcement (e.g insufficient joint controls between Member States, insufficient exchange of information between national enforcement authorities) leads both to an uneven playing field for resident and non-resident transport operators and their drivers and to regulatory burden for Member States and stakeholders. This problem driver has several root causes, some of which are directly linked with the EU legislation in force, notably diverging enforcement practices and control tools and systems used by control officers, insufficient administrative cooperation or enforcement of the Working Time Directive whilst others are within the remit of Member States such as insufficient human and financial capacities within Member States.

Subsidiarity check (and legal basis)

The initiative is based on Articles 90 and 91 of the Treaty of the Functioning of the European Union, which provides for shared competence of the European Union and the Member States in the area of common transport policy.

Despite the existing extensive EU social legislation applicable to the road transport sector, the social dimension of the EU Transport Policy has been identified by the White Paper 2011 as one of the most important challenges to the functioning and further development of the European Single Transport Area. This initiative aims to contribute to improving the social dimension of the common transport policy by addressing recognized EU-wide problems faced by operators and drivers, in particular those engaged in international transport operations.

High mobility is the inherent element of the profession. The two million workers engaged in international road transport operations regularly carry out work on the territory of different Member States, over brief periods of time. Hence the actions to be undertaken have, by definition, a strong cross-border dimension. Creating an efficient, safe and socially responsible EU transport system based on the common high quality working conditions and competition standards cannot be achieved by the Member States individually. These objectives can be more effectively and efficiently achieved by the action undertaken at the EU level with the active involvement of the European sectoral social partners.

The unilateral national actions (e.g. national law on a minimum wage applicable to foreign drivers, prohibition of taking regular weekly in the cabin of the vehicle) proved to be insufficient or inappropriate as they do not solve entirely the core problems of deteriorating working conditions or distortions of competition, but create even more legal uncertainty and administrative burdens for foreign operators restricting access to the national markets and hence interfering with the common transport policy objectives. The current problems require taking coordinated action at the EU level and common understanding of EU rules. To prevent a fragmentation of the internal market through a patchwork of diverging interpretations, enforcement practices and national implementing measures and to enable a consistent application and cost-effective enforcement of the EU social rules in road transport, the action at EU level is necessary.

B. Objectives and Policy options

The initiative aims at ensuring the effectiveness of the original system put in place and therefore contributing to the original policy objectives, i.e.: (1) to ensure a level playing field for drivers and operators, (2) to improve and harmonise working conditions and (3) to improve the road safety level. Additional objective, in the context of applicability of the provisions on posting, is to ensure the right balance between the freedom to provide cross-border transport services and the protection of the rights of highly mobile road transport workers.

This translates into the followings set of specific objectives:

- To provide for uniform interpretation and application of the social rules in road transport by Member States;
- To facilitate cost-effective and consistent monitoring and enforcement of the social legislation;

The baseline scenario would be to maintain the existing rules as they are today. The Commission would continue

to deal with complaints, requests for clarifications and interventions on a case-by-case basis and would, whenever necessary, start infringement procedures against Member States. Despite the more secure and accurate recording and storage of data on the driving time, breaks, rest periods due to the technological developments in relation to tachographs, the identified problems would persist to the great extent.

In order to meet the objectives mentioned above three broad groups of measures have been preliminarily identified (only the most significant measures are indicated):

- simplification, update and clarification of existing rules: clarification of the provision on the regular weekly rest period (in particular clarifying whether the rest can be taken in the cabin of the vehicle or not) and the scope of the legislation, adapting the provisions on breaks and driving times to the specific needs of certain transport services (in particular for local deliveries) , specifying the conditions allowing for differentiation of what constitutes a performance-based remuneration scheme that is considered to be a risk to road safety or to encourage infringements, clarifying the recording obligations of drivers and operators in situations of mixed activities and considering better coherence of the provisions of the Working Time Directive and the Regulation and clarifying the conditions of application of the Posting of Workers Directive, in particular in transport operations involving more than two Member States.
- measures liable to ease and improve enforcement: enhancing the administrative cooperation between Member States, harmonizing the control tools and systems used by enforcers, in particular national risk rating systems (RRS) and software used by enforcement officers, establishing minimum requirements to control compliance with the Working Time Directive as well as to determine appropriate types and levels of sanctions that are proportionate to the seriousness of infringements, promoting use of GNSS digital tachograph.
- measures to address risk factors beyond current rules, which affect working conditions and fair competition: setting more detailed minimum requirements concerning the organisation of work of drivers, and in particular as regards periods away from home/base and establishing criteria to determine the applicability of the provisions on posting of workers, in particular the minimum rates of pay, to the highly mobile workers in the international road transport sector.

