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**COVER NOTE**

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	1 June 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2017) 186 final PART 2/2
Subject:	COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs and Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector <ul style="list-style-type: none"><li>• PART 2/2</li></ul>

Delegations will find attached document SWD(2017) 186 final PART 2/2.

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Encl.: SWD(2017) 186 final PART 2/2



EUROPEAN  
COMMISSION

Brussels, 31.5.2017  
SWD(2017) 186 final

PART 2/2

## **COMMISSION STAFF WORKING DOCUMENT**

### **IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs**

**and**

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector**

{COM(2017) 277 final}

{COM(2017) 278 final}

{SWD(2017) 184 final}

{SWD(2017) 185 final}

{SWD(2017) 187 final}

## **ANNEX 1:**

### **PROCEDURAL INFORMATION CONCERNING THE PROCESS TO PREPARE THE IMPACT ASSESSMENT REPORT AND THE RELATED INITIATIVE**

#### **1. ORGANISATION AND TIMING**

The Directorate-General for Mobility and Transport is the lead service for the preparation of the initiative and the work on the impact assessment. The evaluation was validated in the Agenda Planning under references 2016/MOVE/005, 2016/MOVE/018 and 2016/MOVE/019.

The initiative was validated in March 2016 and the impact assessment work started immediately afterwards. It lasted until April 2017.

An inter-service steering group (ISG), chaired by the Secretariat-General (SG), was set up in 19.07.2016 with the participation of the following Commission Directorates-Generals: Legal Service (LS), Mobility and Transport (DG MOVE), Internal Market, Industry, Entrepreneurship and SMEs (DG GROW), Economic and Financial Affairs (DG ECFIN), Employment, Social Affairs and Inclusion (DG EMPL).

Invitations were also sent to the following Commission Directorates-Generals: Agriculture and Rural Development (DG AGRI), Climate Action (DG CLIMA), Communications Networks, Content and Technology (DG CONNECT), Competition (DG COMP), Informatics (DG DIGIT), Education, Youth, Sport and Culture (DG EAC), Energy (DG ENER), Eurostat (DG ESTAT), Financial Stability, Financial Services and Capital Markets Union (DG FISMA), Migration and Home Affairs (DG HOME), Joint Research Centre (DG JRC), Justice and Consumers (DG JUST), Regional and Urban Policy (DG REGIO), Health and Food Safety (DG SANTE), Taxation and Customs Union (DG TAXUD), Trade (DG TRADE).

Three Inter-service Steering Group were held on 19 July 2016, 10<sup>th</sup> January 2017 and 1<sup>st</sup> March 2017.

#### **2. CONSULTATION OF THE REGULATORY SCRUTINY BOARD**

The Regulatory Scrutiny Board received the draft version of the present impact assessment report on 8 March 2017 and following the Board meeting on 5 April 2017 issued a negative opinion on 7<sup>th</sup> April 2017. The Board made several recommendations. Those were addressed in the revised IA report as follows:

RSB recommendations	Modification of the IA report
<b>Main considerations</b>	
1. The report does not describe the policy context clearly and does not take into account relevant parallel processes such as the 2016 Posting of Workers Directive proposal, the ongoing social dialogues and pending ECJ cases.	More explanation on the relevant parallel processes has been provided in section 2.1 on policy context. In particular the interlinkages with the parallel review of the legislation on access to the market and the complementarity with the pending Commission proposal on PWD was better explained, as well as the pending infringement cases and the on-going social dialogue .
2. The challenges and objectives that this initiative addresses are unclear, incomplete, and do not fully match the findings of the evaluation	This has been addressed in section 1.2 in particular in table 1. The explanations for discarding certain policy measures have been also more elaborated in Annex 6.
3. The baseline is based on unclear assumptions and does not take sufficient account of relevant ongoing processes (see above), market trends and potential future technology developments	It is addressed in section 2.5 on baseline.  The assumptions in the baseline are now clearly outlined (such as market developments, legislative and judicial processes, technological developments and enforcement issues).
4. The report does not sufficiently describe likely impacts, including with regard to costs (REFIT dimension). It does not examine risks of non-compliance and illicit practices. This makes options much harder to compare.	Section 6 on impact, in particular section 6.1.1 takes into account the risks of circumventing the rules.  REFIT has been addressed in section 1.3 and in the impact in section 6, also in table 13.
<b>Further considerations and adjustment requirements</b>	
• The policy context should better justify the need for acting now.	This has been better explained in section 2.1.
• Parallel and ongoing processes, which relate to the current initiative, should be better described. This concerns notably the Posting of Workers Directive proposal of 8 March 2016, the ongoing social dialogues and the pending ECJ cases.	This has been addressed in section 2.1. Please see above.
• The link with parallel initiatives on access to market and to the profession should be clarified. This should show how circumventions of other than social standards requirements (i.e. letter box companies, illicit employment contracts, etc.) add to the problem and how these are addressed.	The links with the market initiative has been better explained in section 2.1 on policy context and 2.2 on market context. Please see above.
• The report should better justify the reasons for discarding upfront issues identified by the ex post evaluation and by stakeholders, as these could potentially affect compliance and enforcement (such as co-liability for	This has been addressed in section 1.2, in particular in table 1. The explanations for discarding certain policy measures have been also more elaborated in Annex 6.

infringement).	
<b>2. Intervention logic</b>	
<ul style="list-style-type: none"> <li>The intervention logic should better distinguish between the 'real problems on the ground' and the legal issues (legislative problems, implementation and enforcement). The problems and policy goals should preferably refer to issues on the ground [...]</li> </ul>	<p>The Problem definition has been considerably revised, indicating problems on the ground and underlying legal issues.</p> <p>New problem tree has been drafted, please see figure 3 .</p>
<ul style="list-style-type: none"> <li>The problem definition and problem tree do not cover the problem perceived by many EU15 drivers, namely that their jobs and wages are threatened by 'unfair' competition from EU 13 drivers [...]</li> </ul>	<p>This has been in particular addressed in sections 2.1 policy context and 2.2 market context and 2.3 on the size of the problems. The risk to EU-15 drivers due to "unfair" competition is addressed in the new problem definition.</p>
<ul style="list-style-type: none"> <li>The intervention logic should be simplified [...]</li> </ul>	<p>New problem tree has been drafted, please see figure 3 .</p>
<b>3. The baseline</b>	
<ul style="list-style-type: none"> <li>The baseline needs to be based on assumptions of how the regulatory environment is likely to develop in the absence of the current initiative [...]</li> </ul>	<p>This has been addressed in section 2.5 on baseline.</p>
<ul style="list-style-type: none"> <li>The report expects new national measures to be taken, which could lead to further regulatory burdens and increasing fragmentation of the internal market. It assumes that efficiency of the enforcement efforts will increase. However, the report does not take into account possible resource limitations of Member States to enforce measures and control their application [...]</li> </ul>	<p>This is more explained in section 2.5, in particular in 2.5.1.2 on High regulatory costs for operators and national authorities Decreasing enforcement capacity is one of the assumptions in the baseline. The issue has been taken into account in the analysis of the impact on enhancement on enforcement.</p>
<ul style="list-style-type: none"> <li>The EUR 2 bn cost baseline should be better explained. The report should be more specific about the types of costs involved and clarify whether they relate to national or to EU measures. The baseline should also be more specific about the consequences for the internal market of the increased fragmentation of the road transport market.</li> </ul>	<p>The clear definition between the various costs (enforcement, administrative, compliance) has been made and cost for baseline scenario was revised. Cost estimate has been updated.</p> <p>This has been addressed in the baseline section 2.5 and in Annex 4 on the calculation of the administrative costs in the baseline.</p>
<ul style="list-style-type: none"> <li>The baseline should give a clearer picture of the trends in the sector, in particular on the issues highlighted in the evaluation as key factors: shortage of drivers; greater concentration in the sector; breakdown of international trips by Member State [...]</li> </ul>	<p>This has been addressed in the baseline section 2.5.</p>
<ul style="list-style-type: none"> <li>The future technology perspectives for road transport could be referred to annex 9, since this may apply to the whole road package. This could include the implications of new</li> </ul>	<p>Future technology perspectives are mentioned in Section 2.5 on the baseline.</p>

technologies such as digital tachographs, satellite/GPS surveillance and driverless trucks	
<b>4. Impacts</b>	
<ul style="list-style-type: none"> <li>The costs of the various options should be clarified, singling out the different types of costs, their relative importance and their measurement; compliance/administrative costs, cost imposed by the EU framework or by national measures; which ones will only disappear once Member States decide to repeal their national measures. What will be the costs of a common EU notification system for EU road transport and for improving enforcement and controls?</li> </ul>	<p>Section 6.2 has assessed these costs.</p> <p>Please note that no such option of a common EU notification system exist.</p>
<ul style="list-style-type: none"> <li>The impact section should look at likely market reactions to the proposed measures. The impacts of the policy packages on compliance and enforcement should be substantiated and it should be better explained how the envisaged actions can reduce strong incentives for national measures and circumvention by operators. The impact analysis should include a presentation of the support of stakeholders and Member States to the different policy packages [...]</li> </ul>	<p>The analysis of the impact of each policy option is accompanied with information on opinions of the main stakeholders.</p> <p>The detailed views on the stakeholders is provided in Annex 2.</p>
<ul style="list-style-type: none"> <li>The ability to prove a 'free choice' as to whether drivers spend their regular weekly rest in the vehicle is not clearly argued. The report does not demonstrate how options on weekly (reduced) rest time, driving time, the split of breaks, as well as the issue of minimum pay would improve the situation of drivers and the road safety.</li> </ul>	<p>The impact of the measures on improving a driver's working condition and fatigue was further elaborated in the section on social impacts (section 6.1)</p>
<ul style="list-style-type: none"> <li>The comparison of options should be adapted to reflect an improved intervention logic and more balanced impact and risk assessments. A clearer overview of the various options, their potential impacts on the assessment criteria and on costs is required to bring out the main trade-offs between these options.</li> </ul>	<p>The comparison of options is based on thorough analysis of the trade-offs and positive and negative impacts of different measures of the same package.</p> <p>The overview of it is provided in table 12 on the comparison of options.</p>
<ul style="list-style-type: none"> <li>The report should provide an overview of the different options and their impacts on main stakeholder groups</li> </ul>	<p>The impact of the policy options has been provided in Annex 3.</p>
<ul style="list-style-type: none"> <li>The preferred option should be put in context of the overall road package, and potential synergies should be set out. This</li> </ul>	<p>An overview of costs of the Road initiatives and the interlinkages with cabotage is provided in new Annex 7 .</p>

should include interlinkages with cabotage. Annex 9 on the overall package should contain an overview of the cumulative cost of the whole package.	
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The Regulatory Scrutiny Board received the revised version of the impact assessment report on 24 April 2017 and issued in written procedure a positive opinion with recommendations on 28 April 2017. The Board made further recommendations which were addressed in the revised IA report as follows:

RSB recommendations	Modification to the Impact Assessment
<b>1. the baseline</b>	
The baseline should address the risks linked to a certain number of uncertainties and be more cautious in the way to formulate the assumptions. The baseline should clarify the expected differences in the scenario with and without the proposed directive on the posting of workers (PWD), [...]	These aspects have been addressed in section 2.5 in the baseline (the adaptations are made in particular in sections: 2.5.1; 2.5.1.2; 2.5.1.3 and 2.5.1.4.)
<b>2. Policy options</b>	
The report and the related annex should provide for a clearer and balanced analysis of the feasibility of the option aiming at modifying the posting of worker directive. It should reflect the possibility for the European sectoral social partners to address the issue or develop why this option has not been taken into account.	This has been addressed in section 5.2.
<b>3. Assessment of impacts</b>	
The report should better demonstrate the impacts on drivers' health and working conditions of weekly rest under revised rules: <ul style="list-style-type: none"> <li>• the report should clarify the impact (effectiveness) of PP2 and PP4a to</li> <li>• Reference to stakeholder's views still needs a more cautious use [...]</li> </ul>	Section 6.1.2, 6.22 and 7.2.
<b>4. Presentation</b>	
The executive summary suggests a trade-off between protection of workers and facilitating cross-border service provision. By contrast, the main report suggests these two goals can be pursued in parallel.	The executive summary has been revised accordingly.

### **3. DATA USED IN IMPACT ASSESSMENT AND EXTERNAL EXPERTISE**

The impact assessment relied mainly on the support study carried out by an external consultant<sup>1</sup>. This study itself followed up from the support study for the ex post evaluation of the social rules carried out by the same consultant<sup>2</sup>. In the course of the support study, a wide range of stakeholders were consulted to confirm the scope and the magnitude of the problems and to provide their views on the potential solutions to these problems.

In parallel to the external studies, the Commission services sought further expertise and input from stakeholders by means of several dedicated meetings throughout the impact assessment.

Other sources of data used included:

- Conferences organised by the Commission in 2015 and April 2016 on the planned Road initiative
- ETF working group meetings – 13 January 2016
- Sectorial dialogue committee in road transport – 19 January 2016
- Sectorial dialogue committee in road transport – 15 June 2016
- Florence Road Transport Forum on 15 July 2016 and 23 January 2017
- Several bilateral meetings with all main stakeholders throughout 2016 and 2017
- Sectorial dialogue committee in road transport – 16 November 2016
- Meeting between Commission and ETF – 24 January 2017
- support Study of ex-post evaluation on the social rules

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<sup>1</sup> Support study for an impact assessment for the revision of the social legislation in road transport (Ricardo 2017)

<sup>2</sup> <http://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

This study was the main basis for the Commission's ex post evaluation of the Regulations:

<https://ec.europa.eu/transport/sites/transport/files/swd20160350.pdf>



## **ANNEX 2**

### **STAKEHOLDER CONSULTATION**

#### **1. PROCESS AND QUANTITATIVE RESULTS OF THE STAKEHOLDER CONSULTATION**

A variety of consultation activities with stakeholders have been carried out in the period between June 2015 and December 2016. The Commission organised an open public consultation, a SME panel survey and targeted stakeholder consultations through a consultant.

The objectives of these consultation activities were two-fold:

- To provide to the wide public and stakeholders an opportunity to express their views on all elements relevant for the assessment of the functioning of the social rules in road transport, as well as to express their positions on the possible/desirable changes to the regulatory framework.
- To gather specialised input (data and factual information, expert views) on specific aspects of the legislation (e.g. working and business conditions, enforcement methods and tools, etc.) from the enforcement community and from the industry.

#### **1.2. OPEN PUBLIC CONSULTATION (OPC)**

The European Commission organised an open public consultation from 5 September to 11 December 2016, i.e. 14 weeks. The OPC aimed to support the back-to-back ex-post evaluation and impact assessment processes; hence it addressed the issues relevant for both processes: the verification of the problems faced by the sector as well as the identification of potential solutions to address those problems. The anonymised replies and a summary of OPC findings are available online:

[http://ec.europa.eu/transport/modes/road/consultations/2016-social-legislation-road\\_en](http://ec.europa.eu/transport/modes/road/consultations/2016-social-legislation-road_en).

The main objectives of the OPC were: 1) to confirm the preliminary results identified during the ex-post evaluation support study, 2) to seek the opinion of stakeholders on possible policy measures; and 3) to assess the expected impacts of the possible policy measures.

Stakeholders were given the opportunity to send spontaneously their contributions to the ex-post evaluation and impact assessment exercises. The invitation to do so was published on the consultation web page, as well as announced at conferences, events, and meetings and correspondence with the Commission etc.

Questionnaires were drafted by the Commission services based on the findings of the study on ex-post evaluation. To better tailor the questions to the stakeholder groups the consultation was composed of two questionnaires: 1) non-specialised questionnaire addressed to drivers, operators, shippers, forwarders, citizens who submitted in total **1209** responses and 2) specialised questionnaire addressed to national authorities, enforcement bodies, workers' organisations and industry associations from whom **169** responses were received.

In total **1378 responses** were received by the OPC. **1209** replies were received to the non-specialised questionnaire which provided a good representation of key stakeholders: drivers/other road transport workers (31%), road hauliers (22%), passenger transport companies (17%). See below for more information.

**Table 1-1: Analysis of responses by type of operation and geography in the non-specialised questionnaire**

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of responses	% of total
<b>Driver or other road transport worker (employee)</b>	EU-wide	173	47%	
	National	170	46%	
	Non-EU/Other	26	7%	
	None/No response	3	1%	
	<b>Total</b>	<b>372</b>	<b>100%</b>	<b>31%</b>
<b>Road haulier</b>	EU-wide	143	53%	
	National	83	31%	
	Non-EU/Other	38	14%	
	None/No response	5	2%	
	<b>Total</b>	<b>269</b>	<b>100%</b>	<b>22%</b>
<b>Passenger transport company</b>	EU-wide	117	55%	
	National	73	35%	
	Non-EU/Other	20	9%	
	None/No response	1	0%	
	<b>Total</b>	<b>211</b>	<b>100%</b>	<b>17%</b>
<b>Self-employed driver</b>	National	136	66%	
	EU-wide	64	31%	
	Non-EU/Other	4	2%	
	None/No response	2	1%	
	<b>Total</b>	<b>206</b>	<b>100%</b>	<b>17%</b>
<b>Other company in the transport chain (shipper, forwarder)</b>	EU-wide	25	56%	
	National	13	29%	
	Non-EU/Other	5	11%	
	None/No response	2	4%	
	<b>Total</b>	<b>45</b>	<b>100%</b>	<b>4%</b>
<b>Private individual</b>	National	16	42%	
	Non-EU/Other	12	32%	
	EU-wide	7	18%	
	None/No response	3	8%	
	<b>Total</b>	<b>38</b>	<b>100%</b>	<b>3%</b>
<b>Other</b>	National	30	44%	
	EU-wide	18	26%	

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of responses	% of total
	Non-EU/Other	7	10%	
	Non-EU/Other	13	19%	
	<b>Total</b>	<b>68</b>	<b>100%</b>	<b>6%</b>
<b>Grand Total</b>		<b>1209</b>	<b>100%</b>	<b>100%</b>

A total of 23 countries were represented by the respondents, with the majority (75%) from EU-15 countries, and a further 24% of the responses were from EU-13 countries. 8 responses (1%) were from non-EU countries.

512 out of 1209 (42%) respondents were from Sweden, which was by far the most represented country. Given that a significant share of all respondents were from Sweden, key questions were analysed disaggregating respondents from Sweden from respondents from other countries. If the views of respondents from Sweden diverged from the overall trend this would have been specifically indicated in the text. Otherwise, they followed the same patterns giving priority to the same issues with largely similar percentages. "Don't know" answers were not considered. Respondents from Czech Republic and Germany were the next most represented countries, with 164 (14%) and 163 (13%) responses.

**Table 1-2: Analysis of stakeholder responses by country of residence/establishment**

Country of residence/establishment	No. of responses	% of responses
<b>Sweden</b>	512	42%
<b>Czech Republic</b>	164	14%
<b>Germany</b>	163	13%
<b>Austria</b>	83	7%
<b>Poland</b>	64	5%
<b>Spain</b>	58	5%
<b>Lithuania</b>	58	5%
<b>France</b>	32	3%
<b>Italy</b>	9	1%
<b>Belgium</b>	8	1%
<b>Portugal</b>	8	1%
<b>Slovak Republic</b>	6	0%
<b>Romania</b>	6	0%
<b>United Kingdom</b>	5	0%
<b>Finland</b>	5	0%
<b>Ireland</b>	4	0%
<b>Netherlands</b>	3	0%
<b>Denmark</b>	3	0%
<b>Luxembourg</b>	3	0%
<b>Slovenia</b>	2	0%
<b>Greece</b>	2	0%

Country of residence/establishment	No. of responses	% of responses
Latvia	2	0%
Bulgaria	1	0%
Other	8	1%
<b>Grand Total</b>	<b>1209</b>	<b>100%</b>

A total of 126 coordinated responses could be identified, split into 8 groups (see table 2-3). The coordinated responses were identified through a screening of responses to open-ended questions that were then also checked against responses to closed questions.

Most of the groups represented respondents from a specific country, and some a specific stakeholder category. The largest coordinated group was from Czech Republic road hauliers and drivers who accounted for 47 coordinated responses. Two of the coordinated response groups from Lithuania had the same responses for closed questions, but only one of the groups had matching open-ended responses and so were identified as a separate group.

**Table 1-3: Analysis of coordinated responses**

Coordinated response No.	Country	Stakeholder category	No. of responses
1	Austria, Germany	Passenger transport companies	6
2	France	Passenger transport companies	2
3	Lithuania	Road hauliers	11
4	Czech Republic	Road hauliers and drivers	47
5	Austria	Drivers, passenger transport companies, road hauliers	24
6	Sweden	Passenger transport company, driver and self-employed driver	3
7	Lithuania	Other companies in the transport chain (shipper, forwarder)	14
8 <sup>3</sup>	Lithuania	Road hauliers, drivers, private individuals	19
<b>Grand Total</b>			<b>126</b>

As regards the specialised questionnaire, **169** responses were received; the majority of the replies were from industry associations (54%) and workers' organisations (13%). The remaining stakeholders represented national authorities (national enforcement authorities, regulatory authorities, enforcement authority organisations) and others (academic bodies, EU governmental authorities, intergovernmental organisations). 78% of the respondents were based in EU-15 countries, and 19% were from EU-13 countries. The remaining 3% were from non-EU countries. Please see table 2-4 for an overview.

<sup>3</sup> Coordinated responses 3 and 8 have different written responses but the same closed responses.

**Table 1-4: Analysis of responses by type of operation and geography in the specialised questionnaire**

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of responses within group	% of total
<b>Industry association</b>	National	34	37%	
	EU-wide	55	60%	
	Non-EU/Other	3	3%	
	None/No response	0	0%	
	<b>Total</b>	<b>92</b>	<b>100%</b>	<b>54%</b>
<b>Workers' organisation (e.g. trade union)</b>	National	11	50%	
	Non-EU/Other	0	0%	
	EU-wide	11	50%	
	None/No response	0	0%	
	<b>Total</b>	<b>22</b>	<b>100%</b>	<b>13%</b>
<b>National enforcement authority</b>	EU-wide	1	14%	
	National	6	86%	
	Non-EU/Other	0	0%	
	None/No response	0	0%	
	<b>Total</b>	<b>7</b>	<b>100%</b>	<b>4%</b>
<b>Regulatory authority (e.g. national transport regulator, national competition authority)</b>	EU-wide	2	33%	
	National	1	17%	
	Non-EU/Other	0	0%	
	None/No response	3	50%	
	<b>Total</b>	<b>6</b>	<b>100%</b>	<b>4%</b>
<b>EU governmental authority</b>	National	1	25%	
	EU-wide	2	50%	
	Non-EU/Other	0	0%	
	None/No response	1	25%	
	<b>Total</b>	<b>4</b>	<b>100%</b>	<b>2%</b>
<b>Academic body (e.g. research institute, training organisation)</b>	EU-wide	1	33%	
	National	2	67%	
	Non-EU/Other	0	0%	
	None/No response	0	0%	
	<b>Total</b>	<b>3</b>	<b>100%</b>	<b>2%</b>
<b>Enforcement authorities' organisation</b>	EU-wide	1	100%	
	National	0	0%	
	Non-EU/Other	0	0%	
	None/No response	0	0%	
	<b>Total</b>	<b>1</b>	<b>100%</b>	<b>1%</b>
<b>Intergovernmental organisation</b>	EU-wide	0	0%	
	National	1	100%	
	Non-EU/Other	0	0%	
	None/No response	0	0%	
	<b>Total</b>	<b>1</b>	<b>100%</b>	<b>1%</b>
<b>Other</b>	National	11	34%	
	EU-wide	17	53%	
	Non-EU/Other	2	6%	
	None/No response	2	0%	
	<b>Total</b>	<b>32</b>	<b>100%</b>	<b>19%</b>

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of responses within group	% of total
<b>Grand total</b>		<b>168</b>		<b>100%</b>

### 1.3. SME PANEL SURVEY

SME in the transport sector received questionnaires through the SME panel survey<sup>4</sup> organised by the Commission from 4<sup>th</sup> November 2016 to 4<sup>th</sup> January 2017, i.e. 9 weeks. The survey was divided into two sub-questionnaires: one, on the application of the posting of workers provisions in the road transport sector, and the second one on driving times, working times and rest periods in road transport. Respondents had the option to answer to one or both questionnaires.

Overall, 109 responses were received to the SME panel survey. Of the 109 responses, 35 were to the questionnaire on posting of workers in road transport sector, 42 were to the questionnaire on driving times, working times and rest periods in road transport, and 24 responded to both questionnaires. The remaining 8 responses did not complete either questionnaire, and were therefore not counted in either of the analyses.

On the questionnaire on driving and working times and rest periods of drivers in road transport, a total of 66 responses were received of which road haulage operators represented 22 (33%) responses, with self-employed drivers representing a further 16 (24%) respondents, and drivers and other road transport workers representing 13 (20%) respondents. Passenger transport operators only accounted for 7 (11%) respondents, while 8 (12%) respondents marked themselves as 'other'. 36 out of 66 (55%) of the respondents operated domestically only, compared to the first questionnaire which had a majority of respondents operate both domestically and internationally. A total of 14 countries were represented with Poland being the most represented country (22 out of 66 (27%) respondents).

As regards the posting of workers questionnaire (see table 2-5 and table 2-6), a total of 59 responses were received, whereas Road haulage operators represented 17 (29%) responses, passenger transport operators counted 14 (24%) replies, and drivers and other road transport workers representing 13 (22%) respondents. Self-employed drivers only accounted for 6 (10%), while 7 (12%) respondents indicated themselves as 'other'. Two respondents did not indicate what type of stakeholder they were. At least 15 countries were represented, of which Romania, Poland and Germany were most represented.

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<sup>4</sup> Stakeholder consultation tool managed by DG GROW. This tool enables services to reach SMEs in a targeted way, as network partners in Member States are well placed in their regions to identify companies that will be most affected by the subject of consultation.

**Table 2-1: Analysis of responses on social rules by type of operation and geography**

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of category	% of total
<b>Road haulage operator</b>	Domestic and international	13	59%	
	Domestic only	9	41%	
	International only	0	0%	
	Other	1	0%	
	<b>Total</b>	<b>22</b>	<b>100%</b>	<b>33%</b>
<b>Self-employed driver</b>	Domestic and international	0	0%	
	Domestic only	15	94%	
	International only	1	6%	
	Other	0	0%	
	<b>Total</b>	<b>16</b>	<b>100%</b>	<b>24%</b>
<b>Driver or other road transport worker (employee)</b>	Domestic and international	5	38%	
	Domestic only	6	46%	
	International only	1	8%	
	Other	1	8%	
	<b>Total</b>	<b>13</b>	<b>100%</b>	<b>20%</b>
<b>Passenger transport operator</b>	Domestic and international	2	29%	
	Domestic only	5	71%	
	International only	0	0%	
	Other	0	0%	
	<b>Total</b>	<b>7</b>	<b>100%</b>	<b>11%</b>
<b>Other</b>	Domestic and international	6	75%	
	Domestic only	1	13%	
	International only	1	13%	
	Other	0	0%	
	<b>Total</b>	<b>8</b>	<b>100%</b>	<b>12%</b>
<b>Grand Total</b>		<b>66</b>	<b>100%</b>	<b>100%</b>

Table 2-2: Analysis of stakeholder responses on social rules by country of residence/establishment

Country of residence/establishment	No. of responses	% of responses
Poland	22	37%
Czech Republic	7	12%
Romania	7	12%
Germany	6	10%
Finland	6	10%
Estonia	5	8%
Italy	4	7%
Slovak Republic	3	5%
Spain	1	2%
Belgium	1	2%
Luxembourg	1	2%
United Kingdom	1	2%
Cyprus	1	2%
Portugal	1	2%
France	0	0%
<b>Grand Total</b>	<b>66</b>	<b>100%</b>

Table 2-3: SME Panel Survey – Analysis of responses on posting of workers by type of operation and geography

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% in category	% of total
<b>Road haulage operator</b>	Domestic and international	12	71%	
	Domestic only	5	29%	
	International only	0	0%	
	Other	0	0%	
	<b>Total</b>	<b>17</b>	<b>100%</b>	<b>29%</b>
<b>Passenger transport operator</b>	Domestic and international	8	57%	
	Domestic only	4	29%	
	International only	2	14%	
	Other	0	0%	
	<b>Total</b>	<b>14</b>	<b>100%</b>	<b>24%</b>
<b>Driver or other road transport worker (employee)</b>	Domestic and international	5	38%	
	Domestic only	8	62%	
	International only	0	0%	
	Other	0	0%	
	<b>Total</b>	<b>13</b>	<b>100%</b>	<b>22%</b>
<b>Self-employed driver</b>	Domestic and international	1	17%	
	Domestic only	5	83%	



Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% in category	% of total
	International only	0	0%	
	Other	0	0%	
	<b>Total</b>	<b>6</b>	<b>100%</b>	<b>10%</b>
<b>Other</b>	Domestic and international	6	86%	
	Domestic only	0	0%	
	International only	1	14%	
	Other	0	0%	
	<b>Total</b>	<b>7</b>	<b>100%</b>	<b>12%</b>
<b>No response</b>	Total	<b>2</b>	<b>100%</b>	<b>3%</b>
<b>Grand Total</b>		<b>59</b>	<b>100%</b>	<b>100%</b>

Table 2-4: SME Panel Survey - Analysis of stakeholder responses on posting of workers by country of residence/establishment

Country of residence/establishment	No. of responses	% of responses
<b>Romania</b>	14	24%
<b>Poland</b>	11	19%
<b>Germany</b>	8	14%
<b>Czech Republic</b>	6	10%
<b>Estonia</b>	5	8%
<b>Finland</b>	4	7%
<b>France</b>	4	7%
<b>Italy</b>	3	5%
<b>Spain</b>	1	2%
<b>Belgium</b>	1	2%
<b>Portugal</b>	1	2%
<b>Luxembourg</b>	1	2%
<b>United Kingdom</b>	0	0%
<b>Cyprus</b>	0	0%
<b>Slovak Republic</b>	0	0%
<b>Grand Total</b>	<b>59</b>	<b>100%</b>

## 1.4. TARGETED STAKEHOLDER CONSULTATIONS

Through a consultant, the Commission carried out several targeted consultations of stakeholders during January to February 2017. Promoted through several driver forums as well as through the European Transport Workers' Federation (ETF), the consultant sent tailored surveys to drivers inviting them to provide their input. Furthermore, tailored surveys were sent to national authorities, including ministries and enforcement agencies of all Member States. In addition to the survey, several targeted interviews were organised with identified national enforcement authorities, individual road transport undertakings, national industry associations, national trade unions and the ETF.

### Stakeholders' surveys

Two surveys were carried out: one of national transport ministries and national enforcers and one of drivers. The former was open for a total period of 5 weeks (deadline of 26<sup>th</sup> February 2017), while the survey of drivers was kept open for a longer period until the 10<sup>th</sup> March 2017. Late responses to the survey of MS authorities were still accepted.

#### 1.4.1 Survey of Drivers

An online survey of drivers was developed and has been promoted via a number of driver forums in 6 Member States (BG, DE, UK, FR, PL and RO). The survey was available in 6 languages: English, French, German, Polish, Bulgarian and Romanian.

In addition to the drivers' forums supported was requested through European Transport Workers Federation (ETF) and national trade unions. Moreover, drivers who participated to the OPC and who agreed to be contacted for other consultation activities were contacted.

In total 345 responses have been received, however, 140 from the Netherlands and 127 from the UK. The survey received a low participation of drivers from most other Member States.

**Table 3-1: Responses to drivers' survey**

Member State	Number of responses	Percentage
Total	<b>345</b>	<b>100%</b>
<i>EU13</i>	<b>22</b>	<b>6%</b>
Poland	8	36%
Bulgaria	5	23%
Romania	5	23%
Czech Republic	2	9%
Lithuania	1	5%
Slovenia	1	5%
<i>EU15</i>	<b>317</b>	<b>92%</b>
Netherlands	140	44%
United Kingdom	127	40%
France	28	9%
Germany	11	3%
Sweden	4	1%

Spain	2	1%
Ireland	2	1%
Belgium	2	1%
Luxembourg	1	1%
<i>Other</i>	<b>6</b>	<b>2%</b>

### 1.4.2 Survey of National Authorities

The survey directed at national authorities (implementing and enforcement authorities) was launched on the 19<sup>th</sup> of January 2017. Respondents' feedback was requested on several proposed policy measures and the impact they are likely to have on the legislation, enforcement, compliance, costs and social and working conditions of drivers.

In total, 41 responses were received from EU28 Member States (except Poland) plus Norway and Switzerland. In a number of cases separate responses were received by different ministries (e.g. ministry of transport or labour) or agencies in charge of the enforcement of the social rules.

### 1.4.3 Direct information requests (hauliers' survey)

Direct information was also obtained from transport operators on specific aspects affected by the proposed measures and cost estimates. The information requests were useful to develop the baseline. In particular they were used to assess costs to business from the current legislation and assessing the impacts. Information request forms were distributed to transport operators that responded to the public consultation and the SME panel.

In total 73 responses to data requests were received, 58 of these were from Hungary, however 41 responses were coordinated.

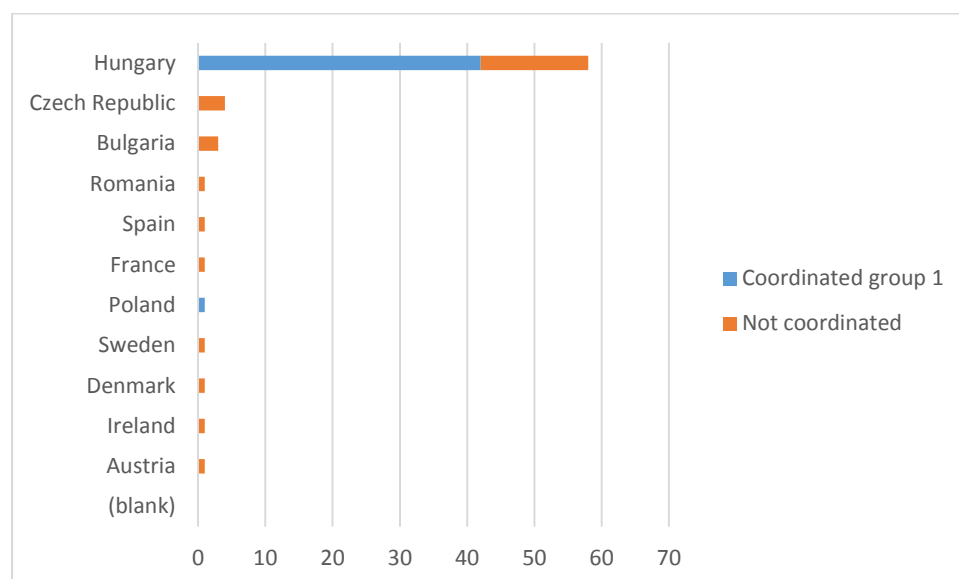
**Table 3-2: Response to hauliers' data request**

Member State	Number of responses	Percentage of total
Total	<b>73</b>	<b>100%</b>
<b>EU13</b>	<b>67</b>	<b>92%</b>
Hungary	58 <sup>5</sup>	79%
Czech Republic	4	5%
Bulgaria	3	4%
Romania	1	1%
Poland	1	1%
<b>EU15</b>	<b>6</b>	<b>8%</b>
Austria	1	1%
Denmark	1	1%
France	1	1%
Ireland	1	1%
Spain	1	1%
Sweden	1	1%

<sup>5</sup> 41 responses from Hungary were part of Coordinated Group 1, as well as 1 Polish response.

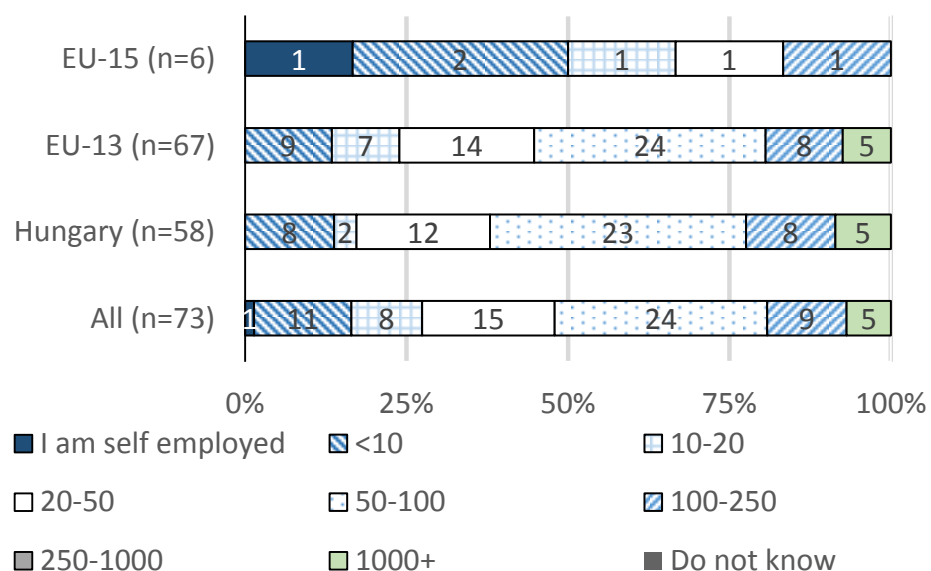
42 of the responses from Hungary were coordinated, including one response from Poland.

**Table 3-3: overview of responses by coordinated and un-coordinated responses**



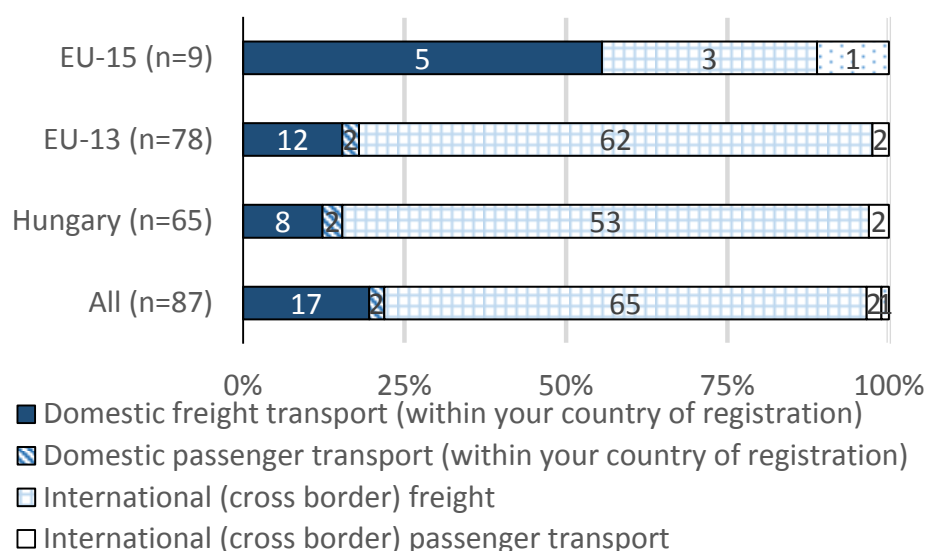
The majority of drivers participating employ around 50-100 and 100-250 employees. This means that they represent above the average size of companies in the market (90% of enterprises in the sector have fewer than 10 employees).

**Figure 3-1:**



The majority (65 out of 87) of the hauliers are operational in internal freight.

**Figure 3-2:**



#### 1.4.4 Interviews

##### Exploratory interviews

Interviews were held with five European stakeholders (CORTE, DVSA, EPTO, ETF and IRU) in order to refine the problem definition as well as identifying the most relevant policy options. Their views have been taken into account to produce a long-list of policy options, and design the main interview programme and respective interview guides.

#### 1.4.5 Stakeholder interviews

In total, 56 stakeholders were invited to interview and 35 interviews were conducted while respecting the balance between EU13 and EU 15 countries.

**Table 3-4: Overview of interviews**

Type of Stakeholder	Interviews Carried out
Transport Company (BG, CZ, DE, HU, PL, SK, EU-wide)	7
National Industry Associations (AT, BG, CZ, DE, DK, ES, FR, PL, RO)	9
National Authorities (Transport Ministries and Enforcement Authorities) (AT, BE, BG, NL, DE, LV, RO, SE)	9
National workers' unions (BE, IT, NL, SI)	4
Other (International Association of Transport Companies) (ETF, UETR, NLA, UEAPME, EEA, CORTE, ECR)	6
<i>EU-15</i>	15
<i>EU-13</i>	14
<i>EU-Wide</i>	6
<b>Total</b>	<b>35</b>

#### 1.4.6 Study visits

Within the study visits the **practical aspects** (e.g. time required to enforce the suggested measures) and **economic impacts** (e.g. costs of introducing the proposed measures) relating to the policy measures were discussed in more detail.

With regard to individual transport undertakings, interviews were arranged with a transport manager or a person responsible for the management/organisation of the operations able to provide the relevant information. For the study visit with enforcers, stakeholders with experience in carrying out both roadside and premises checks as well as having a good understanding of the costs of carrying out enforcement activities were met. The consultant met with enforcement authorities and undertakings in the Netherlands, Belgium and France.

Two study visits have been completed, one with the enforcement authorities in the Netherlands and one with an undertaking in France.

## 2. RESULTS OF CONSULTATION ACTIVITIES

### 2.1. The Open Public Consultation

#### **What should be the main objectives of a revision of current EU legislation?**

The respondents of the non-specialised questionnaire considered all of the main objectives listed in figure 2.1 important for a revision of the current EU legislation. The objective to clarify and simplify the existing rules was considered important by 1017 out of 1147 (89%) respondents, which follows the results where clarity was considered the worst problem with existing rules. This was closely followed by the objective to ensure uniform application and enforcement of the social rules in Member States which was considered important by 997 out of 1140 (87%) of the respondents. All of the other main objectives were considered important by 73-76% of the respondents.

When disaggregated by stakeholder group, little variation was seen. Fewer private individual respondents considered the objectives important, with only about 50% of respondents indicating as such. When split by geographical location, EU-13 based respondents considered all of the objectives less important than the overall trend.

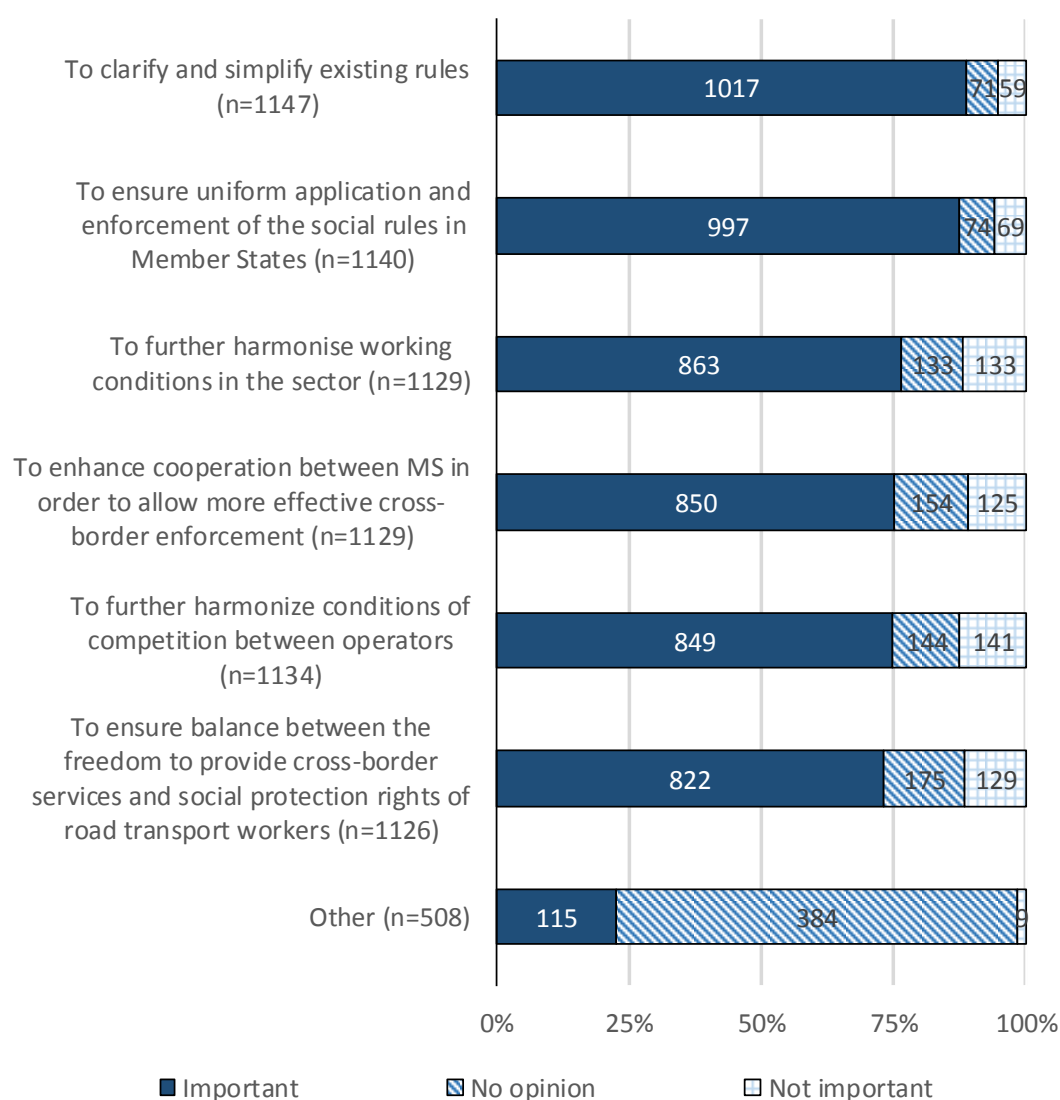
In the specialised questionnaire, all of the objectives listed in figure 2.2 were considered important by at least 97 out of 150 (65%) of respondents. The objectives to clarify and simplify existing rules and to ensure uniform application and enforcement of the social rules in Member States had the most respondents indicate that they were important, with 138 out of 154 (90%) respondents and 132 out of 151 (87%) respondents respectively.

There was very little difference when disaggregated by stakeholder group, but when split by geographical location EU-13 based respondents had a higher share of respondents indicate that the objectives were not important, compared to EU-15 based respondents.

