



# **Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009**

Final report

Study contract no. MOVE/D3/2014 - 254



Gena Gibson, Elisabeth Windisch, Edina Lohr, Stephen Luckhurst (Ricardo Energy & Environment)  
Sara Moya, Miguel Troncoso Ferrer, Conchi Ruixo (GA&P)  
Alessio Sitran, Caterina Rosa, Enrico Pastori (TRT)

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*Contact: Pedro Dias*

*E-mail: [pedro.dias@ec.europa.eu](mailto:pedro.dias@ec.europa.eu)*

*European Commission  
B-1049 Brussels*

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Regulation (EC) No  
1071/2009 and  
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## **Evaluation of Regulation 1071/2009 and Regulation 1072/2009**

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## ABSTRACT

This ex-post evaluation covers two Regulations that form part of the EU Road Transport Package: Regulation 1071/2009 on admission to the occupation of road transport operator, and Regulation 1072/2009 on common rules for access to the international road haulage market. The results show that the Regulations have only been partially effective to date in terms of achieving their objectives. There have been neutral or slightly positive impacts against the objectives to improve social and safety conditions and reducing empty running. Good progress has been made in terms of the objective to ensure a more level playing field, particularly regarding the establishment of common minimum requirements for stable and effective establishment. However, this objective has not been fully achieved due to the continuing presence of letterbox companies, differing national interpretations of the rules (including rules on cabotage) and uneven monitoring/enforcement. There are substantial shortfalls of 92-95% against the objectives to reduce administrative burdens. This is mainly due to the incomplete implementation of requirements to interconnect national registers. The Regulations are not fully coherent with other transport legislation; discrepancies in definitions were uncovered, such as with the Combined Transport Directive 92/106/EEC and the Posting of Workers Directive 96/71/EC. The Regulations represent an EU added value compared to alternatives such as national or non-binding measures.

## EXECUTIVE SUMMARY

### *Scope of the evaluation*

This ex-post evaluation study covers the following Regulations, which form part of the so-called EU Road Transport Package:

- **Regulation 1071/2009 on admission to the occupation of road transport operator:** This Regulation sets the provisions that undertakings must comply with, in order to access the occupation of road transport operator, as well as provisions to regulate and facilitate enforcement by Member States.
- **Regulation 1072/2009 on common rules for access to the international road haulage market:** This Regulation lays down the provisions to be complied with by undertakings that wish to operate on the international road haulage market and on national markets other than their own (cabotage<sup>1</sup>). It also sets down provisions regarding the sanctioning of infringements and cooperation between Member States in such cases.

The evaluation covers the period from the date that the Regulations entered into force, i.e. from 4 December 2011 (with the exception of the rules on cabotage which applied since 14 May 2010).

### *Evaluation methodology*

The methodology followed the standard evaluation framework for an assessment of legislation and the key evaluation questions related to effectiveness, efficiency, relevance, coherence and EU added value.

The main research tools used included:

- Desk research and literature review.
- Analysis of official monitoring data collected under the Regulations (Article 26 of Regulation 1071/2009 and Article 17 of Regulation 1072/2009).
- Exploratory interviews with six organisations.
- Four tailored surveys targeted at the following stakeholder groups: national transport ministries, enforcement authorities, undertakings and general

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<sup>1</sup> Cabotage is defined as national carriage for hire or reward carried out on a temporary basis in a host Member State.



stakeholders (such as associations and trade unions). Almost 200 responses in total were received.

- Interviews with 54 stakeholders.
- Case studies covering five countries: Denmark, Spain, Germany, Poland and Romania.

The main limitations of the research were due to a lack of quantitative data availability. This was variously due to the difficulty of monitoring certain key aspects (such as indirect impacts on social conditions), a lack of monitoring at the required level of detail, or a lack of data due to the relatively short time period since implementation (due in some cases to delayed implementation). These limitations were addressed to the extent possible by supplementing with qualitative analysis conducted on the basis of the literature review, stakeholder engagement and collation of data from official monitoring sources.

## **Evaluation results**

### **Effectiveness**

The Regulations had general and specific objectives to **improve the level of road safety and to improve social conditions** by improving compliance with EU road transport social legislation. The achievement of Regulation 1071/2009 against this general objective has been positive (although impossible to quantify). The direct impacts of Regulation 1072/2009 have been negligible, whereas the indirect impacts caused by increases in competition are likely to have been negative in terms of social and safety impacts. Overall, the Regulations have been ineffective in significantly promoting social and safety improvements.

Partial progress has been made in terms of **ensuring a more level playing field** between resident and non-resident hauliers regarding the establishment of common minimum requirements for access to the profession and to the international haulage market. This has been achieved especially in terms of improving the harmonisation of definitions. However, the general objective of achieving a level playing field for hauliers has not been fully achieved due to the continuing presence of "letterbox companies"<sup>2</sup>, differing national interpretations of the rules and uneven monitoring/enforcement.

**Improving transport market efficiency through reducing empty running** were respectively general and specific objectives of Regulation 1072/2009. It is unlikely that there have been any significant positive or negative impacts on the transport market overall, but the effects on individual carriers vary.

As specific objectives, both Regulations aimed to **reduce the administrative burden** for national authorities and transport undertakings through allowing for improved monitoring and administrative simplification. These measures are still very much a work in progress, and as a result the objectives have still not been achieved.

Regulation 1071/2009 had a specific objective **to ensure a higher standard of professional qualification**. The provisions may have contributed to an improvement in the standards for Member States where previous similar requirements were not already in place (more usually the EU-13 countries). Potential weaknesses that may undermine the achievement of this objective are concerns over varying standards across the EU and related issues of diploma tourism, although no conclusive evidence of these effects could be found.

A specific objective of Regulation 1072/2009 concerned the **establishment of a better definition of the temporary nature of cabotage**. This has been partially achieved and progress can be considered positive. Nevertheless, clarifications of specific aspects may still be needed to ensure the full achievement of this part of the objective. There was insufficient data to assess the achievement of the second part of the objective concerning **improvements in compliance with the cabotage provisions**. Qualitatively,

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<sup>2</sup> This term refers to companies "established" in a Member State where they do not carry out their administrative functions or commercial activities, in violation of Article 5 of Regulation (EC) No 1071/2009

indications of difficulties around enforcement suggest that there is a risk of illegal cabotage activities, especially in heavily cabotaged Member States.

### **Efficiency**

Overall, the benefits experienced to date due to **reductions in administrative cost** are much lower (92-95% lower) than the amount originally anticipated. Total savings from improved monitoring, requirements of financial standing and harmonised control documents are estimated at €8 million to €14 million per annum to date, compared to the expected savings of €175 million. The shortfall is mainly due to the fact that the ERRU system is not fully functional and negligible benefits could be calculated to date, meaning that the expected benefits have not been achieved.

The **additional compliance costs** are estimated at €15 to €34 million per annum, which is broadly comparable to the ex-ante estimates of €20 million per annum. The main uncertainty is the extent to which firms have been affected by the requirement for a designated transport manager in practice, considering the possible need to increase their salary commensurate with their increased responsibilities.

The only provision that made a significant contribution to **implementation costs** was the setting up of national electronic registers and their interconnection. Overall, the estimated ex-post cost for these aspects was €22.1 million, which is around 70% lower than the ex-ante cost estimates of €73 million. Current estimates of the benefit-cost ratio are around 0.2 (assuming a discount rate of 4% and a time period of 10 years), indicating that the system has *not been cost-effective so far*. This is largely because the benefits are assumed to be rather small, due to the incomplete status of interconnection – however, it was not possible to develop quantitative estimates of the expected benefits of the fully functioning system.

As for **ongoing enforcement costs**, indications from both the survey responses and literature are that there have not been any significant changes in enforcement costs, since most of the activities were already being carried out.

### **Relevance**

Overall the Regulations are still considered relevant tools in order to meet the objectives of reducing competitive distortion, improving compliance with road social legislation and improving road safety.

Concerning the relevance of the Regulations in terms of reducing letterbox companies, the targeting of the objectives is appropriate/relevant to the problem, but further specific actions should enhance the measures and ensure that they are fully adequate to address the needs (i.e. more precise definition of an operating centre and greater cooperation between Member States). The issue of divergent control and enforcement systems is still an area of development (e.g. work is ongoing to harmonise the categorisation of infringements). However, the objectives do not explicitly aim at the harmonisation of controls, and hence this issue is not adequately targeted by the operational objectives.

The objective to address high levels of empty running is still relevant in the context of the need to reduce fuel consumption and greenhouse gas (GHG) emissions from transport. However, evidence is mixed as to the extent to which cabotage has been an adequate means to improve fill rates.

### **Coherence**

Overall, the legal framework is not fully coherent concerning interactions with other legislation. There are certain difficulties in the correct implementation of Regulations 1071/2009 and 1072/2009 and the satisfactorily achievement of their objectives, considering the relation with the other EU legislation.

Concerning **Regulation 561/2006 and Directive 2002/15/EC** on driving, rest and working time for road transport operators, the objectives are coherent with Regulation 1071/2009 and 1072/2009, as they all aim to improve social and working conditions for transport workers in Europe. However, there are possible inconsistencies where Regulation 1071/2009 does not contain a specific reference to Regulation 561/2006 or to Directive 2002/15/EC – e.g. when defining in Annex IV the most serious infringements related to driving and working time limits. Furthermore, the co-liability principle established by Regulation 561/2006 is not provided for by Regulations 1071/2009 and 1072/2009.

As regards **Directive 2006/22/EC** which contains provisions for the enforcement of Regulation 561/2006, there are differences in the lists of infringements contained in Annex IV of Regulation 1071/2009 and Annex III of Directive 2006/22/EC and referring to the requirements on (i) good repute and (ii) driving time and rest periods. There are also certain inconsistencies between Regulation 1071/2009 and Directive 2006/22/EC concerning the requirements for monitoring the compliance with both provisions, as well as the types of cooperation between national authorities.

Regulation 1071/2009 is applicable to vehicles with a laden mass of more than 3.5 tonnes. This means that it is not consistent with the exemption established in **tachograph Regulation 165/2014**, which is applicable to vehicles with a laden mass not exceeding 7.5 tonnes.

The road legs of combined transport operations are exempted from the limitations on cabotage contained in Regulation 1072/2009 as long as the conditions established in Article 1 of **the Combined Transport Directive 92/106/EEC** are fulfilled. However, some provisions may be outdated and its application gives rise to certain inconsistencies among Member States. There are also possible disparities between the documentation requirements for cabotage and combined transport.

The enforceability of the **Posting of Workers Directive 96/71/EC** with regard to cabotage operations is highly questionable. There is an inherent difficulty in checking whether drivers performing cabotage are granted the minimum conditions of the workers in the country where they perform cabotage and for the part of their trip where they are performing such cabotage. Furthermore, certain requirements of the Posting of Workers Directive, such as the existence of a service contract between the employer and a recipient in the host state may impede the protection granted by the Directive to transport workers.

A lack of coherence between Regulations 1071/2009 and 1072/2009 and **Rome I Regulation** has not been identified.

In relation to the Treaty on the Functioning of the European Union (TFEU), there have been some questions raised on whether interaction with the Treaty on the right of establishment actually encourages the formation of letterbox companies. In this area there is no contradiction with the Regulations in theory. If an existing company that is doing business in one Member State wants to re-incorporate in a different Member State, but without the intention of having any establishment in the new Member State, this transaction will *not* be protected by the freedom of establishment.

## **EU added value**

Regulations 1071/2009 and 1072/2009 are broadly considered to have led to positive effects compared to the situation prior to when they entered into force. The analysis suggests that the adoption of an EU Regulation has had certain advantages in comparison to alternatives. In particular, previous efforts using Directives as well as non-binding measures (e.g. guidance notes) have not been sufficient to ensure common rules and harmonisation. Therefore the use of a Regulation appears to be the most appropriate, effective and relevant instrument to achieve the objectives.

## **Recommendations**

### **Measures to combat letterbox companies**

The recommendations to combat letterbox companies aim to directly target the problem areas identified, namely:

- A lack of clarity over how to define an operating centre should be addressed by introducing a more precise definition as to what constitutes an operating centre at the European level
- A lack of effective cooperation between Member States should be addressed by introducing additional provisions on better cooperation.

The Enforcement Directive of the Posting of Workers Directive (2014/67/EU) provides a good blueprint of measures in both areas. Concerning the infrastructure needed to ensure cooperation, the current priority with regards to ensuring the effectiveness and efficiency of the rules should be to ensure that full implementation of the existing provisions (such as the full setting up of European Register of Road Transport Undertakings, ERU) is achieved, rather than attempting to introduce additional measures.

### **Clarification of cabotage rules**

The intended interpretations of the rules have already been clarified by the Commission in the Frequently Asked Questions (FAQ) document on cabotage. However, since these are not legally binding the interpretations have not been taken up, and hence a clarification of the provisions in the Regulations seems to be the only effective solution to differing national interpretations.

The practice of systematic cabotage is not strictly prohibited under the current form of the Regulations. If this is to be addressed, there additionally needs to be an amendment to the rules to allow some sort of waiting period.

### **Guidance and sharing of best practice**

Additional guidance and sharing of best practices is recommended by the study team in several areas.

For Regulation 1071/2009, the following areas were identified:

- **Stable and effective establishment:** Provide guidance on the development of risk-rating indices in order to identify organisations at higher risk of infringing the requirements.
- **Financial standing:**
  - Guidance on procedures for verifying the financial standing of newly established enterprises.
  - Guidance on how to monitor if the financial standing requirement is met continuously.
  - Clarification of terms used in the Regulation, such as what can be considered as "capital and reserves"
- **Good repute:**
  - Provide clearer definitions of whether administrative fines, arrangements out of court and on-the-spot payments should be counted as "penalties".
  - Provide examples of best practices for procedures to determine whether the loss of good repute would be disproportionate.
  - Clearer definitions of who should be included in the list of relevant persons to be checked for good repute in addition to the transport manager.
- **Professional competence:** guidance on examination formats / sample papers in order to address diverging levels of difficulty.
- **Transport manager:**
  - A more detailed list of the responsibilities/activities of the transport manager, to ensure that a "genuine link" is demonstrated.

- Guidance on methods to clarify the link between the transport manager and the undertaking.
- **Administrative cooperation:** agreement on acceptable response times, along with a procedure for escalation if these timescales are not met.

For Regulation 1072/2009, additional guidance could be provided in the following areas:

- Best practice on specifically how to conduct cabotage checks effectively and efficiently, in particular how to use supplementary evidence from sources other than the CMR<sup>3</sup> consignment note (such as tachograph data).
- Encouraging Member States to provide information on their national cabotage rules, so that this can be provided on the Commission website.
- More guidance on the harmonised categorisation of infringements, supplemented by explanations and participation in working group discussions.

### Longer-term considerations

Switching to electronic documents and making use of digital tachograph data appears to be an attractive solution to improve the effectiveness of cabotage enforcement, but currently there are legal and technological barriers to implementation that mean this would not be effective in the short- and medium-run.

Additional measures such as requiring ERRU to be made accessible to roadside officers could be considered. At the moment, Member States are still experiencing technical difficulties and introducing additional requirements would only exacerbate such problems. Hence the consultants recommend the priority should be to focus on implementation of the existing provisions instead.

The unintended effects of the requirements of financial standing leading to greater firm exits may be mitigated by extending the maximum permissible grace period to rectify the lack of financial standing to 12 months, instead of the current maximum of 6 months.

The problem of letterbox companies occurs in many industries and there have been several recent actions taken in other areas in order to reduce the problem. Extending liability to those who are responsible for setting up and managing the letterbox company may be a possible approach to consider.

Another area of work is the harmonisation of sanctions. Should problems persist and additional guidance prove insufficient, a stronger approach could be via harmonisation in *criminal law*, where EU competence is established in the TFEU, Article 83.

Certain actions could be taken to enhance the consistency of references between the Road Transport Package and the road social legislation (Regulation 561/2006, Directive 2002/15/EC and Directive 2006/22/EC). In this respect, it could be recommended to:

- Include in Regulation 1071/2009 specific reference to Regulation 561/2006 and to Directive 2002/15/EC when establishing the requirements of driving time, rest periods and working time (Article 6) and when defining in Annex IV the most serious infringements related to driving and working time limits.
- Ensure a harmonised list of categories, types and degrees of seriousness of infringements across all instruments.
- Harmonise the **rules on monitoring** of compliance of social rules and cooperation between the national enforcers, considering that the rules contained in the enforcement Directive 2006/22/EC are more complete. In this sense, the existing extension of the Directive 2006/22/EC risk rating system to Regulation 1071/2009 could serve as a model for further synergies.
- It could also be advisable to analyse the possibility of amending Regulation 1072/2009 in order to establish a **co-liability regime**.

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<sup>3</sup> *Convention des Marchandises par Route*

Finally, several recommendations were made to improve the coherence of the legislation. Regarding combined transport, there are several issues:

- **There is a need for a common definition as to how cabotage relates to combined transport:** In certain Member States the first and final leg of a combined transport journey are considered as a cabotage operation and not as a combined transport operation. A clearer definition of combined transport is needed that preferably avoids the term "*as the crow flies*".
- **Improved documentation:** In this respect, several stakeholders raised the issue of disparities between the documentation requirements for cabotage and combined transport. The establishment of a single document for combined transport operations, similar to the CMR, could solve the current issues related to documentation.

The enforceability of the Posting of Workers Directive with regard to cabotage operations is highly questionable. There is room for an amendment to the legislation, in line with the proposals made by the High Level Group to divide cabotage into linked (to international movements) and non-linked cabotage (Bayliss, 2012).

To ensure a correct enforcement of the Rome I Regulation, non-compliance with Rome I Regulation (i.e. depriving the driver from the law that better protects his/her interests) should be included as one of the infringements that may lead to loss of good repute and withdrawal of the community licence.

There are possible arguments for a supplementary enforcement Directive on the basis that enforcement is a sensitive issue for Member States and national authorities are organised differently. Greater cooperation between Member States could also be mandated if guidance and voluntary cooperation proves insufficient. A parallel can be drawn with the control of compliance with the driving time rules (Regulation 561/2006), which is governed by Directive 2006/22/EC.

## 1. INTRODUCTION

### 1.1. Purpose of the evaluation

This evaluation study has been commissioned by DG Mobility and Transport and focuses on the following Regulations:

- **Regulation 1071/2009 on admission to the occupation of road transport operator:** This Regulation sets the provisions that undertakings must comply with, in order to access the occupation of road transport operator, as well as provisions to regulate and facilitate enforcement by Member States.
- **Regulation 1072/2009 on common rules for access to the international road haulage market:** This Regulation lays down the provisions to be complied with by undertakings that wish to operate on the international road haulage market and on national markets other than their own (cabotage<sup>4</sup>). It also sets down provisions regarding the sanctioning of infringements and cooperation between Member States in such cases.

The Regulations were adopted as part of the "Road Transport Package", which aimed to advance the completion of the internal market in road transport, and contribute to the aim of a more efficient functioning of the road haulage internal market. They aim to achieve this by harmonising rules and simplifying the legal framework in place.

The purpose of this evaluation is to provide insight into the actual performance of the Regulations and the overall impacts (both intended and unintended) on societal, economic and environmental issues. The evaluation report therefore aims to:

- Establish evidence-based conclusions on the effectiveness, efficiency, relevance, coherence and EU added value of the Regulations and the factors that may have resulted in the interventions being more or less successful than anticipated;
- Communicate the achievements and challenges of the Regulations; and
- Inform the assessment of the Regulations under the Regulatory Fitness and Performance (REFIT) programme. The REFIT programme is part of the Commission's commitment to Better Regulation, and aims to ensure that legislation is fit-for-purpose and does not impose unnecessary regulatory burdens.

As well as evaluating the Regulations to date, it will also provide insights as to the extent to which the Regulations and their elements can be considered to be fit-for-purpose in the future.

### 1.2. Scope of the evaluation

Although the Regulations entered into force 2009, they only applied from 4 December 2011 (with the exception of the rules on cabotage which applied since 14 May 2010). Hence, the evaluation will cover the period from the date that the Regulations entered into force.

The two Regulations were adopted as part of a package along with Regulation 1073/2009 on access to the international market for bus and coach services. The provisions of Regulation 1073/2009 on passenger transport are excluded from the scope of this study.

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<sup>4</sup> Cabotage is defined as national carriage for hire or reward carried out on a temporary basis in a host Member State.

## 2. BACKGROUND TO THE INITIATIVE

### 2.1. Description of the initiative

Regulations 1071/2009 and 1072/2009 were adopted as part of the so-called EU Road Transport Package, adopted in 2009.

**Regulation 1071/2009** repealed and took over certain provisions of Directive 96/26/EC in order to modernise the rules and to ensure those rules are applied more uniformly and effectively. Additional provisions were also added, such as measures to facilitate cross-border enforcement (notably the establishment of a European Register of Road transport Undertakings - ERRU). Further details of the implementation of Regulation 1071/2009 and its specific provisions are provided in Section 5.1.1.

**Regulation 1072/2009** lays down the provisions governing access to the market in the international carriage of goods by road and the conditions under which non-resident hauliers may operate within a Member State. It consolidated and repealed a number of previous rules, including:

- Council Regulation (EEC) No 881/92 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States;
- Council Regulation (EEC) No 3118/93 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State; and
- Directive 2006/94/EC on the establishment of common rules for certain types of carriage of goods by road.

Further details of the implementation of Regulation 1072/2009 and its specific provisions are provided in Section 5.1.2.

### 2.2. Baseline

Regulations 1071/2009 and 1072/2009 were proposed in order to address the lack of clear principles for consistently applying the rules laying down the requirements for accessing the profession and the international road transport market, and for performing the associated controls and monitoring. The main needs that were identified as a basis to justify EU-level action were as follows:

- **Heterogeneous requirements for stable and effective establishment:** Each Member State previously imposed its own conditions of establishment, and there was a lack of minimum common requirements. This disparity created competitive distortions by encouraging undertakings to locate in Member States with less stringent requirements and/or lower monitoring, without having a real operational base in the country of registration ("letterbox" companies<sup>5</sup>) (European Commission, 2007a). In addition, it is particularly challenging to check the good repute of letterbox companies with respect to compliance with road transport social rules (e.g. working time rules) – hence the existence of such companies created risks that the rules would be infringed (European Commission, 2007a).
- **Non-comparability of certificates of professional competence and requirements for financial standing:** While the previous Directive 96/26/EC established requirements for financial standing, the scope of what the minimum amounts were supposed to cover had been interpreted very differently (European Commission, 2007a). Directive 96/26/EC also required certificates of professional competence, but in practice the level of training and experience required varied between Member States (European Commission, 2007c). These disparities led to competitive distortion and unnecessary administrative burdens (European Commission, 2007a). It was further identified that it is necessary for road transport

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<sup>5</sup> This term refers to companies "established" in a Member State where they do not carry out their administrative functions or commercial activities, in violation of Article 5 of Regulation (EC) No 1071/2009



undertakings to have a minimum financial standing to ensure their proper launching and administration. During stakeholder hearings at the time, it was emphasised that the most important issue with respect to these requirements was the need to better define and clarify the requirements, rather than raising the minimum standards (European Commission, 2007b).

- **Unclear link between the holder of a certificate of professional capacity (“transport manager”) and the undertaking using their certificate to obtain the licence giving access to the market:** Some Member States allowed one-man companies to designate an external person as their transport manager; however there were indications that this option was used excessively, meaning that the requirement for professional competence was difficult to enforce (European Commission, 2007a). The unclear relationships between the undertaking and the transport manager did not offer guarantees of competence and reputation and created a lack of transparency in the contractual and liability chain.
- **Heterogeneity of a number of control documents:** Only the format of the original Community Licence was originally specified, leading to a lack of uniformity of certified copies as well as driver attestations. This created problems during roadside checks regarding verification of the authenticity of the control documents, and often led to considerable time losses for operators (European Commission, 2007a). For example, the previous legislation left open whether certified copies should have the same colour and whether they must be signed and/or stamped. Some countries had issued copies with “certified copy” printed on them, which caused problems in some other Member States (European Commission, 2006a).
- **Unclear definition and control of temporary cabotage:** The lack of a clear definition of the meaning of the “temporary” nature of cabotage in Regulation 3118/93 eventually led the Commission to adopt an interpretative communication<sup>6</sup> on the matter. Nevertheless, some Member States saw a need to adopt their own guidelines or national rules on cabotage, leading to legal uncertainty for hauliers and impeding effective enforcement (European Commission, 2007a). Furthermore, stakeholders confirmed that improving the definition would provide for better use of capacity and improved efficiency in route planning (European Commission, 2007b).
- **Uneven monitoring of compliance and lack of provisions on cooperation between Member States:** Uneven monitoring of compliance and controls led to distortions of competition between operators who were compliant (and hence bore additional compliance costs) compared to those who deliberately exploited the disparities (European Commission, 2007a). This lack of coordination created unnecessary administrative costs and undermined the credibility and dissuasiveness of the withdrawal of licences (European Commission, 2007c).

The issues outlined above affected stakeholders throughout the transport chain. Road transport operators were confronted with distortion of competition and additional administrative burdens due to the unclear rules. Loopholes in the rules made it possible for some negligent operators to poorly comply with the transport rules, in particular the social and road safety rules. This therefore had an impact on the working conditions and health of the workers in road transport services. Enforcement authorities had to cope with complex rules, heterogeneous control documents and time-consuming procedures related to processing information from various sources. Final consumers may also have been affected by the poor functioning of the internal market, leading to less efficient transport and higher costs. Finally, wider societal impacts arise from poor compliance with road safety rules, since negligent companies are more likely to be involved in accidents than others (European Commission, 2007a).

As such, the identified problems could undermine market efficiency, the quality and safety of road transport in general, and prevent customers from reaping the full benefits of the

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<sup>6</sup> Commission Interpretative Communication on the temporary nature of road cabotage in the movement of freight (2005/C 21/02), 26 January 2005

internal market in road transport (European Commission, 2007c). Intervention at the EU-level was justified on the grounds that it would be impossible for Member States acting alone to satisfactorily solve the identified problems (European Commission, 2007c).

In the absence of the revised rules, it was anticipated that the previous system of inconsistent enforcement, uneven compliance, uneven playing field and high administrative costs would continue and that the identified problems could even become worse if as cabotage was opened up to all Member States (European Commission, 2007a).

The Impact Assessment underlying the Regulations could not identify quantitative indicators that could be used to establish the baseline. Information on the previous situation was also sought to inform this study from stakeholders and literature, but generalisable results could not be obtained, reflecting the difficulty of quantifying many of the issues. Hence, only a qualitative description of the baseline is possible.

It was expected that in the absence of the revised Regulations, difficulties with checking **letterbox companies** would continue and it was expected that their numbers would increase in line with the growth in cross-trade, leading to knock-on effects on road safety, social rules and evasion of tax (European Commission, 2007a). There was no estimate of the number of letterbox companies, nor any guide to the extent of the problem at the time.

The diverging practices with respect to requirements for **financial standing and professional competence** were expected to remain, leading to unequal competition and unnecessary financial burden. The presence of a few operators with lower professional qualifications would continue to have a negative impact on the image of the profession, whereas companies with lower financial standing would continue to infringe the rules. The continuing possibility that the “**transport manager**” may not actually be involved in the daily management of the transport undertaking would be detrimental to fair competition, as well as prejudicial to the transparency in the contractual relationship with shippers and a good compliance with road safety and social rules (European Commission, 2007a). Problems with the **legal uncertainty over cabotage** would persist, and unnecessary administrative and compliance costs due to the difficult controls and the requirement to have a logbook imposed by some Member States. Finally, the problems regarding the authenticity of the control documents would remain (European Commission, 2007a).

### **2.3. Intervention logic**

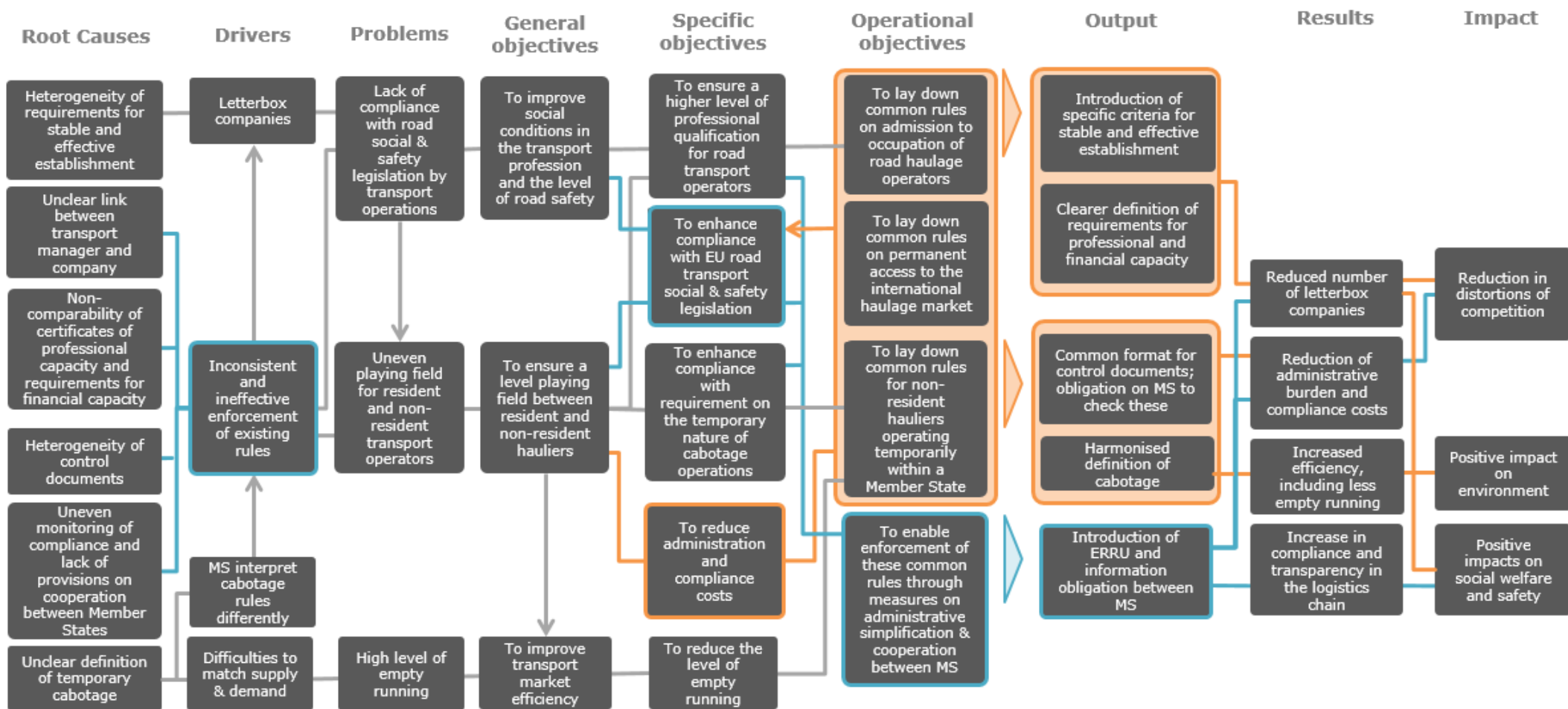
As **general objectives**, both Regulations aimed to support the completion of the internal market in road transport by ensuring a level-playing field between resident and non-resident hauliers. In particular, Regulation 1071/2009 identifies the need to rationalise the market and increase market efficiency. The Regulations also aimed to improve the level of road safety and to improve social conditions by improving compliance with EU road transport social legislation in the profession.

As **specific objectives**, both Regulations aimed to reduce the administrative burden for transport undertakings and national authorities through allowing for improved monitoring and administrative simplification via the introduction and interconnection of national registers, harmonisation of control documents and new provisions on financial standing. Through setting higher standards for the examination granting access to the occupation and conditions for good repute, Regulation 1071/2009 aimed to achieve a higher level of professional qualification of road transport operators. In turn, the increased knowledge of legislation and good repute of operators, as well as improved enforcement of the rules, should lead to increased compliance with social legislation. In addition, Regulation 1072/2009 aimed to better define the temporary nature of cabotage operations, in order to improve the clarity and eliminate legal uncertainty for Community hauliers.

As **operational objectives**, the Regulations aimed to lay down common, simplified and clearer rules that would improve the enforceability. Another objective was to better regulate certain aspects of the previous regime by reformulating provisions on cabotage and community licences. Finally, the Regulations also aimed to propose instruments to ensure the enforcement of these rules, through measures to simplify administration, as well as measures to ensure administrative cooperation between Member States.

For any formal evaluation, the development of the policy's intervention logic is useful in framing the analysis to be undertaken. The intervention logic describes, in graphical form, the links and causal relationships between the problems and/or needs, broader policy goals, the general, specific and operational objectives that the specific policy measure is designed to address, and the specific actions for addressing those problems and/or needs. A graphical version of the intervention logic is shown in Figure 2-1 overleaf.

**Figure 2-1: Intervention logic diagram**



### 3. EVALUATION QUESTIONS

The following set of evaluation questions (and sub-questions) were provided in the terms of reference in order to provide focus for the investigations carried out in this assignment.

#### **Effectiveness**

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

- 1) To what extent are compliance levels with the new provisions relative to stable and effective establishment of undertakings (Regulation (EC) No 1071/2009) and cabotage (Regulation (EC) No 1072/2009) satisfactory vis-à-vis the objectives of the Regulations?
- 2) To what extent are the new enforcement measures effective? Are the checks performed by the competent authorities carried out at an effective frequency and level of thoroughness? Are the requirements set in the two Regulations related to checks relevant and sufficient to ensure compliance? Are the penalty systems in place designed by Member States proportionate and persuasive?
- 3) To what extent the measures on administrative cooperation are effective? Is there a need for better administrative co-operation and administrative coordination (e.g. checks) between Member States and/or the Commission?
- 4) To what extent have the Regulations contributed to the smooth functioning of the internal market for road transport? Among others, to what extent have the provisions on cabotage helped to integrate the internal market for road transport and facilitate the access of non-resident hauliers to national markets? To what extent have the Regulations contributed to reducing the number of letterbox companies? How do the results compare between different EU Member States and regions (i.e. EU15 and EU12)? How do the results compare to the state of play prior to the adoption of the Regulations? Have the Regulations lead to any unintended negative and/ or positive effects with regards to competition on the road transport market?
- 5) To what extent has the legislation helped to increase the level of compliance with EU road transport social legislation? How do the results compare to the state of play prior to the adoption of the Regulations? How do the results compare between different EU Member States and regions (i.e. EU15 and EU12)? Have the Regulations lead to any unintended negative and/ or positive social effects?
- 6) To what extent have the Regulations had an impact on road safety, particularly in terms of fatigue of drivers, and helped to address the road safety concerns identified at the time of adoption? How do the results compare between different EU Member States and regions (i.e. EU15 and EU12)?
- 7) Have the Regulations lead to any positive and/or negative unintended effects (both in terms of impacts and results) other than mentioned in previous questions? If so, what is the extent of these effects and which stakeholders groups are affected the most?

#### **Efficiency**

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

- 9) Are there costs related to the implementation of the new provisions, such as those related to stable and effective establishment, the European Register of Road Transport Undertakings and cabotage? If so, are they proportionate to the benefits achieved, in relation to the measures set out in the Regulations (e.g. setting up and interconnection of electronic registers, harmonisation of transport documents and checks of the establishment and cabotage provisions)?
- 10) To what extent have the Regulations been efficient in their objective of enabling enforcement of the existing rules? Have the enforcement practices put in place by Member States created any savings or costs for national authorities and transport operators?

#### **Relevance**

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

#### **Coherence**

- 12) How do the Regulations interact with and if relevant, have an impact on the objectives of the following acts: Directive 96/71/EC on posting of workers; Regulation (EC) No 593/2008 on contractual obligations ('Rome I Regulation'); Directive 92/106/EC on combined transport; Social provisions in road transport (Directive 2002/15/EC on working time of mobile workers, Regulation (EC) No 561/2006 on driving time and rest periods, Directive 2006/22/EC on enforcement of social provisions in road transport, Regulation (EC) No 165/2014 on the digital tachograph)? Can inconsistencies of references and definitions, and overlaps of provisions be identified? Is there scope to streamline the regulatory framework in the transport sector?
- 13) In terms of their effects, how do the two Regulations relate to the goals of EU transport policy (as set out in the 2011 White Paper) and the wider economic, social or environmental challenges of EU policies? Have they contributed to these policy objectives? In particular, do Regulations contribute towards the 2020 Road Safety aims and to the general objective to reduce the GHG emissions (if so, to what extent)?

#### **EU added value**

- 14) To what extent could a different level of regulation (e.g. at national level) be more relevant and/or effective and/or efficient than the applicable one to ensure common rules for: a) Admission to the occupation of road haulage operator, b) Access to the international road haulage market, c) The conditions under which non-resident hauliers may operate within a Member State other than the one of registration? To what extent could a different level of regulation (e.g. national regulation) improve the enforcement of these rules?
- 15) Is there any evidence that in certain cases a different level of regulation (e.g. at national level) could have been more relevant and/or effective and/or efficient than the applicable one to achieve the objectives of: a) Reducing distortions of competition between resident and non-resident hauliers; b) Increasing compliance with EU road transport social legislation; c) Improving road safety levels?

## **4. METHOD/PROCESS FOLLOWED**

### **4.1. Method/process and limitations**

This section provides a brief overview is presented of the research tools used during this study.

#### **4.1.1. Desk research**

The literature review covered various relevant reports, academic and scientific articles, databases, as well as reviewing published literature, reports and results of EC public consultations. The purpose of the desk research was to provide an overview of the available information relevant to the study in the literature, to provide background information for other research activities and to help triangulate the information found in the data collection, interviews and surveys. Sources were primarily selected by the researchers, and supplemented by suggestions from stakeholders. Almost 150 pieces of literature were used - all of the literature is referenced throughout the report, as well as in Annex E, and was used to supplement responses from stakeholders and official data sources.

An important data source to define the baseline for the Road Transport Package is the underlying Impact Assessment document (European Commission, 2007a), which at the time quantified the impacts as far as possible. There were however several impact categories that could only be qualitatively assessed (i.e. competitiveness impacts, internal market, impacts on SMEs, social impacts, compliance with safety rules and environmental impacts), and the same limitations apply in the current study – in particular, these relate to areas in which the Regulations have an indirect or secondary effect. A similar limitation was also found in other literature, which contained only very limited quantification of any impacts and was hampered by a lack of availability of data and the difficulty in collecting quantitative indicators (including cost reductions or increases, compliance levels, number of checks etc). Conclusions emerging from the desk research were supplemented by the information collected through the other means described below.

#### **4.1.2. Analysis of official monitoring data**

Analysis of official monitoring data included information required under the monitoring provisions of the two Regulations:

- Under Article 26 of Regulation 1071/2009, Member States must report every two years to the Commission on the activities of their competent authorities (provided in Annex A, Section 9.1.1).
- Under Article 17 of Regulation 1072/2009, Member States must report every two years on the number of hauliers possessing Community licenses, on the number of certified copies in circulation, and on the number of driver attestations issued (provided in Annex A, Section 9.1.2).

The quality and availability of the official monitoring data is often limited, despite efforts to substantiate publically available statistics with stakeholder engagement via surveys and interviews. This is due to several issues – firstly, due to the relatively recent implementation of Regulation 1071/2009, there has only been one reporting period so far (from 4/12/2011 to 31/12/2012). For this first submission, reporting from Member States was substantially incomplete (for example, six Member States did not provide any information). This was in part due to the need to familiarise with their obligations, as well as difficulties in interconnecting national registers and difficulties in collecting data from local or regional authorities responsible for enforcement (European Commission, 2014a). Furthermore, there is usually no disaggregation in the relevant statistics (such as identifying the different reasons for withdrawals of licences to operate). To help improve the quality of data, representatives of the relevant authorities in Member States were asked to provide further breakdowns in interviews and surveys,

but typically they reported that they do not monitor this more detailed information and so were unable to provide further disaggregation. Where possible, the partial data collected was used to infer conclusions for Europe as a whole, with the limitations that result.

#### **4.1.3. Exploratory interviews**

Exploratory interviews were carried out with six organisations (two EU-level industry associations, two national level industry associations, a national trade union and a ministry). These interviews were conducted to help inform the development of the surveys (see also the next section), before the wider consultation activities took place.

#### **4.1.4. Surveys**

Stakeholder responses are clearly identified throughout this report, and used to support the research and findings. A summary of the responses is provided in **Annex B**. Significant effort was invested to ensure that the stakeholder engagement activities were as inclusive and representative as possible through extensive email campaigns, follow-ups, time extensions and recruiting associations to aid in the distribution of the surveys. Tailored surveys were developed for several target groups, as follows:

- National transport ministries: focussing on national implementation and interpretation of the Regulations, quantification of impacts and assessment of effectiveness of the Regulations at a national level;
- Enforcement authorities: focussing on enforcement practice and challenges, interpretations of the provisions, estimations of costs and benefits, quantification of impacts and assessment of effectiveness;
- Undertakings: focussing on impacts at the level of individual undertakings that might not be captured or adequately reflected in other sources;
- High level (general) survey: Identification of high level, cross-cutting views on the relevance, effectiveness, efficiency and added value of the Regulations.

Due to the breadth and depth of issues that needed to be covered in the evaluation, the questionnaires were necessarily rather long and complex, and may have been difficult for some stakeholders to find the time to answer. The inputs received from those stakeholders that responded are highly appreciated. Overall, the stakeholder response rate can be considered to be very good in light of the length and complexity of the questionnaires, and also considering the highly technical and specific nature of the Regulations. Further details are given below, and in Annex B.

Responses were received from the national transport ministries of 20 Member States, with 12 from the EU-15 and eight from the EU-13. There was a relatively high response rate (see Table 4-1), and the surveys that were received typically included some effort to answer all of the questions. The quality of the responses was overall high and the ministries were able to provide answers to a major share of questions concerning national implementation. Conversely, questions on the impacts and other quantitative questions were often unanswered or the "don't know" option was chosen, reflecting a lack of data availability.

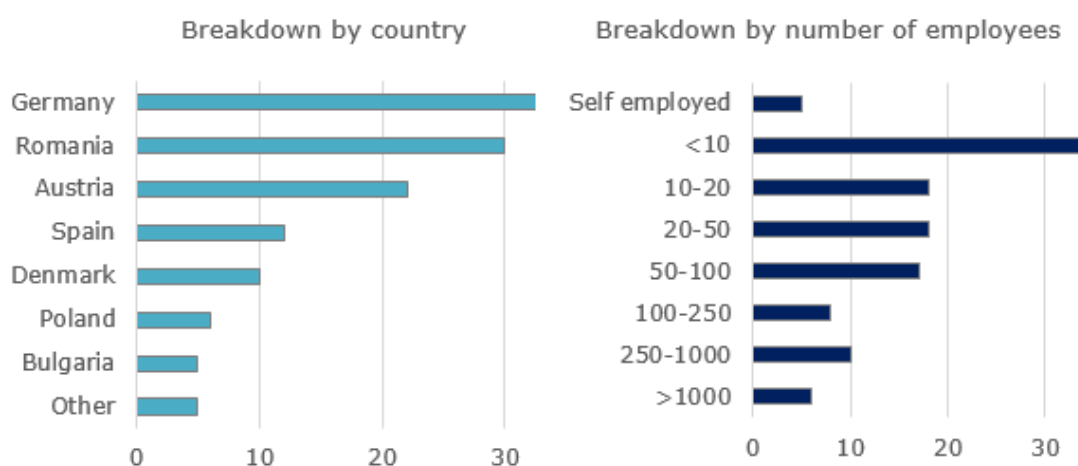
A total of 20 different enforcement authorities responded to the survey. 15 responses were received to the first part on Regulation 1071/2009, including authorities from nine were EU-15 countries and five EU-13 countries. There were 15 responses to the second part on Regulation 1072/2009, including authorities from five EU-15 countries and six EU-13 countries. The surveys for enforcement authorities aimed to gather much of the quantitative information needed to answer the evaluation questions (especially regarding the number of checks, number of infringements and costs). This presented particular challenges for this stakeholder group (detailed quantitative questions tend to lead to low response rates, as reflected in the outcomes) and there were a high number of responses to the effect that no data were available. The quality of the 20 responses



was considered good (within the limitations of data availability), and respondents appears to have invested substantial time and effort to attempt an answer all of the relevant questions.

A breakdown of responses to the survey of transport undertakings is shown in Figure 4-1. A total of 122 responses were received from undertakings, with contributions from Germany and Romania respectively making up 30% and 24% of responses. The majority of responses were from small and medium sized enterprises (SMEs) with fewer than 10 employees.

**Figure 4-1: Breakdown of responses to the survey of transport undertakings**



The high level survey aimed to capture responses from stakeholders for which there is not a targeted survey. It was answered by a total of 37 organisations, mainly associations of transport operators (14) and trade unions (12), with a small number of NGOs and other types of association. A number of the trade unions and associations of transport operators submitted coordinated responses between themselves. We have not attempted to correct for this, since numerical analysis of results was not used for this particular survey (rather, the objective was to gain high level indications of the main problems and positive impacts). The completeness of the responses concerning qualitative answers was generally high, with extensive responses given in the comments sections, particularly for those stakeholders that submitted coordinated responses. The survey contained few requests for quantitative information, as this was primarily sought from other surveys/interviews.

The activities are summarised in Table 4-1.

**Table 4-1: Summary of survey responses**

Type of stakeholder	Approached	Responded	% response rate
National transport ministries	47	20	43%
Enforcement authorities	78	20	26%
Undertakings survey	N/A <sup>A</sup>	122	-
High level (general) survey	154	37 <sup>B</sup>	24%
<b>TOTAL (surveys)</b>		<b>199</b>	<b>-</b>

Notes: Stakeholder engagement activities were conducted from October 2014 until July 2015. Response rates are approximate, as some organisations forwarded the request to participate to other organisations on our behalf.

A) Undertakings surveys were distributed via national associations, hence it is not known how many organisations were contacted. B) A number of coordinated responses were received from trade unions and transport operator associations.

For all surveys, the results are subject to well-understood limitations that affect the interpretation of results, namely that a relatively small sample was collected for some stakeholder groups, that responses were entirely voluntary and that the opinions are

subjective. To some extent, the reliability of the results can be improved by ensuring a good coverage of representative stakeholders (as attempted for this study), but the non-response bias cannot be corrected by increasing the survey size and hence results still need to be interpreted with care.

#### 4.1.5. Follow-up interviews (follow-up from the surveys)

The purpose of the follow-up interviews with was to enrich the questionnaire responses that had been received and to fill remaining data gaps as far as possible.

Since the data requirements of the study were very extensive and not everything could be included in the surveys without making the length unreasonable, building on the survey responses already received via interviews was the most effective way of expanding the data collection, as well as to further elaborate on the specific experience of stakeholders.

Coverage of national transport ministries, industry associations, trade unions and undertakings was considered in line with the planned distribution of interviews, since the response rate was relatively higher in these stakeholder groups. Securing adequate coverage of enforcement authorities proved challenging. In the first stage, an extensive list of contact points in each Member State based on internet searches was gathered. Stakeholders (both ministries and enforcement authorities) were also asked to refer us to other relevant departments where possible in order to augment the list. Finally, every contact was invited to participate in the survey. Having already approached the full list of contacts during the survey stage, those that had not responded had already shown a lack of interest in participation, hence the potential list of interviewees was significantly narrowed to those that had responded to the survey. It is not possible to a minimum number of interviews as this is dependent on respondents being willing to participate. Nevertheless, it was initially hoped that at least 25 respondents could be found, but only 13 interviews could be achieved in the end after following up with all 18 authorities that had shown interest.

**Table 4-2: Summary of interviews (not including exploratory interviews)**

Type of stakeholder	Approached	Responded	% response rate
National transport ministries	6	5	67%
Enforcement authorities	18	13	72%
Industry associations	20	14	70%
Trade unions	12	6	50%
Undertakings	72	16	22%
<b>TOTAL (interviews)</b>	<b>128</b>	<b>54</b>	<b>42%</b>

*Notes: Stakeholder engagement activities were conducted from October 2014 until July 2015. Response rates are approximate, as some organisations forwarded the request to participate to other organisations on our behalf. These were a separate tool to the exploratory interviews, which are reported separately.*

#### 4.1.6. Case studies

The case study investigations were carried out in order to conduct more in-depth analysis of specific situations, which would not be possible for all Member States within the scope of this study. The analysis was conducted for five Member States, as follows:

1. Denmark;
2. Spain;
3. Germany;
4. Poland; and
5. Romania.

The analysis involved a detailed review of national legislation and enforcement practices, a study of issues/problems encountered by each country and a review of national market conditions and a review of additional datasets/reports that were available at the national level.

Interviews were also conducted with stakeholders in each country, in order to confirm and expand upon the findings of the desk research. These interviews included additional case study-specific questions in order to clarify details found in the desk research and gain greater insight into the national implementation and experience with the Regulations.

The interviews are reported in the general interview programme above (Table 4-2), since they also contained the same general questions asked of other stakeholders. The consultants aimed to conduct a minimum of four interviews with stakeholders in each country. This was achieved for all countries (10 interviewees from Germany, 6 from Denmark, 9 from Spain, 4 from Romania) with the exception of Poland (3 interviews). To try to reach 4 interviews in Poland, additional effort invested in contacting Polish stakeholders (42 contacted in total); however, the response rate was unusually low (7%). The full findings of the five case studies are summarised in Annex C.

## 5. IMPLEMENTATION STATE OF PLAY (RESULTS)

### 5.1. Implementation and state of play

#### 5.1.1. Regulation 1071/2009 on access to the occupation of road transport operator

**Article 2** defines the new scope which is consistent with the other road transport legislation by including all vehicles over 3.5 tonnes and limiting the exemptions to certain transport operations clearly identified in other Community acts.

The core requirements for engagement in the occupation of road transport operator are summarised in **Article 3(1)** of Regulation 1071/2009 as follows:

- Have an effective and stable establishment;
- Be of good repute;
- Have appropriate financial standing; and
- Have the requisite professional competence.

The aim of these requirements is to ensure that all companies are subject to the same level of monitoring and to avoid situations where some are not monitored by the authorities in the Member States in which they are established (European Commission, 2007c).

**Article 3(2)** of the Regulation allows Member States to impose additional requirements next to the four requirements given in Article 3(1), as long as these are proportionate and non-discriminatory. In specific cases, Member States have introduced additional requirements. For instance, in Estonia, the respondent to the survey of ministries reported that a licence applicant must be registered in the commercial register; Finland requires that the licence applicant is of legal adulthood (18 years) and he/she cannot be deemed legally incompetent. In Spain there is an additional requirement that applicants must have three vehicles representing at least one payload of 60 tonnes, although this is currently under discussion and may be removed in the near future (see Annex C, Spain case study). Slovakia added a requirement defining the minimum age of a transport manager at 21 years (European Commission, 2014a) An additional requirement in the Netherland for setting up as a transport haulage operator includes registering with the Chamber of Commerce (AECOM, 2014a).

In order to combat the problem of "letter-box companies"<sup>7</sup>, transport undertakings must demonstrate their *effective and stable establishment*. **Article 5** specifies that an undertaking must have an office in which it keeps its core business documents and an operating centre with the appropriate technical equipment and facilities in the Member State of establishment. Moreover, once an authorisation is granted, they need to have at least one vehicle at their disposal which is registered in that Member State. Most Member States have implemented the requirements as per the Regulation without additions, which as previously mentioned are permitted under Article 3(2). The most common additional requirement at the national level is for a parking space, which is specified in Austria, Bulgaria, Ireland, Slovakia and the UK. In Luxembourg, the existence of a parking space is checked; however it is not a legal requirement. Few Member States set specific requirements to own certain property – only in the UK are licence holders required to provide a self-declaration that either they themselves own the premises they intend to use as an operating centre or have permission from the site owner. An additional requirement in Finland is that an undertaking must be registered in Finnish Trade Register and its municipality of residence must be in Finland. More details on the implementation are given in Evaluation Question 4 (Section 6.4).

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<sup>7</sup> i.e. companies "established" in a Member State, where they do not carry out their administrative functions or commercial activities, in violation of Article 5 of Regulation (EC) No 1071/2009

Under Article 5(a), Member States may require that establishments on their territory also have other documents available at their premises at any time. Few Member States mentioned any specific provisions in this regard – for example, the Belgian respondent to the ministries survey indicated that their national legislation stipulates that the CMR<sup>8</sup> documents must be available.

**Article 6** of Regulation 1071/2009 sets out that the *good repute* of transport managers (or undertakings) is conditional on their not having been convicted of a serious criminal offence or having incurred a “penalty” for one of the most serious infringements of road transport rules. Member States vary in whether they treat administrative fines, arrangements out of court and on-the-spot payments as “penalties” for the purposes of establishing good repute. For example, Bulgaria, Croatia, Cyprus, Luxembourg and Poland do not consider any of administrative fines, arrangements out of court and on-the-spot payments as penalties. Administrative fines are considered in Austria, Sweden, Lithuania, Belgium, Estonia, Germany and Latvia; Arrangements out of court are considered in Denmark, Germany and Estonia; On-the-spot payments are considered in France, Belgium, Finland and Germany. The Regulation also provides a general list of the most serious infringements in its **Annex IV**. The Commission is currently preparing a list of infringements that (in addition to those set out in Annex IV) will indicate the categories, types and degrees of seriousness of serious infringements of Community rules that may also lead to the loss of good repute.

The requirements to demonstrate *appropriate financial standing* were clarified and harmonised in **Article 7**. Undertakings must show that, every year, it has at its disposal capital and reserves totalling *at least* €9,000 when only one vehicle is used and €5,000 for each additional vehicle used. It is relatively rare for Member States to require a higher level of capital and reserves per vehicle than the minimum levels set out in the Regulations (which as previously mentioned under Article 3(2), Member States may impose additional conditions provided they are proportionate). One example is in Denmark operators must meet an initial financial capability requirement of 150,000 DKK (around €20,100). Austria and Denmark also require that a company does not have substantial arrears and in Ireland companies must prove that they are tax compliant. More details are given in Evaluation Question 4 (Section 6.4).

National ministries are permitted to agree or require that an undertaking demonstrate its financial standing by means of a certificate such as a bank guarantee or an insurance, instead of certified accounts. Certified accounts and bank guarantees are accepted in most Member States with few exceptions (respectively Luxembourg<sup>9</sup> and Lithuania). The use of insurance is permitted in fewer countries, for example including Austria, Germany, Bulgaria, Czech Republic, Denmark, Estonia, Sweden and Italy. More details are given in Evaluation Question 4 (Section 6.4).

According to **Article 8**, applicants for the position of transport manager must have the requisite *professional competence*, and must provide proof of high-quality professional competence (140 hours of training and an examination covering the topics laid down in **Annex I** of the Regulation). This was intended to raise the standards of professional qualification in the sector.

Exemptions are permitted under certain conditions: Under **Article 8(7)**, a Member State may exempt the holders of certain higher education qualifications or technical education qualifications issued in that Member State. **Article 9** permits Member States to grant exemptions from the examinations for persons who provide proof that they have continuously managed a road haulage undertaking or a road passenger transport undertaking in one or more Member States for the period of 10 years before 4 December 2009. Several Member States report that they do not give any exemptions from the examination for any reason (Cyprus, Czech Republic, Denmark, Ireland, Latvia and

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<sup>8</sup> *Convention des Marchandises par Route*, or consignment note

<sup>9</sup> The possibility to use certified accounts is currently being evaluated in Luxembourg

Lithuania). Others grant exemptions under a condition relating to previous qualifications (Austria, Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Luxembourg, Sweden and the UK). Others grant exemptions for persons who have continuously managed a road haulage undertaking for a certain period of time, e.g. 10 years, including Estonia, France, Germany, Luxembourg, Slovakia, Sweden and the UK. Professional knowledge shall be demonstrated by means of a compulsory written examination which, if a Member State so decides, may be supplemented by an oral examination – an option taken up by Member States including Austria, Belgium, Germany and Slovakia. More details are given in Evaluation Question 4 (Section 6.4).