The form of the measures (EU legislation or explanatory guidelines) and their distribution by various policy packages will be thoroughly assessed during an impact assessment process.

As the large majority of road transport undertakings are SMEs, the measures above would have impact on their work and behaviour.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

There is a risk that Member States will continue to implement the social legislation in a divergent manner and the problem with unequal treatment and non-compliance will persist. Additional administrative costs will occur should infringement procedures be launched following complaints.

Clarification measures, by ensuring legal certainty, will facilitate the compliance of the transport operators with the requirements set out in the social legislation as well as enforcement for the control officers. This will prevent operators from unfairly competing by deteriorating the working conditions of drivers and will lead to a level playing field between road transport operators.

The investment would have to be made to improve and materialize the administrative cooperation through improving of existing or setting up new tools. Thus, this priority action would entail regulatory costs mainly for public authorities with regard to necessity to modify their enforcement arrangements, bearing additional costs for training of enforcers and equipping them appropriately. These costs would however be offset by better enforcement which, together with better understanding of the rules by all actors in the road transport chain, would further contribute to an increase of compliance. The infringements related costs would thus decrease. Citizens would benefit from safer roads. The transport operations would be carried out with no major disturbances due to burdensome roadside controls resulting quite often in immobilisation of the vehicle. This would further contribute to smooth functioning of the internal market.

EU action could therefore contribute to improve the functioning of the internal market. Legal certainty could also contribute to boost investments in the road transport sector, leading to more efficiency in the transport chain.

Likely social impacts

Drivers would benefit from clearer, coherent and simpler rules, whose compliance is controlled effectively and in uniform manner. Addressing issues of the inadequate organisation of work and applicability of the provisions on posting of workers hand in hand with increased understanding of the rules would positively impact the working conditions (e.g. health and safety, conditions of employment, remuneration). The image of the profession could improve, which could possibly attract new, young people, including women, to work in the sector. Accidents risk would decrease improving in general public health and safety.

Likely environmental impacts

No environmental impacts have been identified at this stage. To be confirmed by the impact assessment.

Likely impacts on fundamental rights
The planned measures are expected to have a positive impact on fundamental rights, especially in terms of an enhanced protection of transport workers against adverse effects on their health and safety caused by inadequate working conditions.
Likely impacts on simplification and/or administrative burden
Clarification of the rules will result in legal certainty and some measures (e.g. enhanced administrative cooperation or minimum requirements to control compliance with the Working Time Directive) 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.
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
<p>The crucial information includes the comparative data over the period of several years in the fields of: accidents related to driver's fatigue, costs of non-compliance, regulatory costs of compliance and of enforcement for companies and for national administrations, qualitative data on driver's health and safety, work-life balance, satisfaction with regard to working conditions, effectiveness of enforcement systems, developments in number and types of infringements detected, barriers/facilitation to operate internationally and to organize the work of drivers, etc. The assessment will be based as much as possible on quantitative data allowing conclusions on the sector-wide situation and on causal links to legislation.</p> <p>The data will be gathered through the desk and field research activities, including the mandatory public consultation and targeted stakeholders' consultations (see below). The available sources of information will be exploited including: outcomes of the on-going ex-post evaluation, Commission reports on the implementation of the social legislation over several reporting periods; guidance notes and clarification notes, simplified text of TRACE project, results of the on-going CLOSER project, the previous study and impact assessment on modifications to the specific working time directive in road transport, CARE database, external studies such as ISORE, KNOW-IN, reports and databases on European and international organisations such: as European Works Councils, International Labour Organisation, ECJ rulings, petitions and complaints.</p>
Consultation strategy
<p>A 12-week open public consultation will be launched in September 2016. This will comprise two questionnaires: one, more general, addressed to drivers, operators, shippers, freight forwarders as well as general public and another one, with more specialised questions, for road transport authorities in the Member States, enforcement bodies, workers' organisations and industry associations. The scope of the consultation will cover all the main elements of the evaluation and impact assessment in order to get stakeholders' views on the identified problems to be tackled, the issue of subsidiarity, available policy options and their impacts.</p> <p>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, thematic seminars with stakeholders and oral interviews. These consultation activities will take place in the course of the impact assessment support study (as from the last quarter of 2016 and continued in 2017) and will be complemented by regular meetings of the Road Transport Committee.</p> <p>Regular consultations of the sectoral dialogue committee on road transport will also take place.</p>
Will an Implementation plan be established?
This initiative concerns the possible revision of: (1) the Regulation, which is directly applicable in Member States and do not need to be transposed into national law and (2) two Directives. In the latter case, if the outcome of the impact assessment confirms the need for legislative actions, which might raise implementation issues for Member States and stakeholders, an implementation plan will be envisaged.