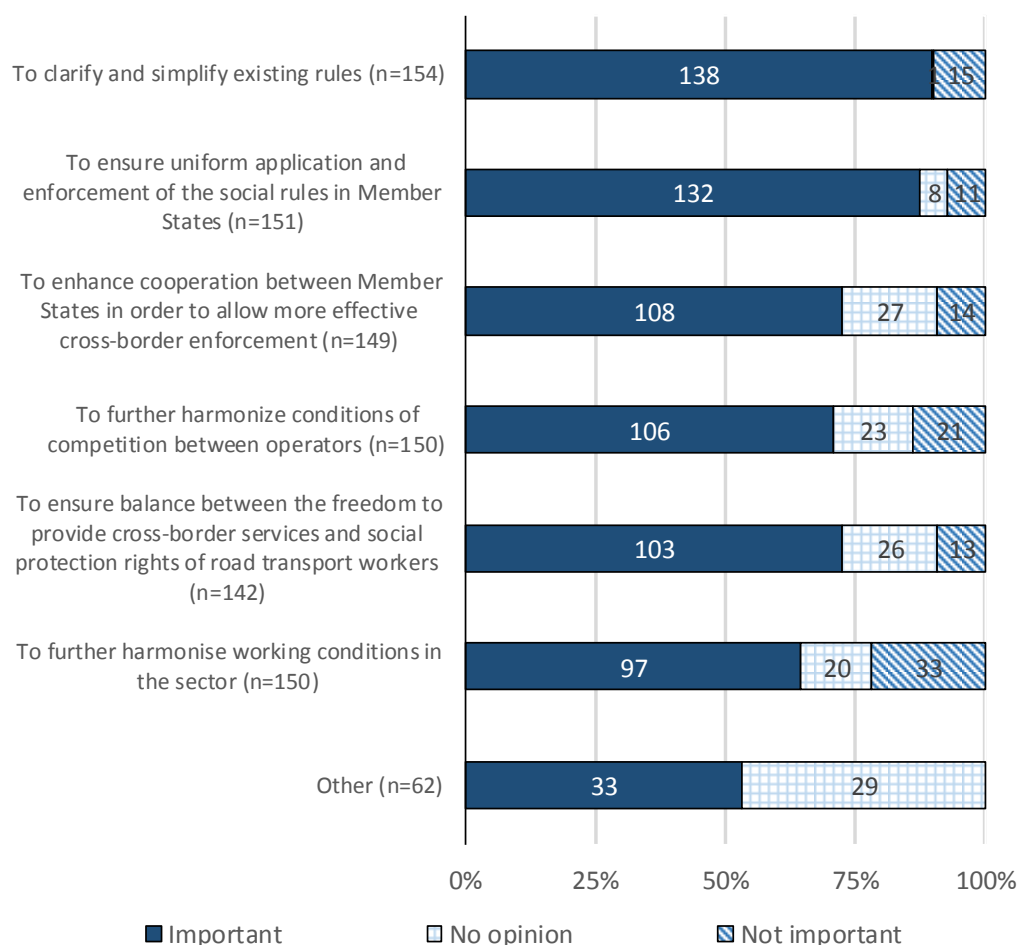
## Which specific measures that can contribute to improving the function of the social rules?

In the non-specialised questionnaire, diverse views were received on the level of contribution that the specific measures listed in figure 4.3 would have on improving the functioning of the social rules in transport. The measure of allowing for flexible distribution of minimum breaks and resting to adapt to specific transport services was considered to be a major contribution by 606 out of 1146 (53%) respondents, a further 321 (28%) indicated either a moderate or minor contribution. Only two of the specific measures had less than 50% of the respondents indicate they would contribute to some degree. These were the measures to exclude self-employed drivers from the working time rules (467 out of 1139 (41%)) and explicitly exclude occasional non-professional drivers from the working time rules (470 out of 1133 (41%)).

**Figure: 4-1: Non-specialised questionnaire - Importance of main objectives of a revision of current EU legislation**



**Figure: 4-2: Specialised questionnaire - Importance of main objectives of a revision of current EU legislation**



When disaggregated by stakeholder group, a range of differences were identified. Shippers and forwarders generally expressed quite different views from other stakeholders, but this may be in part due to the lower sample size of this group. Employees expressed a contribution above the average trend regarding forbidding performance-based pay, and forbidding weekly rest in the vehicles. Passenger transport company respondents differed from the trend regarding distribution of breaks, more indicating a major contribution, and establishing a maximum period away from home/base, more indicating no contribution.

When split by geographical location, EU-15 based respondents considered flexible distribution of minimum breaks, forbid performance-based pay, and forbid weekly rest in vehicle, to be a more major contribution to improving the functioning of the social rules, compared to EU-13 based respondents. EU-13 based respondents instead indicated a more major contribution from adapting administrative formalities for posted workers, and both measures allowing drivers to spend weekly rest in the vehicle.

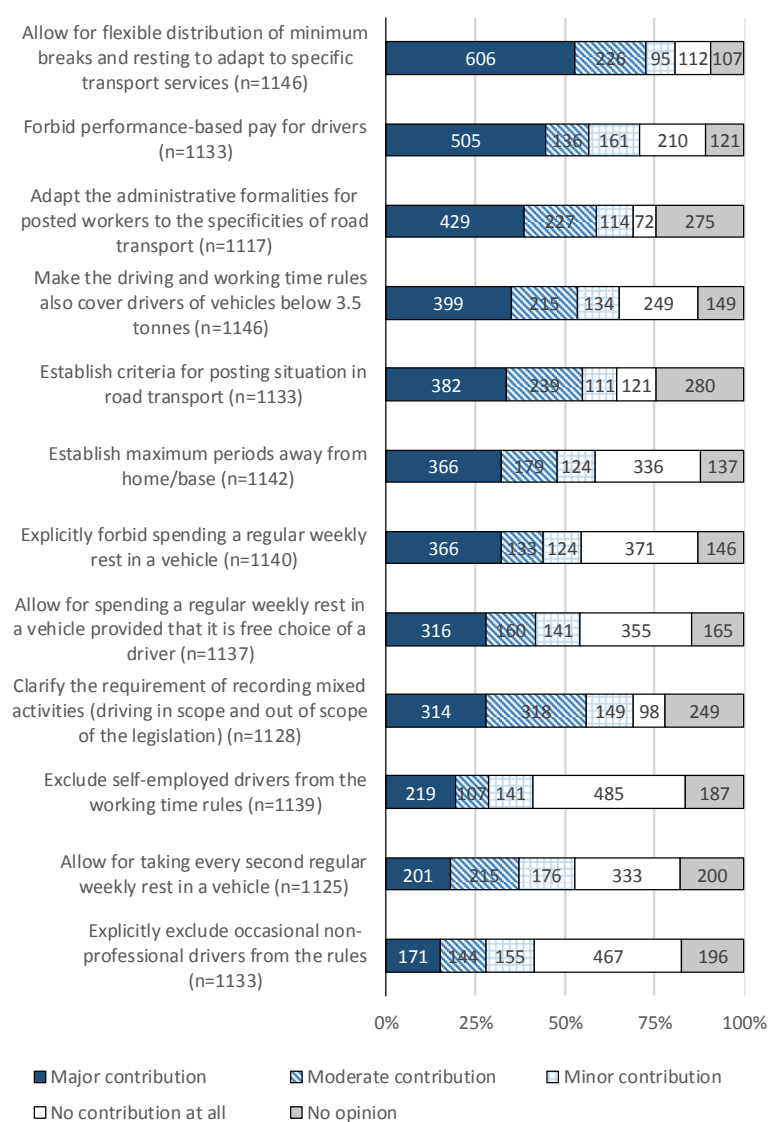
Looking specifically at the exclusion of self-employed drivers from the working time rules (see figure 4.5), there was little difference when disaggregated by geographical location. 182 out of 850 (21%) EU-15 based respondents identified this measure as a major contribution to improving the functioning of the social legislation, while 361 (42%) indicated no contribution



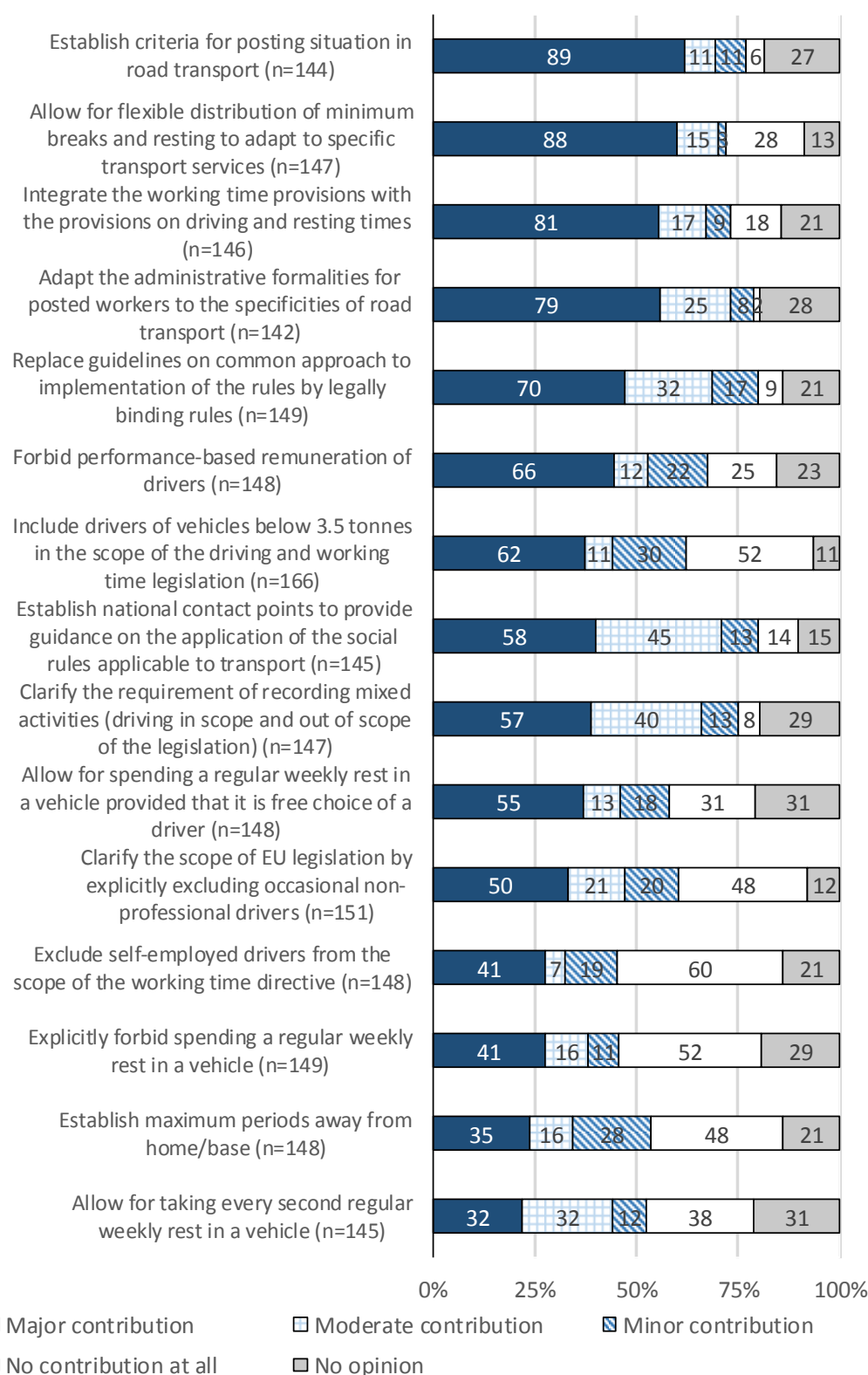
at all. Comparatively, 36 out of 281 (13%) EU-13 based respondents indicated a major contribution, while 117 (42%) respondents indicated no contribution at all.

As for the specialised questionnaire, a wide range of opinions was also present. The measures to establish criteria for posting situation in road transport (89 out of 144 (62%)), allow for flexible distribution of minimum breaks and resting to adapt to specific transport services (88 out of 147 (59%)), integrate the working time provisions with the provisions on driving and resting times (55%) and adapt the administrative formalities for posted workers to the specificities of road transport (55%) had the highest number of respondents consider them a major contribution. However, the measures to exclude self-employed drivers from the scope of the working time directive (60 out of 148 (41%)), explicitly forbid spending a regular weekly rest in a vehicle (52 out of 149 (35%)), establish maximum periods away from home/base (48 out of 148 (32%)) and allow for taking every second regular weekly rest in a vehicle (38 out of 145 (26%)), all had most respondents indicate no contribution at all. For more details see figure 4.4.

**Figure 4-3: Non-specialised questionnaire: Contribution of specific measures to improving the functioning of the social rules in road transport**

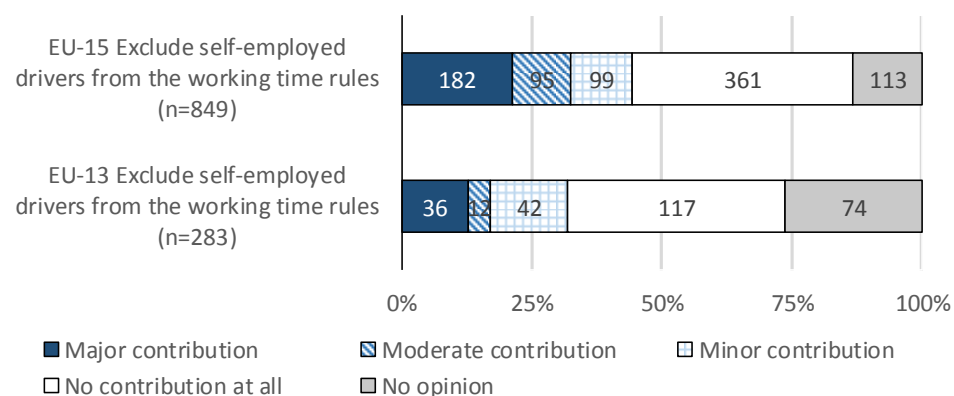


**Figure 4-4: Specialised questionnaire: Significance of policy options for improving the functioning of the social rules<sup>6</sup>**

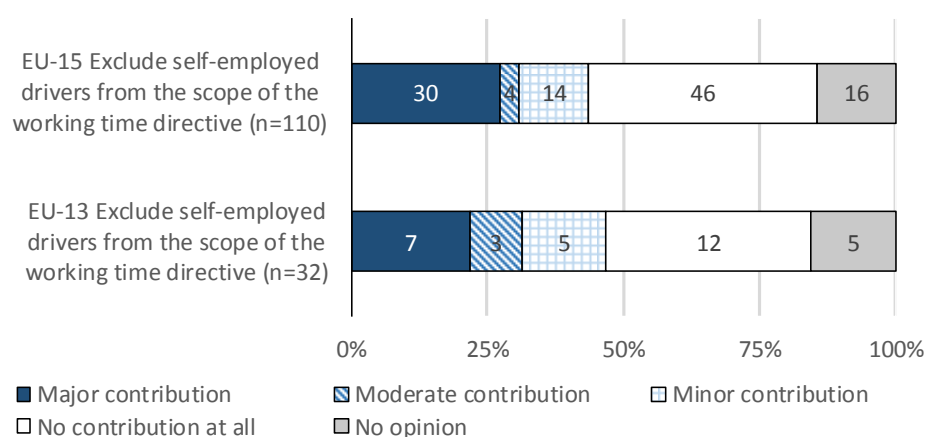


<sup>6</sup> Full text - Integrate the working time provisions with the provisions on driving and resting times (i.e. repeal the working time directive)

**Figure 4-5: Non-specialised questionnaire: Contribution of excluding self-employed drivers from the working time rules to improving the functioning of the social rules in road transport, split by geographical location**



**Figure 4-6: Specialised questionnaire: Contribution of excluding self-employed drivers from the working time rules to improving the functioning of the social rules in road transport, split by geographical location**



When disaggregating the specialised questionnaire by stakeholders, respondents from workers' organisations generally considered all measures to have a greater contribution than the overall trend. Respondents from national authorities indicated slightly less contribution from the measures, while respondents from industry associations were closest to the overall trend. When split by geographical location, a larger share of EU-13 based respondents considered the measures allowing weekly rest in the vehicle to be a major contribution compared to EU-15 based respondents. On other measures, both groups expressed similar views.

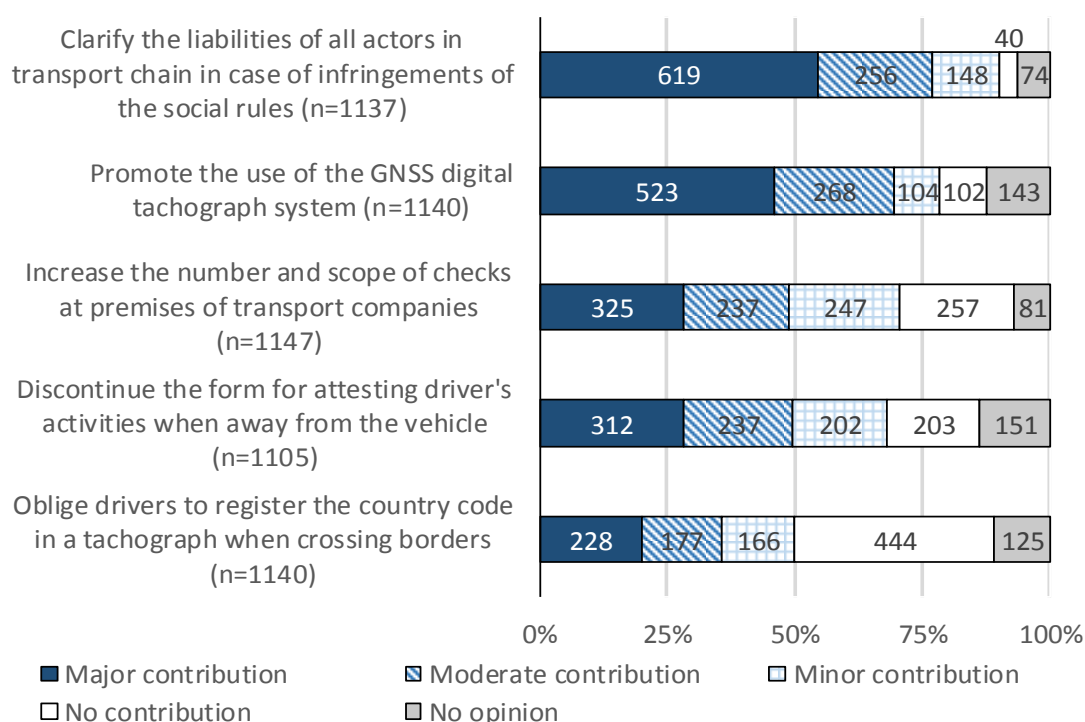
When looking specifically at the measure to exclude self-employed drivers from the scope of the working time directive, EU-15 and EU-13 based respondents expressed a similar response profile. EU-15 based respondents were slightly more likely to indicate no contribution at all (46 out of 110 (42%)), but also more likely to indicate a major contribution (30 out of 110 (27%)). Comparatively, 12 out of 32 (38%) EU-13 based respondents indicated no contribution at all, and 7 (22%) indicated a major contribution (see figure 4-6)

## Contribution of the specific measures to improving enforcement of the social legislation

As regards the non-specialised questionnaire, the measure to clarify the liabilities of all actors in the transport chain in the case of infringements of the social rules was considered as a major contribution to improving enforcement by 619 out of 1137 (54%) respondents. This follows the theme that issues relating to clarity are considered most important by the respondents. The measure to promote the use of GNSS digital tachograph systems was also considered a major contribution by 523 out of 1140 (46%) respondents. The remaining three measures still had at least 50% of the respondents indicate that they would contribute to improving enforcement, however to a lesser degree. The measure to oblige drivers to register the country code in a tachograph when crossing borders was considered to contribute the least with 444 out of 1140 (39%) respondents saying it would not contribute at all. More information is in figure 4-7.

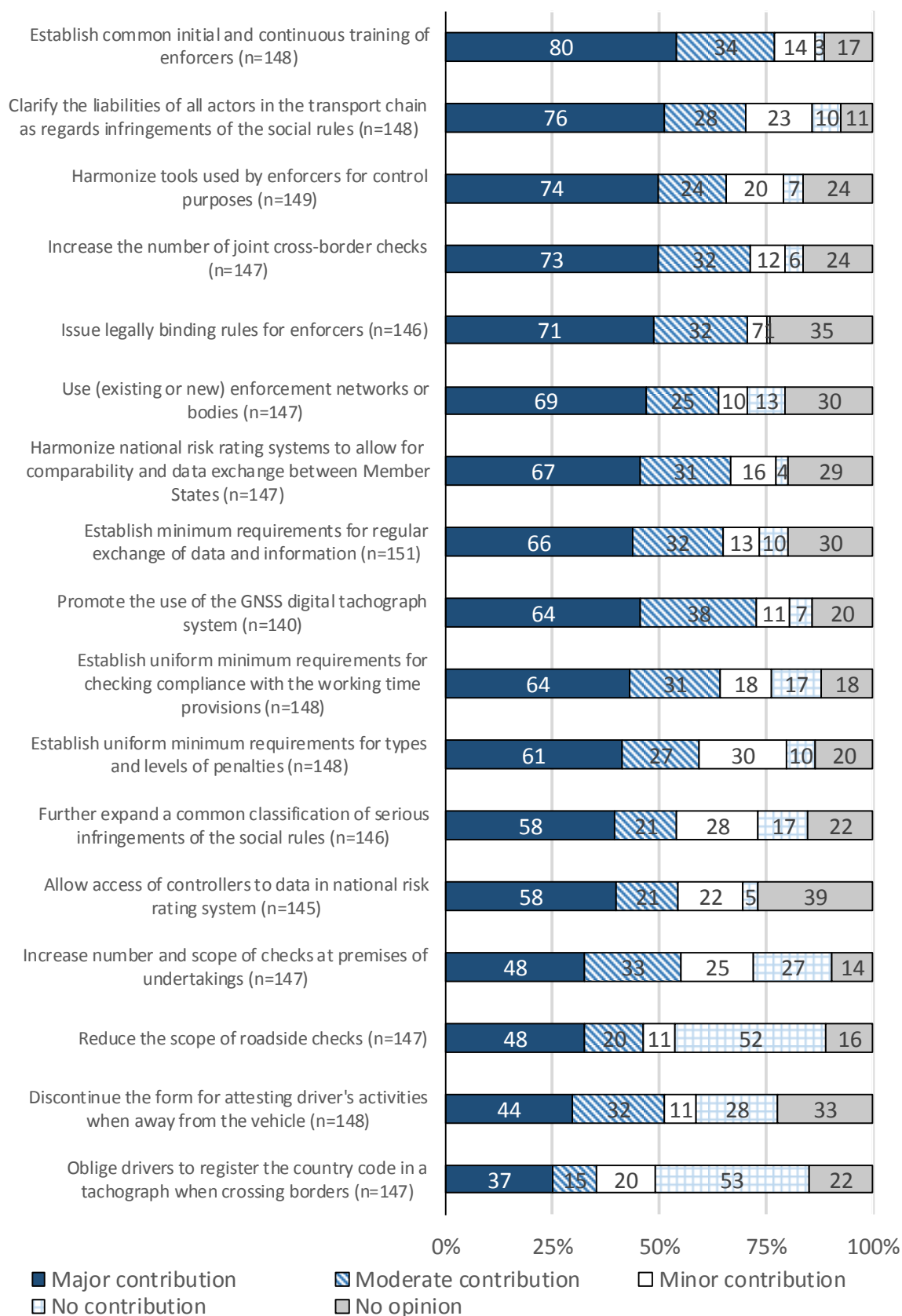
When disaggregated by stakeholder group, employees, self-employed drivers and private individuals had more respondents indicate a major contribution from these measures, while passenger transport companies considered the measures to have less contribution than the overall trend. EU-13 and EU-15 based respondents had a similar response profile, with a small amount of variation in the relative contribution of discontinuing the form for attesting driver's activities when away from vehicle.

**Figure 4-7: Non-specialised questionnaire: Contribution of the specific measures to improving enforcement of the social legislation<sup>7</sup>**



<sup>7</sup> Full text 'Promote the use of GNSS digital tachograph system, to make it easier to target non-compliant companies and reduce the burden for those that follow the rules'

**Figure 4-8: Specialised questionnaire: Significance of policy options to improve enforcement of the social legislation**



As regards the specialised questionnaire, figure 4.8 shows that all of the measures were considered to add a major contribution by at least 35 out of 147 (25%) respondents. Over half of respondents viewed the policy options of establishing common initial and continuous training of enforcers (80 out of 148 (54%)) and clarify the liabilities of all actors in the transport chain as regards infringements of the social rules (76 out of 148 (51%)) as providing a major contribution. The measures of obliging drivers to register the country code in a tachograph when crossing borders was considered to have no contribution at all by 52 out of 147 (36%) respondents.

When disaggregated by stakeholder group, respondents from national authorities were slightly more likely to indicate the measures had a major contribution, while respondents from workers' organisations and other stakeholders were slightly less likely to do so. When split by geographical location, EU-13 based respondents were noticeably less likely to consider the measures a major contribution, compared to EU-15 based respondents.

### **Can the specific measure contribute to improving the EU legislation and its enforcement result in the following impacts?**

In the non-specialised questionnaire, the respondents considered the measures suggested in figure 4.7 to contribute to all of the impacts in figure 4.9 to some degree. All of the impacts had more than 70% of respondents indicate some level of contribution, except for the impact of fairer competition with transport services using small vehicles which only had 748 out of 1127 (66%) respondents indicate similarly. However, the level of contribution varied significantly. 461 out of 1129 (41%) respondents considering the measures to be a major contribution to improved road safety, while only 267 out of 1126 (24%) of respondents thought measures would lead to a major contribution on the impact of reduced compliance cost for companies.

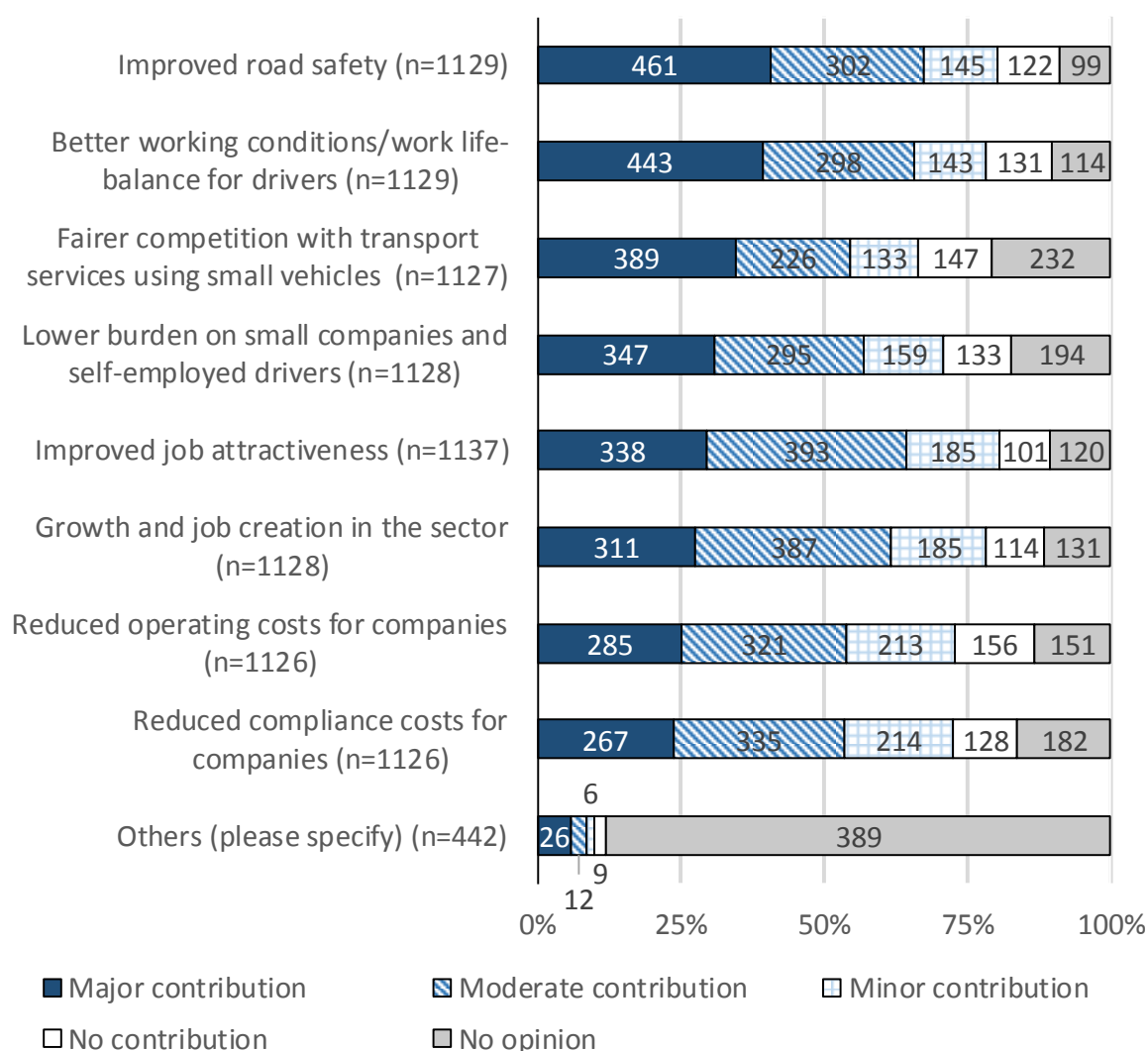
When disaggregated by stakeholder group, employees and self-employed drivers had more respondents indicate a major contribution, compared to other stakeholder groups, although the order of the impacts was largely the same. Hauliers and passenger transport companies, however, had fewer respondents indicate a major contribution, and also expressed equal contribution to all impacts. When split by geographical location, EU-13 based respondents gave more polarised responses, with more respondents indicating major contribution and no contribution, compared to EU-15 based respondents who had a higher share of respondents indicate a moderate contribution.

The specialised questionnaire showed that respondents responded similarly for each impact that was proposed, with more than half of respondents considering there to be a contribution of some magnitude from the enforcement measures. Better working conditions/work life-balance (63 out of 147 (43%)), improved health and safety for drivers (59 out of 146 (40%)), improved road safety (60 out of 148 (40%)) were considered to add a major contribution by a majority of respondents. Fairer competition with transport services using small vehicles was a disputed measure, with 64 out of 164 (39%) respondents identifying it as a major

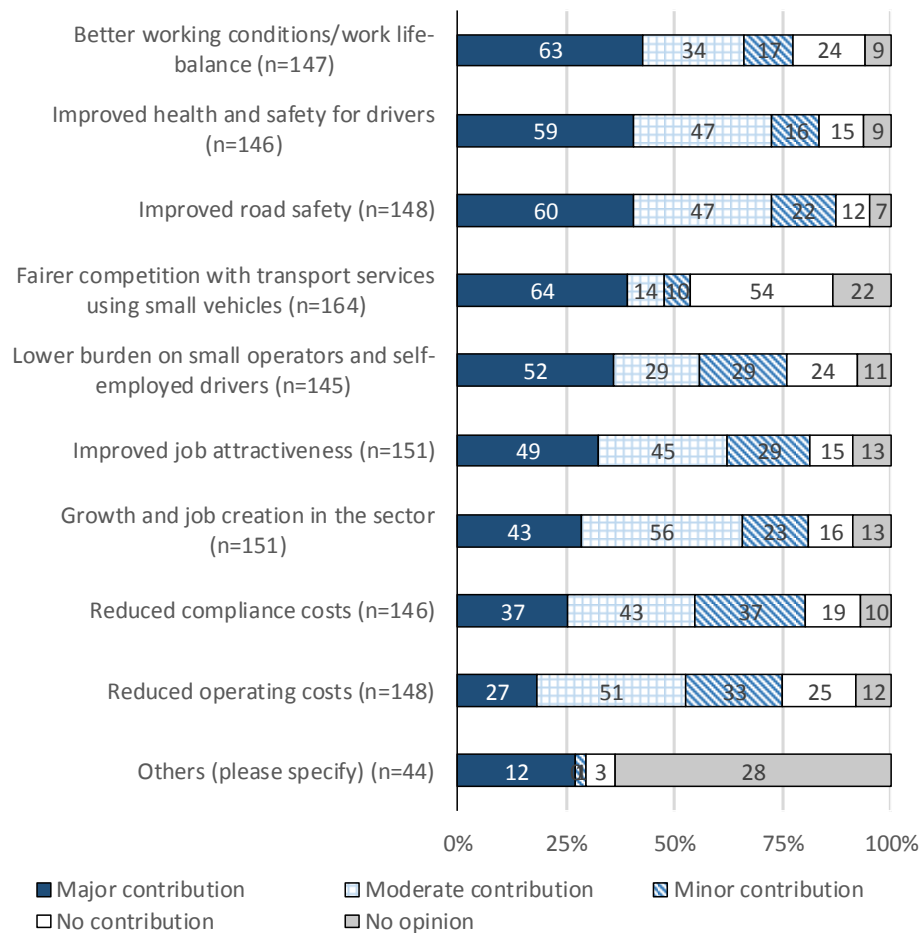
contribution, while 54 out of 164 (33%) identified it as no contribution. More information in figure 4-8

When disaggregated by stakeholder group, respondents from workers' organisations were much more likely to consider the measures a major contribution. Respondents from industry associations and national authorities had a similar response profile to the overall trend, while other stakeholders had less respondents indicate a major contribution, but more indicate a moderate contribution.

**Figure 4-9: Non-specialised questionnaire: Contribution of the specific measures listed in figure 4-8 to the following impacts**



**Figure 4-10: Specialised questionnaire: Significance of the impact from enforcement measures <sup>8</sup>**



### How can the following objectives be most effectively achieved in the EU road transport sector?

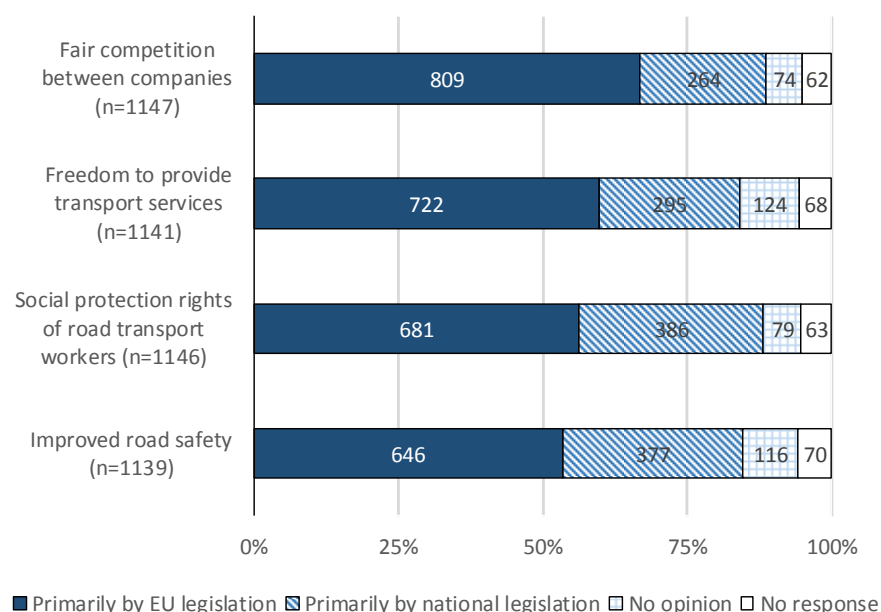
Overall, in the non-specialised questionnaire, a majority of the respondents considered EU legislation to be the most effective way to achieve the objectives, as shown in figure 4.11. Fair competition between companies was considered the objective most effectively addressed by EU legislation, with 809 out of 1147 (71%) respondents indicating as such. While the other objectives were supported at EU legislation level by fewer respondents, they all supported more at EU level than national level.

When disaggregated by stakeholder group, private individuals and self-employed drivers still considered the objectives to be best achieved by EU legislation, but only slightly more so than at national level. Shippers and forwarders, and passenger transport companies expressed an even stronger positive view towards EU legislation than the overall trend. When split by geographical location, a larger share of EU-13 based respondents considered fair competition and freedom to provide transport services as best achieved by EU legislation than the overall trend. EU-15 based respondents were closely followed the overall trend, except regarding social protection rights that had more respondents consider it to be best achieved through EU legislation.

<sup>8</sup> Full text - Fairer competition with transport services using small vehicles (less than 3.5 tonnes)



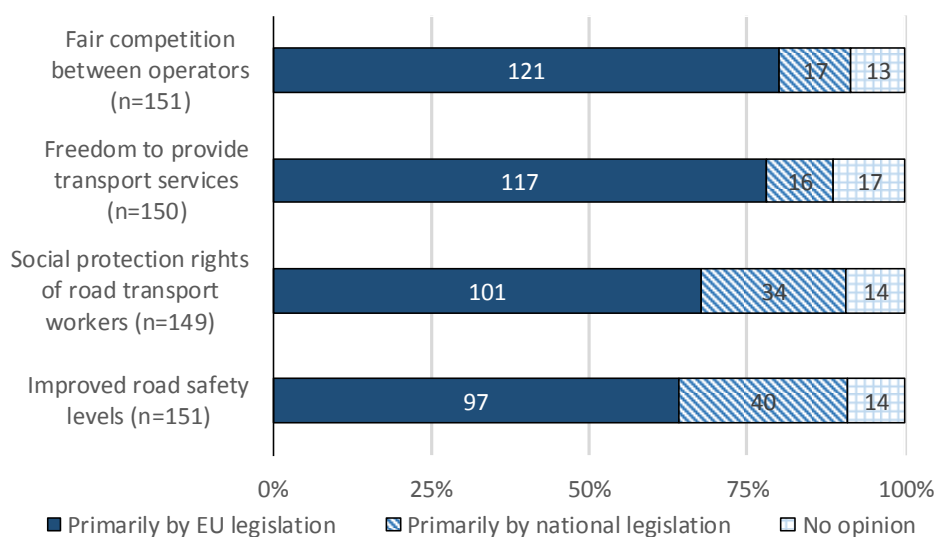
**Figure 4-11: Non-specialised questionnaire: EU legislation to be the most effective way to achieve the objectives**



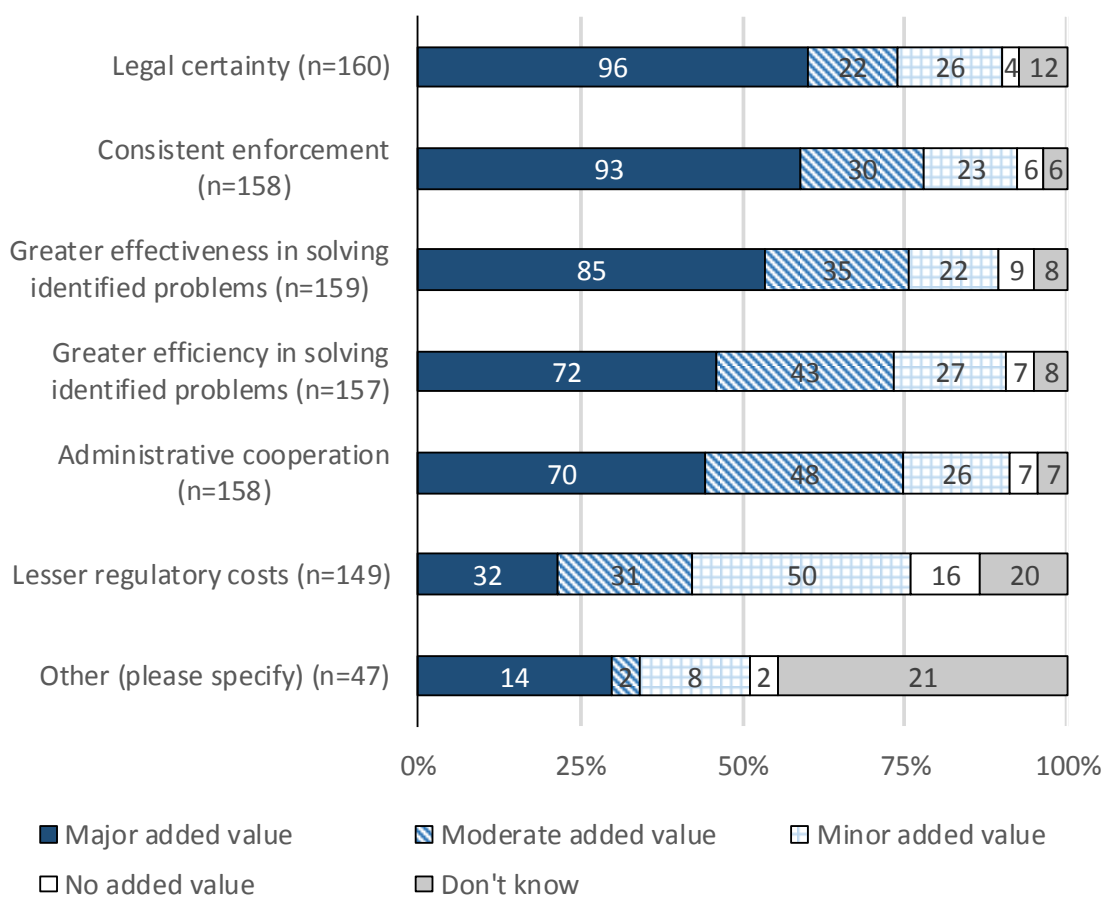
In the specialised questionnaire, the majority of respondents agreed that EU legislation was most effective to achieve the objectives listed in figure **Error! Reference source not found**. 121 out of 151 (80%) of the respondents considered fair competition between operators was most effectively achieved primarily by EU legislation, while 117 out of 150 (78%) agreed freedom to provide transport services was best achieved primarily by EU legislation. Social protection rights of road transport workers and improved road safety level were also considered to be effectively achieved primarily by EU legislation, but to a lesser degree.

When disaggregated by stakeholder group, respondents from national authorities were even more likely to consider the objectives best achieved primarily by EU legislation. The other stakeholder groups had similar response profiles to the overall trend. EU-13 based respondents were more likely to consider social protection rights of road transport workers to be primarily achieved by national legislation, with 17 out of 31 indicating as such. EU-15 based respondents had a similar response profile to the overall trend.

**Figure 4-12: Specialised questionnaire: Appropriate competency level for effectively achieving EU road transport objectives**



**Figure 2-13: Additional value of EU intervention**



### **What would be the additional value resulting from the EU intervention compared to what could be achieved by Member States at national levels?**

In the specialised questionnaire, of the range of issues listed in figure 4-13, legal certainty and consistent enforcement had the largest number of respondents indicate major added value from EU intervention, with 96 out of 160 (60%) and 93 out of 158 (59%) respondents respectively indicating as such. Lesser regulatory costs had the least respondents indicate that it would add major value for this issue. Overall, all issues were mostly considered to add some degree of value.

When disaggregated by stakeholder group, respondents from workers' organisations were far more likely to consider EU intervention to add major value. The other stakeholder groups had a response profile closer to the overall trend, with respondents from national authorities more likely to indicate moderate added value, and other stakeholders more likely to indicate minor added value. EU-13 based respondents were less likely to indicate major added value, instead indicating moderate or minor added value. EU-15 based respondents had a response profile largely similar to the overall trend.

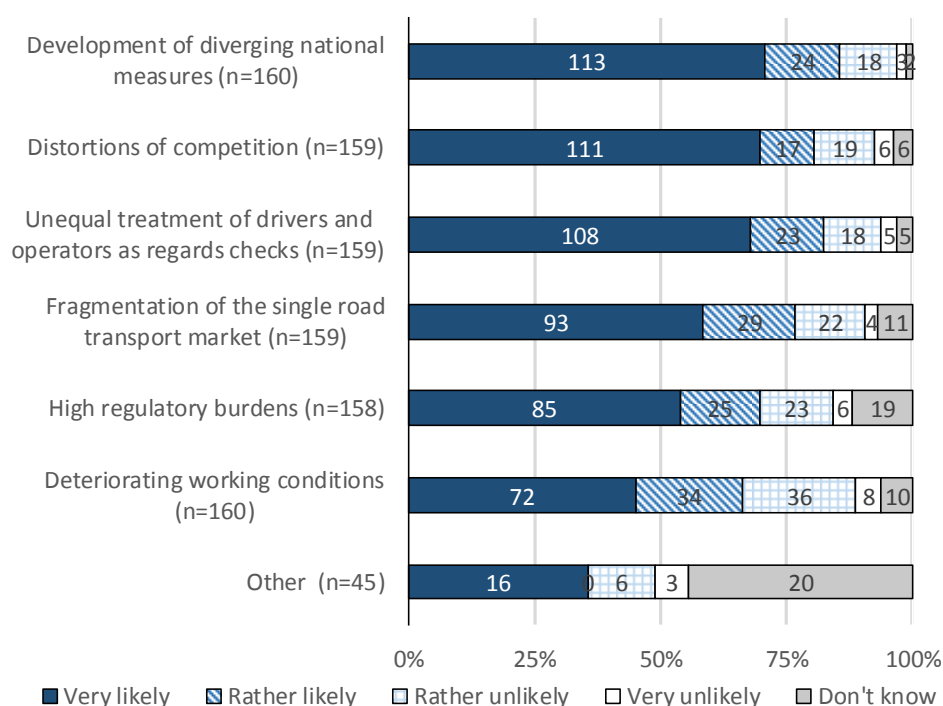
### **Consequences of no EU intervention**

The specialised questionnaire addressed an additional question as regards the possible consequences if no EU intervention is taken.

All of the consequences listed in figure 4-14 were considered very likely as a result of the EU not taking any intervention by the majority of respondents. Each consequence received at least 106 out of 160 (66%) respondents indicating either very likely or rather likely. Of the consequences listed, three received a high number of respondents who stated these were very likely without EU intervention. These included; development of diverging national measures (113 out of 160 (71%)), distortions of competition (111 out of 159 (70%)) and unequal treatment of drivers and operators as regards checks (108 out of 159 (68%)). Deteriorating working conditions had the least number of respondents indicate that it was very likely, with only 72 out of 160 (45%) respondents indicating as such.

When disaggregated by stakeholder group, respondents from workers' organisations were far more likely to indicate that the consequences were very likely than other stakeholder groups, with some consequences having 21 out of 22 respondents indicate as such. Respondents from national authorities also responded strongly, with some consequences having all of the respondents indicate either very likely or rather likely. A significant number of respondents from the other stakeholders group indicated that the consequences were rather or very unlikely. Industry association respondents showed a similar response profile to the overall trend. When split by geographical location, EU-15 based respondents were slightly more likely to indicate rather or very unlikely, compared to EU-13 based respondents who mostly indicated very or rather likely

**Figure 4-14: Perceived consequences of not taking EU intervention**



## 2.2. SME PANEL SURVEY

### On the question concerning posting of workers

***"Question 1: Does the application of EU rules on posting of workers<sup>9</sup> offer the following benefits to road transport operators and drivers?"***

The respondents mostly indicated that they agreed to some extent with the benefits to road transport operators and drivers from the application of EU rules on posting of workers, shown in figure 4-15. This view was most strongly expressed regarding the benefit of better social protection of drivers, where 41 out of 56 (73%) respondents fully or somewhat agreed with this benefit. The benefit that fair competition between operators in the EU is ensured was still strongly agreed with, but had the highest number of respondents (15 out of 57 (26%) indicating that they don't agree.