**Article 4** clarified the role of the *transport manager*. This person has to demonstrate the necessary professional competence, must manage effectively and continuously the transport activities of an undertaking and have a genuine link to the undertaking. A small number of Member States have introduced more specific criteria on the minimum responsibilities for the transport manager, including Belgium and Germany. The transport manager may manage the transport activities of up to four different undertakings with a combined maximum total fleet of 50 vehicles, although Article 4(2) allows Member States to lower these thresholds. This option has been exercised in France (an external manager is limited to two companies representing a total of 20 vehicles); Finland and Romania (an individual may act as transport manager for only *one* company with a maximum total fleet of 50 vehicles). More details are given in Evaluation Question 4 (Section 6.4).

Member States were required to extend the *risk classification system* established pursuant to Article 9 of Directive 2006/22/EC, in order to carry out checks targeting undertakings that are classed as posing and increased risk (**Article 12**). This provision aimed at improving monitoring by means of targeting high-risk companies (rather than more frequent systematic checks). Only one Member State reported not having such a system in place (Bulgaria). More details are given in Evaluation Question 2 (see Section 6.2).

Additional provisions required that Member States must cooperate in the task of monitoring undertakings operating in several Member States. **Article 16** required that the national competent authorities must set up *national electronic registers* of road transport undertakings. Member States shall take all necessary measures to ensure that the national electronic registers are *interconnected* (**Article 16(5)**) and accessible throughout the Community through the *national contact points* defined in **Article 18**. As of 2015, all Member States except Portugal had defined a national contact point and reported this to the Commission. The interconnection of registers should simplify cross-border enforcement, making it more cost-effective, provided that all Member States are connected and that they effectively use the system exchanging high quality data contained in their databases. However, in 2014, only 13 Member States were interconnected via ERRU, 8 were in testing phase and 7 Member States were in infringement procedures launched in February 2014 (European Commission, 2014c). Two Member States (Belgium and Germany) have connected in early 2015. More details are given in Evaluation Question 3 (see Section 6.3).

**Article 26** requires that Member States must draw up a *report every two years*, which shall include:

- a) An overview of the sector with regard to good repute, financial standing and professional competence;
- b) the number of authorisations granted by year and by type, those suspended, those withdrawn, the number of declarations of unfitness and the reasons on which those decisions were based;
- c) The number of certificates of professional competence issued each year;
- d) Core statistics relating to the national electronic registers and their use by the competent authorities; and

- e) An overview of exchanges of information with other Member States pursuant to Article 18(2), including in particular the annual number of established infringements notified to other Member States and the replies received, as well as the annual number of requests and replies received pursuant to Article 18(3).

The first report under Regulation 1071/2009 covers the period from 4 December 2011 until 31 December 2012. The reports are summarised in **Annex A** (see Section 9.1). The next reporting period will cover the full two-year timeframe from 1 January 2013 till 31 December 2014. The data reported indicate that depending on the national schemes, there is a range of scenarios: an authorisation might be a prerequisite to obtain a licence for national transportation and/or a Community licence in order to carry out international carriage, it might be an equivalent of a licence for national transportation or alternatively it might mean a licence for national and international transport granted by means of a single authorisation. Conversely, Regulation 1071/2009 refers to an "authorisation" as an administrative decision that authorises an undertaking that satisfies the conditions laid down in Regulation 1071/2009 to pursue the occupation of road transport operator. The Commission has therefore requested Member States prepare an outline of national arrangements in order to collect more consistent data for the next reporting period. Only twelve Member States provided data on authorisations granted and on this basis around 171,000 authorisations were granted to pursue an occupation of road transport operator in passenger and goods transport.

The highest number of withdrawals of authorisations was reported in Spain (almost 37,600 for passenger and goods transport) and France (4,700), Slovakia (1,200), Sweden (965) and the Czech Republic (956). Greece reported 222 withdrawals for passenger and goods transport, Poland (68), Latvia (58), Hungary (33), Italy (31) and other Member States did not reach more than 10. Most Member States who submitted data on number of declarations of unfitness, stated that there was not a single case recorded during the reporting period for both passenger and goods transport (Austria, the Czech Republic, Greece, Malta, the Netherlands, Poland and Slovakia).

#### **5.1.2. Regulation 1072/2009 on access to the international road haulage market**

Regulation 1072/2009 puts in place a harmonised standard of **Community Licenses (Article 4)** and **driver attestations (Article 5)**. International carriage shall be carried out subject to possession of a Community licence and, if the driver is a national of a third country, in conjunction with a driver attestation (**Article 3**). According to Article 4(2), the Community licence shall be issued for renewable periods of up to 10 years. Member States typically issue licences for periods of 5 years (Austria, Belgium, Cyprus, Finland, Ireland, and UK) or 10 years (Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Latvia, Lithuania, Germany, Slovak Republic, and Sweden). France reported a period of 5-7 years was used for the period of validity.

**Cabotage provisions** are stipulated in **Article 8(2)** of Regulation 1072/2009. Haulers may carry out three cabotage operations in the host Member State within seven days following an international journey – known shorthand as the "**3 in 7 rule**". Within that period hauliers may carry out the three cabotage operations in any Member State transited on their return journey under the condition that they are limited to one operation per Member State transited, within three days of unladen entry into its territory. In any case, cabotage must always be limited to three operations within seven days.

In order to further clarify the interpretation of the cabotage provisions, the Commission organised in 2011 a committee meeting to discuss the main critical points, and subsequently published a "frequently asked questions" note. Despite these clarifications, there are still different interpretations of specific issues concerning the cabotage regime in different countries (as shown in **Annex A**, Table 9-8 and discussed further in Evaluation Question 4). Some countries allow several loading and unloading points per operation (which is the same interpretation the European Commission has

given to Regulation 1071/2009), whereas partial loading and unloading is regarded as a separate trip in other countries such as Germany and Finland. As another example, some Member States have additional provision on the degree to which a vehicle must be loaded/unloaded (e.g. in Germany cabotage starts only after the complete unloading of the vehicle). Finnish law imposes a further limitation of cabotage to ten operations in a three-month period, although the Commission has asked Finland to revise this additional restriction<sup>10</sup>. More details are given in Evaluation Question 4 (Section 6.4).

Regulation 1072/2009 **Article 10** re-established existing *safeguard procedures* under which a specific geographic area may be temporarily excluded from its scope. In this case, the Member States must prove that this regulation has caused “*serious disturbance of the national transport market*”. The Regulation clarifies the term “serious disturbance” as “*the existence on the market of problems specific to it, such that there is a serious and potentially enduring excess of supply over demand, implying a threat to the financial stability and survival of a significant number of hauliers*”. To date, this safeguard procedure has not been used.

*Mutual assistance* under **Article 11** requires Member States to grant reciprocal assistance in the application and monitoring of the Regulation, and to exchange information via the national contact points established pursuant to Article 18 of Regulation 1071/2009. The extent of information exchange between Member States is rather low at the moment, and several (e.g. France, Denmark) have reported difficulties in obtaining responses to queries made to other Member States (discussed further in Evaluation Question 3).

The Regulation also sets down in **Article 12** provisions regarding the sanctioning of infringements. *Sanctions for serious infringements* or for any misuse of driver attestations are decided by the Member State of establishment of the haulier, and could potentially lead to the temporary or permanent withdrawal of Community licence. Under **Article 13**, host Member State authorities can impose penalties on a non-resident haulier who has committed infringements in their territory during a cabotage operation. Penalties need to be imposed on a non-discriminatory basis and may, inter alia, consist of a warning, or, in the event of a serious infringement, a temporary ban on cabotage operations on the territory of the host Member State where the infringement was committed. In practice, there is very wide variation between the type and level of sanctions for infringements of EU cabotage provisions (discussed further in Evaluation Question 2).

Serious infringements that have led to the imposition of a penalty by any Member State shall be recorded by the Member State of establishment in the *national electronic register* of road transport undertakings (**Article 14**). The host Member State and the Member State of establishment shall, within 6 weeks of their final decision on the matter, transmit the information regarding the infringement (description, type, penalties).

**Article 16** requires Member States to lay down the rules on penalties applicable to infringements of the Regulation and take all the measures necessary to ensure that they are implemented.

**Article 17** requires Member States to report every two years on the number of hauliers possessing Community Licences, the number of certified true copies in circulation, the number of driver attestations issued in the previous year and the number of driver attestations in circulation. The monitoring data provided according to Article 17 are shown in **Annex A** (see Section 9.1.2). At the end of 2014 there were a total of 286,883 hauliers possessing Community Licences in the EU-28 (an increase of 5.3% compared to 2013) and 1,839,711 certified true copies in circulation (an increase of 4.2% compared to 2013). The number of driver attestations issued in 2014 was 33,618 (an

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<sup>10</sup> [http://europa.eu/rapid/press-release\\_MEMO-15-4871\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4871_en.htm)



increase of 23.8% compared to 2013) and there were 41,602 in circulation (a reduction of 0.5% compared to 2013).

## **5.2. Market context and development**

### **5.2.1. Road haulage activity and levels of trade**

Overall, road freight transport accounts for around 45% of freight moved in the EU-28 (72% excluding intra-EU sea and air transportation), a share which has remained largely unchanged over the past decade (DG MOVE, 2014). Around two thirds of road freight movements are within Member States and one third is between Member States.

The total volume of road freight transport in the EU-28 was around 1,720 billion t-km in 2013, some 10% less than during its peak in 2007, but showing a small increase compared to 2009 (1,700 billion t-km). This development has been shaped by the global financial and economic crisis, which has had severe impacts on the EU.

Most national transport activities are carried out by domestic transport operators (around 65% in 2013 and this share has been unchanged since 2009 when the Regulations were introduced) (Eurostat, 2014) Cross-trade<sup>11</sup> has grown significantly in recent years due to the fact that international transport activities are completely liberalised within the EU (European Commission, 2014b).

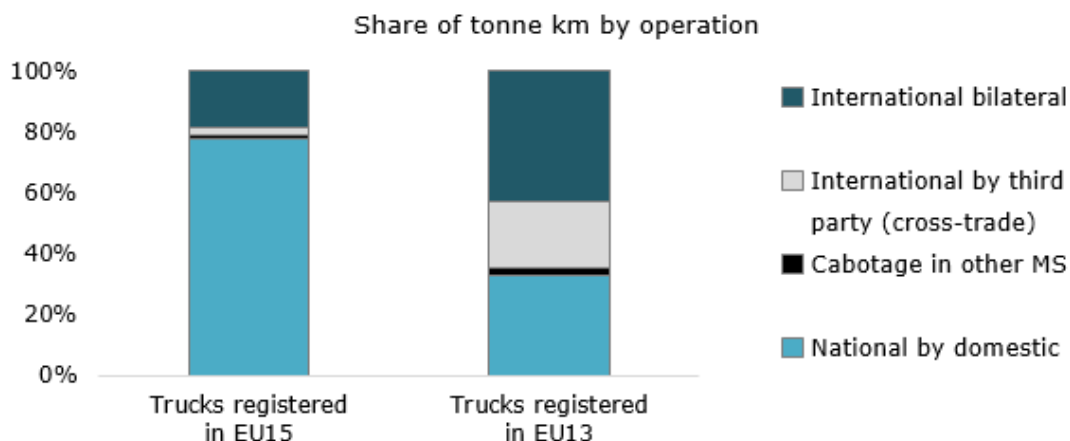
Cabotage, defined as the execution of national transport operations by foreign operators, accounted for just over 2% of national transport activity in 2013. The share of cabotage has roughly doubled between 2004 and 2013, due in part to the lifting of special transitional restrictions in 2009 and 2012 on hauliers from most countries that joined the EU in 2004 and 2007, respectively (European Commission, 2014b). Cabotage grew by 20% between 2012 and 2013 alone, but overall still only accounts for a small share of total freight activities in the EU-28 and is concentrated in a few countries West European countries, such as Germany, France, Italy, the UK, Belgium and Sweden (accounting for 86% of total cabotage taking place) (Broughton et al, 2015). However, there have been suggestions that Eurostat statistics on cabotage operations fail to reflect the real extent of the practice in Europe (discussed further in Evaluation Question 1). Prior to the introduction of the Regulations, cabotage accounted for 0.9% of transport in Europe (European Commission, 2007a).

Around 28% of all cabotage activity is carried out by Polish operators, which have displaced Germany, the Netherlands, and Luxembourg as the dominant actors in the cabotage market (Broughton et al, 2015). Two thirds of all EU-28 cabotage is carried out in Germany and France. The share of cabotage carried out in EU-13 states is virtually zero<sup>12</sup>. Half of all cabotage in 2013 was carried out by operators from the EU-13, up from a third in 2010 (Broughton et al, 2015) - see Figure 5-1.

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<sup>11</sup> Freight carried by vehicles registered in third countries, i.e. neither the loading nor the unloading country

<sup>12</sup> Eurostat Datasets "road\_go\_ca\_hac" and "road\_go\_ca\_c"

**Figure 5-1: Split between national and international road freight movements: EU15 vs EU13 vehicle parc (2013)**

Source: Eurostat Dataset: "road\_go\_ta\_tott"

Notes: While it has been suggested that Eurostat data underestimates actual levels of cabotage (see Evaluation Question 3, Section 6.3), they are the most comprehensive and most comparable data available, as they are the result of an official data collection carried out by National Statistical Offices and reported to Eurostat according to agreed standards (European Commission, 2014b).

Vehicles registered in the EU-15, however, still account for over four-fifths of the total t-km generated by movements between EU-15 Member States (Broughton et al, 2015).

### 5.2.2. Market structure

In total, there were around 575,000 registered road freight transport and removal enterprises in Europe in 2012<sup>13</sup>, employing around three million people (European Commission, 2014b). At the time the Regulations were introduced, there were 582,700 road freight transport undertakings, employing 2.7 million people (European Commission, 2007a).

The market is broadly divided into two main segments. The first are small firms that account for the vast majority of the total number of hauliers - 90% of enterprises in the sector have fewer than 10 employees and account for close to 30% of turnover (including self-employed) (Eurostat, 2015). These firms tend to compete mainly on price, with labour costs being a key determinant of competitiveness (WTO, 2010). At the time the Regulations were adopted, 95% of road transport firms had fewer than 10 employees (European Commission, 2007a), reflecting a slight trend toward consolidation in recent years. Even at the time of the Impact Assessment underlying the Regulations, it was recognised that a proportion of small companies tend to be economically dependent on larger operators who prefer to subcontract through exclusive or preferential contracts rather than to invest in additional vehicles (European Commission, 2007a).

The second segment is made up of a limited number of large firms that provide complex logistics services. Firms in this segment compete on price, range and quality of the services offered (WTO, 2010). Since economies of scale are more important, there is also a higher degree of market concentration; around 1% of enterprises are enterprises with over 50 persons employed, these account for around 40% of sector turnover.

<sup>13</sup> Note that the Eurostat business indicators only cover hire and reward road transport businesses. These account for around 85% of all t-km while own account transportation (transportation carried out by other businesses for their own purposes) accounts for 15%. The transport activities for hire and reward are those carried out by the road haulage sector in the EU as defined in the business statistics while own account transport is carried out by other economic sectors for their own purposes.

Subcontracting plays a major role in road haulage, and there has been a strong increase in subcontracting in recent years. Overall, the European road haulage market can be characterised by a chain of hire and reward companies with large pan-European logistics companies at the top controlling the largest contracts but subcontracting much of that down the chain. Small enterprises and owner drivers either form small consortiums to obtain work, rely on subcontracting from larger firms or move loads identified through freight exchanges.

In the past, the EU road haulage market has been highly competitive and price-sensitive because it has been dominated by a large number of small companies and owner-operators. Rapid expansion of larger operators offering integrated logistic services was identified at the time the Regulations were introduced, along with intense corporate restructuring (European Commission, 2007a) – the importance of pan-European logistics integrators has continued to grow in recent years (AECOM, 2014b). Large multimodal third party logistics providers (3PLs) help to meet the demand for high quality, reliable and predictable door-to-door truck services (AECOM, 2014b). Cost pressures for logistics providers means that many heavily rely on subcontracting less profitable operations to smaller enterprises and owner-operators, driving the number of links in the logistics chain upward (AECOM, 2014b).

A long-term trend suggests that freight integrators<sup>14</sup> and forwarding agents will play an important and growing role in the organisation of international road freight movements, helping to optimise the entire supply chain, improving vehicle usage and reducing empty running (AECOM, 2014b).

### **5.2.3. Cost structure**

At the time the Regulations were introduced, cost differentials between Member States were noted and it was found that road haulage costs can be almost double from one Member State to another (European Commission, 2007a). The rising cost of drivers and fuel costs were identified as having an important impact, depending on the Member State (European Commission, 2007a).

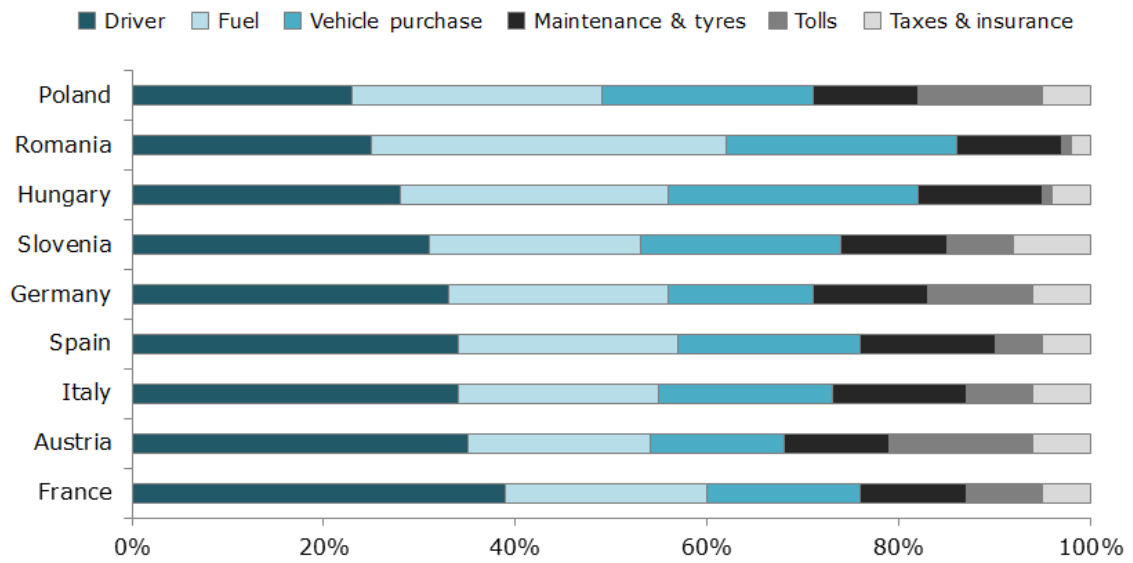
During the economic downturn, profit margins have contracted within the logistics sector as well as in the road haulage sector (European Commission, 2014b). A key effect has been the substantially increased price competition created within road transport, which has then extended to the entire freight market (KombiConsult, 2015). On the trunk lines of European corridors, reported freight rates have fallen even below pre-boom prices in the years up to 2006 to as low as €0.7 per vehicle-km or less. This corresponds to a reduction of some 30% compared to previous market prices of about €0.9 to €1.0 per vehicle-km, which barely covers the variable costs of haulage, let along the full cost of vehicle utilisation (KombiConsult, 2015).

Cost levels are one of the key factors determining competitiveness in the road haulage sector. As shown in Figure 5-2, the most important cost components are the driver's wages and fuel, followed by vehicle purchase costs. While in absolute terms, labour costs in the Member States that joined in 2004 and 2007 remain lower than in the EU-15, the gap is steadily narrowing (European Commission, 2014b).

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<sup>14</sup> A freight forwarder is a person or company that organises shipments for individuals or firms. A forwarder is not typically a carrier, but is an expert in supply chain management.

**Figure 5-2: Percentage of operating costs per hour in selected Member States**



Notes: Driver costs indicate wages; maintenance includes general vehicle maintenance and tyre replacement

Source: (Bayliss, 2012)

## **6. ANSWERS TO THE EVALUATION QUESTIONS**

This section sets out in turn, analysis for each of the evaluation questions presented under the general evaluation headings of effectiveness, relevance, efficiency, coherence and EU-added value.

### **6.1. Effectiveness: To what extent are compliance levels with the new provisions satisfactory?**

To what extent are compliance levels with the new provisions relative to stable and effective establishment of undertakings (Regulation (EC) No 1071/2009) and cabotage (Regulation (EC) No 1072/2009) satisfactory vis-à-vis the objectives of the Regulations?

This evaluation questions focusses on the levels of compliance with two main areas of the Regulations, namely, compliance with provisions on stable and effective establishment and with provisions on cabotage<sup>15</sup>.

#### **6.1.1. Compliance with provisions on stable and effective establishment (reduction of letterbox companies)**

##### **6.1.1.1. Provisions on stable and effective establishment and the link with letterbox companies**

Regulation 1071/2009 introduced a requirement for all transport undertakings authorised by a Member State to have *stable and effective establishment* in that Member State<sup>16</sup>. As described in Section 5.1.1, the minimum requirements of stable and effective establishment have been implemented by all Member States, with only few examples of additional national requirements such as the need for a parking space (such as requirements for parking spaces in Austria, Bulgaria, Ireland, Slovakia and the UK).

Letterbox companies can be defined as a company that is formally registered in a Member State, but none of the administrative or commercial activity of the company takes place in that Member State.

The link between the requirement of stable and effective establishment and the reduction in letterbox companies is therefore a direct one – since letterbox companies operate without undertaking any substantial amount of business in the country of establishment and without having any “real” operational base, imposing the requirement for having such a real operational base would reduce the number of these companies.

As a result of this requirement, it was expected that the number of so-called “letterbox companies<sup>17</sup>” would be reduced. The following sections analyse firstly the current levels of compliance, and secondly the trends over time, in order to establish whether the provisions of stable and effective establishment have been effective.

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<sup>15</sup> Meaning the national carriage of goods for hire or reward carried out by non-resident hauliers on a temporary basis in a host Member State.

<sup>16</sup> Article 5 specifies that an undertaking must have an office in which it keeps its core business documents and an operating centre with the appropriate technical equipment and facilities in the Member State of establishment. Moreover, once an authorisation is granted, they need to have at least one vehicle at their disposal which is registered in that Member State

<sup>17</sup> The term “letterbox company” derives from the practice where the company exists as little more than letterbox for collecting mail that is redirected to the country where the business is actually based in practice.

### 6.1.1.2. Assessment of current levels of compliance and extent of letterbox companies

The number of infringements of the provisions on stable and effective establishment that are detected in each country should provide a direct indicator of the current levels of compliance that have been achieved, and the number of letterbox companies detected. The official reporting requirements under Article 26 of Regulation 1071/2009 require Member States to report on the number of authorisations suspended, those withdrawn, and the number of declarations of unfitness (see Annex A, Section 9.1.1.2). However, Member States typically do not disaggregate their data according to the different types of infringement.

In an effort to obtain the more detailed data needed, all enforcement authorities that responded to the survey were asked to disaggregate the data and identify how many were due to infringements of the requirement of stable and effective establishment. Most were not able to provide this information, but data from all respondents who were able to provide it are shown in Table 6-1. Survey responses were supplemented by detailed interviews in order to try to understand the situation in more detail, although most interviewees were only able to confirm the lack of data availability.

**Table 6-1: Estimated number of letterbox companies in selected Member States (2013 or a similar recent year)**

Member State	Number of checks of stable and effective establishment	Number of letterbox companies detected*	Estimated actual number of letterbox companies
Denmark	All applications	1	0
Poland	2,351	30	No data
Bulgaria	5,640	35 for 2013; 49 for 2014	35 for 2013; 49 for 2014
Romania	7,110	0	0
Netherlands	N/A	15 for 2014	Less than 500
Latvia	No information	0	0

\*i.e. companies without stable and effective establishment

Source: Survey of enforcement authorities

The figures collected indicate a detection rate of around 1% or less in the countries that could provide data, which include examples of both EU-15 and EU-13 Member States. This helps to confirm in official statistics that companies without stable and effective establishment have indeed been found to exist, while suggesting at the same time that the problem is at a low level, at least in these countries (from Table 6-1).

However, official statistics will not show companies that are evading detection. To cross-check whether the data reflected the real situation, all respondents to the survey of enforcement authorities were asked specifically to estimate the total number of letterbox companies in their country, as shown in the last column of Table 6-1. Most respondents (10 out of 15) were not able to give an answer. The respondents from Denmark, Romania, Bulgaria and Latvia indicated that they believe that letterbox companies are being detected effectively, whereas the response from the Netherlands indicates the authority suspects there are more in operation that have not been detected (up to 485 undetected). The lack of data makes it difficult to extrapolate these conclusions to other countries.

Considering next whether the problem could be much higher in other Member States must rely on indirect indications, since direct data is not available. The total number of withdrawals, suspensions and declarations of unfitness might represent the upper bound

limit. The total numbers of withdrawals, suspensions and declarations of unfitness that were obtained from Member States that provided reports were in most other cases relatively small (see Annex A, Section 9.1.1.2). For instance, total withdrawals are less than 100 in nine Member States<sup>18</sup>, whereas information could not be found for a further eight<sup>19</sup>. The relatively small numbers of total infringements reported in many Member States suggests in turn that the problem of non-compliant companies should also be small, provided that the enforcement practices are effective in detecting letterbox companies. Again, these figures cannot show how many companies might be evading detection.

On the other hand, several Member States showed in their monitoring data (under Article 26) a relatively high number of total withdrawals, suspensions and declarations of unfitness. Member States reporting more than 1,000 cases in any category included: Spain (37,595 withdrawals and 12,493 suspensions in 2012); France (3,344 withdrawals over the period 4/12/2011 – 31/12/2012); Netherlands (1,038 withdrawals in 2012); Slovakia (1,219 withdrawals in 2012); (European Commission, 2014a). The available evidence suggests that these are due to other infringements and not due to letterbox companies: In the main monitoring reports it appears that the figures for Spain may be anomalously high because all applications/changes in number of vehicles or variations of operating premises were counted as requests for authorisation, while failure to meet any requirement was counted as authorisations withdrawn<sup>20</sup>. The respondent to the survey of enforcement authorities in France reported that “*few cases are problematic*” with respect to stable and effective establishment. For the Netherlands, it was indicated by the respondent to the enforcement authority survey that the majority of infringements were due to the requirement of financial standing whereas only 15 were due to stable and effective establishment.

Considering whether official statistics accurately reflect the issues on the ground requires a more direct assessment of the extent and conduct of letterbox companies. This is challenging because there are no comprehensive statistics in the EU due to the inherent difficulty in monitoring them. As such, data is typically based on ad hoc investigations or complaints, making it difficult to assess the current situation or trends over time. In the absence of comprehensive statistics, this study has attempted to triangulate information from different sources. Reported examples of letterbox companies collated from literature are provided in **Annex A** (see Section 9.2.1), which summarises a number of reports of letterbox companies affecting various European countries. While these anecdotal examples from the literature cannot be interpreted as evidence of a systematic or increasing problem, they do show that letterbox companies are still found to operate within the EU currently.

The validity of these reports was explored in more detail via interviews carried out for this study. The responses demonstrate how difficult it is to investigate and verify the existence of letterbox companies. As an example, concerns over possible letterbox companies set up by Danish firms in Germany were highlighted to the Commission in 2013 and 2014 by Danish representatives (Parliamentary questions, 2013a). In response, the Commission requested that the German authorities carry out an individual check to verify whether the undertaking met the conditions of Regulation 1071/2009 (see **Annex A**, Section 9.2.1, for further details). During interviews conducted for this study, German stakeholders were asked to comment on this issue and in general appeared to recognise there were some problems but that they were probably not extensive: the German ministry, enforcers and a trade union confirmed that the problem of letterbox companies in Northern Germany is well-known, although the specific companies in question could not be discussed. A German industry association further

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<sup>18</sup> AT, EE, HU, IE, IT, LV, LT, MT, PL, RO

<sup>19</sup> BE, BG, CY, DK, FI, DE, LU, PT

<sup>20</sup> I.e., these withdrawals were due to failure to provide proof of meeting the conditions needed for an authorisation to be granted, on the request of an applicant or cease of operations

recognised the issue of letterbox companies but suggested that it is a very local problem. Finally, five German undertakings interviewed for this study believed that letterbox companies cannot exist long term in Germany as the controls by the BAG (Federal Office for Freight Transport) and the tax office are too frequent and thorough.

Danish stakeholders were similarly asked in interviews carried out for this study to expand on the same issue described above of Danish letterbox companies in Germany. The Danish Ministry and Danish enforcement authorities emphasised that these were only claims and that there is not established proof of such illegal practices taking place. On the other hand, the Danish trade union claimed that they had photographic evidence of the existence of these letterbox companies that had been forwarded to relevant authorities, but in the end the opinion of the German authorities was that these companies were legitimate. The comments also eluded to difficulties in ensuring cooperation between Member States, which are further discussed and analysed in Evaluation Question 3 (see Section 6.3).

Stakeholder perceptions gathered via the surveys also support the conclusion that there are indeed some continuing problems with letterbox companies, but that the issue is affecting only some countries. Although no respondents could provide concrete data, 100% of participants in the high level survey<sup>21</sup> felt that the illegal practices of letterbox companies were a continuing problem in Europe today, indicating a strong feeling on this issue and indeed, this was one of the only areas that respondents agreed unanimously<sup>22</sup>. Five national ministries out of the 20 consulted as part of this study reported that they suspected letterbox companies were being established on their territory (these represented a mix of Eastern European countries and high-wage Central European countries: Bulgaria, Estonia, Germany, Luxembourg and Slovakia). Only Luxembourg was able to quantify (informally) the impact due to letterbox companies, estimated at €30 million per year. Five Member States also identified the reverse problem - that they suspected companies from their own countries were setting up letterbox companies in other Member States (Belgium, France, Germany, Slovakia and Sweden). However, none of the respondents were able to provide further quantitative data on the current or past situation due to difficulties in monitoring. Several Member States were able to recount specific examples of companies in contravention with the Regulations (Sweden, France, Estonia), although full details were not divulged due to confidentiality concerns.

Finally, six Member States reported that they felt their country had *not* been affected by letterbox companies (Austria, Cyprus, Czech Republic, Latvia, Poland and the UK). This supports the conclusion that the problem is not uniform across the EU.

Overall, the statistics on infringements show that there are still companies without stable and effective establishment being detected in Europe today, which is supported by reports of letterbox companies found in the literature and views from the different stakeholder groups consulted (trade unions, associations, ministries and undertakings). This indicates that the problem of letterbox companies in Europe has not been completely solved. A comprehensive assessment of the extent of the problem is hindered by a lack of conclusive data. Official statistics gathered from enforcement authorities suggest that the absolute number of companies infringing the requirement of stable and effective establishment being detected is relatively low, although respondents were not able to comment on the extent to which there might be other companies evading detection.

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<sup>21</sup> Respondents to the high level survey included mainly trade unions and associations – see Annex C for a full breakdown of respondents by group

<sup>22</sup> The other area of unanimous agreement was on that a lack of effective enforcement was a very significant issue.



**6.1.1.3. Assessment of the levels of compliance and the expected result**

The next step of the analysis is to determine whether the Regulations have contributed to a reduction in letterbox companies (the expected result).

Turning to the question of whether the situation has improved or worsened over time, data is even scarcer, and no quantitative data was available from the Impact Assessment to the Regulation that could have been used as a starting point. Literature searches did not reveal any further information and hence stakeholders were the only remaining possible source.

Enforcement authorities were asked to provide estimates of the number of letterbox companies that existed currently and prior to the Regulations. We received only one response from Finland, which estimated that there were previously 500 letterbox companies prior to the Regulations in 2008 compared to around 20 detected in 2014 and an estimated 100 in the whole country. Although this indicates an improvement in Finland, this is not sufficient information to conclude for the whole of Europe and hence it is not clear from the data whether the situation has improved or worsened overall.

Triangulating this data is also challenging because other sources cannot reliably track developments over time. Nevertheless, there does appear to be broad agreement from different stakeholder groups, which lends some additional weight to their views. Opinions gathered from the high level survey indicated that many (around half of respondents) felt that there had been no material effect on the number of letterbox companies while around a fifth of respondents felt there had been a slight positive effect. Conversely, the trade unions in their joint response report an increase in letterbox companies, in contrast to the other views of the high level survey. The responses to the survey of Member State ministries were slightly positive overall, with 18% reporting a positive effect and 36% indicating that they felt the Regulations had no material effect, whereas a similar proportion (32%) did not know<sup>23</sup>. The most positive response was received from the undertakings survey, where 31% strongly agreed and a further 17% slightly agreed that the requirement of stable and effective establishment has reduced the number of letterbox companies. Overall, this indicates that stakeholders from various groups (association, ministries, undertakings) feel that the Regulations has had a neutral or positive impact in terms of reducing the number of letterbox companies, with only trade unions strongly disagreeing.

As an alternative indicator, the development of market incentives that may be driving these practices can be examined. International road transport operators conduct transport in many countries, so it is natural to consider where it is most appropriate to register their trucks and hire their workers based on cost differentials. However, these cost differentials (and in particular, wage levels) can also create incentives to set up letterbox companies. For instance, interview respondents (including ministries, associations, trade unions, enforcers and undertakings) were unanimous that wage differentials were a key driver for the establishment of letterbox companies. Evidence on the development of cost differentials) is described in Box 6-1 (noting that this is an external factor outside of the control of the Regulations).

**Box 6-1: Evidence on development of cost differentials in Europe**

Although there are some signs of labour cost convergence across Europe, there are still considerable differences between Member States (TRT, 2013). For example, the cost of a French driver is 1.3 times higher than that of a Spanish driver, and 2.4 times higher than a Polish driver spending three weeks per month outside their respective domestic markets<sup>24</sup>

<sup>23</sup> This share of “don’t know” responses was relatively high compared to the other answer options (most of which did not receive any “don’t know” answers), indicating the difficulties in obtaining concrete data on the issue

<sup>24</sup> Converted on a PPP (purchasing power parity) basis, the wage differentials of French drivers reduce to 1.27 for Poland and to 1.25 compared to Spain, indicating that there are still differences.

(SDG, 2013a). Even taking into account possible differences in terms of skills and productivity, the pay gaps are sufficiently high to conclude that there are still substantial differences in the labour costs. These wage differentials between countries therefore suggest that there is a continuing incentive for the establishment of letterbox companies.

National taxation laws are another important driver. Many national laws apply also to "visiting" foreign trucks through the principle of territoriality. A foreign-registered vehicle is subject to its host country's legislation in terms of weights and dimensions, payment of tolls, etc. The main exceptions are the taxation of the transport company (in the absence of a double taxation agreement), the taxation of the vehicle in relation to its registration, and the driver's wage and social insurance contributions, which remain those of vehicle's country of origin. For instance, differences in social insurance contributions can be quite substantial. As an example, the estimated amount of the employers' mandatory (net) social security contributions for a driver operating is €736 per month in France; €446-630 in Germany, €481-584 in Spain, as compared to €316 in Slovakia and €111 in Poland.<sup>25</sup> (CNR, 2013).

The enlargement of the EU also probably increased these incentives - if an area is enlarged to include countries or regions with divergences in the relevant economic conditions, the use of these opportunities tends to increase (Kummer et al, 2014). Specific factors may also increase the incentives, as revealed by interviews conducted for this study - for example, a German industry association believes that that letterbox companies are set up in Schleswig Holstein in order to benefit from exemptions to the truck driving ban on Sundays, whereas the German ministry believes that Eastern European letterbox companies are frequently established in Germany to get access to permits that allow them to operate in non-EU countries in the East, such as Russia.

There is good agreement between different sources that in future years the cost differentials between countries are likely to diminish, since pressure for convergence will be exerted by economic forces. On the one hand, the European Commission reports that the cost difference has been constantly decreasing and will most likely continue to do so in the future (European Commission, 2014b). Others are more conservative in their estimations and suggest that the gap will only narrow slowly due to liberal labour immigration rules and a large number of non-EU citizens willing to work for low wages (e.g. Sternberg et al, 2014; Ismeri Europa, 2012), which implies that the existing differentials in wages and other costs will continue to provide strong incentives for companies to establish letterbox companies. Empirical data show mixed results on labour cost convergence in Europe (see Annex A, Section 9.2.2 for a summary of empirical studies), but overall provide evidence of very slow labour cost convergence between EU-12 and EU-15 countries.

Overall, the development of the problem of letterbox companies over time is difficult to track directly due to the paucity of data. The development of market forces is considered as a proxy for the potential incentives for setting them up. This shows that the enlargement of the EU and continuing cost differentials between countries have created greater incentives for the establishment of letterbox companies - suggesting that in the absence of the Regulation there would have been more letterbox companies. As such, the problem is unlikely to have resolved by itself in the past years - nor it is likely to resolve in the near future without effective enforcement of the Regulation. In spite of these market incentives, the weight of stakeholder views (associations, ministries and undertakings) is that the impact of the Regulation has been slightly positive or neutral.

#### **6.1.1.4. Assessment of extent to which the expected results were achieved and issues identified**

The introduction of the requirement for stable and effective establishment was meant to reduce the number of letterbox companies. As discussed above, on balance the evidence suggests that the problem of letterbox companies still exists but it lower than it might otherwise have been if market forces (i.e. elements external to the Regulation)

<sup>25</sup> On a PPP basis: approximately €800 per month in France; €500-700 in Germany, €650-800 in Spain, as compared to €550 in Slovakia and €250 in Poland

had been left unchecked without introducing requirements of stable and effective establishment.

This strongly suggests the measures put in place by the Regulation (linked to the operational objective of laying down common rules for access to the profession) have contributed to improving the situation compared to the counterfactual of having no provisions in the Regulation, as was previously the case.

In summary, although there have been some positive impacts, there is still room for improvement. It is important to control letterbox companies because there are various negative impacts that arise from their existence, discussed below.

The impacts on companies occur due to unfair competition, since letterbox companies can potentially undercut legitimate businesses by avoiding other costs such as social contributions and taxes. An often-cited figure from the literature is that letterbox companies can save as much as 90-95% on labour costs and social contributions (ETF, 2012a), which was based on survey data collected by ETF, although the underlying data from the ETF report could not be obtained for analysis in this study. To cross-check this data point, undertakings that were consulted for this study were asked to estimate the cost advantage that letterbox companies have compared to a company that fully complies with all road transport rules. The weighted average across respondents from all countries was a cost advantage of 31% while the median category was 10-25% (indicating a positive skew, i.e. that a few very high estimates are pulling the average upward). The highest estimates were from Austrian respondents, who predicted an advantage of 40%, whereas respondents from Poland only estimated a 9% advantage – however, there was not a substantial difference in the mean or median when respondents were grouped into EU-13 and EU-15 countries<sup>26</sup>. Even though the estimates obtained from industry for this study are lower than the literature values, within a highly competitive industry such as road transport, this level of cost differential would be highly detrimental to companies that fully comply with the rules. The main contributing factors to this cost advantage were identified by the undertakings as the wages of drivers (the major factor), followed by taxes and social contributions, in agreement with the literature explained in Box 6-1.

Relocation of businesses is not in of itself illegal and may contribute to the efficiency of the internal market – the problems arise specifically in the case of letterbox companies: Firstly, such companies are often (although not always) associated with criminal or dubious activities (Sørensen, 2015). Secondly, when businesses relocate from Member State A to Member State B in order to take advantage of lower taxes in Member State B, there is a fiscal loss to the government in Member State A. This is an economically inefficient outcome if Member State A is still largely responsible for covering the economic costs associated with the formally (but not meaningfully) relocated company.

Studies of potential fiscal losses due to relocation of businesses carried out in Austria (Kummer et al, 2014) and Sweden (Sternberg et al, 2015) find:

- Fiscal losses per vehicle per annum (via loss of tax revenue on vehicles, insurance, corporate income and fuel)
  - €6,183 in Austria
  - €5,765 in Sweden
- Labour-related losses per driver per annum (unemployment compensation, loss of income tax, loss of social insurance contributions and loss of spending power)

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<sup>26</sup> The average cost advantage was estimated as 29% across all EU-13 respondents and 33% across all EU-15 respondents. The median category for EU-13 and EU-15 respondents was the same (i.e. 10-25%)

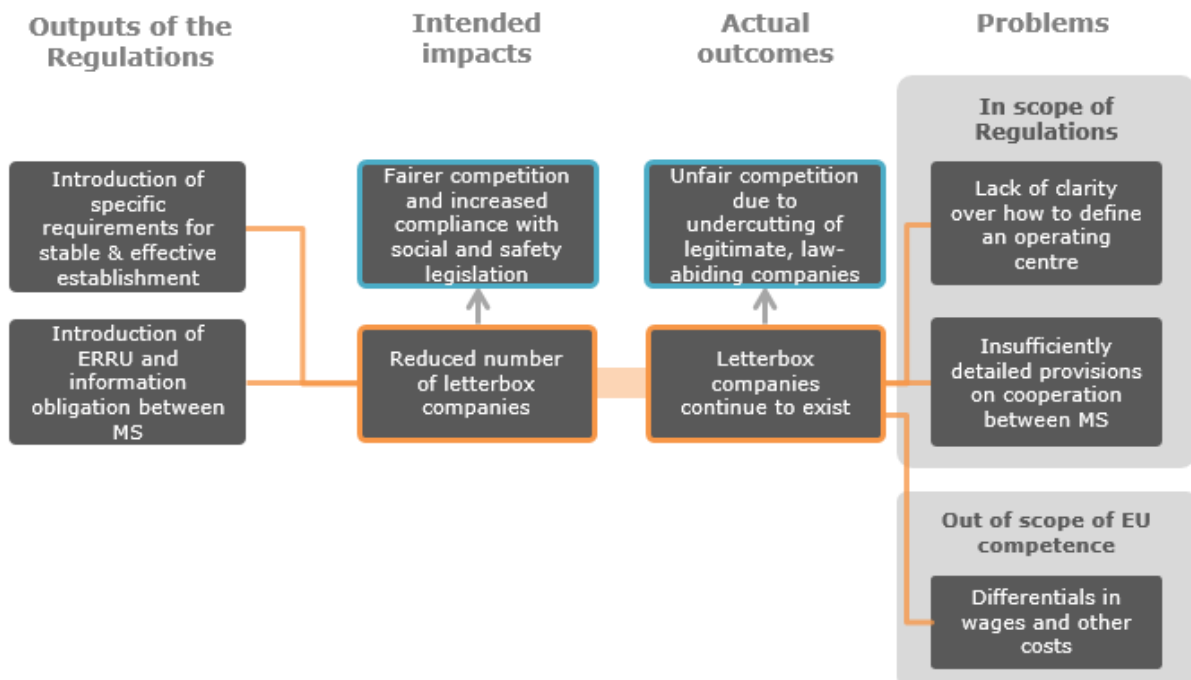
- €29,702 in Austria
- €40,100 in Sweden

These estimates show that the losses per truck are substantial. In addition, there are also possible social consequences arising from the conduct of letterbox companies, which are assessed further in Evaluation Question 5 (see Section 6.5).

Given the above impacts, the reduction of letterbox companies should in turn help to improve the competitiveness of legitimate operators that comply with road transport rules, by creating a fairer, more level playing field. As such, the requirement for stable and effective establishment is linked to the objectives of removing distortions of competition and to improving social conditions. The available evidence described in the previous section suggests that the Regulations has made some progress against this objective, since there is some positive impact in terms of reducing the overall number of letterbox companies compared to what would have happened in the absence of the rules. Nonetheless, it has not removed them from the market completely.

The likely reasons for the continuing existence of letterbox companies, as well as how the Regulations were intended to target this issue, are summarised in Figure 6-1. The main mechanism is through the provisions on stable and effective establishment, which is the explicit focus of this evaluation question. This requirement is also supported by wider provisions on cross-border collaboration in order to better detect infringements through the European Register of Road Transport Undertakings (ERRU). However, ERRU has not yet been fully accomplished, as explained further in Evaluation Question 3 (see Section 6.3). The diagram indicates reasons why the intended result has not been achieved (explained further below), namely that checks of compliance with the provisions on stable and effective establishment are not functioning effectively. Furthermore, the effectiveness of checks may be hampered by insufficient cooperation between Member States, as explained further in Evaluation Question 3 (see Section 6.3). Differentials in wages and other costs are an external driving factor (outside the scope of the Regulations), as discussed above, which may diminish gradually over time.

**Figure 6-1: Overview of impacts of the Regulations with respect to letterbox companies**



### **Identified problem: Lack of clarity over how to define an operating centre**

One of the main indications of difficulties experienced was around the lack of clarity over how to define an operating centre: Article 5 specifies that an undertaking must have an office in which it keeps its core business documents and an operating centre with the "appropriate" technical equipment and facilities in the Member State of establishment.

Member State ministries were asked whether there were any parts in those provisions that led to difficulties or inconsistencies in interpretation. Respondents from Belgium, Estonia, Bulgaria, Finland and Germany mentioned a lack of clarity over how precisely to define an operating centre, which makes it difficult to define when a transport undertaking does not satisfy the requirement on stable and effective establishment, which hampers the clarity of the rules.

These views on the perceived vagueness of the provisions are supported by actions taken by Member States in an attempt to define more specific criteria themselves – in the UK, the additional requirements were seen favourably by an industry association interviewed for this study, as they help to maintain a more positive image for the industry. Efforts to improve the definition in Poland by amending the law in 2013 (see the Polish case study, **Annex C**, Section 11.4) have reportedly improved enforcement. In Luxembourg, the respondent to the survey of ministries indicates that the establishment has to be appropriate to the size of the company; the manager has to be present on a regular basis; and the existence of a parking space is checked although it is not a legal requirement.

Comparing the provisions in Regulation 1071/2009 to legislation in other sectors also shows that there could be more detail. For instance, the recently adopted Enforcement Directive of the Posting of Workers Directive (2014/67/EU) lists conditions that are more extensive than those provided in Regulation 1071/2009. They were introduced because the Posting of Workers Directive itself requires that the posting undertaking has to be "established" in a Member State, but did not set specific criteria in order to determine if there is a genuine link. Under Article 4 of Directive 2014/67/EU, Member States are under the obligation to check that the employer is not a letterbox company. In particular, Member States are required to check that an undertaking "*genuinely performs substantial activities, other than purely internal management and/or administrative activities*"

Although the elements stated are not exhaustive, they seek to identify where the activities that are central to most service companies are actually exercised. Such elements may include in particular:

- (a) the place where the undertaking has its registered office and administration, uses office space, pays taxes and social security contributions and, where applicable, in accordance with national law has a professional licence or is registered with the chambers of commerce or professional bodies;*
- (b) the place where posted workers are recruited and from which they are posted;*
- (c) the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other;*
- (d) the place where the undertaking performs its substantial business activity and where it employs administrative staff;*
- (e) the number of contracts performed and/or the size of the turnover realised in the Member State of establishment, taking into account the specific situation of, inter alia, newly established undertakings and SMEs.*

Potential solutions to this issue are discussed in the summary and conclusions to this section. Other factors may relate to lack of effective cooperation between Member States, which will be discussed further in Evaluation Question 3.

### **6.1.2. Compliance with cabotage provisions**

#### **6.1.2.1. Assessment of current levels of compliance and extent of illegal cabotage**

Cabotage is governed by Regulation 1072/2009. Non-resident hauliers must produce clear evidence of the incoming international carriage and of each consecutive cabotage operation carried out, as detailed in Article 8(3).

In order to assess the levels of compliance with the cabotage provisions, it is necessary to evaluate the available data.

Firstly, it is worth noting that statistics on total cabotage activity (both legal and illegal) are poor, due to the difficulty in collecting such data. In this sense, Eurostat data is the main source for statistics on road freight transportation, including cabotage. The data collection for Eurostat cabotage statistics is not complete - for example, some statistics are non-disclosed, and some countries lack routines for collecting haulage data. This is in part due to the methodology used to gather information - Member States gather statistics on cabotage through postal surveys. Although efforts are made to discourage them from doing so, it is possible for operators to cover up transport operations by claiming the vehicle was idle during the period in question (Eurostat, 2011).

Attempts to estimate the extent of total cabotage activity by other means do indeed suggest that actual activity may be significantly higher than that reported by Member States to Eurostat. Although there are no comprehensive EU-wide studies, examples from several Member States are as follows:

- In Denmark, a study was conducted using large-scale data collection based on a smartphone app, carried out by 8,000 volunteers, and validated using GPS tracking. The study estimated that the total cabotage carried out in Denmark accounts for a minimum of 4.6% of the total domestic market, with a feasible market of at least 8.5%. This is compared to the Eurostat figure of 2.7% in 2012 (Sternberg et al, 2014).
- In the Netherlands, it is claimed that the share of cabotage could be up to 21% (PRC, 2013), while another study estimated the level to be around 10% (Panteia, 2013) compared to Eurostat figures of 5.2%.
- In Sweden, Eurostat data suggested that cabotage was limited to 5% of the for-hire-and-reward transport market. Using volunteer data collection, 7,641 license plates were observed in Sweden in 2013 of which an estimated 1,590 were engaged in cabotage (around 20%) (Sternberg et al, 2015).

Some stakeholders and reports suggest that the inaccuracy of Eurostat data is indicative of a wider problem with illegal cabotage activities – for instance, ETF (2012b) state that *“Statistics circulated by the European Commission on an annual basis show an inexplicably low rate of growth in cabotage within the internal market transport activity. This is precisely because only few operators engaged in cabotage play by the law and therefore declares cabotage activities in the host Member State”*.

However, it is very important to note that the existence of a gap between official Eurostat statistics and the actual level of cabotage does not automatically imply that there are substantial amounts of *illegal* cabotage. Rather, this merely suggests that both legal (and potentially illegal) cabotage may be under-reported in official statistics. As explained above, this is due to the limitations of the data collection techniques used. Hence, to establish whether and to what extent there might be a problem of illegal cabotage, we must examine alternative sources of data in more detail.

The second part of the analysis on data quality is to look at statistics specifically on illegal cabotage. Data specifically on the levels of *illegal* cabotage is rather sparse, and previous studies have confirmed the difficulty in gaining data, stating that *“the phenomenon of illegality of cabotage is really a “grey zone” and actually finding official figures is very difficult”* (AECOM, 2014c). Some statistics could be obtained for this

study, which are typically provided by enforcement authorities based on their enforcement activities. Although all respondents to the survey of enforcement authorities were asked for detailed data on cabotage checks and infringement rates, few were able to do so. Survey responses were supplemented with evidence from literature, shown in Table 6-2. The figures suggest that the problem of illegal cabotage detected by checks is not of a significant size in most countries for which data were available.

**Table 6-2: Number of violations of cabotage rules in different Member States**

Country	Period	Number of detected infringements	Infringement rate
Germany	2014	1,520 out of 183,200 checks	0.83%
	2013	727 out of 186,214 checks	0.39%
	2012	536 out of 207,120 checks	0.26%
	2011	612 infringements out of 118,009 inspections	0.52%
UK	March 2012 – March 2013	229	0.2%
Poland	2013	12 infringements out of 233,118 inspections	0.01%
	January 2012 – October 2012	3 infringements out of 157,000 inspections	0.002%
Lithuania	No data	No data	3% of all controls have led to fines for lack of documentation
Italy	January 2012 – October 2012	205 infringements issued following 220,965 roadside checks	0.1% referring to crimes against rules around International transport, of which cabotage is included
France	2010-2011	50,928	7% of vehicles stopped for cabotage controls were issued an infringement.
Denmark	2014		0.5%
Ireland	2012 – July 2013	1 case out of 78 checks	1.3%
	2013	3 breaches out of 185 checks	1.6%
Netherlands	2013	163 inspections	6.1% (official monitoring data)
			2.4% (estimated)

Source: European Parliament (2013a); (Sternberg et al, 2014) - Denmark; (Dáil debates, 2013) - Ireland; survey of enforcement authorities - Netherlands official monitoring data; (Francke, 2014) – Netherlands estimated data. Statistics for Germany provided by BAG

These relatively low levels of detected infringements in turn suggests that overall illegal cabotage may not be a significant problem, at least in the Member States for which data are available. However, the infringement rate reported in controls cannot necessarily be taken as representative of the whole fleet. As such, it is worth investigating the accuracy of these statistics in more detail. The main weakness of reported infringement rates is of course that they cannot reflect infringements that go **undetected**. In this sense, the true accuracy of the official statistics on illegal cabotage appears to vary, as discussed below.

In some cases, the official data appear to be truly representative of the situation in that country. For instance, the low infringement rates in **Denmark** appear to be due to genuinely low levels of illegal cabotage, and not due to (for example) ineffective detection. On the one hand, several claims have been made by trade organisations of illegal cabotage. For example, the Danish Transport and Logistics Association (DTL) reports that one of the main problems is where foreign drivers use the so-called 'zeroing solution' to drive in Denmark on a permanent basis. This means that foreign drivers simply drive across, for example, the German–Danish border with a load of empty pallets or empty containers and then continue their internal journeys in Denmark. The DTL and the Danish Transport Federation insist there is need for greater control of foreign drivers on national roads, as there have been many instances where they have not adhered to the maximum of three internal transport journeys within the permitted seven days (Parliamentary questions, 2012). However, claims of illegal cabotage in Denmark have not been confirmed by the enforcement authorities, who believe that there are few incentives for such behaviour given the high penalties, frequent enforcement and the small size of the country (see Evaluation Question 2 for more details). Nor have the claims been verified in independently gathered wide-scale data collection in Sternberg et al (2014), although "systematic cabotage" does appear to be taking place (see Evaluation Question 7 for more details). On the basis of nearly 40,000 observations provided by volunteers, Sternberg et al, (2014) gives no indication of any legal infringements of the cabotage rules in Denmark, meaning that none of the observations indicate any trucks making a fourth trip after an international trip. The data was cross-checked through accessing the legal documentation of one haulier, which showed several fines for violations, all of which were due to documentation errors (e.g. failure to get a signature on the consignment note). Hence, the actual data collected in Denmark does not provide evidence of the existence of anything but administrative infringements (Sternberg et al, 2015).

On the other hand, statistics in other Member States may not be as representative. One study in **Sweden** suggests that official cabotage infringement rates may **underestimate** the actual level of infringements, which were estimated information provided by volunteers. An app for smartphones was developed to report foreign trucks in Sweden and downloaded by 5,000 people. The registration number and the geographical position was reported via the app during a one month period in 2013. Data collected suggested that there were 1,590 trucks engaged in cabotage, and potentially 379 engaged in illegal cabotage (24% of trucks engaged in cabotage and around 5% of all trucks (Sternberg et al, 2015). The data indicated that a majority of trucks doing cabotage in Sweden, only make 1 cabotage trip per visit to Sweden – on the other hand, a significant number of trucks do not, according to the data available, leave the country.

AECOM (2014c) attempted to model the amount of potential cabotage based on bottom-up estimates of contestable markets. This showed potentially large discrepancies (more than 2,000 million t-km) between cabotage levels reporting in Eurostat and the expected activity for Germany, Austria and Italy. However, the official statistics obtained for Germany and Italy (see Table 6-2) suggest very low infringement rates respectively of 0.45% and 0.1%, alongside a high number of checks. The apparent disagreement here may be because the unreported activity in the model includes both flagging out<sup>27</sup> (the dominant cause) as well as illegal activity (that may be viewed as legitimate flagging out by some companies) (AECOM, 2014c).

To some extent, the higher infringement rates reported in some countries could also be a result of targeted checks, which result in higher detection rates, in which case the infringement rates **overestimate** the total extent of the problem. Since risk-rating is used to target checks based on aiming to control vehicles with a higher infringement

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<sup>27</sup> The formal relocation of a road haulage business from one Member State to another, or the establishment of a subsidiary in another Member State. The practice of flagging out is legal, as compared to setting up letterbox companies (that do not involve any "real" establishment in the host Member State).



risk, the overall infringement rate cannot be obtained by extrapolating the results from vehicle controls to the total fleet (since the infringement rate is not reflective of the entire fleet). For example, a 2014 report from the Environment and Transport Inspectorate (ITL) in the Netherlands indicates that out of 163 vehicles checked, 36 were engaged in cabotage, of which 10 were found to be "illegal" (around 6% infringement rate - all of which from Eastern European Member States) (Francke, 2014). However, this is a relatively small sample. Alternative estimates based on analysis of Weight in Motion data of Polish trucks, estimated the illegal cabotage rate was 2.4% (Francke, 2014).