When split by geographical location, EU-13 based respondents were more likely to somewhat or fully agree with the proposed benefits of posting of workers than EU-15 based respondents. At least 21 out of 35 (60%) EU-13 based respondents indicated that they somewhat or fully agreed with all the benefits. Comparatively, 18 out of 22 (82%) of EU-15 based respondents indicated similarly for the benefit of better social protection of drivers. However, only 10 out of 22 (45%) indicated similarly to ensuring fair competition between

<sup>9</sup> (1) these EU rules establish that the 'posted worker' (worker providing services temporarily in Member State other than the place of his employment) should be covered by national terms and conditions of employment, including minimum rates of pay, of the 'host' Member State where he temporarily works

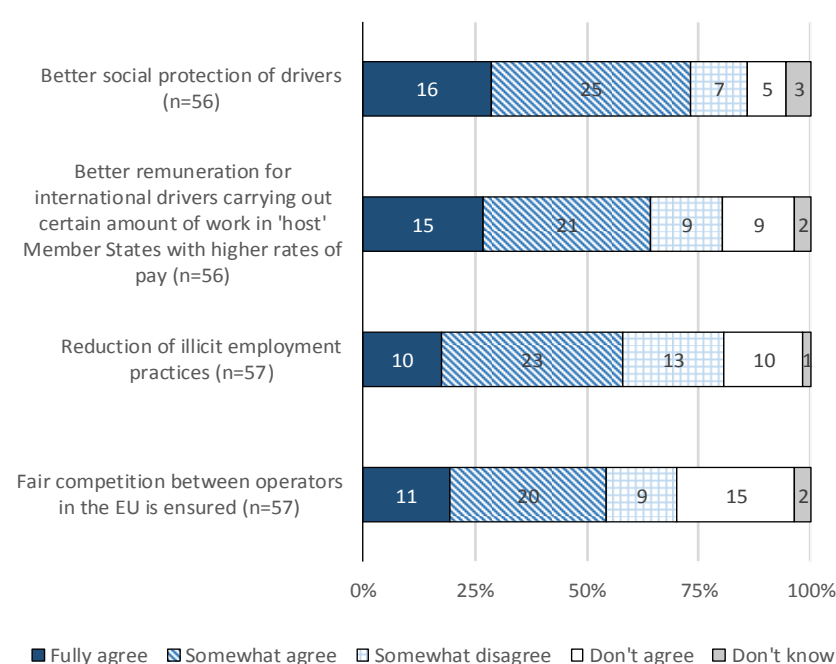
operators in the EU, 11 (50%) to reduction of illicit employment practices, and 10 (48%) to better remuneration for international drivers working in “host” Member States with higher rates of pay. For these three benefits, half of EU-15 based respondents indicated that they somewhat or fully disagreed that the posting of workers offers the proposed benefit.

***“Question 2: What are the challenges/problems faced by road transport companies/drivers as regards the application of the EU rules on posting of workers?”***

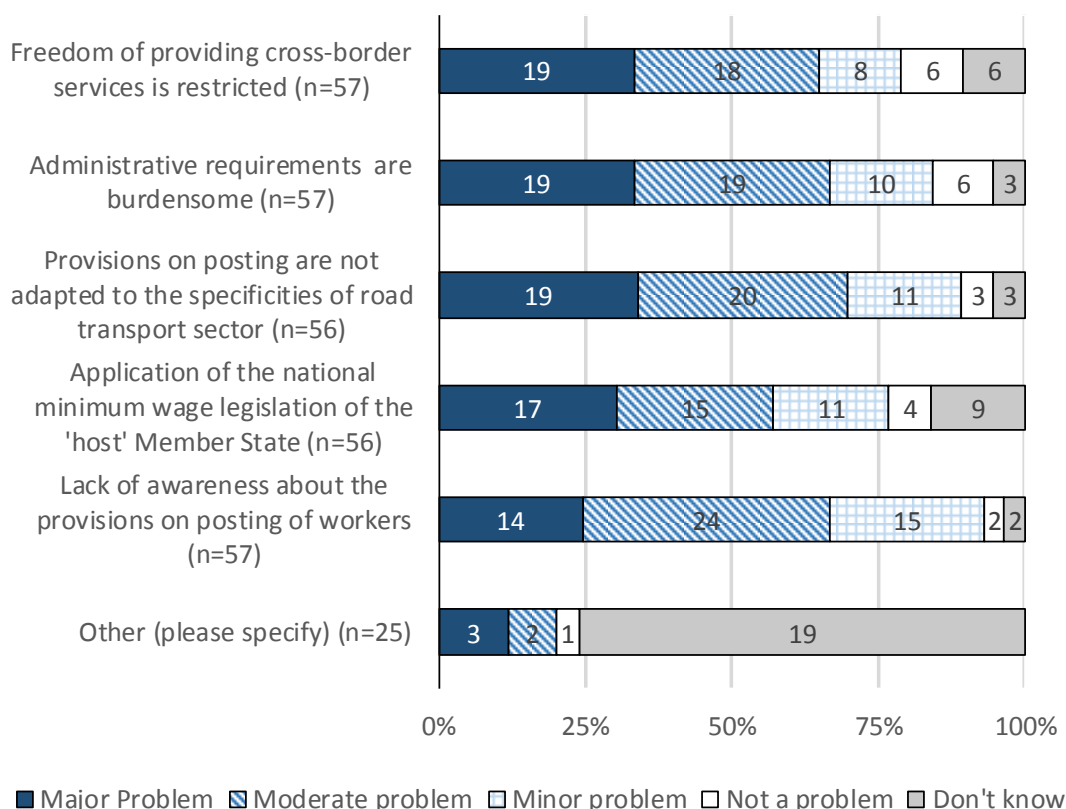
All of the challenges presented in figure 4-16 were considered as major or moderate problems by most of the respondents. The challenge that freedom of providing cross-border services is restricted was considered to be a major problem by 19 out of 57 (33%) respondents, and a moderate problem by a further 18 (32%) respondents. None of the challenges had a significant number of respondents (6 or less out of 57 (11%)) indicating that they were not a problem. In relative terms, application of the national minimum wage legislation of the ‘host’ Member State was considered a smaller challenge with 32 out of 56 (57%) indicating that this was a major or moderate problem.

When split by geographical location, EU-15 based respondents were much more likely to consider burdensome administrative requirements (13 out of 22 (59%)), the lack of adaption of posting provisions to the specificities of road transport (12 out of 22 (55%)), and the lack of awareness about the provisions on posting of workers (12 out of 22 (55%)), to be major problems resulting from the application of EU rules on positing of workers, compared to EU-13 based respondents. However, EU-13 based respondents were more likely to consider the restricting of freedom of providing cross-border services (13 out of 35 (37%)) and the application of national minimum wage legislation of the ‘host’ Member State (12 out of 35 (34%)) to be major problems, compared to EU-15 respondents.

**Figure 4-16: Agreement with the benefits to road transport operators and drivers from the application of EU rules on posting of workers**



**Figure 4-16: Scale of challenges/problems faced by road transport companies and drivers regarding the application of the EU rules on posting of workers**

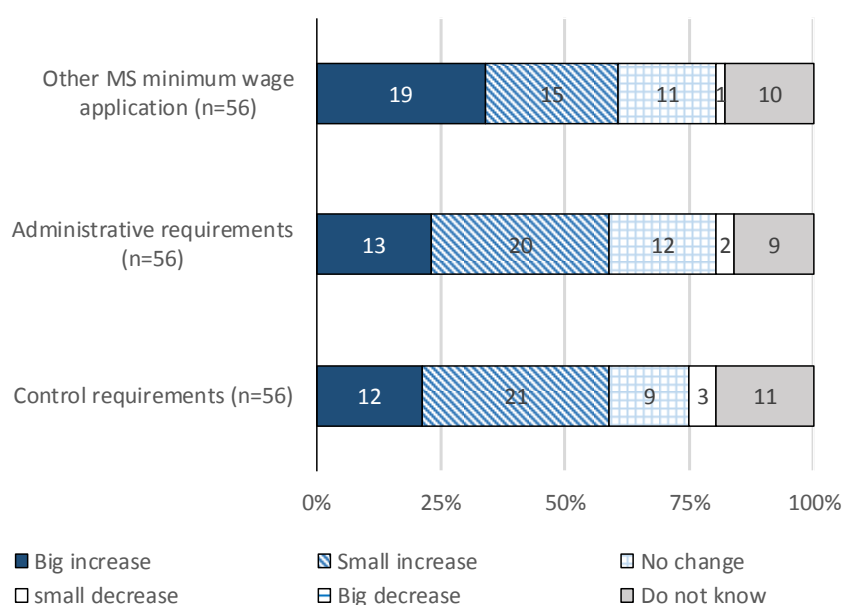


***“Question 3: Please indicate different types of costs related to compliance with the posting provisions (i.e.: with application of the minimum wage legislation of different Member States, including administrative and control requirements).”***

Most respondents indicated that the costs related to compliance with the posting provisions had increased to some extent, shown in figure 4-17. All three cost types had similar response profiles. The cost of other Member State minimum wage application was identified by most respondents as a major driver of increases of costs of compliance with the posting of workers, with 19 out of 56 (34%) respondents indicating a big increase in costs, and 15 (27%) indicating a small increase. The costs of administrative requirements and control requirements had very similar responses.

When split by geographical location, significant differences were observed. 9 out of 22 (41%) EU-15 based respondents indicated a big increase in costs as a result of administrative requirements and control requirements, but only 2 out of 22 (9%) indicated similarly for the application of other Member States minimum wage application. Comparatively, 17 out of 34 (50%) EU-13 based respondents indicated a big increase in costs for application of other Member States minimum wage, while only 4 (12%) and 3 (9%) indicated similarly for administrative and control requirements respectively.

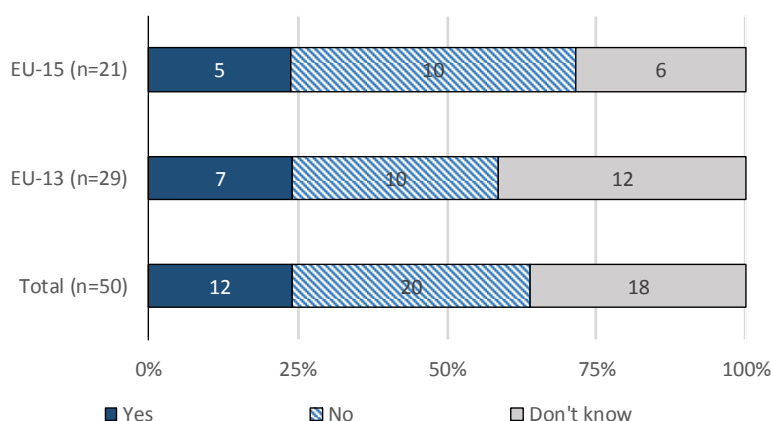
**Figure 4-17: Change in costs related to compliance with the posting provisions**



***“Question 4: Do you think that benefits linked to the application of EU provisions on posting of workers to road transport operators and drivers, referred to in Question 10 would outweigh challenges/problems mentioned in question 11?”***

Most respondents (20 out of 50 (40%)) indicated that they did not think that the benefits linked to the application of EU provisions on posting of workers to road transport operators and drivers outweigh the challenges/problems as regards the application of the rules with a further 18 out of 50 (36%) indicating that they did not know. Only 12 out of 50 (24%) respondents indicated that they did think the benefits would outweigh the challenges/problems. When split by geographical location, a similar number of both EU-15 and EU-13 based respondents indicated that the benefits did outweigh the challenges/problems, while slightly more EU-15 based respondents indicated that they did not think this, compared to EU-13 based respondents. Please see figure 4-18 for details.

**Figure 4-18: Agreement on whether the benefits outweigh the challenges/problems, split by geographical location**

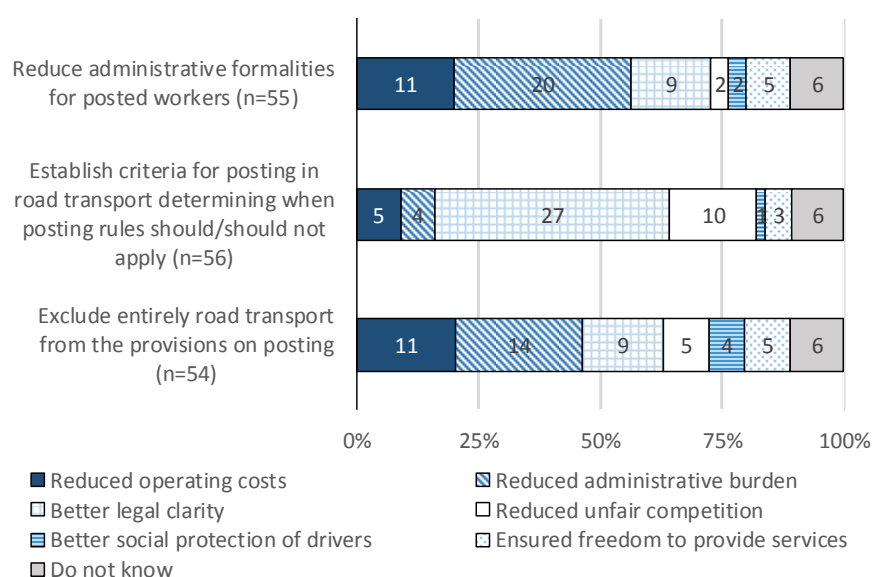


***“Question 5: What would be the impacts of the introduction of the following measures to adapt the posting conditions to the specificities of road transport sector?”***

All of the proposed impacts were indicated to some degree for each measure by the respondents, as shown in figure 4-19. The measure to reduce administrative formalities for posted workers was considered by 20 out of 55 (36%) respondents to have the impact of reduced administrative burden, with a further 11 out of 50 (20%) indicating reduced operating costs. The measure to establish criteria for posting in road transport determining when the posting rules should or should not apply was considered to provide better legal clarity by 27 out of 56 (48%) of respondents. A further 10 out of 56 (18%) felt that this measure would reduce unfair competition. The measure to exclude entirely road transport from the provisions on posting had a more mixed response, with 14 out of 54 (26%) respondents indicating reduced administrative burden, 11 (20%) respondents indicating reduced operating costs, and 9 (17%) indicating better legal clarity.

When split by geographical location, both EU-13 and EU-15 based respondents had similar views on the impacts from establishing criteria for the posting in road transport determining when posting rules should or should not apply, with the majority indicating that better legal clarity would be the main impact. However, when looking at the impacts from reduced administrative formalities for posted workers, 8 out of 21 (38%) EU-15 based respondents indicated that the impact would be reduced operating costs, and a further 6 out of 21 (29%) indicated the impact of reduced administrative burden. Comparatively, only 3 out of 34 (9%) of EU-13 based respondents indicated reduced operating costs, while 14 (41%) indicated reduced administrative burden, and 8 (24%) indicated better legal clarity. When looking at excluding road transport entirely from the provisions on posting, 9 out of 20 (45%) of EU-15 respondents indicated that the impact would be reduced administrative burden, while only 5 out of 34 (15%) EU-13 respondents indicated similarly.

**Figure 4-19: Impacts following the introduction of certain measures to adapt posting conditions to the specificities of road transport**

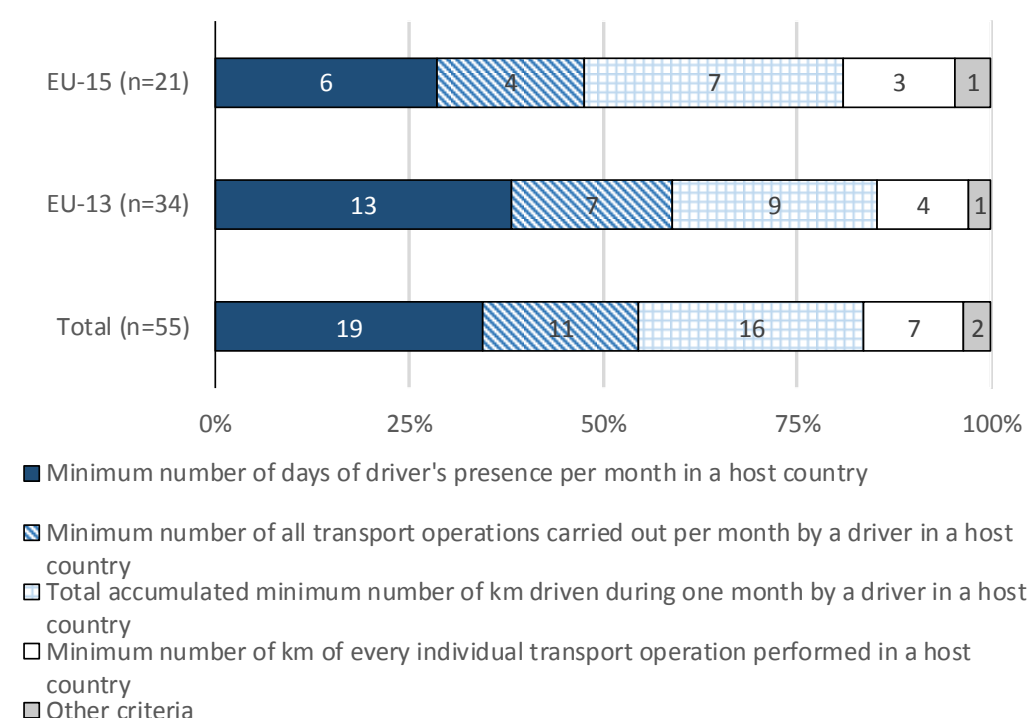




***“Question 6: What would be your preferable criteria to establish when the posting provisions, in particular minimum wage of host country, should apply to drivers in cross-border transport operations?”***

All four suggested criteria were considered preferable by a number of respondents, as indicated in figure 2.20. Overall, 19 out of 55 (35%) respondents preferred the criteria of a minimum number of days of driver’s presence per month in a host country, while 16 out of 54 (30%) preferred the criteria of a total accumulated minimum number of kilometres driven during one month by a driver in a host country. This trend was also seen when respondents were split by geographical location. EU-15 based respondents reversed the two highest criteria, while EU-13 based respondents indicated similarly to the overall trend.

**Figure 4-20: Criteria to establish when posting provisions, in particular minimum wage of host country, should apply to drivers in cross-border transport operations**



To summarise, overall, most respondents agreed with the suggested benefits from the application of the rules on posting of workers, especially the benefit of better social protection for workers. The respondents also agreed with all of the problems suggested, but to different degrees based on geographical location. The respondents also agreed that complying with the posting provisions resulted in an increase in costs. Slightly more respondents indicated that the benefits did not outweigh the costs, although nearly as many indicated that they didn’t know. There was little agreement between respondents in the perceived impacts

of the proposed measures<sup>10</sup>, and the criteria that should be used to establish when posting provisions should apply.

### **On the questionnaire on driving times, working times and rest period in road transport**

#### **Driving, working and rest times**

Most of the respondents agreed that the EU requirements on driving, working and resting times should cover and be the same for all companies and all drivers. However, many respondents did not know, or were not in agreement with what the benefits would be of the measures and changes<sup>11</sup> suggested in the questionnaire, or what the disadvantages would be. Most respondents agreed that the measures and changes would result in an increase in costs, and the respondents were evenly split (between yes, no and do not know) on whether the benefits/advantages would outweigh the costs/disadvantages.

***“Question 1: Do you think that the scope of EU requirements on driving, working and resting times should cover all companies and all drivers engaged in commercial road transport operations, including those listed below?”***

The majority of respondents agreed that the scope of EU requirements on driving, working and resting times should be the same and cover all companies and all drivers engaged in commercial road transport operations, as shown in figure 4-21, 42 out of 66 (64%) respondents indicated that self-employed drivers should be included and have the same requirements, compared to only 10 who felt that only national rules should apply, and 8 who thought that no such requirements should apply. A similar distribution was seen with the other groupings, however with a slightly smaller share of respondents indicating that the same requirements should apply for all. This was most evident regarding occasional non-professional drivers, where 13 out of 62 (21%) respondents indicated that no such requirements should apply.

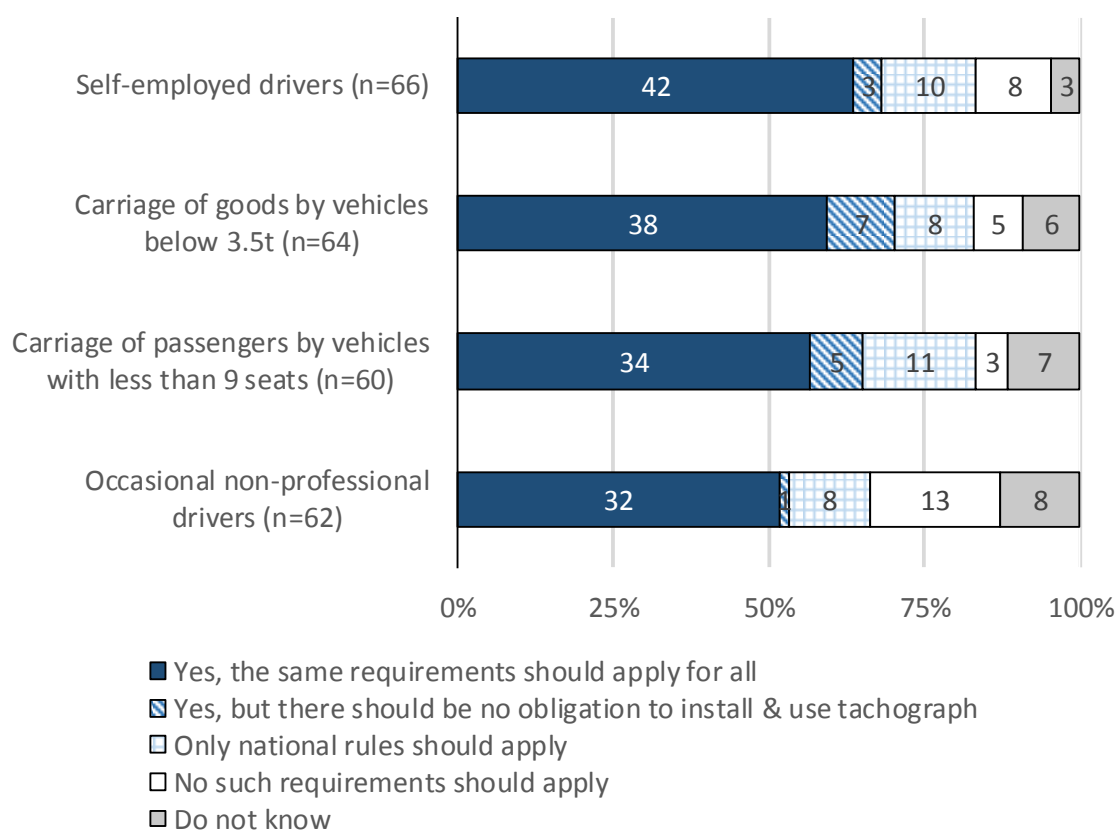
When split by geographical location, EU-15 based respondents were more likely to agree that the scope should cover all companies and drivers and that the same requirements should apply for all, compared to EU-13 based respondents. In particular, 18 out of 21 (86%) EU-15 respondents indicated that self-employed drivers should have the same requirements, and 15 out of 21 (71%) indicated similarly regarding occasional non-professional drivers. Comparatively, only 24 out of 45 (53%) and 17 out of 41 (41%) EU-13 respondents indicated similarly. EU-13 respondents were more likely to indicate that only national rules should apply in the case of all driver categories in question

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<sup>10</sup> Proposed measures were: Reduce administrative formalities for posted workers, establish criteria for posting in road transport determining when posting rules should or should not apply, and exclude entirely road transport from the provisions on posting.

<sup>11</sup> Measures discussed were: Establish maximum periods away from home/based for drivers, forbid performance-based remuneration for drivers, forbid explicitly spending a regular weekly rest of 45 hours in a vehicle, exclude occasional non-professional drivers from the rules, exclude self-employed drivers from working time rules only, include passenger vehicles with less than 9 seats in the scope of the rules, and include goods vehicles below 3.5t in the scope of the rules.

**Figure 4-21: Agreement on the scope of EU requirements on driving, working and resting times**



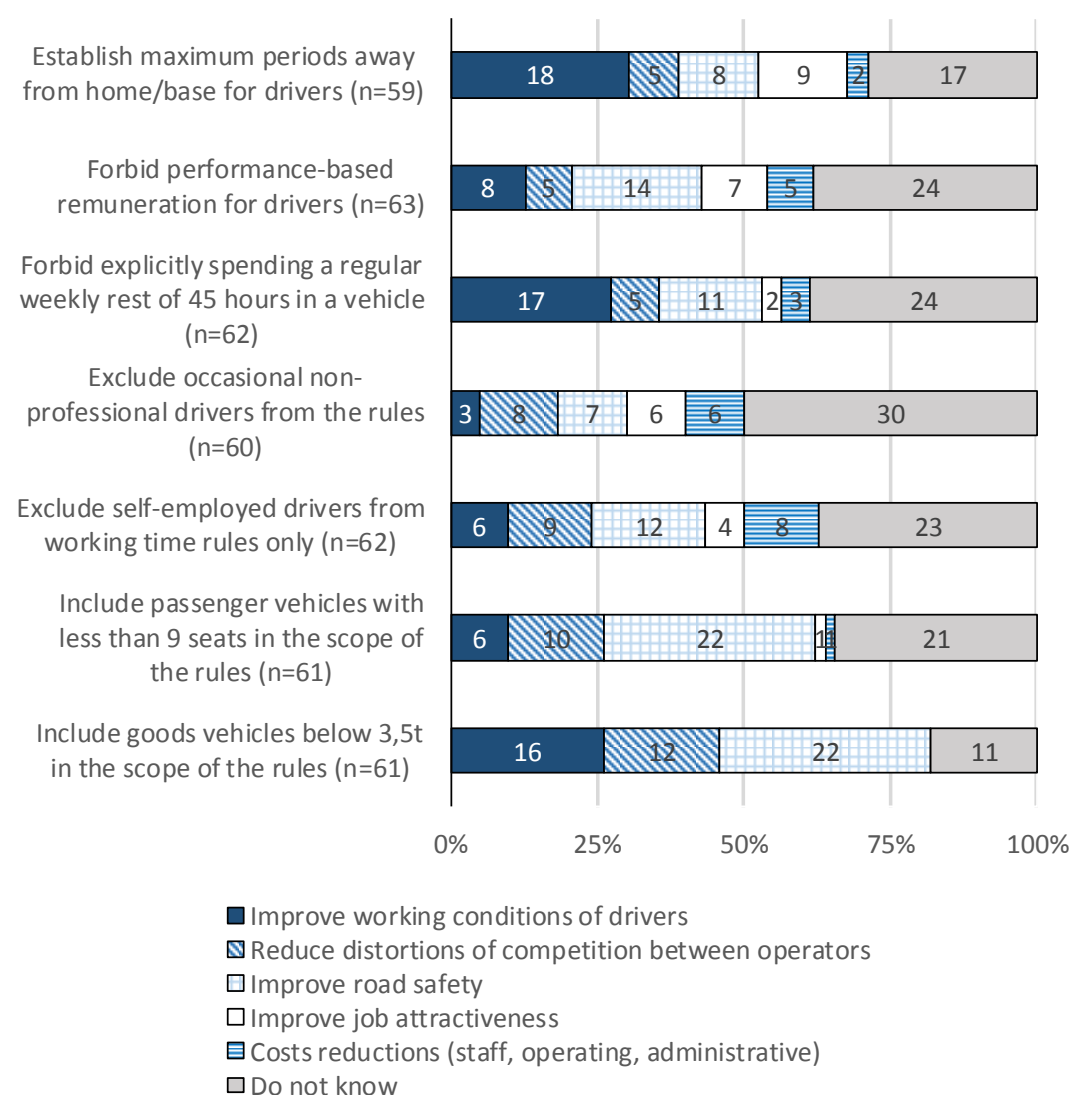
***“Question 2: What would be positive impacts (benefits) of introducing the following measures/changes in the current legislation?”***

For many of the measures, most of the respondents did not know what the benefits of introduction of the proposed measures would be, as shown in figure 4-22. At least 29% (17 out of 59) of respondents indicated that they did not know what the benefits would be to each measure, with the exception of the measure to include goods vehicles below 3.5t in the scope of the rules (11 out of 61 (18%)). The measures to establish maximum periods away from home/base for drivers (18 out of 59 (31%)), to forbid explicitly spending a regular weekly rest of 45 hours in a vehicle (17 out of 62 (27%)), and to include goods vehicles below 3.5t in the scope of the rules (16 out of 61 (26%)) all had a large number of respondents indicating that these measures would improve working conditions of drivers. The measures to forbid performance-based remuneration for drivers (14 out of 63 (22%)), to include passenger vehicles with less than 9 seats in the scope of the rules (22 out of 61 (36%)), and to include goods vehicles below 3.5t in the scope of the rules (22 out of 61 (36%)) were all largely considered to improve road safety. For the remaining measures, respondents expressed a range of views selecting across the remaining benefits.

When split by geographical location, both EU-15 and EU-13 based respondents largely indicated that they do not know what the impacts of the measures would be. A larger share of EU-13 based respondents indicated that the measures would improve working conditions of

drivers, particularly the measure establishing maximum periods away from home/base for drivers, while a larger share of EU-15 respondents indicated that the measures would improve road safety.

**Figure 4-22: Benefits of introducing the following measures/changes in the current legislation**



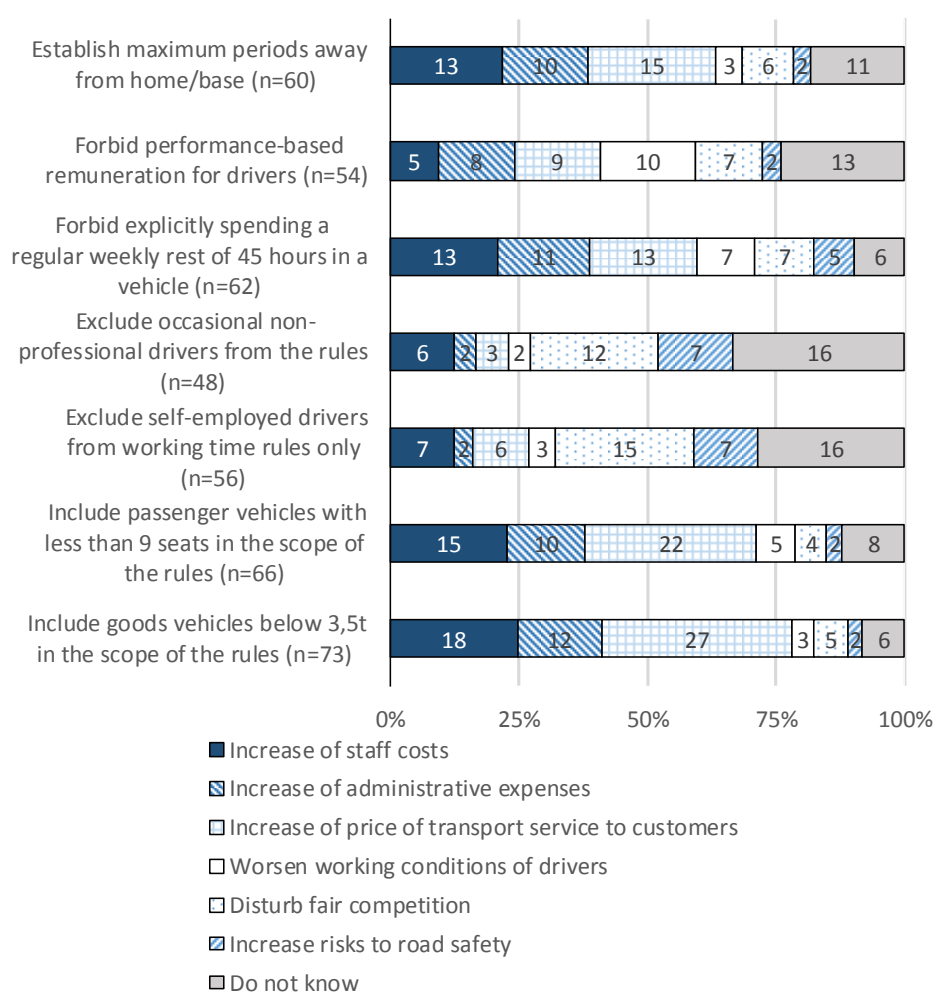
***“Question 3: What would be the negative impacts (disadvantages) of introducing the following measures/changes in the current legislation?”***

A wide range of perspectives were given regarding the disadvantages of introducing the measures listed in figure 4-23. Almost all of the measures had at least 1 respondent indicate each of the possible negative impacts. However, a number of stakeholders considered an increase in price of transport services to customers as a disadvantage to the introduction of measures to include goods vehicles below 3.5t in the scope of the rules (27 respondents), include passenger vehicles with less than 9 seats in the scope of the rules (22 respondents), establish maximum periods away from home/base (15 respondents) and forbid explicitly

spending a regular weekly rest of 45 hours in a vehicle (13 respondents). The same measures also saw a number of respondents indicating an increase of staff costs as a disadvantage. The measures to exclude occasional non-professional drivers from the rules (12 respondents) and to exclude self-employed drivers from working time rules only (15 respondents) were considered to disturb fair competition.

When split by geographical location, more EU-13 based respondents indicated that increase in staff costs would be a disadvantage from introducing the measures, compared to EU-15 based respondents. In particular, the measures to establish maximum periods away from home/base, forbid performance-based remuneration and forbid explicitly spending a regular weekly rest of 45 hours in a vehicle were all considered to increase staff costs by EU-13 based respondents. EU-15 based respondents were more aware of an increase of price of transports services to customers from introducing the measures. In particular, including goods vehicles below 3.5t in the scope, including passenger vehicles with less than 9 seats in the scope, and forbidding performance-based remuneration for drivers were considered to increase the price of transport services to customers by EU-15 based respondents.

**Figure 4-23: Disadvantages of introducing the following measures/changes in the current legislation?**

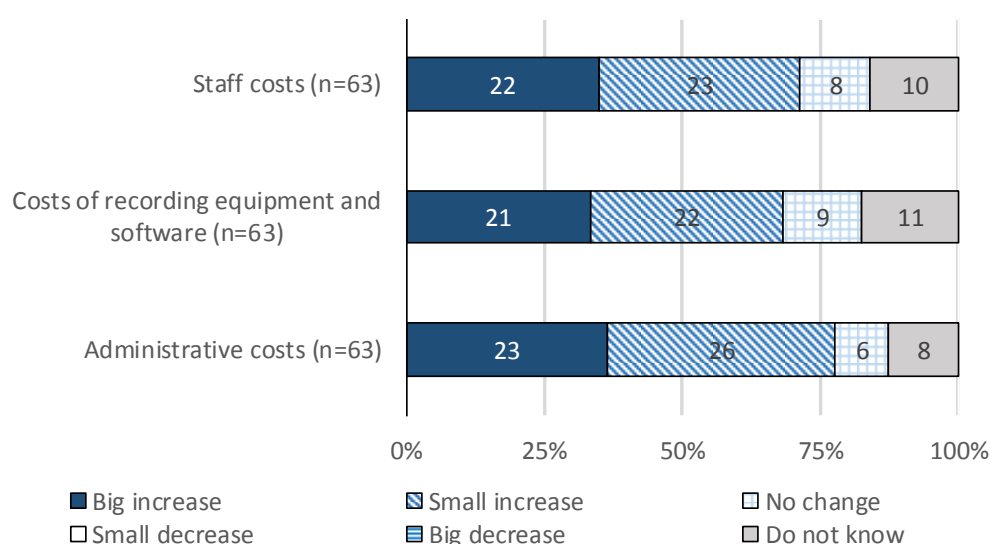


***“Question 4: Please indicate different types of costs expected to increase/decrease as a result of introduction of the above mentioned measures (e.g.: administrative costs, costs of recording equipment and software, staff costs, etc.)”***

Most of the respondents indicated that they expected to some degree an increase for all three cost types, as shown in figure 4-24 **Error! Reference source not found.**. Administrative costs had the most respondents (49 out of 63 (78%)) indicating a small or big increase in costs, while the other two cost types had only slightly fewer number of respondents indicating similarly. No respondents indicated a decrease in costs for any of the cost types.

When split by geographical location, a larger share of EU-15 based respondents indicated that costs would increase, compared to EU-13 based respondents. Most significantly, 19 out of 20 (95%) of EU-15 based respondents indicated either a small or big increase in costs as a result of including goods vehicles below 3.5t in the scope of the rules, compared to only 30 out of 45 (70%) EU-13 based respondents. Similar differences were seen between EU-15 and EU-13 based respondents for the other two measures.

**Figure 4-24: Change in costs as a result of measures listed in figure 4-22**

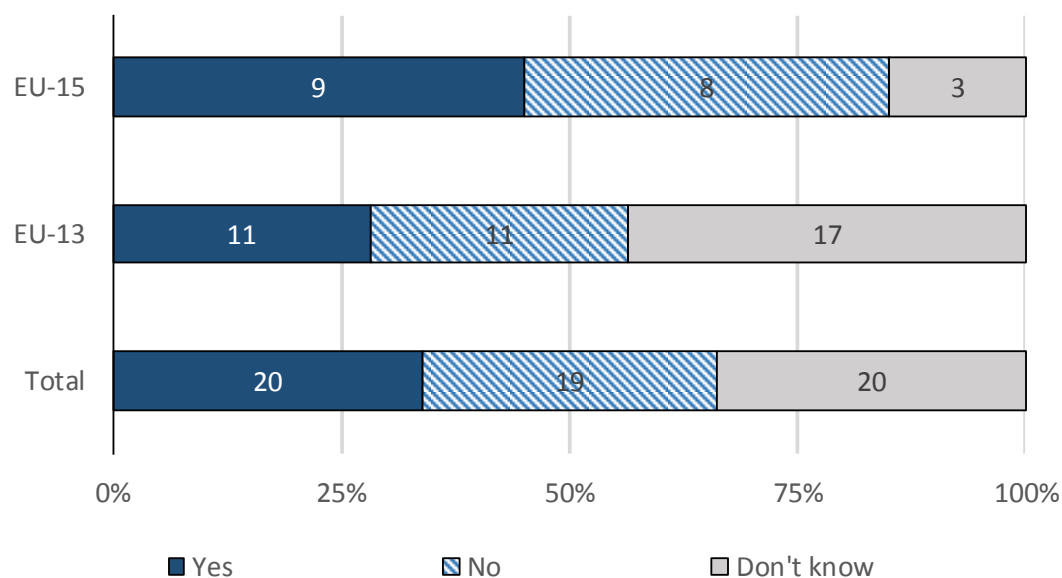


***“Question 5: Do you think that benefits/advantages linked to the introduction of the above mentioned changes in the current legislation would outweigh costs/disadvantages brought to you /your company?”***

The respondents were evenly split on their views as to whether the benefits would outweigh the costs mentioned above (as shown in figure 4-25). 20 out of 59 (34%) respondents thought the benefits would outweigh the costs, while 19 (32%) thought the opposite, and a final 20 (34%) did not know. When split by geographical location, EU-15 based respondents were less uncertain, with fewer respondents indicating that they did not know, compared to a large number of EU-13 based respondents who did not know.

To sum up, most of the respondents agreed that the EU requirements on driving, working and resting times should cover and be the same for all companies and all drivers. However, many respondents did not know, or were not in agreement with what the benefits would be of the measures and changes<sup>12</sup> suggested in the questionnaire, or what the disadvantages would be. Most respondents agreed that the measures and changes would result in an increase in costs, and the respondents were evenly split (between yes, no and do not know) on whether the benefits/advantages would outweigh the costs/disadvantages.

**Figure 4-25: Agreement that benefits/advantages of the above mentioned changes outweigh costs/disadvantages to the respondent**



<sup>12</sup> Measures discussed were: Establish maximum periods away from home/based for drivers, forbid performance-based remuneration for drivers, forbid explicitly spending a regular weekly rest of 45 hours in a vehicle, exclude occasional non-professional drivers from the rules, exclude self-employed drivers from working time rules only, include passenger vehicles with less than 9 seats in the scope of the rules, and include goods vehicles below 3.5t in the scope of the rules.

## 2.2 Enforcement authority survey

In total, all Member States, except Poland responded to the questionnaire as well as Norway and Switzerland. 42 enforcement authorities (usually the relevant Ministries in charge of transport, labour and national agencies dealing with the enforcement) participated in total, 40 from the EU, from which 23 from EU-15 and 17 from EU-13.

**Table 5-1**

Row Labels	Count of Name of organisation	Sum of EU-15	Sum of EU-13
AT	3	3	0
BE	3	3	0
BG	2	0	2
CH	1	0	0
CY	1	0	1
CZ	2	0	2
DE	2	2	0
EE	2	0	2
ES	1	1	0
FI	2	2	0
FR	1	1	0
GR	3	3	0
HR	1	0	1
HU	2	0	2
IE	1	1	0
IT	1	1	0
LT	1	0	1
LU	1	1	0
LV	2	0	2
MT	1	0	1
NL	1	1	0
NO	1	0	0
PT	1	1	0
RO	1	0	1
SE	2	2	0
SI	1	0	1
SK	1	0	1
UK	1	1	0
<b>Grand Total</b>	<b>42</b>	<b>24</b>	<b>17</b>

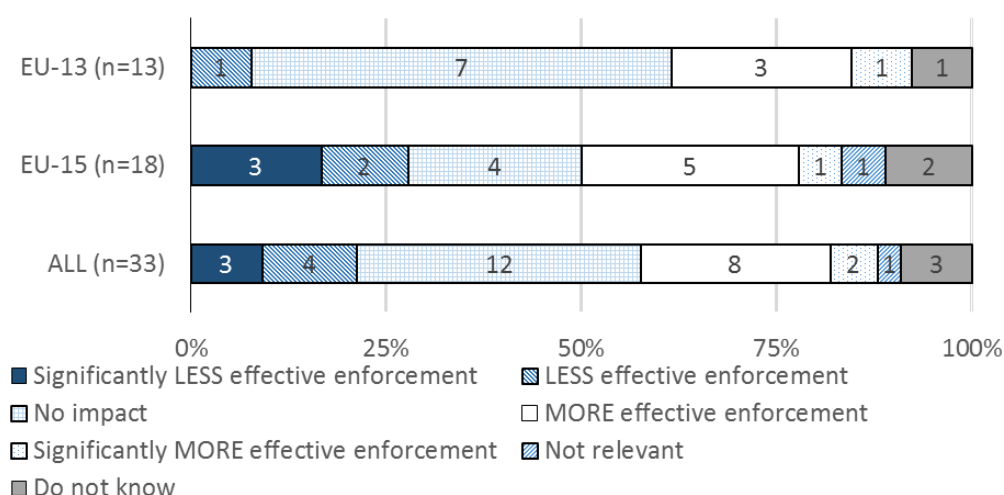


## 1. Measures on the weekly rest<sup>13</sup>

### 1a) Do you expect the measures above to impact the effectiveness of enforcement of the Regulation?

12<sup>14</sup> enforcement authorities (out of 33) expect that the measure to have no impact on the effectiveness of enforcement, whereas 10<sup>15</sup> consider that it would lead to more effective enforcement. Looking at EU-13, the majority (7 out of 13) expect no impact on effectiveness, whereas EU-15 had diverging views on this question (see figure 5-1).

**Figure: 5-1: measures on weekly rest – impact on effectiveness of enforcement**



### 1b) Do you foresee any possible problems with the practical enforcement of the suggested measure?

Half of the enforcement authorities who responded to this question (16<sup>16</sup> out of 32) consider there is no problem as regards the possible increase of time taken to conduct checks. Also on the increase of possible fraud/evasion the majority (18<sup>17</sup> out of 32) did not expect any problem. 19<sup>18</sup> (out of 33) consider that the need for new equipment/software would pose a small problem. 15<sup>19</sup> out of 32 do not see any problem to enforce this measure effectively, whereas 10 see it as a small problem and 7<sup>20</sup> as a major problem.

<sup>13</sup> 1) Standard minimum weekly rest periods: a minimum of 45 h regular weekly rest is to be taken, which is calculated as a minimum average weekly resting time over a reference period of rolling 4 weeks. 2) Definition of Compensation for reduced weekly rest: a reduced weekly rest period of less than 45 h in any week should not be less than 24 h and any reduction should be compensated by an equivalent period taken *en bloc* and attached to another weekly rest period. 3) Maximum period during which compensation should be taken: Within the reference period of 4 weeks

<sup>14</sup> AT, GR, CZ, EE, HU, LU, LV, RO, SI, SK, UK, NO.

<sup>15</sup> AT, CZ, FI, HR, LT, PT, SE, EE, BE.