Hence, some national statistics appear to give an accurate reflection of overall infringement rates (Denmark). At the same time, there are instances of the official statistics both under-estimating (Sweden and Ireland) and over-estimating the likely true extent of illegal cabotage activities (Netherlands).

There are regional differences too, even within a single Member State. Areas around ports appear to feature more often in reports of illegal cabotage operations. Eyewitness accounts from Italy suggest that trailers are brought into the port of Trieste by sea and attached on site to motor vehicles that are waiting in the port area. The vehicles are all registered in non-EU countries and mainly driven by Turkish drivers. According to drivers' testimonies, 60% of trips seem to be (illegal) cabotage, mainly within Italy, while the rest is international transport within the EU (ETF, 2012a). A similar practice has been reported in France, at the port of Toulon (TRT, 2013), as well as around Foynes Port in Ireland (Dáil debates, 2013).

It is difficult to determine the true extent of illegal cabotage operations in connection with these eyewitness reports. On the one hand, hauliers may indeed be conducting illegal cabotage, as suggested by these reports. On the other hand, the reports may overestimate the prevalence of illegal operations as they may not be able to differentiate between any legal operations). These reports may also be affected by an observation bias – as demonstrated by a study of cabotage in Denmark, where volunteers were more willing to report trucks from new Member States, leading to an over-representation of these trucks in the data (Sternberg et al, 2014). As a cross-check of this viewpoint, one study found that selective (risk-based) inspection of the vehicles reached a 6% detection in the area around the port of Rotterdam (Panteia, 2013), compared to an estimated infringement rate of 2.4% for the Netherlands as a whole (Francke, 2014). While this level of detection is not representative of the extent of illegal cabotage in the Netherlands in general, it does again suggest that the official statistics overestimate the pervasiveness of illegal cabotage. On the basis of the available evidence, it appears that overall the areas around ports may be more vulnerable to illegal cabotage, but the problem is not necessarily widespread and it very likely varies by location.

The available evidence supports the conclusion that there are likely problems of illegal cabotage in specific Member States. It appears that national and geographical factors are likely to determine the risk of problems with illegal cabotage in a country. For instance, studies appear to suggest that the low infringement rates in Denmark are genuinely low. Since Denmark is a small country with frequent enforcement controls, it is believed that there are few incentives and high risks for hauliers to take part in illegal cabotage (Sternberg et al, 2014). Hauliers may find it relatively easy to leave the country and return in compliance with the "3 in 7" rule. Other national factors include the level of enforcement, since infrequent controls can translate to a low risk of being caught. This is examined further in the next Evaluation Question.

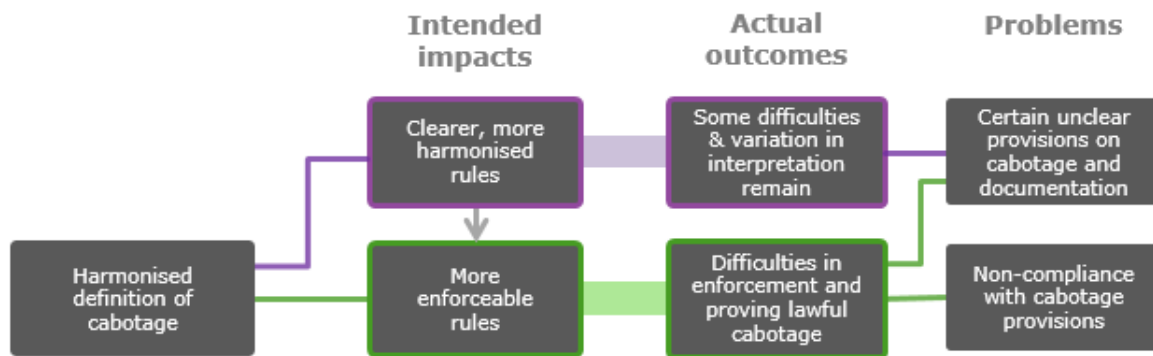
The amount of cabotage penetration also has a bearing on the likely importance of illegal cabotage in a particular country. For example, cabotage is less frequently carried out in the "new" Member States, meaning that infringements may also be less frequent in their territories. Qualitative responses from interviews carried out for this study with the enforcement authorities in Romania, Poland, Bulgaria, Croatia and Latvia confirm that there is not a lot of cabotage in their countries and hence illegal cabotage is not seen

as a priority problem. This means the problems are likely concentrated in the heavily cabotaged EU-15 Member States, potentially to a greater extent than is reflected in official statistics – a view that is supported by bottom-up modelling estimates conducted in AECOM (2014c).

#### **6.1.2.2. Assessment of extent to which the expected results were achieved and issues identified**

The link between compliance levels with the cabotage rules and the operational objectives / results of the Regulation is illustrated in Figure 6-2. The outputs of the Regulations were revised rules on cabotage, which are linked to the operational objective of laying down common rules for non-resident hauliers operating temporarily within a Member State. These revisions were intended to result in clearer, more harmonised rules, which in turn was expected to lead to easier enforcement. The actual outcomes shown in the diagram are that there are still different interpretations of cabotage that hinder the achievement of common rules (see Evaluation Question 4), as well as issues around the documentation required that may hinder enforcement (discussed further in Evaluation Question 2, see Section 6.2). These issues may contribute to the observed levels of non-compliance (discussed further below).

**Figure 6-2: Overview of impacts of the Regulations with respect to cabotage provisions**



The above diagram places the rules into context with the operational objectives. The focus of this evaluation question is concentrated on whether or not compliance levels with the cabotage rules have improved, and the reasons for this, whereas the other aspects are analysed elsewhere in this report.

Attempts to establish trends over time encounter the same difficulties as when trying to estimate the current levels of compliance. All enforcement authorities that responded to the survey were asked to estimate *previous* levels of cabotage infringements prior to the introduction of Regulation 1072/2009. Only Poland was able to supply such data, indicating that 27 infringements of cabotage provisions were found in 2008 compared to 12 in 2013. This suggests a slight reduction in cabotage infringements (although the absolute level is so low that it is difficult to say for certain), but this result cannot be extrapolated to other countries. The supporting study to the Regulation also did not contain any quantitative data on illegal practices or infringements that could be used as a starting point for comparison (Ecorys, 2006).

Trends over time were only available for a few Member States, although these data do not extend back as far as prior to the introduction of Regulation 1071/2009 and only apply to recent years:

- In Denmark, the ministry commented during interviews that although they had increased the amount of vehicles checked in recent years, fewer violations have been detected. This suggests that the compliance rate has improved.
- In Germany, the infringement rate has remained consistently below 1% from 2011-2014.

- In Poland, the infringement rate has remained less than 0.01% in 2012 and 2013.

Since it is difficult to extrapolate from these cases to the rest of Europe, it is worth also considering factors that might lead to increased risks of illegal cabotage. The main drivers for *intentional* non-compliance are economic factors, i.e. cost savings (Panteia, 2013; AECOM, 2014c). The main scope for gains is where large cost differentials exist between countries and crossing of borders is easier (AECOM, 2014c). There are very low levels of reported cabotage across borders where international trade is strong – this may be due to the underreporting in official statistics as discussed above, but also due to activity being undertaken through flagging out (which may not be reported as cabotage), or illegal activities (AECOM, 2014c).

In this sense, many of the same developments in cost differentials outlined previously in Box 6-1 apply also to creating incentives for cabotage. Alongside the higher levels of cabotage seen in the EU (the share of cabotage has roughly doubled between 2004 and 2013<sup>28</sup>), this implies that overall it could be expected that there would be higher absolute levels of cabotage, and in the absence of effective controls (discussed further in Evaluation Question 2, see Section 6.2), this would likely lead to higher illegal cabotage.

Other factors may relate to *unintentional* non-compliance, i.e. due to the differing national interpretations in Member States (discussed further in Evaluation Question 4). These create complications for hauliers trying to comply with the rules, especially if information is difficult to find or there are language barriers. The difficulties faced by hauliers and drivers in proving legal cabotage are discussed further in Evaluation Question 7 (see Section 6.7.4).

### **6.1.3. Summary and conclusions for Evaluation Question 1**

#### **6.1.3.1. Conclusions**

This Evaluation Question has focussed on analysing the specific new provisions of the Regulations regarding letterbox companies and cabotage.

#### **Stable and effective establishment**

The provisions related to *letterbox companies* considered in this question are those concerning the requirement for stable and effective establishment. Overall, the available official statistics on infringements show that there are still companies without stable and effective establishment being detected in Europe today, which is supported by reports of letterbox companies found in the literature and views from the different stakeholder groups consulted (trade unions, associations, ministries and undertakings). Official statistics gathered from enforcement authorities suggest that the absolute number of companies infringing the requirement of stable and effective establishment being detected is relatively low, although respondents were not able to comment on the extent to which there might be other companies evading detection.

Identifying any changes in the number of letterbox companies over time is difficult to track directly due to the paucity of data. The development of market forces is considered as a proxy for the potential incentives for setting them up. This shows that there are continuing cost differentials between countries, which create strong incentives for the establishment of letterbox companies – suggesting that in the absence of the Regulation the problem would have worsened. As such, the problem would have been unlikely to have resolved by itself in the past years – nor it is likely to resolve in the near future without effective enforcement of the Regulation. In spite of these market incentives, the weight of stakeholder views (associations, ministries and undertakings) is that the impact of the Regulation has been slightly positive. This suggests that the

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<sup>28</sup> Eurostat Dataset road\_go\_ta\_tott

Regulation has contributed to improving the situation compared to the counterfactual, although the problem has not been fully solved.

There were two main problem areas identified. Firstly, one of the main deficiencies in the provisions of the Regulation is a lack of a clear definition as to what constitutes an operating centre. This leads to reported difficulties in defining when an undertaking does not satisfy the requirement of stable and effective establishment. Secondly, enforcers reported difficulties in gaining support from authorities in different Member States, which means that it is often not possible to confirm the existence of letterbox companies (discussed further in Evaluation Question 3).

### **Cabotage provisions**

Turning now to *compliance with cabotage provisions* laid down in Regulation 1072/2009, again the availability of data is poor. Data specifically on the levels of illegal cabotage suggest the rates of infringements detected by authorities are relatively low in most countries (e.g. Denmark and Eastern European Member States), although the presence of illegal cabotage is confirmed in others (e.g. Sweden, France).

Overall, the available evidence supports the conclusion that there are likely problems of illegal cabotage concentrated in specific Member States, particularly concerning factors that affect the amount of cabotage penetration. This means the problems are likely concentrated in the heavily cabotaged EU-15 Member States, potentially to a greater extent than is reflected in official statistics – a view that is supported by bottom-up modelling estimates conducted in AECOM (2014c).

Attempts to establish trends over time (and to conclude on the contribution of the Regulation to reducing illegal cabotage) encounter the same difficulties due to a lack of data. There was little evidence in the literature or provided by stakeholders that could be used to develop robust conclusions. Indications from a small sample of countries (Denmark, Germany, Poland) show that the compliance rate has slightly improved or remained consistently high in recent years, but it is difficult to extrapolate from these cases to the rest of Europe.

In the absence of direct indicators of trends in illegal cabotage, it is worth considering factors that might lead to increased risks of illegal cabotage. The main underlying drivers for non-compliance and problems of illegal cabotage are:

- For *intentional* non-compliance, the main driving force are the continuing cost differentials between Member States. This type of non-compliance must be managed by effective enforcement (discussed further in Evaluation Question 2, see Section 6.2);
- For *unintentional* non-compliance, the driver appears to be the differing national interpretations in Member States. These create complications for hauliers trying to comply with the rules, especially if information is difficult to find or there are language barriers. Unclear provisions and differing interpretations of cabotage are discussed further in Evaluation Question 4 (Section 6.4), whereas the practical difficulties of proving legal cabotage are discussed in Evaluation Question 7.

On the other hand, illegal cabotage is not likely to be an issue in Member States with low levels of cabotage. This is supported by the bottom-up modelling of AECOM (2014c), and also validated during interviews with the enforcement authorities in Romania, Poland, Bulgaria and Latvia who confirm that there is not a lot of cabotage in their countries and hence illegal cabotage is not seen as a priority problem.

#### **6.1.3.2. Recommendations**

The recommendations to improve the implementation of the requirements on stable and effective establishment aim to directly target the problem areas identified, namely: a lack of clarity over how to define an operating centre and a lack of effective cooperation between Member States.

In the view of the study team, *a more precise definition as to what constitutes an operating centre should be introduced at the European level*, in keeping with the objectives to ensure common rules on access to the profession. In our judgement, the Enforcement Directive of the Posting of Workers Directive (2014/67/EU) provides a good blueprint of more detailed criteria that could be used. The elements stated seek to identify where the activities that are central to most service companies are actually exercised. The study team view the requirements in the Posting of Workers Directive as a concrete example of how similar problems have been tackled in related legislation, and it provides a good blueprint of how more precise requirements could be introduced. It is therefore recommended that a similar approach be considered to amend Regulation 1071/2009 concerning the requirements on stable and effective establishment and cooperation between Member States.

Another approach that could be transferred from other legislative areas would be to hold liable those who are responsible for setting up and using letterbox companies in an abusive way. Steps have been taken to achieve this in other legislative areas, which may help to prevent abuse of the rules. For example, the proposal<sup>29</sup> for amending the Money Laundering Directive suggests that national or legal persons that do not comply with the disclosure requirement in Article 29 of the Directive should be subject to imposition of an effective, proportionate and dissuasive penalty (Sørensen, 2015). This is a more radical departure from the existing approach and could also be considered.

The recommendations are therefore to clarify the definition of an operating centre. This recommendation should not entail substantial additional costs to enforcement authorities, since there are not any substantial changes to the actions that should be taken already – i.e. the marginal cost of checking more precise criteria should be small. The Impact Assessment for the Enforcement Directive of the Posting of Workers Directive assesses precisely the administrative burdens of introducing more detailed definitions of effective establishment, and concludes that *“providing for more effective and adequate inspections does not imply an increase in controls, inspections and respective costs or resources compared to the status quo... Member States, companies and posted workers will benefit from more effective and adequate inspection since they will contribute to a better compliance with the Directive and a more level playing field”*. Since the recommendations of this study are to follow closely the revisions to the Directive, it is logical that the cost assessment will be similar.

The benefits of such a measure would be in the form of avoided losses for stakeholders – specifically, the fiscal and labour losses per truck to Member States have been estimated at around €40,875 per year. The benefits to legitimate firms will be in the form of income gains that were previously lost to letterbox companies, which were estimated command a cost advantage of around 10-30%. The majority of this cost advantage is thought to be due to wage costs, so the benefits would also be shared with drivers.

Considering the limited costs, and the support for such measures as called for by Member State ministries, alongside the significant benefits to Member States and companies arising from avoiding the unfair conduct of letterbox companies (see Section 6.1.1.4), the benefits associated with these recommendations appear to be proportionate to the costs.

The recommendations following this Evaluation Question relate to the requirements of stable and effective establishment only. The issues identified with respect to illegal cabotage and associated recommendations are linked to other Evaluation Questions, in particular Evaluation Question 2 on enforcement practices (see Section 6.2) and Evaluation Question 4 on the variations in the interpretation of cabotage provisions (Section 6.4).

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<sup>29</sup> Parliament’s proposal adopted on 11 March 2014, (P7\_TA(2014)0191).



## **6.2. Effectiveness: To what extent are the new enforcement measures effective?**

To what extent are the new enforcement measures effective? Are the checks performed by the competent authorities carried out at an effective frequency and level of thoroughness? Are the requirements set in the two Regulations related to checks relevant and sufficient to ensure compliance? Are the penalty systems in place designed by Member States proportionate and dissuasive?

The effectiveness of the enforcement practices related to the Regulations needs to be assessed from several angles in order to determine the underlying reasons for any trends observed. Firstly, the implementation and effectiveness of national enforcement measures are assessed. Secondly, the associated penalty systems in place are reviewed in terms of whether they are proportionate and dissuasive, considering the infringements they have been put in place to deter.

### **6.2.1. Regulation 1071/2009**

#### **6.2.1.1. Implementation and national enforcement measures**

With regard to understanding the effectiveness of enforcement practices, the first step is to review the implementation across Member States. The relevant provisions of Regulation 1071/2009 related to checks are contained in its Article 12. This article requires that the Member States control whether undertakings continue to meet the requirements set out in Article 3 (i.e. stable and effective establishment, financial standing, good repute and professional competence). Until the end of 2014, the Member States must, at least every five years, check that the undertakings continue to meet the requirement. Article 12 also requires that Member States shall carry out checks targeting those undertakings which are classed as posing an increased risk. For that purpose, Member States shall extend the risk classification system established by them pursuant to Article 9 of Directive 2006/22/EC.

Concerning the extent to which Member States have been able to fully implement these requirements, some information was available in the official monitoring reports required under the Regulation. Details for Estonia, Ireland, Latvia and Hungary were given (discussed further below). In order to better understand how the enforcement systems were developed and applied in different Member States, additional details were sought via surveys and interviews carried out for this study – full details of the examples collected are given in Annex A (see Section 9.3.1).

Precise data on the frequency and thoroughness of checks carried out was sought from the literature and also from stakeholders via the surveys and interviews, but it proved difficult to gather consistent information across different Member States. In Latvia, checks of compliance with financial standing are performed by means of information from the annual reports provided by the Register of Enterprises (European Commission, 2014a). Hungary indicated the numbers of checks on conditions of good repute (11062), financial standing (7197) and professional competence (5329) during this reporting period (i.e. from 4/12/2011 – 31/12/2012) (European Commission, 2014a). Checks of all requirements with respect to the conditions of access to the occupation were confirmed to be carried out by the authorities interviewed in the course of this study from Germany and Poland. In Denmark, the interviewee explained that checks are carried out for all new applications covering at least financial standing, professional competence and stable and effective establishment for new applications – checks of good repute are only conducted if there are indications (e.g. from the police) of a potential problem. Ireland reported that checks of the requirements of the Regulation are performed at least every five years during the renewal process for each undertaking, with additional checks carried out on the basis of risk rating. The Romanian authority

reported that if a company opens a branch, checks are done on its stable and effective establishment. They considered this to be an effective system.

The incomplete data received means that we cannot confirm whether or not all Member States are meeting the requirement for checks of undertakings at least every five years. Further information could not be found, but it may be recalled that a similar requirement for a maximum period of five years between compulsory checks has been in place long before the Regulation (i.e. under Directive 96/26/EC, Article 6(1)). Bearing this in mind, it seems that there should not have been major changes to the systems already in place in most Member States.

Most Member States have now transitioned to using a risk rating system directly because of the requirement of the Regulation (e.g. Romania, Latvia, Netherlands and Finland), whereas a smaller number reported via the surveys that they already had a system in place (e.g. France, Denmark and the UK).

Further details on the application of the risk rating systems were obtained via the interviews conducted for this study (full details given in **Annex A**, Section 9.3.1). Many risk-rating systems operate in the manner prescribed by the Regulations (e.g. in Romania, Finland, Poland). There were several examples of the risk rating system going beyond the minimum requirements – in the Netherlands, risk rating is used to detect transport operators that are in risk of no longer fulfilling the requirement of financial standing, as well as covering professional competence. The UK's Driver and Vehicle Standards Agency has had a system known as OCRS (Operator Compliance Risk Score) since 2006 which was refined in 2012 to improve its predictive ability. The OCRS goes beyond the minimum requirements of the legislation by integrating information on roadworthiness infringements, which are correlated with other infringements (SDG, 2013a).

Three respondents to the survey of ministries felt that the risk rating system had improved the effectiveness of checks (Luxembourg, Spain, and Finland). There appear to be a small number of countries who still do not use a risk rating system – only the Bulgarian respondents indicated that they did not have a risk-rating system: The Bulgarian authorities reported that they were waiting for the new classification of infringements from the Commission before establishing a system.

The examples demonstrate that national enforcement practices vary in terms of the functioning of the risk rating system (e.g. whether it focusses on good reputation or includes other requirements such as financial standing and professional competence).

#### **6.2.1.2. Effectiveness of enforcement measures**

The next question to examine is whether the enforcement measures in place are effective, and the extent to which different factors influence the outcomes.

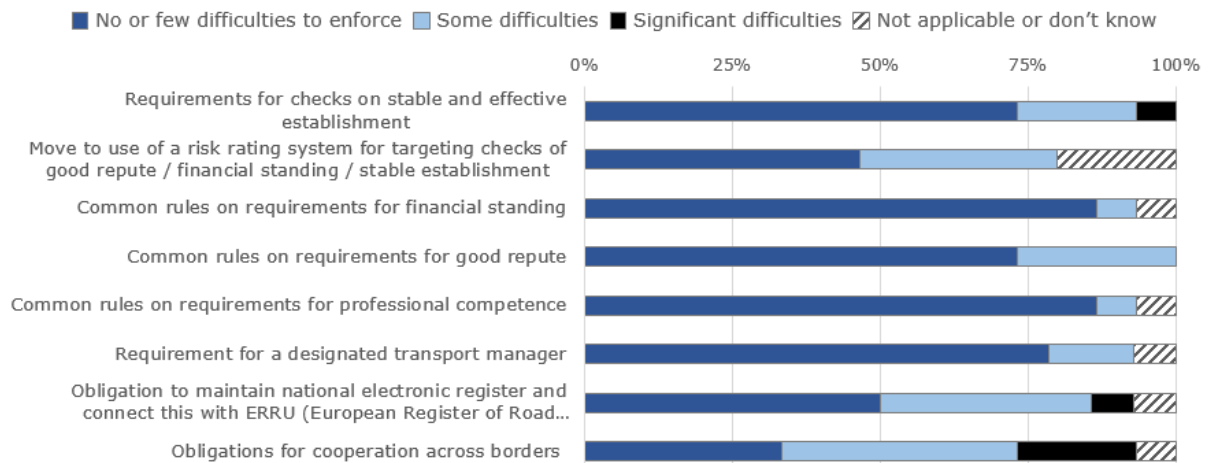
Information on the number of checks carried out in different countries and the number of infringements found against different requirements was requested from enforcement authorities, but very little data was returned on this point. An alternative indicator of how well the enforcement systems are operating is the rate of recidivism (re-offending within 2 years) among offenders. That is, if the enforcement system is effective and dissuasive, the rate of re-offending should be low. All enforcement authorities were asked about this, but only two were able to provide data. The respondent from Finland indicated that they felt the rate of recidivism had fallen from 10-15% prior to Regulation 1071/2009, to around 8% currently, which indicates a positive trend. Conversely, the respondent from Denmark estimated that the rate had not changed from around 5%. All other authorities reported that they did not have data. The limited sample makes extrapolation to other Member States impossible.

A more qualitative indicator of the effectiveness of enforcement measures is to understand whether there are any areas that are widely considered to be "difficult" to enforce, since this may give an indication of areas that may not be working effectively or not, and/or be possible areas for improvement. To explore this, enforcement officers



were asked about any areas that may lead to difficulties in monitoring and enforcement. Figure 6-3 shows that most provisions of Regulation 1071/2009 were not considered to cause any significant difficulties with enforcement. The main area of contention appears to be the obligations for cooperation across borders (assessed further in Evaluation Question 3, see Section 6.3). This was followed by the move to a use of a risk rating system, which as discussed above is not fully implemented in all Member States. The obligations for interconnection of national registers are known to have been subject to delays and are discussed further in Evaluation Question 3.

**Figure 6-3: Responses from enforcement authorities to the question: Are there any parts of the provisions in Regulation 1071/2009 that may lead to difficulties in monitoring and enforcement?**

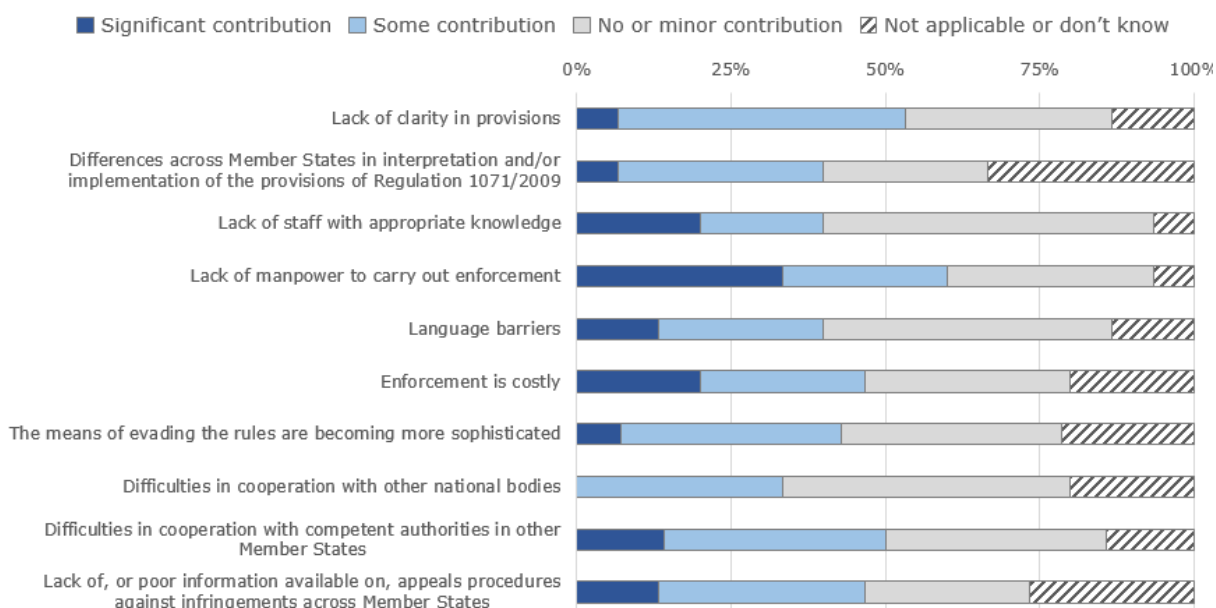


Source: survey of enforcement authorities (N=15)

Interviewees were asked about changes to their enforcement practices and any best practices they felt were noteworthy. In several countries, interviewees reported that the requirements of Regulation 1071/2009 were broadly similar to those they already had in place, and as such few changes were needed. For instance, the provisions in Regulation 1071/2009 were confirmed to be similar to the existing requirements in Denmark, the UK and Spain. It could be expected that EU-13 countries had to make bigger changes; however, there were no strong indications of greater difficulties reported by respondents from the EU-13 or EU-15, with most respondents indicating they faced some difficulties in one or two areas only.

The main contributing factor to the difficulties was reported to be a lack of manpower to carry out enforcement. This is also likely to be related to the second-most important contributing factor identified by the respondents: lack of staff with appropriate knowledge. That is, it is important to have staff with a high level of skill due to the complexity of the legislation.

**Figure 6-4: Responses from enforcement authorities to the question: What are the main reasons that contribute to difficulties in enforcement of Regulation 1071/2009?**



Source: survey of enforcement authorities (N=15)

Other potential areas contributing to enforcement problems received a broadly similar ranking overall, with around 40-50% of respondents identifying them as having at least some contribution, which indicates that there are many different issues at work. Lack of manpower was identified as the factor making the most significant contribution by both EU-15 and EU-13 respondents. There were small differences in the answers on other contributing factors between the EU-15 and EU-13, but due to the low number of respondents when split into two groups (10 from EU-15 and 5 from EU-13), these shares are strongly affected by the choices of each individual and do not provide a very robust insight into overall conditions for the two groups.

A review of the literature was also carried out to help frame the responses from stakeholders obtained for this study. The review identified only a few reports that are specific to the requirements of Regulation 1071/2009, whereas most reports in this area concentrate on Regulation 1072/2009 (i.e. cabotage) or the enforcement of driving times and rest periods. In general terms, AECOM (2014a) identifies that discrimination in the enforcement of rules on road freight can be used as a barrier to the cross border provision of freight services, and relates industry concerns over relatively lax enforcement in some Member States. According to Hellemons (2013), the European Traffic Police Network (TISPOL) recognises issues around a lack of manpower, complexity of the rules, there being many ways to escape from the rules and highlights a lack of political will in Member States to deal with issues. Bayliss (2012) notes that achieving appropriate levels of enforcement are a major concern and summarises the overall difficulties in enforcement of European regulations in international transport as:

- It is a service sector and less easy to control than other sectors such as manufacturing;
- It is highly mobile in space and time;
- Enforcement lies with individual Member States with their different standards, constraints, capabilities, cultures and objectives.

In order to more precisely build up an understanding of the enforcement measures and their effectiveness, each of the requirements of Regulation is examined separately in the following sections. These sections focus mainly on implementation and the presence of practical difficulties for enforcement authorities as an indicator of how well

enforcement is functioning, since more direct indicators of the effectiveness of enforcement and its impact on compliance and the achievement of objectives are often lacking. This is due to two main factors: firstly, the relatively short period since the Regulations have been fully in force (since 4 December 2011); secondly, where data is available there is often insufficient disaggregation.

### **6.2.1.3. Checks of stable and effective establishment**

The information gathered with respect to checks of stable and effective establishment is presented in Evaluation Question 1, which found that the number of checks could only be identified for four Member States. In all cases, the number of detected infringements is relatively low (close to zero for Denmark, Romania and Latvia; less than 50 for Poland, Bulgaria and the Netherlands).

Despite these low detection rates, Evaluation Question 1 concluded that the problem of letterbox companies still exists in some countries and hence there may be some that are evading detection. Evaluation Question 1 explored the issues concerning *the clarity of the provisions related to the requirement of stable and effective establishment* in the Regulation itself.

The focus of this Evaluation Question is on the *enforcement practices* put in place. That is, whether the checks being carried out are effective or not, and whether there is a need for additional actions. Interviews were conducted in the course of this study to better understand the situation.

The feedback received from some of the surveys indicates that checks of stable and effective establishment in particular are considered to be rather demanding and resource-intensive; in particular this was highlighted by enforcers from Bulgaria, Germany, Finland and the Netherlands. Further details are given in **Annex A** (see Section 9.3.1). These difficulties particularly relate to the lack of administrative capacity in the country (e.g. Bulgaria, Germany, Finland), which suggests that the provisions of the Regulations may not have been fully sufficient to ensure enforcement when taking into account the limited resources available.

On a practical level, there are examples of some enforcement authorities (e.g. France, Finland and Denmark) that appear to have tried to strike a balance between the thoroughness of checks and the associated enforcement burdens. In France, this is achieved by combining a simple verification procedure with more targeted checks based on perceived risks. The French enforcement authority noted that *"verification of the requirement of stable and effective establishment is made by the Administration on the basis of a statement completed by the manager of the company, with the limitations that result. If in doubt, a controller may physically verify the presence of the establishment, but few cases are problematic."* The French authority has also identified multiple indices to indicate a higher risk of non-respect for the requirement of stable and effective establishment, which highlight a higher risk potential non-compliance and may help to more effectively target scarce resources:

- The place of establishment of these subsidiaries is a building located in an urban residential area, and obviously does not include the local operating and facilities appropriate technology;
- Transport operations from or to the establishment of the said Member State seem marginal in terms of all transactions.
- The drivers rarely have the same nationality as the establishment said Member State..

In Denmark, checks on stable establishment are carried out for new applicants, but not usually for established undertakings, since letterbox companies on Danish territory are not considered to be a problem. In Finland, stable and effective establishment is checked during the application process.

The problem identified at the time that the Regulations were introduced was that there was a lack of minimum common requirements for stable and effective establishment. As previously noted, minimum requirements have now been established in Member States. However, in terms of whether the Regulation has been effective in ensuring compliance, it appears that several enforcement authorities seem to find that checking the requirement of stable and effective establishment is rather demanding (Bulgaria, Germany, Finland, Netherlands). This, in combination with the findings of Evaluation Question 1 that highlighted the continuing existence of letterbox companies and a lack of clarity in the definition of an operating centre, suggests that the provisions of the Regulation have not been fully effective. An important limitation, aside from the clarity of the provisions as previously discussed, is how to ensure compliance considering the limited resources of enforcement authorities. At a practical level, several authorities have developed methods that aim to make the most of their enforcement capabilities, by for example conducting basic checks complemented by general risk-targeting (Denmark, France), focussing on newly established firms (Finland), as well as developing more specific risk-targeting criteria for the conditions of stable and effective establishment (France).

#### **6.2.1.4. Checks of financial standing**

Regulation 1071/2009 states that undertakings must show that, every year, it has at its disposal capital and reserves totalling at least €9,000 when only one vehicle is used and €5,000 for each additional vehicle used.

Specific data was sought from enforcement authorities as to the number of infringements with respect to the financial standing requirements. Data from the few authorities that were able to provide it are shown in Table 6-3.

**Table 6-3: Number of withdrawals due to not meeting the requirement of financial standing in selected Member States**

Member State	Infringements of financial standing requirement	Total withdrawals
Bulgaria	964	No data
France	2,871	3,344
Denmark	50	No data
Luxembourg	134	No data
Finland	450	No data
Austria	9	10

Source: Survey of enforcement authorities; Austria data inferred from (European Commission, 2014a).

Table 6-3 shows that the available data is very patchy, but on the basis of the countries shown it appears that infringements of the requirement of financial standing are among the most common. The share of withdrawals due to not meeting this requirement accounts for a large share of total withdrawals in France (85%) and Austria (90% - i.e. 9 out of 10). The French authority elaborated that it is difficult for undertakings to obtain certificates of financial standing due to the low profitability of the sector (the consequences of this are examined further in Evaluation Question 7, Section 6.7). The Finnish authority noted in their survey response that financial standing is by far the most common area in which infringements are detected. The official monitoring report mentioned also that in the Netherlands "most" withdrawals were caused due to no longer meeting the requirement of financial standing (European Commission, 2014a).

This suggests that checks of the financial standing requirement are able to detect infringements effectively. This conclusion is further supported by the response to the survey of enforcement authorities, where 87% of respondents felt there were no or few difficulties to enforce this requirement.

Although for the most part, the requirements do not appear to be considered as a source of enforcement issues, there are several areas that cause some concerns. Firstly, there are inconsistencies in the interpretation of the provisions, such as what should be covered by "capital and reserves". These are examined further in Evaluation Question 4 (see Section 6.4).

The Regulation does not define a consistent approach across the EU of how to verify financial standing for new companies – an issue that has been highlighted by the Lithuanian ministry in their survey response. Several examples can be found to illustrate working practices. Guidance from the UK authorities indicates that in those circumstances, bank statement evidence will be accepted, so long as the requisite amount is available, and a finance condition will be put in place requiring a further set of bank statements (Traffic Commissioner for Great Britain, 2015). The Irish authorities accept a current state of affairs for a new business.

Secondly, there are concerns over difficulties encountered when verifying compliance with the requirement of financial standing in *real time*. This problem was highlighted by Italy in its official monitoring report, which also mentioned the fact that this responsibility is managed by more than a hundred independent provincial administrations across Italy (European Commission, 2014a). In their response to the survey of ministries carried out for this study, the Croatian ministry also felt that the mechanism of checking if transport undertakings are capable of meeting their financial obligations throughout the business year is problematic. The French enforcement authority mentioned that the procedure for companies not complying with the requirement of financial capacity requires regular and rigorous monitoring, and specialisation in the field.

In this respect, the Dutch enforcement authorities report that they have developed specific risk-rating to ensure the constant compliance with the requirement of financial standing (see **Annex A**, Section 9.3.1).

Overall, the enforcement of the financial standing requirements appears to be effective. The available evidence on the basis of infringements detected shows that checks of the financial standing requirement are able to detect infringements effectively and hence the Regulations has been effective in allowing the enforcement of this provision. This conclusion is further supported by the response to the survey of enforcement authorities, where 87% of respondents felt there were no or few difficulties to enforce this requirement. There is some variation in the approach to verify financial standing for new companies, and some concerns have been expressed by authorities from Italy and Croatia over how to monitor whether firms constantly meet the requirement in real time.

#### **6.2.1.5. Checks of good repute**

The good repute of transport managers (or undertakings) is conditional on their not having been convicted of a serious criminal offence or having incurred a penalty for one of the most serious infringements of road transport rules, in its **Annex IV**. The Commission is currently preparing a list of infringements that (in addition to those set out in Annex IV) will indicate the categories, types and degrees of seriousness of serious infringements of Community rules that may also lead to the loss of good repute. A draft list has recently been under discussion and the European Parliament has called for it to be amended to include additional rules such as infringements of Regulation 1072/2009 (European Parliament, 2014a).

Sufficient proof of good repute is, according to Article 19 of the Regulation, an extract from a judicial record. Failing that, an equivalent document can be presented, or a declaration on oath. Previous studies have indicated that enforcers find checks of such documents when issued in Member States other than their own are difficult to carry out (European Commission, 2013a). This aspect was explored in more detail for this study: The Lithuanian ministry noted that "*at present it is not even clear which institution of another Member State should be recognised as appropriate issuers of such documents.*"

The Finnish ministry commented that *“the key question is always the availability of information - when a Member State fines an undertaking, the information is often lost. ERU was to be the main solution to this problem, but all Member States are still not linked in it.”* The progress of ERU is therefore important to ensuring the effectiveness of checks of good repute, and is discussed further in Evaluation Question 3. Aside from this, general language barriers were mentioned although not specifically with regard to checks of good repute (see Figure 6-4).

In accordance with Article 14 of Regulation 1071/2009, when a transport manager loses its good repute, the competent authority should declare the transport manager unfit to manage the transport activities of an undertaking. The number of declarations of unfitness should be reported to the Commission under Article 26. However, data on declarations of unfitness were not provided by 16 Member States<sup>30</sup>, while eight others indicated that there were no declarations of unfitness<sup>31</sup>. Declarations of unfitness were also low in France (3) and Estonia (14), whereas in Hungary they were reported as 129 and in Italy 348. In Hungary the delay or deficiency of the required 10-year periodic training of transport managers led to loss of good repute in some cases.

Even though data was not provided for all Member States, the available monitoring data strongly suggests that there is variation in terms of the stringency with which the rules are applied (at least for those Member States covered). Whilst a high number of withdrawals is not any sort of goal as such, the number of sanctions applied is a clear indicator for the stringency of enforcement – which in the case of very lenient enforcement show ineffectiveness of the provisions. In this sense, the monitoring data suggests that some Member States taking lenient views (i.e. in eight Member States there were no withdrawals on the basis of loss of good repute). This conclusion is further supported by the comments from both associations and trade unions received in the high level survey, which complained about the lack of effective enforcement of the requirement of good repute due to inconsistent interpretations and “protectionism” where national enforcement bodies were reluctant to withdraw good repute.

Part of the reason for the variation in the stringency of enforcement is the perceived lack of clarity in definitions of precisely which infringements should lead to the loss of good repute. This perception is confirmed by many respondents to the survey of ministries (Finland, Germany, Ireland, Estonia, Poland, Slovakia, Slovenia and Bulgaria). The Irish ministry responded that the inconsistency in the application of the Regulation in respect of determining good repute is a possible loophole that reduces its effectiveness. Trade unions that responded to the high level survey warn that companies will try to shift to Member States with a lenient approach, whereas an association responding to the survey also noted the different approaches taken in Member States was an issue. Finally, the lack of clarity can also be confirmed because the definition of the categories is still being developed by the Commission.

To investigate whether certain Member States considered the loss of good repute to be disproportionate, and hence whether this was contributing to the low number of withdrawals, the procedures in place were investigated. Article 6(2) states that: *“If the competent authority finds that the loss of good repute would constitute a disproportionate response, it may decide that good repute is unaffected.”* Although the number of such decisions is meant to be reported under Article 26, no quantitative information could be found.

Member States must determine whether loss of good repute would constitute a disproportionate response to an undertaking (or relevant person) committing a criminal offense or one of the most serious road transport offenses. Some Member States report that this is carried out on a case-by-case basis, and as such there is no specific

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<sup>30</sup> Belgium, Bulgaria, Cyprus, Denmark, Finland, Germany, Ireland, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia, Spain, Sweden and the UK

<sup>31</sup> Austria, Czech Republic, Greece, Malta, Netherlands, Poland and Slovakia

procedure (e.g. Bulgaria) or that they are in the process of setting up the requirements (e.g. Italy). Other Member States have defined very detailed procedures that comprise specific steps and the involvement of committees, including France and Estonia, which may be considered examples of best practice. Full details of the procedures in place are given in **Annex A** (see Section 9.3.2). The overall picture shows that the implementation of this requirement is incomplete, and the national interpretations also vary. Furthermore, several respondents to the survey of ministries indicates that they felt the requirements to develop administrative procedures lacked precision (Romania and France). The respondent to the survey of enforcement authorities from Luxembourg noted that the loss of good repute would have a big financial impact for a large transport company. The German ministry also pointed out potential weaknesses in the provisions that allow authorities to consider whether revoking good repute would be disproportionate, criticising the wording of the Regulation for providing too much flexibility.

To better understand how the checks of good repute are conducted on the ground, in-depth interviews were carried out for this study.

In Spain, there has not been a single case of an operator losing their good repute. The reasons for this were explored in detail with Spanish stakeholders representing different interests. A Spanish industry association confirmed that no operators had lost their good repute, and considered it a problem because of the disproportionate nature of the loss of good repute. To further elaborate, they described an example: for a company that owns 50 vehicles, an infraction committed by one single driver would be sufficient to result in the loss of good repute and thus, the loss of the authorisation to operate. They explain that this lack of proportionality has meant that the authorities are very reluctant to withdraw good repute in practice. In order to improve this situation, the interviewees proposed to centralise the system to recognise and withdraw the good repute at the European level.

The Spanish ministry explained that withdrawing the good repute is not always an effective sanction since the company may simply change the person whose good reputation is withdrawn by a new one and the problem would be solved without any other consequence. They pointed out that the Spanish law had been amended in 2013, such that it now explicitly contains a provision to withdraw good repute in case of very serious infringements. They expect that the first sanctions as a result of this amendment will be declared at the end of 2015. A Spanish trade union discussed that in their view the good repute requirement in Spain was ineffective. They felt that the requirement works properly in some countries, giving the examples of best practice as Belgium, France and Germany, which avoids a situation where non-compliant operators continue to be active in the market.

A German interviewee explained that in theory, a licence can be withdrawn in case of a 'most serious' infringement. However, if there is an undertaking that has been operating for many years without any violations, the enforcer might judge it as disproportionate to withdraw the licence. There is no precise rule for when or when not such a withdrawal is to be enforced - the enforcer will decide this on a case-by-case basis. They hence suggest that it would be helpful if there were a guidance to such exemptions, to have a harmonised approach to when such a sanction would be disproportionate.

In summary, the official monitoring data show that the requirement of good repute appears to be enforced inconsistently, with some Member States taking a very lenient approach. In cases where enforcement is very lenient, i.e. it is very rare for operators to lose their good repute despite infringing the provisions, this suggests that the provisions of the Regulation are ineffective in ensuring the good repute of operators. Part of the reason for the variation in the stringency of enforcement is the perceived lack of clarity in definitions of precisely which infringements should lead to the loss of good repute (mentioned by Finland, Germany, Ireland, Estonia, Poland, Slovakia, Slovenia and Bulgaria). Another part of the underlying issue may be that the procedure for determining whether the loss of good repute is disproportionate may be too flexible,

allowing some Member States to be very lenient. A very detailed procedure that comprise specific steps has been defined in some countries such as France and Estonia. These include points-ranking of infringements based on the seriousness of the offense, the size of the company and whether infringements have been repeated or not, as well as the involvement of committees.

#### **6.2.1.6. Checks of professional competence**

Checks of professional competence were identified by enforcers responding to the survey as one of the least problematic requirements, with 87% reporting no or few difficulties.

Only a few specific issues were found with the enforcement of this requirement. Article 21 requires that Member States recognise certificates of professional competence that are issued in other Member States "*by the authority or body duly authorised for that purpose.*" The ministries from Germany and Sweden commented that there is no consolidated list of authorities in the EU, which makes the audit of certificates more difficult. The Slovakian ministry also commented that they have problems in this area.

One industry association interviewed for this study recounted a case in Norway of a manager obtaining documents fraudulently, and claimed there was no system to prevent people obtaining certificates illegitimately on the internet. The respondent also recognised that it is difficult to say how much this practice is occurring. On the basis that this practice did not appear to be widespread (i.e. it was not mentioned by other respondents and enforcement authorities did not highlight major difficulties), it does not appear to be a major concern among stakeholders – rather, there were greater concerns over the lack of harmonisation of the examination standards (see Evaluation Question 4 for more analysis on this point).

More detailed analysis conducted via desk research, interviews and other surveys did not reveal any other specific issues with the practical enforcement of this requirement, which is done on the basis of checks that the transport manager has the requisite certificate. Overall therefore, the enforcement of this requirement does not appear to be problematic, as reflected also in the responses from enforcers. Hence it can be concluded that the provisions of the Regulation appear to be implemented effectively, and there is no evidence of widespread problems in ensuring compliance.

#### **6.2.1.7. Transport managers**

Article 4 of Regulation 1071/2009 clarified the role of the transport manager. This person has to demonstrate the necessary professional competence, must manage effectively and continuously the transport activities of an undertaking and have a "*genuine link*" to the undertaking. The transport manager may manage the transport activities of up to four different undertakings with a combined maximum total fleet of 50 vehicles, although Article 4(2) allows Member States to lower these thresholds. This option has been exercised in France (an external manager is limited to two companies representing a total of 20 vehicles); Finland (the manager may manage one undertaking with a maximum total fleet of 50 vehicles) and Romania (an individual may act as transport manager for only *one* company).

The implementation of enforcement was investigated through surveys and interviews carried out for this study. The survey of enforcement authorities revealed that 79% of respondents felt that there were no or few difficulties with respect to enforcing this requirement.

More in-depth research showed that there may be certain practical difficulties in checking the requirement for the transport manager to demonstrate a "*genuine link*" with the undertaking. For example, the Danish ministry considered that it is still possible to become a transport manager without being employed by the undertaking, increasing the risk of "*front men*".



This aspect was explored in more detail via interviews. The Danish Transport Authority reports that, while external transport managers are required to have a “clear link” to the company, the meaning of this “clear link” is defined on a case-by-case basis: Typically the transport manager has to be the owner or an employee of the company. An external transport manager that only owns a negligible share of the company will typically not be considered as being a lawful external transport manager. In practice it is the enforcement officer’s responsibility to judge whether the link of the transport manager to the company is sufficient.

A related concern that was uncovered is that the effectiveness of this provision is reduced because it is relatively easy to change the transport manager after a loss of good repute, meaning that an undertakings could continue to operate with little downtime after its transport manager loses their good repute simply by changing to a new manager.

For instance, the Finnish ministry commented that *“it is rather easy to change Transport manager after a loss of good repute, and in that sense it is doubtful if the provisions can have a real impact.”* The Finnish enforcement authority explained that it is often quite difficult to get a sufficient proof that the transport manager is not operating in accordance with Regulation 1071/2009. They elaborated that it is not clear how to consistently control the actions of a designated transport manager (i.e. that he/she manages an undertaking effectively and continuously). The Finnish licencing authority requires a written contract in which the designated managers’ responsibilities are clearly defined – however, these contracts come in all shapes and forms and it is not fully understood what the minimum responsibilities of a Transport Manager should be.

A Swedish trade union also commented that *“We have a lot of companies where owners get barred from the industry, only to return with the use of front men. They can start up the next day, with a new holder of the certificate.”* When asked about the reasons for these practices, the interviewee explained that the reasons were varied – it could be to sidestep the requirement of good repute, to save costs or to hide criminal activity. There were no quantitative details on the extent of this practice in Sweden.

In respect of the difficulties of possible “front men”, the issues overlap with the requirement of good repute and how to define who exactly should be checked for good repute. Article 6 states that Member States shall consider the conduct of the undertaking, its transport managers and *“any other relevant person”* in its assessment. To reduce the risk of “front men”, some Member States require other persons to be checked, for example: CEOs and general partners in partnerships (Finland) or legal representatives of the undertakings (Latvia).

The Slovakian ministry commented that the role of transport manager is not defined accurately, and particular discrepancies arise in practice. The French ministry also considers that designating external managers can lead some persons holding the certificate of professional competence for “rent”, so as to allow some trucking companies to comply with the rule, without having to invest sufficiently in the current management of these companies.

The view that the definition of the transport manager may be unclear is also supported in the literature by SDG (2013a), where it has been suggested that the EU shed light on this matter. For example, by adding to the requirement a minimum amount of time spent on the management of transport activities of a company (e.g. the Austrian requirement of min. 20 hours per week).

Evidence is also substantiated by the actions taken by various countries to reduce this problem by limiting the number of companies/vehicles that an external transport manager can handle (as mentioned above), and/or including a more detailed list of responsibilities for the manager (e.g. the Finnish licencing authority requires a written contract in which the designated managers’ responsibilities are clearly defined).

In Romania, a transport manager is only permitted to manage one company. The Romanian enforcers interviewed for this study explained that there was a debate in

Romania considering whether to increase the number of companies, but it was concluded that having more managers can result in having "false" managers. In addition, they consider that a single manager is helpful for control officers as well since it facilitates checks at the premises. A Romanian industry association confirmed their view that having a single manager ensures higher quality of services and compliance with the rules than this would be the case if they were permitted to manage more.

In France there is a stricter limit for external managers of handling two companies and a total of 20 vehicles – with a view to reducing persons holding the certificate of professional competence for rent, so as to prevent companies from complying with the rule without having to invest sufficiently in the current management. The ministry considered that the actual degree of involvement that external managers can have in the management of a company could be called into question if they were able to handle up to four companies. However, they note that it is too early to form a definite opinion since the Regulation has only been in force for a few years.

The Danish enforcement authority explained during an interview conducted for this study that they do not allow external transport managers that do not have a clear link to the company. What this clear link means is defined on a case-by-case decision: Typically the transport manager has to be the owner or an employee of the company. An external transport manager that only owns a negligible share of the company and claims that he hence has a 'clear link' will not be considered as lawful external transport manager. However, there are no specific thresholds set. In the end, it is the responsibility of the enforcers to judge whether the link of the transport manager to the company is sufficient or not.

In the UK, transport managers are "added" to an operating licence, making the link very robust. In Spain there is further regulation in progress in order to: (i) concretely define the functions of the manager within the company; (ii) require clear legal links between the manager and the company.

Based on the above evidence from surveys and interviews, the requirements related to the transport manager do not overall appear to be a major cause of difficulties (e.g. 79% of enforcement authorities responding to the survey felt that there were no or few difficulties with respect to enforcing this requirement). Hence the requirements can generally be considered to be effective in terms of allowing enforcement. A possible risk to the effectiveness of the provisions is the use of "front men" who rent out their good reputation to companies without really managing the business. The extent of this practice could not be quantified for any countries, but concerns were raised by stakeholders in Finland, France and Sweden. Steps taken to reduce the use of front men are either in the form of reducing the number of companies/vehicles that a transport manager is allowed to manage (France, Finland, Romania) and/or defining the role and the need for clear links with the undertaking in more detail (Finland, the UK).

#### **6.2.1.8. Penalty systems**

The analysis of systems in place across the EU shows wide variation in the typology of sanctions, which in turn gives transport operators inconsistent messages on the gravity of such infringements. The dissuasive effect of sanctions differs enormously across those Member States that have qualified infringements of commercial road transport as criminal offences (see **Annex A**, Section 9.3.3, for an overview of the typology of sanctions applied in Member States for infringements of the Road Transport Package).

The differing level of sanctions applied in Member States has been identified in other studies, including European Commission (2009) and AECOM (2014a). Concerns of industry stakeholders are also reflected in the responses to a web survey carried out for the High Level Group on road haulage, where many of the comments related to the issue of allocating responsibility for infringements between hauliers, shippers and freight forwarders (AECOM, 2014a). In their responses, a number of industry associations highlighted the problem of different interpretation of the basic rules and different levels of penalties in different Member States (AECOM, 2014a). Additionally, in an effort to

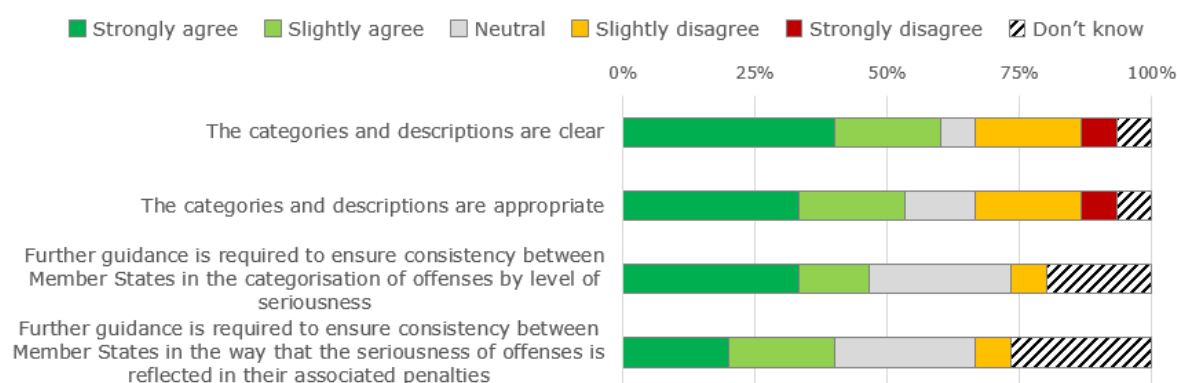
encourage greater harmonisation of enforcement practices, the Transport Regulators Align Control Enforcement (TRACE) was completed in 2012 and a follow-up project (CLOSER) was launched in 2014.

According to a 2013 study specifically conducted on the harmonisation of sanctions, only some Member States have adopted specific sanctions for the infringements that are qualified as most serious infringements of EU law as listed in Annex IV of Regulation (EC) No 1071/2009, notably, Bulgaria, Germany, Estonia, Romania and Spain (to a certain extent) (Grimaldi, 2013a). The study confirms that the dissuasive effect of sanctions differs enormously between Member States, and infringements categorised at the same level may attract vastly different fines (with ten-fold differences reported in some areas – see **Annex A**, Section 9.3.3, for examples). Fines were confirmed by legal experts in the study team to be tailored to the seriousness of the offences in Spain, Romania and Germany, although the levels of fines imposed are different<sup>32</sup>. Further details are given in **Annex A** (see Section 9.3.3).

Work towards a common categorisation of infringement types has been going on for some years. Annex III of Directive 2006/22/EC as amended by Directive 2009/5/EC contains a categorisation of infringements against Regulation 561/2006 and Regulation 3821/85, recommending which ones should be categorised as very serious, serious or minor.

Enforcement authorities appeared to be broadly supportive of the current form of Annex IV of Regulation 1071/2009, but still showed some uncertainty of the clarity and appropriateness of the categories (Figure 6-5).