<sup>16</sup> 3 AT, CY, 2 CZ, EE, FI, HR, HU, LT, RO, SE, UK, BE, NO,

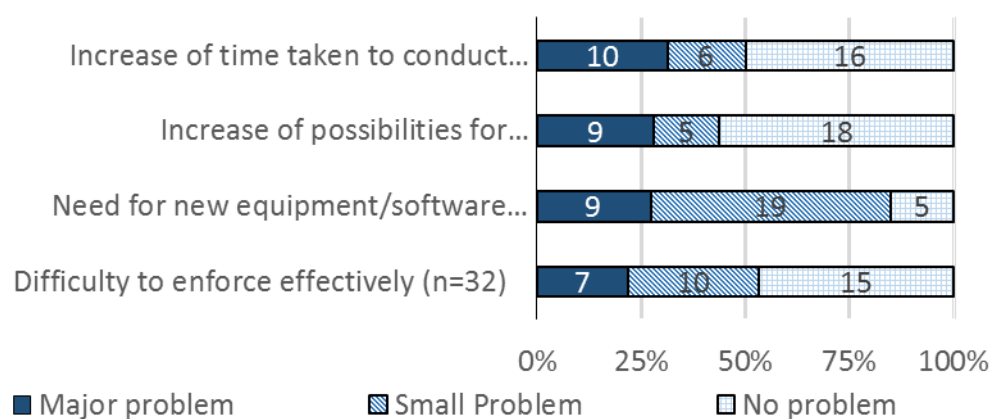
<sup>17</sup> AT, GR, CH, CY, 2 CZ, EE, HR, HU, LT, LV, RO, SE, SI, SK, UK, BE, NO,

<sup>18</sup> 2 AT, BG, CH, CZ, DE, EE, FI, FI, HU, IE, LT, LU, LV, RO, SE, UK, BE, NO,

<sup>19</sup> 3 AT, CZ, CZ, EE, FI, HR, HU, LV, RO, SI, UK, BE, NO,

<sup>20</sup> EE, ES, FR, GR, IE, IT, NL,

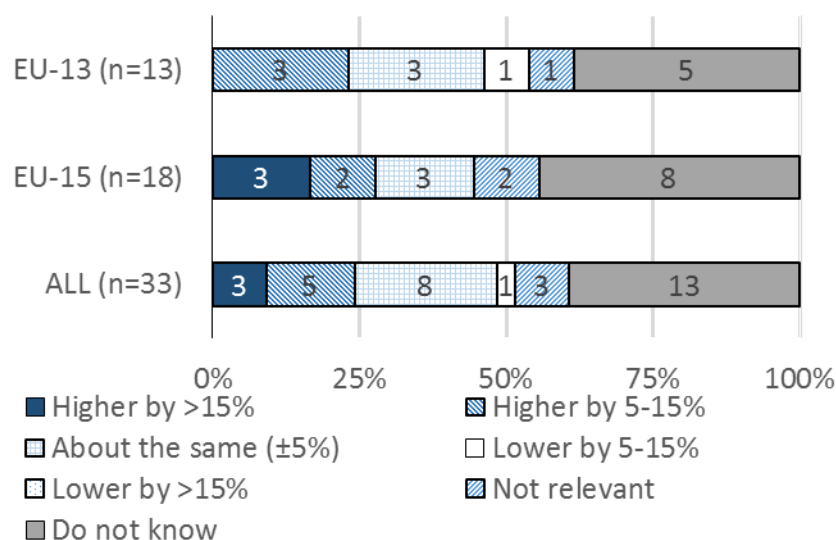
**Figure 5-2: measures on weekly rest – possible practical enforcement problems**



***1c) Do you expect the adoption of the above measures to change enforcement costs compared to the current situation?***

13 enforcement authorities (out of 33) could not tell if enforcement costs would change after the adoption of the proposed measures. 8<sup>21</sup> authorities indicated that they would expect an increase.

**Figure 5-3: measures on weekly rest - possible change in enforcement costs**



<sup>21</sup> CY, HU, LT, LU, NL, ES, FR, PT

***1d) In your view, what would be the most appropriate definition of “adequate accommodation” in order to ensure clarity and enforceability of the rules, as well as access to decent accommodation for drivers?***

These are samples of definitions which were proposed:

- an accommodation that allows full recreation of the driver’s abilities
- The driver should have at his/her disposal an own room as well as meal and bathing facilities. The space must be suitable also for overnight stays keeping safety in mind as well. In Finland the collective agreement uses the definition of “hostel-standard accommodation”.
- the place of rest must not be an accommodation in industrial premises, must not have an area not less than 6 m<sup>2</sup> and 15 m<sup>3</sup> per person (parts less than 1.90 m are not accounted for), must count the existence of ventilation, windows, free access to housing, heating equipment. A room for couples and access to water points, shower and toilets etc.
- a decent and secure hotel accommodation with standard comfort good hygiene restaurant and modern multimedia facilities.
- a definition of adequate accommodation" mentioned in ILO Recommendation R115 be adopted with the proper adaptations.
- It was also suggested to have a "negative" definition and thus stipulating and listing where the normal weekly rest cannot be taken (e.g. parking lot).

***1e) How do you expect the proposed measures affect the clarity of the current rules as to where the driver is allowed to spend their weekly rest?***

15<sup>22</sup> (out of 32) enforcement authorities are expecting positive effects as regards forbidding the regular weekly rest in the vehicle. Allowing the regular weekly rest in the vehicle if it is the choice of the driver, the majority (14<sup>23</sup> out of 32) considers as having a negative effect on the clarity of the current rules. The same applies to the measure to allow up to every second regular weekly rest in the vehicle where the majority 18<sup>24</sup> (out of 32) also expects a worsening of the clarity of the rules, whereas 7<sup>25</sup> would see a positive effect

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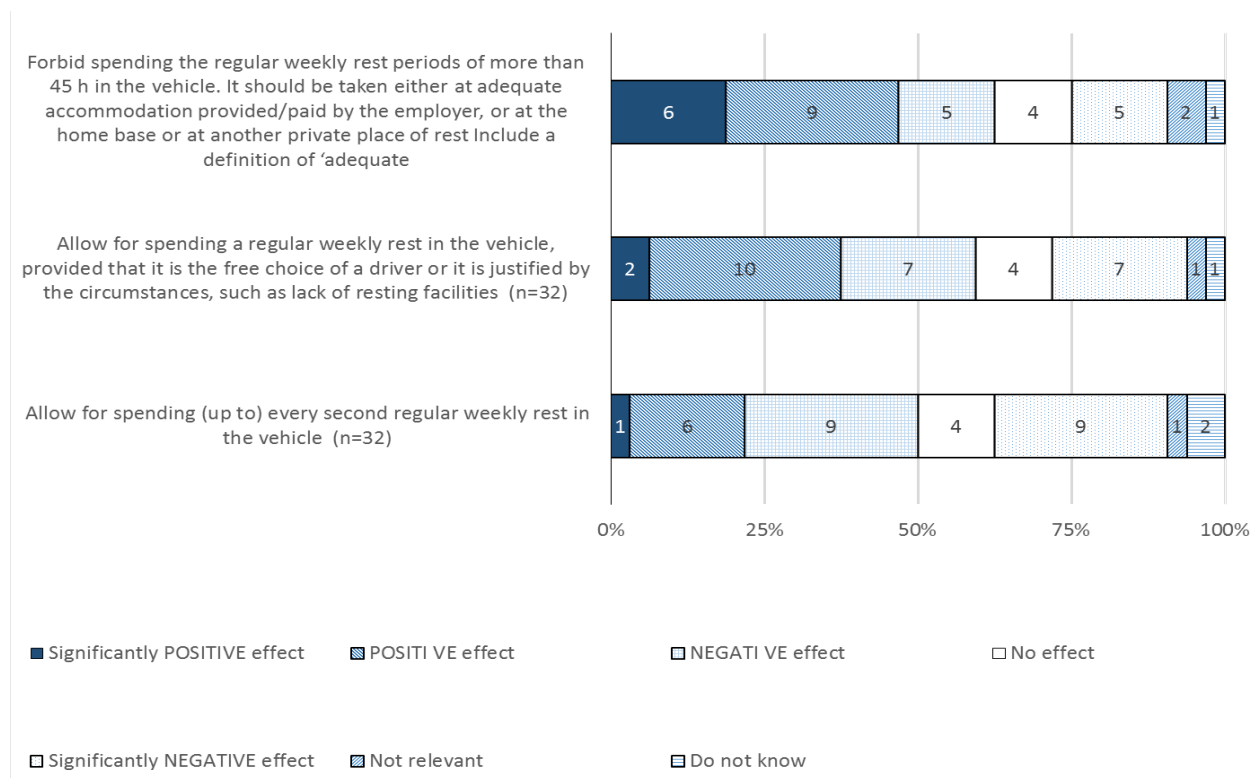
<sup>22</sup> 3 AT, 2 CZ, EE, FI, HR, HU, PT, GR, DE, SE, SK, CH

<sup>23</sup> 3 AT, CZ, FI, SE, GR, DE, EE, FR, NL, BE, NO, CH

<sup>24</sup> 3 AT, GR, EE, FI, GR, SI, CZ, DE, EE, FR, IE, NL, PT, BE, NO, CH

<sup>25</sup> CZ, HR, HU, LV, RO, SE, LU

**Figure 5-4: weekly rest: impact on the clarity of the current rules**



**1e) Do you foresee any possible problems with the practical enforcement of the suggested measures?**

19<sup>26</sup> and 14 enforcement authorities consider that allowing up to every two weeks or leaving the choice to the driver, respectively, was the measure among the three which would bring the biggest problem as regards practical enforcement. 15<sup>27</sup> (out of 32) enforcement authorities are expecting major problem as regards forbidding the regular weekly rest in the vehicle. While 6<sup>28</sup> see it as a small problem and 10<sup>29</sup> others do not consider it as problematic to enforce it

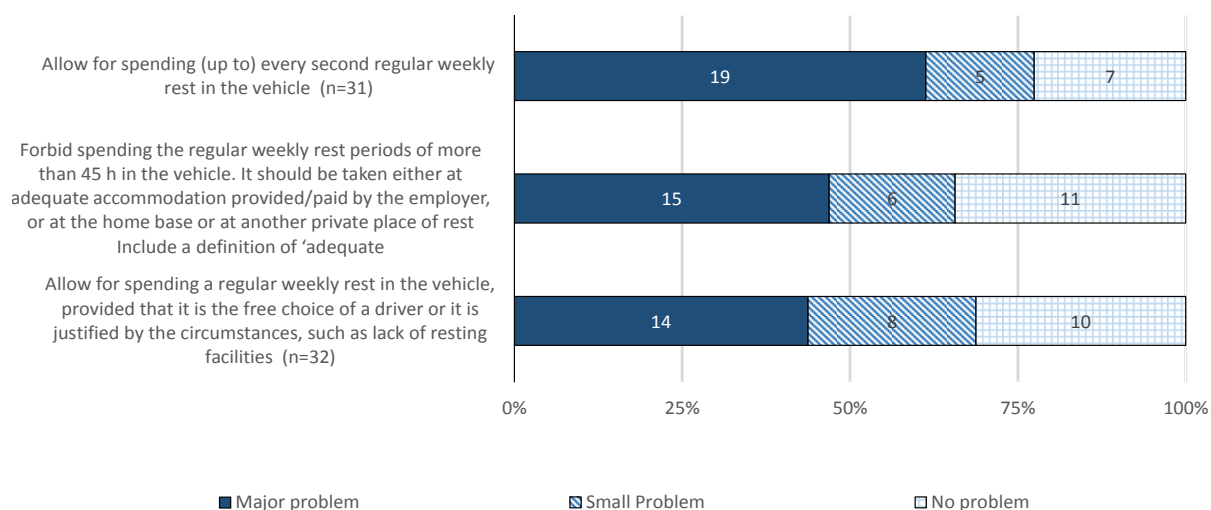
<sup>26</sup> AT, GR, CZ, DE, 2 EE, ES, FI, FR, GR, HU, IT, NL, SE, SI, SK, BE, NO, CH

<sup>27</sup> BG, CZ, 2 EE, FR, GR, IE, IT, LT, NL, RO, SE, SI, BE, NO

<sup>28</sup> DE, FI, HU, LU, LV, SK,

<sup>29</sup> 3 AT, GR, CY, CZ, ES, FI, HR, UK, CH

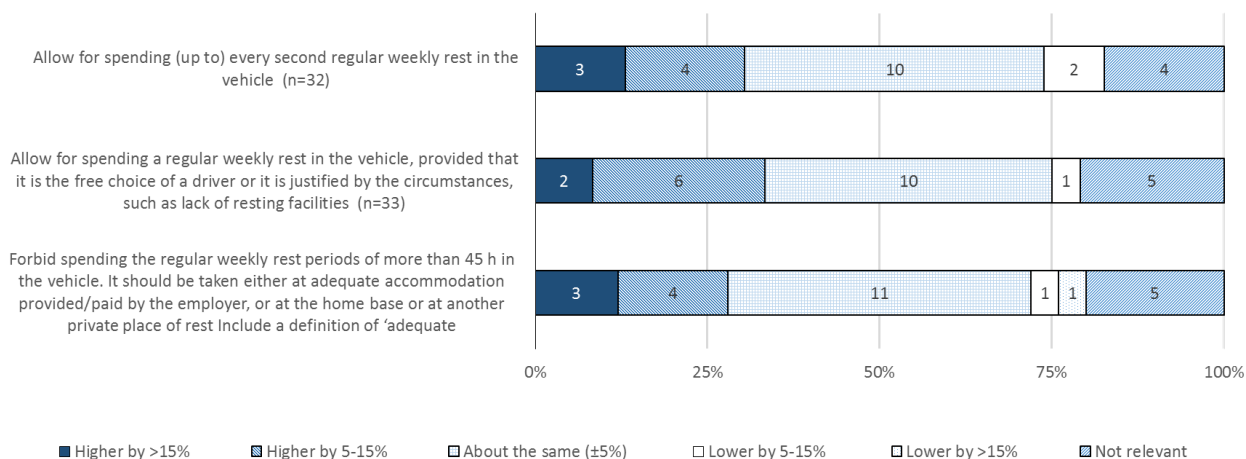
**Figure 5-5: Weekly rest – practical enforcement problems**



***1f) Do you expect the measures to change enforcement costs compared to the current situation?***

In general, enforcement authorities do not expect any big changes in the costs of enforcement due to the proposed measures.

**Figure 5-6: weekly rest – enforcement costs**



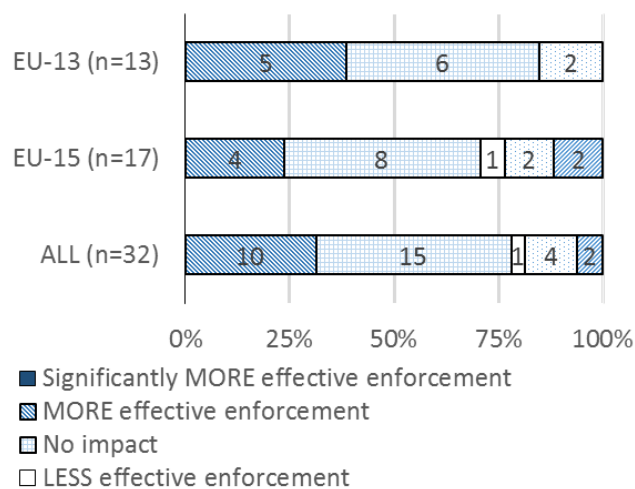
## 2. Increasing flexibility of transport operations<sup>30</sup>

### Changes to breaks

#### 2a) Do you expect the proposed measure to impact on the effectiveness of enforcement of the Regulation ?

In total, 15<sup>31</sup> (out of 32) enforcement authorities do not see the proposed measure to have much impact on the effectiveness of enforcement, while 10<sup>32</sup> others would expect more effective enforcement Authorities from EU15 tend to be more optimistic on the effectiveness of the measure.

**Figure 5-6: changes to breaks – impact on effectiveness of enforcement**



<sup>30</sup> Changes to breaks - For all drivers - a break of minimum 45 minutes may be split into maximum 3 periods of at least 15 minutes each. Basic provision on breaks remains unchanged.

Changes to derogations for passenger transport by coach – 1) Abolish compensation for reduced rest after 12-day derogation. 2) Extend 12-day derogation to domestic occasional transport by coach. 3) 8-day derogation for domestic occasional transport by coach. Changes to multimanning - Allow one driver for the first two hours or the last one hour of the journey

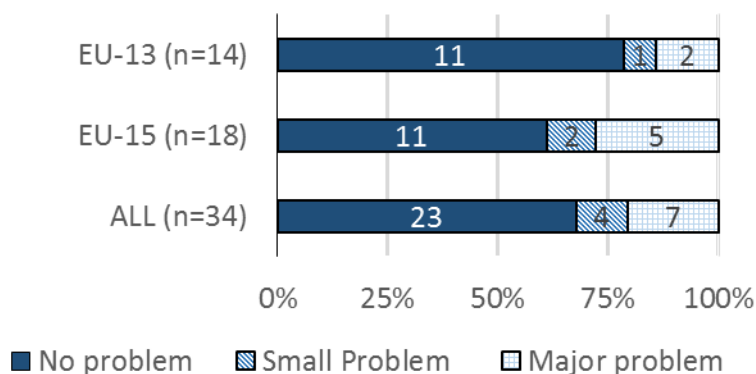
<sup>31</sup> 3 AT, GR, CZ, EE, FI, HU, LU, LV, SI, SK, UK, BE, NO.

<sup>32</sup> BG, CH, CY, FI, GR, HR, IE, LT, PT, RO.

**2b) Do you foresee any possible problems with the practical enforcement of the suggested measure?**

The vast majority (23<sup>33</sup> out of 34) did not expect any practical problems, while 7<sup>34</sup> consider that the measure would lead to major problem in enforcement.

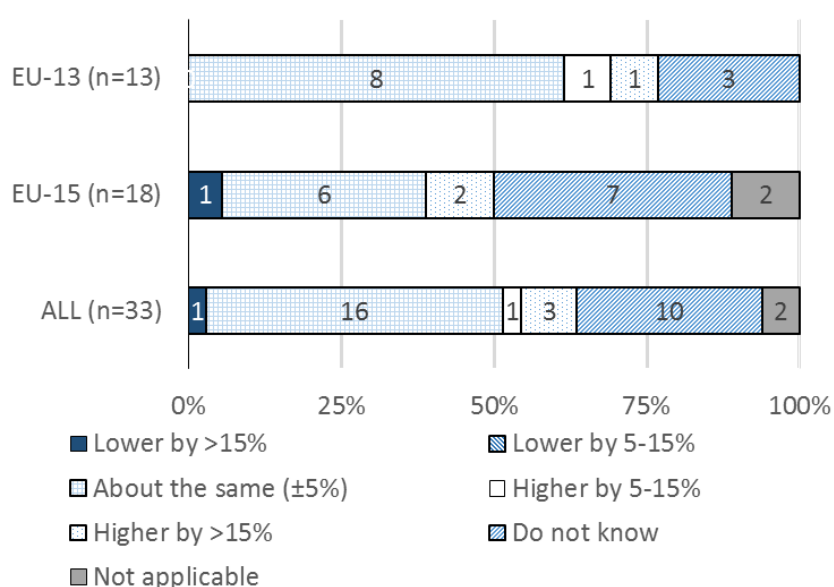
**Figure 5-7: changes to breaks – practical enforcement problems**



**2c) Do you expect the measures to change enforcement costs compared to the current situation?**

16<sup>35</sup> out of 32 enforcement authorities did not expect any changes in the enforcement costs. , 10 authorities did not expect any changes to enforcement costs.

**Figure 5-8: changes to breaks – change in enforcement costs**



<sup>33</sup> 3 AT, 2 GR, BG, CY, CZ, EE, ES, FI, FI HR, HU, IE, LT, LU, LV, RO, SI, SK, BE, NO,

<sup>34</sup> CZ, DE, EE, FR, NL, PT, SE.

<sup>35</sup> 2 CZ, EE, FI, FI, HU, LT, LU, LV, NL, RO, SE, SK, BE, NO, CH.

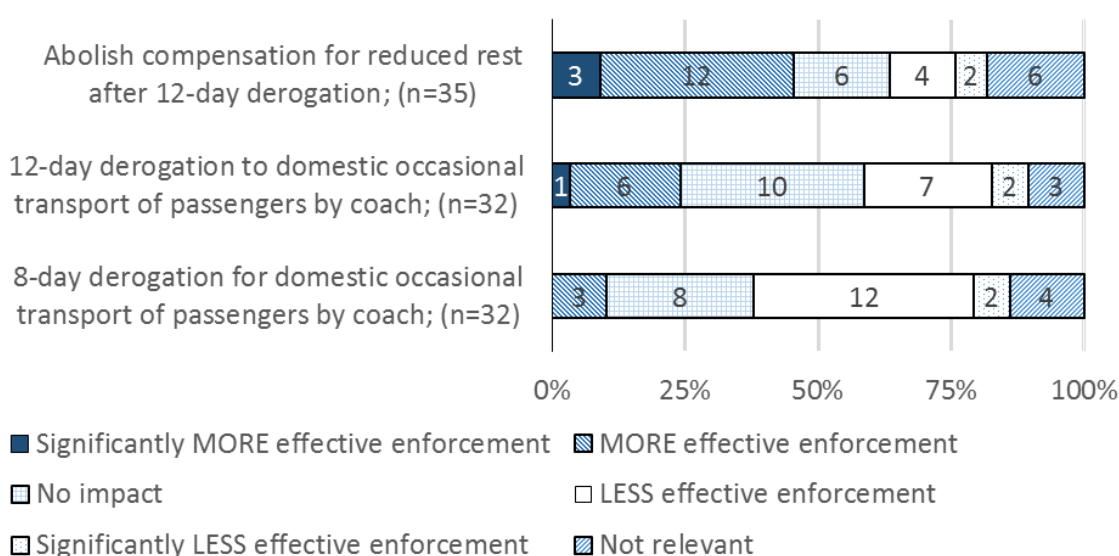
## Derogations for passenger transport by coach

3 possible measures were envisaged: 1) Abolish compensation for reduced rest after 12-day derogation. 2) Extend 12-day derogation to domestic occasional transport by coach. 3) 8-day derogation for domestic occasional transport by coach.

### 2a) Do you expect the proposed measures to impact the effectiveness of enforcement of the Regulation?

15<sup>36</sup> (out of 35) enforcement authorities would expect a more effective enforcement as a result of abolishing the compensation for a reduced rest after a 12- day derogation. 10<sup>37</sup> (out of 32) would see no impact on effectiveness of enforcement with the extension of the 12- day derogation to domestic occasional transport of passengers by coach, whereas 9<sup>38</sup> see less effectiveness. 14<sup>39</sup> (out of 32) enforcement authorities would consider the 8 day derogation as less effective.

**Figure 5-9: derogations for passenger transport - impact on effectiveness**



### 2b) Do you foresee any possible problems with the practical enforcement of the suggested measures?

Most enforcement authorities that responded to this question consider the three measures as problematic as regards enforcement, in particular the third measure, namely the 8- day derogation (10<sup>40</sup> out of 12).

<sup>36</sup> BE, BG, LV, 2 CZ, ES, HR, IE, LT, PT, RO, SE, SK, BE, NO,

<sup>37</sup> AT, BG, CY, EE, FI, LT, LU, SI, BE, NO,

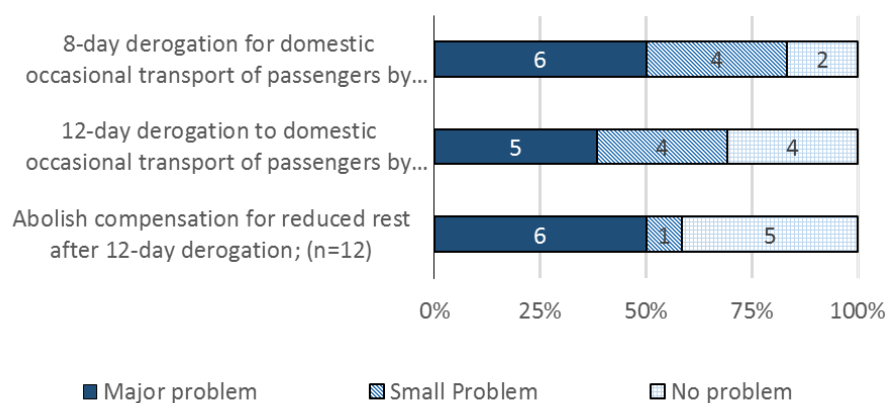
<sup>38</sup> 2 AT, ES, FI, HU, RO, CZ, NL, CH.

<sup>39</sup> 2 AT, CZ, NL, EE, ES, IE, LT, LV, RO, SE, BE, NO, CH.

<sup>40</sup> HU, IE, PT, RO, DE, FR, IT, NL, SE, SI.



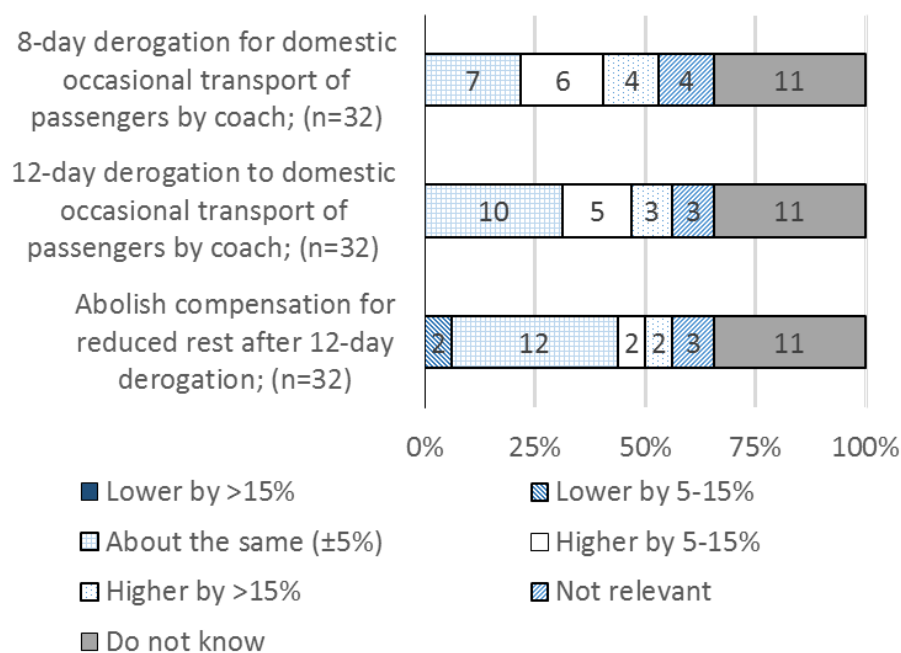
**Figure 5-10: derogations for passenger transport - practical enforcement problems**



**2c) Do you expect the measures to change enforcement costs compared to the current situation?**

Many enforcement authorities (11<sup>41</sup> out of 32) did not know whether the measures would change enforcement costs or they expected it to remain the same, see figures below for more details.

**Figure 5-11: derogations for passenger transport - enforcement costs**



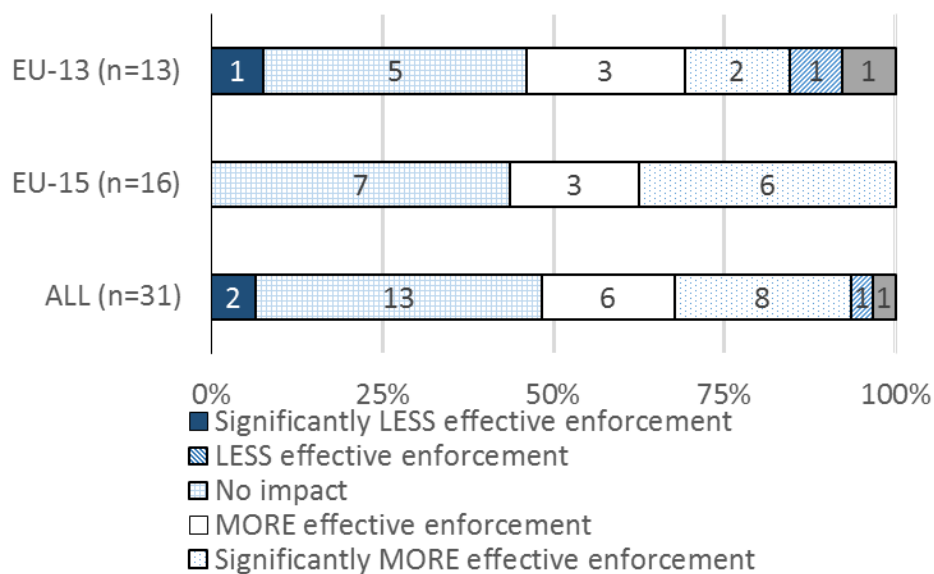
<sup>41</sup> 2 AT, BG, FI, GR, HR, IE, IT, LU, SI, UK (for all 3 proposed measures)

### 3. Forbidding all performance-based pay<sup>42</sup>

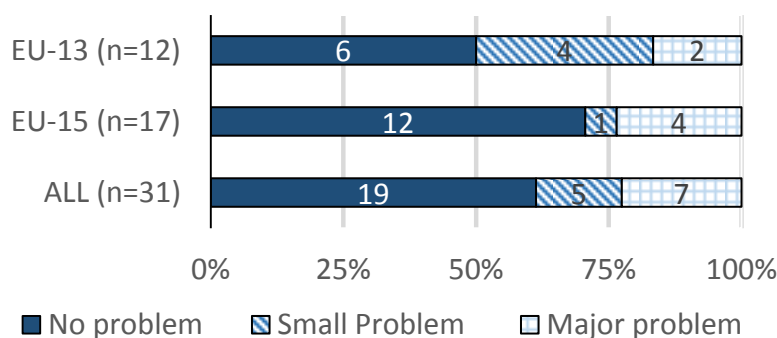
#### 3a) Do you expect the proposed measure to impact the effectiveness of enforcement of the Regulation?

14<sup>43</sup> (out of 31) enforcement authorities expect a more effective enforcement, whereas 13<sup>44</sup> expect no impact. Only 2<sup>45</sup> authorities expect a worsening of the effectiveness of enforcement.

**Figure 5-12: performance-based pay – effectiveness of enforcement**



**Figure 5-13: performance-based pay – practical enforcement problems**



<sup>42</sup> Forbid all performance based payment (strict prohibition of payments based on distances travelled/amount of goods carried)

<sup>43</sup> BG, EE, FI, FI, RO, SE, 2 GR, EE, FR HR, IT, PT, BE.

<sup>44</sup> 2 AT, CH, CY, DE, HU, IE, LT, LU, LV, NL, SI, UK.

<sup>45</sup> CZ, NO.

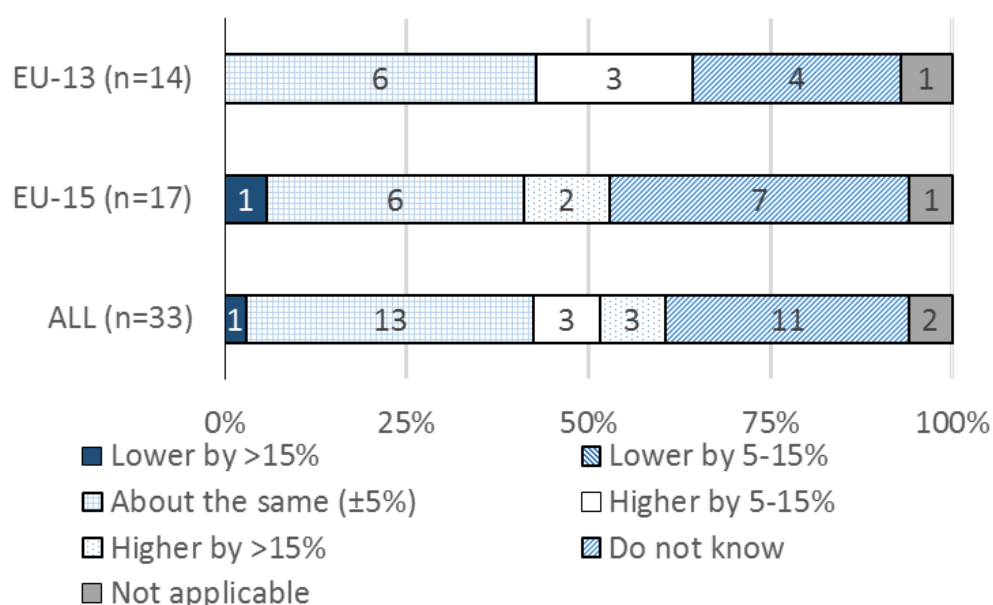
**3b) Do you foresee any possible problems with the practical enforcement of the suggested measures?**

The majority of national authorities who responded (19<sup>46</sup> out of 31) do not expect any problem of practical enforcement.

**3c) Do you expect the proposed measures to change enforcement costs compared to the current situation?**

13<sup>47</sup> (out of 33) authorities do not expect any change in enforcement costs due to this measure. 11<sup>48</sup> authorities did not know an answer to this question.

**Figure 5-13: performance-based pay**



#### 4. Clarifications and scope of Regulation (EC) No 561/2006

**Define occasional driver and operations for private purposes to be excluded from Regulation (EC) No 561/2006**

**4a) Do you expect the proposed measure to impact the effectiveness of enforcement of the regulation?**

14<sup>49</sup> (out of 34) enforcement authorities consider that the measure would lead to less effective enforcement. Whereas 10<sup>50</sup> expect the measure to have a positive impact on the effectiveness

<sup>46</sup> 2 AT, 2 GR, BG, EE, FI, FR, HR, HU, IT, LU, PT, SE, SI, SK, UK, BE, CH

<sup>47</sup> CY, CZ, EE, FI, FR, HU, NL, SE, SI, BE, CH

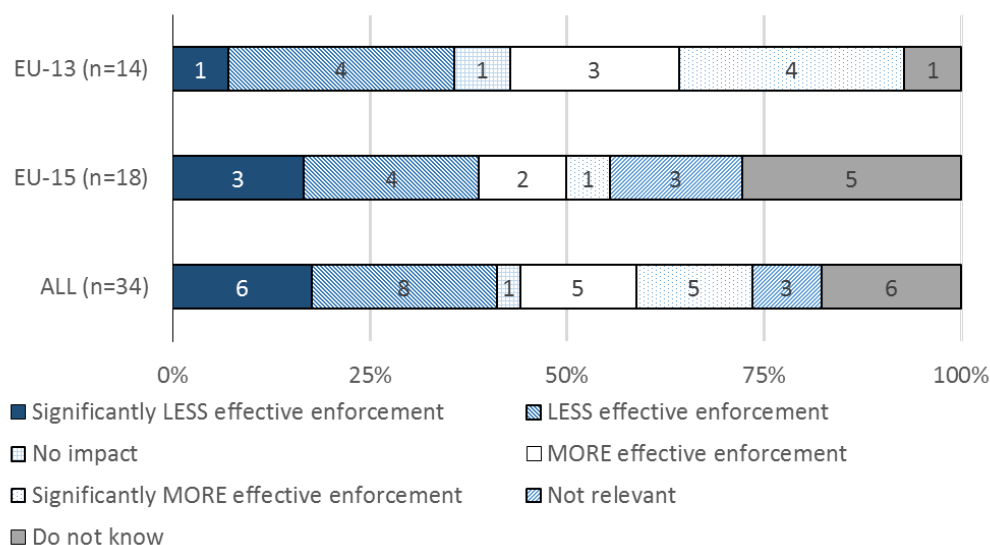
<sup>48</sup> 2 AT, 2 GR, BG, CZ, HR, IE, IT, SK, UK,

<sup>49</sup> 2 GR, CY, EE, 2 FI, IE, LT, RO, CZ NL, SE, NO, CH

<sup>50</sup> AT, BG, ES, HR, LV, CZ, EE, HU, PT, SK.

of enforcement. 6<sup>51</sup> authorities could not tell if there would be any changes. Austrian authorities had some divergent views on this question.

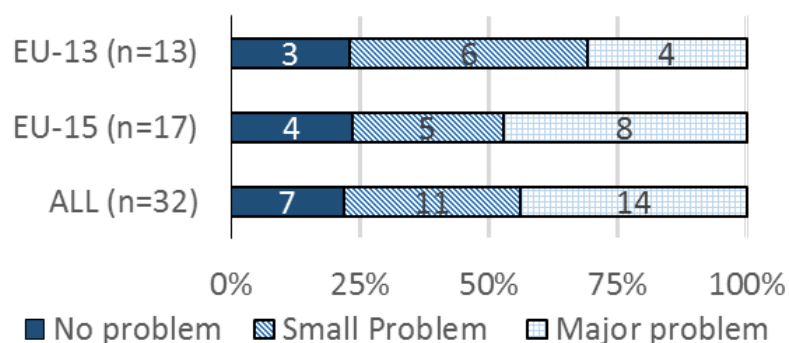
**Figure 5-14: clarification and scope – effectiveness of enforcement**



#### **4b) Do you foresee any possible problems with the practical enforcement of the suggested measure?**

14<sup>52</sup> out of 32 authorities would see it as significantly problematic to exclude occasional drivers from the Regulation. 11<sup>53</sup> would consider it as leading to small problems as regards enforcement. Whereas 7<sup>54</sup> authorities would not see any problems in enforcing the measure (see figure 5-15). They consider that it depends on how clear the definition is and that in general it would make enforcement more difficult. There is some concern that driving this mode of transport would require certain training to ensure road safety. Some pointed out that the definition needs to be narrowed and that rules should apply on the use of commercial vehicles and secondly on drivers of these vehicles. Most of enforcers (12<sup>55</sup> out of 32) do not know whether enforcement costs would change (see figure 5-16).

**Figure 5-15: Clarification and scope – practical enforcement problems**



<sup>51</sup> 2 AT, CY, FR, IT, BE,

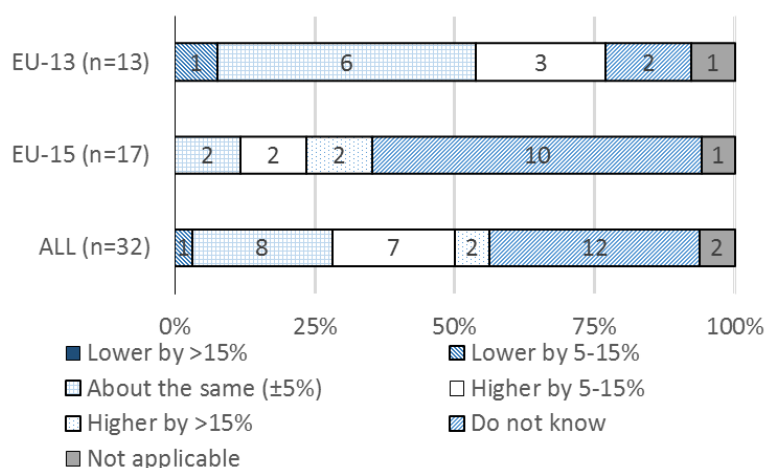
<sup>52</sup> 2 GR, CZ, DE, IE, IT, LT, NL, RO, SE, SI, UK, NO, CH

<sup>53</sup> 2 AT, CY, CZ, 2 EE, 2 FI, HU, LV, BE

<sup>54</sup> BG, ES, FR, HR, LU, PT, SK

<sup>55</sup> 2 AT, GR, BG, FI, FR, GR, HR, IE, IT, LU, UK

**Figure 5-16: Clarification and scope – change in enforcement costs**



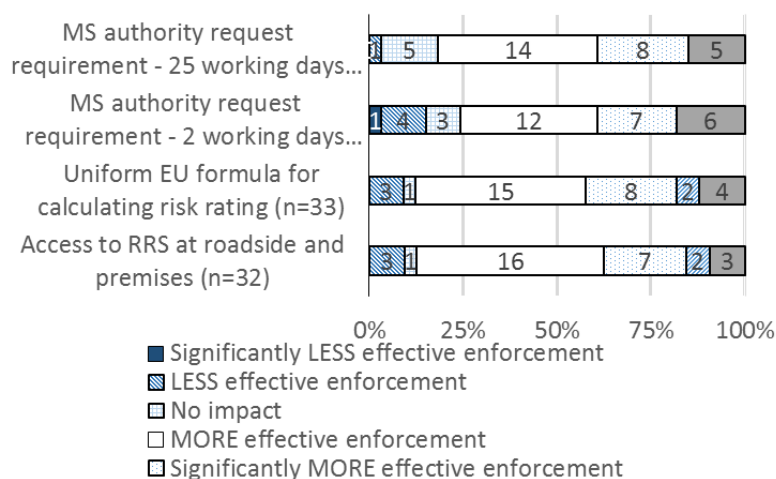
## 5. Enhancing enforcement <sup>56</sup>

### 5 a) Do you expect the proposed measures to impact the effectiveness of enforcement?

23<sup>57</sup> out of 32 enforcers agree that access to the RRS would increase the effectiveness of enforcement. 23<sup>58</sup> out of 33 enforcers would see the establishment of a uniform EU formula for calculating risk rating as improving effectiveness of enforcement. Authorities would welcome the introduction of measure introducing a deadline for responding to urgent and non-urgent request among Member States' authorities. The deadline of 2 working days for urgent cases was found by 19<sup>59</sup> or 32 authorities as improving the effectiveness of enforcement. Whereas

Whereas 22<sup>60</sup> out of 33 approve of the 25 working days deadline for non-urgent cases.

**Figure 5-17: Enhancing enforcement: impact on effectiveness of enforcement**



<sup>56</sup> Risk rating systems and cooperation between MS

Allow controllers access to risk rating system in real-time for roadside and premise checks.

Establish uniform EU-level formula for calculating risk ratings.

Enhance admin cooperation of national control authorities by requiring 2 working day response times for urgent cases, and 25 working day response times for non-urgent cases.

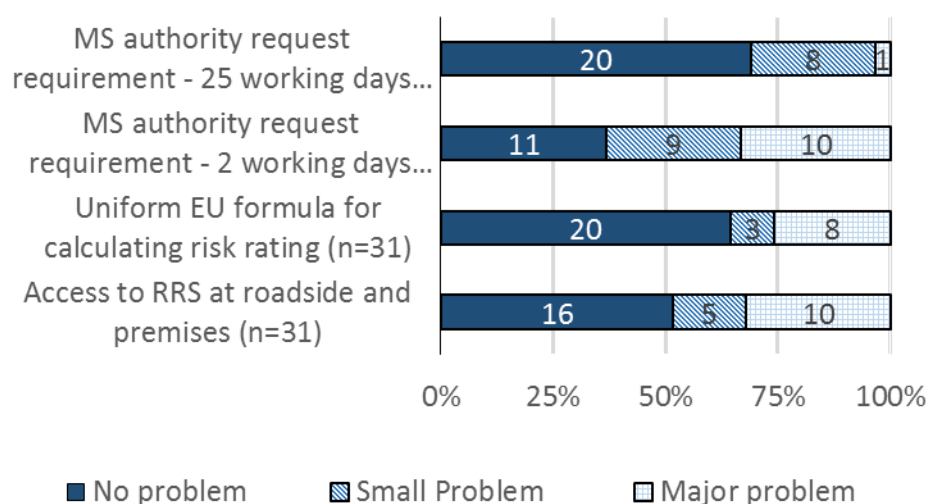
<sup>57</sup> GR, CY, 2CZ, EE, 2 FI, FR, HR, IE, LT, LV, LV, RO, SI, SK, UK, HU, LU, NL, PT, BE, NO,

<sup>58</sup> 2 GR, 2 CZ, 2FI, HR, IE, LT, 2LV, NL, RO, SE, SI, SK, 2 EE, HU, LU, PT, BE, NO,

<sup>59</sup> GR, 2 CZ, EE, FI, HR, IE, 2 LV, RO, SE, SI DE, HU, LU, NL, PT, NO, CH

<sup>60</sup> 2GR, 2 CZ, 2EE, FI, HR, 2 LV, RO, SE, SI, SK, DE, ES, HU, LU, NL, PT, NO, CH

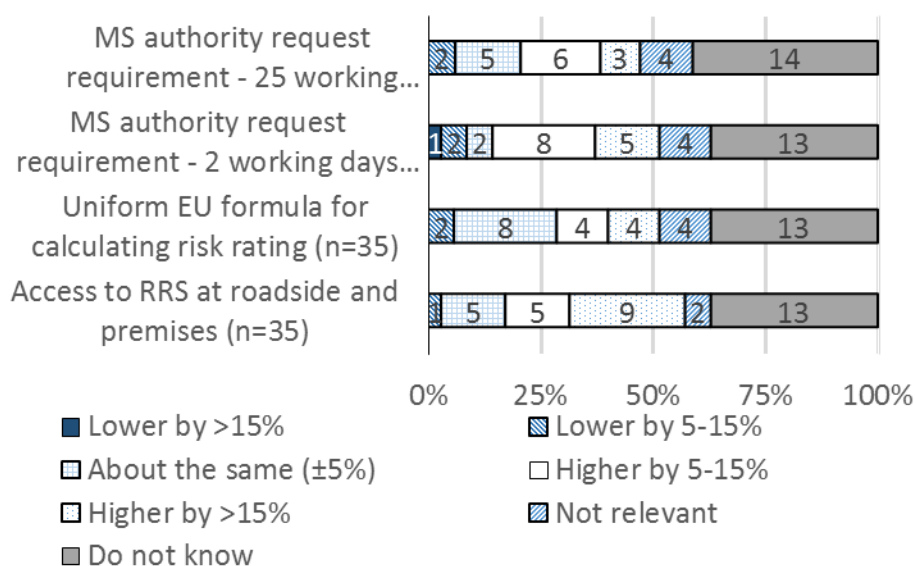
**Figure 5-18: Enhancing enforcement: practical enforcement problems?**



**5c) Do you expect the measures to change enforcement costs compared to the current situation?**

Most enforcers (14<sup>61</sup> out of 35) expect that access to RSS would lead to higher enforcement costs. But mostly (13 to 14 out 34 and 35), authorities did not know whether costs would increase for all the 4 measures proposed.

**Figure 5-19: Enhancing enforcement: change in enforcement costs**



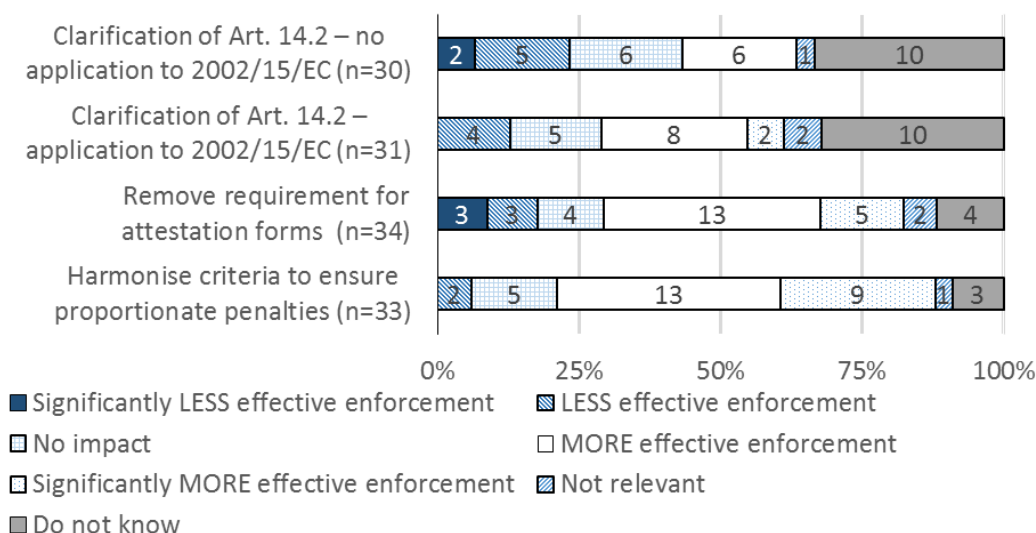
<sup>61</sup> CY, CZ, DE, ES, FR, GR, PT, BE, EE, LU, NL, SK, NO, CH

## 6. Clarification and simplification of the rules<sup>62</sup>

### 6a) Do you expect the proposed measures to impact the effectiveness of enforcement of the Directive?

Enforcement authorities (10<sup>63</sup> out of 31) see more effective enforcement for applying Article 14(2) of Regulation (EC) No 561/2006 which deals with temporary exception that Member States may grant, also to Directive 2002/15/EC. Whereas only 6<sup>64</sup> would see more effective enforcement and 7<sup>65</sup> even consider it to decrease effectiveness in not applying the Article to the Directive. The majority (18<sup>66</sup> out of 34) would see removing the attestation form better for enforcement. Also the harmonisation of criteria as regards penalty system would in their opinion increase effectiveness of enforcement (22<sup>67</sup> out of 33).

**Figure 5-20: Clarification and simplification – effectiveness of enforcement**



### 6b) Do you foresee any possible problems with the practical enforcement of the suggested measures?

The majority does not see any problem of practical enforcement as regards removing the attestation form. 17 out of 23 of the authorities consider that applying Article 14(2) of Regulation 561/2006 to Directive 2002/15/EC would be beneficial to enforcement. 10<sup>68</sup> out of 30 enforcement authorities consider the measure proposing to establish a national penalty system to ensure proportionate penalties to the level of seriousness of infringements to be a major problem as regards practical enforcement and 8<sup>69</sup> consider it as a small problem.

<sup>62</sup> Establishing national penalty systems to ensure proportionate penalties to the level of seriousness of infringements.

Remove requirement for attestation forms.

Explicitly state that article 14.2 (derogation from driving and resting time rules in exceptional circumstances) does or does not apply to Dir. 2002/15/EC.

<sup>63</sup> 3 GR, HR, IE, RO, SE, HU, PT NO,

<sup>64</sup> 2 FI, GR, HR, RO, CH

<sup>65</sup> 2 GR, BG, EE, SE, HU, NO

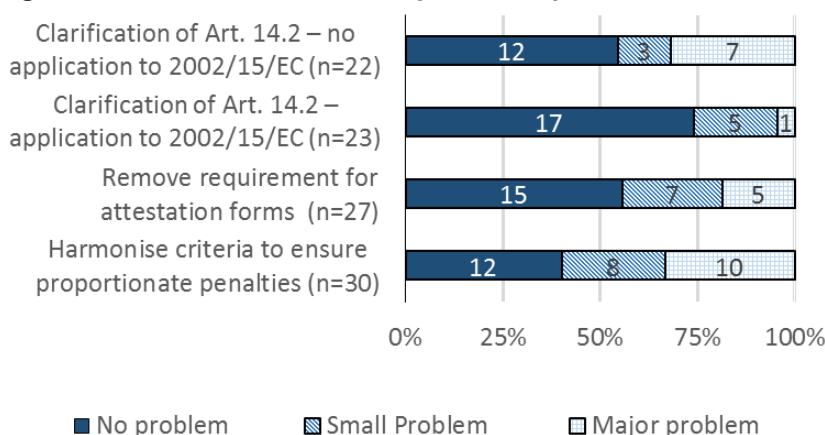
<sup>66</sup> GR, FI, HR, IE, LU, 2 LV, NL, SE, SI, SK, CZ, HU, LT, PT, RO, NO, CH

<sup>67</sup> 2 GR, EE, 2 FI, HR, IE, LT, NL, RO, SE, SI, CZ, ES, HU, IT, 2 LV, PT, SK, BE, NO,

<sup>68</sup> DE, FR, IE, LU, 2 LV, SE, UK, BE, CH

<sup>69</sup> CY, EE, IT, NL, PT, RO, SI, SK,

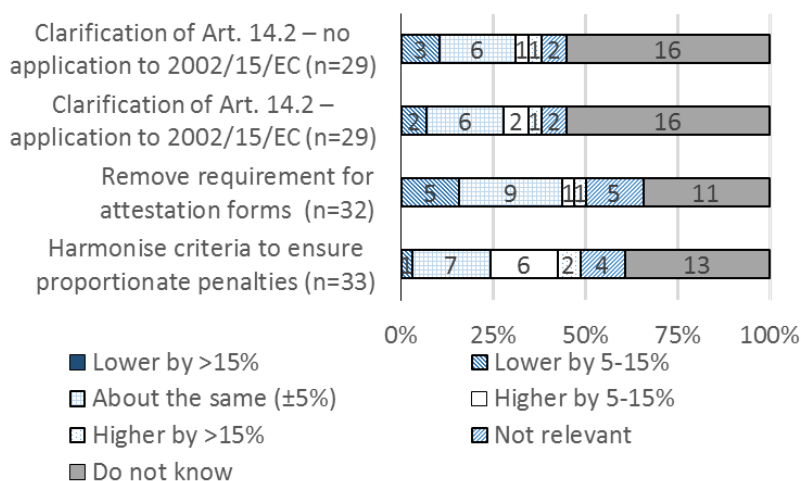
**Figure 5-21: Clarification and simplification-practical enforcement problems**



**6c) Do you expect the measures to change enforcement costs compared to the current situation?**

The majority of enforcement authorities did not know whether there will be any changes in enforcement costs. Please see figure 5-21.

**Figure 5-22: Clarification and simplification – enforcement costs**



## 7. Enforceability of the Working Time Directive<sup>70</sup>

**7a) Do you expect the proposed measures to impact the effectiveness of enforcement of the Directive?**

Most enforcement authorities (19<sup>71</sup> out of 31) expect that effectiveness of enforcement would increase when introducing the minimum threshold for the working time provision. 22<sup>72</sup> out of 32 see an improvement in enforcement when reducing the reference period for calculating the maximum average weekly working time. 12<sup>73</sup> out of 31 authorities consider that establishing

<sup>70</sup> 1) Reduce reference period for calculations of average weekly working time (48hrs) from 4 or 6 months, to 4 weeks. 2) Establish minimum thresholds for controlling compliance with working time provisions through roadside and premise checks. 3) Establish reporting template for biennial national reports.

<sup>71</sup> DE, PT, AT, 2 BE, 2 BG, EE, FI, HR, HU, IE, IT, LU, LV, RO, SE, SK, NO,

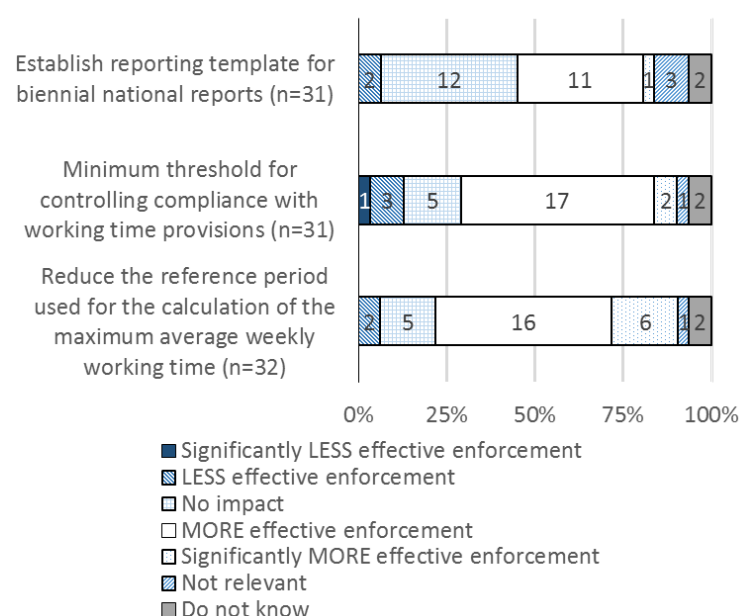
<sup>72</sup> 2 BE, 2 BG, CH, CY, 2 EE, FI, HR, IE, LT, LV, NL, RO, SK, AT, GR, IT, PT, SE, NO,

<sup>73</sup> 2BE, 2 BG, FI, HR, LU, RO, SE, SI, PT, NO,



reporting template for the Directive would lead to more effective enforcement, whereas other 12<sup>74</sup> would not expect any impact.

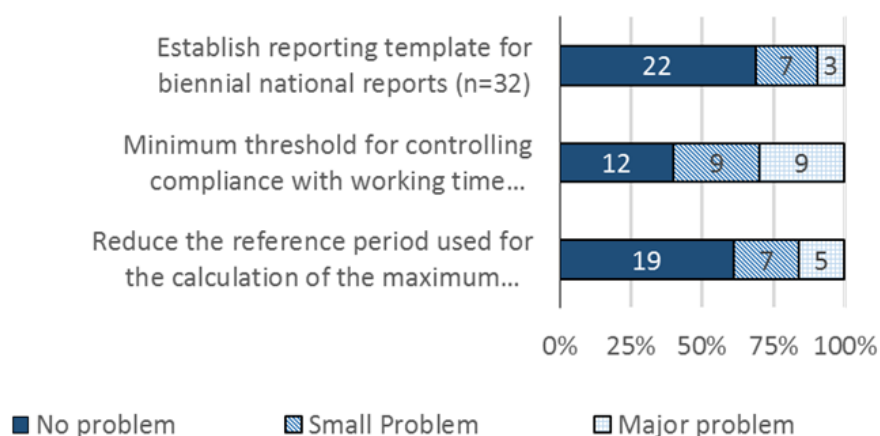
**Figure 5-23: Working time Directive – effectiveness of enforcement**



**7b) Do you foresee any possible problems with the practical enforcement of the suggested measures?**

18<sup>75</sup> out of 30 enforcement authorities see a problem for practical enforcement as regards the minimum threshold for controlling the working time provision. Concerns from were more linked to the fact that working time provisions differ among the Member States. Therefore harmonisation of the contents for the monitoring of the directive can be a difficult task. Concerns in relation to the necessary required resource were also mentioned. Others also raised the concern that the quality may suffer with keeping the minimum threshold. As regards the other measures there were no particular concern. Please see figure 5-23

**Figure 5-24: Working time Directive – practical enforcement problems**



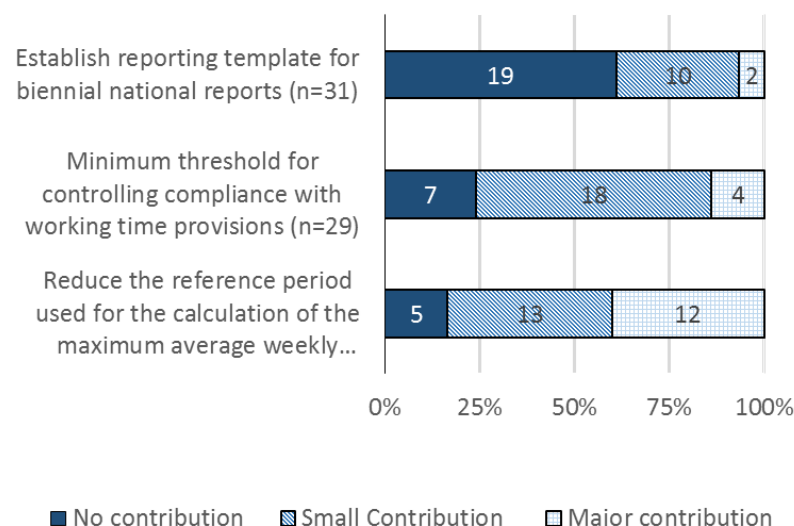
<sup>74</sup> AT, CY, DE, EE, FR, HU, IE, IT, LT, LV, SK, CH

<sup>75</sup> AT, CZ, EE, FI, LT, LU, LV, SE, DE, FI, GR, 2 HU, IE, IT, RO, UK, CH

**7c) Do you expect the measures to improve working conditions of drivers by reducing accumulated fatigue?**

12<sup>76</sup> out of 29 authorities consider that the reduced reference period and the minimum threshold (18 out of 29) would contribute considerably to reduce accumulated fatigue 13<sup>77</sup> would consider it to make a small contribution.

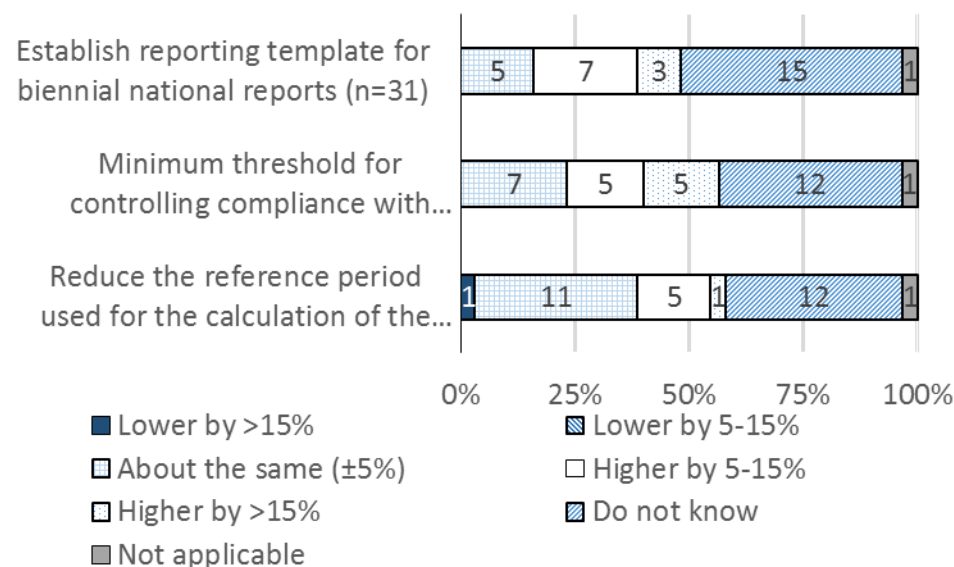
**Figure 5-25: Working time Directive –impact on working conditions of driver's fatigue**



**7d) Do you expect the measures to change enforcement costs compared to the current situation?**

Most of the enforcers did not know whether enforcement costs will change.

**Figure 5-26: Working time Directive - enforcement costs**



<sup>76</sup> AT, CH, DE, EE, FR, GR, HR, HU, IT, PT, RO, SE,

<sup>77</sup> 2 BE, BG, CY, EE, FI, FI, IE, LT, LV, SI, SK, UK,

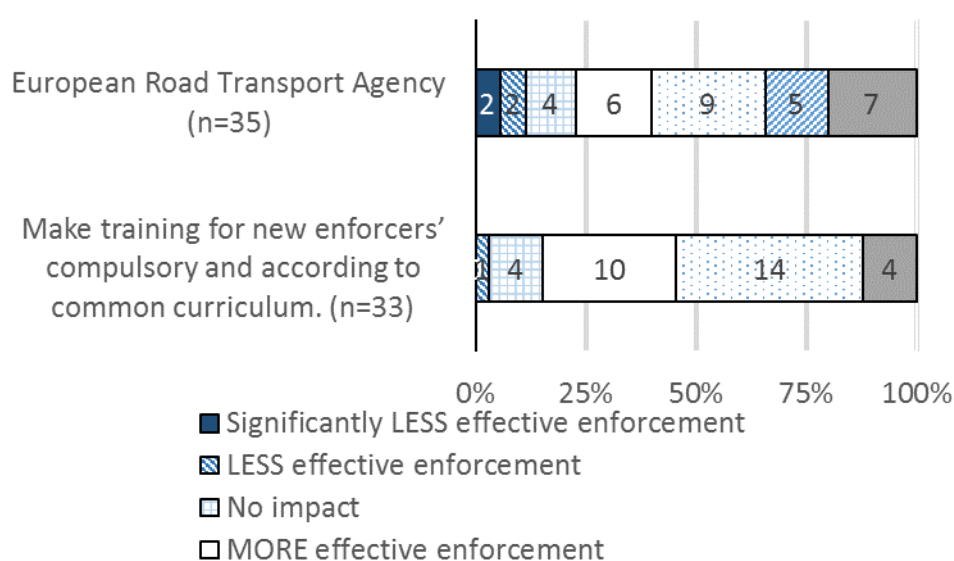
## 8. Make training for new enforcers' compulsory and according to common curriculum and establishing a European Road Transport Agency

### 8 a) Do you expect the proposed measures to impact the effectiveness of enforcement of the Directive?

24<sup>78</sup> out of 33 authorities consider that introducing a compulsory training for enforcers based on a common curriculum more effective. 4<sup>79</sup> consider that it would have no impact.

9<sup>80</sup> out of 35 consider that the creation of a European Road Transport Agency would improve enforcement significantly, 6<sup>81</sup> expect that it would improve it. 5<sup>82</sup> claimed that it was not relevant, whereas 4<sup>83</sup> would expect no impact on the effectiveness of enforcement.

**Figure 5-27: Training for enforcers and European Road Transport Agency – effectiveness of enforcement**



### 8b) Do you expect the measures to change enforcement costs compared to the current situation?

20<sup>84</sup> out of 33 authorities did not know whether enforcement costs compared to the current situation would change if a European Road Transport Agency were established. 8<sup>85</sup> expect an increase in enforcement cost. As regards the training of enforcers common curriculum 14<sup>86</sup> out of 34 authorities did not know whether to expect a change in enforcement costs.

<sup>78</sup> 2 CZ, 2 EE, 2 FI, 2 GR, HR, HU, IE, 2 LV, PT, SI, SK, BE, ES, FR, LT, NL, RO, SE, NO,

<sup>79</sup> CY, DE, LU, CH

<sup>80</sup> EE, FR, GR, HR, LV, LV, PT, SK, BE

<sup>81</sup> CZ, EE, ES, HU, LT, RO

<sup>82</sup> 2 AT, DE, FI, SI,

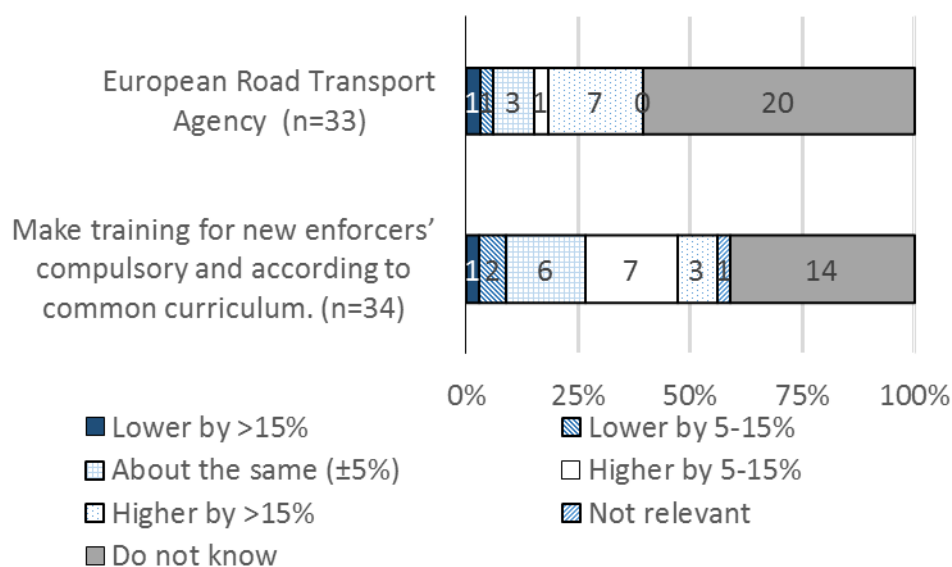
<sup>83</sup> GR, CH, CY, FI,

<sup>84</sup> 2 AT, GR, BG, CY, 2 CZ, EE, FI, FI, HR, IE, IT, LT, 2 LV, SE, SI, SK, UK,

<sup>85</sup> GR, ES, NL, PT, RO, BE, NO, CH

<sup>86</sup> 2 AT, GR, BG, 2 CZ, EE, HR, IE, IT, LU, 2 LV, UK,

**Figure 5-28: Training for enforcers and European Road Transport Agency – enforcement cost**



## 9. Posting of Workers<sup>87</sup>

### 9a) Do you expect the proposed definitions to increase the clarity of the Directive?

11<sup>88</sup> out of 23 authorities expect a positive impact on the clarity of the Directive of having one month as a reference period for the posting of workers. 4<sup>89</sup> expect a negative impact on the clarity. 12<sup>90</sup> out of 18 authorities consider that if the majority of the driver's time has been spent in one Member State it should be considered as one full day. 10<sup>91</sup> out of 23 authorities think that the time spent during the daily and weekly rest period should be accounted for, 5<sup>92</sup> did not know and other 5<sup>93</sup> authorities saw a negative impact. 12<sup>94</sup> out of 24 authorities consider that the driving time, other work and period of availability should be included into the calculation. 11<sup>95</sup> out of 22 authorities consider a calendar month as an appropriate reference period.

<sup>87</sup> Definition of time spent in a Member State - Proposed definitions of day/time spent in MS are:

1. The amount of time (constituting the reference period) spent in a host Member State should include driving times, other work, periods of availability and breaks).
2. Time spent during daily and weekly rest periods should also be accounted for, since during this time the driver is exposed to the cost of living of the host Member State.
3. If a driver has spent the majority of his time during one day in a Member State, this should be accounted as a "full day" for the purpose of application of the PWD
4. A calendar month should constitute the appropriate reference period, as it is the usual time period for establishing a driver's salary.

<sup>88</sup> AT, BE, BG, EE, FI, HR, IT, LU, SK, BG, CZ, NL,

<sup>89</sup> CZ, GR, HU, MT

<sup>90</sup> AT, BE, 2 BG, FI, HR, IT, MT, NL, SK, EE, LU,

<sup>91</sup> AT, BE, 2 BG, EE, FI, HR, IT, LU, NL,

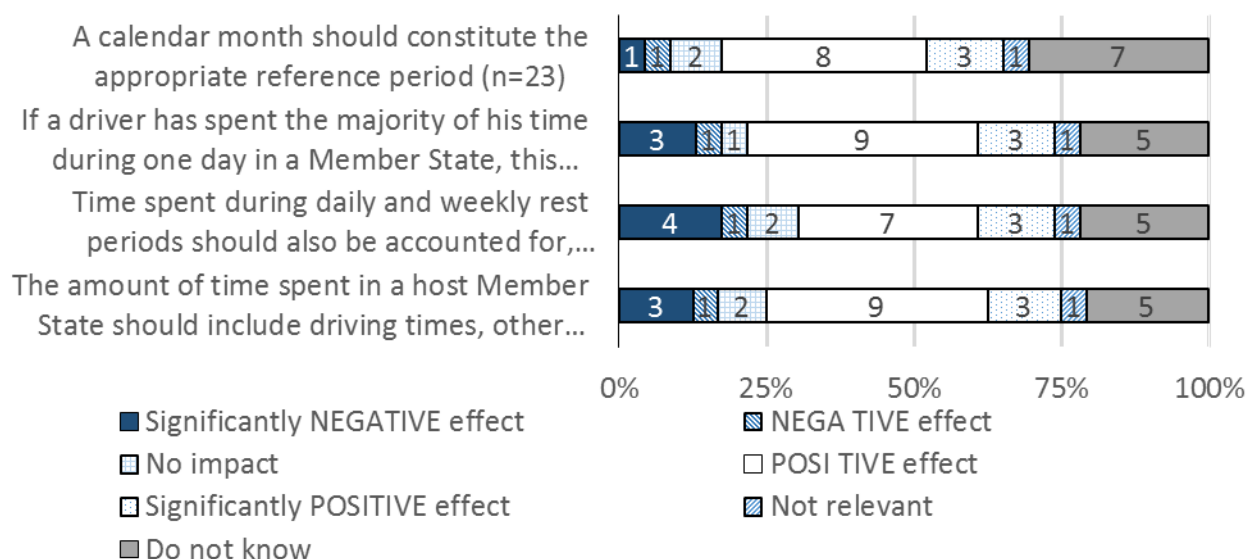
<sup>92</sup> CZ, HU, IE, SE, SI,

<sup>93</sup> CZ, GR, HU, LV, MT

<sup>94</sup> AT, BE, 2 BG, EE, FI, HR, IT, LU, SK, CZ, NL,

<sup>95</sup> AT, BE, 2 BG, EE, HR, IT, LV, MT, LU, NL,

**Figure 5-29: Posting of Workers – clarity of the Directive**



**9b) Do you foresee any possible problems with the practical enforcement of the suggested measures?**

6<sup>96</sup> (out of 16) enforcement authorities do not see any problem that a calendar month should constitute the appropriate reference period, whereas 5<sup>97</sup> see it as major problem and 5<sup>98</sup> others as a smaller problem.

8<sup>99</sup> (out of 18) consider it as major problem for practical enforcement with the proposed measure that if a driver has spent the majority of his time during one day in a Member State, a "full day" for the purpose of application of the PWD should be accounted for.

9<sup>100</sup> (out of 19) of enforcement authorities see it as a major problem enforcement wise and 6<sup>101</sup> expect no problem that the time spent during daily and weekly rest periods should also be accounted for.

7<sup>102</sup> out of (17) consider it a major problem, 6<sup>103</sup> expect no problem and 4<sup>104</sup> see it as a minor problem that the amount of time spent in a host Member State should include driving times, other work, periods of availability and breaks.

Enforcement authorities are quite divided in their opinion on this topic. Some concerns mentioned by the authorities relate to the fact that the PWD should not apply at all to the road transport sector. Others indicate that it should see problems for enforcement that whether the application of posting applies can only be known at the end of a month and not beforehand. Others see the reference period of a month as too short as they consider that an employer should not be present repeatedly in a host Member State's territory.

<sup>96</sup> AT, BE, BE, HR, LU, SK,

<sup>97</sup> CZ, DE, HU, LV, NL,

<sup>98</sup> BG, EE, FI, IT, MT,

<sup>99</sup> 2 BE, CZ, DE, EE, GR, HU, LV,

<sup>100</sup> BE, BE, CZ, DE, GR, HU, IT, LV, MT,

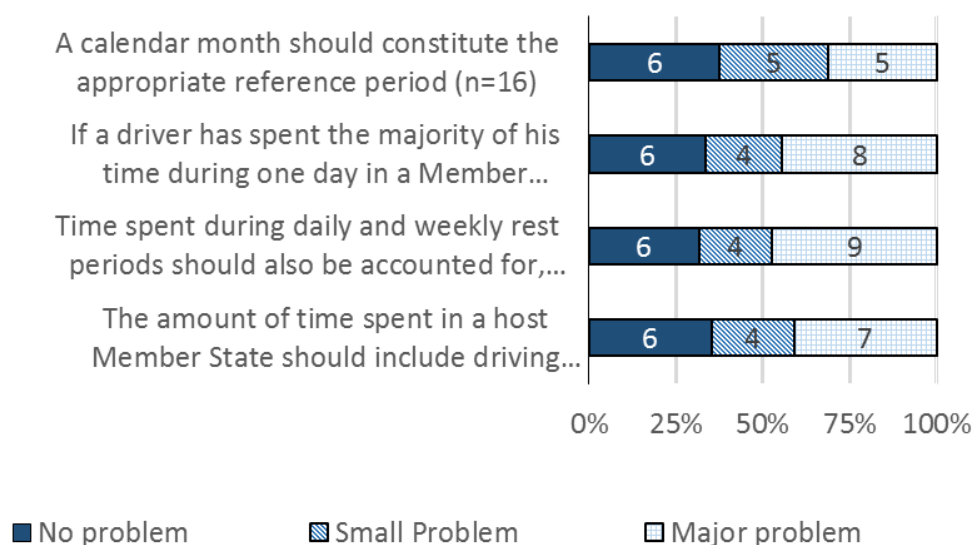
<sup>101</sup> AT, BG, DE, FI, HR, SK,

<sup>102</sup> BE, BE, CZ, DE, GR, HU, MT,

<sup>103</sup> AT, BG, FI, HR, LU, LV,

<sup>104</sup> BG, EE, NL, SK,

**Figure 5-30: Posting of Workers – practical enforcement problems**

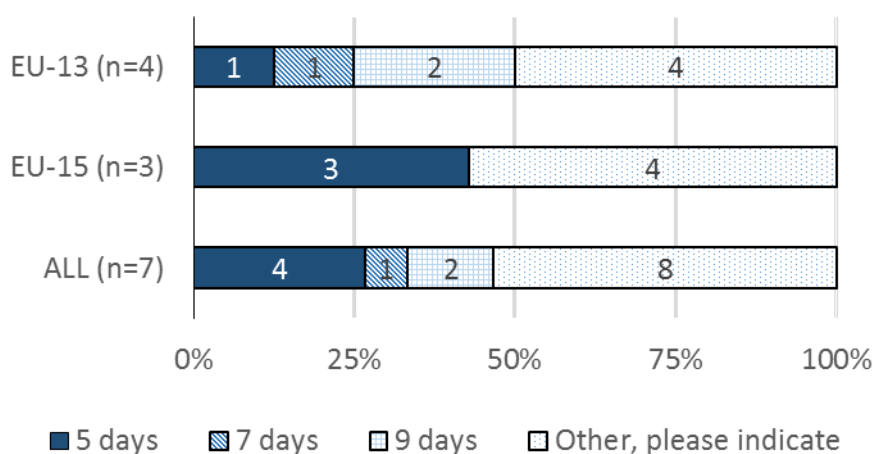


## 10. Posting of workers – Threshold of 5, 7, 9 days per month

### 10a) What is the most appropriate minimum period (5,7 or 9 per month) during which posting of workers rules should apply?

Since only 6 Member States chose one of the three options the results will be given by Member States. 3 Member States (BE, ES, LU) out of 6 were in favour of the 5 days threshold, one MS (BG) is in favour of 7 days, whereas 2 MS (HR and SK) would consider 9 days as appropriate. 3 Member States (AT, BG and FR) are in favour that the Posting of Workers Directive applies from the first hour, whereas 1 MS (IT) suggested a threshold of 3 days. 3 Member States (CZ, SI, HU) consider that the Posting of Workers Directive should not be applied at all. 1 Member States (LV) suggested a higher threshold than 9 days.

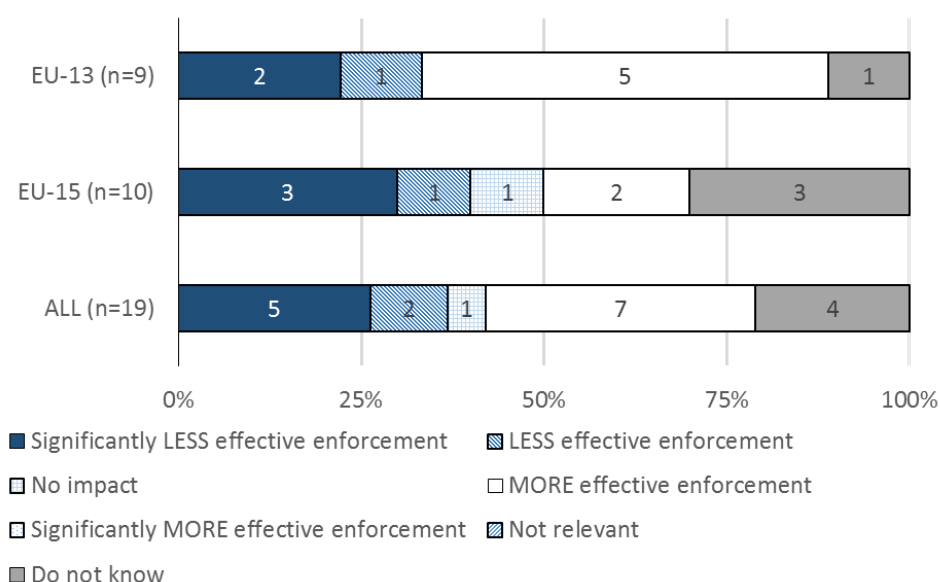
**Figure 5-31: Posting of workers – threshold of 5,7 and 9 days/month**



**10b) Do you expect the proposed measure (application of PWD on the basis of a certain number of days per month) to impact the effectiveness of enforcement of the Directive?**

Enforcement authorities were divided in their opinion, whereas 7<sup>105</sup> out of (19) (representing 7 Member States) expect that enforcement will be less effective, 7<sup>106</sup> (representing 6 Member States) also consider that it would make enforcement more effective.

**Figure 5-32: Posting of workers – effectiveness of enforcement**



**9c) Do you foresee any possible problems with the practical enforcement of the suggested measures?**

11<sup>107</sup> enforcement authorities (out of 15) see a small problem with the reporting of costs and 6<sup>108</sup> see a major problem and another 6<sup>109</sup> a minor problem with the reporting of activities.. However some pointed out that the two concepts were not really clear as it was not explained in the survey what it was referring to.

<sup>105</sup> CZ, DE, FI, FR, HU, BE, LV,

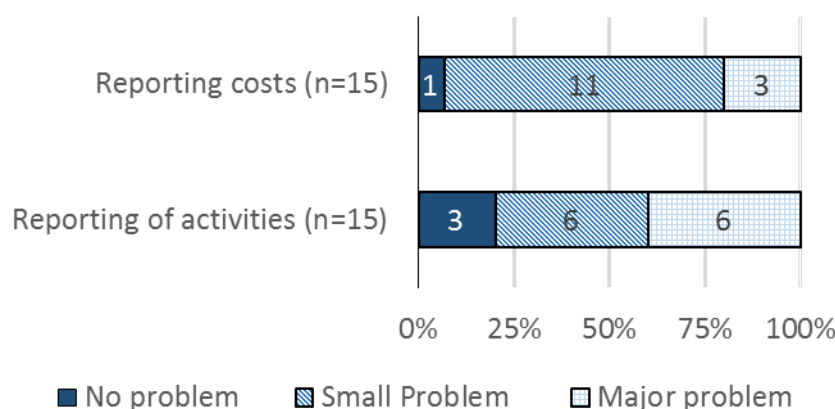
<sup>106</sup> BE, 2 BG, EE, HR, IT, SK,

<sup>107</sup> AT, BE, BG, DE, EE, FI, GR, IT, LU, NL, SK,

<sup>108</sup> CZ, DE, EE, HU, LV, NL,

<sup>109</sup> AT, BE, BG, FI, GR, SK,

**Figure 5-33: Posting of workers – practical enforcement problems**

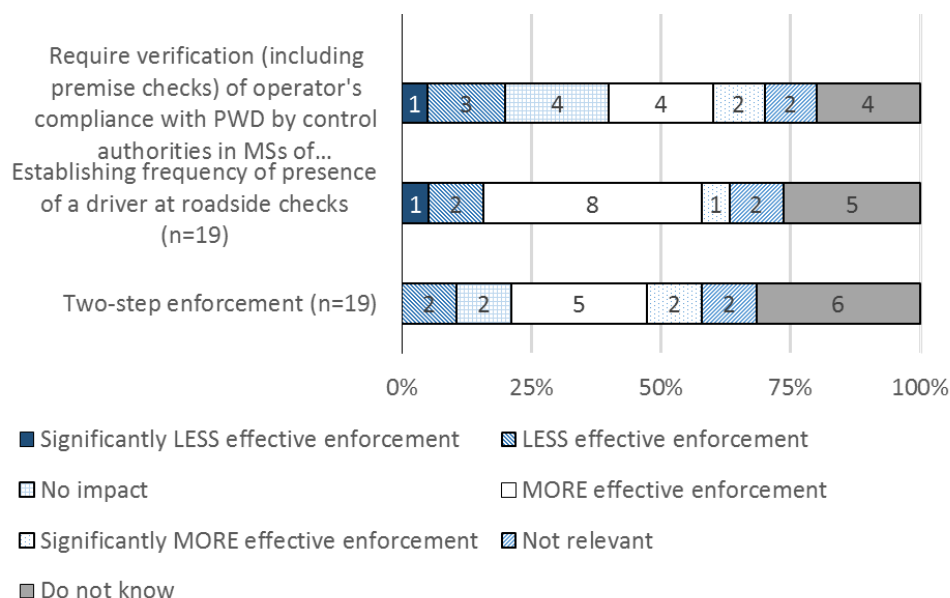


## 11. Enforceability of posting of workers provisions<sup>110</sup>

### 11a) Do you expect the proposed measures to impact the effectiveness of enforcement of the posting provisions?

7<sup>111</sup> out of 19 would see a more effective enforcement establishing a two-step enforcement (roadside and premises). 9<sup>112</sup> out of 19 envisage that establishing frequency of presence of a driver at a roadside check as contributing to more effective enforcement. Different views were more spread as regards whether requiring verification leads to more effectiveness.

**Figure 5-34: Posting of workers – effectiveness**



<sup>110</sup> In order to improve the enforcement of the Posting of Workers Directive for transport, measures on making a better use of existing control and communication tools (e.g. tachograph, risk rating system, ERRU – European Register of Road Transport Undertakings) while minimising relevant administrative burden are being considered. More specifically:

1) Two-step enforcement approach (similar to reg. 561 on driving times), with a roadside check followed by a premises check.  
 2) Obliging drivers to record in the tachograph the country code of the country where they are each time they stop a vehicle and not only at the start and the end of the daily working period.  
 3) Enable premise checks at control authorities in MS of establishment of employers.

<sup>111</sup> 2 BE, BG, HR, IT, SK, FI,

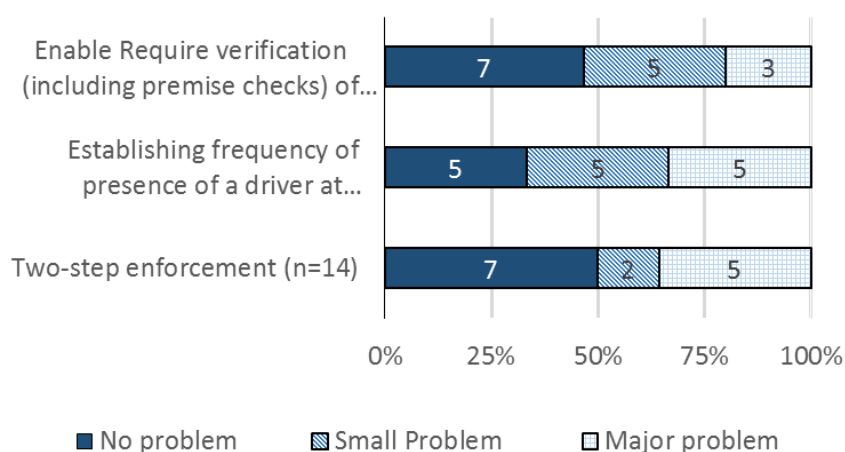
<sup>112</sup> 2 BE, BG, EE, FI, HR, IT, NL, SK,



**11b) Do you foresee any possible problems with the practical enforcement of the suggested measures?**

Enforcers see some problem as regards practical enforcement to require verification of operator's compliance (7<sup>113</sup> out of 15) as regards the verification on operators compliance, whereas there was no clear views on whether the establishing frequency of presence the driver was problematic. 7<sup>114</sup> out of 14 do not expect any problem as regards the two-step enforcement.

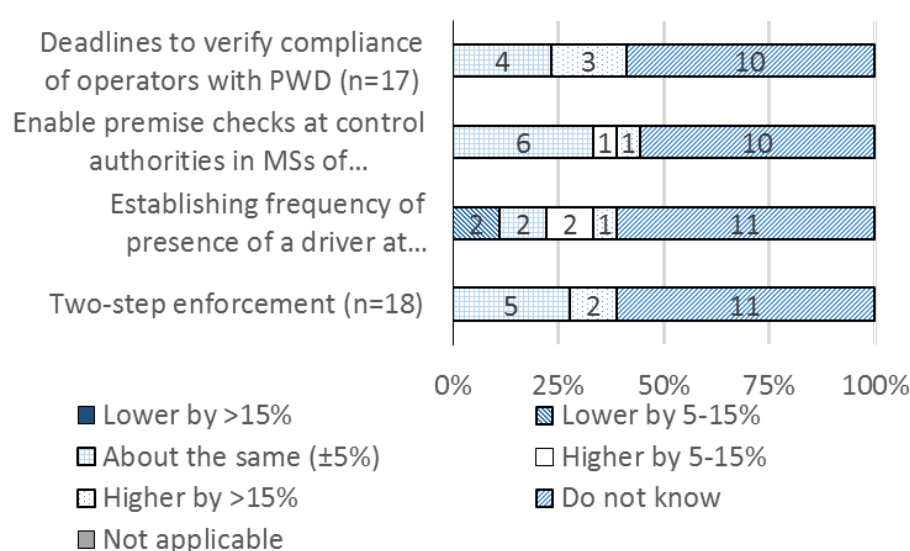
**Figure 5-35: Posting of workers – practical enforcement problems**



**11c) Do you expect the measures to change enforcement costs compared to the current situation ?**

The majority of enforcers did not know whether enforcement costs will change with the proposed measures.

**Figure 5-36: Posting of workers – enforcement costs**



<sup>113</sup> BE, BG, EE, FI, HR, IT, NL, SK,  
<sup>114</sup>

## 2.3 DRIVERS SURVEY

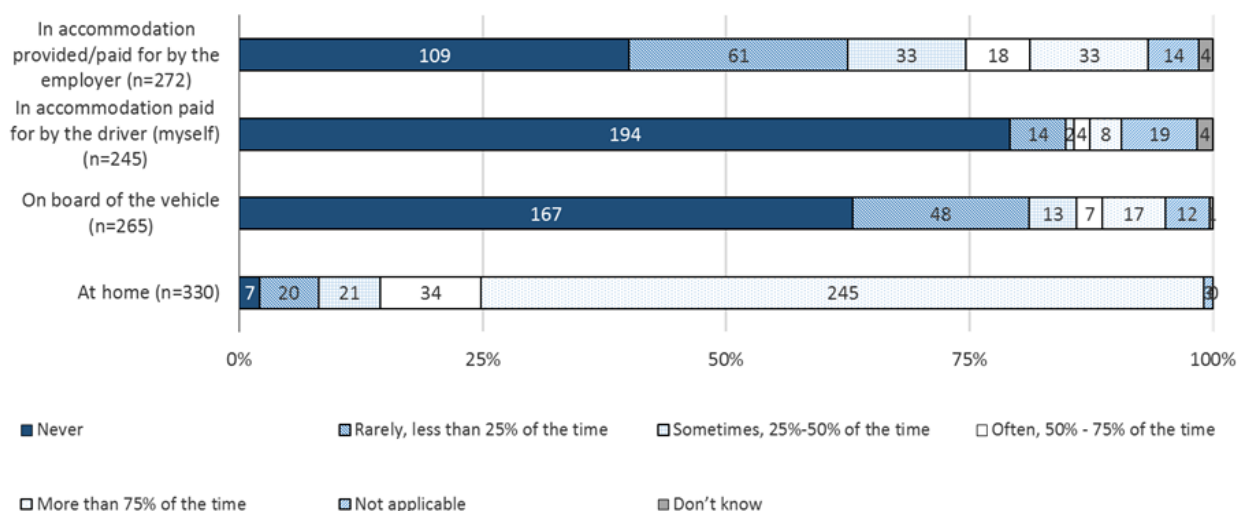
Drivers responded the following in the survey which was grouped by theme. The nationality of drivers participating in the survey is not well distributed as 40% of them were Dutch and 36% were British.

### 1. Regular weekly rest

#### 1a) Most often, where do you take your regular weekly rest?

245 drivers (out of 330) responded that they spent their 50-75 % of their regular weekly rest at home. 194 drivers (out of 245) indicated that they spent it in accommodation paid by them whereas 167 (out of 265 drivers) responded that they take it on board of the vehicle.

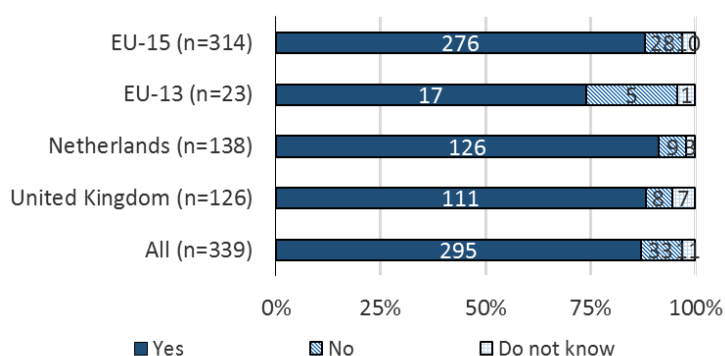
**Figure 6-1: place of regular weekly rest**



#### 1b) Do you think that employers should be obliged to provide (or pay for) adequate accommodation when drivers cannot take their regular weekly rest at home or at another private place of rest?

The majority of drivers (295 out of 339) participating in the survey consider that employers should be obliged to pay/provide for adequate accommodation (see figure 6-1)..

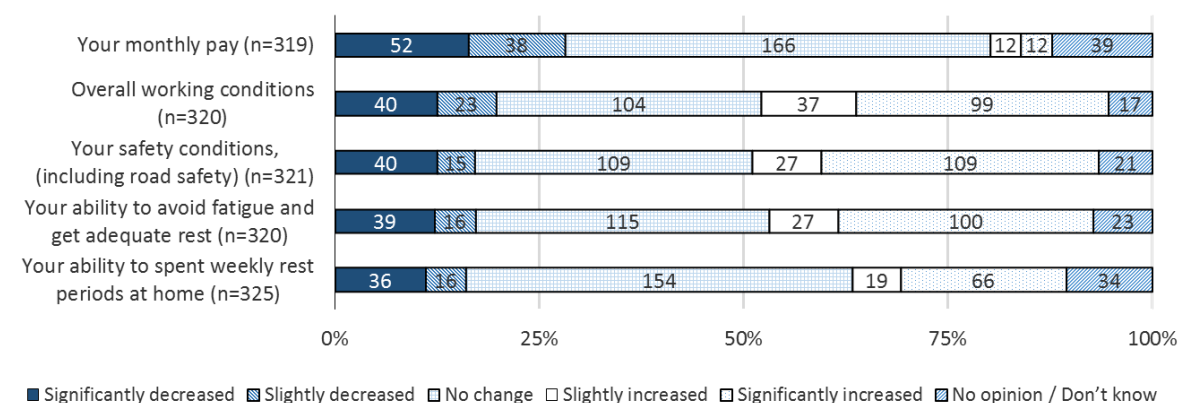
**Figure 6-1: regular weekly rest – adequate accommodation to be provided by employer?**



**1c) How do you expect to be affected in the case that new rules forbid spending weekly rest in the vehicle and the employer is required to provide (or pay for) adequate accommodation?**

166 drivers (out of 319) expect no change in their monthly pay. Looking at EU-13, 10 out of 23 drivers expect a decrease in pay, whereas 9 expect no change. 136 (out of 320) expect a slight to significant increase in their overall working conditions. Whereas 104 expect no change in the overall working conditions.