**Figure 6-5: Responses from enforcement authorities to the question: Is the way the Commission has described serious offenses and categorised the most serious offenses in Annex IV of the Regulation both clear and appropriate?**

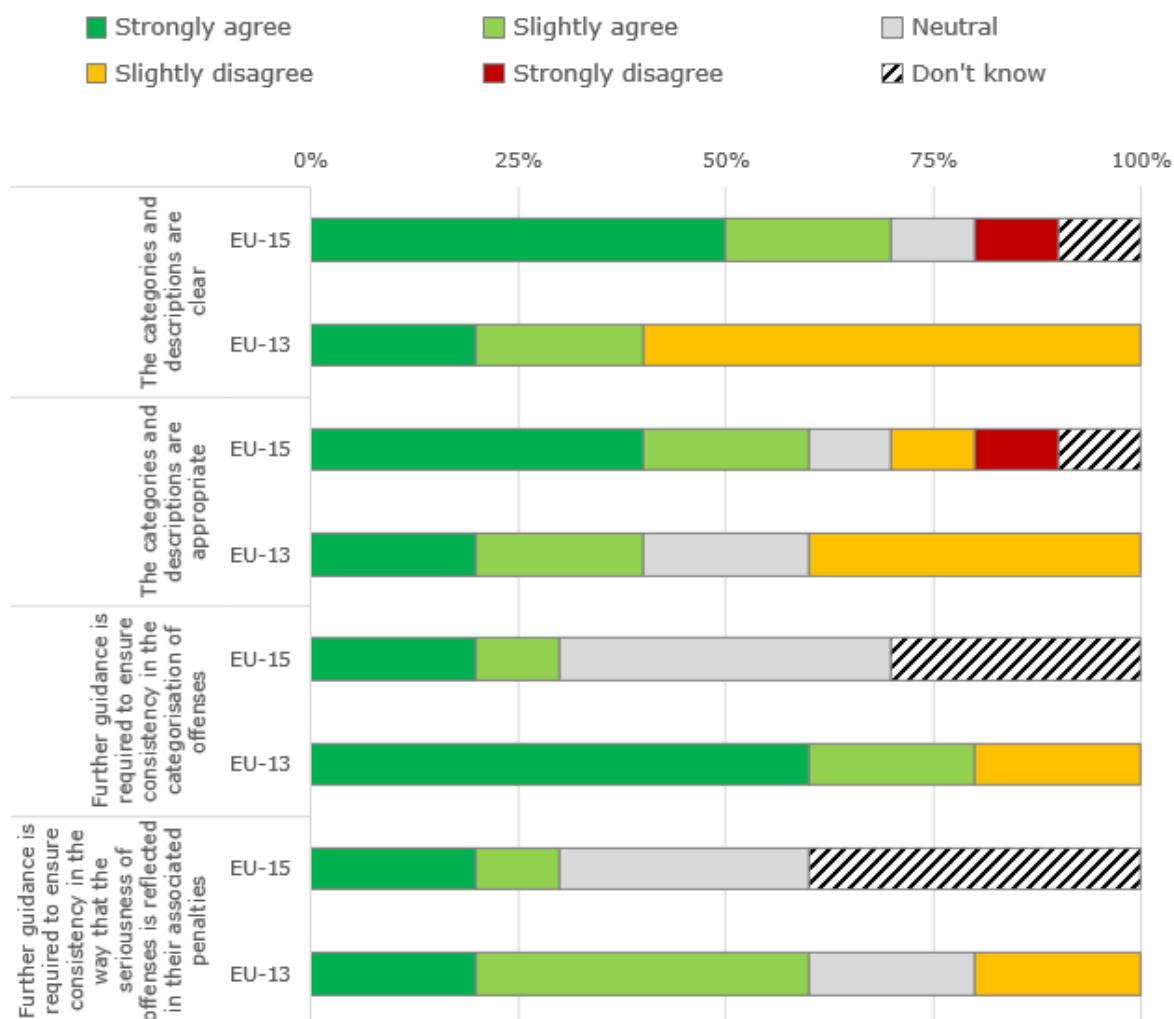


Source: survey of enforcement authorities (N=15)

When split by EU-15 versus EU-13 responses, there appears to be significantly more agreement that current categories and descriptions are clear/appropriate among the EU-15 respondents (Figure 6-6), whereas EU-13 respondents tended to feel the categories were less clear/appropriate and called for more guidance.

<sup>32</sup> On a PPP basis: for most serious infringements approx. €1,650-9,850 in Spain, €5,700-7,600 in Romania and up to €282,400 in Germany. For serious infringements on a PPP basis approx. €650-1,650 in Spain, €2,550-3,800 in Romania and up to €141,200 in Germany

**Figure 6-6: Responses from enforcement authorities to the question: Is the way the Commission has described serious offenses and categorised the most serious offenses in Annex IV of the Regulation both clear and appropriate?**



Source: survey of enforcement authorities (10 respondents from EU-15 and 5 from EU-13 countries)

Respondents calling for additional guidance included the authorities from Poland, Romania, Latvia, Bulgaria, Netherlands, Denmark and Finland.

The reasons for this were explored with stakeholders during interviews for this study. The responses of national authorities from the Netherlands, Ireland, France, Bulgaria, Finland and Germany indicate that the variations are due to national factors and the flexibility permitted in the Regulation in particular with regards classification of breaches (see **Annex A** for further details).

Overall it is clear that there are wide variations in the penalty systems defined by Member States. The reasons for this are due to the flexibility permitted in the Regulations, as well as the incomplete progress on defining the categorisation of the level and types of offences that can lead to loss of good repute – although a draft list has recently been under discussion (European Parliament, 2014a). Ministries from EU-13 Member States in particular appear to also have some difficulty with the clarity and appropriateness of the existing categorisations/definitions under Annex IV.

## **6.2.2. Regulation 1072/2009**

### **6.2.2.1. Implementation and national enforcement practices**

Since the introduction of Regulation 1072/2009, a single Community licence is accepted in all Member States, the harmonised drivers' attestation has been put in place and a clear indication of the documents to be shown to prove the legitimacy of cabotage operations has been provided. Few issues have been identified with respect to the harmonised control documents – the implementation of which was meant to make it easier (and therefore quicker) to check licenses of non-resident hauliers. Half of the respondents to the survey of enforcement authorities confirmed that checks were faster now (mainly EU-13 respondents), whereas the remaining half noted that there was no material change (mainly EU-15 respondents). A small number of comments with respect to the harmonisation of documents were gathered during the interviews, but issues do not appear to be widespread: The Romanian enforcement authority commented that there were some initial problems concerning the true copies of the licenses because they are personalised with the registration number of the plate of the vehicle, but this has now been solved. The Polish trade union interviewed for this study commented that the drivers carry extracts of the licence, which are not numbered and are also laminated. The result is that during the inspection, they show a copy of the document that cannot be verified and it is not known how many copies of the same extract have been made. Conversely, the Polish enforcers interviewed for this study felt that the Regulation had made checks easier, and the extent of the problem with copies of the document is not known.

Consistent information on the number of checks under Regulation 1072/2009 was very difficult to identify, despite requesting this information from all enforcement authorities in the surveys and conducting a literature review. The available statistics on the number of checks of cabotage were reviewed in Evaluation Question 1, which showed the patchy nature of the information available. Reporting required under Article 17 of Regulation 1072/2009 only request information on the number of hauliers possessing Community licences and the number of driver attestations, and not the enforcement practices. Data on the number of checks of Community Licences Article 6(1) of Regulation 1072/2009 were sought from enforcement authorities. Article 6(1) requires verification whenever an application for a Community Licence (or a renewal) is made, to ensure that the requirements of access to the occupation are still met. All enforcement authorities were asked to estimate the number of Community Licences checks, but consistent information was very difficult to obtain – only information from Slovenia shed some light on the national implementation. The Slovenian enforcer indicated that in 2013 around 13,000 Community Licences were checked, and their official monitoring report indicates that 13,135 Licences were granted in the period from 4/12/2011 – 13/12/2012), indicating that if the number of Licences granted in 2013 were similar, they met the requirement of Article 6(1). The sparse data on both the number of Community Licences issued and the actual level of checks makes any quantitative assessment of this requirement impossible.

Article 6(2) requires checks each year covering at least 20% of the valid driver attestations issued in that Member State, to ensure that the haulier holds a valid Community Licence and lawfully employs the driver. According to official monitoring data (see **Annex A**, Section 9.1.1), many Member States only have a few driver attestations in circulation at the end of 2014. The Member States with the highest numbers are Spain (8,321), Italy (4,098), Poland (6,809), Slovenia (6,056) and Lithuania (4,098). All enforcement authorities were asked about the number of driver attestations checked - only Slovenia provided these data, estimating 1,000 were carried out in 2013 (around 18% of attestations in circulation in 2013 – possibly there is a rounding issue in the estimated number of checks provided to us). The implementation of Article 6(2) in other Member States is not known.

A literature review did not uncover information on these specific requirements either. DfT (2010) indicated that the transition to standardised certified copies of Community

Licences and Driver Attestations would not result in any significant costs, but makes no specific reference to the procedure of verification/checks.

An alternative indicator of how well the enforcement systems are operating is the rate of recidivism (re-offending within 2 years) among offenders. This was sought from enforcement authorities, but not a single authority was able to provide this information.

The lack of data was confirmed explicitly in interviews carried out for this study: for example, the Bulgarian authorities report that no institutions in Bulgaria collect data on the number of checks. The Polish enforcers noted that it is difficult to provide quantitative data on anything related to Regulation 1072/2009 since no research has been conducted on the issues. The Latvian authority reported that they do not collect data on checked Community Licences.

Due to this lack of data, more qualitative approaches to the analysis of enforcement are used in the following sections.

#### **6.2.2.2. Effectiveness of enforcement practices**

Checks of cabotage are organised differently in different Member States, with checks primarily carried out at the roadside, although they may be supplemented by other checks at the premises in order to verify documentation (SDG, 2013a). The bodies involved and the degree of specialisation vary depending on the Member State. For example, in Austria, controls mostly take place at the roadside and are carried out by the local police, but there is no specialised unit (SDG, 2013b). In France, the Ministry reported during interviews conducted for this study that there is a specialised control body of around 500 "road transport controllers" who carry out roadside checks as well as checks in depots and receive specific training on cabotage legislation. Controls in Germany are directly carried out by staff of the Federal Office for Goods Transport (also supported by customs and police), and may be carried out on a sample basis at the roadside/service areas. These checks are sometimes supplemented by checks at the premises, and the German enforcement authority (BAG) also has powers to review all relevant documents and data, make copies or copy them to their own data storage devices, if these actions are necessary to monitor compliance with national laws. In the UK, an interview carried out for this study with the national enforcers revealed that roadside checks are applied both for Regulation 1071/2009 and Regulation 1072/2009 at the same time (as well as other legislation such as roadworthiness). The national risk-rating system is also used to target cabotage checks, but is considered less effective compared to the system for Regulation 1071/2009 since it covers mainly non-domestic operators for which the level of information is lower.

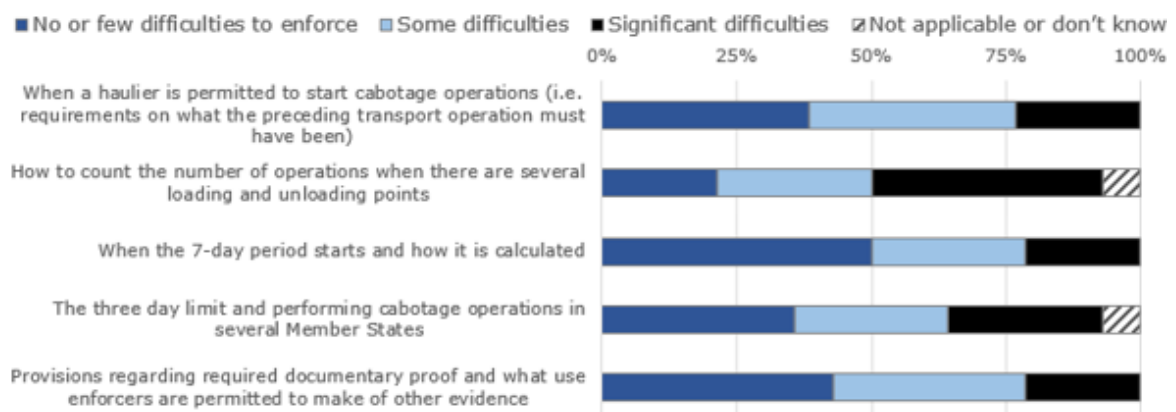
In general, the literature review highlights concerns about the low levels of effectiveness of cabotage checks. For instance, over two thirds of stakeholders from the road haulage industry answering the 2011 questionnaire of the High Level Group considered that controls aimed at ensuring compliance with the current cabotage rules were not effective (European Commission, 2013a). Petitions submitted to the European Parliament further support this claim, highlighting irregularities committed with regard to illegal cabotage and violations of road transport social rules (enforcement of driving time and rest periods) (TRT, 2013); (ETF, 2012b).

Responses to the high level survey also highlight significant concerns among stakeholders: In their joint response, trade unions reported that "*In the absence of controls, non-compliance with cabotage rules leaves an open door to hauliers who want to operate low-cost on a high-cost domestic transport market of a Member State.*" The trade unions considered that Regulation 1072/2009 was indeed effective in ensuring *common* rules for cabotage, but felt that the problem is that the rules are not enforced and respected. Industry associations in their coordinated response also called for more control of illegal cabotage - more enforcement and more efficient enforcement (such as immobilisation/confiscation of vehicle and goods in certain circumstances).

The above evidence from the literature and stakeholder consultations conducted both for this study and others (e.g. the 2011 questionnaire of the High Level Group) therefore indicate concerns over the effectiveness of controls of cabotage. Combined with the evidence from Evaluation Question 1 which suggests that illegal cabotage is likely to be a problem in some countries, this indicates that enforcement is likely to be ineffective in some countries. The consultants therefore explored the possible reasons that might lead to ineffective enforcement in the following sections.

Responses to the survey of enforcement authorities returned answers on aspects of the rules that were considered difficult to enforce, as shown in Figure 6-7. Significant difficulties were identified by at least some respondents in all areas, with the rules on multi-drops standing out at the most challenging area.

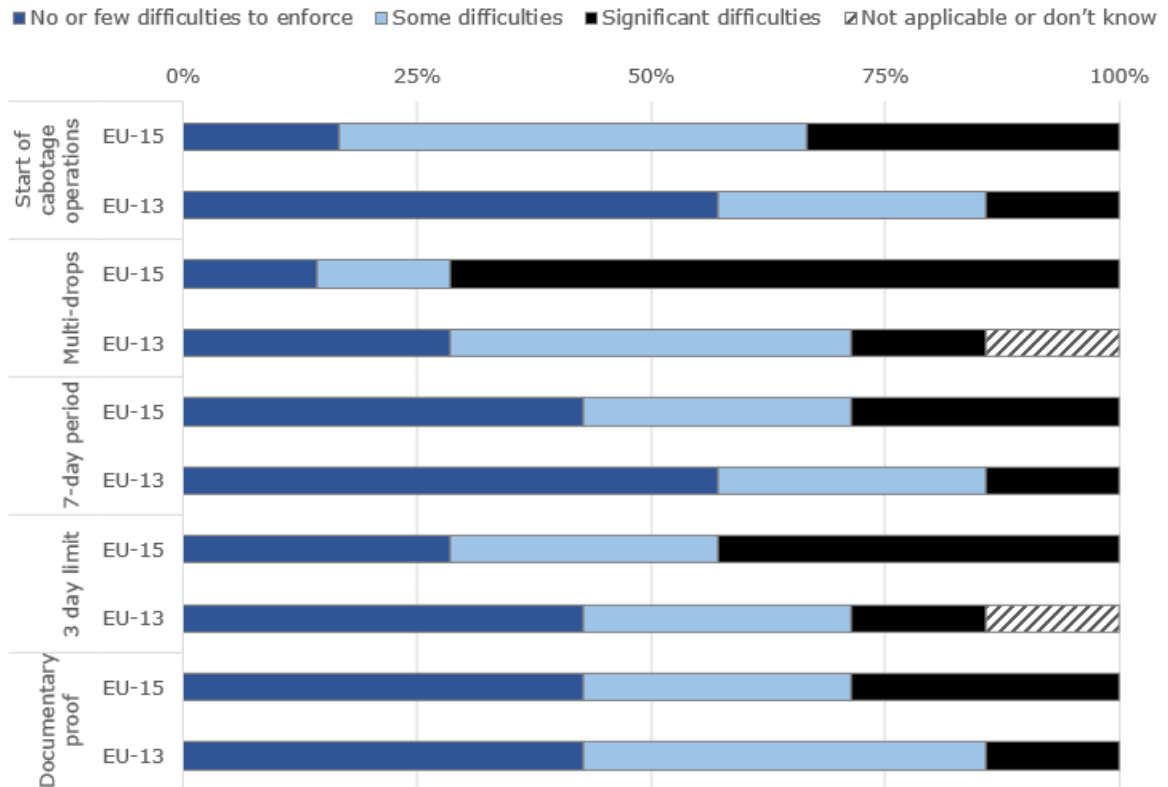
**Figure 6-7: Responses from enforcement authorities to the question: Are there any parts of the provisions in Regulation 1072/2009 that may lead to difficulties in monitoring and enforcement?**



Source: survey of enforcement authorities (N=14)

Respondents from EU-13 countries reported overall fewer difficulties in enforcement across all of the categories – this is likely due to the fact that cabotage is less common in EU-13 countries, as discussed in Evaluation Question 1.

**Figure 6-8: Responses split by EU-15 vs EU-13 from enforcement authorities to the question: Are there any parts of the provisions in Regulation 1072/2009 that may lead to difficulties in monitoring and enforcement?**

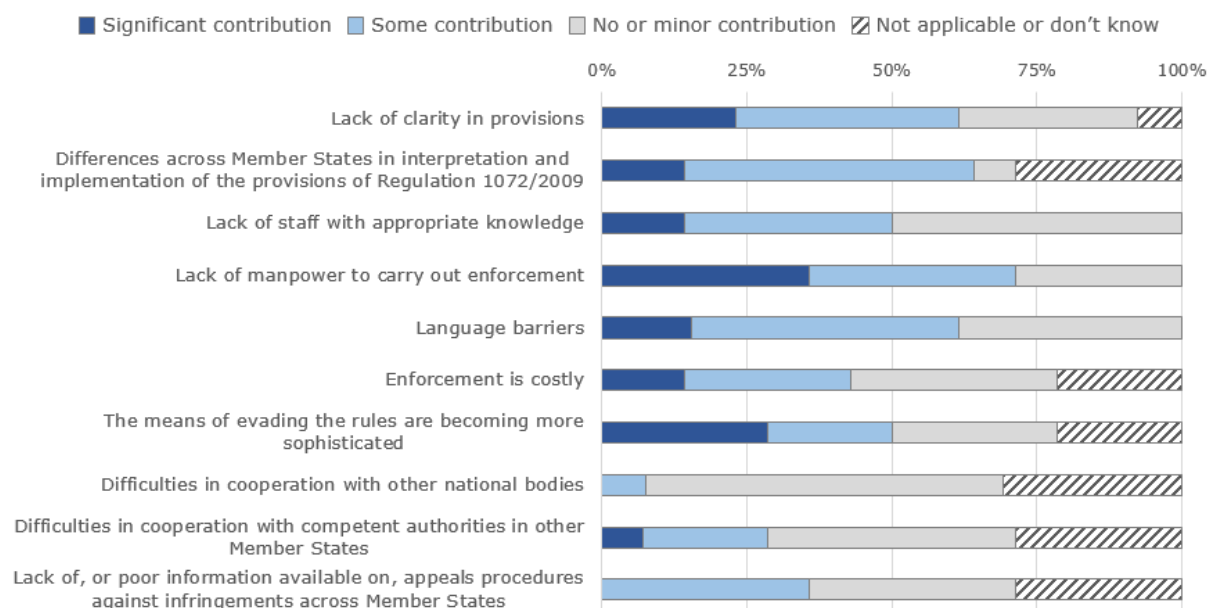


Source: survey of enforcement authorities (7 respondents from EU-15 Member States and 7 from EU-13 Member States)

The contributing factors to any difficulties in enforcement were similar to those listed for Regulation 1071/2009, with lack of manpower identified as a leading factor. The lack of clarity in provisions, differing interpretations across Member States and increasingly sophisticated means of evading detection were identified as more important factors for Regulation 1072/2009 compared to Regulation 1071/2009, as well as difficulties in cross-border cooperation. A lack of clarity in provisions was identified as a contributing factor by 61% of respondents (this is explored further in Evaluation Question 4).



**Figure 6-9: Responses from enforcement authorities to the question: Are there any parts of the provisions in Regulation 1072/2009 that may lead to difficulties in monitoring and enforcement?**



Source: survey of enforcement authorities (N=14)

Overall, the profile of responses was not widely differentiated between EU-15 and EU-13 respondents – lack of manpower, differing interpretations and a lack of clarity in the provisions were highlighted as the most major issues in both groups, with EU-13 respondents reporting additional major issues (more than half reporting at least some contribution to problems) concerning language barriers.

There are often **multiple enforcement bodies** within one Member State with responsibility - for example, in Belgium, six different bodies can in principle carry out cabotage enforcement (AECOM, 2014b). In Hungary and Spain, regional police bodies are tasked with roadside checks (AECOM, 2014a). The presence of multiple enforcement bodies has been highlighted in the literature as one of the contributing factors to enforcement difficulties, such as in AECOM (2014a) and SDG (2013a). However the responses from enforcement authorities in the survey for this study did not indicate significant problems with cooperation between national bodies (as shown above in Figure 6-9, where it was only identified making some contribution by France<sup>33</sup>). The inconsistency between the answers for this study and those found in the literature could be due to several factors: firstly, the countries with cooperation problems may not have been included in the survey participants. SDG (2013a) reports that multiple bodies are responsible in Belgium, Italy, Spain and Hungary – the only overlap in respondents with this study is Spain, where no or few difficulties were identified by the participant. In Spain, the enforcement is overseen by the Ministry of Infrastructure and Transport (Ministerio de Fomento), with national police (Guardia Civil) and regional police. It may be that previously identified problems with coordination identified in the literature have been solved – for example, in its 2015 national inspection plan, the Ministry of Infrastructure and Transport have worked jointly with the national police and state that the development of planning will be carried out with collaboration from all of the bodies with responsibility for surveillance, to achieve proper coordination of controls (Ministry of Infrastructure and Transport, 2015c). During the interview with the Spanish enforcers, only problems of international cooperation and language barriers were

<sup>33</sup> In France, the Ministry of Transport has a specialised control body with around 500 controllers, but estimate that there are over 7,000 enforcers in total. Other bodies responsible for enforcement include the police and customs authorities are involved in traffic regulations and the labour ministry is responsible for checks of driving hours and rest periods.

mentioned. Secondly, it may be that previously identified problems of coordination have been solved – for example, SDG (2013a) also reports that in some countries the problem has been overcome through ensuring effective cooperation (e.g. in Poland, the specialised Inspectorate (GITD) has laid out cooperation arrangements so that joint patrols and checks with police forces take place). Alternatively, the literature did not identify the extent of the contribution of ensuring coordination to problems of enforcement, and it could be that the contribution exists, but is relatively minor. The real underlying reason for this inconsistency could also be a combination of the above-mentioned reasons.

The possible **lack of clarity in provisions** and **differences across Member States in interpretation** is assessed further in Evaluation Question 4. The issues of cooperation are assessed in Evaluation Question 3. Of the remaining areas, the problems of enforcement of the cabotage rules appear to relate to the following broader categories:

- a) A **lack of enforcement capability / manpower**: which is linked to the cost of enforcement and budgetary limitations
- b) Issues related to the **documentation required to prove lawful cabotage** (typically the CMR consignment note): which is linked to the means of evading the rules and language barriers).

These two points are considered in turn below.

#### **a) Lack of enforcement capability / manpower**

Concerning the **lack of manpower**, further details were gathered through stakeholder interviews carried out for this study, indicating a range of staffing levels and degrees of satisfaction with these levels. As described earlier, checks of cabotage are primarily conducted at the roadside. In particular, enforcers from Bulgaria (480 staff responsible), Latvia (28 staff responsible), Sweden (160 staff responsible)<sup>34</sup>, Ireland (11 staff responsible), Spain (400 traffic agents and 150 employees of the administrative organs), Romania (317 staff responsible) and the Netherlands (unknown number of staff responsible) have indicated that they consider they have an insufficient number of staff (see Annex A for more details, Section 9.3.4). However, the data shows here is no clear trend concerning any optimum size of staff, either in absolute terms or relative to the size of the cabotage market. For example, the UK has a similar ratio of staff to cabotage market size as Sweden and Spain assesses the number of staff being adequate, whereas Bulgaria who has the highest ratio of staff to cabotage market size does not.

The main constraint identified from the above comments was the **budgetary issues** associated with recruiting more staff. On the other hand, the level of staffing was seen as adequate in other countries such as the UK, Poland and France. There are around 500 dedicated control officers in France, are supported in their activities by other forces totalling more than 7,000 people in total making controls on the French roads. The French ministry explained during an interview conducted for this study that “*the number of control officers in France is seen as adequate and proportionate.*” In the UK, there are 300 officers in the DVSA who have responsibility for checking cabotage and the enforcers estimate there are 600 people making checks in total. During an interview conducted for this study, the UK enforcers commented that they viewed this number as proportionate since there are no critical matters emerging concerning the effectiveness of checks. A UK association interviewed for this study noted that due to the UK’s fortunate geography, enforcement is made easier. In Poland, lack of manpower was not considered a problem in the enforcers’ survey response, and the authority reported

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<sup>34</sup> There are 450 officers in Sweden of which only 160 have specialist knowledge

that there are around 400 road transport inspectors responsible for performing roadside checks in full scope (with responsibility shared with the General Inspectorate of Road Transport, Police; Border Guards and Customs).

The issue of staffing levels is also recounted in the literature, where SDG (2013a) reports that resourcing at national control bodies is of concern to stakeholders in the Netherlands and Spain. The report also mentions that stakeholders in several countries (e.g. Italy, Spain, and Austria) claimed that in many cases enforcement bodies – such as the police – do not have the means to check for infringements.

Overall, for the Member States that provided data there appear to typically be around 300-500 staff (e.g. UK, Poland, Bulgaria, Sweden, Romania and Spain). Problems of having a lack of resources have been reported in Bulgaria, Sweden, Ireland, Romania, the Netherlands and Latvia in this study, as well as Italy, Spain and Austria in the literature. Conversely, the level of resources is considered adequate by enforcers in the UK, France and Poland. The above responses indicate that there is a lot of variation in the number, types, size and resources of national bodies responsible for enforcement. However, the data shows here is no clear trend concerning any optimum size of staff, either in absolute terms or relative to the size of the cabotage market. For example, the UK (where staffing levels are considered adequate) has a similar ratio of staff to cabotage market size as Sweden and Spain (where there is considered to be a lack of resources). Bulgaria has the highest ratio of staff to cabotage market size, yet considered there is a need for additional staff.

#### ***b) Issues related to the documentation required to prove lawful cabotage***

As previously noted in Figure 6-8, 57% of enforcement authorities responding to the survey indicated some or significant difficulties in the provisions regarding required documentary proof and what use enforcers are permitted to make of other evidence. The clarification FAQs<sup>35</sup> to the Regulation note that the required consignment note or bill of lading, normally in the CMR<sup>36</sup> format, should **provide all of the required information** in order to prove that the cabotage rules have been respected. The Commission's clarification note on the cabotage rules further states that the Regulations do not prevent control authorities from using other evidence, e.g. the tachograph data, to establish whether a cabotage operation is carried out according to the rules.

A review of the literature confirms certain issues related to cabotage documentation – SDG (2013a) finds that stakeholders in Germany, Italy, Spain and Austria claimed that enforcement bodies do not have the means to check for infringements. Particular difficulties were highlighted in the study with respect to verifying the start of cabotage operations, its link to international carriage, the calculation of the 7-day period and the identification of the number of journeys carried out within the period. According to SDG (2013a): *"The controls of these aspects are based on the documentation made available in the international waybill by road hauliers and/or drivers, who might have an incentive to provide only partial – if not false – information."* The German Federal Association of Road Haulage, Logistics and Disposal (BGL) was quoted as saying that monitoring compliance with the regulation only through the review of the necessary documentation is not sufficient, since illegal cabotage activities can be detected in only a small number of cases due to a mismatch between the documentation and actual behaviour (SDG, 2013b). According to AECOM (2014b), *"whilst in theory the documentation requirements are easily enforceable at the roadside, the burden of proof of compliance has now shifted to the driver from the enforcer and there is some debate about the*

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[http://ec.europa.eu/transport/modes/road/haulage/doc/qa\\_the\\_new\\_cabotage\\_regime\\_2011.pdf](http://ec.europa.eu/transport/modes/road/haulage/doc/qa_the_new_cabotage_regime_2011.pdf)

<sup>36</sup> *Convention des Marchandises par Route*, or consignment note

*efficacy of the documentation requirements*". ETF (2012a) also claim that enforcement of cabotage rules is ineffective.

These findings in the literature were cross-checked during interviews conducted for this study. The French enforcement authority reported that *"monitoring compliance of the period of three days is impossible to perform"* and suggested that *"the obligation to mention the time and date of loading and unloading, should be added to the evidence referred to in art. 8.3 of Regulation 1072/2009, since data are lacking for the controllers"*. The French ministry also confirmed their view that the CMR document does not include all key elements to control whether cabotage operations are correctly carried out. For this reason other documents are required to check date and time of loading / unloading operations. Nevertheless the ministry reports that this is complex and time-consuming.

The determination of the date and the place of entry in the Netherlands is considered a problem by the respondent to the survey of enforcement authorities from the Netherlands, as well as determining the number of journeys in relation to loading and unloading in the Member State.

The respondent to the survey of ministries from Bulgaria specifically identified a need for more guidance on what documents can be provided by a haulier in case cabotage operations are performed in a Member State. According to this stakeholder *"Since no clear rules on that exist, it gives hauliers the possibility to hide information and evidence for performed cabotage operations. This creates impediments for the work of control authorities during checks"*

The Italian ministry also identifies problems with documentation, noting that *"the text of the Regulation makes it possible to circumvent the rules on the number of transactions and makes the work of the supervisory bodies more difficult in relation to the evaluation of the documents / evidence to be presented by the carrier, which is insufficient"*.

SDG (2013b) also raised the potential issues of **falsified documentation**, which can only be detected by detailed controls at the hauliers' offices, but not during roadside checks. However, the study did not have information on the extent of such issues. AECOM (2014b) also reports that many industry representatives voiced the opinion that the road-side presentation of consignment note evidence is not reliable because documents can be hidden by drivers. Although it is not possible to quantify the extent to which this may be taking place, when asked more specifically about any problems (e.g. the possibility of falsification, losing documents), several enforcement authorities responded during interviews that these problems were not frequent in their countries (Ireland, Bulgaria). Conversely, the Austrian authority felt that consignments are often counterfeited, and considered that moving to electronic documents would help to address this. Industry reports in Spain identify checks in which some CMR documents were found to be counterfeited (FENADISMER, 2015).

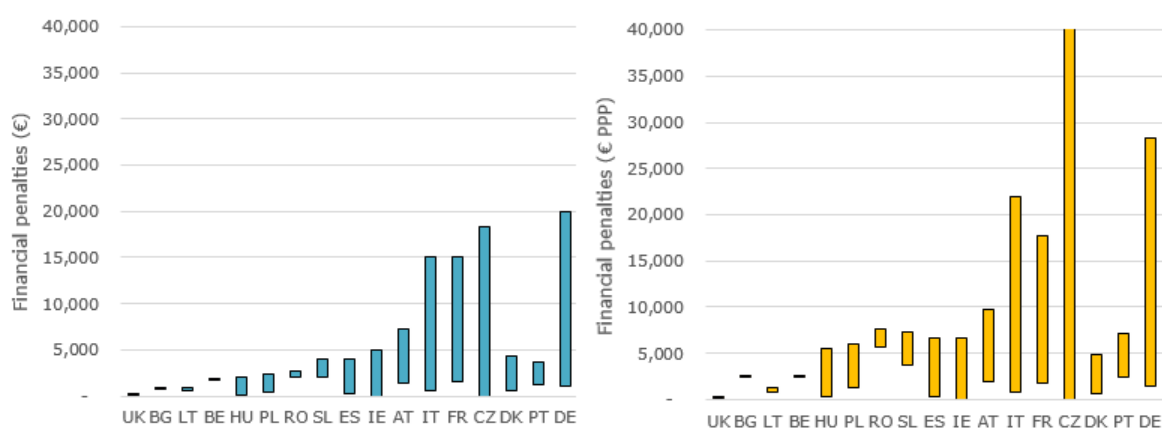
In summary, confirming the legality of cabotage on the basis of only the CMR consignment note was highlighted as an issue due to two main factors: Firstly, some authorities believe that the CMR document does not contain all of the information necessary to verify whether a cabotage operation is in compliance with the rules (France, Germany, Netherlands, Italy). Secondly, there is a possibility that documents are falsified or hidden (possible issues were identified for example in Austria and Spain). Both of these factors were emphasised during interviews conducted for this study, as well as in the literature. Recommendations to address these issues are discussed in the final section of this document.

### **6.2.2.3. Penalty systems**

Regulation 1072/2009 requires that Member States define the penalties to be levied for violations. Figure 6-10 shows the level of fines applicable to cabotage infringements – it demonstrates that there is not a level playing field when the fines are viewed across

countries. Member States have generally laid out a regime of sanctions which varies according to the type of infringement. In most cases, the lack of a community licence is sanctioned with a lower fine than the breaking of the “three operations within 7 days” rule. For example in Italy, if the relevant documentation has not been completed correctly, sanctions range between €600 and €1,800; however infringements relating to the maximum number of operations can be fined up to €15,000. By contrast, in some Member States a fixed fine has been introduced (e.g. a fixed fine of €1,800 is in place in Belgium). Converting the fines on a PPP basis (right-hand graph) makes the discrepancies larger, indicating that socioeconomic differences between the Member States cannot explain the differences.

**Figure 6-10: Financial penalties applicable to cabotage infringements in selected Member States (€, left and €PPP right)**



Source: (SDG, 2013a) and updated with responses to the stakeholder surveys

Other penalties used in connection with cabotage infringements are outlined in Table 6-4. This shows a range of other penalties are used in Member States and that the approaches are not harmonised.

**Table 6-4: Other penalties used in connection with cabotage infringements**

Penalty	Applicable	Not applicable
Retention/immobilisation of vehicle	Belgium, UK, Netherlands, France, Poland, Germany, Italy	Norway, Bulgaria, Czech Republic, Romania, Latvia
Retention of trailer	UK, Netherlands, France	Belgium, Norway, Germany, Bulgaria
Retention of goods	Norway	Belgium, UK, Netherlands, Germany, France, Bulgaria
Other	Belgium*, UK & France**	

\* Belgium: require to return to the place of loading in order to unload the goods or require to reload the goods into another vehicle in order to continue the trip in a legal way

\*\* This may be enforced in France and in the UK, in the form of a one-year ban from performing cabotage

Source: (Trafikstyrelsen, 2013), SDG (2013a) and updated with information from surveys of ministries and enforcement authorities

Regulation 1072/2009 does not expressly include chain of command responsibility in its scope. The principle of ‘chain of command’ responsibility is that all parties to a transport contract have a duties regarding compliance and can be held liable for infringements that they have in some way contributed to causing. Table 6-5 shows which parties can be considered liable in connection with infringements of the cabotage rules – again, this indicates a diverse range of approaches and shows that treatment of infringements is not equal across Member States. It demonstrates that some Member States have been active in enshrining the concept of chain of command liability into their laws.

**Table 6-5: Who is liable in connection with infringement of cabotage rules**

	Yes	No
Haulier	All	
Driver	Belgium, Sweden, Norway, Germany	UK, Netherlands
Forwarding agent	Belgium, Sweden, Norway, France, Germany, Denmark	UK, Netherlands
Others	Belgium*	Sweden, UK

\*Belgium: Client, loader, and forwarding agent can be punished by a court decision in the same way as a haulier.

Source: (Trafikstyrelsen, 2013) and updated with information from surveys of ministries and enforcement authorities

To understand the application of co-liability principles in practice, interviews with stakeholders were carried out. The German ministry explained that this co-liability is checked during checks at premises, but how and to what stringency this is verified will depend on each single case. A German association commented that it would be positive if this co-liability was introduced at a larger scale in other Member States. All of the German undertakings interviewed were supportive of this provision and three out of six also considered it would be useful to transfer this approach other countries.

In Denmark, depending on the circumstances, a freight forwarder will be able to be penalised for complicity in a foreign haulier's illegal cabotage operation. However, experience in Denmark shows that the prosecution of freight forwarders is often difficult to implement in practice, since there are considerable challenges in proving they have knowledge of illegal practices (Trafikstyrelsen, 2013). In France, the transport principal must ensure that its contracted haulier does not carry out more than three cabotage operations in any seven day period. The company does not need to verify that the requisite international transport journey has been carried out or if other cabotage operations have been made. However, the principal must maintain a record of all supporting documents for two years. In this way, transport principals are therefore obliged not to instigate transport operations that they know will be unlawful, and they are required to keep documentation that could be collated along with instructions from other shippers to form a picture of a particular operator's activities (AECOM, 2014b). According to AECOM (2014b), the Finnish Road Haulage Association has adopted a joint liability provision. This has increased the responsibility of the customer and they are now obliged to verify that the haulage companies they work with have a clean record. In addition the transport company they are using must have a valid operators' license and proof that its employer and taxation obligations have been met. According to SDG (2013a), several stakeholders Member States where co-liability is not present in the law have spoken in favour of increasing the administrative controls for both service providers and customer companies. It is reported that the provisions of co-liability are rarely implemented in practice due to the complex subcontracting arrangements in place that make it difficult to determine responsibility and meet the burden of proof (Barbarino et al, 2014). The possibility of introducing co-liability is considered further (along with recommendations) in Evaluation Question 12, in the context of ensuring a coherent legal framework.

Bayliss (2012) suggests that the differences have arisen because the penalty systems have evolved historically, and recommends a more uniform and effective enforcement of road transport legislation should be achieved through the adoption of common definitions of infringements and the harmonisation of controls, complemented by corresponding action in the area of sanctions. SDG (2013a) noted that it is hard to say that regulations are effectively the same across the EU if corresponding sanctions vary so greatly.

Overall, the review of penalties shows that there is not a level playing field and as such it cannot be concluded that the dissuasiveness (and consequently the effectiveness of enforcement) is the same across the EU. In particular, in some countries the level of sanctions could be considered so small that there is in effect no need to comply with the relevant rules, making the dissuasiveness low and the enforcement ineffective. This also creates an incentive for business models exploiting regulatory differences across the EU and jeopardises the achievement of EU policy objectives.

#### **6.2.2.4. Best practice examples and lessons learned**

Despite the various reported issues with enforcement outlined above, some Member States appear to have achieved very high compliance rates, whereas others appear to suffer problems of illegal cabotage (discussed in Evaluation Question 1).

A combination of interviews and literature review was used to investigate the national enforcement practices in more detail, and to try to identify some common best practices or lessons learned. In **Denmark**, the frequent controls and high fines lead to high risks for hauliers to take part in illegal cabotage and consequently a very low infringement rate (Sternberg et al, 2014). There are “considerable resources” for controlling trucks, making Denmark well-known for extensive controls (Sternberg et al, 2014). Further debates in Denmark have highlighted widespread support among the stakeholders for the following measures in order to improve compliance (Trafikstyrelsen, 2013).

- Greater use of tachograph data;
- A hotline for the police;
- Adjusted consignment note (voluntary) to ensure information is readily available;
- Increased penalties and differentiation of fines for more serious infringements;
- Increased information / monitoring.

Since these measures are still in discussion, it is not possible to verify their effectiveness. The Danish police report in 2014 that the rate of illegal cabotage is only 0.5% (Sternberg et al, 2014), and they believe that increased controls (higher fines and increased resources) have been effective in reducing illegal cabotage in Denmark (Report to the Transport Committee, 2014). The Danish ministry confirmed that the police received additional funding for increasing the number of roadside checks in 2013 and 2014. They report that although the number of vehicles checked had increased, fewer violations have been detected. This suggests that the non-compliance rate has decreased (Report to the Transport Committee, 2014).

The high frequency of controls is also thought to contribute to low levels of illegal cabotage in **Norway**, in combination with the often harsh local weather conditions that make the Norwegian market harder to access for foreign operators (Sternberg et al, 2015).

Since 1 January 2015, **Sweden** introduced new higher fines for illegal cabotage (Sternberg et al, 2015). Although it is too early to see the results of this change, there is a relatively sparse level of controls and so it remains to be seen whether this new policy will be as effective as that in Denmark. According information provided to the authors in Sternberg et al (2015), in the latest large scale control of trucks on Swedish roads, only five cabotage transports were controlled, of which three were fined for illegal cabotage. An enforcement officer specialised in control of trucks commented that part of the problem is understaffing, since there are only 450 officers of which only 160 have specialist knowledge (Sternberg et al, 2015).

In **Ireland**, it is alleged that 43% of foreign trucks entering the country engage in illegal haulage activity, as set out under the cabotage rules, but that these are not detected due to a lack of enforcement capability (Dáil debates, 2013). According to figures from the Road Safety Authority only 78 vehicles were checked in 2012 to July 2013, and only

a single breach was found (Dáil debates, 2013). The respondent to the enforcement survey indicated that 185 vehicles were checked in 2013 and three breaches are being processed. The authority indicated that cabotage is checked as part of standard inspections of out-of-state vehicles.

Conversely, in **France** the interview with the authorities indicated that there are over 7,000 control officers (a level thought to be adequate by the enforcement authority) and a relatively high rate of illegal cabotage detected (7%). Previous studies reported that in order to address the concerns of French hauliers, the Ministry of Transport announced in June 2009 that cabotage checks would be strengthened, and the total number of annual checks increased by 14,000 in 2009 compared to 2008 and remained at that level in 2010 (European Parliament, 2013b). France is the second largest market in Europe for cabotage operations as a result of its location making it an important transit country in Europe. SDG (2013a) reports that the fines for cabotage infringements in France are up to €15,000, whereas failure to show the relevant documents is punishable by a fine of up to €1,500. Specific requirements concerning the documentation are that it must include the date when the freight was unloaded and the registration number of the vehicle used for the cabotage operation – also, verification of tachograph information is used. The French enforcement authority reported in their survey response that in 2013 there were 50,928 checks of cabotage.

The **German** authorities interviewed for this study confirmed that a relatively low number of cabotage infringements has been detected, but wondered whether it is due to difficulties in enforcement. A German enforcement authority explained that they face problems when trying to reconstruct the transport operations/trips of a truck. They also commented that there are occasional periods during which checks of infringements on cabotage are intensified, and during these periods the detection rates are slightly higher. In a Parliamentary question (2014), claims by a German association of lorry drivers are discussed of abuse of cabotage rules. According to this source, a typical case is where *"a lorry is used, for example, to carry out cabotage operations in Germany for a week. After a week, a replacement driver arrives by car, bringing a new number plate plus the relevant registration certificate and other documents. In the lay-by where the changeover of drivers takes place, the lorry's identity is changed, with the digital tachograph card also being replaced in order to modify all relevant data"*. The level of fines is relatively high, set at €1,000-20,000 according to the survey respondent from the German enforcement authority.

From the examples found, there is no consistent recipe to determine the most effective enforcement techniques; however, it appears that for most countries, both a high frequency of controls and dissuasive level of penalties are needed. In countries where the enforcement of cabotage is a political priority (e.g. France and Denmark), penalties are relatively high, budgets for control have been increased in recent years and issues of a lack of manpower do not appear to be a current concern in these countries. Controls in France also rely on documentation that identifies the date of loading/unloading of the vehicle and verification of tachograph data, since the enforcers do not view the information in the CMR documents as sufficient for verification of cabotage activities. A group discussion held at Euro Contrôle Route also supports this conclusion, where it was found that there are very diverse practices, but in their view it is *"clear that cabotage is enforceable, but requires a significant investment in manpower and budget as well as coordination with the labour inspectorate."* (ECR, 2013). SDG (2013a) also confirms that the amount of roadside checks undertaken by enforcement bodies is not uniform across the EU, which implies that the risk of being caught is very different between Member States.



### **6.2.3. Summary and conclusions for Evaluation Question 2**

#### **6.2.3.1. Conclusions**

##### **Regulation 1071/2009**

Information on how the requirements of Regulation 1071/2009 (stable and effective establishment, good repute, professional competence and financial standing) are checked and verified is very scarce, despite efforts to collect such data from national ministries and enforcement bodies. From the information that could be obtained, it appears that the requirements are verified for all new applicants in the Member States that reported information, whereas additional checks may be conducted on the basis of a risk rating system (e.g. in Denmark). All countries that reported information indicated that they had a risk rating system with the exception of Bulgaria. The functioning of the risk rating system varies across different countries (e.g. whether it focusses on good repute only, or includes other requirements such as financial standing and professional competence).

Due to a lack of quantitative data on the number of checks and infringements of the various provisions, a more qualitative approach was taken to establish how the checks of the individual requirements are conducted.

Overall, responses to the survey of enforcement authorities reported that the majority (50% or more) of enforcers faced no or few difficulties to enforce most of the requirements of Regulation 1071/2009, with most respondents indicating they faced some difficulties in one or two areas only. The main areas of difficulty were the obligations for cooperation across borders (assessed further in Evaluation Question 3), followed by the move to a use of a risk rating system.

Overall, the requirements of the Regulation are generally possible to enforce; however, there are specific details of the provisions that cause challenges and/or reduce the effectiveness, which are explored in more detail below.

The specific problems of enforcing the requirement of **stable and effective establishment** arise due to several factors, which reduce the effectiveness of the provisions in terms of being able to reduce letterbox companies:

- Firstly, the lack of a clear definition of an operating centre means that identifying companies without a stable and effective establishment is more difficult, thus leading to a problem of letterbox companies continuing to exist despite the checks (as discussed in Evaluation Question 1)
- Secondly, a lack of cooperation between Member States makes cross-border investigations more challenging (as discussed in Evaluation Question 3)
- Finally, a lack of resources and administrative capacity, combined with the more demanding nature of the checks of stable and effective establishment, makes the enforcement of the requirement for all undertakings a challenge. At present it appears that several Member States (i.e. Bulgaria, Germany, and Finland) report that they find it difficult to implement the required checks of stable and effective establishment.

The enforcement of **financial standing** appears to cause no or few difficulties for the majority of enforcement authorities. It also tends to be the area in which most infringements are detected, which implies that checks of the financial standing requirement are able to detect infringements effectively (and hence enforcement is effective). There is some variation in the approach used to verify financial standing for new companies, and some concerns have been expressed by authorities from Italy and Croatia over how to monitor whether firms constantly meet the requirement in real time.

The official monitoring data strongly suggests that there is variation in terms of the stringency with which **good repute** is checked, with some Member States taking very lenient views (i.e. in many Member States there were no reported withdrawals on the

basis of loss of good repute). This result suggests that in some Member States, the enforcement of the provisions is not effective, since operators are not at high risk of losing good repute regardless of their conduct. This conclusion is further supported by the comments from both associations and trade unions received in the high level survey, which complained about the lack of effective enforcement of the requirement of good repute. There are two main issues with respect to the requirement, namely:

- A perceived lack of clarity in definitions of precisely which infringements should lead to the loss of good repute (mentioned by ministries in Finland, Germany, Ireland, Estonia, Poland, Slovakia, Slovenia and Bulgaria).
- Inconsistent approaches and incomplete implementation concerning administrative procedures to determine whether loss of good repute would be disproportionate.

No specific enforcement issues were encountered with the requirement of **professional competence**, and hence this suggests that implementation of the provisions has been effective. There is no evidence to suggest that there are problems experienced in enforcement, which in turn suggests that enforcement is likely to be effective. One industry association mentioned a case where documents had been obtained fraudulently, which is a concern, but the practice does not appear to be widespread.

There were few direct issues found with enforcement of provisions relating to the **transport manager**, which suggests that the enforcement of the rules according to the letter of the law is effective. However, there appears to be a lack of clarity of the role of the transport manager and how to ensure that they demonstrate a genuine link to the undertaking. This causes a risk of the use of "front men", who merely lend their good repute to an undertaking without really managing the business – thereby reducing the effectiveness of the provision in terms of being able to ensure compliance of undertakings with the rules. The extent of this practice could not be quantified for any countries, but concerns were raised by stakeholders in Finland, France and Sweden.

In terms of the penalties in place for infringements, the variation of financial penalties between Member States is often to a level that cannot be justified on grounds solely of socio-economic differences. Only some Member States have adopted specific sanctions for the infringements that are qualified as most serious infringements of EU law as listed in Annex IV of Regulation 1071/2009, which were identified in a 2013 study as Bulgaria, Germany, Estonia, Romania and Spain (Grimaldi, 2013a) – and confirmed to be up-to-date in case studies for this study in Germany, Romania and Spain (albeit at different levels). The responses from enforcement authorities indicate that the variation between countries may be because the current categorisation of infringements in Annex IV is not considered clear/appropriate by some Member State ministries, and the need for further guidance was highlighted, especially by EU-13 respondents.

### **Regulation 1072/2009**

The review of quantitative information on controls across Europe was hampered by a lack of data, and most enforcement authorities were unable to provide information on the number of checks and/or infringements in their countries. Falling back on alternative sources of information suggests that there are concerns about the low levels of effectiveness of cabotage checks (highlighted in literature and by respondents to the high level survey).

Overall, evidence from the literature, petitions submitted to the European Parliament and stakeholder consultations conducted both for this study and others (e.g. the 2011 questionnaire of the High Level Group) indicate concerns over the effectiveness of controls of cabotage. It is not possible to verify the extent of such issues due to the limitations of the data on cabotage compliance (explored in Evaluation Question 1) – the most important being that official enforcement statistics cannot indicate how much illegal cabotage might be going undetected. The evidence from Evaluation Question 1

suggests that illegal cabotage is likely to be a problem in some countries (in turn, indicating ineffective enforcement), but not in others. The consultants therefore explored the possible reasons that might lead to ineffective enforcement.

The most important contributing factor to difficulties in enforcement was identified as a lack of manpower. However, responses to the enforcers' survey indicated that many other factors also contributed to difficulties in enforcement, including a lack of clarity in provisions, differing interpretations across Member States, as well as difficulties in cross-border cooperation. This indicates that enforcement is considered challenging in many different circumstances and across diverse national situations.

The lack of manpower has been discussed in literature, which highlighted concerns in the Netherlands, Spain, Italy and Austria. Problems of having a lack of resources have been reported in Bulgaria, Sweden, Ireland, Romania, the Netherlands and Latvia in this study, as well as Italy, Spain and Austria in the literature. This shows that a lack of manpower (closely linked to financial constraints) affected many Member States. Conversely, a few Member States felt that staffing levels were adequate, including Poland (400), UK (300) and France (500 controllers in the ministry, more than 7,000 in total). Overall, there is a lot of variation in the number, types, size and resources of national bodies responsible for enforcement.

Confirming the legality of cabotage on the basis of only the CMR consignment note was highlighted as an issue due to two main factors: Firstly, some authorities believe that the CMR document does not contain all of the information necessary to verify whether a cabotage operation is in compliance with the rules (France, Germany, Netherlands, Italy). Particular difficulties were mentioned around verifying the start of cabotage operations, its link to international carriage, the calculation of the 7-day period and the identification of the number of journeys carried out within the period. Secondly, there is a possibility that documents are falsified or hidden (possible issues were identified for example in Austria and Spain). Both of these factors were emphasised during interviews conducted for this study, as well as in the literature.

The level of fines applicable to cabotage infringements varies greatly across Member States, as well as the possibility of other penalties (such as immobilisation of the vehicle) and liability of other actors in the transport chain. In most cases there is a regime of sanctions which varies according to the type of infringement, but in some countries there is a fixed fine (e.g. Belgium). The variation means that there is not a level playing field in Europe. Moreover, in some countries the level of penalties is so low that it could not be considered dissuasive, thereby rendering enforcement ineffective. A review of the literature suggests that differences have arisen because the penalty systems have evolved historically.

Reviewing enforcement practices across different Member States showed a range of approaches to control and demonstrated that there is no consistent recipe to determine the most effective enforcement techniques; however, it appears that for most countries, both a high frequency of controls and dissuasive level of penalties are needed. In countries where the enforcement of cabotage is a political priority (e.g. France and Denmark), penalties are relatively high, budgets for control have been increased in recent years and issues of a lack of manpower do not appear to be a current concern in these countries. Controls in France also rely on documentation that identifies the date of loading/unloading of the vehicle and verification of tachograph data, since the enforcers do not view the information in the CMR documents as sufficient for verification of cabotage activities. A group discussion held at Euro Contrôle Route also supports this conclusion, where it was found that there are very diverse practices, but in their view it is *"clear that cabotage is enforceable, but requires a significant investment in manpower and budget as well as coordination with the labour inspectorate."* (ECR, 2013).

### **6.2.3.2. Recommendations**

#### **Regulation 1071/2009**

The main recommendations with respect to improving enforcement of Regulation 1071/2009 relate to the provision of clarifications and guidance. This is because the main problems identified related to a lack of clarity in the provisions and/or inconsistency in approaches. The implementation of guidance and clarifications would not add significant costs to the rules, since the enforcement activities are already being carried out. Guidance, rather than strict rules, would allow Member States adjust the conditions to suit the national context and take best advantage of existing monitoring systems in order to keep the costs minimal. The specific recommendations of areas that should be targeted by guidelines are as follows:

- **Stable and effective establishment:** Provide guidance on the development of risk-rating indices, such as those used in France, in order to identify organisations at higher risk of infringing the requirements. This would help to prioritise the scarce enforcement capability by targeting higher risk undertakings for more detailed checks.
- **Financial standing:**
  - Guidance on procedures for verifying the financial standing of newly established enterprises. Examples of the approaches used were given for the UK and Ireland.
  - Guidance on how to monitor if the financial standing requirement is met continuously. This could be based on the risk rating system developed in the Netherlands.
  - Clarification of terms used in the Regulation, including what can be considered as capital and reserves (discussed further in Evaluation Question 4).
- **Good repute:**
  - Provide clearer definitions of precisely which infringements should lead to the loss of good repute.
  - Provide examples of best practices for procedures to determine whether the loss of good repute would be disproportionate, to encourage a more consistent approach and help to avoid over-use of this provision.
  - Clearer definitions of who should be included in the list of relevant persons to be checked for good repute in addition to the transport manager. Examples from individual Member States suggests that the list of other relevant persons to be checked could include: CEOs and general partners in partnerships (Finland) or legal representatives of the undertakings (Latvia).
- **Transport manager:**
  - Include a more detailed list of the responsibilities/activities of the transport manager, to ensure that a "genuine link" is demonstrated. This approach appears to have wide support amongst the ministries of several countries, including Germany, Finland, Slovakia and Sweden

Determination as to which specific approaches should be included in such guidance should be decided in a way that ensures the interpretations are in keeping with the intended interpretation of the rules. In the context of this study, the consultants can only highlight examples of approaches taken in Member States, without commenting on whether these would constitute the best approach for all countries – this next step would need to be the subject of more detailed discussions, such as in working groups.

Another approach specific to the problems found concerning the transport manager and the use of “front men” would be to limit the number of companies and/or vehicles that an external transport manager can be responsible for, to a level below the current limit of four companies or 50 vehicles. This approach has been taken in several countries, including France and Romania. Although there are some merits to this, the study team consider that it is not necessary to pursue further - firstly, because Member States already have an option under the Regulations to set lower limits if they choose. Secondly, stakeholders in other countries appear satisfied with the current limits and have not reported issues of front men – meaning the practice may affect some countries more than others and imposing EU-wide rules would be disproportionate to solve the problem.

Some stakeholders have called for more frequent checks of undertakings in order to prevent letterbox companies (e.g. ETF (2012a) call for Member States to be required to conduct checks every 2 years, as opposed to every five years). However, conducting proper checks of stable and effective establishment is a demanding task. In the view of the study team, it seems unlikely that enforcement authorities could dedicate the necessary resources to support this increase in frequency of checks without compromising the thoroughness. This view is based on the responses from enforcement authorities to the effect that having adequate manpower is already a concern. Rather, more effective risk-targeting of checks as recommended above seems to offer a more proportionate solution.

Enforcement authorities were asked for suggestions to mitigate enforcement difficulties. Enforcement authorities from France and Poland called for greater cooperation: France further suggested strengthening exchanges with national partners (e.g. transplants commercial courts, chambers of commerce and industry, court administrators or accountants). Possible provisions for greater cooperation are considered in more detail in Evaluation Question 3.

Other approaches to help mitigate problems have been suggested in Hellemons (2013), where it is recommended to use combination of more targeted (intelligence led) enforcement and a better use of technology. This would allow the sparse human capacity can be used in a more clever way, leaving as much of the “dumb work” as possible for the technology. Further suggestions in Hellemons relate to the use of risk rating systems and ERRU to target high risk operators, which complement the use of intelligence-led enforcement. Examples of such best practices can already be found in some Member States, where authorities are trying to make the best use of limited staff and resources. Since no clear cross-cutting best practices seem to emerge from the examples analysed in this chapter, the study team consider that this falls into the remit of sharing best practice between Member States (including through participation in existing efforts such as ECR) in order to maximise learning and synergies.