**Figure 6-2: impact of regular weekly rest provision**

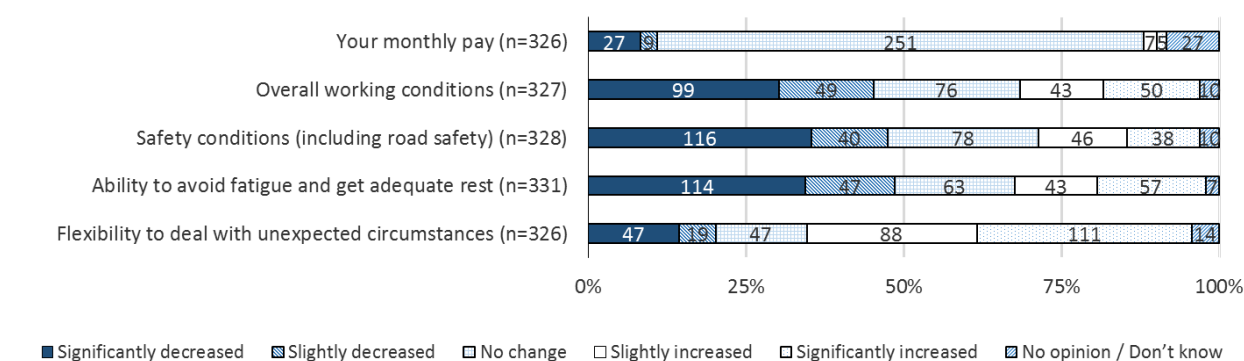


## 2. Adaptation of breaks (to be able to split a break into at least 15 minutes each)

**What do you expect to be the impact of the proposed change to the following?**

148 drivers (out of 326) considered that the proposed measure would lead to a decrease in overall working conditions. 156 (out of 328) believed that it would impact on safety conditions, including road safety. 161 (out of 331) believed that it would decrease their ability to avoid fatigue and getting adequate rest. At the same time, 199 (out of 326) drivers recognised that the measure would give them the flexibility to deal with unexpected circumstances.

**Figure 6-3: adaptations of breaks - impact**

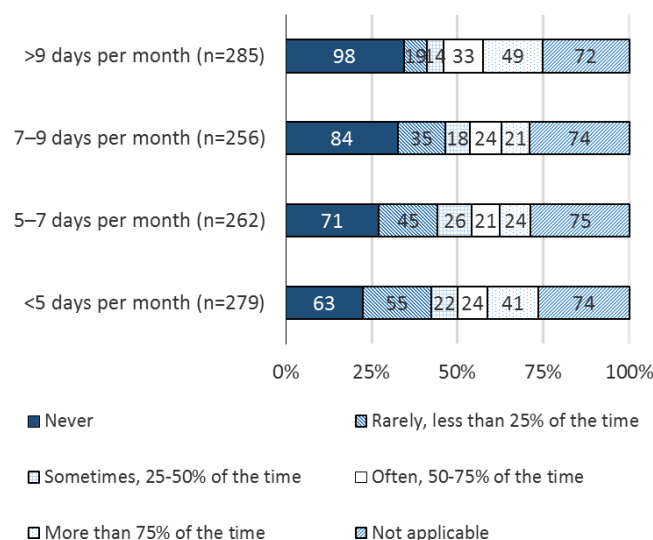


### 3. Posting of Working Directive

#### 3a) What is the typical amount of time (days per month) that you spend in a country other than your home country when you are engaged in international transport operations?

65 out of 279 drivers responded that they often (at least 50% of the time) are spending 5 days per month abroad. 45 out of 262 drivers indicated that they spend 5-7 days/month, whereas 84 (out of 256) are never spending 7-9 days/month abroad.

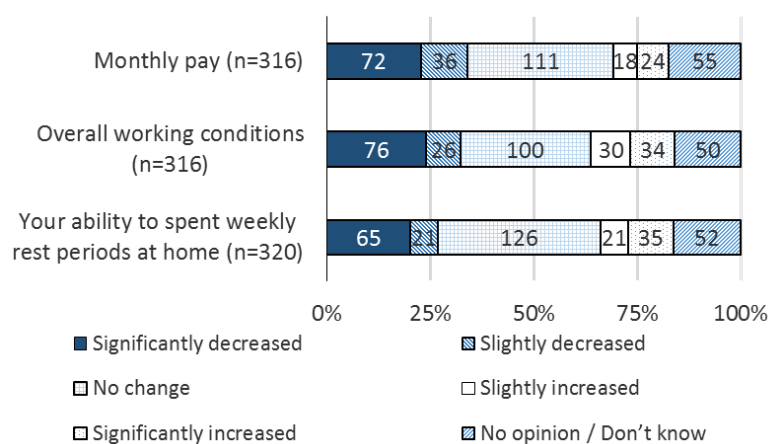
**Figure 6-3: Posting of workers Directive – usual period away from home**



#### 3b) How do you expect the introduction of such rules on payments (minimum salary of host Member State when threshold for posting is reached) will affect the following aspects?

111 drivers (out of 316) expect that there will be no changes in their monthly pay. Whereas 108 believe that their monthly pay would decrease. Looking at EU-13 Member States, 13 out of 23 drivers expect an increase in pay. 100 out of 316 drivers expect no change, whereas 98 expect that overall conditions would slightly decrease. 126 out of 320 expect no change as regards their ability to spend their weekly rest at home.

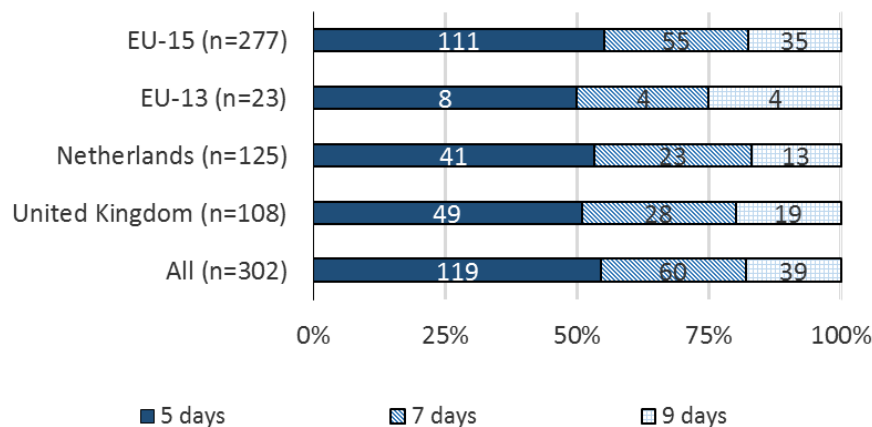
**Figure 6-4: Posting of Workers Directive – impact of minimum salary of host Member States**



**3c) What do you consider as the most appropriate period which, when exceeded, posting of workers rules should apply? (i.e. employers will be obliged to pay drivers according to the rules of the Member State of work (and not of the Member State of establishment of the employer))**

The majority of drivers were in favour that posting should apply when the threshold of 5 days/month is reached.

**Figure 6-5: Posting of Workers Directive – Time threshold**

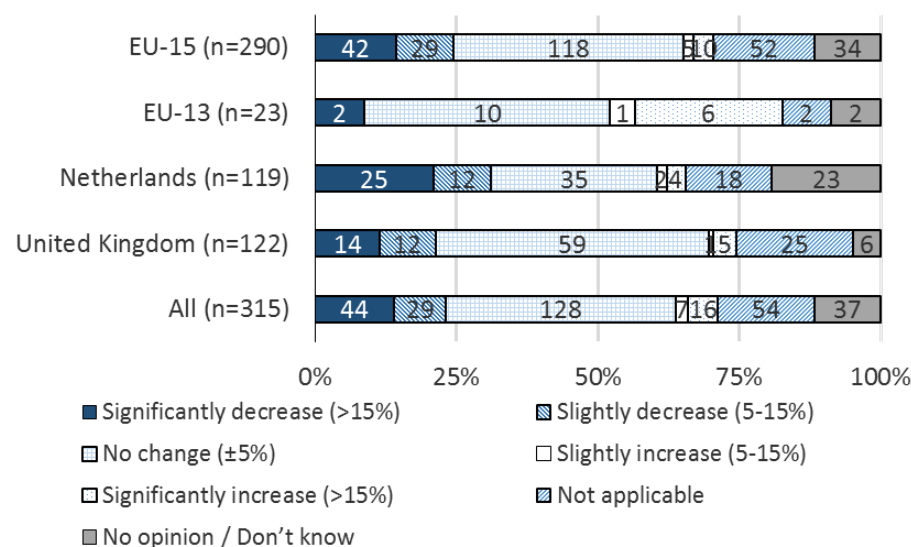


#### 4. Performance-based pay

**How do you expect the introduction of a ban on performance based payments will affect your monthly pay?**

128 out of 315 drivers responded that they expect that no changes would occur.

**Figure 6-6: Performance-based pay**

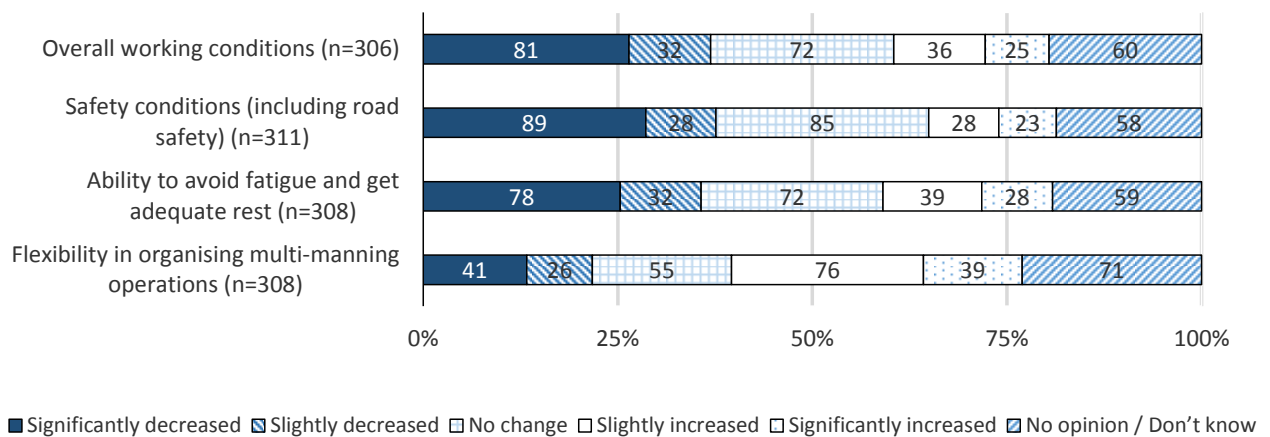


## 5. Multimanning (to allow the presence of only one driver for the first two hours or the last one hour of the journey)

*What do you expect to be the impact of the proposed change to the following?*

81 (out of 306) responded that they expect a significant decrease in their overall working conditions. Whereas 89 (out of 311) would expect a significant decrease of safety conditions, and 85 do not expect any change. 78 (out of 308) expect a decrease to avoid fatigue whereas 115 (out of 308) expect an increase in flexibility.

**Figure 6-7: Impact of Multimanning**



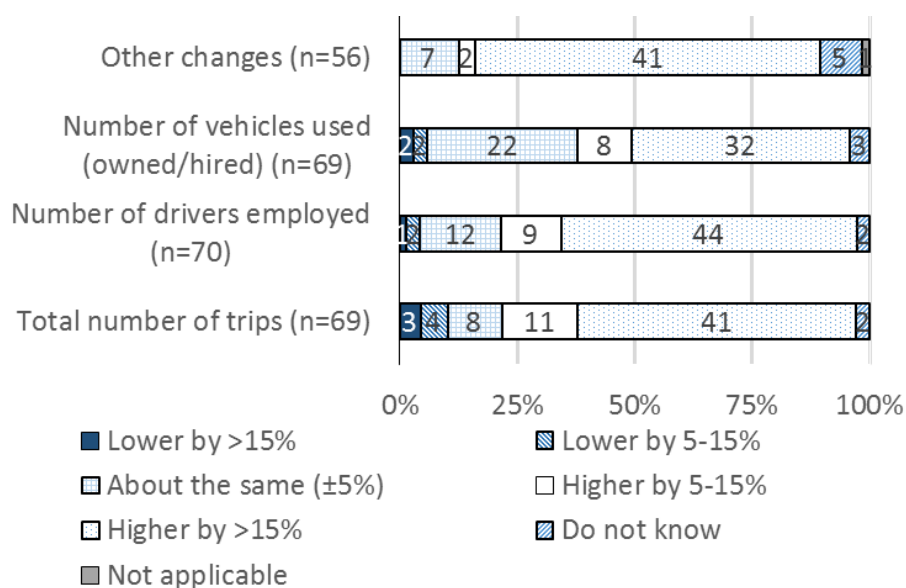
## 2.5 DIRECT INFORMATION REQUEST (HAULIER'S SURVEY)

### 1. Calculation of weekly rest

**1a) What changes do you expect to make in order to maintain the same level of turnover if the proposed changes are adopted?**

32 haulier operators (out of 69) responded that they would use 15% more vehicles, whereas 44 (out of 70) indicated that they will employ more than 15% drivers. 41 (out of 69) consider to increase the total number of trip by more than 15%.

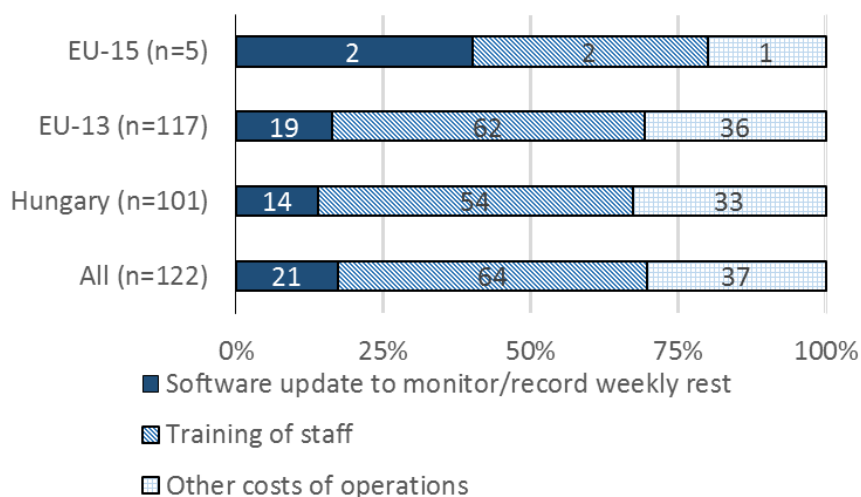
**Figure 7-1: Weekly rest**



**1b) Do you expect any other costs to adapt to the proposed measures?**

The majority (64 out of 122) expect that costs for training staff will be increased following the proposed measure.

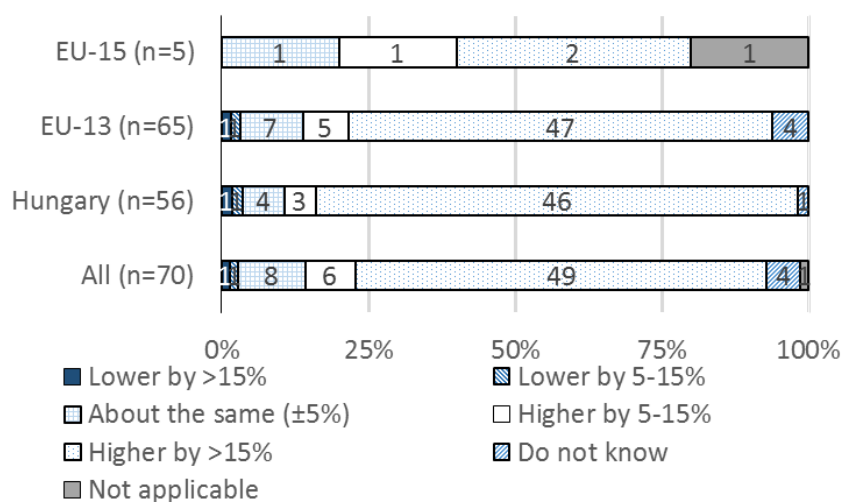
**Figure 7-2: Weekly rest – other costs to adapt**



**1c) What will be the impact on annual operating costs for your organisation as a result of the proposed measures (compared to current costs)?**

49 (out of 70) hauliers indicated that the annual operating costs would increase by more than 15%.

**Figure 7-3: weekly rest – impact on annual operating costs**

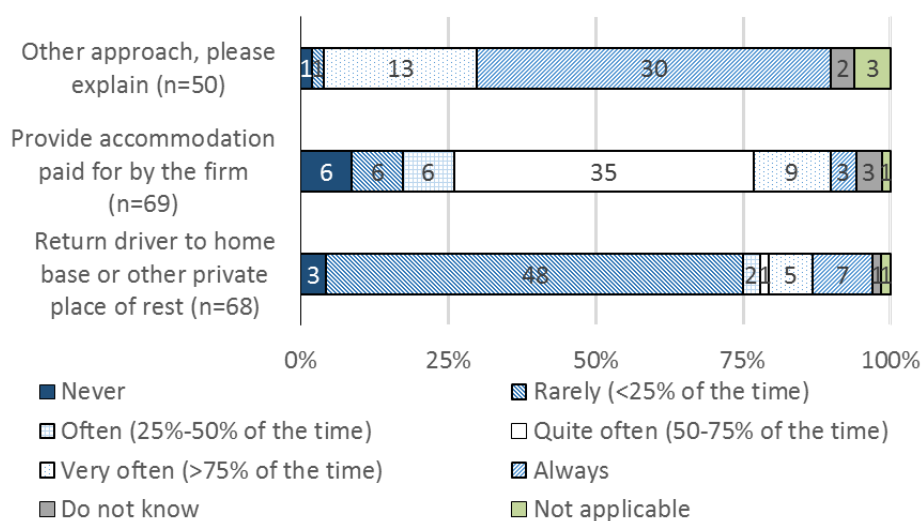


## 2. Weekly rest in the vehicle

**2a) In the case that spending the regular weekly rest periods of more than 45 h in the vehicle is forbidden, which resting places do you expect to give preference to?**

48 out of 68 hauliers responded that they would prefer that the driver return to the home base. 35 out of 69 indicated a preference for accommodation provided by the company. 30 out of 50 would choose other approaches.

**Figure 7-4: weekly rest in the vehicle – preferred place of private rest**

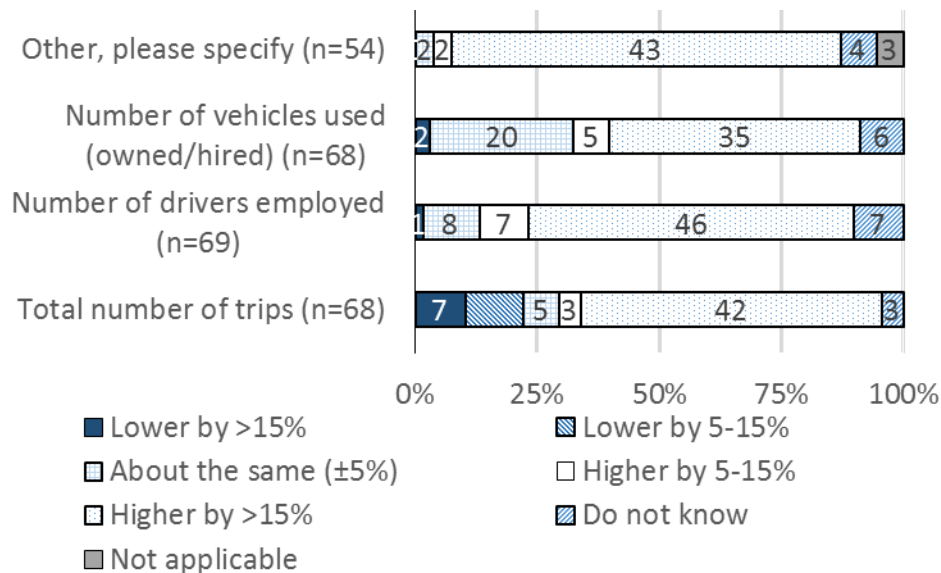




## 2b) Would the proposed measure have an impact on any of the parameters indicated below?

46 out of 69 haulier indicated that the measure would have an impact on the numbers of drivers employed, secondly on the total number of trips (42 out of 68 hauliers) and lastly on the number of vehicles used (35 out of 69 hauliers).

**Figure 7-5: weekly rest in the vehicle - impact**

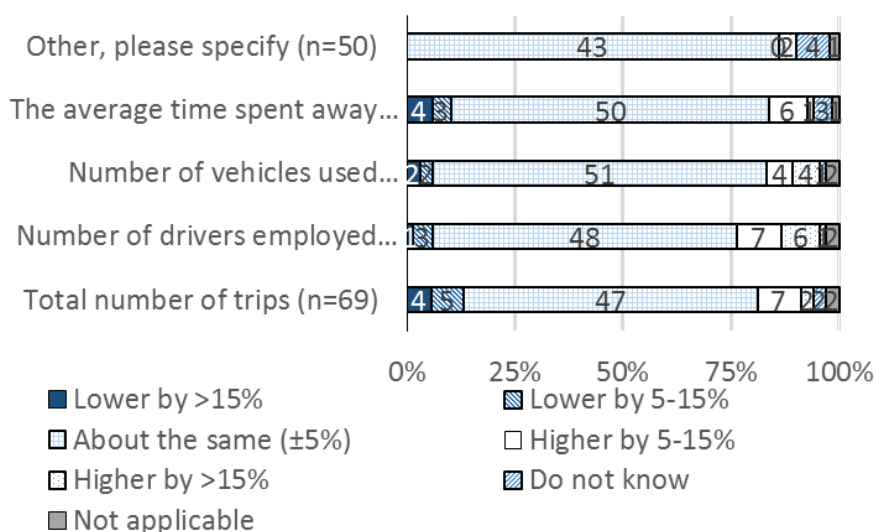


## 3. Posting of Workers

### What changes do you expect to make in order to maintain the same level of turnover if the proposed changes are adopted?

Most hauliers indicated that no changes would be made to maintain the same level of turnover.

**Figure 7-6: Posting of Workers**

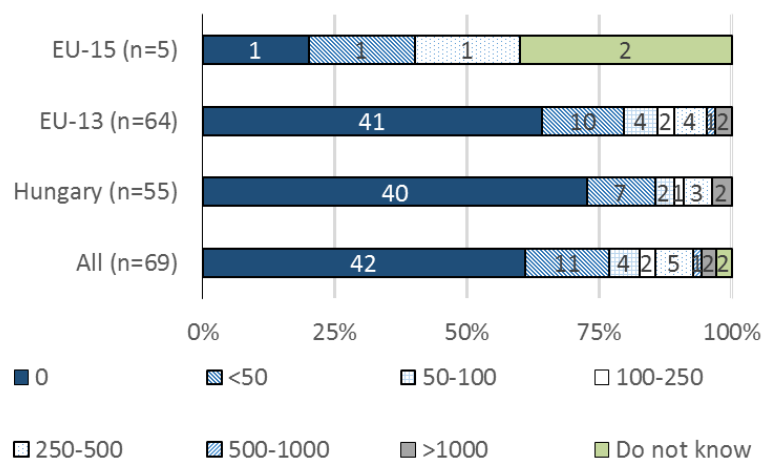


## 4. Attestation form

### 4a) Approximately, how many attestation forms do you submit per year?

The majority of hauliers (42 out of 69) indicated that they submit no attestation of forms. 11 out of 69 responded that they submit less than 50 per year.

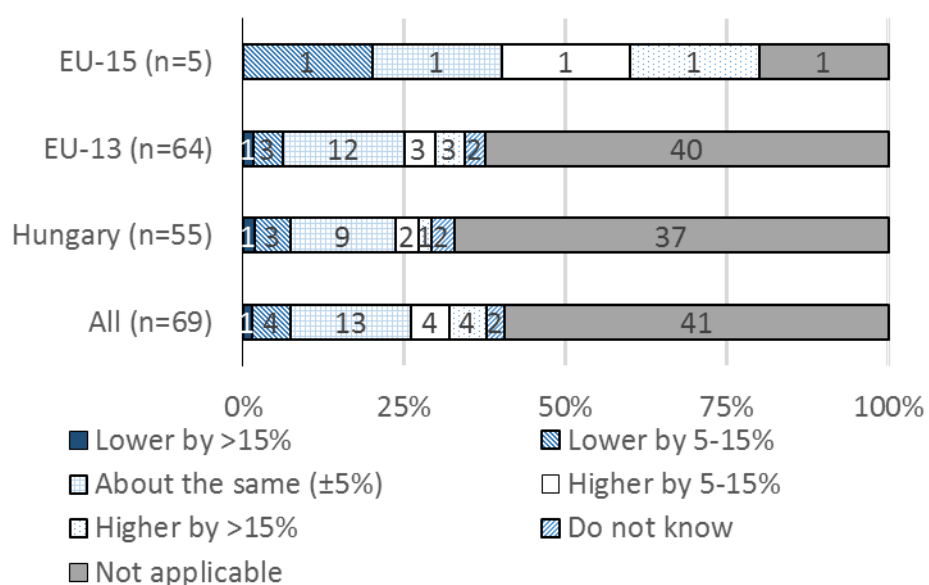
**Figure 7-7: Attestation form**



### 4b) What do you expect to be the impact of the proposed measure on the annual operating costs for your organisation (in relation to the current costs)?

Most hauliers (41 out of 69) do not see any relevance of the attestation form with the annual operating costs.

**Figure 7-8: Attestation form – impact on annual operating costs**

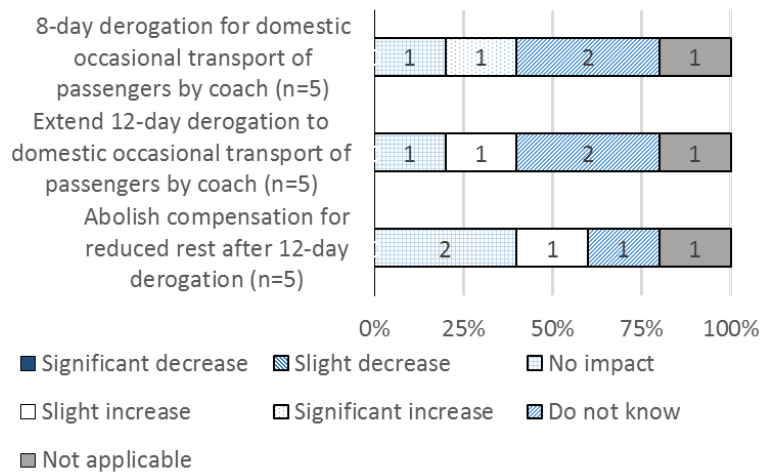


## 5. Derogation for coaches

### 5 a) How do you expect the proposed change to contribute to the flexibility in planning work for passenger passport drivers?

There was no clear answer to this question as only 5 answers were received.

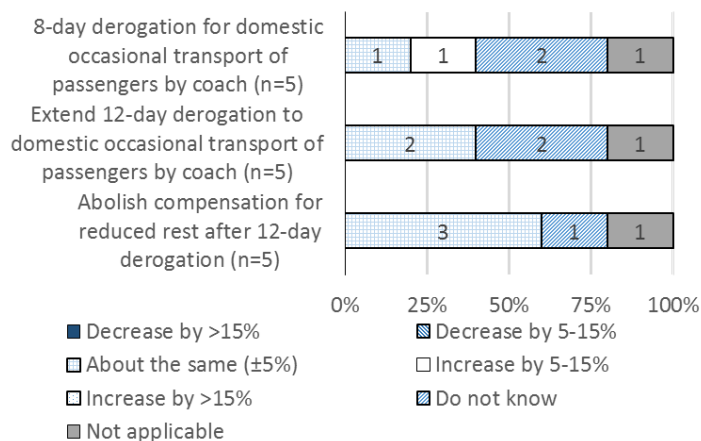
**Figure 7-9: derogation for coaches - flexibility**



### 5b) What will be the impact on annual operating costs for your organisation (compared to current costs) from the proposed derogations?

Only 5 hauliers responded to this survey and no clear answer could be found on this question.

**Figure 7-10: derogation for coaches – impact on annual operating costs**



## ANNEX 3

### WHO IS AFFECTED BY THE INITIATIVE AND HOW?

#### **Stakeholders affected in case of adoption of the preferred option**

The preferred policy package 2 intends to clarify the legal framework and strengthens enforcement as well as changes the obligation. The horizontal policy package 4b, addresses issues linked to the application of PWD.

**Table 8-1**

Type of stakeholder	Practical implications of the preferred policy option
<b>Drivers</b>	<p><u>Working conditions :</u></p> <p>The prohibition of the weekly rest in the vehicle, the requirement of the employer to provide for adequate accommodation and the new system of calculation of the weekly rest would improve drivers' working conditions by decreasing accumulated fatigue, by ensuring adequate resting facilities during their regular weekly rest and by reducing their long periods away from home (the latter should impact more drivers from Member States with low wages who tend to have longer periods away from home). This should have positive effects on their health and safety.</p> <p><u>Equal treatment</u></p> <p>Drivers will be treated equally throughout the EU as rules will be clarified. More effective enforcement will also ensure a more level playing field.</p> <p>Drivers from Member States with high wages would face less downward pressure.</p> <p>Drivers from Member States with lower wages would get the relevant minimum wage of the Host Member States extended to the whole EU after the specific time threshold has been passed.</p> <p><u>Administrative burden</u></p> <p>The lighter administrative requirements in relation to the PWD would also reduce stress and administrative burden for the drivers.</p>
<b>Transport operators</b>	<p><u>Planning of transport operations</u></p> <p>Slight increase of costs can be expected from side of the operators as they need to ensure the provision of adequate accommodation to their drivers. However, this can be possibly offset by more effective planning of long distance transport operations. Operators would gain more flexibility from the adaptation of the break, on the one hand, but would lose some flexibility due to the reduction of the reference period of the average working time of their</p>

	<p>employees on the other hand.</p> <p><u>Equal treatment</u></p> <p>More effective enforcement will also ensure a more level playing field.</p> <p><u>Administrative burden</u></p> <p>The measures in relation to the Posting of Workers Directive would allow operators to avoid burdensome pre-notification and the full administrative requirements which would lead to significant cost savings. Less diverging national enforcement will also reduce unnecessary administrative burden and costs.</p>
<b>National authorities</b>	<p>National administrations would operate on clearly established cooperation conditions, would gain a better overview of genuine posting situations and would benefit from regular exchange of information on compliance of operators with the minimum wage legislation and other applicable road transport rules.</p> <p>Enforcement authorities would improve the effectiveness of enforcement due to the access to the risk rating system and the introduction of the time to respond between national administrations.</p>
<b>Others road users</b>	<p><u>Road safety</u></p> <p>The increase of compliance level of the social rules and the reduction of fatigue level of drivers would contribute to improve road safety in general.</p>

## **ANNEX 4:**

### **ANALYTICAL MODEL USED OR CONSIDERED IN PREPARING THE IMPACT ASSESSMENT**

#### **1. Levels of compliance**

##### **Analysis of monitoring data**

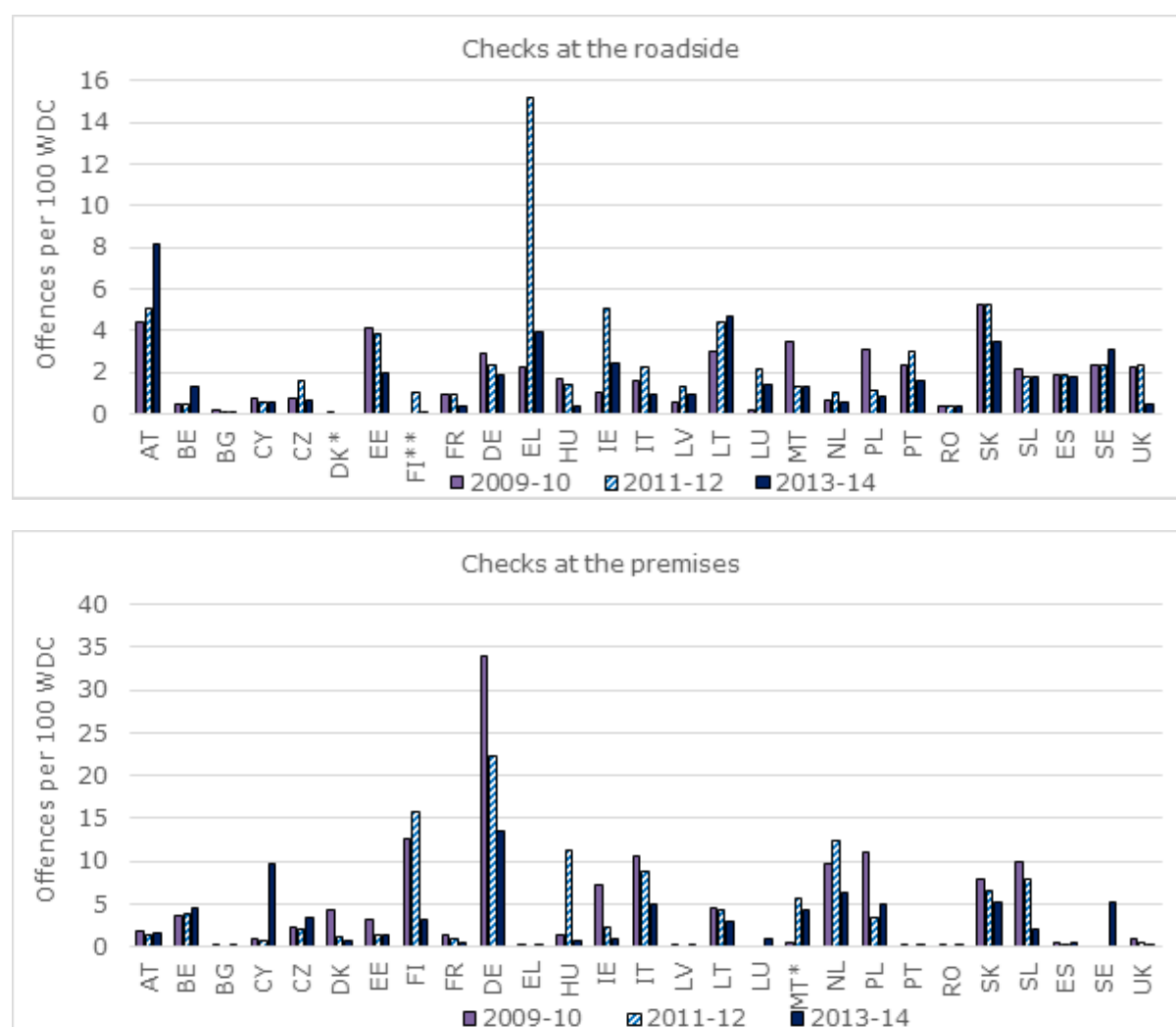
In an effort to quantitatively define what the baseline development of levels of compliance would be, the newly available reporting data from the latest 2013/14 period were analysed. As for the support study to the Ex-post Evaluation, the reported infringement detection rates are used as a proxy to understand the trends in compliance since they represent the best-available indicator. However, there are some important limitations – especially in the context of the social legislation – such as differences in enforcement practices.

Each type of check (roadside and premises) is a distinctly different enforcement activity - checks at the roadside involve a single vehicle at a time, whilst checks at the premises will typically encompass multiple vehicles in a transport operator's fleet. To account for this the analysis of infringement rates is structured separately.

##### **Trends in infringements rates**

The absolute infringement rate for checks across each Member State varies significantly, as illustrated in figure 9.1. The main things to note are the large discrepancies in the infringement rates seen. For example, Austria, Estonia, Greece, Latvia and Slovakia have relatively high infringement rates in at least two of the three reporting periods for checks at the roadside – of around 4 offences per 100 working days checked or more - whilst Bulgaria, Denmark, Finland, France and Romania all demonstrated generally very low infringement rates (at less than 1). Checks at the premises have a far greater range compared to roadside checks – up to 34 offences per 100 working days checked in Germany in 2009/10. Bulgaria, Greece, Latvia, Portugal and Romania and Spain have very low infringement rates of less than 1 across all three periods.

**Figure 9-1: Infringement rates per 100 working days checked (WDC)**



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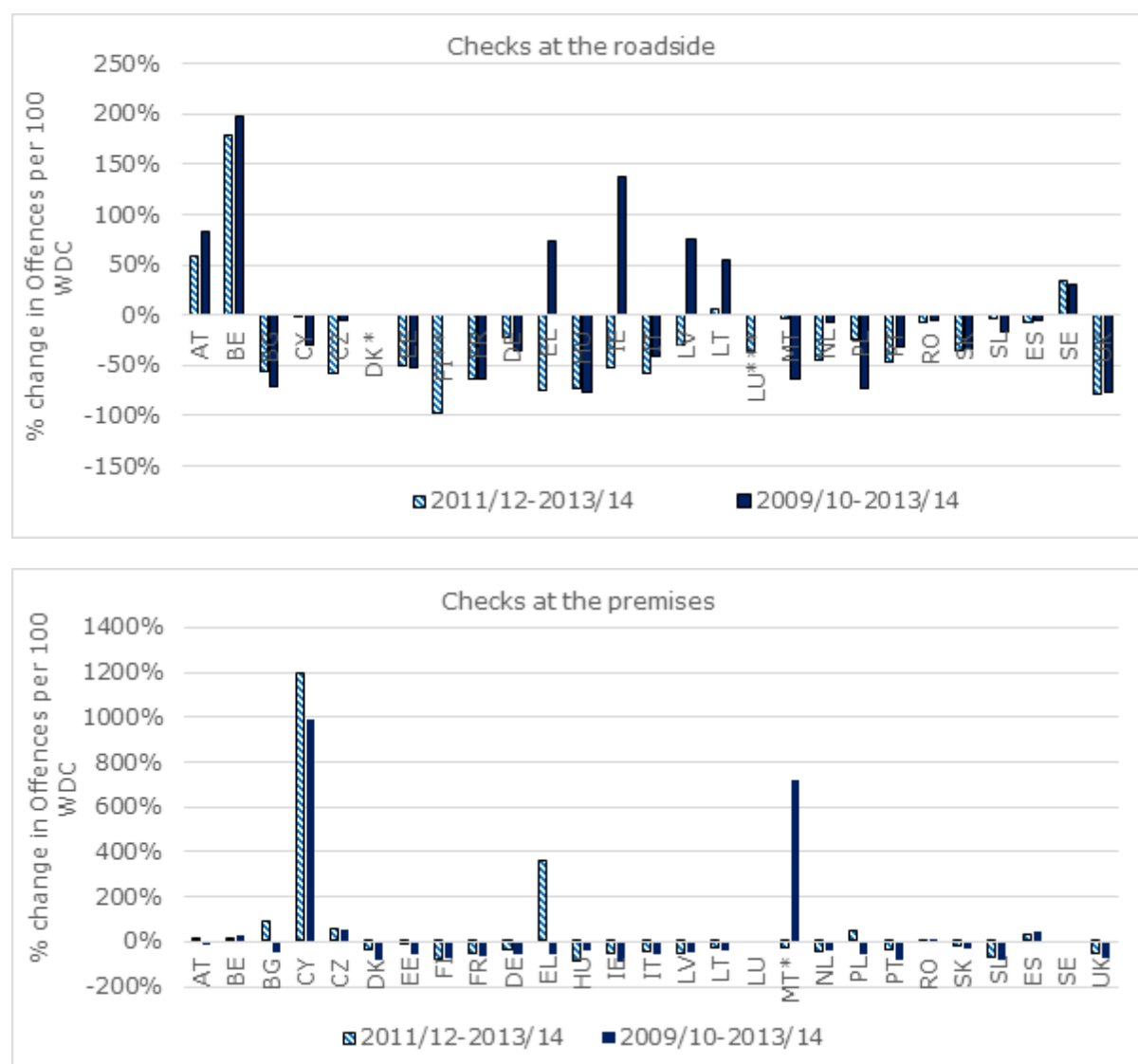
Notes:

\*No data available for 2013/14 period

\*\*No Data available for 2009/10 period

Trends over time are often not consistent and show very large fluctuations, pointing to possible reporting issues. Figure 9.2 shows the percentage change between infringement rates between the latest reporting period (2013/14) and the previous two reporting periods. Large fluctuations of more than 50% are seen in 11 out of 27 Member States between 2011/12 and 2013/14 for roadside checks. The longer term view - percentage change between 2009/10 and 2013/14 shows similar issues, where 13 countries have a change greater than 50%. For checks at the premises, again there is even higher variation - with 11 countries exceeding a 50% change and extreme changes observed in CY (1190%). The longer-term trend between 2009/10 to 2013/14 also indicates considerable variability, 16 countries have infringement rates that vary greater than 50%, whilst Malta increased by 717%.

**Figure 9-2: Percentage change between 2013/14 reporting period vs 2009/10 and 2011/12 – checks at the roadside**



## Regression analysis

The variability in the data, discussed above, suggests that the quality of the time series data is insufficient to develop any robust statistical relationships for the baseline. As such, we did not consider it appropriate to attempt to use the historical data on year-by-year changes to inform the analysis.

Instead, a cross section of the 2013/14 data was tried – hypothesising that the reporting quality may have improved over time, and hence the latest reporting data could be the best / most accurate representation of the true situation. This could be the case due to improvements in the reporting template, consistency checks carried out internally / by the EC, as well as general experience gained after several years of meeting the reporting requirements. As such,



we decided to apply some cross-sectional analysis to see if there were any steady-state trends that could be discerned from the 2013/14 data.

A wide range of variables were tested for the 2013/14 cross section for checks including:

- Infringement rates – separately for checks at roadside and at the premises;
- % of the minimum threshold for checks that was met – separately for checks at roadside and at the premises (as an indicator of the “intensity” of enforcement in each country - the higher this ratio, the higher the enforcement effort of the country);
- Dummy variables to indicate whether a country is EU-15 or EU-13;
- Total haulier operating costs;
- Driver salary;
- % of driver salary that is variable payment;
- Maximum fines for infringement of the social legislation, in Euros and PPP adjusted;
- Maximum fines for infringement of the social legislation, as a % of haulier costs;
- Number / share of enforcers equipped with digital tachograph-reading equipment.

Simple and multiple-regressions was employed to establish whether there were any relationships between the variables tested. Both linear and logarithmic models to determine whether there were unit- or percentage-type relationships between any of the variables were tested. However, it seems that the vast majority of the models lacked significance, even at the 10% level. For those models that did return some level of significance, it was typically weak (i.e. max 10%, and only for some parameters), and the lack of results using other tests suggests that the model was unlikely to be robust.

Even where relationships intuitively make a great deal of sense – both logically and backed up in economic literature – we could not detect any statistical relationship. For example, there should theoretically be a link between detected infringement rates and enforcement intensity, but the models returned only weak relationships, as shown by the illustrative results of Model 1 below. This shows that the coefficient of the relationship between the (log) infringement rates and (log) of the enforcement effort is not even significant at the 10% level, which is the minimum we would accept to use the model further.

**Model 1: OLS, using observations 1-27 (n = 26)****Dependent variable: LOG\_INFRINGEMENT\_RATE\_ROAD**

	Coefficient	std. error	t-ratio	p-value
const	0.463901	0.385237	1.204	0.2403
LOG (% Quota of roadside checks met)	-0.428997	0.278542	-1.540	0.1366

Mean dependent var -0.008174 S.D. dependent var 1.222136

Sum squared resid 33.98178 S.E. of regression 1.189919

R-squared 0.089946 Adjusted R-squared 0.052027

Multiple regressions can sometimes tease out more complicated relationships between variables, by controlling for the influence of several factors on the dependent variable. However, this approach did not return any usable results either, despite systematic checking of combinations of variables and linear/log models.

The lack of statistical results is very likely due to the large noise in the reporting data (due to reporting inconsistencies) that obscures any true relationships that might exist. In order to test this assumption, the infringement rate averaged across the two latest reporting periods were also tested– with the aim of dampening any variation over time. However, this still did not lead to any robust relationships to include within the baseline.

As explained above, significant effort into trying to come up with a quantitative approach was made to understand developments in infringement rates in the baseline. However, no relationships between the data that could be exploited for this purpose was found. As such, we propose to revert to a qualitative description of the expected trends in compliance, which will need to be fairly high level in the absence of concrete data.

The analysis of trends in compliance will draw from the assumed evolution of the drivers/problems described above, i.e.:

- Unintentional infringements:
  - Will decrease over time, as drivers/operators become more used to the rules and IT software solutions to ensure driver compliance penetrate the fleet more.
  - However, they will not be completely eliminated due to persisting problems of different interpretations/enforcement of the rules (Root cause A, B; Driver D, E)
- Intentional infringements will be affected by the following factors:
  - Gradual improvements over time due to:

- Continued sharing of best practices in cross-border concerted checks and via voluntary membership in organisations such as ECR and slight improvements in connection via ERRU/TACHONET (Driver F).
- Release Uptake of TRACE and CLOSER training curriculum.
- Increasing penetration of digital tachographs into the fleet (external variable).
- However, there will continue to be a level of intentional non-compliance, due to :
  - Continued insufficient administrative cooperation in cross-border enforcement specific to social rules (Root cause C).
  - Continued inconsistent enforcement of current rules (Driver F).
  - Continued problems of unfit rules for the sector (Root cause B).

## 2. Methodology

### **Level of drivers' stress and fatigue – baseline**

The main factor contributing directly to drivers' fatigue levels are working patterns. To calculate the extent of driver fatigue, the tool developed by the UK Health and Safety Executive (HSE)<sup>115</sup> was used. The tool provides two outputs: the *fatigue index*, expressed by an average probability multiplied by a high score value of 100, giving a value between 0 and 100; and the *risk index* expressed by the relative risk of an incident occurring on a particular shift. A baseline index of 1 represents the average risk. The two indices provide slightly different, complementary indicators of the impacts on fatigue and it is desirable to keep both as low as possible.

The tool calculates the fatigue index and risk index based on work schedules. For the purposes of this study a basis against which the policy measures can be compared is needed. Since there are a lot of possible variations in the way in which a driving schedule can be organised, it is not appropriate to have a single baseline; at the same time, given the flexibility in the rules it would not be constructive to attempt to compare every possible schedule.