**Harmonising sanctions** for the most serious and very serious infringements would help to provide a more consistent deterrent for operators and improve alignment of the sanctions applied to the same infringement. This is still a work in progress and so the effectiveness of the current actions to revise Annex IV should be assessed before considering greater harmonisation. Several enforcement authorities call for more guidance in this area, which would be a first step. Nevertheless, the full harmonisation of national systems of control and penalties remains a difficult area to address due to the principle of subsidiarity, as well as due to differing national administrative and cultural practices. Introducing additional guidance may be helpful in this regard, although it does not carry the same legal force as a Regulation. This approach would be respectful of different national legal traditions, while still emphasising the need to tailor sanctions to the gravity of the different infringements.

If differences that threaten the effectiveness of the Road Transport Package measures continue to exist, a stronger approach could be envisioned. This could be to harmonise penalties in *criminal law*, where EU competence is established in the TFEU, Article 83. This allows for establishment of minimum rules in areas that have been subject to

harmonisation measures if compliance with the principles of proportionality, necessity and subsidiarity is demonstrated.

The necessity of adopting criminal measures to ensure effective enforcement of more serious breaches (such as the most serious infringements) would however need further assessment. Such measures could be justified on the grounds that the most serious infringements are already sanctioned in many Member States with criminal sanctions and all criminal systems foresee financial penalties as criminal sanctions. In terms of the proportionality of this course of action, fixing minimum level of criminal sanctions at EU level does not seem to affect substantially the sanctions' systems of Member States, as all criminal systems foresee financial penalties as criminal sanctions (Grimaldi, 2013a).

Appropriate levels of proportionate and dissuasive *minimum* levels of pecuniary fines have been suggested by Grimaldi (2013a):

- Most serious infringement: €2,000 for employees, €20,000 for employers;
- Very serious infringement: €1,000 for employees, €10,000 for employers.

The study team consider the recommendations from Grimaldi to be a starting point for negotiations, which would be needed to secure any progress in this area. However, it unlikely to be practical to fix maximum levels of fines, as some Member States apply sanctions proportionate to the wage and the turnovers of transport operators (Grimaldi, 2013a). These penalties could be accompanied by sanctions such as confiscation or immobilisation of the vehicle, and of the withdrawal of the driving licenses and of the Community licenses, which are seen as effective complementary measures, because they do not allow the operators to gain the advantage from infringements of the relevant rules.

### **Regulation 1072/2009**

When considering potential ways to improve enforcement, it is crucial to recognise that the enforcement authorities concerned have limited resources, and although several mentioned that they would like to increase staffing levels this would not be possible due to financial constraints.

While no single solution can be completely effective, there is consistent support for the organisation of common training of enforcement authorities and greater international cooperation among respondents to the survey of enforcement authorities. Recognising that budgetary pressures can limit additional efforts by already stretched departments, it is paramount that synergies are exploited as far as possible. This concept has been actively pursued in other areas of legislation, most notably in the enforcement of road social rules, as well as through organisations such as Euro Contrôle Route (ECR).

In addition, although enforcement authorities may prioritise the control of compliance with social legislation (e.g. driving times), checks are often conducted in parallel with other legislation. In this regard, a similar approach to that used in Regulation 561/2006 could be used, under which the organisation of common training of enforcement authorities and greater international cooperation is foreseen, and the idea is valued by associations, enforcement authorities and Member States. This could also take the form of collecting and disseminating information on procedures across Member States, or facilitated exchanges with national partners.

Issues with the documentation that needs to be carried to prove lawful cabotage have been raised with respect to its adequacy in revealing illegal activities. This suggests that reliance on the consignment note alone may not be sufficient. The Regulations do not prevent control authorities from using other evidence to establish whether a cabotage operation is carried out according to the rules (e.g. the tachograph data). In this case, best practice guidance on specifically how these checks can be carried out effectively and efficiently may be beneficial.

The trade unions in their joint response to the high level survey call for making mandatory the regular automatic recording of vehicle location (geo-positioning) and the use of digital tachographs<sup>37</sup>. These suggestions were also noted in the literature (e.g. AECOM, 2014b; SDG, 2013a; ETF, 2012a; CLECAT, 2013b). The trade unions further call for the mandatory retrofitting of fleets with the new digital tachographs. It is worth noting in this sense that although the digital tachograph represents a more robust and tamper-resistant recording device, the analogue tachographs used on vehicles registered before 1 May 2006 still represent a large part of the market. The average number of vehicles equipped with digital tachograph that were controlled in 2011-2012 was around 56% (European Commission, 2014b). A Swedish trade union agreed that the use of more documentation is needed so that enforcers can see where the vehicle is coming from and where it's going. An Austrian trade union also agreed that the CMR document is not sufficient to check cabotage.

Another suggestion was to move towards e-waybills and electronic community licences, possibly in conjunction with GNSS (Global Navigation Satellite System). Indeed, some countries are already moving towards digitalisation. For example, in Spain the Ministry foresees a move to digital community licences by 2017. Enforcement authorities were split over whether this would improve the effectiveness of enforcement. Two respondents strongly agreed that this would be an effective solution (Germany, Slovenia), on the basis that it would help to avoid manipulation of records, whereas the Spanish authorities strongly disagreed. The other respondents were neutral or did not volunteer a view. The Irish authorities suggested that greater harmonisation through shared training/exchanges would provide enforcers with real life experience of best practice - and is probably more likely to improve enforcement rather than using technology such as GNSS. The French and Dutch authorities pointed out the significant costs involved. Several authorities also pointed to difficulties related to data protection (France, Netherlands), as well as noting that it would not be an effective solution in the short- and medium-term (Netherlands, Poland). The Dutch authorities cautioned against seeing this as a silver bullet. The Austrian respondent noted the fact that extensive tracking of vehicles was not an objective of the Regulation and felt that an extension of the Regulation should be avoided.

In the view of the study team, greater recourse to electronic documents and the use of data from digital tachographs could provide greater certainty and could be considered a good solution in the longer-term. The study team investigated this possibility with enforcement authorities and received a mixed response as to whether this would constitute a desirable solution. One of the suggestions to improve enforcement was a move to electronic documents and GNSS. Currently, electronic documents are already available in some cases and it is not expected that there would be resistance from stakeholders in terms of acceptability – the main barriers are of a legal and technological nature (Gomez-Acebo & Pombo, 2009). It has also been pointed out that there are differences in technological capability between Member States, for example electronic COTIF/CIM consignment notes are frequently being printed out when crossing the border between Austria and Hungary (Gomez-Acebo & Pombo, 2009). These challenges were confirmed in interviews with enforcement authorities, who note that the costs of implementation (from already stretched budgets) would be significant.

On the other hand, AECOM (2014b) reports that telematics, GNSS and digital tachograph technology already provides the capability for the remote tracking and recording of cabotage activity. They suggest that in order to future-proof the likely on-going need to control and enforce the cabotage market, measures to better monitor activity in relation to cabotage should be properly represented in the Commission's revisions to digital tachograph requirements – such as obliging drivers to record their location by GNSS at the start and end of each transport operation.

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<sup>37</sup> On-board recording equipment fitted to the vehicles regulated by the provisions of the Tachograph Regulation 165/2014.

Overall, the study team consider that the use of electronic documents, digital tachographs and GNSS would be a good long term solution (provided cabotage continues to be restricted) but would not solve problems in the short- and medium-run. As such, the study team consider that a move to electronic documents or greater use of digital tachograph data should be a matter for Member States to opt in to (as should already be possible within the provisions of the Regulation), rather than making it mandatory. This is due to the barriers described, taken in context with the fact that illegal cabotage does not appear to affect all Member States equally countries (as discussed in Evaluation Question 1) – meaning that the measure would likely be disproportionate to the benefits in these countries. The study team also agree with the suggestion in AECOM (2014b) to ensure that possible measures are considered in future revisions of digital tachograph requirements.



### **6.3. Effectiveness: To what extent are the measures on administrative cooperation effective?**

To what extent the measures on administrative cooperation are effective? Is there a need for better administrative co-operation and administrative coordination (e.g. checks) between Member States and/or the Commission?

This section assesses the provisions of the Regulations concerning administrative cooperation, in terms of the status of implementation, how well they are working and whether there is a need for better cooperation and coordination measures.

The main aspects concerned in this section concern:

- The interconnection of national registers; and
- Related provisions on data exchange and administrative cooperation between Member States.

#### **6.3.1. Interconnection of national registers**

In order to facilitate the monitoring of the road transport undertakings, Article 16(1) of Regulation 1071/2009 required Member States to set up national electronic registers of road transport undertakings that have been authorised by a competent authority designated by it to engage in the occupation of road transport operator.

The national registers were intended to be interconnected from 31 December 2012, as laid down in Article 16(5) of Regulation 1071/2009. The linked-up database is known as the European Register of Road transport Undertakings (ERRU). Further details on the development of ERRU are given in **Annex A** (see Section 9.4).

The analysis of the effectiveness must first establish the extent to which Member States have implemented the requirements of the Regulation. In March 2013 the Commission opened 21 EU-Pilot (pre-infringement) cases against those Member States who failed to carry out the necessary interconnection actions by that time, showing that the process has been considerably delayed. By 2014, only 13 Member States were interconnected via ERRU (European Commission, 2014c). By 2015, this has risen to 20 Member States<sup>38</sup>, showing that interconnection is still incomplete.

To understand in more detail what the difficulties involved in establishing interconnection were, national ministries in all Member States were invited to describe any issues they faced. The reasons for delays in interconnection given mainly related to technical issues (see **Annex A** for more details).

Similar problems were also found in the literature. Bayliss (2013) reports that efforts to link separate Member State registers were initially affected by connectivity problems, and it was eventually decided that the software deployed for the task was not suitable. According to ICF (2014), in Ireland, the introduction of a new computer licensing system and online application facility was subject to a number of technical difficulties. As a result, the implementation of this requirement was delayed. This situation also applied to Hungary and the Netherlands that observed delays in the introduction of the system (ICF, 2014). The UK authorities duly noted that the ICT adaptations needed much longer to implement than foreseen in the Regulation (with the original deadline of 31<sup>st</sup> December 2012), which made compliance with the requirement very difficult. ICF (2014) concluded that obstacles or difficulties were experienced in three main areas: the financial burdens of the national registers; technical difficulties in linking national

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<sup>38</sup> Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Malta, Netherlands, Romania, Slovak Republic, Slovenia, Spain, Sweden and the UK

registers to ERRU; and delayed implementation of the systems which slows down the monitoring of road transport undertakings.

Despite the above-mentioned delays, the number of Member States connecting to the system has been increasing gradually. Interconnection is expected to lead to more interventions because of a better flow of data on infringements when vehicles are operating outside their home Member State.

The next question to consider is the extent to which the system has been effective in achieving these effects in practice. To evaluate this, Member State ministries were asked about the impact of participating in ERRU on the effectiveness of their cooperation so far. Encouragingly, many Member States that are currently connected have reported that they feel the effectiveness has improved (Belgium, Ireland, Sweden, Estonia, Bulgaria, Latvia, Lithuania, Cyprus), even though the system is not fully functional – however, they were not able to quantify the impact. Qualitative views received express support for the overall conclusion that there have been some benefits to date and that progress is in the right direction, for example: the Belgian ministry noted that *“although there's still much room for improvement, the obligation to set up a register that has to be interconnected can be considered a huge step forwards.”* The Latvian ministry appreciated the faster exchange of information about Most Serious Infringements, while the French ministry state that *“the implementation of the interconnection of national registers... is a first step in cross-border cooperation is to be welcomed”*.

On the other hand, the Austrian ministry commented that *“running ERRU means heavy stress for authorities without any substantial effects so far”*. The remaining respondents were split between those who report that they have not noticed any effect (UK, France, Germany, Denmark), and those that did not know (Finland, Slovakia).

It is also worth recognising that the full benefits of ERRU would only be realised once the interconnection is completed, meaning that the current performance does not reflect the full potential of the existing provisions. This state of affairs is also reflected in the usage statistics, which are low at the moment compared to other systems that are also used as exchange mechanisms for connection with other Member States. To put this in context, more than 150,000 requests through ERRU were forwarded to the Member States in 2013 ( Bausà Peris et al, 2014). By comparison, 17 million enquiries were made in the first half of 2013 through the European Car and Driving Licence Information System (EUCARIS) and 1 million requests from January to August 2013 were made through the Tachograph Network (TACHOnet) ( Bausà Peris et al, 2014). By way of comparison, the level of usage envisioned in the TUNER project once the system was fully connected were of similar orders of magnitude – estimated to be a maximum of 9.6 million search requests per year and up to 11.6 million infringement notification and response messages (Wilson et al, 2009).

The relatively low levels of usage indicates that the system is not being used to its full potential (reflecting the incomplete status of interconnection) and hence its contribution to achieving the objectives of the Regulation for the time being is limited (i.e. in terms of ensuring more efficient and effective monitoring). It is therefore also worth considering how the ERRU is expected to function once it is completed and determine whether the ex-ante estimates of the benefits were realistic.

Views on the *expected* impacts were collected from ministries. Most ministries consulted were hopeful that improvements in control should be achieved (Bulgaria, Denmark, Estonia, Finland, France and Sweden), indicating a high level of support for the measures. The respondents from Belgium and Germany noted that it was too early to tell. Conversely, only the Austrian ministry reported that they still did not expect any substantial impacts. They explained that language barriers impede information sharing between Member States, since Member States must report infringements in the language of the host Member State. They consider that translation would be *“far too much administrative burden”* and considered that it does not add anything to road traffic safety. Responses from the high level survey from both trade unions and industry associations called for the completion of ERRU as a matter of urgency.

A literature review was also conducted in order to substantiate this conclusion. Quantification of the improvements in efficiency (see Evaluation Question 9) also indicate that at least some Member States (UK, Latvia, Hungary) have achieved small reductions in costs, mainly due to the switch away from paper-based systems, whereas other Member States report no savings so far (ICF, 2014). ICF (2014) also includes comments from Estonian authorities that information exchange with other Member States not connected to ERRU takes place by mail, which is considered burdensome.

In order to consider whether further actions might be needed, stakeholders were asked for their opinions on how ERRU could be made more efficient or effective. The Estonian and Swedish ministries also called for ERRU to be made accessible in real time to authorities conducting roadside inspections, such that it would allow authorities making roadside checks to confirm the validity of the certified true copy of the Community Licence. Trade unions also supported this in their coordinated response, highlighting that the data registered in the ERRU is not accessible to enforcement authorities. Making it available would facilitate enforcement of Regulation 1071/2009, as well as controls of labour and social legislation. The French ministry highlighted their view that cross-border administrative cooperation should not be limited to the interconnection of registers, but also consider it appropriate to go further on a number of issues such as harmonisation of control policies and auditing of the way the national authorities enforce the regulations in their territory.

In conclusion, the system of ERRU has clearly been subject to significant delays mainly due to technical issues. As a result, the expected benefits in terms of more efficient and effective monitoring have not yet been realised and there is a continuing need for better cooperation/use of the system as it is gradually completed. Nevertheless, some Member States indicate that there have been some improvements in the effectiveness of monitoring even with the partial functioning of the system and there is support among ministries, enforcement bodies, trade unions and associations for the completion of the system. These are promising signs that indicate there will be benefits in the future once the system is working fully. The effectiveness will also be improved by the participation of Switzerland, Norway, Iceland and Liechtenstein, who will also participate in the ERRU (although participation from any other third country is not foreseen) (ERRU working group, 2011). Once the system is completed, there appears to be support for extending it to allow roadside officers to access the information during checks.

### **6.3.2. Administrative cooperation and coordination**

Under Regulation 1071/2009, Article 18, Member States are obliged to exchange information via national contact points (designated contact points who are responsible for the exchange of information with other Member States) on infringements and on transport managers declared to be unfit. Article 18 further requires that Member States forward to the Commission the names and addresses of the national contact points by 4 December 2011. As of July 2015, only Portugal had not provided contact details<sup>39</sup>.

Article 24 of Regulation 1071/2009 further states that Member States shall “*cooperate closely and shall give each other mutual assistance for the purposes of applying this Regulation. They shall exchange information on convictions and penalties for any serious infringements, and other specific information liable to have consequences for the pursuit of the occupation of road transport operator, in compliance with the provisions applicable to the protection of personal data.*” Finally, mutual assistance under Article 11 of Regulation 1072/2009 calls for Member States to assist each other with monitoring and to exchange information.

According to Article 26 of Regulation 1071/2009, Member States should include in their monitoring reports an overview of exchanges of information with other Member States

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<sup>39</sup> The latest list of contact points is available on the Commission website at <http://ec.europa.eu/transport/modes/road/access/doc/list-of-national-contact-points.pdf>

pursuant to Article 18(2). This should detail in particular the annual number of established infringements notified to other Member States and the replies received, as well as the annual number of requests and replies received pursuant to Article 18(3). According to the first monitoring report, some Member States such as Cyprus, Lithuania, Malta, the Czech Republic, the Netherlands and Slovakia indicated that there was no exchange of information (European Commission, 2014a). Information was exchanged in Bulgaria, Estonia, France, Ireland, Poland, Romania and Spain. No further details are given in the official monitoring report, so further information was sought from stakeholders.

The limited quantitative data that could be retrieved is shown in Table 6-6, which shows the estimated number of additional checks and infringements that were possible as a result of cooperation with other Member States. The share of the total number of checks of infringements conducted as a result of tip-offs from other Member States ranged from zero in Denmark to 33% in Luxembourg, whereas the number of additional infringements reached as high as 16% of all infringements (Bulgaria).

**Table 6-6: Estimated number of checks of compliance with Regulation 1071/2009 conducted due to information provided by other Member States**

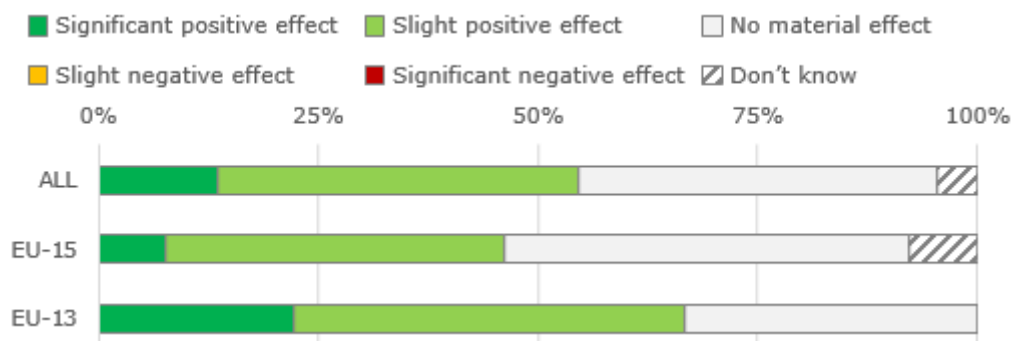
Member State	% of total number of checks that were conducted as a result of information from other Member States	Detected infringements as a result of information from other Member States
Romania	7%	No data
Bulgaria	17%	16% of all infringements
Netherlands	16%	22 additional infringements found
Denmark	0%	0
Luxembourg	33%	5% of all infringements
Germany	1%	3 additional infringements found

Source: Survey of enforcement authorities

This indicates that at least in some Member States, the effectiveness of enforcement has been improved due to cooperation with other Member States, and there has been some progress towards achieving the objectives of the Regulations. At the same time, the data strongly suggests that implementation and progress towards achieving more cooperative and effective enforcement is unequal across the Member States.

Qualitative responses received from the ministries survey (Figure 6-11) indicate that 55% of respondents felt there had been a significant or slight positive impact of the Regulations on cooperation between enforcement authorities in different Member States, whereas no respondents felt that it had worsened cooperation. Respondents from the EU-13 returned somewhat more positive responses overall. The Belgian ministry commented positively that there was almost no cooperation prior to the Regulation 1071/2009, and considers that the Regulation has contributed to improvements in this area.

**Figure 6-11: Responses to the question: How would you describe the effect of any changes as a result of Regulation 1071/2009 in terms of improving cooperation between enforcement authorities in different Member States?**



Source: Survey of ministries (12 from the EU-15 and eight from the EU-13)

Despite the positive indications from these qualitative results, it is also clear from Member State experiences that more work is required in this area. In particular (and related to Evaluation Question 1), control of letterbox companies often involves cross-border situations that make investigations and enforcement more difficult, since the Member State of establishment is not necessarily the one that is affected by the activities of the letterbox company.

As a specific example of difficulties in ensuring cooperation between Member States, we return to the case discussed earlier in Evaluation Question 1, about the concerns over possible letterbox companies set up by Danish firms in Germany (Parliamentary questions, 2013a). During interviews conducted for this study, Danish stakeholders were asked to expand on their experience. A Danish trade union elaborated that there were journalists trying to go investigate the issue in Flensburg, who sent pictures of the letterbox companies' sites to the Danish administration: they claim that the photographs showed the establishment was a residential site, and that the information was sent to the Commission. Their understanding of the most recent developments were that the Commission had sent a letter to the German authorities, who in turn had confirmed that in their opinion these were legitimate hauliers where there were actual activities. The Danish enforcement authority commented that they must rely on the German authorities for further information in this case, but typically they do not receive any responses, although the further emphasised that they certainly did not blame their German counterparts.

Respondents to the surveys have provided some other comments on problems in gaining cooperation from other Member States in enforcement. For example, the UK enforcer pointed out that some Member States are willing to authorise UK operators in their own territory, and in these cases it is very difficult to prove that an operator is actually established in the UK when they have authority from another Member State. The French authorities claimed that there is not always feedback from the liaison offices of the various member countries. Trade unions suggested in their coordinated response that the lack of administrative cooperation is due to a lack of political will in Member States rather than a matter of legal provisions. Statistics were also sought from enforcement authorities as to the frequency of contacts made with other Member States concerning the enforcement of Regulation 1072/2009. The Polish authority noted that in 2014, one of the Euro Control Route "coordinated control weeks" was devoted to performing checks of cabotage. The Irish authority estimated that there had been 10 contacts in the last year and the Dutch authority stated that no contacts had been made. All other authorities could not provide information – it is not clear whether this indicates there were no contacts or if the data are not available. Overall, the available data shows that cooperation is not being conducted in a systematic way.

SDG (2013a) also noted that the exchange of information between Member States is still too weak in the context of cabotage enforcement. This makes it difficult for the

countries of establishment of road hauliers to impose sanctions for violations of EU rules committed abroad, as they need first to get information from the enforcement bodies of Member States hosting cabotage operations. Moreover, they consider that there is not sufficient exchange of best practices and lessons learnt - a process that, at present, seems not to be effectively coordinated and appears to rely only on the willingness of each single enforcement body to share their information with similar bodies from other countries. The report of the High Level Group also notes the potential for cooperation to improve enforcement practices and calls for information to be made more readily available between national authorities and that operators participating in international operations and cabotage (Bayliss, 2012).

Ministries were asked about how the minimum requirements for administrative cooperation across borders be made more effective or efficient. The Danish, French and Irish ministries suggested that there should be an agreed timeline for national points to respond to request from other Member States. The Irish ministry further felt that there should also be an escalation protocol if this is not adhered to. The same question was put to enforcement authorities, and similar suggestions were received. The Danish authority noted that it should be mandatory for Member States to answer inquiries and the Latvian authority suggested the development of a standard form for such requests. The Romanian and Spanish enforcement authorities considered that administrative cooperation would already become more effective under ERRU. The French and Dutch enforcement authorities called for a European level enforcement agency to coordinate initiatives and share best practice – for the time being this is carried out via Euro Control Route (ECR), but not all Member States participate. The Irish authority also mentioned that shared training/ECR exchanges would be beneficial.

Although there appear to have been some benefits so far, it is clear that the progress on ensuring administrative cooperation has been uneven and is not working well for all Member States. Good practices appear to be carried out in Bulgaria, the Netherlands and Luxembourg, where information exchanges took place and additional infringements were detected as a result. In considering whether additional measures are needed, suggestions from stakeholders indicate that introducing timescales for the responses to requests would be beneficial, as well as more coordination through European-level enforcement bodies such as ECR.

### **6.3.3. Summary and conclusions for Evaluation Question 3**

#### **6.3.3.1. Conclusions**

It can be seen that the measures on administrative cooperation are still very much a work in progress, and as a result the benefits to date have been hampered by the partial functioning of the system. On the establishment of ERRU, only 13 Member States were interconnected in 2014, despite the deadline of 31 December 2012. Progress has been rather slow, with only two more Member States connecting as of January 2015 (Belgium and Germany). Many of the difficulties that have been reported are technical. The incomplete implementation means that current levels of usage are rather low and hence its contribution to achieving the objectives of the Regulation has been limited.

Nevertheless, qualitative survey responses received from ministries indicate that there is wide support for full interconnection. Most ministries were hopeful that improvements in control should be achieved (Bulgaria, Denmark, Estonia, Finland, France and Sweden), indicating a high level of support for the measures. Responses from trade unions and industry associations also urged the completion of ERRU in order to facilitate control.

Quantitative indicators of the status of cooperation suggest that information exchange is lacking in other areas. Most enforcement authorities were not able to provide data on the number of checks they carried out as a result of information provided by other Member States, or indicated that it was rather low (Denmark, Germany). Good practices appear to be carried out in Bulgaria, the Netherlands and Luxembourg, where

information exchanges took place and additional infringements were detected as a result. This shows that in some Member States, the effectiveness of enforcement has been improved due to cooperation, and there has been some progress towards achieving the objectives of the Regulations in this respect. At the same time, the evidence strongly suggests that implementation and progress is unequal across the Member States. Nevertheless, qualitative responses from national ministries indicate that they consider the current situation to be an improvement compared to the situation prior to the Regulations.

Specific examples of problems in achieving cooperation were found with respect to alleged letterbox companies set up in Germany by Danish firms. Comments from ministries in other Member States (UK and France), which seem to highlight similar issues to do with the difficulty of getting information confirmed. The lack of information exchange has also been highlighted in the literature, which identifies this as contributing to the poor enforcement of cabotage rules.

### **6.3.3.2. Recommendations**

Implementation of the requirements is incomplete for both the measures on interconnection of national registers and cooperation between Member States. Yet there is generally an expectation that, when the systems are fully connected, the effectiveness of enforcement will be improved. Taken in this context, the study team recommend that full implementation of the existing provisions is prioritised. Non-connection to ERRU is not just a problem for the Member States that are not connected; until everyone is connected, the effectiveness of the system is undermined for those who are, since they have no notification of the infringements committed in some Member States (i.e. there are network externalities).

In the future, additional measures such as requiring ERRU to be made accessible to roadside officers (as suggested by some stakeholders) could be considered. The study team consider that attempting to introduce additional measures such as this on a mandatory basis while Member States are still experiencing technical difficulties would only exacerbate such problems, and hence recommend the priority should be to focus on implementation of the existing provisions instead. Nevertheless, making ERRU accessible to roadside officers could be considered at a national level by interested authorities for implementation on a voluntary basis.

A possible solution to the problem of insufficient coordination between Member States could be to involve more coordination from a central authority. The French and Dutch ministries suggested a European control agency for road transport could allow coordinated initiatives and sharing of best practices. Experiences to date in with the activities of Euro Control Route (ECR) were reviewed positively by several respondents to the enforcement survey (Ireland, Netherlands, and France). This indicates that either greater participation in ECR or a separate European control agency would be helpful (ECR is voluntary and not all Member States are involved). In our view, encouraging greater participation in ECR would be beneficial given the positive experiences of participating Member States. However, setting up a European control agency as a mandatory instrument would not be a first choice and should be considered further in the frame of an Impact Assessment. This is because enforcement has historically been the competence of Member States and it would be politically difficult to justify moving away from this position.

Cooperation is particularly important in enforcement that requires cross-border investigations, such as in the case of letterbox companies and also cabotage. In order to identify more precisely what provisions could be included in additional guidance or more detailed rules, a review of literature was carried out to find any parallel examples from other legislation. The issue of cooperation has come up in other areas as well, and experience shows that Member States so far have taken few steps to prevent letterbox companies incorporated in that Member State being misused for activities in other

Member States<sup>40</sup> (Sørensen, 2015). These problems have been recognised and as such, introducing better cooperation was one of the objectives underlying the Enforcement Directive of the Posting of Workers Directive (2014/67/EU). Normally the Member State where the posting takes place would start the investigation. However, clearly this Member State may have difficulties in conducting the investigation on its own as the investigation requires identification of the activities taking place in the Member State in which the company is formed. Thus, the Directive requires Member States to collaborate on these investigations. Article 7(5) of the Directive allows Member States to request the Member State of establishment "*... to provide information as to the legality of the service provider's establishment, the service provider's good conduct, and the absence of any infringement of the applicable rules.*"

The Enforcement Directive of the Posting of Workers Directive (2014/67/EU) provides a good and transferable example of a potential solution, since it targets cooperation in multiple ways. Member States are urged to try to identify who is behind such letterbox companies. The Directive also suggests strengthening enforcement of sanctions across borders<sup>41</sup>. It requires Member States to collaborate under Article 7(5), where one Member State can request the Member State of establishment "*... to provide information as to the legality of the service provider's establishment, the service provider's good conduct, and the absence of any infringement of the applicable rules.*"

The Impact Assessment for the Enforcement Directive of the Posting of Workers Directive assesses precisely the administrative burdens of cooperation requirements. In this context, no significant administrative burdens were found for the requirements for cooperation. The main argument of the revisions is that increased regulatory certainty and cooperation between Member States will create positive effects on the development of the single market. The costs are considered to be "*relatively small and well-contained while the benefits are significant. The identified administrative burden for public authorities implied by improved information is very low or even meaningless for the majority of Member States. However, such action is instrumental in reducing the probability of non-compliance with national law.*" (European Commission, 2012b).

Since the recommendations of this study are to follow closely the revisions to the Directive, it is logical that the cost assessment will be similar and that there will not be substantial additional costs.

The benefit of improved cooperation would be a general improvement of the enforcement of the Regulations. In particular, since detection of letterbox companies is particularly reliant on cross-border enforcement, it would result in a more effective control and reduction of letterbox companies. As already discussed in Evaluation Question 1, letterbox companies entail significant costs for industry and Member State authorities. It is also worth noting that the establishment of the electronic register and interconnection to ERRU were identified as the most significant implementation cost category by respondents to the ministry survey (see Evaluation Question 9 for quantification of the costs). However, these are sunk costs– hence actions that improve the effectiveness of the system that do not incur significant additional costs should result in the cost-effectiveness/efficiency of the system being improved overall.

Cross-checking this viewpoint in the literature shows that other studies also recommend increasing cooperation between different government bodies and amongst Member

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<sup>40</sup> With a few exceptions: for example, according to Sørensen (2015), the UK wants to make a greater effort to prevent UK letterbox companies from being used for different types of abuse, and likewise the Netherlands seem to take steps to avoid Dutch letterbox companies from being used for tax speculation.

<sup>41</sup> E.g. Recital 42 of the preamble states that in cases where a service provider is not really established in the Member State in which the company is formed, Member States should investigate the matter to further establish the identity of the natural person or legal person who is responsible for the posting



States as a means of improving cost-effectiveness, e.g. ICF (2014) and Bayliss (2012), which supports the view that such measures would be proportionate and improve cost-effectiveness overall.

#### **6.4. Effectiveness: To what extent have the Regulations contributed to the smooth functioning of the internal market for road transport?**

To what extent have the Regulations contributed to the smooth functioning of the internal market for road transport? Among others, to what extent have the provisions on cabotage helped to integrate the internal market for road transport and facilitate the access of non-resident hauliers to national markets? To what extent have the Regulations contributed to reducing the number of letterbox companies? How do the results compare between different EU Member States and regions (i.e. EU15 and EU12)? How do the results compare to the state of play prior to the adoption of the Regulations? Have the Regulations lead to any unintended negative and/ or positive effects with regards to competition on the road transport market?

##### **6.4.1. Provisions on cabotage**

###### **6.4.1.1. Harmonisation of national cabotage rules**

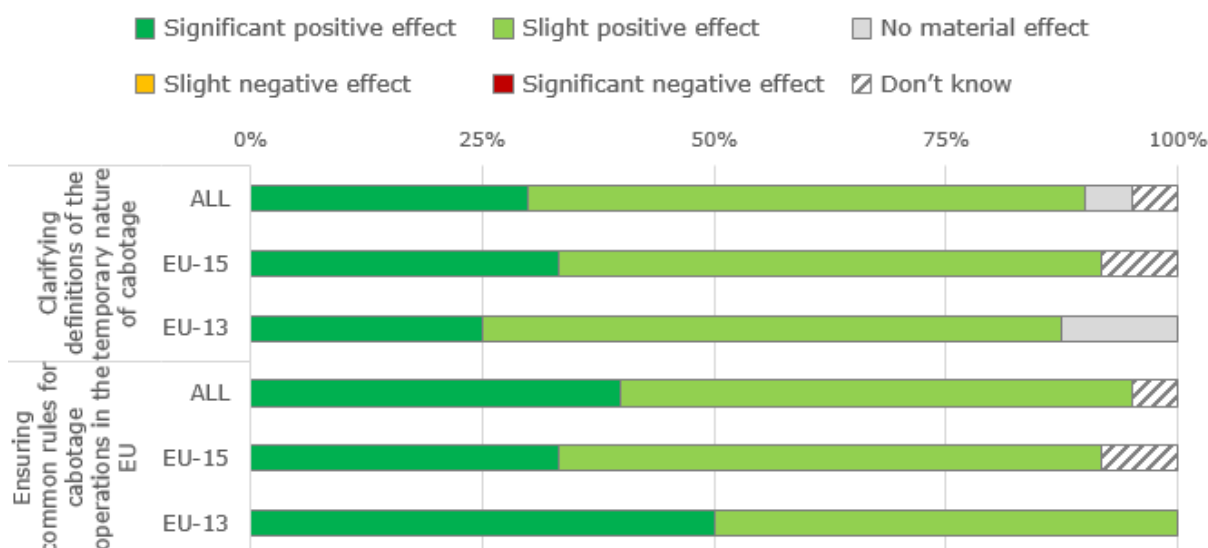
Although the market for cabotage has been increasing (as described in Section 5.2.1), its overall volumes are small compared to total EU road transport. The ability of Member States joining the EU after 2004 to perform cabotage was previously governed by temporary restrictions set at national level through pre-accession treaties. These effectively limited cabotage activities for most EU-13 Member States until 2009, with restrictions for Bulgaria and Romania continuing until 2012 in most cases. Hence the strong growth in cabotage activity in recent years is in part due to the lifting of special transitional restrictions.

Regulation 1072/2009 was implemented to replace a patchwork of national rules on access to the international road haulage market. The revisions were intended to result in clearer rules, which would help to integrate the internal market and facilitate access by non-resident hauliers by ensuring more harmonised conditions of access. That is, Regulation 1072/2009 was intended make the conduct of cabotage and its enforcement easier by reducing fragmentation of the internal market (increasing harmonisation), but it was not intended/expected to increase the overall volumes of cabotage (over and above that being achieved by lifting temporary restrictions as described in the previous paragraph) (European Commission, 2007a).

Council Regulation 3118/93 was the legal basis for cabotage prior to Regulation 1072/2009. It stated that any non-resident hauliers holding a Community authorisation provided for in Council Regulation (EEC) No 881/92 were entitled to operate, on a temporary basis, national road haulage services in another MS, without having a registered office or other establishment in that Member State. However, it had no definition of "a temporary basis". This created uncertainty among operators in the transport sector as to the exact scope of the cabotage operations, and there was a lack of harmonisation in terms of interpretation across Europe. Some Member States did not add any specific provisions to clarify "temporary", others applied additional specifications. For example in 2004, Italy limited cabotage operations to 15 days a month for a maximum of five consecutive days, whereas France restricted cabotage for one vehicle to a limit of not more than 10 consecutive days, nor more than 15 days in any 60 day period (SDG, 2013a).

Regulation 1072/2009 clarified the temporary nature of cabotage as being up to three cabotage operations within a seven-day period starting the day after the unloading of the international transport. These requirements had not been included in the previous rules. The responses from national ministries indicate that the rules are a step in the right direction: National ministries were asked whether they felt the Regulation had clarified the definition of the temporary nature of cabotage, and whether the rules had helped to ensure common rules. Both questions received at least 90% positive responses, with strong support from respondents in both EU-15 and EU-13 countries.

**Figure 6-12: Responses from national ministries to the question: How would you describe the effect of any changes as a result of Regulation 1072/2009, compared to the situation prior to when it entered into force?**



Source: survey of ministries (12 respondents from EU-15 and 8 from EU-13)

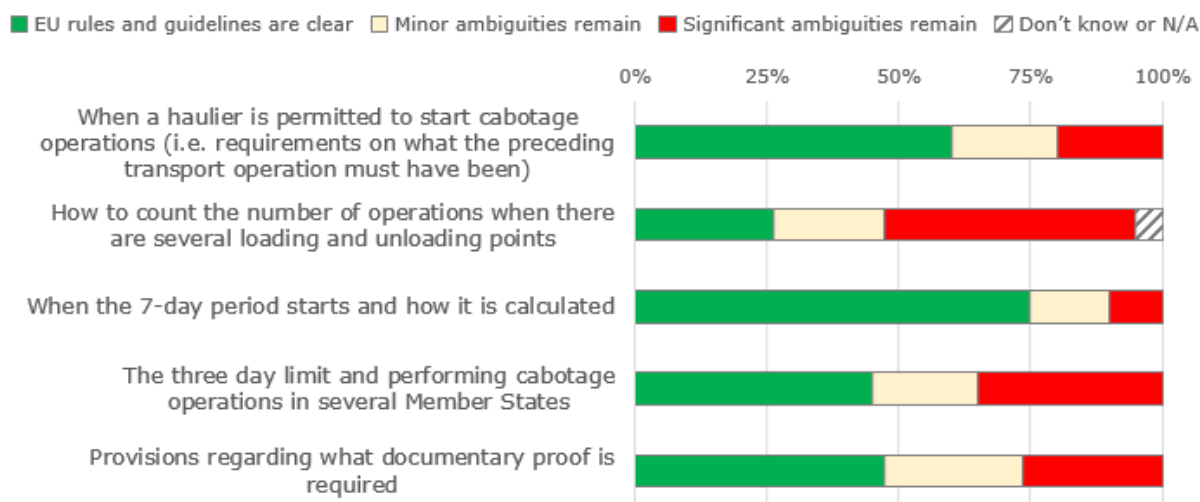
Trade unions in their joint response to the high level survey also agreed that Regulation 1072/2009 had helped to clarify the temporary nature of cabotage and ensure more common rules, but felt the main problem was in the lack of enforcement (as discussed in Evaluation Question 2).

Several industry associations however in their coordinated response to the high level survey highlighted the remaining difficulties concerning the interpretations of the cabotage rules. They considered that there was a lack of clarity around what constitutes a cabotage trip, i.e. how freight with different destinations (multi-drops) should be counted; how to calculate the 7 day period; how to apply the Posting of Workers Directive; and called for improvements to documentation. A summary of variations in interpretation in selected Member States is shown in **Annex A** (Section 9.5.1) and key points are discussed further below.

Moreover, the lack of clarity in the legal provisions of the Regulation is evidenced by the need for the Commission to issue further clarifications soon after the provisions came into force. In 2011, the Commission organised a committee meeting to discuss the main critical points, and subsequently published a "frequently asked questions" note that provided guidelines for interpretation of key areas.

National ministries consulted for this study were also asked specifically about areas in which the guidelines were considered unclear. The responses, shown in Figure 6-13 suggest that there is still confusion over many of the provisions. The provision that stands out in particular as having a high number of respondents identifying "significant ambiguities" is how to count the number of operations when there are several loading and unloading points (multi-drops); however, all of the provisions attracted at least some responses that they were unclear.

**Figure 6-13: Responses to the ministries survey: In your view are the European Commission's guidelines clear in the following areas?**



Source: Survey of Member State ministries (N=18)

When asked to specify the areas that needed further guidance, respondents to the survey identified: multi-drops, i.e. several loading and unloading points, (Poland, Ireland), documentation issues (Poland, France, and Ireland), the 7-day period (Poland); combined transport (Netherlands, Ireland).

As previously mentioned in Evaluation Question 2, 61% of respondents to the enforcers' survey identified a lack of clarity in provisions as a contributing factor to difficulties in enforcement. The French authority identified ambiguities with respect to provisions such as multi-drops, the number of operations and the start of a period of cabotage, the differences in interpretation and the heterogeneity of controls in other Member States. The respondent from the Netherlands highlighted that the determination of the date and the place of entry in the country is also considered a problem, as well as the number of journeys in relation to loading and unloading in the Member State. Respondents from the Netherlands and Ireland also pointed out ambiguity as to whether an operator is permitted to produce documentation to show compliance with cabotage rules after a roadside check.

This chapter will further develop on problems of multi-drops and empty containers, while issues of 7-days period, unclear documentation are discussed under Evaluation Questions 2 (Section 6.2.2) and combined transport is discussed in Evaluation Questions 12 (Section 6.12.4).

The number of operations is counted when there are several loading and unloading points (**multi-drops**) is interpreted differently across Member States. The position from the Commission stated in the clarification document<sup>42</sup> is that "a cabotage operation can involve several loading points, several delivery points or even several loading and delivery points, as the case may be". That is, the Commission considers that Article 8 of Regulation 1072/2009 does not set a maximum number of loading and/or unloading operations within the course of the same cabotage operation.

According to an interview with a Swedish association, the practice of transporting cargo from different clients is extremely common, making these differing requirements confusing. Restricting the maximum number of loading and/or unloading operations in a cabotage operation also restricts the possibility for non-resident hauliers to organise their transport operations. Some countries such as Sweden allow several loading and

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[http://ec.europa.eu/transport/modes/road/haulage/doc/qa\\_the\\_new\\_cabotage\\_regime\\_2011.pdf](http://ec.europa.eu/transport/modes/road/haulage/doc/qa_the_new_cabotage_regime_2011.pdf)

unloading points per operation (which is the same interpretation the European Commission has given to Regulation 1071/2009). Germany takes the view that each loading point or each client counts as one operation (HK Hamburg, 2015). In France, partial loading/unloading is regarded as a cabotage operation (SDG, 2013a). According to the Danish interpretation, cabotage can include several loading or unloading places, but not both - in light of this, the Commission sent a letter of formal notice to the Danish Government because according to the definition laid down by the Commission, a cabotage operation can include several loading as well as unloading places (Parliamentary questions, 2015).

This issue has previously been identified in the literature as well. The AECOM study (2014a) found similar issues when they asked 14 organisations from 13 member states whether a single load with three delivery locations for a single customer within their state would constitute a single cabotage movement, three cabotage movements or something else. In 10 Member States this would constitute one cabotage movement, in France it would constitute three cabotage movements if there are three consignment notes. In Estonia it would depend on the number of consignment notes, whereas the Romanian road haulage association stated that this was not specified by any legal requirement. Therefore, it appears that some in some Member States the number of consignment notes is seen as equivalent to the number of cabotage movements where as in others the number of loading or unloading points is seen as defining the number of cabotage movements. SDG (2013a) also found substantial variation in the interpretation of cabotage provisions.

A further issue of contention is the transport of **empty containers** and empty returns (pallets, flower transport stands or the like). Currently this does not give access to legally perform cabotage operations in Denmark, since they are not considered to be goods for consumption, sale, or manufacture. In the Commission response to a question raised by Danish stakeholders, it is noted that "*the international transport of empty containers and pallets with the only purpose of justifying a subsequent cabotage operation would not be in line with the regulation since the transport operator might not be able to produce clear evidence of the incoming international carriage based on a contract of the sender and the haulier*". (Parliamentary questions, 2012).

By contrast, according to an interview conducted for this study with a Romanian enforcement agency, empty pallets will count as a transport operation in Romania if they are described in the CMR document, otherwise the vehicle will be considered empty. According to the German ministry interviewed for this study, the operation must be an "economic activity"; there is however no threshold/guidelines on how full the truck has to be loaded. A summary of how other Member States interpret the carriage of empty pallets is provided in **Annex A** (Section 9.5.1).

The AECOM (2014a) study found that transport of empty pallets did not count as cabotage in Denmark and the UK. They further report that Transport en Logistiek Vlaanderen (TLV – Belgium) and Transport en Logistiek Nederland (TLN - Netherlands) felt that if the movement was to order then it should count as cabotage, if it was owned by the transport company or as part of a pallet exchange then it should not. This view is shared by AEBTRI of Bulgaria and FNTR of France stated that this situation was interpreted as meaning the inbound international operation had not yet finished so would not count as cabotage but a cabotage load could not be taken until this operation had finished. Sveriges Åkeriföretag (The Swedish Association of Road Transport Companies) felt that they were not sure but could see no reason as to why this wouldn't be treated as a cabotage operation. Respondents from Romania, Germany, Czech Republic and Ireland felt that this did not constitute a cabotage movement.

In terms of the actual outcomes therefore, the situation is certainly improved compared to the patchwork of systems in place prior to the Regulations. Nonetheless, there are still some varying interpretations of the specific provisions among Member States. This situation makes it clear that, although Regulation 1072/2009 is considered broadly among stakeholders to be a step in the right direction, the process of ensuring common

rules is not complete. The differences in interpretations indicate that the Regulation has not fully achieved its operational objectives to introduce more harmonised rules on cabotage, and suggests there is a lack of clarity in the provisions despite the efforts to improve them.

#### **6.4.1.2. Cabotage and imbalances of supply and demand**

According to stakeholder responses to a public consultation carried out by the Commission, seasonal peaks reportedly occur in various sectors, such as agricultural demands for seeds, fertiliser, lime, grain storage etc; Christmas shopping and product-related peaks (European Commission, 2013a). In cases where subcontracting to domestic hauliers is not sufficient or cost-effective, cabotage restrictions may have an impact on the use of foreign hauliers and thereby limit market efficiency. Restrictions may also affect specialised sectors such as oversized transport, where operations may take more than seven days.

This possible impact of seasonable peaks and cabotage restrictions was not strongly reflected in the responses from ministries to the survey for this study. The majority of Member States consulted for this study (13)<sup>43</sup> felt that there were no imbalances of supply and demand created by the cabotage provisions. Most others provided no opinion (Cyprus, Finland, Luxembourg, and Sweden). Ireland and the UK mention specific problems with movement of new cars and vans during the peak registration periods. According to the Irish ministry, this requires additional transporters from other Member States and therefore cabotage restrictions must be temporarily lifted to accommodate this specific operation. The UK ministry reports that national legislation has been amended to accommodate the peak registration periods during March and September, which results in a relaxation of the cabotage rules for non-GB car transporters during the periods each year. According to a DfT report, the European Commission has confirmed that a Member State may selectively relax cabotage rules providing that the relaxation is done in a way that does not discriminate between other Member States (DfT, 2012), and the Commission's own report confirms that they were required to take an accommodating stance (European Commission, 2013a). The ministry from Belgium felt that small countries were disadvantaged because a haulier can easily bypass these limitations by performing a new international transport after the three cabotage operations.

In the event of "*serious disturbance(s) of the national transport market*" that occur due to (or are aggravated by) cabotage, Regulation 1072/2009 permits governments to refer to the Commission with a view to adopting safeguard measures, as per Article 10(1). According to SDG (2013a), stakeholders from local industry groups in the Port of Rotterdam and local governments in the Italian region of Friuli have asked their national governments to apply in order to protect their regional markets, but to date it appears that no Member States have requested an official safeguard procedure.

When asked whether they felt these provisions were still required, Member State responses were split – with nine Member States in favour of keeping them (Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Sweden, Italy) and five in favour of dropping them (Bulgaria, Czech Republic, Ireland [in view of further liberalisation], Lithuania, Poland). Those in favour of keeping the provisions noted that distortions created by cabotage are a highly sensitive matter and that the provisions should be kept in place just in case. Those in favour of dropping the provisions commented that no clear definition on serious disturbance(s) of the national transport market is provided and considered the cabotage provisions were already appropriate.

The responses from ministries outlined above to the effect that in most cases there are no serious imbalances in supply and demand, seem to indicate that this is not considered

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<sup>43</sup> Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Latvia, Lithuania, Poland, Slovakia, Italy.

a major issue. Specialised cases in the UK and Ireland involving seasonal peaks in new vehicle registrations have been dealt with through temporary relaxation of the cabotage rules during these periods.

#### **6.4.1.3. Efficiency of transport operations**

The current rules under Regulation 1072/2009 offer more flexibility than the previous ones adopted in 1993<sup>44</sup>, and this was intended to support the goal to reduce high levels of empty running. Theoretically, removing or reducing restrictions should make it easier for hauliers to combine loads and use return trips for carrying goods rather than running empty. Therefore, one of the objectives of the rules on cabotage was to reduce empty running and allow for improved efficiency/environmental impact of transport operations (see the intervention logic, Figure 2-1).

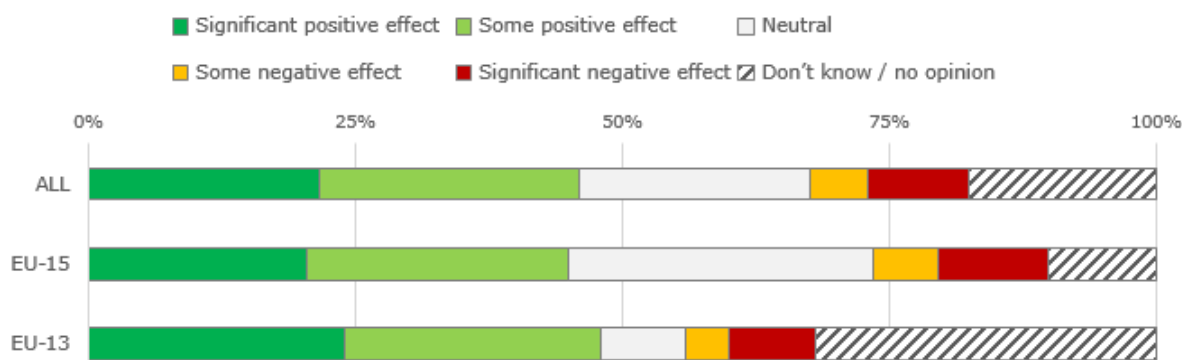
Eurostat data show that the levels of empty running in the Union have indeed reduced substantially after the cabotage restrictions on new Member States were lifted in 2009 and 2012, and segments exposed to competition (cross-trade and bilateral international haulage) have much lower levels of empty running compared to market segments with restrictions (e.g. cabotage) (European Commission, 2014b). In the report on the state of the union road transport market, the Commission reasons that, since cabotage trips usually involve general cargo carried out with curtain-sided trailers or containers, the high level of empty running is not likely to be due to difficulties in finding return loads, but rather due to the restrictions applicable to cabotage (European Commission, 2014b). This reasoning is supported by some stakeholder such as CLECAT, a freight forwarder association. CLECAT agrees that there are still some restrictions on cabotage movements that lead to inefficiencies that may force operators to travel with empty vehicles, or prevent them from loading their vehicles in an optimal way (CLECAT, 2013b). Sternberg et al (2014) recognises an inefficiency under the current regulations is that a haulier first has to complete an international trip before carrying out cabotage. This will often lead to unnecessary empty running, since the haulier is not allowed to pick up goods until the international trip is completed.

Responses from the different stakeholder groups consulted for this study were contradictory. Trade unions responding to the high level survey were of the view that there was no material effect on levels of empty running. Industry associations provided mixed responses with no clear overall agreement on whether the rules had positive or detrimental effects. Responses from ministries showed that the overall impacts are difficult to discern, with 45% of respondents reporting that they did not know if the rules had affected empty running. 20% of ministries participating in the survey felt there had been no material effect, whereas 30% felt there had been some positive effect on reducing empty running.

Undertakings consulted for this study reported an overall positive opinion that the requirements had allowed them to reduce empty running when looked at as a whole (Figure 6-14). Out of 75 respondents, 47% reported a significant or slight positive effect, compared to 15% reporting a slight or significant negative effect. The sample size is not large enough to be able to conclude on impacts at the European level, but when quantitative data was explored more in interviews with undertakings, the responses varied very widely - indicating a diverse range of impacts on businesses. For instance, a Polish haulier estimated that they had been able to reduce empty runs by 30%. A German undertaking felt that they were limited by the restrictions applicable to cabotage operations, and unable to organise their transport operations efficiently, hence empty running had increased.

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<sup>44</sup> Where previously Member States could prevent an undertaking from performing cabotage during one year after one month of cabotage operations.

**Figure 6-14: Responses from undertakings to the question: what impact have the cabotage rules had in terms of allowing you to reduce empty running?**

Source: Survey of undertakings (49 respondents from EU-15 and 25 from EU-13)

Existing literature provided mixed evidence as to whether or not cabotage can increase fill rates. Studies have shown both positive environmental impacts from cabotage (KiM, 2010; Fernández, 2014) and negative ones (Ministerie van Infrastructuur en Milieu, 2013; Sternberg, 2013). The studies indicating a negative impact point out that the potential modal shift or increased transport demand as a result of lower prices could offset any positive environmental impacts. A discussion of the potential impacts of cabotage on prices is discussed further in Evaluation Question 5 (see Section 6.5.2). A field study that tracked truck movements in Denmark based on 8,000 volunteers also did not suggest that cabotage improved fill rates (Sternberg et al, 2014).

Overall, it seems that the relevance of cabotage to targeting environmental goals in a significant way is questionable, but it probably does not have substantial negative impacts either. Responses from trade unions, associations and ministries were mixed, with a large share of respondents from ministries indicating that they did not know – this implies that the effects, if any, are difficult to detect and measure. Responses from undertakings indicate that on balance, they view the rules on cabotage as having a positive effect on fill rates even if the impacts on individual firms are very diverse. However, the literature suggests that even if fill rates are improving, overall emissions may not decrease due to rebound behaviour (due to lower prices – see Evaluation Question 5) or modal shift.

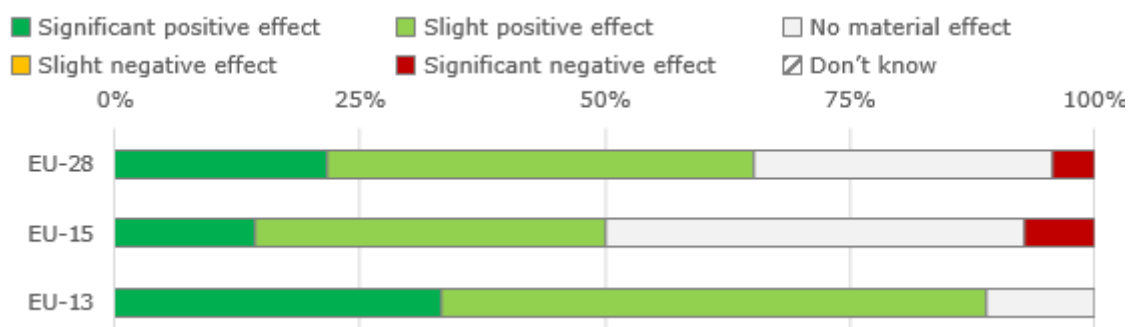
#### **6.4.2. Harmonisation of requirements on access to the profession (Regulation 1071/2009)**

The contributions of the Regulations to the smooth functioning of the internal market can also be described in terms of ensuring *common rules* for access to the profession. The level of harmonisation has important implications for the smooth functioning of the internal market, as without common rules there is a risk that firms located in Member States with lower standards will gain a competitive advantage over firms that are more efficient. Harmonisation of enforcement is also of relevance to the functioning of the internal market (this has already been assessed in Evaluation Question 2).

There is some support from stakeholders on the achievements of the Regulations in terms of ensuring common rules (Figure 6-15). The majority (65%) of Member State ministries consulted for this study reported that they felt the Regulations had resulted in significant or slight positive impacts in this regard, although one-third reported that they felt there was no material impact. Only the respondent from Germany indicated a negative effect although they did not substantiate their answer. The respondents from the EU-13 show an overall more positive view on the effects.