In order to provide the best basis for comparison, a schedule was designed that met the maximum working and driving times allowed under the current rules. This represents the *maximum possible levels of fatigue and risk that could be expected under the current rules*. In practice, many drivers will have shorter working/driving times; however, the maximum levels were intended to provide a certain level of protection against excessive fatigue, and therefore this is the factor that is of most relevance for the policy comparison. That is, the maximum levels of fatigue and risk that can be achieved in the baseline vs the policy measures indicates the level of protection offered to drivers under the social rules.

In the analysis, two theoretical scenarios were used: *Scenario 1* applies maximum legal values for working and driving times, and minimum values for daily and weekly rest, filling the remaining time with periods of availability. *Scenario 2* has no extended driving times, reduced daily rest, but the same number of working hours. For both scenarios, a maximum of 60 hours working time is achieved for every week over the time span of 4 weeks. Both scenarios account for practices which are currently allowed under the legal framework.

The baseline schedule was designed to respect the framework of the EU road social rules, as shown in Table 9-1.

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<sup>115</sup> The detailed explanation on the methodology and HSE tool used is in Annex 4

**Table 9-1: Rules for driving, working, and rest times used for creating driving schedules**

Variables	Rules
Daily driving time	10 hrs a day with 1.5 hr break, 2 times a week (extended driving time)
	9 hrs a day with a 45-min break, all other times
Weekly driving time	Maximum 56 driving hrs a week, maximum 90 driving hrs bi-weekly
Weekly working time	Maximum 60 working hrs a week (for all 4 weeks)
Regular daily rest	Reduced 9 hrs daily rest, 3 times a week
	11 hrs regular daily rest all other times
Regular weekly rest	Reduced weekly rest of 24 hrs, compensated by 21 hrs taken within 3 weeks and attached to any rest of 9 hrs

Along with the parameters above, the model requires information on job type, attention required, commuting time, and breaks. These were defined as follows (constant for all schedules):

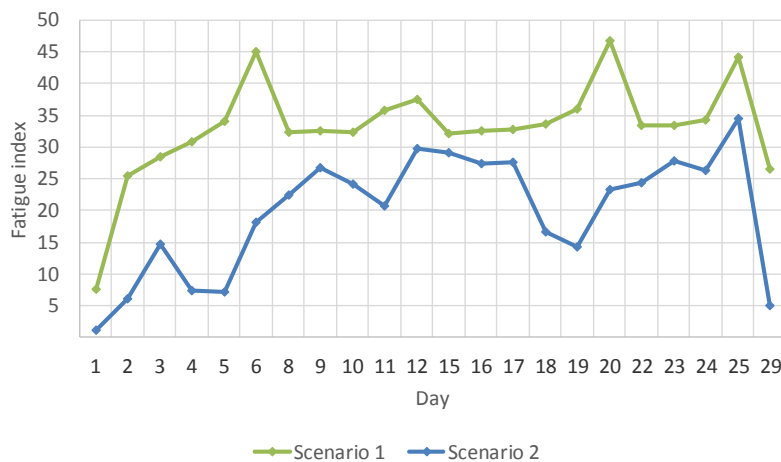
- Commuting time – 1 hour
- Breaks:
  - Taken typically every 2.5 hours, with an average length of 30 minutes
  - The longest period of work before a break – 4.5 hours, with a longest break of 45 minutes.
- Workload parameters
  - Driving time – Extremely demanding workload, and no spare capacity (maximum setting)
  - Other work – Moderately demanding workload and little spare capacity
- Attention required
  - Driving time – Attention required all or nearly all the time (maximum setting)
  - Other work – Attention required most of the time

Even when consistently applying the maximum driving times and working times, there are still multiple possible configurations for taking weekly rest within the current rules (due to the possibility of taking reduced weekly rest that will be compensated later on).

**Figure 9.3: Fatigue index of 4-week shift pattern for the baseline scenarios** 9.3 shows the fatigue index of the two scenarios. The points given for each day reflect the fatigue index for the driving time duty period. Although fatigue indexes were also derived for other work and periods of availability, they tend to be lower than for driving time since the attention required for these periods is lower. It can be seen that Scenario 1 has a consistently higher fatigue index, due to the high periods of availability assumed in the schedule. Scenario 2 shows a significantly lower fatigue index of the 4-week reference period, as a result of longer daily and weekly rest periods, and no extended daily driving hours.

This fatigue index serves as a useful reference to analysing the changes in fatigue that could arise from the adoption of specific policy measures. Nevertheless, as a rough benchmark, a maximum daytime fatigue index of 35 is considered good practice, and of 45 for night work (or combinations of day and night work) in order to mitigate risks of causing employee fatigue.

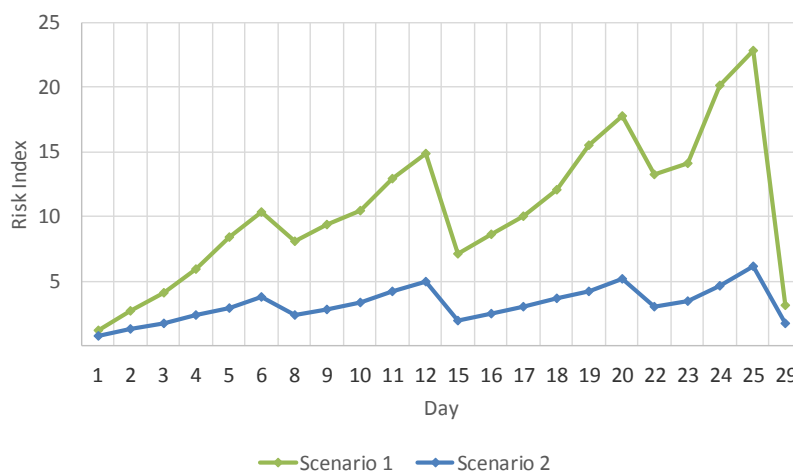
**Figure 9.3: Fatigue index of 4-week shift pattern for the baseline scenarios**



Source: HSE tool and author calculations

Figure 9.4 shows the risk index for driving times for the scenarios. Again, the results indicate significantly higher risk for scenario 1 compared to scenarios 2. The baseline scenarios therefore represent very high levels of risk at peak levels.

**Figure 9.4: Risk index over 4-week shift pattern for baseline scenarios**



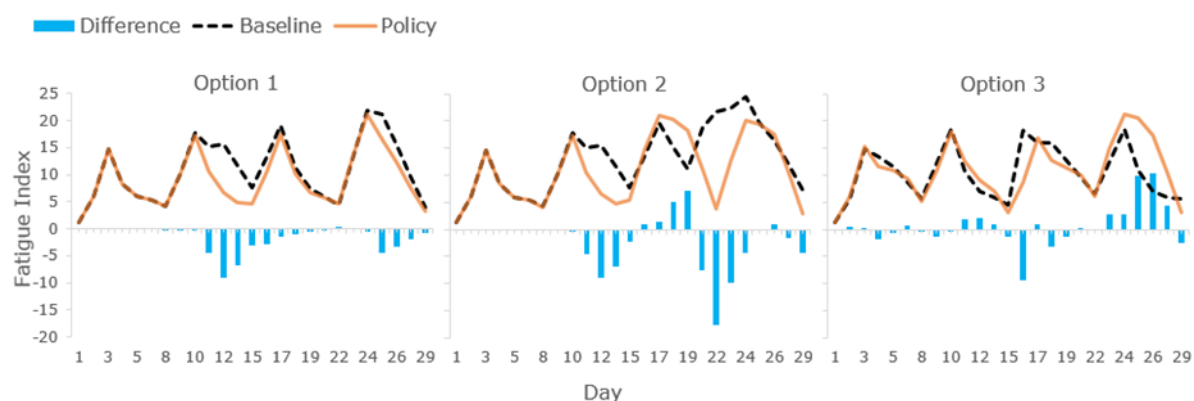
Source: HSE tool and author calculations

In the baseline scenario, it is assumed that there are no major changes to driver schedules in future, since there are no changes to the framework of the social legislation – hence, the fatigue and risk indices will remain as calculated above.

### **Impacts on level of drivers' stress and fatigue**

The analysis of changes in fatigue index and risk index have been performed against the baseline scenario in the context of policy measure (1) - on calculating average minimum regular weekly rest of 45 h and on adequate accommodation) and policy measure (19) – on a 4-week reference period for calculating average maximum weekly working time of 48 h. Figure 9-6 shows that measure 1 could result in positive changes (reductions) in fatigue levels due to a higher average weekly rest length than the baseline options.

**Figure 9-6– Evolution of fatigue index under baseline and policy scenarios**

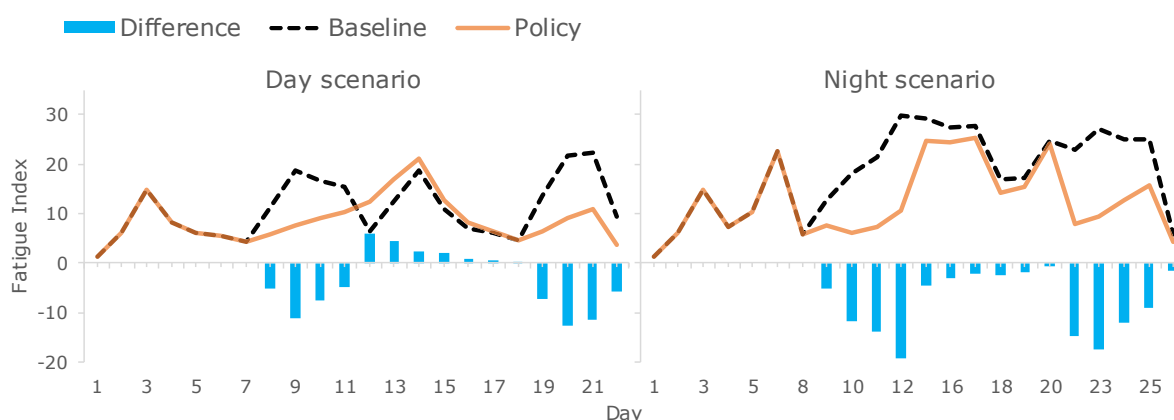


Notes: Options refer to different configurations of taking weekly rest within the current rules. Option 1 (21h to be compensated within 3 weeks, from week 1 to week 3); option 2 (21h added to daily rest of 9h); option 3 (21h to be compensated within 3 weeks, from week 2 to week 5, where week 5 is outside of the assessment period). See Annex B for full details.  
Source: author calculations, HSE tool (HSE, 2006)

The difference between the policy and baseline fatigue indexes varies in magnitude at specific points as a result of the different schedules, and it can be seen that fatigue levels are elevated compared to the baseline at some points for both options 2 and 3. However, it is the change in **average fatigue** that is the more important result, rather than differences at single points in time. The average fatigue index is improved (reduced) in options 1 and 2 compared to the baseline (by 17% and 16% respectively). Conversely, option 3 results in a slight increase compared to the baseline (6%). Over all three options, the schedules under the policy measure resulted in a decrease in the average fatigue index by 1.1, or 10%, suggesting that the measure is likely to have a net positive impact on driver fatigue.

Figure 9-7 presents the results of the analysis of the impact on the fatigue index from the changes to the calculation of working time (measure 13). Both day and night scenarios show a significantly lower average fatigue index under the policy measure. The day scenario baseline has an average fatigue index of 10.9, compared to 8.7 for the policy, giving a reduction of 2.2 (-21%). For the night scenario, an even bigger difference is seen, with a baseline average fatigue index of 18.1, compared to 12.6 for the policy, giving a reduction of 5.5 (-30%). The average over the two scenarios is a reduction of 3.9 (25%).

**Figure 9-7 : Evolution of fatigue index for changes to the calculation of working time**



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Measure (2) on the requirements of adequate accommodation (provided/paid for by the employer) for drivers, is positively assessed by drivers participating in drivers' survey. 127 of the 320 respondents (around 40%, with no significant differences in this proportion between respondents from different countries) felt that this measure would increase their ability to avoid fatigue and get adequate rest.

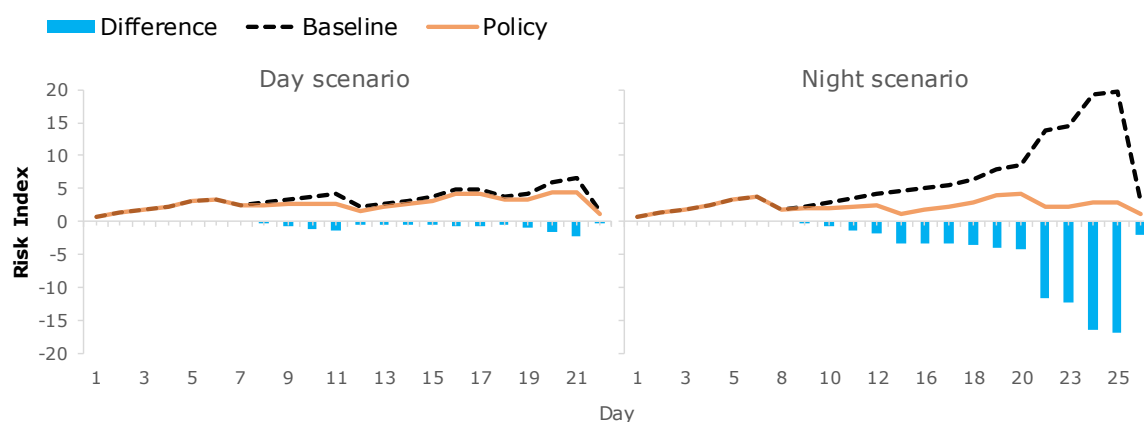
Postponing the weekly rest in domestic passenger operations (measures 7a and 7b) are expected to have negative implications for fatigue, increasing its level for affected drivers by 33% in case of measure 7a, and by 20% in case of measure 7b. Also the measure abolishing the compensation after the use of 12-day derogation in international passenger journeys (measure 6) is expected to bring a 8% increase in fatigue for affected drivers.

### Impacts on road safety and occupational health

To the extent that fatigue is reduced the risk of road accidents should also decrease.

Figure 9-8 presents the results of the analysis of the impact on the risk index from the changes to the calculation of working time (measure 13). The reduced shift length on days 8 to 12 and 22 to 25 result in lower risk indexes under the policy schedules. For the night scenario, the change is significantly larger as a result of the increased risk of night work, which amplifies the difference of longer shifts. Overall, the index under the policy measure remains lower than the baseline index at all times for both scenarios. Therefore it can be concluded that the measure on working time will contribute to reducing risks to road safety.

**Figure 9-8 : Evolution of risk index for changes to the calculation of working time**



Changes to calculation of working times as well as strengthened control measures and more efficient and regular use of control tools such as risk rating system is expected to bring significant impacts on improving road safety levels as well as health and safety of drivers, mainly due to. It is expected that effective and dissuasive controls will contribute greater to reducing the road safety risks. In addition, the measures contributing to reducing periods away from home/base (i.e. measures on weekly rest gives incentives to spend the regular weekly rest and compensation at home) are also expected to contribute to better occupational health and lesser risk to road safety. The reduced periods spent in a vehicle means the reduction of exposure to diesel exhaust emission and reduced time in sitting (tiring or painful) postures, and hence reduction of risks of occupational diseases. In addition, measure 5 allowing to split obligatory breaks into maximum three parts of minimum 15 minutes each may bring a small reduction of 5.7% on average in the risk index. Under the proposed policy,

shorter, more regular breaks result in shorter periods between breaks, and therefore a lower risk index.

Measure (17) forbidding performance based payment, which is seen as the main incentive for breaching driving and resting time limits (also speeding and those on maximum weights) may also contribute to improving road safety in freight. In passenger transport, the measures 6 and 7 on derogations from weekly rest requirements in international and domestic transport of passengers may result in increase in risk of 4% for international coach drivers and 4-5% for domestic coach drivers subject to the derogations.

## Baseline – Administrative costs

Comparable data on administrative costs were very sparse. The most complete data for quantifying the administrative costs was provided by industry representatives from the Czech Republic (summarised in Table 9-3), who estimated administrative costs for Czech drivers operating under the German and French minimum wage laws. This includes the following administrative tasks:

- Maintaining extra records of working time,
- Gathering and collating information on transport contracts, breaking down journeys into outward, return and transit,
- Creating special payslips with separate remuneration for every country,
- Gathering and archiving the payment orders used to pay wages,
- Documentation of deductions from pay, such as amounts claimed back, which results in a second payroll with the addition of extra items to cater for the specific features and requirements of Germany and France.

**Table 9-9: Data on administrative costs for drivers from the Czech Republic based on CZ association data only**

ID	Parameter	Host country		Calculation	Source
		DE	FR		
Admin costs (paperwork etc.)					
a	Admin staff per driver	0.1	0.1	-	CZ association estimate
b	Cost of 1 admin staff per month (CZK)	40,000	40,000	-	CZ association estimate
c	Exchange rate (CZK/EUR)	0.037	0.037	-	<a href="http://www.xr.com">www.xr.com</a>
d	Cost of 1 admin staff per month (EUR)	1,480	1,480	= b * c	Calculation
e	Admin cost per driver and month (EUR)	148	148	= d * a	Calculation
f	Average number of international + cabotage trips per truck and month, Median	7.55	assumed to be the same as for DE	-	Calculations based on (DTU, 2017). Data only available for DE



ID	Parameter	Host country		Calculation	Source
		DE	FR		
g	Number of drivers/truck	1	1	-	2013/14 social legislation official monitoring data <sup>116</sup>
h	Admin cost/trip	19.6	19.6	= (e/f)g	
Local representative cost (FR only)					
i	Cost per driver/month (CZK)	n/a	4,200	-	CZ association estimate
j	Cost per driver/month (EUR)	n/a	155.4	= i*e	Calculation
k	Local rep cost/trip (EUR)	n/a	20.6	= (j/f)*g	
Total admin + local rep cost (EUR)		19.6	40.2	= h + k	

Input from other industry associations suggests that the values provided by the Czech associations are at the higher end of the spectrum and might overestimate the administrative costs. The only other data that we received, which is exactly comparable to the Czech values is information received from an Austrian industry association, who estimate the administrative costs connected to the minimum wage laws as €7.00. We used this data to adjust the Czech values downwards to a potentially more realistic value. To be able to calculate an average value for CZ and AT data, we adjusted the Czech estimates using data on the total labour costs for administrative and support service activities from Eurostat (Labour cost levels by NACE Rev. 2 activity [lc\_lci\_lev]). The calculations are outlined below:

**Table 9-10: Administrative costs per trip based on CZ and AT data**

	DE	FR
CZ Admin cost/trip [€]	19.60	19.60
CZ Local rep cost/trip [€]	-	20.58
AT Admin cost/trip [€]	7.00	-
AT Admin cost/trip --> converted to CZ wage level [€]	1.85	-
CZ-AT average cost/trip [€]	10.72	10.72
Adjusted value versus original CZ value [%]	55%	-
Adjusted local rep value based on admin cost ratio [€]	-	11.26

These adjusted values for admin costs for Czech operators connected to minimum wage laws were then adjusted for differences in the level of labour costs in the different countries, we have indexed the relevant part of the Czech estimates using data on the total labour costs for administrative and support service activities from Eurostat (Labour cost levels by NACE Rev. 2 activity [lc\_lci\_lev]).

A further assumption is that the administrative costs are the same regardless of whether the posted driver already complies with the minimum wage law in the host country, since the company would still need to carry out the required administrative tasks such as notification, providing appropriate evidence etc.

<sup>116</sup> The 2013-2014 monitoring data (European Commission, 2016b) provides the number of checks in each country in terms of both the number of drivers and number of vehicles. This shows that the median across all EU Member States is 1 driver per truck.

Table 9-11 provides the administrative costs by posting country for different host countries applying minimum wages.

To calculate the annual administrative costs per sending Member State due to minimum wage laws, we used data on trips by posting country and host country combination, from (DTU, 2017). In order to take into account the evolution in the number of trips in future years, the number of trips were adjusted by indexing to the EU Reference Scenario 2016 data on freight transport activity (Gtkm)

By multiplying the annual number of trips for both cabotage and international transport with the administrative costs per trip, we obtain the annual administrative costs for Member States that have minimum wages laws in place in the baseline. The DTU dataset does not provide information for Denmark, Italy and Luxembourg.

**Table 9-11: Administrative costs [€/trip]**

Sending country	Host country	
	DE = AT = IT = BE = LU = SE = DK	FR (includes local representative)
Austria	41	83
Belgium	55	112
Bulgaria	5	9
Croatia	10	20
Cyprus**	18	36
Czech Republic	11	22
Denmark	59	120
Estonia	15	31
Finland	38	79
France	44	91
Germany	34	70
Greece*	17	35
Hungary	11	22
Ireland	36	75
Italy	32	65
Latvia	10	21
Lithuania	10	20
Luxembourg	35	72
Malta	18	37
Netherlands*	39	79
Poland	11	22
Portugal**	14	29
Romania	6	13
Slovakia	12	24
Slovenia	19	38
Spain	25	52
Sweden	53	108
United Kingdom	37	77

*Notes: The additional costs for a local representative are assumed to apply only in France.*

*Source: Calculations based on Eurostat 2015 data on labour costs for administrative and support service activities from Eurostat (Labour cost levels by NACE Rev. 2 activity [lc\_lci\_lev])*

*\*based on 2014 value*

*\*\* based on 2012 value*

## ANNEX 5

### ISSUES NOT ADDRESSED BY THE IMPACT ASSESSMENT

#### Drivers of Light Goods Vehicles

Since the social rules apply to vehicles above 3.5t, there is no European legislation regulating the driving hours and resting time of drivers of vehicles below 3.5t, which are also referred to as Light Goods Vehicles (LGV). Since the adoption of the social rules in 2016 a higher number of vans on the roads were registered (ETSC, 2014). In the UK and Austria, for example, the use of such vehicles between 2006-2014 increased by 19% and 25% respectively, while the use of HGVs decreased by 11% and 5 % accordingly.

Recent studies<sup>117</sup> have shown that there is a growing concern in how far the increased use of LGV is affecting, working conditions, road safety and fair competition since drivers of LGV are also not covered by the same rules as HGV like the social rules but also as on access to occupation and to the international haulage market. However, only 9.5 % (97 out of 1026) of respondents to the non-specialised survey and 25% (40 out of 162) of the specialised survey consider that it is as the most important challenge in road transport.

However, the trend towards increased use of LGV is not applying to all Member States and tends to concentrate only in a few. In 2015 for example, four countries<sup>118</sup> accounted for 70% of total EU LGV activity in Gt-km. In most other countries the absolute level of LGV activity is fairly minor, as 15 countries<sup>119</sup> were estimated to have less than 1Gt-km of LGV activity in 2015. There is also no economic incentive for 'switching' from HGVs to LGVs and the risk of distortions of competition as the cost of transport per ton by HGV is estimated to be around 16% of the cost to transport a ton by LGV. The study concludes that the increase of the use of LGVs is linked mainly with the rise in e-commerce activities and home delivery sector and 'last mile' deliveries, especially in urban areas, for which HGVs are not suitable. Therefore, the trend is more likely due to the nature of the business demand<sup>120</sup>, rather than an explicit motivation to avoid the legislation.

As regards the concern on fatigue and risks to road safety, there is mixed evidence as to the extent to which fatigue is a problem for LGVs drivers in Europe. An investigation in the UK for example found that van drivers are 23% more likely to be fatigued in crashes compared to other road users. Data for Germany shows that fatigue is a contributory factor to van collisions in 4% of cases on motorways (compared to 6% for cars) and in 1% of cases on rural roads (the same proportion as cars) (VDA, 2010).

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<sup>117</sup> Ricardo et al, 2015, Support study for an evaluation of Regulations (EC) No 1071/2009 and No 1072/2009; Ricardo et al, 2016, Support study for an evaluation of the social legislation in road transport and its enforcement.

<sup>118</sup> FR, IT, DE and the UK

<sup>119</sup> RO, DK, IE, SK, PT, FI, HU, BG, SI, LU, LT, EE, LV, CY and MT.

<sup>120</sup> due to the rise in home deliveries and developments in urban freight logistics (ETSC, 2014)

Some countries decided to regulate this matter at their national territories. For instance Germany applies the national rules on driving and resting times, also to vehicles between 2,8 and 3,5 tonnes. Austria applies even more stringent requirements regarding driving times to van drivers than HGV, namely maximum 8 hours per day instead of 9 hours. In fact, levels of fatigue as a whole are similar for LGV and HGV drivers, despite the fact that EU drivers' hours rules apply to HGVs and are enforced by tachographs whereas only domestic hours rules apply to vans with less stringent enforcement (due to the absence of tachographs on vans). The data also suggests that for drivers of vans it is common for the fatigue to have occurred without exceeding the regulated hours limits<sup>121</sup> – meaning that it is not necessarily excessive driving and working times that are the most important underlying causes of fatigue. Rather, the more important root cause of the fatigue of van drivers seems more clearly linked with the demands of the job such as the pressures of keeping to schedules, increasing traffic, and a higher proportion of drivers' working time taken up by non-driving activities.<sup>122</sup>

Furthermore, a possible measure would require the purchase and installation of tachographs, tachographs cards, relevant software, workshop card and would represent an excessive regulatory cost to small enterprises, which constitute 90% of the road transport sector. In addition there would be also administrative and compliance costs for such operators. The imposition of such costs to microenterprises would be against the REFIT objectives.

There also does not seem to be much support from side of the Member States. Based on the position papers received by the Commission in 2015 on the Road initiatives, only 4 Member States (Austria, Belgium, France, Germany) were in favour of including LGV into the scope, whereas 12 Member States (UK, ES, HR, EE, FI, NL, IE, RO, PL, HU, SK, CZ) raised concerns on including these vehicles.

It should also be noted that the issue of LGV is already addressed in the access to market initiative<sup>123</sup> in measures 30 and 31 which envisage extending the criteria on access to the profession as stipulated in Regulation (EC) No 1071/2009 and the requirement for a Community licence and driver attestation and the cabotage restrictions to LGV. The market initiative also proposes the collection of data, among other issues, on the prevalence of LGV in national and international transport, which would allow the Commission to get a better idea on whether to reconsider the scope of the Regulation or not. This impact assessment will therefore not assess the possible inclusion of LGV.

### **Self-employed drivers**

Directive 2002/15/EC on working time for persons performing mobile road transport activities also includes self-employed drivers. The Directive obliged the Commission to present a report to the Council and the European Parliament which would analyse the consequences of the exclusion of the self-employed drivers from the scope of the Directive in

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<sup>121</sup> Danklefsen, 2009

<sup>122</sup> ETSC, 2014

<sup>123</sup> Revision of Reg. 1071/2009 on access to the occupation of road transport operator and of Reg. 1072/2009 on access to the international road transport market

respect to road safety, conditions of competition, the structure of the profession as well as social aspects. The study<sup>124</sup> concluded that it would be advantageous to exclude self-employed drivers from the scope of the Directive. The Commission has tabled a proposal in 2008<sup>125</sup> and which found endorsement in the Council but was rejected twice by the European Parliament.

In the meantime, several Member States raised concerns as regards the inclusion of self-employed drivers in the scope of the rules<sup>126</sup> because it creates unnecessary administrative burden and since Regulation (EC) No 561/2006 provides already adequate rules for self-employed drivers and it is difficult to enforce. In some countries, like Finland for example, controlling self-employed drivers at their premises, which are at their private homes, is against the constitution (sanctity of home) or other measures on protection of fundamental rights of citizens. Belgium stated that in practice it is nearly impossible to control the application of the rules as it is undesirable to disturb the rest of the self-employed drivers with the controls. Additional difficulties when inspecting self-employed drivers were indicated by Bulgaria, which referred to an issue of selecting drivers for a control as there is no official list indicating the number or location of self-employed drivers. According to Bulgarian law self-employed drivers are not falling within the scope of the obligation to keep record of working times and working arrangements available for inspection at their business premises and to designate the person who is given the task of presenting these records on demand by the Labour Inspectorate. In addition, binding instructions cannot be issued by the Bulgarian Labour Inspectorate to the self-employed-drivers.

Nevertheless, since the proposal to exclude self-employed drivers was rejected twice by the European Parliament, the Commission will not look into this issue in this impact assessment.

Whereas the majority of SMEs consulted within SME Panel Review – 64% (42 out of 66) indicated that self-employed drivers should be included and have the same requirements, compared to only 8 who thought that such requirements should not apply.

In contrast, there does not seem to be too much support in the OPC. 19 % (219 out of 1139) of the respondent to the non-specialised questionnaire consider that exclusion of self-employed drivers from the working time Directive would be significant in improving the functioning of the social rules, whereas 43% (485 out of 1139) would see no contribution at all. Similar results could be seen in the specialised questionnaire, with 28% (41 out of 148) consider it to be a major contribution, whereas 41% (60 respondents) would not expect any contribution.<sup>127</sup>

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<sup>124</sup> COM (2007) 266 final of 23.05.2007

<sup>125</sup> COM(2008) 650 final

<sup>126</sup> Commission report 2013-2014

<sup>127</sup> <https://ec.europa.eu/transport/sites/transport/files/2016-social-legislation-road-specialised-summary.pdf>

## **Establishment of a European Road Agency**

A European Road Agency would need to be established by a Regulation under co-decision. It would need to be preceded by a full-fledged impact assessment detailing which tasks such an agency would undertake and which added value it would have. Moreover, this would need to be supported by a calculation of costs due to the financial implications on the EU budget. Given that such an assessment would go beyond the current revision of the existing road transport legislation, it is excluded from the assessment in the Road Initiatives.

The Road Initiatives have a strong focus on enforcement, which has been identified as one of the main issues by stakeholders. As described in the present Impact Assessment, it is envisaged to better exploit existing enforcement tools and data systems such as tachograph, ERRU, Risk Rating System, and to improve cooperation between host and home Member States in terms of exchange of information. Better cooperation between Member States can also be achieved via participation of Member States in already existing enforcement network organisations, i.e. Euro Contrôle Route (ECR) – the network of European Transport Inspection Services – and the Confederation of Organisations in Road Transport Enforcement (CORTE).

The focus of the Road Initiatives on improving existing enforcement measures is expected to bring benefit in short and mid-term, which would not be the case for a European Road Agency, which – following a separate Impact Assessment and legislative procedure – would need to obtain funding and to recruit staff. As such, the process of establishing a European Road Agency would require a relatively longer period, and would therefore not be able to address the acute problems faced by the road transport sector.

The Commission will closely monitor the effects of the proposed enforcement measures stemming from the Impact Assessment. Should these measures not achieve the expected results in terms of uniform application of the EU rules throughout EU and improved effectiveness and consistency of cross-border enforcement, the Commission may decide to launch a new legislative initiative, which could lead to the establishment of a European Road Agency.

## **Diverging national penalty systems**

The national penalty systems is not harmonised by the social rules which means that they significantly differ between Member States in terms of types and levels of penalties imposed for the same infringements. For example, the level of fine for exceeding the maximum 6-day or fortnightly driving time limits by 25%<sup>128</sup> (one of the most serious infringements), can cost 1400 € in Latvia or 30 000 € in France. In general, one can say that for most serious infringements, the range of national sanctions from 400€ and immobilisation of a vehicle (in Sweden) to a 30 000 € fine and one year imprisonment (in France). For very serious

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<sup>128</sup> A most serious infringement (according to classification of serious infringement established by Regulation (EU) 2016/403), which triggers an administrative procedure by the competent authorities of the Member States in order to determine whether the undertaking should lose its good repute.

infringements, it can cost 210 € in Latvia, whereas it is 18 000 € in the Czech Republic. For serious infringements, drivers can get a warning in Romania or fine of 32 € in Hungary and or 2 000 € in Slovenia or 3 500 € in UK. These discrepancies are not necessarily justified by socioeconomic differences between the Member States. These differences in the types and levels of the sanctions lead to higher administrative burden for operators as they have to deal with different national requirements of the penalty systems. Furthermore, it also disadvantages those, who operate mainly in markets where penalties are higher or where different interpretation of what constitutes an infringement is applied.

The OPC also showed that only 42% of the respondents (63 out of 150) in the specialised survey consider that the different levels and types of penalties for infringements constitute one of the biggest obstacles for the effectiveness of the social legislation.

The Commission has established a common classification of seriousness of infringements in 2009, enhanced in 2016 and which will be further extended through the revision of the Regulation on access to occupation. This aims at indirectly aligning to certain extent the level of sanctions, which must be proportionate to the seriousness of infringement. A study<sup>129</sup> on harmonisation of sanctions clearly illustrated that there is a lack of common denominator in order to create a common level of penalty system. The harmonisation of the different system would require burdensome intervention in the national penalty systems. In addition, harmonising penalty systems would also risk the jeopardizing the subsidiarity principle. This impact assessment will therefore not assess the objective to harmonise the penalty system.

### **Difficulties to control co-liability for infringements**

The principle of co-liability for infringements against the provisions of the Regulation is stipulated in Article 10 of Regulation (EC) No 561/2006 and applies, in theory, to all actors in a transport operation chain (consignors, freight forwarders, tour operators, principal contractors and subcontractors, employment agencies) and not only to drivers and operators. The provision is, however, not sufficiently enforced or difficult to apply according to the survey of enforcement authorities (9<sup>130</sup> out of 22) and trade unions (11 out of 14) and in line with the opinion of 36 % (49 out of 138) of institutional respondents to the open public consultation<sup>131</sup> (national authorities, enforcement bodies, industry associations and trade unions).

The variation in implementation of this principle by Member States leads to situations where the same facts could make different parties being held liable depending on the Member State. Difficulties in enforcement are typically due to the challenges of identifying who is really responsible for any infringements detected, especially in cases of extensive subcontracting chains. In effect, it is typically a driver who is penalised. According to the results of the ex-

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<sup>129</sup> Study on sanctions in the field of commercial road transport, February 2013, [http://ec.europa.eu/transport/modes/road/studies/road\\_en](http://ec.europa.eu/transport/modes/road/studies/road_en)

<sup>130</sup> Enforcers from NL, DE, FI, FR, BE

<sup>131</sup> <https://ec.europa.eu/transport/sites/transport/files/2016-social-legislation-road-specialised-summary.pdf>



post evaluation, other parties in the transport chain are never held liable in the Netherlands, Cyprus, Croatia, the UK, Sweden, Belgium or very rarely (less than 1%) in Finland and Poland. At the same time, the fact that parties in the transport chain are not held sufficiently liable for infringements has been identified by enforcers as being one of the three major factors contributing to non-compliance with the social legislation.

The transport undertakings survey confirmed these different implementations on the ground. About 50% of responding undertakings (599 of 1198) stated that they have never been held liable for an infringement that was detected during a roadside check; 35% (419 of 1198) that they have been sometimes held responsible for such infringements. In Sweden, 70% (403 of 577) stated that they have never been held responsible; in Italy this percentage drops to 35% (3 of 7). Looking at transport undertakings that solely engage in international transport (104 respondents), approximately an equal amount responded that they have either never been held responsible or sometimes. Less than 5% (5 out of 104) state they have always been held responsible for such infringements.

The solution to this problem would be to clearly define the roles and responsibilities of co-liable parties (drivers, operators, consignors, freight forwarders, tour operators, subcontractors, employments agencies). However, translating such an objective into clear and enforceable legal obligations might prove difficult. As a basic principle of law, the legal responsibility of a person or a company cannot be presumed, it must be based on evidence.

Furthermore, enforcement capacity tends also to decrease in Member States, therefore adding this issue to the lists of aspects to be investigated would increase enforcement costs which would go against the REFIT objectives.

This impact assessment is therefore not looking at this issue.

### **Insufficient/inconsistent training for control officers**

The inconsistent or ineffective enforcement of the current rules is also linked with diverging or insufficient initial and continuous training for control officers. Poor cooperation between Member States with regard to joint training programmes and exchange of good practices in enforcement is also a factor. The common training curriculum established within TRACE<sup>132</sup> project has not been taken up by all Member States. Responses to the survey carried out within ex-post evaluation study showed that out of 25 responding national enforcement authorities, eight authorities<sup>133</sup> had partially taken up TRACE training curriculum, eight<sup>134</sup> had completely taken up TRACE, three<sup>135</sup> did not take it up and six<sup>136</sup> respondents did not know.

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<sup>132</sup> TRACE stands for Transport Regulators Align Control Enforcement – project co-funded by the Commission; developed a harmonised training format for enforcers.

<sup>133</sup> National enforcement authorities from BE, CY, DE, GR, HU, PL, SE, SI

<sup>134</sup> National enforcement authorities from CZ, LT, LU, LV, NL, NO, RO, SI

<sup>135</sup> National enforcement authorities from BE, CH, HU

<sup>136</sup> From national enforcement authorities from CR, EE, FI, LU, SI, SK

Article 39 (3) of the Tachograph Regulation already requires the Commission to adopt an implementing Act on the content of training for enforcers and guidelines for application of the Regulation (No) 561/2006 and Regulation (No) 165/2014. The Commission will therefore adopt measures which establish content for initial and continuous training for control officers. This impact assessment is therefore not going to look into this issue.

## Annex 6

### SCREENING OF DISCARDED POLICY MEASURES

A number of policy measures were proposed by some stakeholders, yet contested by other stakeholders and in some cases contradicted by evidence provided. Some others were beyond the remit of the legislative acts subject to this revision or even beyond the mandate of the Commission. They were therefore excluded from further assessment. These measures include the following:

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
1.	Performance-based pay	Clarify rules / test procedures for performance-based payment that would endanger road safety, i.e. specify what constitutes a performance-based remuneration that endangers road safety	Not clear how the current definition of such payment systems can be clarified further.	No clear how such test procedures would be implemented	No clear how further clarification of such payment systems that endanger road safety can benefit the current social legislation.	No problem foreseen	No problem foreseen
2.	Enforcement	increasing the minimum number of concerted checks from 6 to 10 per year	no specific problem foreseen	lack of resources may make it very difficult to implement	Considered too costly for authorities since they consistently do not meet current thresholds	possibly not supported by many Member States in view of the fact that available resources are limited	no specific problem foreseen
3.	Enforcement	Exclude self-employed and define better the mobile worker, self-employed and false self-employed driver	Possibly improve enforcement of Working Time Directive	No problem foreseen	No major impact expected on the improved effectiveness of the social legislation.	Politically not feasible in a context with social rules high in the agenda. Already rejected twice in the past. Please see Annex 6 for more details.	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
4.	Enforcement	Establish mandatory initial training of enforcers based on TRACE	Possibly in conflict with regulation (EU) No 165/2014	No scope for social rules to regulate training of enforcers when it is already addressed by tachograph rules.	No problem foreseen	No problem foreseen	No problem foreseen
5.	Enforcement	Standardising the format of information exchange regarding detected infringements filed against an undertaking of another Member State	Possible conflict with standardisation system implemented by ERRU.	No need to introduce an additional standardisation system already regulated by ERRU	No problem foreseen	No problem foreseen	No problem foreseen
6.	Enforcement	Increase the number of joint trainings (if there is no mandatory harmonised training) to 2 or 4 per year	Out of scope of this legal revision. Training of enforcers is already addressed by Regulation (EU) No 165/2014	Possible issues of practical implementation	No problem foreseen	No problem foreseen	No problem foreseen
7.	Clarification	Incorporate most relevant provisions of the Working Time Directive 2002/15/EC into Regulation 561/2006/EC	Issues of coherence between Regulation 561/2006 and Directive 2002/15/EC may arise	Would require a very broad revision and may be complicated	Possibly help simplify and clarify rules - However no significant impact	No problem foreseen	Could be seen as disproportionate since it will require a broad revision
8.	Clarification	Retain separate legislation, but ensure coherence by clarifying the scope and legal terms to be consistent	No problem foreseen	No problem foreseen	No considered having a significant impact and would require significant change to legal framework and costs	No problem foreseen	Could be seen as disproportionate since it will require a broad revision
9.	Clarification	Merge Article 3 and 13 of Reg. 561/2006 to make it easier to identify exemptions to the Regulation applicable in different MS	Not feasible as the revision of derogation/exceptions is out of scope of the revision of social rules.	No problem foreseen	No expected impact on the effectiveness of the social rules; significant costs for any changes for limited impact	No problem foreseen	Could be seen as disproportionate since it will require a broad revision
10.	Posting of Workers	Exempt road transport from the PWD.	Possibly against treaty obligations	No problem foreseen	against the objectives of the initiative of	No support from a	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
					combating unfair business and employment practices MS will still be able to introduce own requirements on minimum wage unless explicitly forbidden	number of Member States	
11.	Tachograph	earlier introduction of smart tachographs	No in scope of this Regulation and as is addressed in the Tachograph Regulation.	No problem foreseen	No problem foreseen	May not be supported by all Member States, but demanded by several stakeholders and some Member States. Commission would need to assess the impact and costs first in a dedicated study.	No problem foreseen
12.	Sanctions	Adoption of common classification of infringements not related to safety	No problem foreseen	No problem foreseen	No added value since it will be to be done via revision of Regulation 1071	No problem foreseen	No problem foreseen
13.	Sanctions	Adoption of common level of penalties	May require significant changes to national legislation	No problems foreseen	More certainty for hauliers and more consistent framework to dissuade infringement of the rules	Some opposition could be expected from MS that wish to retain their existing classification	May be considered disproportionate and infringe subsidiarity

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
14.	Scope	LCVs fully/partly covered or excluded from legislation	No problems foreseen	Possible issues of practical implementation	Possible rise in compliance costs which may not be beneficial for operators.	No support from a number of Member States	Too little evidence to justify a scope in te social legislation for LGVs see more in Annex 6
15.	Clarification	<p>clarifications of applying existing rules in certain situations</p> <p>1. Creation of an online platform where Member States can post information relating to applicable national rules, legal interpretations, national enforcement practices, documentation and any other requirements.</p> <p>2. Clarification of the following concepts: - digital tachograph rules, - weekly rest in the cabin, - recording other work, - recording periods away from vehicle, - availability periods, - ferry rule.</p> <p>3. The calculation of frequent breaks, - extended daily driving times (and the question if an extended daily driving falls in two weeks, for which week this extended daily driving should be accounted), - situation in the first hour of driving in the case of multi-manning, - the definition of journey.</p> <p>4. Clearer differentiation of infringements.</p>	No problem foreseen	No problem foreseen	No need for legal action for such aspects - Costs of revision disproportionate to benefits	No problem foreseen	Action at EU may be considered disproportionate
16.	Suitable stopping space	Allow drivers to inform enforcement officers orally at the beginning of a roadside check in case they are currently 'in search' for a suitable stopping place and could not make any indications on the print out/ record sheet yet.	No legal certainty	Possible issues of practical implementation	Does not address an important issue - overall effectiveness is expected to be limited	No problem foreseen	No problem foreseen
17.	Weekly rest	A driver engaged in <b>international</b>	No problem foreseen	Expected to be	Negative in terms of	No problem	No problem

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		<p><b>goods transport operation</b> could postpone his weekly rest period up to nine periods of 24 hours after the end of the previous weekly rest period, provided that:</p> <ul style="list-style-type: none"> <li>International transport operations should include at least 24 consecutive hours in a Member State that is not the country where the undertaking is established.</li> <li>Once the exception granted, the driver should take a regular weekly rest period within the Member State where the undertaking is established.</li> </ul> <p>c) The regular weekly rest period provided in paragraph b) should be increased by one hour for each period of three hours (or fraction) exceeded by the driver in the six 24hour period after the end of the previous weekly rest period.</p>		complex to implement/monitor	protecting working conditions and road safety	foreseen	foreseen
18.	Weekly rest	<p>A driver engaged in an <b>occasional service of carriage of passengers</b> may postpone the weekly rest period for up to 12 consecutive 24-hour periods following a previous regular weekly rest period, provided that:</p> <ul style="list-style-type: none"> <li>the driver takes after the use of the derogation at least one regular weekly rest period. However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the thirteenth week following the end of the derogation period;</li> <li>the vehicle is equipped with recording equipment in accordance with the requirements of Annex IC to Regulation (EEC) No 165/2014 ;</li> </ul>	Out of scope of the revision of the social rules	Difficult to check on the road since it includes reference period of over 4 weeks	Limited impact on improving effectiveness of social rules.	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		The first hour of the first day and the last hour of the last day in the journey it is allowed that only one driver is on board. This shall be understood as a double manned transport anyhow.					
19.	Weekly rest	A driver engaged in an <b>occasional service of carriage of passengers</b> (or <b>occasional coach tour service</b> ) may derogate from the weekly rest provision in the case of the 12 day derogation provided that s/he does not work for more than 12 consecutive daily driving periods between weekly rests and takes a full weekly rest immediately before and after making use of the 12-day derogation. The 12-day derogation is extended to domestic coach tour services with a duration of more than six days. This extension is accompanied by the abolition of the single trip limitation.	Out of scope of the revision of the social rules	Difficult to check on the road since it includes reference period of over 4 weeks	Limited impact on improving effectiveness of social rules.	No problem foreseen	No problem foreseen
20.	Weekly rest	Driver engaged in a <b>single occasional service of international carriage of passengers</b> may postpone the weekly rest period for up to 12 consecutive days following a previous regular weekly rest period, provided that: (a) a single occasional service of transport is provided; (b) after the single service, the driver takes one calendar day off; (c) after 60 calendar days, the driver shall take a rest of at least 7 calendar days. The driver shall take this rest at the address of normal residence.	No problem foreseen	Difficult to check at roadside	Limited impact on improving effectiveness of social rules.	No problem foreseen	No problem foreseen
21.	Daily rest / driving times	By way of derogation, <b>in case of a driver engaged in an occasional service of carriage of passengers</b> reduced daily rest period means any	No problem foreseen	No problem foreseen	Reducing daily rest to 8 hours would not improve the overall effectiveness of the	Probably not acceptable from some stakeholders	No problem foreseen



No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		period of rest of at least 8 hours but less than 11 hours			social rules		
22.	Daily rest / driving times	Allow greater flexibility of the rest period, including taking the bigger break first, or three smaller breaks.	No problem foreseen	Difficult to enforce	Alternative proposal for more flexibility in taking breaks considered more effective (e.g. a break of minimum 45 min may be split into utmost 3 parts, each of minimum 15 minutes)	No problem foreseen	No problem foreseen
23.	Daily rest / driving times	Clarify that after a daily rest a new daily driving time starts, even if the period of 24 hours hasn't been reached. (For example: when you have reached your daily rest after 20 hours, you can start a new driving time).	Out of scope of the revision of the social rules - already addressed by guidelines	No problem foreseen	No problem foreseen	No problem foreseen	No problem foreseen
24.	Breaks / driving time	For passenger transport: Define total period for considering driving/break time on an annual basis to allow to balance periods of high demand with low demand	No problem foreseen	No problem foreseen	Not effective in terms of protecting road safety/driver's fatigue which is a daily concern and cannot be averaged over the period of 1 year.	Probably not acceptable from some stakeholders	Potentially disproportionate - providing too much flexibility for the issue under consideration
25.	Breaks / driving time	Single definition of daily driving time to 10 hours (without exceptions)	No problem foreseen	No problem foreseen	Possibly help simplify rules - However against safety/working condition objectives	Probably not acceptable from some stakeholders	No problem foreseen
26.	Multi-manning	3 hours available at either end of the journey where multi-manning is not compulsory.	No problem foreseen	No problem foreseen	Endangers road safety too much at the end of the trip	Probably not acceptable from some stakeholders	No problem foreseen
27.	Multi-manning	2 hours available at either end of the journey where multi-manning is not compulsory.	No problem foreseen	No problem foreseen	Endangers road safety too much at the end of the trip	Probably not acceptable from some stakeholders	No problem foreseen
28.	Clarification	Codification of issues dealt with by the EC guidance and clarification notes in legislation	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
29.	Enforcement / Clarification	With regard to the provisions concerning checks of 28 days and the current day, a clarification could be to make it clear in 2006/22 that the enforcement officer has to check that the driver has all the data with them, but can decide themselves how many of these days are to be checked at each check.	No problem foreseen	No problem foreseen	No problem foreseen	Probably not acceptable from some stakeholders	No problem foreseen
30.	Scope / Derogation	Daily and weekly rest exemptions/derogations for delivery of domestic heating fuel	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
31.	Enforcement	Mandatory training on social legislation for drivers, intermediaries and transport managers	Not in scope of legislation	No problem foreseen	Covered in other legislation - limited contribution - possibly costly	Support is unclear	No problem foreseen
32.	Enforcement	Bring forward GNSS by making it mandatory	Possible conflict with tachograph regulation	No problem foreseen	Significant additional costs to hauliers	Already discarded in the tachograph regulation IA	Could be seen as disproportionate
33.	Rest/Breaks / Derogation	Greater flexibility for combined transport specifically	No problem foreseen	Possibly difficult to enforce	Maybe costly to enforce separately	May not be supported by some stakeholders	No problem foreseen
34.	PwD	Criteria for posting situation in road transport has to separate international transportation (going to deliver/take cargo) from posting a driver to work as a driver to another company established in another Member State.	No problem foreseen	Possible difficulties to separate activities	May reduce effectiveness of measure	Not acceptable to exclude certain types of international transport	No problem foreseen
35.	Enforcement	Introduction of training provisions for enforcement officers, similar to those in Regulation (EC) No 165/2014	No problem foreseen	No problem foreseen	Covered in other measure related to training	No problem foreseen	No problem foreseen
36.	Enforcement	Whistle blower report system	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
37.	Enforcement	Increase number of checks on premises (but don't reduce number of roadside checks);	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		Ensure increased enforcement at premises (also for scheduled / line bus trips)					
38.	Enforcement	Company visits must be made through physical visits to at least 25% of all businesses controls	No problem foreseen	No problem foreseen	too costly	National authorities will probably not support it	Probably excessive - it is up to authorities to establish appropriate level
39.	Enforcement	Adapt list of most serious infringements to include infringements to payment regimes	No problem foreseen	No problem foreseen	Covered in other legislation	No problem foreseen	No problem foreseen
40.	Enforcement / Attestations	Make Clarification note 7 (on forms of attestations) binding	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
41.	Enforcement / Attestations	Abolish the form of attestation for occasional international traffic	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
42.	Attestation forms	Abolish attestation forms only when/if all LCVs are required to be equipped with a digital tachograph	No problem foreseen	No problem foreseen	Limited effectiveness since it is only relevant for Germany	No problem foreseen	No problem foreseen
43.	Recording of activities	Allow for 'break room' tacho to facilitate/avoid retrospective recording of activities and/or make driver card compatible with other working time systems	No problem foreseen	No problem foreseen	Already covered in other measure (abolishing attestation forms)	No problem foreseen	No problem foreseen
44.	Recording of activities	Simplify recording activities for companies that only rarely fall into the scope of the Regulation --> e.g. drivers that only carry out in-scope activities for 10-20 times a year could register those on an official form that the company has obtained beforehand and that is valid for a certain number of trips	No problem foreseen	No problem foreseen	Already covered in other measure (abolishing attestation forms)	No problem foreseen	No problem foreseen
45.	Recording of activities	Reduce requirements on retrospective recording	No problem foreseen	No problem foreseen	Already covered in other measure (abolishing attestation forms)	No problem foreseen	No problem foreseen
46.	PoA / Recording of activities	Abolish the term availability as it is now obsolete.; Don't make a distinction between 'other work' and	No problem foreseen	Practical issues since availability periods are	Limited effectiveness since problem limited to few Member States	May not be support by trade unions	Disproportionate since problem is not EU wide

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		'periods of availability' to ease retrospective recording		remunerated different in different MS			
47.	Breaks	Allow the split of breaks into 3x15min <b>from the second block of driving time in a 24h period onwards;</b>	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
48.	Daily rest	Change the rest time to 10 hours with two breaks of 30 minutes that we can put where we want within the 10 hours so we can adapt to the customer's needs without limiting rest time	No problem foreseen	Possibly difficult to control	Possible negative impact on road safety	Probably not acceptable from some stakeholders	No problem foreseen
49.	Scope / Derogations	Change the definition of scheduled bus services to a radius of 100km	No problem foreseen	No problem foreseen	Limited effectiveness since problem limited to few Member States	not expected to be supported	Disproportionate since problem is not EU wide
50.	Scope / Derogations	Derogation/Exemption for national occasional transport for 50km radius around base	No problem foreseen	Possibly difficult to control	Limited effectiveness since problem limited to few Member States	not expected to be supported	Disproportionate since problem is not EU wide
51.	Scope / Derogations	Exclusion of transport of concrete over small distances	No problem foreseen	Possibly difficult to control	Limited effectiveness since problem limited to few Member States	not expected to be supported	Disproportionate since problem is not EU wide
52.	Scope / Derogations	Exclude craftsmen from scope of legislation	Legal since Regulation's scope is on the basis of the vehicle not the driver	Possibly difficult to implement/control	Costly to implement with limited impact	not expected to be supported	No problem foreseen
53.	Scope / Derogation	Introduce a derogation for those who move vehicles within a radius of 50 km for the purposes of repair, maintenance, inspection, etc. when the driver's main job is not performing road transport operations.	No problem foreseen	Possibly difficult to control	Costly to implement with limited impact	not expected to be supported	No problem foreseen
54.	Scope / Derogations	Increase radius for derogations/exceptions from 100 to 150km;	No problem foreseen	Possibly difficult to control	Costly to implement with limited impact	not expected to be supported	No problem foreseen
55.	Coherence across MS	Avoid/Don't allow for any national-level differences/specifications of the rules	No problem foreseen	Possibly difficult to control	Already covered in other measures	not expected to be	No problem foreseen

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
						supported	
56.	Weekly rest / away from home	Fix a maximum period spent outside the home	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
57.	Weekly rest / 12 day derogation	Abolish the 24h requirement of being abroad for the 12-day rule; Apply 12-day rule to domestic operations	No problem foreseen	No problem foreseen	Already covered in other measures	No problem foreseen	No problem foreseen
58.	Weekly rest / 12 day derogation	Abolish compensation for reduced weekly rest periods and review the possibility of introducing the 12-day rule domestically and also for the carriage of goods	Extension of 12 days derogation to freight transport is out of scope of the revision of the social legislation	No problem foreseen	Limited impact on improving effectiveness of social rules.	No problem foreseen	No problem foreseen
59.	Weekly rest	Weekly rest in bus no problem	No problem foreseen	No problem foreseen	Introducing different rest requirement will not increase effectiveness/efficiency	Probably not acceptable from some stakeholders	No problem foreseen
60.	Weekly rest	Ensure that there are sufficient/high quality rest places and trucks are sufficiently equipped to spend night in the vehicle	Not in scope of social leg.	No problem foreseen	No problem foreseen	No problem foreseen	No problem foreseen
61.	Liability	Hold organisers of trips liable, not only drivers and the undertakings;	Requires changes to internal market legislation	No problem foreseen	No problem foreseen	Interference with MS-level competence	Interferes with national competence
		Extend the access to profession criteria to all actors in the supply chain would improve the co-liability with regard to infringements of rules. Shippers and freight forwarders' roles should be included.	Not in scope of social leg.	No problem foreseen	No problem foreseen	Interference with MS-level competence	No problem foreseen
62.	Software	Harmonise software - i.e. certify companies that supply equipment/software (replacing equipment at company/enforcement level would be too costly now)	Not in scope of social leg.	Possibly complicated	Possible impact on increase of enforcement cost	No problem foreseen	No problem foreseen
63.	Other	Allow self-employment also in passenger transport segment	No problem foreseen	No problem foreseen	Limited effectiveness since it is not EU wide problem	No problem foreseen	May be considered disproportionate

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
							given that it not EU wide issue
64.	Scope / derogations	Extend the scope of the existing Article 13.1(d): all delivery operators shall be considered exempted from Regulation 561/2006/EC if they operate vehicles below 7.5t, stay within a 100 km radius with their vehicle and the driver's main activity does not constitute driving.	No problem foreseen	Possibly difficult to control	No problem foreseen	not expected to be supported	No problem foreseen
65.	Scope / derogations	Individual exceptions for member states according to Art. 13 Reg.(EC) 561/2006 should be limited to exceptional circumstances only.	No problem foreseen	No problem foreseen	Limited effectiveness since it is not EU wide problem	not expected to be supported	Disproportionate since problem is not EU wide
66.	Enforcement	There should be a general tolerance for all time limits of 15 min.	No problem foreseen	Possibly difficult to control	Danger that tolerance limits will become a rule	No problem foreseen	No problem foreseen
67.	Breaks	Driving breaks (Art. 7 Reg.(EC) 561/2006): even more flexibility needed (e.g. splitting into parts of at least 10 minutes; it should be allowed that breaks may be executed within a period of 9 hours instead of 4.5 hours)	No problem foreseen	No problem foreseen	No effectiveness as already covered	No problem foreseen	No problem foreseen
68.	Suitable stopping place	Suitable stopping place (Art 12 Reg.(EC) 561/2006): clarification that for passenger transports at the end of each day the suitable stopping place is the final destination of that day.	Not in line with social rules regarding road safety	No problem foreseen	Possibly against road safety objectives	No problem foreseen	No problem foreseen
69.	Weekly rest	Weekend breaks (Art. 4 lit. h Reg.(EC) 561/2006): clarification that the reduced weekly rest period may be compensated within 4 weeks.	No problem foreseen	No problem foreseen	No effectiveness as already covered in weekly rest proposal	No problem foreseen	No problem foreseen
70.	Enforcement / Penalties / Tolerance	No penalty shall be meted out for infringements that have taken place as a consequence of unexpected occurrences that resulted in disruptions and delays. It is not reasonable to apply penalty if the company can provide a reasonable	potential conflict with national legislation	Possibly complicated	No problem foreseen	Interference with MS-level competence	May be considered disproportionate and infringe subsidiarity

No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		explanation for the infringement.					
71.	Enforcement / Penalties / Tolerance	No penalty shall be made for short movements of buses without a card inserted in the tachograph, e.g. in connection with washing and cleaning or marshalling of the vehicles.	potential conflict with national legislation	Possibly complicated	No problem foreseen	Interference with MS-level competence	May be considered disproportionate and infringe subsidiarity
72.	Enforcement / Penalties / Tolerance	The penalty for omission on the part of the driver to register the start and destination country should be made less severe.	potential conflict with national legislation	Possibly complicated	No problem foreseen	Interference with MS-level competence	May be considered disproportionate and infringe subsidiarity
73.	Weekly rest	Prolong reference periods for the compensation of weekly rest period	No problem foreseen	No problem foreseen	No effectiveness as already covered	No problem foreseen	No problem foreseen
74.	Clarification	Provide clarification that duplicate punishment for one and the same violation is forbidden	No problem foreseen	No problem foreseen	No effectiveness as already covered	No problem foreseen	No problem foreseen
75.	Clarification	Clarification as to what applies when a vehicle is moved by car ferry or stevedore personnel within a harbour area (i.e. not by the driver, but by other personnel → the tachograph still registers these movements)	No problem foreseen	No problem foreseen	No problem foreseen	No problem foreseen	Not considered significant issue to require regulatory intervention
76.	Enforcement	Require a national inspection authority to conduct a survey before a penalty is imposed (a 'priority 1 measure' for them)	potential conflict with national legislation	Possibly complicated	No problem foreseen	Interference with MS-level competence	May be considered disproportionate and infringe subsidiarity
77.	Enforcement	EC Regulations should be developed and clarified with respect to proportionality of fines, to avoid non-proportionate sanctioning	No problem foreseen	No problem foreseen	No effectiveness as already covered	No problem foreseen	No problem foreseen
78.	WTD	Working time rules that are not in contradiction with driving time's breaks and rest periods should be integrated into Regulation (EC) n°561/2006; those in contradiction and that are not useful should not be kept.	No problem foreseen	No problem foreseen	No effectiveness as already covered	No support for such measures in earlier rounds	No problem foreseen
79.	Multi-manning / breaks / availability	The definition of availability should be changed to indicate that the concept only exists in relation to a second	No problem foreseen	Practical issues since availability periods are	Covered by another measure	May not be supported by trade unions	No problem foreseen



No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		driver (multi-manning). In case of multi-manning, availability would then be considered as a break.		remunerated different in different MS			
80.	Recording of activities (retrospectively) / form of attestation	Article 34 (5. point (iv) of Regulation (EC) 165/2016, the reference to "breaks or rests" should be changed to "breaks or daily rests" because the tachograph should only be used for days when driving is performed. This would be in line with Article 15 point 3 (d) of Regulation (EC) 3821: 'breaks and daily rest'.	Not in scope of the revision of the social legislation as addressed already by guidelines.	Possibly complicated	Expected to be more cost-effectively addressed through guidelines	No problem foreseen	Not considered significant issue to require regulatory intervention
81.	Other Work	Delete reference to the Working Time Directive in the definition of other work of Regulation (EC) 561/2006 and include a reference to situations in which the driver is engaged for the purpose of being able to operate as a driver (such as a training - i.e. on the request of the driver's employer or not).	The proposed measure remains unclear to the Commission.				
82.	Multi manning	Availability in multi-manning should be considered as a break	It would not reflect the social rules provisions on occupational health and safety	It may be difficult to enforce	It would not reflect the social rules provisions on occupational health and safety	May not be seen acceptable by trade unions	No problem foreseen
83.	Ferry crossings	Everything under one hour on board a ferry should be considered part of a break. Anything over one hour on board a ferry can be a part of an interrupted daily rest.	Out of scope of the revision of the social legislation	No problem foreseen	Limited impact on improving the effectiveness of social rules	No problem foreseen.	Not consider significant issue to require regulatory intervention
84.	Unforeseen circumstances	Further flexibility should also be provided in situations of unforeseen delays, as long as this did not compromise safety. Greater flexibility to ensure drivers can complete the journey, by diminishing limits, such as the ability to drive for no more than 15 further miles or 30 further minutes	No problem foreseen	It may be difficult to enforce	Limited effectiveness since already covered in Article 12 / Rather to include in enforcement guidelines	No problem foreseen	No problem foreseen



No	Theme	Proposed measure	Legal feasibility	Technical feasibility	Effectiveness and efficiency	Political feasibility	Proportionality
		where it can be demonstrated that an unforeseen event had caused the driver to “run out of hours”.					
85.	Unforeseen circumstances	Improve article 14, by clarifying what the term ‘unforeseeable circumstances’ means and can include. By clarifying the current Regulation, drivers that, for example are stuck in traffic, could claim the time spent in traffic as ‘break’ or ‘emergency’, and therefore allow for some flexibility on their working schedule.	No problem foreseen	No problem foreseen	Limited effectiveness since already covered in Article 12 / Rather to include in enforcement guidelines	No problem foreseen	Not considered significant issue to require regulatory intervention at EU level
86.	Precision to possible expansion to LCVs	<3.5 tonnes vehicles should be included but should not have to comply to the same rules as bigger vehicles. For example, instead of asking all <3.5 vehicles to install and use a tachograph, which would be quite demanding, especially for small operators (SMEs), these vehicles could for example use the log book.	It is out of scope of the revision of the social legislation	It may be difficult to enforce	Limited impact on improving the effectiveness of social rules according to OPC results it is not a major issues across MS	No problem foreseen	No problem foreseen
87.	Enforcement	Set concrete minimum requirements and specific thresholds for the MSs to follow and cooperate. For example, more specific requirements should be introduced on the use of ERRU among the MSs states to improve cooperation and exchange of information.	No problem foreseen	No problem foreseen	Limited effectiveness since already covered in another policy measure.	No problem foreseen	No problem foreseen

## ANNEX 7

### THE ROAD INITIATIVES – THE BIG PICTURE

#### INTRODUCTION

The Road Initiatives, which are all REFIT Initiatives, are fully inscribed in the overall priorities of the Juncker Commission notably under the 'A deeper and fairer Internal Market' and the 'Climate and Energy Union'.

The Communications from the Commission on 'Upgrading the Single Market: more opportunities for people and business' and on 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy' explicitly refer to the Road Initiatives.

The table below presents the link between the Juncker priorities, the Impact Assessments prepared for the Road Initiatives and the related legislative acts.

Priorities	IAs	Legislation
A deeper and fairer Internal Market	Hired vehicles	Directive 2006/1
	Access to the haulage market and to the Profession	Regulation 1071/2009 & 1072/2009
	Social aspects: Driving/rest time, working time and enforcement measures (tachograph), Posting of workers and enforcement measures	Regulation 561/2006 and Regulation 165/2014
		Directive 96/71, Directive 2014/67, Directive 2002/15 and Directive 2006/22
Climate and Energy Union	Access to the market of buses and coaches	Regulation 1073/2009
	Eurovignette	Directive 1999/62
	European Electronic Toll Service (EETS)	Directive 2004/52
		Commission decision 2009/750

Moreover, the transport strategy of the Commission as laid down in the White Paper "Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system" adopted on 28 March 2011, included references to the road initiatives<sup>137</sup>.

## **THE EU ROAD TRANSPORT MARKET**

Road transport is the most prominent mode of transport. In 2014, almost three quarters (72%) of all inland freight transport activities in the EU were by road. On the passenger side, the relative importance of road as mode of transport is even greater: on land, road accounts for more than 90% of all passenger-kilometres: 83% for passenger cars and almost 9% for buses and coaches.

Almost half of the 10.6 million people employed in the transport and storage sector in the EU are active in carrying goods or passengers by road. Road freight transport services for hire and reward employs around 3 million people, while the road passenger transport sector (buses, coaches and taxis) adds another 2 million employed persons (a third of which are taxi drivers). This corresponds to more than 2.2% of total employment in the economy and does not include own account transport which in road freight transport alone provides employment for 500,000 to 1 million additional people.

There are about 600,000 companies in the EU whose main business is the provision of road freight transport services for hire and reward. Every year, they generate a total turnover of roughly €300 billion, around a third of which is value added by the sector (the rest being spent on goods and services from other sectors of the economy). The provision of road freight transport services for hire and reward is hence an important economic sector in its own right, generating almost 1% of GDP.

In road passenger transport, there are about 50,000 (mostly) bus and coach operators (of which 12,000 provide urban and suburban services, (some including tram and underground)) and around 290,000 taxi companies in the EU. Together, they generate a turnover of €110 billion. Without taxis, total turnover of the sector is around €90 billion per year, of which some €50 billion is value added.

## **WHY IS THERE A NEED FOR ACTION?**

Road transport is for a large part international (around 34%<sup>138</sup>) and this share is increasing, which explains the need for a common EU legal framework to ensure efficient, fair and sustainable road transport. The framework covers the following aspects:

Internal market rules governing access for operators to the markets of freight and passengers

Social rules on driving/rest time and working time to ensure road safety and respect of working conditions and fair competition

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<sup>137</sup> More specifically in the Annex under points 6, 11 and 39

<sup>138</sup> Statistical Pocketbook 2016, EU Transport in figures

Rules implementing the user and polluter pays principles in the context of road charging

Digital technologies to enable interoperable tolling services in the EU and to enforcement EU rules (e.g. the tachograph)

It is clear that current rules are no longer fit for purpose. Member States are increasingly adopting own national rules to fight "social dumping" while acknowledging that their actions have adverse effects on the internal market. Moreover, public consultations have shown a strong support for EU action to solve current issues in road transport. For example:

Severe competition in the road transport sector has led many operators to establish in low-wage countries without necessarily having any business activity in these countries. There is a lack a clear criteria and enforcement mechanisms to ensure that such establishment practises are genuine, and that there is a level playing for operators.

Measures on Posting of Workers implemented in 4 Member States (DE, FR, AT and IT) are all different and obviously from other Member States which have not implemented any measure to implement the minimum wage to road transport on their territory. Stakeholders ask for a common set of (simplified) enforcement rules.

CO2 emissions from road transport represent a large share of total emission and the share is set to rise in the absence of common action (at EU 28 level), which is needed to contribute substantially to the commitment under the Paris Agreement and to the 2030 goals.

Due to the increasingly more and more hyper-mobile nature of the sector, there is a need for common and enforceable rules for workers. All workers should benefit from the same level of protection in all Member States to avoid social dumping and unfair competition between hauliers. This is currently not the case.

## **WHAT ARE THE MAIN PROBLEMS?**

The Internal market for road transport is not complete. It is our assessment that the current situation does not allow to exploit the full potential of transport services

- e.g. current rules on bus/coach services or the rules on hired vehicles are still very restrictive. Some Member States have decided to unilaterally open their market, which has led to a fragmentation of the EU internal market.

Many rules are unclear, therefore leading to different level of implementation by Member States and problems of enforcement:

- e.g. on cabotage where all stakeholders agree that current rules are unenforceable

There are allegations of 'social dumping' and unfair competition in the road transport sector. This has led to a division between East and West in Europe. As a consequence, several Member States have decided to take national measures, which might jeopardize the unity of the EU market for road transport:

- E.g. minimum wage rules in DE, FR, IT and AT coupled with disproportionate administrative requirements ; prohibition of drivers taking the weekly rest in the cabin of vehicles in FR and BE

Environmentally, we have made good progress on reducing pollutants from Heavy Good Vehicles but our legal framework currently does not address the issue of climate change (CO<sub>2</sub>). At the same time, the infrastructure quality is degrading in the EU despite that fact that user charges and tolls are levied on most TEN-T and motorways.

Electronic tolling systems in the EU are, despite the primary objective of the EU legislation of "one contract/one on-board unit/one invoice" for the users, far being interoperable. More generally, the benefits of digitalisation are still under-exploited in road transport, in particular to improve control of EU legislation (e.g. many Member States do not currently the use of electronic waybills).

## **OPTIONS AND MAIN IMPACTS**

To achieve these objectives, all IAs will consider a range of different options, which ultimately should improve the efficiency, fairness and sustainability of road transport.

The IA on Hired Vehicles will assess options aiming at removing outdated restrictions on the use of hired goods vehicles and thus at opening up new possibilities for operators and leasing/hiring companies alike. More flexibility for the hiring of vehicles should lead to more efficient operations, higher productivity and less negative environmental impacts as fleet renewal will be promoted.

The IA on Access to the haulage market and to the Profession will study various options 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. Three broad groups of potential measures will be assessed, namely measures liable to improve enforcement, measures ensuring simplification and clarification of current rules and measures reinforcing the cooperation between Member States.

The IA on Access to the market of buses and coaches will assess options aiming at improving the performance of coach and bus services vis-a-vis other transport modes, especially private car and further developing the internal market for coach and bus services. This should lead to a reduction of the adverse environmental and climate effects connected with mobility. Various policy options will be considered for creating more uniform business conditions and also a level playing field for access to terminals.

The IA on Social aspects of road transport will study options aiming 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. An additional objective, in the context of the implementation and enforcement of the provisions on posting of workers, 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. In this perspective, three broad groups of measures will be analysed: 1. Simplification, update and clarification of existing rules, 2. More efficient enforcement and cooperation between Member States and 3. Improved working conditions of drivers and fair competition between operators.

The IA on the Eurovignette will assess options to promote financially and environmentally sustainable and socially equitable (road) transport through wider application of the 'user pays' and 'polluter pays' principles. A number of different measures and their variants aiming at correcting price signals in freight and passenger transport will be considered in order to address the issues identified. The policy options range from minimum adjustments to the Directive required for improving its coherence and addressing all policy objectives, through the promotion of low carbon (fuel efficient) vehicles and the phasing out of time-based charging schemes (vignettes) for trucks to the optimisation of tolls for all vehicles.

The IA on EETS (European Electronic Tolling Service) will study options aiming at reducing the cost and the burden linked to the collection of the electronic tolls in the EU – for the users and for the society at large. It will equally seek to improve the framework conditions for the faster and more widely provision of an interoperable European Electronic Toll Service. Different policy options will be considered, including a non-legislative approach (facilitating exchange of best practice, co-financing EETS-related projects) and a legislative review.

These policy options and their impacts will be presented and assessed in detail in the respective IAs.

## **EXPECTED SYNERGIES OF THE PACKAGE**

The different initiatives constitute a coherent set of measures which will jointly contribute to an efficient, environmentally and socially sustainable road transport sector. It is expected that the impacts will be more than the addition of the impacts of each initiative, meaning that the initiatives are complementary. Some examples of such synergies are provided below.

Current restrictions on cabotage are unclear and therefore lead to illegal cabotage. These illegal activities are closely linked with the fact that transport operators established in low-wage countries exert unfair competition via 'social dumping' and not respecting the rights of workers, who often are staying in their trucks abroad for longer periods. This illustrates the clear link connection between compliance of internal market rules and social/fair competition aspects of road transport, which are all addressed by the road initiatives and which cannot be dealt with separately.

When assessing the laws applying a national minimum wage to road transport, Member States explained the Commission that one of the reasons for adopting these national measures is to fight the phenomenon of fake establishments and “letter box” companies in low-wage countries. Tackling the issue of posting of workers in road transport goes therefore hand in hand with the issue establishment of road hauliers transport operators, which again illustrates the link connection between internal market and social aspects of road transport.

Promoting interoperability of electronic tolls systems will lead to lowering the implementation costs of such systems by Member States. We can expect that this will incentivise Member States to put in place distance-based tolls, which better reflect the user and polluter pays principles use of infrastructure. This shows the close link between the Eurovignette and EETS initiatives.

Seeking to improve the performance of coach and bus services vis-a-vis other transport modes will inevitably lead discussion on a level playing between road and rail services. Current EU legislation provides that rail users shall pay for the use of infrastructure, while it is not currently the case for buses and coaches which are outside the scope of the Eurovignette directive. The inclusion of buses and coaches in the Eurovignette initiative to ensure that they pay a fair price for using the road infrastructure is therefore essential and will ensure endure overall coherence.

The initiatives on hired vehicles is in particular related to the initiatives on the access to the market and to the profession, all having the aim of establishing clear and common rules for a well-functioning and efficient Internal Market for road haulage : some of them by ensuring a good functioning of the market of transport services, others by ensuring the best use of the fleet of vehicles.

## **OVERALL COSTS AND BENEFITS OF THE ROAD INITIATIVES**

The Road Initiatives are, despite the important synergy effects described in this Annex, dealing with very different topics, ranging from Internal market rules, to road charging (Eurovignette and EETS) and to social rules. For that reason, the costs and benefits, which have been calculated in the relevant impact assessments, are addressing various different impacts (economic, environmental and social) for different entities (e.g. the general public, drivers, hauliers, toll service providers and toll chargers, enforcement authorities and Member States). In other words, the resulting costs and benefits and highly context depended.

For instance, the preferred option with respect to the internal market rules would lead to savings for operators (due to for example e-docs, which could amount between €5,195 to €6,940 million (2020-2035 ) but also additional enforcement costs to authorities having to control compliance (€65,2 million to €165,6 million (2020-2035 )) with notably rules on establishment of companies. Operators will, in turn, benefit from a more level playing stemming from rules on establishment being applied equally across the EU.

The preferred options in the initiative on road charging, would lead to important environmental benefits (€9,7 million in savings (2016-2030)), but accordingly additional costs to users, who will increasingly be paying according to the user and polluter pays principles. These additional costs users will represent higher tolls revenues for toll chargers and eventually Member States (€ 40,5 billion (2016-2030)).

The preferred option on the social rules, will lead to important social benefits for drivers (such as reduce period away from home, reduced stress and fatigue, equal treatment) , who will be guaranteed a minimum wage when being abroad for longer periods. Operators, who will be liable to pay higher wages to drivers, will on the one hand face higher costs, but at the same time benefit from a more level playing field. Along the measures on the posting of workers, operators will have significant saving in compliance costs (€ 288-374 million/year) and savings in administrative costs (around € 691 million/year). To ensure that drivers are receiving the required minimum wages, enforcement authorities will face higher enforcement costs.

The examples provided above from the impact assessments of the Road Initiatives, providing different costs and benefits for various entities, shows that it would not be rational to cumulate these for all the Road Initiatives. This is reinforced by the fact that other costs and benefits, such as the benefits of a level playing field, are very difficult – if not impossible - to quantify.



## ANNEX 8

### ANALYSIS OF INTERACTIONS BETWEEN HAULAGE MEASURES (REVISION OF REGULATION NO 1071/2009 AND 1072/2009) WITH SOCIAL RULES

Haulage IA measures	Interaction with proposed social IA measures?	Design interactions	Effectiveness / benefit interactions	Cost interactions
Introduce cross-border joint controls (voluntary/mandatory)	Increase the number of concerted checks	Preferable to require the same number of joint controls for both legislative areas in order to be proportionate and consistent.	N/A	Not significant. Social IA indicated that cost to organise joint controls was minor, so synergies here (if any) will have a minor effect
Introduce a minimum number of checks of compliance with the cabotage provisions	N/A	Could be based on the existing requirements for minimum checks of social legislation.  Changes to the level of minimum checks under social legislation are not foreseen	N/A	N/A
Opening up of the national risk-rating systems to other Member States to promote exchange of information on high-risk companies and to target checks	Harmonise the control tools and systems used by enforcers, in particular national risk rating systems (RRS) to enable comparability of data and their exchange between Member States' enforcement authorities and software used to read and analyse data downloaded from the tachograph and driver's card	Requirements / timeframes should be similar for both pieces of legislation.	Yes. Risk targeting can take into account more data.	Yes. Fixed costs for any changes to the system should be incurred once and so there should be synergies if multiple changes are made at the same time.
Facilitate cross-border checks on establishment provisions, by introducing a maximum time period for replies to questions regarding establishment (along with a procedure for escalation it	Enhance the level and effectiveness of administrative cooperation within and between Member States by improving the exchange of information on infringements, checks and	Requirements / escalation procedure should be similar for both pieces of legislation.	Not significant. Potential for minor improvements (e.g. better compliance with required response times) due to increased familiarity with	Not significant

Haulage IA measures	Interaction with proposed social IA measures?	Design interactions	Effectiveness / benefit interactions	Cost interactions
these timescales are not met).	investigations,		requirements across multiple legislative areas	
Adopt common classification of undertakings (green amber, red label used to indicate increasing level of risk of non-compliance and be linked to more/less frequent inspections)	Harmonise the control tools and systems used by enforcers, in particular national risk rating systems (RRS) to enable comparability of data and their exchange between Member States' enforcement authorities and software used to read and analyse data downloaded from the tachograph and driver's card	Requirements / timeframes should be similar for both pieces of legislation.	Yes. Risk targeting can take into account more data.	Yes. Fixed costs for any changes to the system should be incurred once and so there should be synergies if multiple changes are made at the same time.
Identify minimum common data/information to be included in risk rating systems	Harmonise the control tools and systems used by enforcers, in particular national risk rating systems (RRS) to enable comparability of data and their exchange between Member States' enforcement authorities and software used to read and analyse data downloaded from the tachograph and driver's card	Requirements / timeframes should be similar for both pieces of legislation.	Yes. Risk targeting can take into account more data.	Yes. Fixed costs for any changes to the system should be incurred once and so there should be synergies if multiple changes are made at the same time.
Use of GNSS digital tachograph for enforcement after a certain date	Promote use of GNSS digital tachograph. The digital tachograph equipped with a GNSS function will be available from 2016-2017 and thanks to its new satellite positioning function, will allow enforcers to check at the roadside the movements of a vehicle.	Requirements / timeframes should be compatible with both pieces of legislation	Yes. More available data to enforcers at the time of the check	Yes. Additional costs of training / equipment for enforcers can be shared between the two pieces of legislation to some extent (although not completely – e.g. some training would need to be specific).
Extend access to ERRU to road side check officers and make mandatory the fields in ERRU relative to vehicle registration plates. Currently ERRU is only accessible to enforcement authorities through an administrative	Enable access of controllers to RRS to help them check in real time whether a company is registered and to identify high-risk companies	Requirements / timeframes should be similar for both pieces of legislation.	Yes. More available data to enforcers at the time of the check	Yes. Possible synergies if roadside officers need additional equipment to access both systems (unknown, to be checked with stakeholders what

Haulage IA measures	Interaction with proposed social IA measures?	Design interactions	Effectiveness / benefit interactions	Cost interactions
request.				is needed)
Automatically detect data conflicts and registering them in the NERs, ERRU and the risk rating systems, as part of the operator's compliance record	Harmonize the control tools and systems used by enforcers, in particular national risk rating systems (RRS) to enable comparability of data and their exchange between Member States' enforcement authorities and software used to read and analyse data downloaded from the tachograph and driver's card.	Requirements / timeframes should be compatible with both pieces of legislation	Yes. More available data to enforcers at the time of the check	Yes Increased costs to adapt the systems will be incurred and may be assigned to the 1071 revision, but would benefit enforcement in general.
Extend scope of Regulation (EC) No 1071/2009 to cover vehicles below 3.5 t fully.	Clarify and adapt, where necessary, the scope of the legislation with regard to driver (professional, private, occasional driver, self-employed), to vehicle (e.g. vehicles below 3,5 tonnes),	Requirements / timeframes should be compatible with both pieces of legislation	Not clear	Not clear Only relevant to the extent that enforcement is carried out at the same time / by the same organisations, which is not always the case
Extend scope of Regulation (EC) No 1071/2009 to cover vehicles below 3.5 t partially	Clarify and adapt, where necessary, the scope of the legislation with regard to driver (professional, private, occasional driver, self-employed), to vehicle (e.g. vehicles below 3,5 tonnes),	Requirements / timeframes should be compatible with both pieces of legislation	Not clear	Not clear Only relevant to the extent that enforcement is carried out at the same time / by the same organisations, which is not always the case
Extend scope of Regulation (EC) No 1072/2009 to cover vehicles below 3.5 t fully	Clarify and adapt, where necessary, the scope of the legislation with regard to driver (professional, private, occasional driver, self-employed), to vehicle (e.g. vehicles below 3,5 tonnes),	Requirements / timeframes should be compatible with both pieces of legislation	Not clear	Not clear Only relevant to the extent that enforcement is carried out at the same time / by the same organisations, which is not always the case
Extend scope of Regulation (EC) No 1072/2009 to cover vehicles below 3.5 t partially	Clarify and adapt, where necessary, the scope of the legislation with regard to driver (professional, private,	Requirements / timeframes should be compatible with both pieces of legislation	Not clear	Not clear Only relevant to the extent that enforcement is carried out at the same time / by the same

Haulage IA measures	Interaction with proposed social IA measures?	Design interactions	Effectiveness / benefit interactions	Cost interactions
	occasional driver, self-employed), to vehicle (e.g. vehicles below 3,5 tonnes),			organisations, which is not always the case
Introduce penalties for shippers and freight forwarders, in case they knowingly commission transport services involving infringements of the Regulations (e.g. illegal cabotage operations).	Introduce penalties for shippers, freight forwarders and other actors in subcontracting chain, in case they knowingly commission transport services involving infringements of the legislation. Such penalties would incentivise them to resort to transport operations carried out in a lawful way.	Intervention should be consistent between both pieces of legislation	Not significant	Not significant
Extend the empowerment for the Commission to come forward with a classification of infringements which are not related to safety and revise annex IV of Regulation (EC) No 1071/2009 on the most serious infringements.	Establish minimum requirements to determine appropriate types and levels of sanctions that are proportionate to the seriousness of infringements as established by the EU legislation (e.g.: Regulation (EC) No 2016/403).	Intervention should be consistent between both pieces of legislation	Not significant May be some mutual reinforcement of compliance with rules overall where operators offend in multiple areas	Not significant

## ANNEX 9

### PRELIMINARY ASSESSMENT OF DELIVERY INSTRUMENTS FOR POLICY PACKAGE 4

#### **Legal delivery instruments of Policy package 4:**

Policy Package 4 implies the adoption of legislative measures specifying the conditions of application of the posting of workers rules to road transport (scope of the rights for the workers and the enforcement measures to be complied with by the employers).

#### ***Option 1 : Revision of existing posting of workers rules through a proposal for a Directive amending Directive 96/71/EC and Directive 2014/67/EU***

The revision of existing legislation as a delivery instrument has the benefit of allowing targeted modifications of the relevant provisions, in view of adapting them to the specificities of road transport. This approach requires a minimum level of legislative intervention. Furthermore, such targeted revision provides an efficient mechanism to clarify existing provisions and to remove uncertainty and inconsistency.

Based on the policy measures in option 4, the legislative proposal would provide for : (1) a threshold above which the minimum wage of the host Member State shall be paid to the driver and (2) some enforcement measures specific for road transport, leaving unchanged most of the provisions of Directive 2014/67/EU for example the mechanism of exchange of information between the Member States.

The overall legal integrity of the EU framework on posting of workers is maintained (no duplication of legal texts as the sector-specific rules for road transport will be "inside" Directive 96/71/EC and Directive 2014/67/EU).

#### ***Option 2 : Adoption of a separate legal instrument (Directive) for road transport***

Directives 96/71/EC and 2014/67/EU remain untouched. The specific rules applicable to road transport would be part of a separate legal instrument "outside" the two existing directives on the posting of workers. Two sub-options are possible :

#### ***Option 2 (a) : Legislative framework regulating all aspects of posting of workers in road transport.***

Directive 96/71/EC and Directive 2014/67/EU would no longer regulate road transport. Road transport would be (fully) regulated in a sector-specific framework.

This would provide a holistic approach which is tailored to the particular needs of the sector. However, this approach represents a significant legislative initiative as it requires the specification and negotiation with the European Parliament and the Council of all rules of posting of workers which are already regulated in Directive 96/71/EC and Directive 2014/67/EU. Compared to a revision of the two existing Directives, the development and

adoption of entirely new legislation would be considerably more time and resource consuming. It would also create additional administrative and financial burdens for the Union, the Member States as well as undertakings, as it would require the transposition, monitoring of transposition and practical application of a large volume of new rules.

***Option 2 (b) : Legislative framework regulating only the specific aspects for road transport***

The new framework would include only the rules which are specific for road transport. Directives 96/71/EC and 2014/67/EU continue to apply subject to the specific road transport rules.

Similar to the first delivery instrument, this would represent an efficient and targeted delivery instrument for addressing transport related posting issues. Although targeted and efficient, this option does not however guarantee the integrity of the EU legal framework and ensures a lower level of legal clarity. Application of the EU posting of workers rules in road transport would require a combined reading of the existing provisions (Directive 96/71/EC and Directive 2014/67/EU) and the new specific provisions for road transport derogating to existing legislation.

**Clarification of existing legislation on posting of workers through guidelines or interpretative communication (non-legislative instruments)**

An interpretative communication or guidelines issued by the Commission, attempting to clarify the application of the posting of workers legal framework to road transport, in particular the application of the rules on minimum paid annual holidays and minimum rates of pay as well as the administrative requirements stipulated by the enforcement Directive, would in principle represent a resource-efficient and minimum level of intervention. This would ensure stability to the current legal framework, as no new rules would have to be negotiated with the European Parliament and the Council.

However it is expected that this approach will result in no change, at least in the short/medium term, compared to the baseline scenario.

The Commission launched infringement procedures against DE (supplementary letter of formal issued in June 2016) and FR (letter of formal notice in June 2016). The Commission has considered that the application of the minimum wage to international transport operations having only a marginal link to the territory of the host Member State cannot be justified, as it creates disproportionate administrative barriers, which prevent the internal market from functioning properly. The Commission has also considered that more proportionate measures should be taken to safeguard the social protection of workers and to ensure undistorted competition, whilst allowing for free movement of services and goods.

An interpretative communication or guidelines would merely reproduce the reasoning developed by the Commission in the infringement procedures against FR and DE. It make

little sense to issue guidelines now, before the completion of the infringement proceedings, i.e. before a judgment of the Court of justice in at least one of the pending cases.

- The Member States concerned will likely not amend their legislation/practice before a judgment of the Court of justice. The infringement procedures launched against FR and DE had so far not effect. In their reply to the infringement procedures, FR and DE argue that their national rules implementing the rules on posting of workers to road transport are fully compatible with Directives 96/71/EC and 2014/67/EU and with the Treaty principles . It can therefore be expected that the Member States concerned would disagree and not follow the interpretation of the Commission in non-binding guidelines.
- Substance-wise, it would not be useful to formulate guidelines without the guidance of the Court.

This would mean that guidelines or an interpretative communication could be issued at the earliest around two years from now.

On the other hand, it remains very uncertain to what extent the judgement(s) of the Court of justice could help the Commission in clarifying how posting of workers rules shall apply to road transport. Where the Court finds that an infringement exists, it formalises this finding through a corresponding judgment. However, the judgment does not pronounce itself on the appropriate remedies to be adopted for putting an end to the infringement. Hence, even though the judgment may contain some indication to this effect, a high uncertainty remains about the scope and practical value of such indications for the purposes of possible Commission guidelines. Hence, a judgment may not contain what is needed, i.e. elements simply to be converted into Guidelines and thereby ending contestation and differences between Member States.

Following the judgment of the Court, the Member States concerned would have to reassess and adapt their national legislation. They would probably do this in an uncoordinated manner, which means that the new national rules applying the rules of posting to road transport would probably, as is the case today, be different from one Member State to the other. This would not solve the issue of fragmented approach of this issue, which has led to a fragmentation of the internal market. Road industry would continue to be confronted with diverse national rules applying the principles of posting of workers to road transport.

Similar considerations apply insofar as it may happen that the Court be seized with a request for a preliminary ruling. In addition, the submission of such request depends on the willingness of operators to go to national Courts and is not in the Commission's hands. So far, no request of the kind is known to the Commission.

We can also expect that other Member States will implement the rules of posting to road transport (IT is already applying the minimum wage to cabotage and is waiting for legal clarity at EU level before implementing it to international transport). In the absence of clear

rules at EU level, we might therefore see a multiplication of non-coordinated national systems incompatible with EU law and EU Treaty.

In summary, guidelines or interpretative communication could not deliver what is needed, namely legal certainty and uniformity within the internal market, within a reasonable time frame.



## **ANNEX 10**

### **OVERVIEW OF THE RELEVANT CURRENT MAIN PROVISIONS**

#### Regulation (EC) No 561/2006:

- Scope: applies to carriage by road of goods exceeding 3.5t or of passengers for more than 9 persons
- Daily driving time: max. 9 hours (or 10 hours twice a week)
- Weekly driving time: max. 56 hours (max. 96 hours during two consecutive weeks)
- Break: at least 45 minutes within or after 4.5 hrs of driving. This break can be replaced by a break of at least 15 minutes followed by at least 30 min.
- Daily rest: regular daily rest is more than 11 hrs; reduced daily rest is between 9-11 hrs.
- Weekly rest: regular weekly rest is 45 hrs; a reduced weekly rest is of at least 24 hours.
- Co-liability: A transport undertaking shall not give drivers it employs any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety or encourages infringement of the Regulation. A transport undertaking shall be liable for infringements committed by drivers of the undertaking.

#### Directive 2002/15/EC:

- Average weekly working time: max. 48 hrs (it may be extended to 60 hrs if over four months the average of 48 hrs/week is not exceeded).
- Reference period to calculate the working time is 4 months.
- Break: a break of at least 30 minutes if 6-9 hrs of working time. Otherwise, at least 45 minutes if working time is exceeding 9 hrs. Breaks may be subdivided into periods of at least 15 minutes each.
- Records shall be kept for at least two years after the end of the period covered.

### Regulation (EU) No 165/2014

- Regulates the rules around the recording device (tachograph) in order to verify the compliance with Regulation (EC) No 561/2006 and Directive 2002/15/EC.
- Sets the data the tachograph is recording (distance travelled, speed, time measurement, position points, identity of driver, activity of driver, data in relation to control and calibration, event and faults)
- The tachograph records the position of the vehicle at the starting and end place of a daily working period, every three hours accumulated driving time

### Directive 2006/22/EC

- Minimum conditions for the enforcement of Regulation (EC) No 561/2006 and Council Regulation (EEC) 3821/85
- Establishment of intracommunity liaison bodies as contact points for the Commission and other Member States.
- Exchange of information at least every 6 months and upon specific request by a Member State in individual cases
- Legal basis to introduce risk rating system for undertakings based on the relative number and severity of infringements
- Establishes the form of availability
- Stipulates the data to be checked on the roadside and at the premises of undertakings and the statistics to be collected and provided to the Commission biennially.

### Directive 96/71/EC

- Stipulates the minimum requirements for posted workers providing services
- Undertakings that post workers to another Member State shall ensure that they apply:
  - ✓ the maximum work periods and minimum rest periods,
  - ✓ minimum paid annual holidays,
  - ✓ minimum rates of pay, including overtime,
  - ✓ conditions of hiring-out workers,
  - ✓ health, safety and hygiene at work,
  - ✓ protective measures,

- ✓ equality of treatment, provisions of non-discrimination
- The reference period of posting is 1 year
- Member States are required to establish liaison offices

#### Directive 2014/67/EU

- Sets details of enforcement for Directive 96/71/EC
- Establishes the exchange of information via IMI between national authorities. Timelines for urgent cases requiring the consultation of registers is 2 working days. All other request are maximum of 25 working days.
- Member States can impose administrative requirements and control measure necessary to ensure effective compliance of the Directive:
  - ✓ declaration of service provider (identify of service providers, number of posted workers, duration of posting, start and end date, address of work place, justification of posting),
  - ✓ copies of employment contracts or other documents (payslips, time-sheets, proof of payment of wages etc.). To provide translation of the latter documents in one of the official languages of host Member State or another language accepted by host Member State,
  - ✓ designate liaison person to liaise with competent authorities in host Member State.