**Figure 6-15: Responses to the question: How would you describe the effect of Regulation 1071/2009 in terms of ensuring common rules\* on access to the profession, compared to the situation prior to when it entered into force?**



\*i.e. ensuring common rules on requirements for establishment / good repute / financial standing / professional competence

Source: Survey of ministries (11 respondents from EU-15, 9 respondents from EU-13 countries)

The following sections provide a detailed review of the comparability of the individual requirements between Member States.

#### **6.4.2.1. Stable and effective establishment**

Prior to the introduction of Regulation 1071/2009, each Member State imposed its own conditions on road undertakings wishing to establish themselves on its territory. The previous levels of variation created a risk that undertakings would choose to locate in Member States where the requirements were lower, but without having a real operational base and office in the country of registration (establishment country). This previously resulted in competitive distortion, difficulties with checking compliance with road safety and social rules and evasion of taxes (European Commission, 2007a).

As indicated in Section 6, minimum requirements for stable and effective establishment have now been introduced under the Regulation. It can therefore be concluded that the Regulation has contributed to ensuring that minimum requirements for stable and effective establishment exist in Member States, as compared to the situation prior to the Regulations. There are some differences in the requirements between countries (e.g. the above-mentioned requirements for a parking space).

The functioning of the internal market may be undermined if letterbox companies (i.e. those without stable and effective establishment) are used to either avoid paying taxes in the Member State where they are due, or if they are used to avoid legislation in a Member State. The extent to which the Regulations have contributed to the reduction of letterbox companies in practice was also assessed in Evaluation Question 1, where it was concluded that there was likely to have been some positive effects, but at the same time there are some letterbox companies that remain in existence. The problems that led to the continued existence of letterbox companies were identified as being linked to the different application of the rules in practice, with the consequence that letterbox companies are more difficult to detect and are inconsistently controlled (see Evaluation Questions 1 and 2).

#### **6.4.2.2. Financial standing**

Regulation 1071/2009 sets minimum requirements for operators to demonstrate that they have a sufficient level of capital and reserves at their disposal to support their enterprise (€9,000 for the first vehicle and €5,000 for each subsequent vehicle). The main changes to national rules that resulted from the Regulation appear to have involved relatively small adjustments to the minimum capital and reserve requirements per vehicle (e.g. in Finland, prior to Regulation 1071/2009, requirement for financial standing was €10,000 for every truck and €4,000 for every additional vehicle; in Italy, €50,000 was previously required for the first vehicle and €5,000 for each additional

vehicle. Both countries now have requirements in line with the thresholds in the Regulation).

The previous Directive set the same financial thresholds as the Regulation; however at the time there was a lack of clarity as to what these amounts were intended to cover (European Commission, 2007a). This had previously led to disparities where an undertaking deemed to satisfy the minimum requirement of financial standing in one Member State would not satisfy it in another, even though they were authorised to operate on the same market.

The introduction of the possibility to prove financial standing by means of a bank guarantee was intended to give the assurance that financial standing is permanently met, avoid regular reporting and give greater security for creditors (European Commission, 2007a). National ministries are permitted to agree or require that an undertaking demonstrate its financial standing by means of a certificate such as a bank guarantee or an insurance, instead of certified accounts. Certified accounts and bank guarantees are accepted in most Member States with few exceptions (respectively Luxembourg<sup>45</sup> and Lithuania). The use of insurance is permitted in fewer countries, for example including Austria, Germany, Bulgaria, Czech Republic, Denmark, Estonia, Sweden and Italy (see Annex A, Section 9.5.3, for further details).

The effectiveness of the harmonisation of the requirement was assessed in the course of the stakeholders' consultations. The continuing lack of harmonisation was raised as a concern by industry associations in their coordinated response to the high level survey although the specific comments received related mainly to issues of enforcement.

Despite the efforts to improve the interpretation, a number of issues still seem to be unclear according to national ministries. When asked about any provisions that could lead to difficulties or inconsistencies in interpretation, a range of issues were identified by ministry respondents as follows:

- The following terms used in the Regulation were considered unclear:
  - What exactly is meant by professional insurance (Austria);
  - What should be understood by the notion capital and reserves (Belgium, Finland, Germany);
  - Who could be the mentioned duly accredited person having a right to certify the annual accounts of transport undertaking (Estonia);
  - With regard to the bank guarantee, it is not clear who is to be declared on the guarantee (Germany, Italy, Slovakia);
  - What liability needs to be covered by insurance (Latvia, Slovakia).
- Article 13.1(c)<sup>46</sup> needs to be clarified, and the derogation in Article 7.2 (i.e. permitting the use of bank guarantees, liability insurance etc) is unclear. (Ireland).
- It is undefined how a newly established enterprise has to prove its financial standing (Lithuania, Germany).
- Italy also reports that some of the difficulty is due to the divergent legal concepts of a guarantee laid down in national law, and a lack of corporate insurance policies at early stages (European Commission, 2014a).

The diverse responses above suggest that many terms used in the Regulation cause problems in interpretation for at least a few Member States. Since most of the terms were only mentioned by one or two respondents, this suggests the problems may arise

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<sup>45</sup> The possibility of using certified annual accounts is currently being evaluated in Luxembourg

<sup>46</sup> A time limit not exceeding 6 months where the requirement of financial standing is not satisfied

specifically with regard to the interaction with national laws/business practices/translation. For example, the Finnish respondent explained that the term "capital and reserves" and its true meaning is not translated very well in the Finnish translation of Regulation 1071/2009. This ambiguity has led to many inquiries by the auditors on what they should include in the "capital" of an undertaking. Finland interprets this to mean company's own capital, which is contributed by the owner or entrepreneur of a business rather than the borrowed capital, which must be paid back (usually with interest). The German authorities report that the requirements of the Regulation has not been defined any more explicitly in the German law and is hence interpreted differently across the different enforcement authorities leading to different practices across the control authorities. They explained that the previous version of the German law explicitly stated which types of assets and reserves were accepted, which made the assessment of financial standing easier.

The consequence of these differing interpretations is that the requirement of financial standing is not strictly harmonised across the EU. As discussed previously, the level of harmonisation has important implications for the smooth functioning of the internal market, as without common requirements there is a risk that firms located in Member States with lower standards will gain a competitive advantage. Areas that are considered to be highly uncertain may also lead to additional enforcement costs for authorities. When asked about possible actions to address these difficulties or inconsistencies, ministries suggested the following:

- Provide examples for insurances (Austria);
- Clarify what is meant by capital and reserves (Belgium, Finland);
- Explanation of liability risks which should be covered by insurance to comply with financial standing requirements (Latvia);
- Amendments to the Regulation (Ireland);
- Guidance notes (Ireland);
- Amend Article 7 regarding starting statements for new enterprises or interim statements if financial standing was changed (i.e. increased amounts of capital and reserves) (Latvia).

This indicates a wide support among ministries for more guidance and clarifications, with fewer respondents calling for amendments to the Regulation. Specific recommendations are outlined in the summary to this section.

#### **6.4.2.3. Good repute**

Most Member States confirmed that there were no additional requirements for good repute above those in the Regulations. Variations from the core requirements of the Regulation (as permitted) were around the inclusion of offenses against national legislation (Estonia, UK, Italy and Sweden). Member State must implement their own system of penalties and also a system to determine whether loss of good repute would constitute a disproportionate response – the variation across Member States were already assessed in Evaluation Question 2 (see Section 6.2).

Regulation 1071/2009 provides that Member States must take into account any convictions or penalties for a serious infringement when assessing good repute. In practice, Member States vary in whether they treat administrative fines, arrangements out of court and on-the-spot payments as "penalties". For example, Bulgaria, Croatia, Cyprus, Luxembourg and Poland do not consider any of these as penalties. Administrative fines are considered in the assessment of good repute in Austria, Sweden, Lithuania, Belgium, Estonia, Germany and Latvia; Arrangements out of court are considered in Denmark, Germany and Estonia; On-the-spot payments are considered in France, Belgium, Finland and Germany. Full details are given in **Annex A** (see Section 9.5.5).

The Belgian ministry explained that, since the Regulation mentions both convictions and penalties, they interpret it such as not only convictions, but also every payment that drops the criminal prosecution (such as on the spot fines and administrative fines) must be taken into account. However, they recognise that some Member States have chosen to include convictions only. The respondent from Belgium is of the view that this important part of the condition of good repute should be the same in all Member States. One industry association commented that companies may try to shift to Member States with a lenient interpretation of penalties, but that *"so far this problem has not been very visible, as a lot of MS are not yet connected to ERRU"*.

Article 15 of Regulation 1071/2009 calls for Member States to take steps to ensure that undertakings have the possibility of appealing against the loss of good repute. Indications from enforcement authorities are that appeals may take place in court (e.g. Denmark, Netherlands) or with the enforcers (Poland, Romania). Full details are given in **Annex A** (see Section 9.5.6).

Procedures for rehabilitation after a loss of good repute are not prescribed in the Regulation, but Member States are required to specify the measures applicable in the event of the suspension of an authorisation or a declaration of unfitness (Article 15). Some Member States do not have specific procedures (e.g. Ireland, Latvia, and Bulgaria). Several Member States may require a person to follow specific training, pass an examination, or otherwise satisfy the competent authorities that they are rehabilitated (UK, Sweden, Denmark). The period of time that must elapse before good repute is reinstated also varies greatly between Member States – for example, from 6 months in Spain to 10 years in Luxembourg. Full details are given in **Annex A** (see Section 9.5.6).

The above findings show that the requirements of good repute vary between Member States, with the consequence of distortions of competition and a reduction in the smooth functioning of the internal market. Firstly, there are differences in interpretation of which "penalties" should be considered in the assessment of good repute, with Member States taking varying approaches in terms of whether or not administrative fines, arrangements out of court and on-the-spot payments are counted. These differences have the consequence that the assessment of good repute is not harmonised – penalties in one Member State may lead to loss of good repute but the same penalties would not lead to loss of good repute in another Member State. Secondly, procedures for rehabilitation vary, and in particular the period of time that must elapse before good repute is reinstated varies from 6 months in Spain to 10 years in Luxembourg. This again means that there is not a level playing field.

#### **6.4.2.4. Professional competence**

Regulation 1071/2009 sets out the minimum areas in which operators must demonstrate their knowledge via a written examination, including those with professional experience and those holding a diploma<sup>47</sup>. The minimum standards ensure that certification can be mutually recognised between Member States. Previous disparities had contributed to distortion of competition and potential damage to the image of the sector in the case of low quality qualifications (European Commission, 2007a).

There is still some degree of variance observed in the requirements for an individual to gain professional competence, including minor differences in the length and type of examination required of candidates wishing to qualify as transport managers. Voluntary

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<sup>47</sup> These areas include: civil law; commercial law; social law; fiscal law; business and financial management; access to the market; technical standards; and road safety, where road haulage is relevant to each area.

conditions that are listed in the Regulation (EC) No 1071/2009 become mandatory if these are accepted by Member State:

- Organisation of oral exam to supplement the written exam (Slovakia, Hungary, Austria, Belgium, Germany (optional<sup>48</sup>));
- Organisation of training for applicants prior to the exam (Hungary, Denmark, Ireland);
- Promotion of periodic training at 10-year intervals (no respondents to the survey indicated this option was taken up);
- Retraining in order to update knowledge of persons who possess a certificate of professional competence, but who have not managed road undertaking in the last 5 years regarding the current developments of the legislation.

Hence, due to these voluntary requirements, there are some variations between the requirements in different Member States. Some examples are elaborated in more detail in **Annex A** (see Section 9.5.1).

The main issue regarding these different practices is that it may lead to variations in the difficulty of the exam, and hence could lead to diverging standards. This was raised as a concern by the ministries from Spain and France. The Swedish ministry commented that the possibilities of exemptions that could be granted for prior experience or qualifications is not clear and might lead to different interpretations in different countries. The French ministry expressed concerns over the comparability of the level of professional qualification across the EU. The Belgian ministry noted a limitation in that the passing standards in the regulation are related to all subjects together and do not seem to allow Member States to take into account serious deficiencies on individual subjects. Other respondents did not raise any specific issues.

The pass rate can be used as a proxy for the difficulty of the exam, although it is not a perfect indicator due to, e.g. differences in the underlying capabilities of the candidates. The pass rate prior to the Regulation varied from 10% in France to 100% in Cyprus in 2005. Compared to this, it appears that the pass rate in recent years varies less widely between Member States, from 20-25% in some regions in Spain to 96% in Estonia, which may suggest a more even level of difficulty compared to the previous situation but is not a conclusive indicator. There is no strong evidence of any systematic differences between EU-15 and EU-13 countries: the average pass rate for the EU-15 countries is 59% (57% weighted average<sup>49</sup>) and for EU-13 is 63% (54% weighted average). Full details are given in **Annex A** (Section 9.5.1).

Interviews with stakeholders indicate that the level of prior training undertakings by candidates is an important factor in determining the overall pass rate: For example, national associations in Spain offer courses to prepare candidates for the exam which they claim increases the success rate from 20-25% to 50% (estimated during an interview conducted for this study). The variation in pass rates within Spain was examined in more detail during interviews. The ministry replied that although each region prepares its exam individually the basis and the structure is common for all of them and there are samples that are to be followed published on their website. Estonia, Ireland and Denmark have preparatory courses and the pass rate is relatively high in these countries (respectively 96%, 85% and 87%), but Croatia does not have a preparatory course and also has a high pass rates (91%). Without access to any evidence on the underlying capabilities of the applicants, it is not possible to evaluate

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<sup>48</sup> More specifically, there are two two-hour written exams (contributing 40% and 35% to the total grade), and one oral exam of 30 minutes (contributing the remaining 25% to the grade). A minimum of 60% over all examination parts has to be achieved, while each part has to be passed with at least 50%. In case the written examinations are passed with over 60%, the oral examination is no longer necessary

<sup>49</sup> Excluding Spain and Finland, for which there was insufficient information

whether the differences seen between the countries are due to differences in the difficulty of the examinations.

In considering whether “diploma tourism” due to variations in the difficulty of the exams is an issue, it could be expected that if such practices were occurring systematically, a much larger number of applicants would be found in Member States that had a high pass rate (i.e. as a proxy for “easier” exams). However, the data does not reveal any trends that suggest the number of applicants relative to the size of the transport market is disproportionately higher in countries with a higher pass rate ( $R^2 = 0.0235$ , see **Annex A** Section 9.5.4).

A possible explanation is that even where differences in the difficulty of examinations prevail, language barriers are sufficient to prevent applicants from transferring. As such, even where differences may exist, the impact is limited. More qualitative information on the possible effects was sought during interviews with national authorities, German authorities report that despite the requirement that applicants shall sit the examination in the Member State in which they have their normal residence or the Member State in which they work, it does occur that candidates travel to another Member State (i.e. their home country) to sit the exam in order to avoid potential German language difficulties. On the other hand, the Danish authorities commented that there is not believed to be any diploma tourism since the training in Denmark is done in Danish and it is furthermore obligatory for being able to sit the exam afterwards. The Spanish ministry thought that some individuals could go to another Member State in order to obtain the qualification since exams there are easier, and/or they may qualify for exemptions based on a variety of qualifications. The second effect mentioned by the Spanish ministry (of going to other Member States based on exemptions) is examined in further detail below.

Member States are permitted to grant certain exemptions if they so choose, as follows:

- Exemption from exam for holders of certain higher education qualifications or technical education qualifications issued in that Member State (Austria, Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Luxembourg, Sweden and the UK).
- Exemption from the examinations of persons who provide proof that they have continuously managed a road undertaking in one or more Member States for the period of 10 years before 4 December 2009 (Estonia, France, Germany, Luxembourg, Slovakia, Sweden and the UK).

Several Member States report that they do not give any exemptions from the examination for any reason (Cyprus, Czech Republic, Denmark, Ireland, Latvia and Lithuania). Further details on the conditions for which exemptions are granted are provided in each Member State are provided in **Annex A** (see Section 9.5.4). Table 6-7 shows the number of exemptions granted from examinations for the above reasons in selected Member States for which data could be obtained.

**Table 6-7: Number of exemptions granted in a selection of Member States**

	Number of exemptions granted (year 2013)
<b>Finland</b>	Approx. 800 in total (6% of total managers)
<b>France</b>	7,166 (2012-2014) (78% of total managers)
<b>Luxembourg</b>	Less than 10 since 2010
<b>Netherlands</b>	20 (0.8%)
<b>Sweden</b>	Very few
<b>UK</b>	13,000 exemptions in total (out of an unknown total number of transport managers)
<b>Poland</b>	232 in total

	Number of exemptions granted (year 2013)
<b>Bulgaria</b>	188 (0.01% of total managers)
<b>Estonia</b>	Approx. 30 in total

Source: Stakeholder consultation – survey of national transport ministries and enforcement authorities

Of the Member States that do grant exemptions, for the most part the total number of exemptions granted is relatively small – hence granted exemptions cannot be considered a significant cause of any market distortions and there do not appear to be significant consequences for the internal market. Only in the UK and France do the number of exemptions reach the thousands. In France, the requirements have not changed compared to those previously in place before Regulation 1071/2009 was introduced - the examinations are considered very difficult, and most operators opt to circumvent them by receiving derogations on the basis of prior qualifications (NEA et al., 2005). The French enforcement authority commented that there are still a significant number of persons possessing certificates that were gained on the basis of exemptions, but recognised that these exemptions have been phased out. In the UK, the reason for the high figure is not explained by the respondent. However, since 2013 was the last year in which grandfather rights for transport manager could be sought this might explain the anomalously high figure.

Moreover, there are not any clear relationships between the examination pass rate and the number of exemptions granted, suggesting that applicants in countries with difficult exams do not typically seek to gain competence using the exemptions instead (with the possible exception of France, discussed above).

In summary, the requirements for gaining professional competence still vary across Member States as permitted by the Regulation in terms of the type of examinations (e.g. oral examinations are used in Slovakia, Hungary, Austria, Belgium and optionally in Germany). This has the consequence that the smooth functioning of the internal market is reduced – as harmonisation is important to ensure that firms operate on a level playing field and to prevent firms located in Member States with lower standards gaining a competitive advantage over firms in Member States with higher standards. Concerns raised relate to possible differences this may create in terms of the difficulty of the exams and the degree of professional competence that is required to pass them. The pass rate does indeed vary widely between Member States, from 20-25% in Spain to 96% in Estonia, although it is not clear to what extent this variation is due to other factors. For example, information provided by stakeholders indicates that the level of prior training is an important factor in determining pass rates. Obtaining consistent data across Member States proved difficult, but on the basis of the available data there are no clear indications that Member States with higher pass marks are attracting disproportionately high number of applicants (which would be an indicator of diploma tourism), nor that gaining qualifications through exemptions is being used on a wide scale in most Member States.

### **6.4.3. Summary and conclusions for Evaluation Question 4**

#### **6.4.3.1. Conclusions**

The changes enacted by Regulation 1072/2009 are widely considered to be an improvement on the previous situation by national ministries in terms of clarifying the definition of the temporary nature of cabotage. Previously, no formal definition of the temporary nature existed, whereas Regulation 1072/2009 clarified the temporary nature of cabotage as being up to three cabotage operations within a seven-day period starting the day after the unloading of the international transport. In this respect, the revisions can be considered to have led to clearer rules that ensure more harmonised conditions of access to the international road haulage market.

At the same time, it is clear that there is still more work needed to ensure common rules with respect to cabotage. Despite the changes introduced by Regulation 1072/2009 and additional guidance released by the Commission, there are still different interpretations of specific issues, which impedes the smooth functioning of the internal market by creating fragmentation - such as how to count the number of operations when there are several loading and unloading points. This indicates that there is a lack of clarity in the provisions of the Regulation, a view that is supported by responses from different stakeholder groups (associations, ministries and enforcers). The most problematic area appears to be how to count multi-drops, but several other areas have been mentioned including the calculation of the seven day period, what constitutes a cabotage trip, transport of empty pallets, interactions with other legislation and the need for improved documentation.

Regarding any potential market disruption due to imbalances in supply and demand created by the cabotage rules, in practice this does not appear to have been of great concern to Member States, although some specific cases have been reported that were not escalated. In this sense, therefore, the Regulations have not caused disruptions to the internal market by generating imbalances. Comments received indicated that the potential for safeguard procedures is a sensitive matter, with concerns over detrimental effects on the one hand, versus concerns over protectionist measures on the other.

In terms of whether the provisions on cabotage have contributed to reductions in empty running, there is mixed evidence that points to both increases and decreases in fill rates (from survey responses and literature). Overall it seems unlikely that the provisions have had any significant positive or negative impacts, but the effects on individual carriers varies.

Regulation 1071/2009 has undoubtedly improved the level of harmonisation across the Member States for requirements on stable and effective establishment as compared to the situation prior to the Regulations. Previously, some Member States had only basic registration criteria and whereas now the minimum requirements apply and differences in national legislation are relatively small (e.g. variations in requirements or not for a parking space). Nevertheless, there are variations in enforcement practices, which are also hampered by a perceived lack of clarity in the provisions, and which likely lead to different application of the rules in practice (see Evaluation Question 1 and 2). This has the consequence that letterbox companies are more difficult to detect and are inconsistently controlled.

With respect to other requirements, **harmonisation contributes to the functioning of the internal market by ensuring common rules and mitigating competitive distortion.** On the requirements of financial standing, there is a high degree of harmonisation in terms of the minimum thresholds required by Member States. However, most terms used in the Regulation cause (e.g. capital and reserves, insurance, accredited persons) are considered unclear by at least one ministry, suggesting that problems may arise specifically with regard to the interaction with national laws/business practices/translation. The use of bank guarantees has been widely introduced with few exceptions (e.g. Lithuania) and certified accounts are also permitted in most Member States (excluding Luxembourg). The use of insurance is permitted in fewer countries (8 out of 20 Member States participating in the survey of ministries).

Concerning the requirement for good repute, the minimum requirements have been introduced with only minor variations around the inclusion of additional offenses against national legislation in the assessment of good repute (Estonia, UK, Italy and Sweden). Member States vary in whether they treat administrative fines, arrangements out of court and on-the-spot payments as "penalties". For example, Bulgaria, Croatia, Cyprus, Luxembourg and Poland do not consider any of these as penalties. Administrative fines are considered in Austria, Sweden, Lithuania, Belgium, Estonia, Germany and Latvia; Arrangements out of court are considered in Denmark, Germany and Estonia; On-the-spot payments are considered in France, Belgium, Finland and Germany. These differences in interpretation have the consequence that the assessment of good repute



is not harmonised – penalties in one Member State may lead to loss of good repute but the same penalties would not lead to loss of good repute in another Member State. In turn, this has implications for the smooth functioning of the internal market by creating competitive distortions.

Although no Member States reported that they did not have an appeals procedure against loss of good repute, the process differs – for example, appeals may take place in court (e.g. Denmark, Netherlands) or be lodged with the enforcers (Poland, Romania). There are also differences reported in the procedures for rehabilitation. Some Member States do not have specific procedures (e.g. Ireland, Latvia, and Bulgaria). The period of time that must elapse before reinstatement also varies widely from 6 months (Spain) to 10 years (Luxembourg).

The requirements for gaining professional competence still vary across Member States as permitted by the Regulation in terms of the type of examinations (e.g. oral examinations are used in Slovakia, Hungary, Austria, Belgium and optionally in Germany). Objections raised in this respect relate to possible differences this may create in terms of the difficulty of the exams and the degree of professional competence that is required to pass them. Differences in the standards of professional competence create competitive distortions and consequently impede the smooth functioning of the internal market. The pass rate does indeed vary widely between Member States, from 20-25% in Spain to 96% in Estonia, although it is not clear to what extent this variation is due to other factors. For example, information provided by stakeholders indicates that the level of prior training is an important factor in determining pass rates.

A related concern is that “diploma tourism” could occur, resulting in competitive distortion. The data does not reveal any trends that suggest that countries with higher pass rates attract a higher number of applicants relative to their transport market size, the number of enterprises or vehicles. A possible explanation is that language barriers prevent applicants from transferring. Finally, the total number of exemptions granted is usually relatively small in Member States where this is allowed – hence for the most part, this does not appear to be a significant cause of market distortions.

#### **6.4.3.2. Recommendations**

In light of the continuing difficulties in achieving harmonised interpretations of the cabotage rules (despite the additional guidance released by the Commission), this suggests that a clarification of the provisions in the Regulations will be the only effective solution. One of the issues with the use of guidelines is that they are not legally binding, and hence cannot ensure a uniform interpretation – as demonstrated by the persistent differences despite the guidance available. A clarification of the Regulation also appears to have broad support among stakeholders – for example, the French respondent to the enforcers survey notes that “*Regulatory clarification or interpretation is needed at EU level*” to solve issues of heterogeneity in interpretations.

To evaluate whether the benefits would be proportionate for this measure, the potential costs need to be assessed. Changing the provisions in the Regulations may lead to some one-off implementation and/or ongoing costs for authorities due to the need to adapt enforcement practices to the new rules. The recommendation of the study team is to clarify existing provisions, rather than introducing large changes, and hence should not involve any substantial changes to activities. We could not identify any specific cost information to assess the impact of clarifications, but parallels could be drawn from previous experience. That is, the new rules introduced by Regulation 1072/2009 as compared to the previous rules represented changes that are more major compared to the clarifications proposed in this recommendation. The responses to the survey of enforcement authorities indicate that the costs that arose from the previous changes are likely to have been small, supporting the view that further clarifications will not incur significant additional costs. To elaborate further:

- **Implementation (one-off) costs:** Although all respondents to the enforcers’ survey were asked to estimate the implementation costs of Regulation

1072/2009, Only Slovenia estimated a modest increase of €10,000. The respondent from Bulgaria noted “a slight increase in the administrative costs for our control authorities.” The respondent from the UK thought there had been no implementation costs, and this is further supported by an assessment conducted by the DfT, which did not identify costs associated with the clarification of the rules in Regulation 1072/2009 (DfT, 2010).

- **Ongoing annual costs:** All respondents to the enforcers’ survey except one reported that there had either been no material impact or they did not know. Only the respondent from the Netherlands felt that there had been a need for five additional staff (due to political and public pressure).

Overall, this indicates that both the implementation and ongoing costs arising from clarifying the provisions is likely to be small.

By contrast, the clarifications could lead to cost reductions for authorities. Looking back at what has already been achieved due to the clarification of the rules achieved so far compared to the previous regime, 21% of enforcement authorities consulted felt that checks were more efficient, and the remainder reported that there had either been no material impact or they did not know – whereas no authorities reported increases in costs.

Overall, introducing clarifications to the cabotage provisions seems to entail limited additional costs since most of the activities should already be carried out, and this assumption seems to be supported by the assessment of marginal costs arising from the previous change when Regulation 1072/2009 was first introduced. The benefits on the other hand would accrue to enforcement authorities due to the ability to carry out more efficient checks. This would enable the achievement of the operational objective to introduce clearer, more harmonised rules on cabotage.

Although the provision on safeguard procedures has not been used to date, the study team recommend that it be kept in place in case of truly exceptional circumstances. The lack of application by any Member State so far shows that it has not been used as a protectionist tool to restrict market access, which would be the major concern about retaining the measure.

To ensure better harmonisation of the requirements of Regulation 1071/2009, greater clarity is needed around several terms used in the Regulations:

- **Financial standing:**
  - Capital and reserves – for example, what specific assets should be account when assessing the level of capital.
  - Professional liability insurance – there is no clear definition of the liability risks to be covered by insurance.
  - Who exactly qualifies as the “duly accredited person” having a right to certify the annual accounts of transport undertakings.
- **Good repute:** whether administrative fines, arrangements out of court and on-the-spot payments should be counted as “penalties”.
- **Professional competence:** guidance on the subject areas to be covered is already provided in the Regulation, but comments received from stakeholders indicate some concerns over diverging levels of difficulty. One example from Spain could be used as a possible way forwards for ensuring greater harmonisation at EU level – the regions implement their own examinations, but guidance and a sample paper are provided on the ministry’s website.

There is a wide support among ministries for more guidance and clarifications, and this is considered by the consultants to be the preferred first approach as opposed to amending the Regulation.

The study team recommend that the precise details to be included in the guidance should be a matter for a more focussed consultation with stakeholders, such that the final interpretations are in keeping with the spirit of the Regulation. In the context of this study, the consultants can point to different examples of current practice and recommend that the experience of Member States is drawn on. For example, in order to determine what can be considered as capital and reserves, there are several approaches that can be drawn from current practice in Member States. Finland interprets "capital" to mean the company's own capital, which is contributed by the owner or entrepreneur of a business rather than the borrowed capital, which must be paid back (usually with interest) - in accordance with the first subparagraph in Fourth Council Directive 78/660 EEC of July 1978. In the UK, when deciding whether or not it is appropriate to take a particular asset into account, the courts consider it is important to bear in mind that the assets must be available, or can be made available<sup>50</sup>, to pay bills as and when they fall due (Traffic Commissioner for Great Britain, 2015).

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<sup>50</sup> The Guidance Notes issued by the Senior Traffic Commissioner indicate that one month, or 30 days, is an appropriate cut-off point.

### **6.5. Effectiveness: To what extent has the legislation helped to increase the level of compliance with EU road transport social legislation?**

To what extent has the legislation helped to increase the level of compliance with EU road transport social legislation? How do the results compare to the state of play prior to the adoption of the Regulations? How do the results compare between different EU Member States and regions (i.e. EU15 and EU12)? Have the Regulations led to any unintended negative and/ or positive social effects?

The purpose of this evaluation question is to gain an understanding of whether Regulations 1071/2009 and 1072/2009 have contributed to increase the level of compliance to the EU social legislation, namely with **Regulation 561/2006** on driving times, breaks and rest periods and **Directive 2002/15/EC** on working time of “mobile” workers.

Regulation 561/2006 lays down rules on driving times, breaks and rest periods for drivers. Directive 2002/15/EC supplements the provisions of Regulation 561/2006 by setting a limit on mobile workers’ working time, i.e. time spent working whether or not this involves driving. The road social legislation aims to improve road safety levels by reducing driver fatigue, and to ensure that road transport workers are afforded an adequate level of social protection, including regard for their health and safety.

As a general point, Table 6-8 shows the frequency of offences against Regulation 561/2006 (driving time rules) from 2007 to 2012. It demonstrates a general improvement in terms of the infringement rates falling, which occurred after the introduction of Regulation 1071/2009 and 1072/2009. However, this trend was already occurring over previous years and there are no data to provide evidence of a direct contribution of the Regulations to this reduction. Further analysis of the possible contribution of the Regulations is provided in this section.

**Table 6-8: Frequency of offences detected from 2007 to 2012**

Year	Number of offences detected	Number of working days checked	Detection rate
2007-2008	3,244,997	84,041,058	3.9%
2009-2010	4,500,000	145,858,300	3.1%
2011-2012	3,861,964	158,648,377	2.4%

Source: Two-year reports concerning the implementation of Regulation 561/2006: SEC(2011) 52 final, SWD(2012) 270 final, SWD(2014) 342 final.

#### **6.5.1. Requirements of Regulation 1071/2009 and interactions with social legislation**

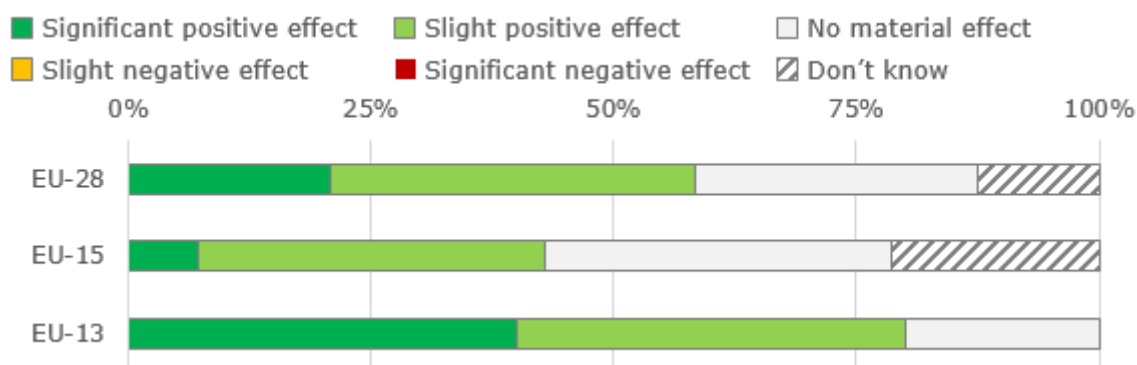
Regulation 1071/2009 may have improved the effectiveness of controls at the roadside and/or at the premises by ensuring that hauliers that are not complying with the social legislation can be detected. Quantitative evidence of this would need to be in the form of *identifying the additional cases of non-compliance* with the social legislation that were found thanks to the requirements of Regulation 1071/2009. All enforcement authorities were asked to estimate this figure: most indicated that they had no data and could not make an estimate. Three responses were received that indicated a positive effect (Poland, Luxembourg and Romania): in Poland, the authority estimated an additional 5% of infringements of road social legislation were detected. The Romanian authorities indicated that 58 additional infringements were found (or 0.002% of the total). The respondent from Luxembourg indicated a positive effect but could not provide quantitative data. Conversely, the UK authorities reported that there was little impact on detection rates because the vast majority of requirements were already in place.

An alternative indicator is whether the *levels of compliance* with road social legislation are considered to have improved due to the Regulation (that is, whether there are fewer infringements overall, as opposed to more infringements detected). Since there are no empirical data suggesting a clear connection between the Regulation and the level of compliance with social rules, more qualitative responses from stakeholders were used as a proxy.

Stakeholders from different groups were asked about whether they felt Regulation 1071/2009 has improved compliance with the social legislation. Respondents to the high level survey from the groups of trade unions and industry associations largely felt that there had been no material impact of Regulation 1071/2009 on improving compliance with the road social legislation. Comments received to the survey indicate they feel the problems are due to poor enforcement and the existence of letterbox companies.

From the survey of ministries, 21% indicated a significant positive effect, and 38% indicated a slight positive effect compared to the situation prior to the Regulation. The remaining respondents indicated no material impact or that they did not know, but no respondents felt that there had been any negative impacts. As shown in Figure 6-16, respondents from the EU-13 indicate a stronger positive effect overall. However, none of the respondents were able to provide quantitative data to support their views.

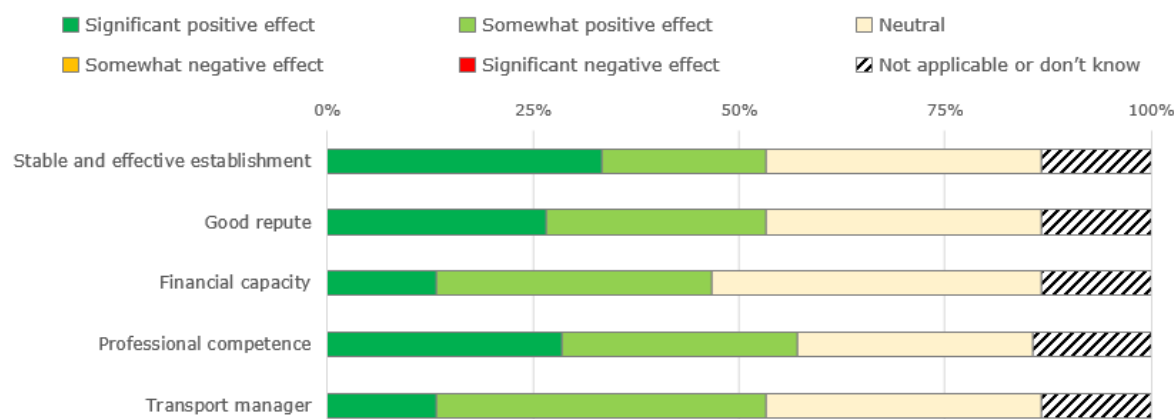
**Figure 6-16: Responses from ministries to the question: What has the impact of Regulation 1071/2009 been on compliance with the road social legislation?**



Source: Survey of ministries (N=15; 9 respondents from EU-15 and five from EU-13)

Enforcement authorities largely view the impacts of the Regulation as positive, or at worst neutral, and there were no respondents reporting that there were negative impacts (see Figure 6-17). The requirements of stable and effective establishment, professional competence, good repute, administrative cooperation and transport managers all received positive indications from more than half of respondents.

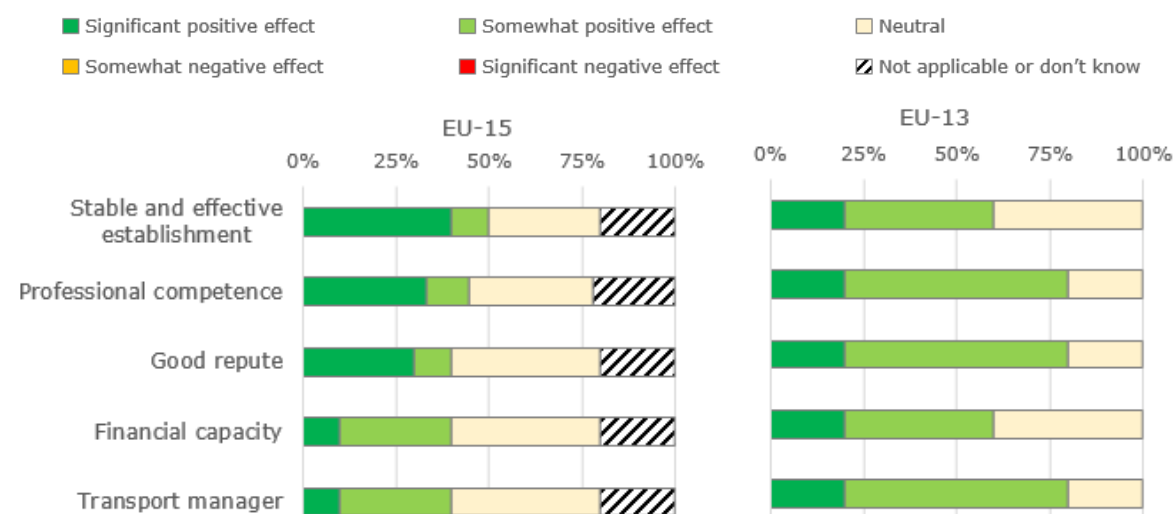
**Figure 6-17: Responses from enforcement authorities to the question: To what extent do you think the following measures had a positive/negative effect on compliance with road transport social legislation**



Source: enforcement authorities survey (N=15)

Systematic differences between EU-15 and EU-13 countries are hard to identify, since the number of respondents from EU-13 countries was only five, but it appears that overall the EU-13 respondents rated all requirements more positively in terms of the impacts on social rules.

**Figure 6-18: Responses from enforcement authorities to the question: To what extent do you think the following measures had a positive/negative effect on compliance with road transport social legislation**



Source: enforcement authorities survey (10 respondents from EU-15 and 5 from EU-13)

When asked to substantiate their responses further only a few qualitative comments were received. The French enforcement authorities specifically commented that the conditions of establishment, good repute and professional (vocational) capacity have had a positive impact on compliance with the social legislation. The respondent from the Netherlands remarked that the effects (if existing) were either not known or measurable.

No further data could be collected via interviews either. For example, the Polish enforcers remarked that they felt the impacts of the Regulation on compliance with the social rules was positive, based on their personal experience, but had no data to support this position. The UK enforcers felt there was no impact, but this was a difficult question to answer and they similarly reported that there is no evidence.

The difficulty of obtaining quantitative estimates was also reflected in the Impact Assessment underlying the Regulations, where there was only a qualitative indication of

“improvements” to social conditions. More broadly, there are still problems of uneven monitoring and enforcement across the EU (see Evaluation Question 2), and an incomplete implementation of requirements on administrative cooperation (see Evaluation Question 3), which may impede the effective enforcement of the rules and reduce the achieved benefits compared to the expected improvements in compliance with the social legislation (although as previously mentioned, the magnitude of this impact was not quantified).

In the absence of further quantitative evidence, a more specific qualitative assessment of each requirement is carried out below. The most positive effect is considered to have come from the requirement of **stable and effective establishment**, with one-third of enforcement authorities indicating a strong positive effect and a further 20% indicating a somewhat positive effect. The reasons for this were explored further, and appear to relate to the issue of letterbox companies. Such companies are often (although not always) associated with criminal or dubious activities (Sørensen, 2015). Trade union respondents to the high level survey indicated that *“in as far as the social and labour conditions are concerned, illegal practices of letterbox companies are the biggest problem for the sector. In recent years, more and more companies have resorted to employing and ‘trafficking’ professional truck drivers through systems such as letter box companies... These practices have created considerable distortions on the EU labour market and on domestic labour markets of a number of Member States.”*. The interaction here arises because undertakings without stable and effective establishment (i.e. letterbox companies) cannot be properly checked to the same extent as other undertakings – increasing the risk of businesses being able to infringe the road social legislation without detection and/or penalties.

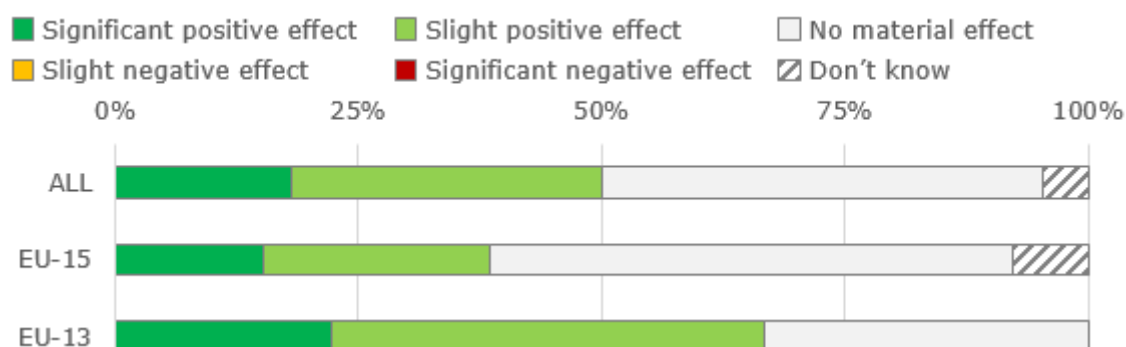
This effect is also reflected in the monitoring data provided under Regulation 561/2006, which shows that checks at the premises are more effective than roadside controls<sup>51</sup>. Thus, it can be seen that the requirement for stable and effective establishment can complement the enforcement of social legislation, as well as monitoring of the other provisions in Regulations 1071/2009. Information on the number of simultaneous infringements (i.e. whether undertakings without stable and effective establishment are also more likely to commit infringements of the social rules) was not available.

**Professional competence** also received strong positive responses from the enforcers. In this respect, Regulation 1071/2009 compels transport undertakings to have specific knowledge on a list of subjects (as laid down in Annex I of the Regulation) including, among others, EU road social and safety legislation. Regulation 1071/2009 aimed to achieve a higher level of professional qualification of road transport operators. Since knowing the rules is a first requirement to respecting them, the increased knowledge of transport managers was expected to lead to increased compliance with social legislation (European Commission, 2007a). The direct impact is not possible to quantify. As an indicator of the success of the Regulations in this regard, Figure 6-19 shows that ministries consulted for this study generally feel that the Regulation has had a positive or neutral effect in this regard, with EU-13 respondents returning a more positive response overall.

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<sup>51</sup> The detection rate of infringements at the premises is three times higher than at the roadside (COM(2014) 709 final )

**Figure 6-19: Responses from ministries to the question: What has the impact of Regulation 1071/2009 been on standards of professional qualification in the industry?**

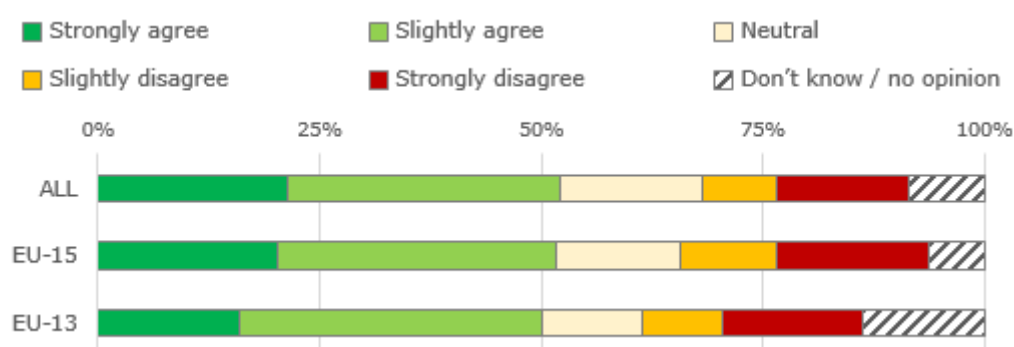


Source: Survey of ministries (N=15; 9 respondents from EU-15 and five from EU-13)

The French ministry considered the impact of the rules on professional competence to be negligible in France because similar requirements were already in place, but they remarked that “the beneficial effects of this Regulation with regard to the level of professional qualification of managers belonging to other Member States is surely indisputable.”

Responses from undertakings also show an overall positive view, although a significant minority (23%) disagreed that standards had been raised. When asked to elaborate on this view, a respondent from Romania indicated that in smaller companies, the business owner has more decision-making capability than the transport manager, and hence the professional qualifications do not change how the company is managed, while another pointed out that the level of qualifications are not the same across Europe. A German undertaking felt that there were still many in the industry who are unaware of their responsibilities.

**Figure 6-20: Responses to the undertakings survey to the question: To what extent do you agree or disagree that the measures have raised the standards of professional qualification in the industry?**



Source: Survey of undertakings (64 respondents from EU-15, 44 from EU-13)

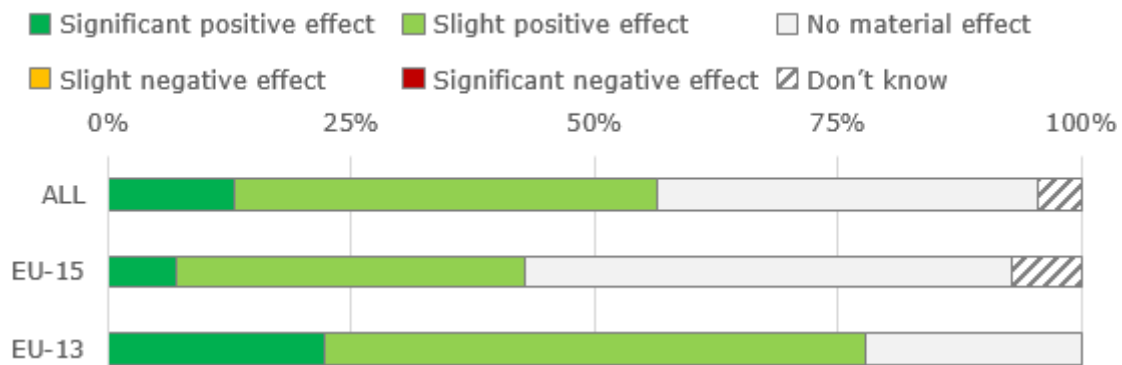
Overall, both ministries and undertakings gave overall positive responses that the requirement of professional competence had raised the standards of professional competence in the industry. For several Member States, the requirements were already in place, but they still may have benefitted from higher standards of foreign hauliers. The opinions of enforcement authorities also support the view that the requirement has improved compliance with the road social legislation (Figure 6-17).

A related provision is the requirement to designate a **transport manager**, which was expected to improve compliance with the road social rules by ensuring that all transport undertakings satisfy the minimum conditions regarding professional capacity (European Commission, 2007b). In addition, ensuring that the transport manager be involved in the daily management of the transport undertaking was expected to improve the



transparency in the contractual relationship with shippers, and hence contribute to better compliance with road safety and social rules (European Commission, 2007a). In this specific regard, responses from ministries indicate an overall view that the Regulation has had positive or neutral effects on improving market transparency (Figure 6-21).

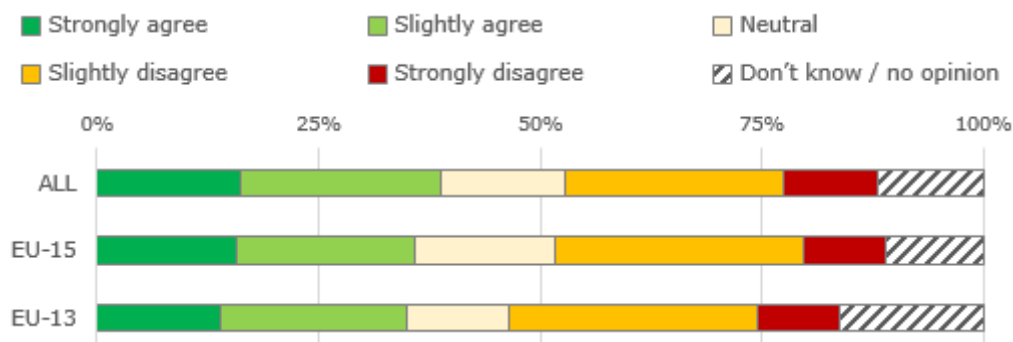
**Figure 6-21: Responses from ministries to the question: What has the impact of Regulation 1071/2009 been on market transparency?**



Source: Survey of ministries (N=15; 9 respondents from EU-15 and five from EU-13)

Responses from undertakings indicated roughly equal shares of responses indicating agreement and disagreement that there had been improvements in market transparency (39% vs 35% respectively). When asked to elaborate on their responses, an undertaking from Austria noted that checks were not harmonised, and two undertakings from Germany felt that nothing had changed.

**Figure 6-22: Responses to the undertakings survey to the question: To what extent do you agree or disagree that the measures have improved transparency in the logistics chain?**



Source: Survey of undertakings (64 respondents from EU-15, 44 from EU-13)

Overall it is harder to say what the impact on market transparency has been, since different stakeholders report different levels of support. Broadly, the ministries gave positive responses and the opinions of enforcement authorities also support the view that the requirement has improved compliance with the road social legislation (Figure 6-17). Trade unions in their joint response to the high level survey did not have an opinion on whether an unclear link between the transport manager and the undertaking was still a problem today in the industry. On the other hand, the undertakings were split between positive and negative responses (with no clear differences between EU-13 and EU-15 respondents), and associations in their response to the high level survey were split between those that felt unclear links were still a significant issue, those that felt it was a slight issue and those who felt there was no issue.

The **good repute** of transport managers is conditional on not having been convicted of a serious criminal offence or not having incurred a penalty for a serious infringement. The link with the social legislation is made explicit in Annex IV of the Regulation, which

lists violation of social rules (i.e. exceeding driving time rules) among the most serious infringements. However, limited quantitative or qualitative evidence could be identified that would shed light on how well this requirement is supporting the compliance with social legislation in practice. For example, no data could be found on what share of the withdrawals of good repute were specifically due to infringements of the social legislation. The French ministry specifically commented that it is difficult to measure the impact that may have arisen due to including violations of the social rules in Annex IV. DfT (2010) reports that disqualification of those managers judged to be of ill repute will lead to social benefits in the long term, since the threat of disqualification would also be expected to exert a wider disciplinary effect. A Swedish association interviewed for this study felt that companies could sometimes retain their good repute despite breaking the social rules, and called for tougher rules.

Since limited quantitative or qualitative information could be found concerning the impact of the requirements of good repute, only a logical argument can be made as follows: As discussed in Evaluation Question 2, the enforcement of the provisions of good repute seems to be applied unevenly in Member States, with some countries taking a lenient approach. Since the effectiveness of the requirement (including with regard to impacts on social legislation) depends on the effective enforcement, the expected benefits probably have not been achieved.

The requirement for **financial standing** provides a level of security to creditors and contributes to sure that the operator has enough financial resources to comply with standard business practices. It was previously identified that companies with low financial standing tend to be more negligent and to infringe the rules more than the others<sup>52</sup> (European Commission, 2007b). A literature search did not find any more recent studies to confirm whether this is still the case, and data on the infringements of financial standing does not indicate the extent to which these organisations had also infringed the social legislation; hence no conclusions can be drawn from this information as to whether the requirement of financial standing has contributed to improving social conditions.

### ***6.5.2. Requirements of Regulation 1072/2009 and interaction with social conditions***

The links between Regulation 1072/2009 and the social legislation are less direct, and the Impact Assessment underlying the Regulations did not anticipate any impact on social aspects due to the changes to cabotage rules or control documents (European Commission, 2007b), and hence no impacts were quantified or expected. This evaluation question aims to establish whether this was indeed the case, or if unexpected impacts occurred.

Responses from trade unions to the high level survey show that this group think that Regulation 1072/2009 has had no material effect in terms of improving compliance with the road social legislation. Qualitative responses from the trade unions highlight their concerns that the poor enforcement of cabotage can allow the non-respect of Community rules overseeing labour and social law. Most industry associations also felt that there was no impact, although several indicated a highly detrimental effect due to unfair and low-price competition.

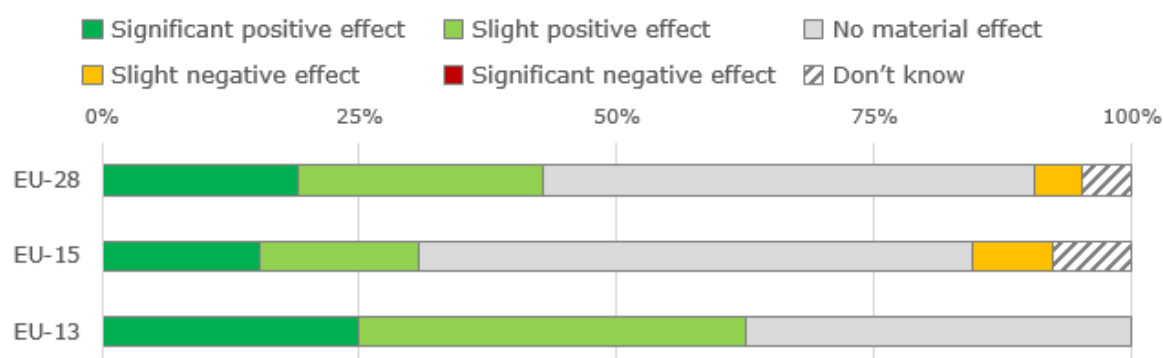
Respondents to the ministries survey largely felt that there had been no material effect or that there had been positive effects (Figure 6-23). Only the respondent from Germany indicated a slight negative effect but did not substantiate their reply further.

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<sup>52</sup> A sample analysis of records of serious infringements against roadworthiness and driving time rules made in France has found that 18% of companies which do not meet the financial capacity condition do not comply with roadworthiness and driving time rules, which is 50% higher than the population of transport companies which meet the financial capacity requirement (European Commission, 2007b)

Respondents from EU-13 countries appear to have a more positive view of the impacts compared to EU-15 countries.

**Figure 6-23: Responses from ministries to the question: What has the impact of Regulation 1072/2009 been on compliance with the road social legislation?**



Source: Survey of ministries (11 respondents from EU-15 and 8 from EU-13)

The French ministry further commented that Regulation 1072/2009 has not had a decisive effect of the proper application of the road social rules. The Bulgarian enforcers commented that they did not see any link with Regulation 1072/2009 and the social rules.

The same absence of quantitative data to support such views as already discussed with regard to Regulation 1071/2009 was present and confirmed in the literature. For example, Broughton et al (2015) note that evidence on unfair competitive practices and illegal activities is by its nature difficult to obtain. Hence, a more qualitative assessment must be carried out of what the unexpected impacts could have been. The main potential mechanism by which Regulation 1072/2009 could affect compliance with the social rules is through the impacts of cabotage.

There are several recent studies on the impacts of cabotage in the EU. According to Mundutéguy (2014), since the cabotage regime changed in 2010, many national haulage companies fear that they will be outplayed by competitors who enjoy a more favourable legislation in their home country. As a result, truck drivers' working conditions may worsen. Tillman (2012) reports that cabotage has long been a sensitive subject and many hauliers are concerned that lower salaries and lighter social legislation in the EU-13 Member States would give them an unmatched advantage in competition, as well as lowering the quality and social standards of the business. The issue of driver wages in Europe is highly important for social impacts as it can be a major source of competitive advantage. At the same time, even though wages in new Member States have remained relatively stable, there is a large pool of non-EU citizens prepared to work for lower wage levels (Sternberg et al, 2014). AECOM (2014b) report general concerns over enforcement of cabotage and social protection rules. UNECE (2012) recognises that deregulation can lead to cut-throat competition and declining quality in the sector, and market opening should be accompanied by reinforcing the qualitative framework conditions, e.g. regarding safety, security, sustainability and social considerations.

A dedicated study was commissioned in 2013 to assess the implementation and social impacts of cabotage, although the study recognised the difficulties in quantifying any impacts. SDG (2013a) finds that the market entry of EU-13 hauliers has led to increased competitive pressures in the industry, in parallel with lobbying efforts to improve the effectiveness of controls on foreign hauliers. With regard to the price competition, SDG (2013a) states that *"this is after all what liberalisation is supposed to do – increasing the competitiveness of the EU economy as a whole."* The study finds that the growth of cabotage operations has triggered specific legislation in some Member States such as

Austria and France<sup>53</sup>, and hence one of the impacts of cabotage liberalisation has thus been more stringent application of social legislation. Conversely, the study recognised that illegality is a problem, and that the harmonisation of social standards and enforcement practices across the European Union remains the challenge.

ETF (2012a) warn that illegal cabotage and letterbox companies are expanding and its profitability is based on "social dumping". ETF (2012b) further claims that the manner in which the cabotage rules have been interpreted and delays in enforcement have led to "*massive distortions of fair competition and the labour market*". The report claims that this is due to illegal cabotage activities and make a direct link with the problem of letterbox companies: Differences in tax and social/labour costs give hauliers from EU-13 Member States a cost advantage, which hauliers from EU-15 Member States are offsetting by operating via letterbox companies. The basis of the claims in the ETF reports are widespread surveys/interviews conducted with drivers – it was not possible for the study team to obtain the raw data in order to confirm the extent to which these problems are occurring.

To better understand how developments have occurred over longer time periods (since cabotage restrictions were lifted in 2010 for most countries and 2012 for Romania and Bulgaria), a literature search on the impacts of past liberalisation was carried out. There appears to be broad agreement that the differentials in wages and social conditions between Member States, alongside increased competition, lead to strong incentives to contravene the road social legislation. For example, Hamelin (1999) argues the deregulation of road haulage services after 1993 significantly increased the competition on the market, which forced companies to reduce their operational costs (especially decreasing labour costs). The study reports that fierce competition is instrumental in making unsocial working hours the norm for drivers. Hermann (2003) focuses on Austria as a case study and finds that increased competition after Austria's accession to the EU had forced many companies to decrease their profit margins - in some instances companies minimised their costs through unfair or illegal practices. For example, some companies used performance-based bonuses, which put pressure on their drivers to work long hours and were the most common reason for infringements of the driving and resting time rules. Henstra et al (1999) note that enforcement of social rules is a challenge in the context of deregulation and enlargement, especially since "*as driver costs account for 50 per cent of total operating costs, there is a high incentive to violate the regulations of transport operations, such as driving bans on weekends, permits for combined transport activities, and the enforcement of the maximum driving times/minimum rest times.*"

Experience from overseas also indicates the same adjustment mechanisms - it is well-established in literature that the deregulation in the USA made driving a less desirable occupation, due to the significant drop in wages and the demanding working conditions (Belman, 2005). Boylaud and Nicoletti (2001) stated that "*empirical evidence suggests that liberalisation in road freight industry, across OECD countries, has promoted efficiency and consumer welfare in the countries that have implemented reforms*". The ECMT (2002) state that the economic effect in terms of competition from countries with lower wages in the sector is significant, and therefore some transport undertakings deliberately commit infringements of the social legislation in order to remain competitive.

Hilal (2008) reports that EU economic deregulation has led to unintended social effects on truck drivers. This was mainly caused by the fact that deregulation was not accompanied by an adequate degree of harmonisation of tax and labour legislation in some Member States. Hilal points out this produced several negative consequences for

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<sup>53</sup> In Austria, cabotage operations are considered to be postings of workers and are subject to the provisions of the Austrian Law Amending the Labour Contract Law (AVRAG). Cabotage operators were required to ensure that they were compliant with all French laws relating to employment.

fair competition on the market, namely social dumping and fraudulent practice. According to Hilal, the intensified use of subcontracting of activities to self-employed drivers and illegal employment of third-country nationals leads to dodging of national tax laws and labour and welfare regulations, with worsens working conditions.

The studies of both past and present market opening point to the issue of price competition (stemming from diverse wage levels and different tax/labour regimes) as a key driving force for deterioration of social conditions. The cabotage provisions were foreseen as a transitional cabotage regime as long as harmonisation of the road haulage market had not yet been completed, aiming to strike a balance between contending positions that argued for complete market liberalisation on the grounds that this would increase efficiency versus opposition to further liberalisation on the basis that this could exacerbate social and fiscal competition between Member States.

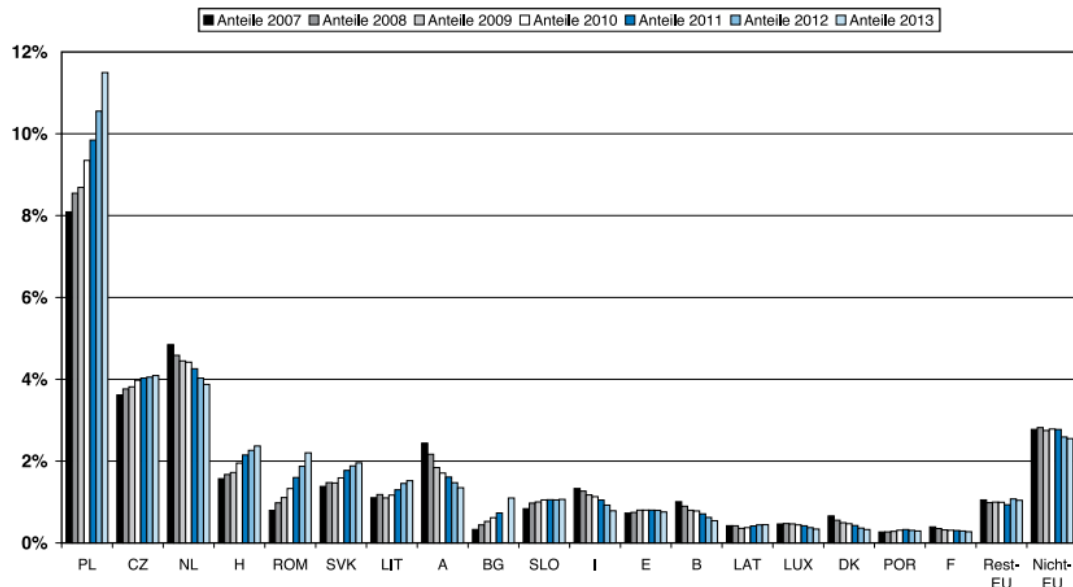
The possibility of cabotage leading to price competition is now examined in more detail. The issue of price competition arises because of differences in social models between the EU15 and the EU13, mainly due to driver salaries but also national tax and social laws (TRT, 2013; Alonso & Ascociados, 2014; AECOM, 2014b; Broughton et al, 2015).

Market prices for long-distance transport (particularly in full- and part-load services) did indeed come under considerable pressure in 2011. SDG (2013a) confirms that the effect of cabotage versus the general economic recession is difficult to determine, but posits that entry of EU-13 hauliers exposed pre-existing inefficiencies in the EU-15 haulage industry. There are strong suggestions in the literature that the added competitive pressure within the international road haulage market, combined with the differentials in labour costs and employment conditions between Member States, is creating incentives for unfair competitive practices (including social dumping) (Broughton, 2015; ETF, 2012a; SDG, 2013a; TRT, 2013; AECOM, 2014a).

Some stakeholders (reportedly Western European hauliers in particular, according to Kombiconsult, 2015) attribute the recent drop in freight rates to the liberalisation of cabotage - arguing that road hauliers are prepared to accept nearly any price to capture inland shipments in a host Member State, if they don't have an immediate backload to their home country, or stay for an entire week before returning home (KombiConsult, 2015). Claims on Swedish national television are that carriers and freight forwarders suppress prices to a level that makes it impossible for a Swedish haulier to compete if it has drivers that are paid according to Swedish terms and conditions (Parliamentary questions, 2013b). This situation is then blamed on the EU cabotage rules, which allegedly have given rise to market distortion and risks that foreign drivers are forced to work under unacceptable conditions (Parliamentary questions, 2013b).

A national study in Germany conducted in 2010 suggested that there had not been a significant impact between 2010 and the market opening in 2009, but this could be due to the crisis (BAG, 2010). Another national study forecast the impact of opening to Bulgaria and Romania, and concluded that there would not be significant impacts because of language barriers, lower quality of service and distance from the national transport market (BAG, 2012). German stakeholders suggested during interviews that the studies were out of date. Hence, more recent data on toll statistics was assessed. This data records the distance travelled by vehicles according to their country of registration, and it shows an increase in activity from vehicles registered in EU-13 countries since 2012. The biggest caboteurs in Germany were Polish undertakings in 2013, who increased their cabotage activities by 32% compared to the year 2012 (to 4.4 billion t-km). The total shares of performed kilometres on German's toll roads attributable to Romanian and Bulgarian vehicles in 2013 amount to 2.4 and 1.1% respectively (BGL, 2014). Figure 6-24 shows the shares of toll kilometres and their development in the period from 2007 to 2013 by the country of registration of the vehicles.

**Figure 6-24: Shares of German toll kilometres and their developments by country of registration of the vehicles in the period from 2007 to 2013**



Source: (BGL, 2014)

Market research does indeed show that non-resident hauliers can undercut the market price levels for national transport (KombiConsult, 2015). A number of reports have also highlighted the difficult conditions in the sector in light of decreasing profit margins and growing competition from EU-12 Member States (TRT, 2013); (ITF, 2009); (European Parliament, 2013a).

This does not necessarily imply that the liberalisation of cabotage activities has caused the collapse in freight rates, since many other factors were at work. Following the economic crisis, transport volumes decreased or stagnated. However, many SMEs were forced to keep their entire fleets in service due to the need to pay leasing or rental rates for the trucks and to earn their living, as other job opportunities were scarce in the hard economic circumstances. This led to overcapacity in the freight market, and hauliers were prepared to cut rates to obtain a shipment. The KombiConsult study concludes that it is unlikely that cabotage deregulation has contributed to the ruinous price competition, but it is likely that it has contributed to the intensified struggle for cargo, especially in specific markets. Even if cabotage is growing, its volume is small compared to the total EU road haulage market (even accounting for unreported cabotage).

A related concern in the use of drivers from low-cost third countries to undercut wages and place further price pressure on transport markets. ETF (2012a) emphasises social problems linked to treatment of non-EU drivers, mentioning specifically an example of Turkish drivers brought in by low-cost flights or by sea, who are made to live in the port area of Trieste in "appalling conditions" until they are assigned to a truck. ETF claim that this may take days, and urge the European Commission to set up and coordinate a quota system for the distribution of operating licences to third-country operators. Quantifying the extent of any issues linked directly to drivers from third countries is very challenging and investigations are typically based on local case studies and ad hoc investigations. The reports mentioned above about the poor conditions under which some of these drivers operate is closely linked to the question of ensuring effective enforcement. It is also worth noting that these drivers may contribute to alleviate the shortage of drivers in Europe, which is seen as a major concern (Bayliss, 2012). Estimates of the expected shortage of drivers in 2018 range from around 106,000 to 129,000, depending on the scenario for economic growth (Bayliss, 2012). Nationals of non-EU countries may be employed as drivers subject to the issuing of a driver attestation in line with Regulation 1072/2009. The drivers must then comply with all of

the normal requirements of EU road haulage laws (e.g. driving time and rest periods, tachograph, or weights and dimensions of road vehicle etc).

Respondents to the high level survey have reported concerns over the use of Filipino drivers in Latvia. The issue was also raised in a Parliamentary question, where according to the Dutch magazine *Truckstar*, a German/Latvian road haulage business was using Filipino workers for international road haulage in Europe – it is claimed that this is an attempt to cut business overheads at the expense of employees (Parliamentary questions, 2013c). The Commission stated in its response to this question that it was not aware of any other similar cases. Looking at the monitoring reports on the number of third-country drivers registered in Latvia, it has remained relatively constant at around 5,000 between 2007 and 2011, and fell by 72% between 2011 and 2014 (1,433 attestations in 2014). In the EU as a whole, the number of attestations for drivers from third countries in circulation has fallen by 13% between 2011 and 2014, and they represent less than 1% of all drivers. In addition, the number of new attestations issued for drivers from third countries in the EU has fallen by 18% between 2011 and 2014.

Specific problems have also been raised with regard to the interaction with the Regulations and other legislation – and the subsequent deterioration of social conditions – by trade union respondents to the high level survey. This concerns most importantly the Directive on Posted Workers (96/71/EC) and the Combined Transport Directive (92/106/EEC). The potential issues are also reflected in the literature. For example, ETF (2012b) claim that combined transport is a contributing factor to the expansion of illegal cabotage due to ineffective controls. They further claim that the application of the Posting of Workers Directive is not controlled in spite of clear provisions stipulated in Regulation 1072/2009. ETUI (2014) report difficulties in checking the actual establishment of firms in foreign Member States and slow cooperation by corresponding authorities in the sending Member States. SDG (2013a) and TRT (2013) find inconsistent application of the Posting of Workers Directive in Member States and difficulties in enforcement. The interactions and consequences between the Road Transport Package and the social legislation are examined further in Evaluation Question 12 (see Section 7.12). In summary, there are complex interactions that may make enforcement of cabotage provisions more challenging with regard to combined transport and posting of workers, which may impede the achievement of the intended levels of social protection.

### **6.5.3. Summary and conclusions**

The provisions laid down in Regulation 1071/2009 aim to reinforce the level of compliance with the social rules. Survey responses from the groups of trade unions and industry associations show that these groups do not think there has been any impact of Regulation 1071/2009 on improving compliance with the social rules, whereas responses from enforcement authorities and ministries show that these groups feel there have been positive impacts, with slightly higher support among EU-13 respondents. Quantitative estimates were very sparse, but suggest increases in detection rates of non-compliance with the social legislation due to the provisions of Regulation 1071/2009 in Poland (5%) and a much smaller increase in Romania (0.002%).

Indications from these survey responses are that the most beneficial provision has been the requirement of stable and effective establishment. This may be because a key problem for social protection in the sector is the presence of letterbox companies, which this provision directly aims to target. Having a stable and effective establishment also allows for more effective checks of the social rules compared to roadside checks, as confirmed in the monitoring data from Regulation 561/2006.

In assessing whether the expected benefits were achieved, it is worth noting that the magnitude of the *expected* impact was not quantified, and only a general mention of “improvements” was made in the underlying Impact Assessment. However, various provisions of the Regulation have not been fully implemented or achieved as expected,

including the uneven monitoring and enforcement (see Evaluation Question 2), and an incomplete implementation of requirements on administrative cooperation (see Evaluation Question 3), which may impede the effective enforcement of the rules and reduce the achieved benefits compared to the expected improvements in compliance with the social legislation.

In summary therefore, Regulation 1071/2009 is likely to have had neutral or slightly positive impacts with regard to ensuring compliance with social rules, but the extent of these impacts is impossible to quantify.

The links between Regulation 1072/2009 and the social legislation are less direct and the Impact Assessment underlying the Regulations did not anticipate any impact on social aspects due to the changes to cabotage rules or control documents. Respondents to the surveys agreed that there had not been any material impact (i.e. respondents from trade unions, associations and ministries).

In summary, Regulation 1072/2009 was not expected to have had any direct impacts on compliance with social legislation and no impacts were found.

Concerning possible indirect impacts, a literature review was carried out of studies on the current cabotage rules, as well as previous liberalisation in the EU and overseas. There was consistent agreement between the studies that the mechanisms by which cabotage liberalisation could affect social conditions was via increase competition in the sector, combined diverse wage levels and national labour/tax rules. This leads to hauliers trying to remain competitive by lowering salaries for drivers, and creates greater incentives to circumvent the rules. Nevertheless, none of the studies found could quantify the extent to which the problems occur.

While cabotage is likely to have contributed to greater competition, especially in specific freight markets, it is unlikely to be the sole cause of the intensified price competition seen in recent years. This study has not identified any comprehensive evidence that the liberalisation of cabotage has created significant competitive distortions, but it is clear that widespread entry of hauliers with lower labour costs will cause price competition in the affected markets. The problems of illegal cabotage and letterbox companies (see Evaluation Question 1), can undoubtedly contribute to non-compliance with social legislation, since these firms are engaged in illegal activities already.

Specific problems were also identified with respect to the interactions with the Directive on Posted Workers (96/71/EC) and the Combined Transport Directive (92/106/EEC), which contribute to difficulties in enforcement of cabotage and hence potentially contribute to higher levels of illegal cabotage.



**6.6. Effectiveness: To what extent have the Regulations had an impact on road safety, particularly in terms of fatigue of drivers, and helped to address the road safety concerns identified at the time of adoption?**

To what extent have the Regulations had an impact on road safety, particularly in terms of fatigue of drivers, and helped to address the road safety concerns identified at the time of adoption? How do the results compare between different EU Member States and regions (i.e. EU15 and EU12)?

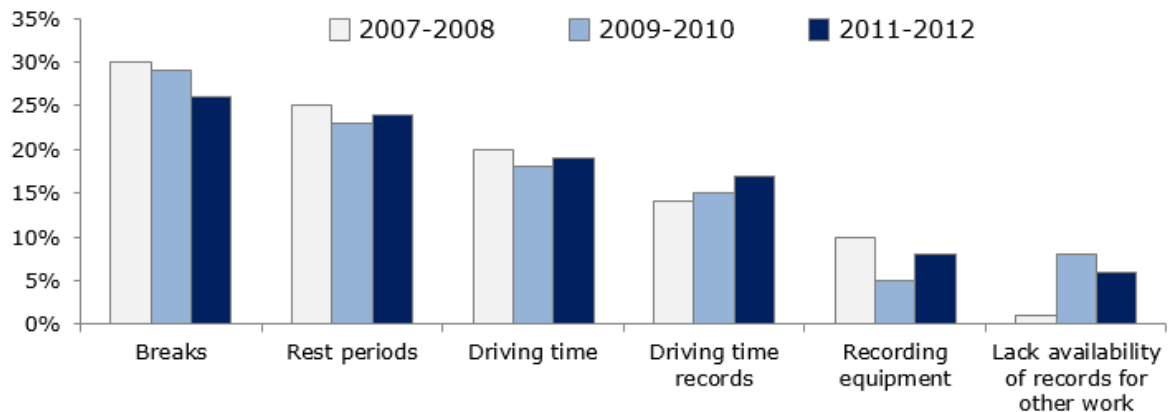
This evaluation question focusses on whether the Regulation have had an impact on road safety, with a particular focus on the fatigue of drivers. The road safety concerns identified at the time, as detailed in the underlying Impact Assessment, were that pressure to save costs might incite some operators to poorly comply with social (i.e. driving time and rest periods) and safety rules (with regard to safety rules, the driving times and rest periods were also mentioned) (European Commission, 2007a). The Impact Assessment and Proposal for the Regulations recognised that the influence on safety would be indirect. The magnitude of the impact was not quantified in any way – only “improvements” were identified at the time.

It is worth clarifying the meaning of “fatigue” and its role in road safety. According to Grandjean (1979) fatigue can be defined as “*gradual and cumulative process associated with a loss of efficiency, and a disinclination for any kind of effort*”. Fatigue impairs the driver’s cognitive and motor performance by slowing reaction times, reducing attention to the external environment and disrupting steering skills (TRL, 2009).

Driver fatigue therefore represents a serious problem for drivers in the commercial transport industry and is a risk factor for accidents involving truck drivers, chiefly when it is caused by long working hours and sleep restriction (Smolarek and Jamroz, 2013). Collisions that are caused by fatigue (often in association with sleepiness) – are usually more severe than other types of accidents and a greater proportion of them are fatal (Åkerstedt and Haraldsson, 2001).

The European Commission reports that non-compliance with obligations for minimum rest periods can result in driver fatigue, and they estimate that the cost of the fatigue of professional drivers in terms of accidents is €2.2 billion per year in the EU-27 (European Commission, 2012b). Although in general, road deaths in Europe have been decreasing (ETSC, 2012), accidents result from a spectrum of causes and even the link with fatigue is often not clear (the available data is examined in more detail in Annex A). This makes it difficult to identify causal links with Regulation 1071/2009 and 1072/2009.

At a general level, there is a very close link between the impacts on compliance with the social rules (see Evaluation Question 6) and the impacts on driver fatigue. This is shown specifically in the statistics of infringements of the road social legislation (Figure 6-25), which consistently show that infringements of the driving times and rest periods are the most frequent, despite apparent improvements in compliance rates overall in recent years.

**Figure 6-25: Distribution of offences by type of infringements of Regulation 561/2006 (2007-2012)**

Source: Bi-annual monitoring reports of Regulation (EC) No 561/2006

### 6.6.1. Regulation 1071/2009 and impacts on road safety

The impacts of Regulations 1071/2009 on road safety and consequently on fatigue of drivers are closely related to the effects on social rules concerning working/driving time and rest periods. That is, improved compliance with the social rules should ensure that drivers are afforded adequate rest in order to avoid fatigue (the main road safety issue identified at the time).

Looking in more detail at the mechanisms by which Regulation 1071/2009 was intended to improve road safety shows that they were identical to those expected to improve compliance with social legislation for each of the requirements (i.e. stable and effective establishment, financial standing, professional competence, good reputation and designated transport managers) (European Commission, 2007a). Hence, the qualitative assessment of safety impacts follows from the previous Evaluation Question, where it was found that the impacts were likely to have been neutral or slightly positive overall. Responses to the high level survey from trade unions and industry associations show that most respondents did not think there was a material impact of Regulation 1071/2009 specifically on road safety as an issue separate from the social legislation. No specific comments were received from stakeholders on this point.

The requirement of financial standing and stable and effective establishment were also intended to have an impact on safety by ensuring the proper maintenance and roadworthiness of vehicles, although again the impact is not possible to quantify. A UK-based association pointed out that the minimum levels of financial standing may no longer be relevant, since many vehicles are leased or hired (and therefore maintenance is included in the contract). Guidance from the UK authorities addresses this issue and points out that they are still relevant for leased/hired vehicles because: *“the financial requirement is not reduced in the case of contract or lease hire vehicles whose maintenance is included in the hire charge, since there are often substantial penalty clauses within hire agreements which would have to be met if, for instance, the operator wanted to return the vehicles early upon the loss of a contract. The financial requirement is primarily for the purpose of working capital.”* (Traffic Commissioner for Great Britain, 2015). The only other evidence of a possible link could be found in older literature that predates the Regulation: Rodríguez et al. (2004) point out that the frequency of crashes is greater in freight firms with low liquidity, showing that the financial performance of the firm is related to safety. Bruning (1989) finds that firms on the edge of bankruptcy decrease their investments in safety, maintenance, and equipment, and in addition they use owner-operators more frequently, which can be regarded as detrimental from the safety perspective.

A review of the literature identified only a few other more recent references to safety in particular that were not already discussed in the review of compliance with the social rules. The UK's DfT, specifically assessing the impacts of interconnecting their register in compliance with Regulation 1071/2009 concluded that that "*improved compliance/safety of foreign registered commercial vehicles would be expected to lead to a reduction in the number of fatal accidents that this type of vehicle is involved in however, it has not been possible to determine what proportion of the overall benefits of the package can be attributed to the interconnection of the national registers*" (DfT, 2014c).

Overall, and as expected in the Impact Assessment, the contribution of Regulation 1071/2009 to improving road safety is indirect and difficult to quantify. There is no evidence of a direct impact of Regulation 1071/2009 on road safety in particular. Insofar as the Regulations support compliance with the social legislation (driving times, rest periods and working times), they will also contribute indirectly to safety by reducing fatigue, through helping to ensure drivers get adequate rest. However, as previously discussed, the impacts in this regard are considered to be neutral or slightly positive (see Evaluation Question 5). Regulation 1072/2009 and impacts on road safety

The impact of Regulation 1072/2009 on fatigue is even more indirect – as already discussed in the previous Evaluation Question, Regulation 1072/2009 was not expected to have any effect on compliance with road social rules; however, market opening may have increased competition in the haulage sector. The increased pressure on profitability may have had knock-on effects on the compliance with road social legislation. Overall therefore, the general conclusions follow directly from the previous Evaluation Question. This section therefore focusses on any other possible unintended or unexpected impacts.

Responses from trade unions to the high level survey show that this group think that Regulation 1072/2009 has had no material effect in terms of improving compliance specifically with safety rules. Most industry associations also felt that there was no impact, whereas a few indicated a slightly detrimental effect. The comments received from associations mentioned their concerns over the increasing use of third country drivers obtaining "*quick but not necessarily adequate and sufficient qualifications to become a professional driver in the EU*". In this respect, Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers is relevant. This Directive aims to increase safety on European roads and establishes the mandatory initial qualification and periodic training requirements for drivers who are nationals of Member States or who are working for an undertaking based in the European Union. A detailed review of the effectiveness of the driver training Directive is outside the scope of the current study, but a recent ex-post evaluation concluded that it may have had a positive impact on road safety by reducing human error (Panteia et al, 2014). Vlakoveld et al (2012) reports that if there is any effect of the quality of driver training on crash involvement can have, it would only occur in the first one or two years after obtaining the license – after which point the experience of the driver outweighs any influence of the driving training, and conclude that the effect in the Netherlands is probably minimal. Both studies note the difficulty of obtaining relevant statistical data in this area. As previously noted in Evaluation Question 5, drivers from third countries represent less than 1% of all drivers and their numbers have been decreasing in recent years.

As reported in SDG (2013a), the opening of the road freight transport market has resulted in an increased number of foreign hauliers and drivers circulating across Member States, in particular across EU-15 countries. In some countries (UK, Germany and the Netherlands) this issue has raised road safety concerns (SDG, 2013a). However, the SDG study was not able to pull together any statistical evidence to back the view that foreign hauliers are involved in a greater number of road crashes than domestic hauliers.

In a meta-analysis of deregulation and transport safety, (Elivik, 2006) sought to quantify the safety outcomes of deregulation of transport in the road, rail, aviation and

sea sector. He identified 41 studies in the literature search and concluded that economic deregulation does not seem to hamper safety. The meta-study's summary estimate of effect indicates that no statistical changes in road safety occurred because of deregulation.

The Impact Assessment underlying the Regulations had previously identified that in the UK, HGVs on international journeys have a higher rate of non-compliance with roadworthiness rules than those engaged in purely domestic journeys (e.g. as regards roadworthiness, 31% of non-UK vehicles are non-compliant compared to 25% for UK vehicles). An interviewee from the UK commented that the UK has historically been concerned about non-domestic vehicles being more likely to commit offenses. Official statistics now show similar rates of infringement for UK and non-UK vehicles. However, the respondent pointed out that UK vehicles are subject to much more targeted checking (using the national risk rating system, which does not apply to foreign vehicles) than non-UK vehicles and therefore the UK vehicles that are stopped ought to have a higher rate of infringement than vehicles stopped at random. From this, it could be inferred that non-UK vehicles are indeed more frequent offenders.

The UK Royal Society for the Prevention of Accident (ROSPA) (2012) noted a particular issue in the UK with left-hand vehicles. In 2011 7% of total road deaths in HGV accidents (N=257) involved foreign registered left-hand HGVs, and left-hand drive HGV drivers were more likely to be at least partially at fault for the accidents in which they were involved. This study also found that the foreign drivers found driving in Britain more difficult due to the unfamiliar road layout and road user behaviour.

Nævestad et al. (2014) found that the accident risk of foreign HGVs is approximately two times higher than that of domestic HGVs. The paper concludes that better data on accident risk and risk factors must be gathered in order to correctly analyse traffic safety challenges. The SAFT project pages<sup>54</sup> report several risk factors found when investigating Norwegian accidents, namely that foreign lorry drivers often lack sufficient competence on how to drive safely in the hilly Norwegian terrain, that their vehicles are typically older and less powerful, that they are influenced by the safety cultures of their home countries and because foreign transport companies often violate rules on the technical state of trucks and lack of mandatory equipment. The authors indicate that greater cabotage penetration, especially from Eastern European truck drivers, would have unfortunate consequences for road safety. Specifically, it is stated that these hauliers are more likely to choose cheap tyres, and it is also claimed that foreign lorry drivers choose roads with as few ferries and toll stops as possible, in order to save money. As a consequence, they take steep and narrow roads over mountains and around fjords.

Considering also the broader implications of cabotage and price competition is also of relevance. Since price is considered to be the dominant competitive factor, the possibility that this could have an impact on the operational quality of the companies could be a risk factor, as noted in the Norwegian case discussed above. Conversely, Alvarez-Tikkakoski et al (2011) investigate the possibility that increased subcontracting and price competition may lead to negligence in the compliance with traffic safety and security, and in practice they found the situation is quite the opposite. They suggest that this could be because the economic and financial difficulties have forced the poorly performing operators to completely exit the market, rather than just bend the safety rules and regulations of the industry.

### **6.6.2. Summary and conclusions**

The link between the Regulations and driver fatigue is rather indirect, and arises due to the effect that the Regulations have on compliance with social rules. The social rules aim to ensuring drivers have adequate rest and are not fatigued, which was the main aspect of road safety identified at the time, as indicated in the Impact Assessment.

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<sup>54</sup> Safe Foreign Transport (SAFT): <https://www.toi.no/SAFT>

Driver fatigue is an important risk factor for accidents involving truck drivers, hence improved compliance with the social rules should ensure that fatigue-related accidents are reduced.

The mechanisms by which the Regulations were intended to improve road safety are therefore identical to those expected to improve compliance with social legislation, and the conclusions from the previous Evaluation Question apply here also with respect to impacts on safety – namely, that the impacts were likely to have been neutral or slightly positive overall, but their indirect nature makes it difficult to attribute any specific improvements to the Regulations. Similarly, the positive effects appear to have been slightly greater in EU-13 countries compared to EU-15 countries, largely because similar requirements were already in place in EU-15 countries prior to Regulation 1071/2009 (see Evaluation Question 5). Overall there is no evidence to suggest that Regulation 1071/2009 has had any effect on road safety aside from indirectly via the social legislation.

Regulation 1072/2009 was not expected to have any effect on compliance with road social rules, nor could any evidence of an effect be found, hence there is no evidence for an impact on road safety via this mechanism.

The other main safety-related concern raised by respondents to the high level survey is that greater penetration of foreign drivers (in connection with increased cabotage) without the requisite knowledge and skills can have harmful effects on safety. Overall the literature shows a consensus on the poor quality of data relating to safety and accident risks, which prevents a statistical analysis of the safety impacts. As such, the extent to which the accident rates of drivers has been affected is not clear. However, research suggests that foreign-registered HGVs may be more at risk of accidents due to factors such as unfamiliar road layout and road user behaviour. Concerning possible differences between EU Member States, these impacts are most likely to affect EU-13 hauliers (who carry out a large share of cabotage), whereas accident risks are more likely to affect Member States with particular characteristics – i.e. differences in left- and right-hand drive, and challenging terrain (e.g. mountainous regions) in some Member States.

### **6.7. Effectiveness: Have the Regulations led to any positive and/or negative unintended effects (both in terms of impacts and results) other than mentioned in previous questions?**

Have the Regulations led to any positive and/or negative unintended effects (both in terms of impacts and results) other than mentioned in previous questions? If so, what is the extent of these effects and which stakeholders groups are affected the most?

This Evaluation Question aims to identify any positive or negative impacts of the Regulations that have not already been assessed in the previous sections. Input from stakeholders, along with desk research, was used to identify the main areas for investigation, which are as follows:

- Impact of requirements for financial standing on firm exit;
- Treatment of vehicles less than 3.5t;
- Interactions with the increased use of subcontracting and role of freight forwarders;
- Systematic cabotage; and
- Difficulties in proving legal cabotage.

#### **6.7.1. Impact of financial standing requirements on firm exit**

Although the requirement of financial standing is considered to be straightforward for many operators to comply with, specific challenges have been reported in particular Member States (e.g. Spain and the Czech Republic). These problems do not appear to be widespread and are related to national administrative or legislative issues. Further details are outlined in **Annex A** (see Section 9.7.1).

One possible side effect of the requirement of financial standing is that it may have led to greater firm exit. Prior to the introduction of the Regulation, under Directive 96/26/EC (which had the same minimum thresholds), a relatively small number of operators failed to meet the requirement each year (NEA et al., 2005).

Partial data are available on the extent of the problem. As discussed already in Evaluation Question 2, most withdrawals were caused by not meeting the requirement on appropriate financial standing in France, Austria, the Netherlands and Finland. This provides an indicator that the requirements could be difficult to meet. French authority elaborated that it is difficult for undertakings to obtain certificates of financial standing due to the low profitability of the sector.

Trends over time would also indicate whether the requirement is becoming harder to meet (i.e. detected infringements are increasing). This data was requested from enforcement authorities, and the results are inconclusive for the patchy data received. The number of withdrawals due to not meeting the requirement of financial standing appears to have increased in some Member States and decreased in others as shown in Table 6-9.

**Table 6-9: Number of withdrawals due to not meeting the requirement of financial standing in selected Member States**

Member States	2013	2009	% change
Bulgaria	964	638	+51%
France	2,871	2,361	+22%
Denmark	50	50	0%
Luxembourg	134	154	-13%
Finland	450	750	-40%

Source: Survey of enforcement authorities

Qualitatively, it appears that difficulties in meeting the requirement have been exacerbated especially following the recession and for smaller operators – for example in cases where payment of invoices has been delayed, leaving them with insufficient reserves. This is demonstrated by a number of examples. Banque de France reports that many transport companies are now considered vulnerable from the point of view of their financial standing (European Commission, 2014b). In the UK, the Senior Traffic Commissioner noted that: *"Another feature of the economic downturn has been an increased risk of insolvency and a consequent increase in public inquiries held featuring operators who seek to remain in business even though they no longer have the appropriate financial standing to hold an operator's licence."* (Culshaw, 2012).

Where an operator cannot demonstrate financial standing, Regulation 1071/2009 allows (but does not require) the granting of a period of time (up to six months) to rectify the situation. A German industry association felt that the requirements on financial standing are the most problematic out of all the requirements of Regulation 1071/2009, but consider at the same time that *"it is absolutely right that they exist"*. The German ministry suggested that six months may not be sufficient for many operators, and that a period of up to 12 months would be more suitable.

The unintended effects may also be mitigated since companies that exit the market may also re-enter or be replaced by new undertakings. Several sources report that the barriers to entry to starting a transport company are considered to be relatively low (European Commission, 2014b); (WTO, 2010).

Overall, examples from France and the UK suggest that the financial crisis may have made it more difficult for firms to comply with the requirement of financial standing, leading to a higher number of firms infringing this requirement. This led to the unintended effect of stimulating greater firm exit during recessionary periods. This is supported by comments from the German ministry and data to the effect that most withdrawals were caused by not meeting the requirement on appropriate financial standing in France, Austria, the Netherlands and Finland.

### **6.7.2. Treatment of vehicles less than 3.5t**

One possible impact of excluding vehicles less than 3.5t from the Regulations rules is that operators may switch to lighter vehicles in order to avoid them. This would have the consequence of reducing the effectiveness of the rules since more operators are avoiding the scope.

There is very little concrete data on the extent of any switching to lighter vehicles in practice, since it is not explicitly monitored in most countries and official statistics do not provide the necessary level of detail to determine the share of light goods vehicles in international transport.

A large share of Member State ministries participating in the survey felt that there was no or very little impact due to switching so far or potential to create impacts in the future (47%). A significant minority (12%) felt there was a significant impact due to switching so far or potential to create impacts in the future. The German ministry remarked during an interview conducted for this study that there have been observations of undertakings (especially Eastern European) investing in lighter vehicles to circumvent the cabotage rules. This view was formed based on questionnaires sent to regional authorities. However, the extent of these practices is unknown. A German enforcement authority interviewed for this study confirmed that some regions are more concerned by such practices than others, and that it has been a rather new phenomenon. However, they explained that it cannot be said whether the lighter vehicles have replaced heavier vehicles, or whether these are additional ones. Finally, a German industry association reported that there are an increasing number of trucks at 11.9t in order to avoid the 12t limit for the toll roads. Conversely, they explained

that the 3.5t limit on the contrary has been in the German Transport Act for a long time, so there haven't been any significant shifts.

Separating out the effect of the Regulations from other legislation is also difficult, since many other pieces of legislation only apply to vehicles over 3.5t, the most significant of these being the road social rules (Regulation 561/2006), road infrastructure charging (Directive 1999/62) and the tachograph Regulation (Regulation 165/2014).

Given that the incentives for switching behaviour are likely to be economic, the existence of cost differentials should provide an indication for switching potential. Comparing the cost differentials between different types of vehicles in Europe showed that HGVs have a considerable advantage over LGVs in all regions. As shown in Table 6-10, the cost of transport per ton by HGV (25 tonnes, 80m<sup>3</sup>) is only around 16% of the cost to transport a ton by LGV (1.65t, 20m<sup>3</sup>). By volume, the cost of transport by HGV is around 60% of the cost of transport by LGV. An increase of more than 25% in the freight transport cost price for HGVs (against a static LGV rate) would be needed for competition to occur (NEA, 2010).

**Table 6-10: Cost of transport by HGV relative to LGVs**

	South West Europe	Southeast Europe	North West Europe	North East Europe
Per ton	16%	16%	16%	16%
Per m <sup>3</sup>	60%	62%	60%	62%

Source: (NEA, 2010)

The impact may also be limited because some countries have extended the Regulations to cover LGVs (and hence switching has lower benefits). This is the case specifically for rules on cabotage in several Member States. Around half of the Member States consulted for this study apply the same cabotage rules to vehicles less than 3.5t (Belgium, Czech Republic, Denmark, Finland, France, Latvia, Poland, Slovak Republic, Sweden), whereas the remainder have less restrictive rules. A Swedish trade union commented that phenomenon of shifting to lighted vehicles is not really observed anymore, since the rules are also applied to vehicles <3.5t. A Danish stakeholder suggested that there was a role to play for lighter touch regulation of vehicles <3.5t, since Danish businesses in the <3.5t market are becoming concerned about the bad reputation these businesses have – for business, road safety, and behaviour.

Several countries (Belgium and France) make reference to Article 8(5), in conjunction with Article 1(5), of Regulation 1072/2009, which is interpreted by them to mean that the rules governing cabotage apply to all carriers, including those who use light vehicles. Italy and Latvia also extend requirements on authorisation to engage in road transport to undertakings below 3.5t (ICF, 2014). Other HGV legislation has also been adapted or expanded to cover LGVs, such as rules on driving times, although the situation is far from harmonised.

In conclusion, there is no concrete evidence of an effect of switching to vehicles <3.5t in order to avoid the Road Transport Package in particular. The likelihood of operators being able to gain a substantial advantage by doing so also appears limited due to economic factors and the fact that many countries have extended the legislation to cover lighter vehicles. Hence it seems unlikely that there are systematic problems of switching to lighter vehicles due to Regulation 1071/2009 and 1072/2009 alone.



### **6.7.3. Interaction with the increased use of subcontracting and the role of freight forwarders**

As outlined in Section 5.2.2, there has been a trend toward greater use of subcontracting, as well as the use of freight forwarders<sup>55</sup>. This may allow for greater efficiency and access to specialised knowledge/services in the market. At the same time, it may create problems because responsibilities become harder to track, and decision-makers may fall outside the practical scope of enforcement. In particular, subcontracting chains can become very complex, making enforcement of the rules harder.

Although the requirements of the Regulations dictate to a certain extent the operational conditions and details of the transport, freight forwarders and shippers are generally not liable for potential infringements to the transport legislation during the transport. Hauliers can therefore come under intense pressure to infringe regulations due to, for example, short delivery deadlines set by forwarders who are not held responsible (AECOM, 2014a; Broughton et al, 2015). As described in Evaluation Question 2 (see Section 6.2.2.3), several Member States have introduced co-liability that includes other actors in the transport chain, but it is not a requirement of the Regulation.

In conclusion, the increased use of subcontracting and the role of freight forwarders has developed externally to the Regulations – this development has been ongoing since before the Regulations were introduced (see Section 5.2.2 for further details) and is driven by market forces rather than the legislation. The main interaction is that the scope of the Regulations may be relevant in terms of contributing to problems of more difficult enforcement (due to difficulty in tracking responsibilities) and more pressure on hauliers (exerted by clients that are not held responsible for infringements of the rules).  
Systematic cabotage

The main unexpected and unintended impacts of Regulation 1072/2009 relate to cabotage. Notably, the Regulation's definition of temporary cabotage does not exclude "systematic" cabotage. This means that in practice a foreign haulier can spend the majority of its time in another EU country, as long as the haulier carries out an international trip every week. This is despite the text in Recital 15, which states that cabotage should not be a permanent or continuous activity, and hence the appearance of systematic cabotage is considered to be an unintended consequence.

Systematic cabotage may affect certain Member States more than others, partially due to their geography. For example, systematic cabotage appears to be carried out in Denmark, but does not appear to significantly affect Sweden, and has only been observed to a small extent in Norway<sup>56</sup> (Sternberg et al, 2015). The extent of possible systematic cabotage in other countries could not be determined, since the analysis of systematic cabotage in Denmark, Norway and Sweden needed to be carried out using specialised data collection via smartphone applications (as explained in Evaluation Question 1, Section 6.1.2.1).

One Danish undertaking interviewed for this study admitted they are carrying out systematic cabotage themselves, which in their opinion is legal based on the Regulations.

Schramm (2012) suggests that large-scale international hauliers with enough of a demand for international trips can act as domestic hauliers and continually rotate their trucks between two countries with three domestic trips in each of the countries. The issue of systematic cabotage appears to arise because of Denmark's specific geography

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<sup>55</sup> Freight forwarders organise goods movements on behalf of shippers, with one or more transport operators. They provide services relating to the carriage, consolidation, storage, handling, packing or distribution of the goods, as well as ancillary or advisory services

<sup>56</sup> A few Lithuanian trucks seem to be engaged in systematic cabotage between southern and western Norway, according to the study.

– its small size means that it is possible for a truck to carry out international transport on a daily basis, with subsequent cabotage. Sternberg et al (2014) showed that between 150 and 200 trucks in Denmark operate with cabotage as a business model – i.e. they are stationed in Denmark, leaving the country for shorter international hauls and then returning to run cabotage in Denmark. This is expected to grow, given the major cost differences between Danish and new Member States' hauliers. According to the study, the relatively high wages of drivers in Denmark make cabotage as a business model a logical consequence.

#### **6.7.4. Difficulties in proving legal cabotage**

The lack of common rules and requirements across Member States (as discussed in Evaluation Question 4) can lead to difficulties for hauliers in providing the required documentation to prove that cabotage is lawful, resulting in them receiving fines for operations that were otherwise legal. This potential issue was identified in the literature, where AECOM (2014b) reports that according to the European Transport Workers Federation has found during the field visits it organises to interview freight drivers in parking areas has revealed that 'professional' drivers are not always aware of the cabotage rules and as a result carry out illegal operations on a 'large scale'.

Information on the extent of this problem is difficult to locate for the purposes of cross-checking the evidence from stakeholders. Enforcement authorities were asked whether they could provide a breakdown of the reasons for cabotage infringements but were not able to identify what share were due to documentation errors. Qualitatively, the enforcement authorities interviewed in Ireland and Bulgaria did not think it was a big problem in their countries. The Dutch enforcer commented that they knew of some problems but could not estimate the extent.

Since access to the cabotage market was only granted in 2012 for Bulgarian and Romanian hauliers, it would be logical to consider that these hauliers would have the greatest risk of unintentional non-compliance due to a period of adjustment to the new provisions. It is difficult to verify whether this is the case using quantitative data due to a lack of availability. To explore whether stakeholders in Romania and Bulgaria felt there were any adjustment problems, several interviews were carried out.

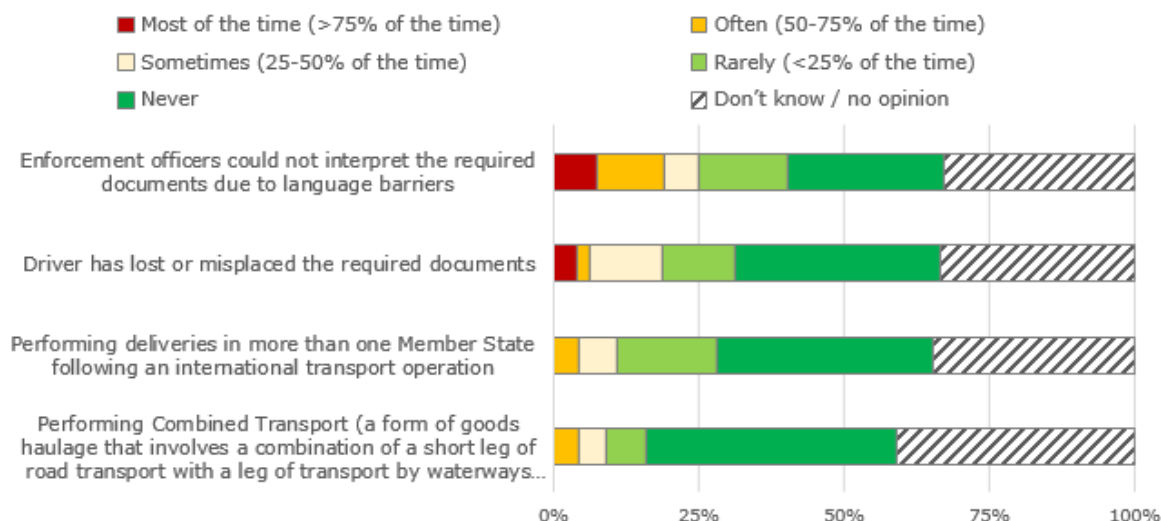
Qualitatively, the Romanian enforcement authorities interviewed for this study observe that the behaviours of Romanian hauliers is improving year by year, i.e. compliance is improving. A Romanian undertaking explained that they consider the provisions in the Regulation to be fair, but this is undermined by the possibility for countries to impose diverse national rules. A Bulgarian association noted that: "*lack of clarity in the rules creates a danger of penalising hauliers for accidental infringements*". Both the Bulgarian association and a Romanian association pointed out that information on national provisions is not available in a common language (such as English).

On the other hand, even stakeholders in Member States that have had access to cabotage for longer still report problems. According to SDG (2013b), the UK enforcers have found that the main cause of cabotage infringements is an inadequate understanding of the cabotage limitations. During interview, a Danish undertaking commented "*In general the regulations have improved the definition of cabotage and have made cabotage operations easier. However, there is still a need for clarification of the rules as the main problem is that they are interpreted differently across Member States.*". He further explained that his company has received a number of charges from Danish authorities, but they have won every case in front of the court. The possibility of difficulties in proving legal cabotage appears to be supported by a study in Denmark. The authors gained access to complete legal documentation for one Bulgarian haulier, and noted the haulier had received several fines for cabotage violations, all of them being due to documentation errors (e.g. the driver picked up the wrong consignments, failed to get a signature for consignment note etc) (Sternberg et al, 2014). This information from a single haulier does not provide evidence of a widespread problem,

but rather indicates that it is indeed possible for documentation errors to occur in practice.

To further understand the potential for any difficulties in demonstrating compliance, undertakings were asked about the main difficulties they faced in proving lawful cabotage, shown in Figure 6-26.

**Figure 6-26: Have you experienced problems with demonstrating compliance with cabotage rules to enforcement officers for the following reasons?**



Source: Undertakings survey (N=70)

The issue of language barriers appears to be the most common, although the results also verify that drivers can lose the required documents and this is the second-most common reason. The issue of language barriers was strongly identified by respondents from both EU-15 and EU-13 Member States (i.e. identified as occurring most of the time or often by 20-44% of respondents in Denmark, Poland, Romania and Austria). The interaction with Combined Transport was also considered a difficulty in a small share of cases and is further discussed in Evaluation Question 12.

Overall, the possibility that hauliers have difficulty in proving legal cabotage and unintentionally break the rules has been suggested in literature, but the extent of the problem was difficult to confirm. Respondents to the undertakings survey and Bulgarian and Romanian interviewees suggest that language barriers could be an important factor, including the lack of information on national interpretations in a common language.

### 6.7.5. Summary and conclusions for Evaluation Question 7

#### 6.7.5.1. Conclusions

An unintended consequence of the requirement of financial standing is that it may exclude firms that are otherwise considered reliable – due to for example, unforeseen market changes or a temporary loss of a major client. It appears that difficulties in meeting the requirement have been exacerbated especially following the recession, and may particularly affect smaller operators.

Several stakeholders voiced concerns over the potential for operators to switch to vehicles of less than 3.5t in order to avoid the Regulations (as well as many other pieces of legislation). There is very little concrete data to support claims of operators switching to lighter vehicles. This is in part due to a lack of monitoring, as well as the difficulty in attributing switching behaviour to the Road Transport Package (as opposed to other legislation). An indication of the potential incentive for switching can be obtained by analysing the cost differentials between transport with lighter and heavier vehicles. This shows that HGVs have a substantial cost advantage over LGVs (NEA, 2010). Even with

the combined regulatory burden from relevant legislation, it appears unlikely that there is substantial unfair competition between light goods vehicles and heavier freight vehicles in international commercial road freight transport (NEA, 2010).

The increased use of subcontracting and the role of freight forwarders has developed externally to the Regulations, driven by market forces and continuing a trend that was in evidence prior to the introduction of the Regulations. Possible unintended effects may have arisen when considering this market development alongside the scope of the Regulations – i.e. since freight forwarders and shippers are generally not liable for potential infringements, hauliers can come under more intense pressure to infringe regulations. More specifically, the unintended effect of the rules is to place additional pressure on hauliers when seen in combination with market developments in subcontracting / use of freight forwarders.

The problem of “systematic” cabotage, where hauliers spend the majority of their time in another EU country, appears to affect some Member States more than others – in particular, this activity has been reported in Denmark, and to a lesser extent in Norway. This unintended effect occurs because systematic cabotage is not strictly forbidden by the Regulations, as long as the haulier is leaving the country every week. The relatively high wages of drivers in Denmark appears to be a key factor in making it more vulnerable to systematic cabotage as a business model, although the extent to which this occurs in other Member States is unknown.

Overall, the possibility that hauliers have difficulty in proving legal cabotage and unintentionally break the rules has been suggested in literature and in some individual cases, but the extent of the problem was difficult to confirm.

#### **6.7.5.2. Recommendations**

The unintended effects of the requirements of financial standing leading to greater firm exit may be mitigated by extending the maximum permissible grace period to rectify the lack of financial standing to 12 months, instead of the current maximum of 6 months. The additional costs of this measure to enforcement authorities are expected to be minimal on the basis that the existing verifications should already be carried out (expect now at 12 months rather than 6).

The potential for switching to lighter vehicles (<3.5t) is not clear and in the absence of concrete data on such problems, no legislative measures at the EU-level are recommended by the study team. Should concerns arise at the national level, there is demonstrated experience in extending the rules - around half of the Member States consulted for this study apply the same cabotage rules to vehicles less than 3.5t (Belgium, Czech Republic, Denmark, Finland, France, Latvia, Poland, Slovak Republic, Sweden).

Concerning the increased use of subcontracting and the role of freight forwarders – two possible solutions have been put forward:

Firstly, introducing separate requirements for freight forwarders/shippers on access to the profession has been suggested: In a presentation at the Working Party on Intermodal Transport and Logistics, it was pointed out that in other professions such as lawyers, doctors, accountants, practitioners must meet certain requirements in order to gain access to national and / or the common market – hence it was questioned why freight forwarders did not have similar requirements (UNECE, 2014). Possible criteria could include the requirement of good repute, financial standing and proven market knowledge (UNECE, 2014). This would have benefits in terms of increased market confidence, reliability and quality assurance, but could also restrict access for small or medium-sized forwarders. On the other hand, representatives of freight forwarders interviewed for this study assert that the same conditions for access to the profession could not apply since the responsibilities and required knowledge are quite different.

The second possible solution would be introducing joint liability, which would make freight forwarders responsible for infringements that they contributed to – this approach

is already used in the Driving Time Regulation (561/2006), as well as in certain national legislation (e.g. Germany). However, this is rarely implemented in practice due to the complex subcontracting arrangements in place that make it difficult to determine responsibility and meet the burden of proof (Barbarino et al, 2014). Nevertheless, a greater recourse to such measures has been identified by the High Level Group as a positive aspect that should be applied to other areas of road transport legislation as a means of improving the effectiveness of the rules (Bayliss, 2012). In the view of the study team, the second approach of introducing joint liability is preferable since it is already used in some Member States and therefore proven to be acceptable. The possibility of introducing co-liability is considered further (along with recommendations) in Evaluation Question 12, in the context of ensuring a coherent legal framework.

The practice of systematic cabotage is not strictly prohibited under the current form of the Regulations and it is clear that it is used in practice as a business model in some Member States. In order to prevent systematic cabotage, the idea of a “waiting period” has been discussed in Denmark, under which a certain amount of time would be required before a new international carriage could be associated with cabotage (Trafikstyrelsen, 2013). However, according to the Danish authorities the Commission has stated that such a waiting period has no support in the Regulation (Trafikstyrelsen, 2013). Without an amendment to the rules to allow some sort of waiting period, it is therefore not clear how Member States can address this issue.

Respondents to the undertakings survey and Bulgarian and Romanian interviewees suggest that language barriers could be an important factor in the difficulties faced by hauliers in proving legal cabotage, including the lack of information on national interpretations in a common language (e.g. English). This issue is also related to the variation in national rules (discussed in Evaluation Question 4, along with specific recommendations), since the differences contribute to problems of proving legal cabotage. Some authorities have produced detailed national guidance (e.g. the French guidelines are cited as an example of best practice in AECOM, 2014b – other countries also produce guidance including Italy and Denmark). However, such information is still not available for all countries nor available in a common location. A relatively low-cost solution would be to present the information already available in a central area (such as the Commission website), which can be used by hauliers or associations.

### **6.8. Efficiency: To what extent have the Regulations helped to reduce costs (i.e. compliance and administrative) both for transport undertakings and national authorities?**

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

This evaluation question considers first the administrative cost savings and compliance costs that have occurred in practice, as compared to those expected at the time the Regulations were introduced.

#### **6.8.1. Administrative cost savings**

The ex-ante savings of €190 million were expected to arise from administrative simplification (European Commission, 2007a). This figure includes impacts on the passenger sector, which are outside of the scope of this study. The relevant total savings within the scope of this study are **€182 million**. There are three elements that accounted for 93% (**€175 million**) of the total ex-ante cost savings, which are considered in the quantitative assessment below: improved monitoring, introduction of financial standing requirements and harmonisation of control documents.

Table 6-11 shows a comparison between the ex-ante and the ex-post cost savings. Overall, the benefits are lower than originally anticipated, mainly due to the non-achievement of the improved monitoring system under ERRU. The full calculations of the ex-post costs are provided in **Annex A** (see Section 9.8.1). The main points for each cost item are as follows:

- **Improved monitoring:** Responses from stakeholders suggest the benefits have been smaller than the ex-ante estimate. However, ministries consulted for this study are optimistic that the fully interconnected system will provide benefits. The lower-bound ex-post benefits for public authorities are estimated on the basis of findings in ICF (2014), which report administrative burden reductions of €1 million compared to the baseline for five countries, mainly due to the use of electronic systems (as opposed to paper-based). Due to the limited data available, the ICF report recommended that the data for countries should not be extrapolated, and hence no upper-bound estimate was developed. Time savings for industry are estimated to be negligible in the lower-bound case, as the expected benefits are mainly due to the avoidance of unnecessary checks under the interconnected system, which has not yet been achieved. It was not possible to define upper-bound estimates, since no further information could be found either in the literature or from stakeholders to form the basis of a more up-to-date estimation.
- **Financial standing:** The main benefits were expected to arise due to the use of bank guarantees, which would avoid the need for time-consuming regular reporting and checks. Since most countries had already allowed the use of bank guarantees, only a portion of undertakings would be affected. The ex-ante estimate assumed that 270,000 firms would opt to use bank guarantees, with a saving of €122 per annum per firm for industry and €100 per annum per firm for public authorities. The ex-post estimation is based on the number of community licences in countries that changed their system to meet the Regulations, which appears to be much lower than the ex-ante assumption, at 107,525-156,051. Responses to the undertakings survey indicate that in most cases there was no cost or saving, but a small portion of firms experienced some impact. The weighted average impact is a cost of €53 per firm. As for public authorities, no more up-to-date estimates were available of the costs or savings, so no ex-post estimate could be developed.

- Control documents:** Feedback from stakeholders indicates that harmonised control documents have significantly speeded up checks. The underlying assumptions for the ex-ante estimate are not clear, but are assumed to be mainly due to time savings. Quantitative estimates obtained in interviews found estimates that checks had speeded up by 15 minutes on the road for enforcement officers and hauliers (plus 45 minutes of back office time for hauliers). The number of checks EU-wide is estimated at 1.2 million. Cost savings are estimated using the average wage rate of workers in public administration (€20.5/hr) for public authorities, and the average operating cost of a truck excluding fuel (€50/hr) for industry (for time saved during road-side checks. Back-office time is estimated at a wage rate of €20.5/hr – the same as public authorities). Assuming that around half of all checks are now quicker gives the upper-bound, whereas the lower-bound assumes that only 29% of checks are now quicker – these shares are in line with survey responses from undertakings.

**Table 6-11: Comparison of administrative cost savings (€ millions)**

	Industry		Public authorities		Total		Difference
	Ex-ante	Ex-post	Ex-ante	Ex-post	Ex-ante	Ex-post	
Improved monitoring	33	Negligible	42	1	75	1	<b>-74</b>
Financial standing	33	-8 to -6	27	unknown	60	-8 to -6	<b>- 66 to - 68</b>
Control documents	20	11 to 18	20	2 to 3	40	13 to 21	<b>- 27 to - 19</b>
Total savings	86	5 to 10	89	3 to 4	175	8 to 14	<b>- 167 to - 161</b>

\* Expected once ERRU system is fully functioning, assuming that ex-ante benefits are achieved  
Source: Ex-ante costs from (European Commission, 2007a); full calculations of ex-post costs provided in Annex A, Section 9.8.1

The ex-post estimations show in all cases that the savings were substantially lower than the expected benefits, and in practice there is very little evidence of any significant savings due. The ex-post cost estimates are based on various assumptions and approximations due to the overall poor availability of relevant data, and are therefore subject to large uncertainties. As such, they should be interpreted only as a guide to the overall level of savings in various categories for the purposes of comparisons with the ex-ante costs.

### 6.8.2. Additional compliance costs

The main additional costs in the ex-ante assessment were due to increased compliance costs on industry, as shown in Table 6-12. These were thought to arise mainly from the requirement of professional competence and the requirement for a designated transport manager. The ex-post costs have been calculated to be broadly in line with ex-ante cost (within the range of uncertainty). The key assumptions are as follows:

- Professional competence:** This cost arises due to the need for training. The actual average cost of training was slightly lower than the ex-ante estimate (€1,030 compared to €1,200, from Machenil, 2014), whereas the number of applicants was slightly higher (around 14,500 compared to 10,000), leading overall to a roughly comparable cost. For public authorities, the cost of accrediting a training centre was estimated to be substantially lower in practice by enforcement authorities compared to what was originally assumed (€200 per centre ex-post, compared to €4,000 per centre ex-ante).

- Transport manager:** The vast majority of undertakings consulted indicated employing a transport manager did not imply any significant change in costs, largely because they already fulfilled this requirement – hence overall costs to industry are assumed to be negligible in the lower bound case. The upper bound case assumes that around 1% of all firms incur additional costs. The ex-ante cost estimate only considered reimbursement of the training costs (€1,200). The ex-post cost estimate instead reflects the need to increase pay in line with additional responsibilities (estimated at a €4,570 increase).

**Table 6-12: Comparison of additional compliance costs (€ millions)**

	Industry		Public authorities		Total		Difference
	Ex-ante	Ex-post	Ex-ante	Ex-post	Ex-ante	Ex-post	
Professional competence	12	15 - 21	2	0.1	14	15 to 21.1	+ 1 to +7.1
Transport manager	6	Negligible to 13	0	0	6	0 to 13	- 6 to 0
Total costs	18	15 to 34	2	0 to 0.1	20	15 to 34.1	- 5 to + 7.1

Source: Ex-ante costs from (European Commission, 2007a); full calculations of ex-post costs provided in Annex A, Section 9.8.2

As for the calculation of benefits, the availability of the required underlying data is extremely poor and hence the ex-post estimates should be interpreted as very rough approximations only, for the purposes of comparing the magnitude of impacts.

### 6.8.3. Other costs or benefits

Concerning the requirement of stable and effective establishment, the ex-ante estimates assumed that most businesses would already comply. The results from the survey of undertakings indicate that this seems to have been the case, with 81% indicating that there had been no significant cost changes. However, 8% of respondents identified a “significant increase in costs” associated with this requirement. However, only one of the respondents that indicated a significant cost increase could provide a numerical estimate, which they reported as €300 per year. Although this seems inconsistent with the identification of the costs as significant, this respondent was a self-employed operator and such costs could be proportionately larger. Estimates of the additional costs were obtained from 29 other undertakings of which 24 estimated the cost at zero, and the average of the five numerical responses received was €1,400. Conversely, 5% of respondents identified some reduction in costs due to this requirement, although again numerical estimates were not provided. Overall it seems that the requirement of stable and effective establishment could increase costs for some organisations (although the magnitude is not clear). At the same time, it does not appear to have systematically impacted the industry and the majority of firms already met the requirements.

There were no other additional costs or benefits identified as being significant in the survey of undertakings. A review of the literature also suggests that additional costs may have been minimal. For example, a study published by the Polish Ministry of Transport noted that the authorisations to pursue the occupation of road transport operator in Europe replaced the previous national operating licences in 2007, which would take place gradually and not entail any additional costs for business (Ministry of Transport, 2013). The Dutch and Slovakian respondents quoted in ICF (2014) felt that the business impact was very limited in their countries. The UK ex-ante assessment found that the requirement of stable and effective establishment would have minimal effect because operators already had to demonstrate an operating centre (DfT, 2010). They also considered the impact of cabotage to be minimal due to the low penetration rates (DfT, 2010).



Opportunity costs due to loss of good repute may affect individual transport managers (through loss of income for an average of two years) but losses of income will be offset by income gains to other transport managers that have retained their good repute. In the long-run, the industry and society as a whole would also be expected to benefit from the disqualification of those managers judged to be of ill repute (DfT, 2010). Unexpected benefits may have arisen due to the unanticipated need to temporarily relax the cabotage rules in order to meet seasonal peaks in the motor vehicle trade in the UK. The DfT estimates the additional benefits to businesses to be around €1.8 million per year, whereas the additional cost to treasury due to loss of fuel duty and VAT would be €0.05 million per year (DfT, 2012). This situation is however rather unique to the UK and does not apply across Europe.

Considering whether requirements might have disproportionate impacts on SMEs is an important part of evaluation. Around 45% of respondents to the high level survey felt that the Regulations had disproportionate impacts on SMEs. The industry associations noted that in general, common administrative burdens automatically affect SMEs more and also felt that being at the bottom of the subcontracting chain made them less competitive. An industry association explained that negative impacts on SMEs may not necessarily be because of the Regulation, but because of market forces and the economic crisis. SMEs are disadvantaged because they cannot be as flexible as bigger companies and they can't outflag or subcontract. Qualitatively, in ICF (2014), Lithuania and Malta underlined that it might be more difficult for SMEs to have a transport manager in charge of haulage operations, as restrictions on the numbers of enterprises and vehicles were imposed. In their responses to the survey of ministries, representatives from Lithuania also asserted that SMEs find it more difficult to have a transport manager in charge of haulage operations as restrictions on the numbers of enterprises and vehicles were imposed.

The view that cost increases naturally affect SMEs more negatively makes intuitive sense, although it was not strongly supported by the responses from undertakings. The survey asked about whether each of the requirements of the Regulations had increased or reduced their costs. Smaller companies employing fewer than 20 people (around one-third of respondents) actually had a lower share of respondents indicating a cost increase compared to the group as a whole, for each of the requirements relating to the Regulations (stable and effective establishment, financial standing, transport managers, professional competence, cabotage documentation etc). At the same time, the smaller companies indicated a higher share of respondents choosing the option of "don't know", which may explain this apparent discrepancy.

#### **6.8.4. Summary and conclusions**

Overall, the benefits experienced to date due to reductions in administrative cost are much lower (92-95% lower) than the amount originally anticipated, estimated at €8 million to €14 million per annum to date, compared to the total savings expected for improved monitoring, financial standing and harmonised control documents of €175 million.

The shortfall is mainly due to the fact that the ERRU system is not fully functional and negligible benefits could be calculated to date, meaning that the expected benefits have not been achieved. Stakeholders are however optimistic that the system will eventually lead to cost savings once the interconnection is complete, although the possible savings once this is achieved could not be estimated/quantified. The other main area of shortfall was the requirement of financial standing, which was expected to lead to savings for industry but is calculated to have resulted in net costs. It may be possible that the benefits due to these requirements could not be noticed or quantified by firms since they were expected to arise from less frequent verification (i.e. possibly time savings) – in any case, it seems they are unlikely to be significant since firms could not identify them. In the view of the consultants, the original estimates seem to have been over-optimistic.

The additional compliance costs are estimated at €15 to €34 million per annum, which is broadly comparable to the ex-ante estimates of €20 million per annum. The main uncertainty is the extent to which firms have been affected by the requirement for a designated transport manager in practice, considering the possible need to increase their salary commensurate with their increased responsibilities.

In all cases, it should be noted that the availability of the underlying data required for the calculations is extremely poor, and hence the cost estimates should be interpreted as a very rough estimation of the *magnitude* of impacts, rather than an exact calculation.

Additional costs not already considered may include costs to businesses to meet the requirements of stable and effective establishment, but the impact does not appear to be systematic and the majority of firms indicated that they already met this requirement. Other costs were not identified as being significant. The possible negative impact of cost increases on SMEs was highlighted by industry associations and ministries in Lithuania and Malta, but the extent of this is not clear and SME respondents to the undertakings survey did not provide replies that suggested a disproportionate impact.

The main shortfall in the achievement of the expected benefits is due to the incomplete functioning of ERRU, and hence it is recommended that interconnection is pursued as a priority. The cost-effectiveness of such measures are calculated in more detail in Evaluation Question 9.

### 6.9. Efficiency: Are there costs related to the implementation of the new provisions? If so, are they proportionate to the benefits achieved?

Are there costs related to the implementation of the new provisions, such as those related to stable and effective establishment, the European Register of Road Transport Undertakings and cabotage? If so, are they proportionate to the benefits achieved, in relation to the measures set out in the Regulations (e.g. setting up and interconnection of electronic registers, harmonisation of transport documents and checks of the establishment and cabotage provisions)?

This evaluation question is concerned with the **implementation costs** in relation to Regulations 1071/2009 and 1072/2009, that arose during the course of changing their national rules and introducing the new systems.

#### 6.9.1. Qualitative analysis of implementation costs

As a first step, the relevant **one-off costs** and **ongoing costs** were identified (see Table 6-13) and a qualitative assessment of their importance was made. This screening is based on the responses from national enforcement authorities, who were asked to identify whether each item had a significant, small or negligible contribution to implementation costs.

**Table 6-13: Implementation costs for Regulations 1071/2009 and 1072/2009**

Cost item	Contribution to overall implementation costs (% of stakeholder responses)
<b>Regulation 1071/2009</b>	
Obligation to set up / maintain national electronic register and connect this with ERRU	<b>Significant contribution (82%)</b>
Establishing a risk rating system for targeting checks of good repute / financial standing / stable establishment	Small contribution or no contribution (80%)
Obligations for cooperation across borders	Small contribution or no contribution (58%)
Requirements for checks on stable and effective establishment	No material impact (64%)
Obligations to mutually recognise certificates issued in other Member States	No material impact (70%)
<b>Regulation 1072/2009</b>	
Obligation to ensure that serious infringements are recorded in the national electronic register (Article 14)	Small contribution or no contribution (66%)
Changes to the <i>cabotage</i> provisions	No material impact (75%)
Common format for community licences and drivers' attestations	No material impact (57%)

*Notes: Respondents identifying that costs were not applicable are excluded from the calculations and percentages based on the remaining pool of respondents*

*Source: Survey of enforcement authorities*

Specifically concerning the cost elements identified in the evaluation question itself, **harmonisation of transport documents** (common format for community licences and drivers' attestations), **checks on establishment** and **changes to the cabotage provisions** were not identified as having had any significant contribution to overall implementation costs.

### 6.9.2. Quantitative analysis of identified implementation costs for public administrations

As shown in Table 6-13, the only provision that made a significant contribution to implementation costs was the **setting up of national electronic registers and their interconnection with ERRU**.

#### 6.9.2.1. Setting up / upgrading of national registers

Data on set-up costs for national registers were provided by a number of Member States (full details are in **Annex A**, see Section 9.9.1). Ministries were asked to provide estimates of the setup and interconnection costs, *disregarding any costs incurred that were not due to the Regulation* (i.e. ensuring that only the additional impact of the Regulation was estimated). In absolute terms, there was a very large variation from €14,755 in Cyprus up to €2.5 million in Poland. In some cases, the interconnection cost was included in the estimate of set-up costs (Germany, UK, Ireland, Latvia, and Lithuania).

To establish whether the expected level of costs were realised, the actual costs need to be compared to the ex-ante estimates. Full details of the calculations are provided in **Annex A**. Ex-ante cost estimates were taken from the TUNER study (Wilson et al, 2009). On the basis of the data provided by 11 Member States, the costs for set-up / upgrading of national registers were extrapolated to estimate the total investment for the EU-28. The costs of implementation tend to scale with the size and complexity of the required system, hence Member States were classified according to whether they had small, medium or large registers (see Annex A for more details).

As shown in Table 6-14, the ex-post cost outcomes appear to be around two-thirds lower than the ex-ante estimates. The total cost of setting up/upgrading national registers for all 28 Member States was estimated at €18.2 million ex-post, compared to €52.75 million ex-ante. However, it should be noted that, at the time the ex-ante estimates provided in TUNER were considered to be a “worst case” (but realistic) scenario, and were calculated in recognition of the fact that development costs for older systems could be significant.

**Table 6-14: Comparison between ex-ante and ex-post costs for set up / upgrading of national registers (disregarding any prior costs)**

Register size	Number of Member States	Member States	Ex-ante set up cost (€ millions)	Ex-post set up cost (€ millions)
Small	9	HR, CY, DK, EE, FI, LT, LU, MT	0.75	0.37
Medium	12	AT, BE, BG, CZ, EL, HU, IE, PT, RO, SE, SI, SK	1.5	0.51
Large	7	FR, DE, IT, NL, PL, ES, UK	4.0	1.25
Total	28		52.75	18.20

Notes: Cost estimates of set-up costs provided by Germany, Latvia, Lithuania, UK and Ireland were adjusted to take account of the fact that their cost estimates also included interconnection costs.

Source: Ex-ante cost estimates and MS register size categories from Wilson et al (2009), assuming that HR has a small register. Ex-post cost estimates from survey of national ministries.

### 6.9.2.2. Interconnection to ERRU

Not all Member States are interconnected to the ERRU system (see Evaluation Question 3, Section 6.3), due to technical difficulties and delays. To date, 20 Member States<sup>57</sup> are connected (plus Norway, which is not included in the calculations since it is not part of the EU-28). Full details of the calculations are provided in **Annex A**.

Separate estimates of the cost of interconnection were provided by eight Member States that have achieved interconnection indicate that on average the costs were around €300,000, but showing a very large range from €21,600 to €1.4 million. There does not appear to be any relationships between the interconnection cost and the size of the national register, and no substantive comments were given by stakeholders as to why the costs may have varied.

Nevertheless, it could be expected that the costs depend more on the ease of the implementation process. A straightforward interconnect would require (Wilson et al, 2009):

- National registers are in place that have high degrees of automation;
- Information required by the Regulations to be already available;
- Good ICT infrastructure already in place.

Conversely, if these conditions are not met, the interconnection process would be more difficult. The number of Member States with easy, medium and difficult implementation was processes taken from TUNER project (Wilson et al, 2009). Only the overall numbers were identified in the report and difficulty levels were not assigned to individual countries. In the absence of more up-to-date information, the same number of Member States experiencing easy, medium and difficult connections was assumed in order to extrapolate the partial information received to cover all 20 Member States that have interconnected their registers so far. This was assumed to be a reasonable approximation since the original classification in the TUNER project was based on the infrastructure in place prior to the Regulations.

Table 6-15 shows that the estimated ex-post interconnection costs for all 28 Member States is around €3 million. This is around 85% lower than the ex-ante cost estimates. Full details of the calculations are given in **Annex A** (see Section 9.9.3).

**Table 6-15: Comparison of ex-ante and ex-post cost estimates for interconnection**

Ease of implementation	Number of Member States ex-ante (ex-post)	Ex-ante interconnection cost (€ millions)	Ex-post interconnection cost (€ millions)
Easy	10 (7)	0.58 (medium) (0.4 - 0.7)	0.05
Medium	11 (8)	0.68 (medium) (0.5 - 0.8)	0.12
Difficult	7 (5)	0.98 (medium) (0.8 - 1)	0.31
Total	28 (20)	20.14 (medium) (15.1 - 22.8)	2.83

<sup>57</sup> Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Malta, Netherlands, Romania, Slovak Republic, Slovenia, Spain, Sweden and the UK

\* *easy*” interconnection taken as the lower quartile of the estimates provided; *medium*” taken as the median of all estimates; *difficult*” taken as the upper quartile of the estimates provided  
 Notes: Number of Member States with easy, medium and difficult implementation processes taken from TUNER project (Wilson et al, 2009). Only overall numbers were identified, and difficulty levels were not assigned to individual countries. Croatia assumed to have a medium difficulty implementation. Low, medium and high interconnection costs depend on whether low, medium or high staff costs were assumed. Costs include staff time, maintenance, hardware, software & interface connections

### 6.9.3. Cost-benefit analysis

The primary benefits of setting up the ERRU were intended to be in terms of allowing more efficient and effective enforcement. These benefits are assessed in Evaluation Question 8, see Section 6.8), where it is found that there have been limited benefits to date since the system is not currently fully functioning. The ex-post benefits are estimated to be €1 million per year for public authorities and negligible for businesses.

The cost-benefit analysis must take one further cost into account - the activities involved in maintenance, management and operation of the interconnected registers represent an ongoing cost of enforcement. The ex-ante cost estimate for ongoing maintenance at the EU level was €6 million per year (European Commission, 2007a), although this was not broken down at a Member State level. To estimate the ex-post costs it is assumed that the maintenance costs scale with the complexity of the national registers. As shown in Table 6-16, the ex-post cost outcomes appear to be around 73% lower than the ex-ante estimates, with the total for all 28 Member States estimated at €1.6 million (full details are given in **Annex A**).

**Table 6-16: Comparison between ex-ante and ex-post costs for maintenance of interconnected registers**

Register size	Number of Member States	Ex-ante maintenance cost of national registers (€)	Ex-post maintenance cost (average €)*
Large	7	Not given	35,000
Medium	12	Not given	59,000
Small	9	Not given	88,000
Total	28	6,000,000	1,639,000

\* *unadjusted average of responses received from Member States in the surveys in each size category*

Notes: Number of Member States with each register size taken from TUNER project. Croatia assumed to have a small size

The reason for this discrepancy is not explained by any comments from stakeholders, but probably reflects the lower staffing levels. According to the UK Department of Transport (DfT, 2014c) staff costs are one of the most important components of the overall running costs. Hence the overall low costs may indicate that enforcement agencies lack appropriate levels of manpower (as suggested by stakeholders). Once the system of ERRU is fully functioning and if Member States are making and responding to requests, it could be expected that the maintenance costs will increase compared to the estimates provided for the current partially-functioning system.

As shown in Table 6-17, the ex-post benefit-cost ratio is 0.2, based on the estimated current maintenance costs and lower-bound estimated benefits. This indicates that the system has *not* been cost-effective to date. Full calculations are provided in **Annex A** (see Section 9.9).

**Table 6-17: Net Present Value (NPV) of ERRU system (€ millions)**

	NPV costs (one-off plus maintenance)	NPV benefits		Benefit- Cost ratio
		Public authorities	Industry	
NPV to-date (20 Member States interconnected)	34.9	8.4	negligible	0.2

*Notes: Using a discount factor of 4%, and estimating the costs and benefits over 10 years. Benefits are assumed to start accruing annually the year after the system is in place. Costs include the discounted costs of set-up, interconnection and maintenance.*

As discussed in Evaluation Question 3, the benefits in the cost-benefit calculations are substantially lower than expected due to the partial functioning of the ERRU system. Qualitatively, the benefits are widely expected to increase once the system is fully functioning (see Evaluation Question 3). Nevertheless, the extent of these expected benefits could not be quantified and it cannot be confirmed whether or not the cost-benefit of the completed system will be positive or negative. Taking into account that only 13 Member States were connected to ERRU in 2014 (rising to 20 in 2015 - plus Norway), it is considered too early to measure what the possible benefits of the fully interconnected system will be.

#### **6.9.4. Summary and conclusions for Evaluation Question 9**

This Evaluation Question has looked at the implementation costs due to the new requirements laid down in Regulations 1071/2009 and 1072/2009.

The only provision that made a significant contribution to implementation costs was the setting up of national electronic registers and their interconnection with ERRU. Overall, the estimated ex-post cost for all 28 Member States is €18.2 million for the setting up / upgrading of national registers (excluding any costs incurred prior to the adoption of the Regulation) and €2.83 million for their interconnection (a process that is still ongoing with only 20 Member States being interconnected to date). This totals to €22.1 million, which is around 70% lower than the ex-ante cost estimates of €73 million.

Since the system has not been completed to date, the benefits achieved at the moment are also much lower than the ex-ante estimates (as discussed previously in Evaluation Question 8). Current estimates of the benefit-cost ratio are around 0.2 (assuming a discount rate of 4% and a time period of 10 years), indicating that the system has not been cost-effective so far. This is largely because the benefits are assumed to be rather small, due to the incomplete status of interconnection. Although the benefits are widely expected to increase once interconnection is completed, no quantitative estimates of the eventual benefits of the fully functioning system could be obtained.

**6.10. Efficiency: To what extent have the Regulations been efficient in their objective of enabling enforcement of the existing rules?**

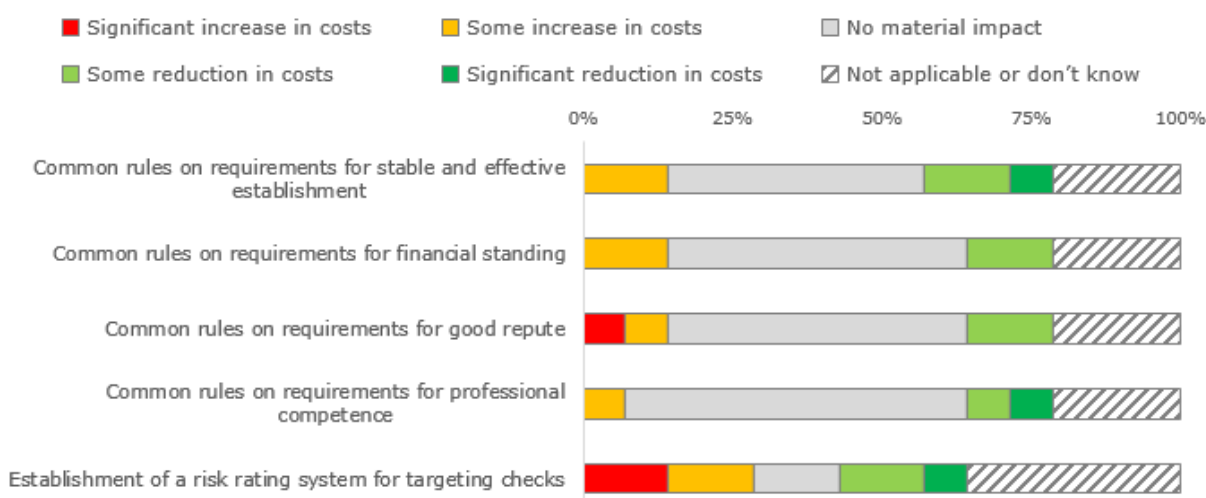
To what extent have the Regulations been efficient in their objective of enabling enforcement of the existing rules? Have the enforcement practices put in place by Member States created any savings or costs for national authorities and transport operators?

This Evaluation Question is concerned specifically with the costs arising from enforcement measures in a “narrow” sense, e.g. the costs for individual checks. The assessment is more qualitative than for the previous efficiency questions. This is because the cost for individual elements of enforcement cannot usually be separated out according to different activities, or even checks of requirements specifically related to the Road Transport Package, since enforcement authorities tend to conduct checks of several pieces of legislation in parallel.

**6.10.1. Regulation 1071/2009**

Enforcement authorities consulted for this study do not generally appear to consider that the provisions of Regulation 1071/2009 had any significant impacts on ongoing enforcement costs – either positive or negative. Figure 6-27 shows the responses of enforcement authorities when asked about the impact of Regulation 1071/2009 on the cost of their enforcement activities, with most indicating a neutral impact, and roughly equal proportions indicating an increase and a decrease.

**Figure 6-27: Impact on annual operational costs of enforcement authorities due to Regulation 1071/2009**

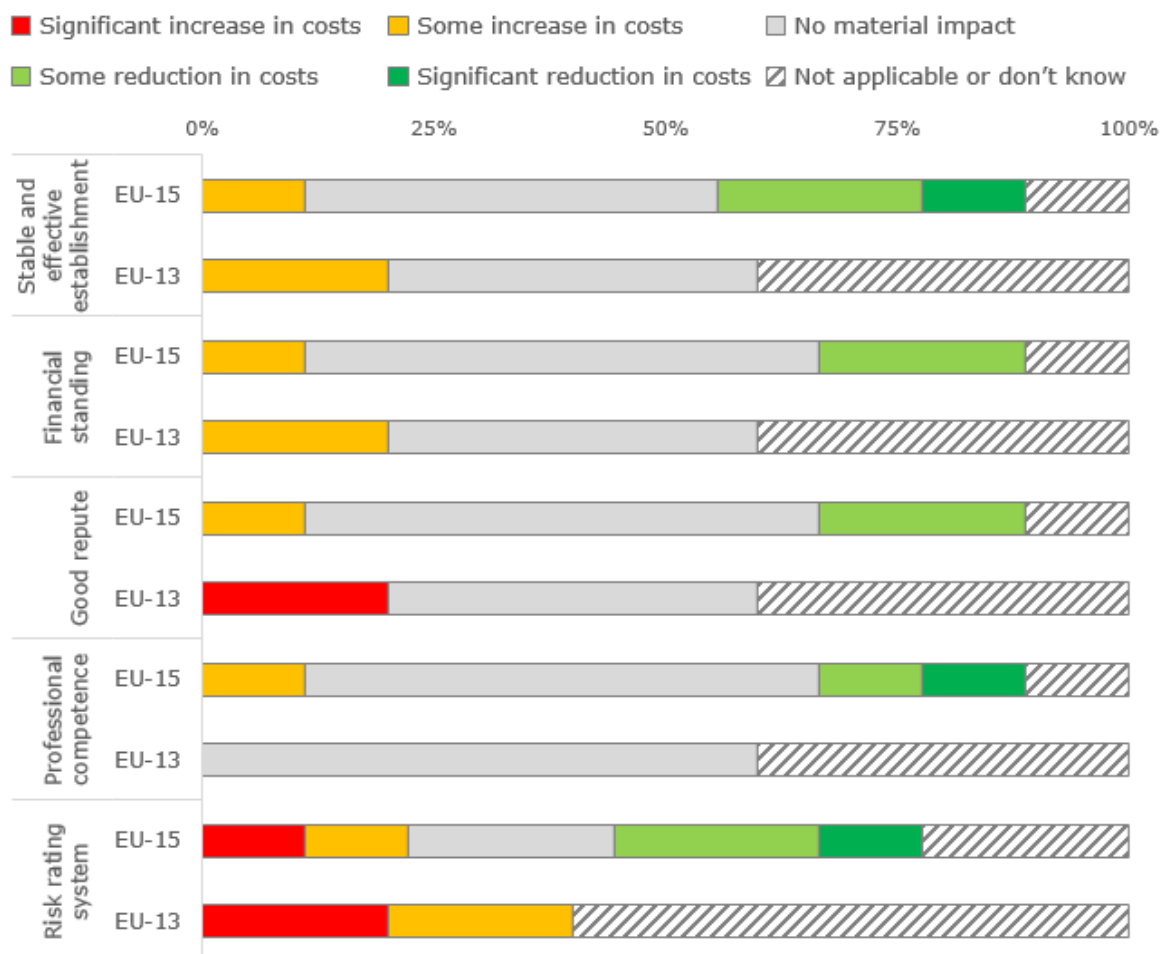


Source: Responses to the survey of enforcement authorities (N=14)

When split by EU-15 and EU-13 respondents (Figure 6-28), the majority of responses for each group was still that there was no material impact. All of the answers indicating a cost reduction came from EU-15 respondents, whereas most of the “don’t know” responses came from EU-13 respondents.



**Figure 6-28: Impact on annual operational costs of enforcement authorities due to Regulation 1071/2009**



Source: Responses to the survey of enforcement authorities (9 respondents from EU-15 and 5 from EU-13)

The establishment of a risk rating system has elicited the most variation in responses. Those that identified significant increases in costs highlighted the additional staff time needed to operate the new systems and technical difficulties. It should also be noted that some countries still have not set up a risk rating system as required, and as discussed in Evaluation Question 2, the functioning of these systems differs between countries.

In order to quantify whether the requirements of Regulation 1071/2009 have enabled more targeted checks, enforcement authorities were asked to estimate the extent to which they could now achieve this due to the requirements of the Regulation. The majority of respondents who replied to this question reported that they were not able to reduce the number of checks (Romania, Latvia, France, Luxembourg, Finland and Germany), which appears in line with the qualitative responses received above. The Danish authority stated that they conduct fewer checks than before, but the number depends on the number of violations that feed into their risk-rating system.

A general lack of quantitative data has hindered a more detailed analysis, despite requests made to ministries and enforcement authorities. The difficulties in obtaining quantified estimates were also confirmed in a previous detailed study conducted by ICF (2014), which was commissioned to focus exclusively on the cost of the Regulations. In the ICF study, it was not possible to gather quantitative estimates of any administrative savings/costs in seven Member States (the Czech Republic, Estonia, Greece, Spain, Italy, Cyprus and Slovenia). In addition, the savings were explicitly estimated as being negligible in a further seven Member States (including Latvia, Malta, Netherlands,

Austria, Slovakia, Finland and Denmark). The Danish, Slovakian, Finnish and Austrian respondents commented that the lack of savings was due to similar requirements already being in place. These findings are broadly in line with the responses for the surveys carried out in this study, which also indicate that in most cases there was no material impact, and that any impacts are difficult to quantify.

At the Member State level, the main obstacles or difficulties experienced by Member States relate to the financial burdens of setting up and interconnecting national registers; technical difficulties in linking national registers to the ERRU and delayed implementation of the systems slowing down the monitoring of road transport undertakings. As discussed in Evaluation Question 9, the single biggest cost of the Regulation the set up and interconnection of national registers.

The differences between national experiences is shown below through examples that have been developed based on desk research, supplemented with findings from the interviews and surveys conducted for this study.

As examples of countries that have reported costly experiences, Germany and Italy are reviewed. The **German** authorities reported in ICF (2014) that a new administrative procedure had to be created for the declaration that the transport manager is unfit to manage the transport activities of an undertaking. They felt that this procedure causes further administrative burden, as does the evaluation of the requirements of the transport manager and the risk assessment of companies (but these costs were not quantified). They recognise that the extension of the period of validity of the licence from five to ten years might lighten the administrative burden, but again did not quantify the impact (ICF, 2014). However, the response from the main enforcement authority in Germany to the survey for this study is not consistent with the findings in ICF, as the respondent indicated "some reduction" in ongoing costs for all of the requirements on common rules.

The **Italian** ministry reported in their survey response that the major problems have been encountered in the test phase of interconnection since, having chosen to work with the platform Eucaris, it was necessary to carry out checks - first in one environment and then Eucaris environment configured to interact with the entire ERRU system through the central hub. It is not directly clear why this is the case in Italy, since other countries also used Eucaris. A possible explanation as remarked by the Italian trade associations in ICF (2014) is that: "*Regulation 1071/2009 has led to duplication between the old Register of Road Haulage Companies and the New National Electronic Register, increasing the amount and type of information to be provided and the number of authorities the undertakings have to deal with.*". It appears that Italy have reported at various times the challenges faced due to the need to change from their previous paper-based system (ERRU working group, 2011).

The representative from **Malta** reported in ICF (2014) that the main changes that had increased administrative burden were the introduction of the register and the limitations in the operation of the transport manager to 4 companies and/or 50 vehicles. However, they consider that the positive impacts from greater harmonisation and a more level playing field shall balance the increase in administrative burden caused by the same changes (ICF, 2014).

The **Portuguese** respondent in ICF (2014) commented that "*benefits derived from this Regulation – although unequivocal – are inherently difficult to account for in terms of administrative savings.*", but no further details of national best practice were found. The response from **Latvia** in ICF (2014) pointed out that the access of enforcers to data on infringements (national registers) and to information on the risk rating of the company (risk rating systems) would contribute to improving enforcement; however, the examination of all the information still requires administrative resources.

The **Irish** respondents to the survey in ICF (2014) commented that potential savings of €1.3 million could be achieved due to the new computer systems, which enables the exchange of enforcement data between government agencies, provides more secure

and modern documentation systems and allows operators to apply for and manage their records online. They felt that best practice would be for government bodies will continue to seek opportunities for greater electronic sharing of information in order to reduce the need for applicants to provide the same information repeatedly where they are applying for a range of services across different Government bodies.

More broadly, **the UK** can be considered an example of best practice. ICF (2014) reported that the UK authorities found the total direct costs over 10 years were €6.2 million, but estimate that the total savings were €10.9 million (net saving of €4.7 million over 10 years). No further information on exactly what these costs or savings could be attributed to was reported. Quoted in ICF (2014), the UK highlighted the key lesson in their implementation of using 'independent regulators' (non-departmental public organisations that regulate an industry or sector), working with industry to find solutions to implementation difficulties and to find ways to minimise burdens where possible (ICF, 2014). The UK respondent to the enforcers' survey for this study remarked that they were able to conduct fewer checks compared to the situation prior to Regulation 1071/2009, but stressed that this was due to their national systems and not the Regulation. In the UK, the Operator Compliance Risk Score (OCRS) system is used to decide which vehicles should be inspected at the roadside. The scoring includes data on roadworthiness test history information, data relating to when the vehicle fleet was checked and actual checks undertaken at the roadside, as well as traffic enforcement data based on a score relating to the number of infringements relating to driver hours and the number of infringements relating to overloading and other infringements. The effectiveness of the risk targeting has been demonstrated in the enforcement statistics – the prohibition rate of targeted checks was 26.6% on average in 2013-2014, compared to a rate of 12.5% found for random checks (VOSA, 2015).

Quoted in ICF (2014), best practice highlighted in **the Netherlands** is to efficiently carry out company inspections on the basis of risk factors, and also stated that implementation of the Regulations had negligible impact on administrative burdens for businesses and citizens. On the other hand, the Dutch respondents to the survey for this study indicated a "significant increase" in costs in connection with the risk-rating system. When explored in more detail, this cost was estimated to be due to having at least one extra full time employee that executes the system. They were not able to estimate the extent of savings, but explained that their risk-rating system had been developed by the Dutch Road Haulage Organisation for National and International Transport, and it detects transport operators that are in risk of no longer fulfilling the requirement of financial standing. They further elaborated that the system also includes risk-targeted of professional competence.

Enforcers were asked for their suggestions as to how enforcement could be made less costly without significantly detracting from current levels of compliance. Several suggestions were received, which were diverse and there were no clear themes emerging across groups of countries. For instance, the Romanian respondent suggested developing automatic control systems using ICT applications. The Dutch enforcers considered that clear, unambiguous rules were still needed. They also suggested redesigning ERRU into a multipurpose system also suitable for direct enforcement and risk rating. Finally, they called for more international cooperation through ECR. The UK authorities suggested desk-based compliance assessment and earned recognition for compliant operators.

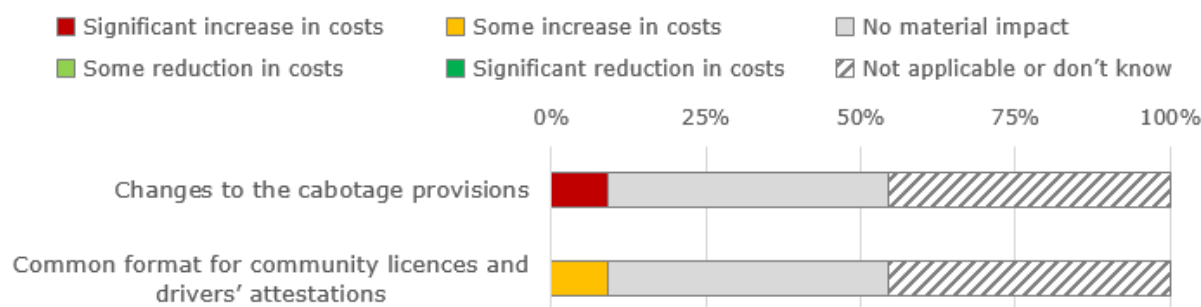
In conclusion, this lack of consistency in the identified means to improve efficiency, along with the examples of enforcement practices from different countries, reflects the very diverse national situations. The ability to achieve costs or savings at the enforcement level seems to be largely dependent on the national implementation and the systems already in place prior to Regulation 1071/2009, especially concerning the pre-existing ICT infrastructure. Best practice examples from the UK and the Netherlands indicate that a higher use of the risk rating system to target checks could result in greater cost-effectiveness.

### 6.10.2. Regulation 1072/2009

The direct cost savings at the enforcement level of Regulation 1072/2009 that were expected in the ex-ante assessment to be much smaller compared to Regulation 1071/2009. Aside from the harmonisation of control documents (quantified previously in Evaluation Question 9), the main expected benefits arose from the simplification and harmonisation of the definition of cabotage (estimated to save €3 million for public enforcement bodies and €4 million for hauliers each year).

As already discussed in Evaluation Question 2, data on the number of checks of Community Licences and Driver Attestations is very scarce. The general lack of information is also confirmed in the survey responses from enforcement authorities, with a high share of respondents indicating that they did not know what the impact on ongoing enforcement costs was. As shown in Figure 6-29, almost half of respondents did not know, whereas most of the remaining respondents indicated that there was no material impact. The significant increase in costs was identified by the Netherlands and refers to five additional full-time staff that were needed to implement controls of cabotage, but the respondent noted that this was due to national political pressure.

**Figure 6-29: Response to the question: What effect on ongoing (annual) enforcement costs has each of the following provisions had since the adoption of the Regulation?**



Source: Enforcers' survey (N=11)

To try to approach the issue from another direction, enforcers were asked whether performing checks on cabotage was more efficient now due to the new rules, compared to the situation prior to Regulation 1072/2009. However, again around half of respondents could not answer. Three enforcers felt that the efficiency had improved, and four felt that there had been no material impact. No further comments were given to substantiate these answers in the surveys.

Enforcement authorities in interviews were expressly asked about any *time savings* (as distinct from cost savings) due to the common rules for cabotage (NB, time savings due to the common formats for control documents were already assessed in Evaluation Question 8). The Romanian authorities interviewed for this study felt that the costs were the same as compared to the situation prior to the Regulation. The Irish, Latvian, Polish and Slovenian authorities could not say. Only the Bulgarian authorities were able to provide an indication that the common rules on cabotage had led to time savings of 10% (6 minutes). The apparent diversity of experiences across Member States means that this data point cannot be extrapolated further. According to an Austrian industry association, cabotage in Austria was previously checked through the "Kabotagekontrollblatt" (cabotage control sheet). With the new regulations the checks are done based on the CMR and waybills, which according to the association makes it more difficult for enforcement authorities.

Overall, the survey results and interviews strongly suggest that there have not been any major impacts (increases or decreases) on enforcement costs due to Regulation 1072/2009. Any time savings due to the common rules on cabotage appear to be harder to identify and quantify compared to the time savings due to harmonised control documents analysed previously in Evaluation Question 8.

A review of the literature also did not return many specific results. The UK authorities in their assessment of the rules did not indicate any significant costs associated with Regulation 1072/2009, noting expressly that it was not possible to quantify impacts associated with the improved definition of cabotage (DfT, 2010). SDG (2013a) reports that enforcement of cabotage rules before the introduction of Regulation 1072/2009 was difficult to implement both because of a lack of clarity of the legislative provisions ruling the cabotage market and because of the weakness of the instruments used and the actions put in place to monitor them – the report considers that Regulation 1072/2009 has certainly helped to define the scope of cabotage operations by providing a clearer definition based on specific criteria such as the 3 operations in 7 days rule and the link to international carriage, even considering the different implementation across Member States (SDG, 2013a).

One potential efficiency issue is whether or not hauliers are required to show documentation (i.e. CMR consignment note) during roadside checks. Regulation 1072/2009 does not require that the documents must be on-board the vehicle when it is stopped for control purposes.

The French ministry, in their survey response for this study, noted that Regulation 1072/2009 does not require that these documents must be on-board the vehicle when it is stopped for control purposes. In such cases, they explained that getting the document is time-consuming because the drivers have often to request it by email to his/her company, and they claim that a lot of time is lost with an associated administrative cost for authorities (controls take longer than needed) and economic costs for the company (i.e. if the vehicle is immobilised).

In order to avoid this problem, Denmark requires that documentation is presented to enforcement officers on demand, and should be available when the vehicle is stopped. In practice, this means that documentation should be able to be presented within a reasonable time after the stopping of the vehicle. Electronic forwarding within a quite short time is accepted. However, providing of documentation must not cause a considerable delay of the inspection of the police (Trafikstyrelsen, 2014).

In Germany, if required documentation (including the driver attestation) cannot be provided upon request, entitled authorities may impound the vehicle until these documents can be submitted (European Parliament, 2013b). Several enforcement authorities (Ireland, Netherlands) pointed out in their survey responses that it is not clear whether an operator is permitted to produce documentation to show compliance with cabotage rules after a roadside check. The Dutch enforcement practice is that such documentation must be presented to the inspecting officer at the time of the roadside check and not after the event.

### **6.10.3. Summary and conclusions**

For Regulation 1071/2009, indications from both the survey responses and literature are that there have not been any significant changes in enforcement costs, since most of the activities were already being carried out. A neutral cost impact was therefore indicated for the requirements of stable and effective establishment, financial standing, good repute and professional competence. The requirement that returned the most uncertain responses with regard to its impact was the establishment of a risk rating system for targeting checks, possibly due to the different functioning of these systems at the national level.

Looking at specific countries in more detail indicates a diverse range of experiences. Italy suffered from particular difficulties due to the implementation of the register, which appear to be due to duplication with the previous national register. The difficulty and time required to implement new ICT systems should not be underestimated, and many Member States have experienced technical difficulties and delays in the implementation of their systems (as identified in Evaluation Question 3). On the other hand, Ireland felt that their new ICT systems had decreased the administrative costs, indicating that more streamlined implementation should be beneficial.

Other countries felt that increases in costs were balanced by decreases elsewhere (e.g. Latvia, Malta), whereas Portugal and the UK indicated net positive impacts.

Best practice examples from the UK and the Netherlands indicate that a higher use of the risk rating system to target checks could result in greater cost-effectiveness – the risk rating systems in both these countries go beyond the minimum requirements of the Regulation by including factors other than good repute. The UK highlighted the benefits of using independent bodies to help find ways of minimising burdens in collaboration with industry.

Ensuring better cooperation has been suggested as a way to improve efficiency, as already discussed in Evaluation Question 3. No other consistent suggestions from enforcement bodies were received as to how enforcement could be made less costly, which possibly reflects the diverse national situations.

For Regulation 1072/2009, again there do not appear to be any significant changes (positive or negative) in the enforcement costs indicated via surveys, interviews and literature review. Therefore it can be concluded that although there are not likely to have been substantial costs, the expected savings due to the definition of cabotage operations introduced by Regulation 1072/2009 have not been achieved (expected saving of €3 million for public enforcement bodies).

A possible efficiency issue is whether or not hauliers are required to show documentation during roadside checks. In cases where the driver does not have the documentation in the vehicle, it was pointed out that this increases administrative burdens and impedes the work of control officers. To combat this, some Member States require that documentation is available in the vehicle or provided within a short time (e.g. Denmark, Netherlands).

No clear examples of best practices that resulted in cost savings were evident. Suggestions from stakeholders and in the literature largely referred to the possible extension of ERRU to ensure better cooperation and enable roadside officers to use the information (see Evaluation Question 3 for discussion of this), and the use of electronic data/GNSS (assessed in the context of Evaluation Question 2, see Section 7.2).

### **6.11. Relevance: To what extent are the operational objectives of the Regulations relevant and proportionate to address the problems of the sector?**

To what extent are the operational objectives of the Regulations (i.e. to lay down sets of common rules on, inter alia, documentation, cabotage and requirements for access to the occupation, and the effective enforcement of these rules) relevant and proportionate to address the problems of:

- a) Distorted competition between resident and non-resident hauliers;
- b) Non-compliance with EU road transport social legislation and the road safety concerns identified at the time.
- c) High levels of empty running

The assessment of “relevance” analyses whether the operational objectives of the Regulations are still relevant and proportionate to the problems and needs of the road freight transport sector today. The intervention logic diagram (Figure 2-1) shows a mapping of the needs and problems of the sector on to the objectives of the Regulation.

#### **6.11.1. Distorted competition between resident and non-resident hauliers**

There are two elements that must be assessed in order to be able to conclude that distorted competition between resident and non-resident hauliers is still a relevant need today, i.e.:

- To what extent are there still problems of competitive distortion between resident and non-resident hauliers; and
- If there are still problems of competitive distortion, whether the *operational objectives* of the Regulations are still adequate to address them.

The issue of competitive distortion relates primarily to issues of letterbox companies and different treatment of resident/non-resident hauliers through inconsistent enforcement.

The general form of the problem of **letterbox companies** has not substantially changed since the Regulation was introduced – letterbox companies can enjoy significant cost savings (e.g. due to paying lower wages, avoiding taxes and social security payments etc), leading to competitive distortion (as discussed in Evaluation Question 1).

Considering whether this is still a problem for the sector today, there is evidence that letterbox companies continue to exist. The statistics on infringements show that there are still companies without stable and effective establishment, which is supported by reports of letterbox companies found in the literature and views from the different stakeholder groups consulted (trade unions, associations, ministries and undertakings). However, the extent of this is not known (see Evaluation Question 1, Section 6.1).

Prior to the Regulations, the lack of minimum and common requirements ensuring stable and effective establishment was believed to be contributing to the increasing levels of companies without a real office and operational base (i.e. “letter box” companies) (European Commission, 2007a). Due to the difficulty in monitoring letterbox companies, no concrete causal relationships could be defined – nevertheless, letterbox companies are by definition those without a stable and effective establishment. Hence, the *operational objectives* set up to address this issue were to lay down common rules on admission to the occupation (namely through the requirement of stable and effective establishment), which would ensure a more level playing field, and to enable the enforcement of these rules.

The *targeting* of the provisions themselves therefore directly focus on the issue of letterbox companies and can thus be considered appropriate in this sense. The *content*

of the provisions, especially concerning a more precise definition of an operating centre, may need to be made more precise in order to ensure they are fully appropriate to address the issue (as discussed in Evaluation Question 1).

In terms of ensuring the adequate enforcement of the rules and control of letterbox companies, the objective was to achieve this through the measures on administrative simplification and cooperation between Member States. Experience from other areas of legislation indicates that these are considered to be important tools in the fight against letterbox companies, for example in the Posting of Workers Directive, Money Laundering Directive and Parent-Subsidiary Directive (Sørensen, 2015). Although it is clear that the full implementation of these provisions has not yet been achieved (see Evaluation Question 3), the *targeting* of the objectives is appropriate.

Competitive distortions are also created by the unequal treatment of road transport undertakings in different Member States, owing to **divergences in control and penalty systems** relevant for access to the market and profession (European Commission, 2011b). It is clear from the analysis in Evaluation Question 2 that this is still a problem for the sector today and there is not a level playing field in terms of the enforcement practices and/or penalty systems in place. This can introduce competitive distortion by providing inconsistent disincentives for non-compliance.

Ensuring fair competition has been an important part of the EU's work ever since it was set out in the Treaty of Rome in 1957. Therefore, the identified problem of competitive distortion that the Regulations seek to address through its objectives is still pertinent today and remains relevant to achieving future EU transport policy goals.

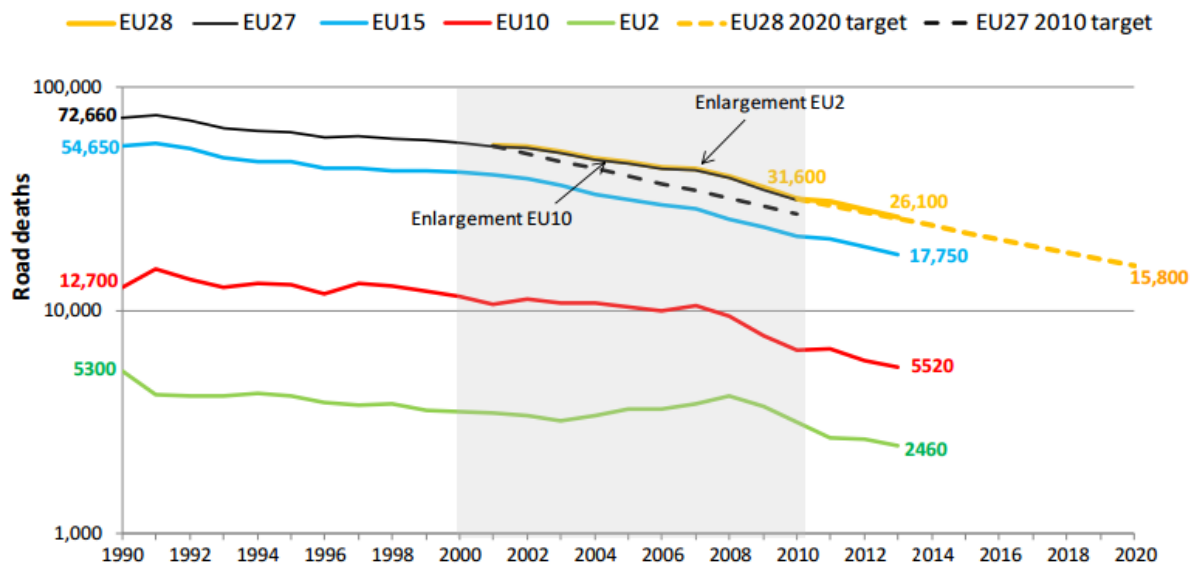
More specifically, although the operational objectives of the Regulations were sets out a framework for access to and operations in the road transport market at the European level, *enforcement* remains the responsibility of individual Member States (Bayliss, 2012), as well as the laying down of penalty systems. Hence, the operational objectives do not directly target the problem of divergences in control and penalty systems. If harmonisation of control and penalty systems were to be pursued more explicitly (see recommendations in Evaluation Question 2), it would therefore be relevant to add this as an operational objective.

#### **6.11.2. Non-compliance with EU road transport social legislation and road safety rules**

The issue of non-compliance with EU road transport social legislation and road safety rules is very closely linked to the issue of competitive distortion – as shown in the intervention logic diagram. It appears that the issue of non-compliance with social legislation (such as non-respect of driving times) is still a problem in the EU, despite improvements in recent years (TRT, 2012 – see also Table 10-9). These unfair practices contribute toward a general decline in standards, as well as having impacts on social and working conditions. Non-compliance with road transport social legislation also has knock-on effects for road safety.

The EU renewed its commitment to improving road safety in 2010 by setting a target of reducing road deaths by 50% by 2020, compared to 2010 levels. Progress against this goal is shown in Figure 6-30. Despite recent progress, a year-to-year reduction of at least 6.7% is needed over the 2010-2020 period to reach the target through constant progress in annual percentage terms (ETSC, 2015).



**Figure 6-30: Reduction in road deaths since 1990 in Europe (log scale)**

Source: (ETSC, 2015)

Regarding whether the operational objectives of the Regulations are still adequate to ensure compliance with road social and safety rules, it is worth considering the possible incentives for operators to commit infringements. When the Regulations were devised, it was identified that the pressure to save costs in the industry could incite some road operators to poorly comply with rules on road safety and social standards (European Commission, 2007a). The industry has since suffered considerably during the recession, which led to further reductions in profit margins and pressure to cut costs (discussed extensively in Evaluation Question 5). This suggests that the main identified drivers for breaking road social and safety rules may have increased compared to the situation before the Regulations, given the economic circumstances of the sector today. With this in mind, it is even more important to have mechanisms in place that ensure compliance with the social rules – meaning that the objective to improve compliance with the social and safety rules is still relevant today.

In terms of the *targeting* of the objectives, it is worth noting that the Regulations and intended to play a supporting role in enhancing compliance with the separate legislation on social and safety issues. Insofar as this supporting role can be defined, the targeting of the objectives is therefore appropriate, since they ensure the alignment of the objectives with achieving wider EU transport goals.

More specifically, as discussed in Evaluation Question 5, one of the major concerns over social and safety issues relates to the unscrupulous practices of letterbox companies, as well as the ineffectiveness of controls to detect illegal cabotage. Hence, the general conclusions from the previous section also apply here, i.e. that the targeting of the objectives could be made more precise in this area.

### 6.11.3. High levels of empty running

The objective to reduce empty running is primarily addressed at the operational level through the provisions on cabotage. This objective is still relevant considering that the EU has committed itself to substantial, long-term CO<sub>2</sub> reductions in order to address climate change. The Commission's most recent Transport White Paper sets a target reduction for transport of 60% in 2050 compared to 1990 levels (European Commission, 2011a).

As shown in **Annex A** (see Section 9.10), almost a quarter of all goods vehicle-km in the EU-28 are empty runs, meaning that it is still a prevalent issue in Europe. A separate analysis of empty running by type of operation carried out by the European Commission (2014b) finds that the share of empty vehicle km during trips within Member State by

foreign operators (cabotage if loaded) has significantly dropped in recent years but in 2012 still remained at around 47% - significantly higher than in other types of operations.

The relevance of the Regulations to target the problem of high levels of empty running and increase efficiency depends on whether or not the provisions on cabotage can enable operators to combine loads and use more efficient routing. As discussed already in Evaluation Question 4 (see Section 6.4.1.3) any contribution towards reducing empty running and reduction of GHG emissions is difficult to establish, but overall impacts are probably minor.

Hence, the *targeting* of this objective to reduce empty running does not appear to be relevant. A more precise and relevant targeting of the cabotage rules would instead be to improve the **economic efficiency** of transport (rather than environmental efficiency). Here, there is stronger evidence that cabotage is effective at supporting these goals (as discussed in Evaluation Question 5, Section 6.5.2). Overall, there is consensus in the literature that greater liberalisation of cabotage has been successful in allowing for lower transport prices and diversification of supply – primarily through shifting to lower wage drivers (e.g. WTO, 2010; Sternberg et al, 2014).

#### **6.11.4. Summary and conclusions**

The problem of competitive distortion between resident and non-resident hauliers relates primarily to issues of i) letterbox companies and ii) different treatment of resident/non-resident hauliers through inconsistent enforcement.

Firstly, letterbox companies can enjoy significant cost savings (e.g. due to paying lower wages, avoiding taxes and social security payments etc), leading to competitive distortion. In this case, there was a lack of minimum and common requirements ensuring stable and effective establishment prior to the introduction of the Regulation. Since letterbox companies are by definition those without a stable and effective establishment, the targeting of the objectives is relevant to the problem (i.e. the objective to lay down common rules). Further specific actions should enhance the measures and ensure that they are fully adequate to address the needs (i.e. more precise definition of an operating centre and greater cooperation between Member States).

Secondly, concerning divergent control and enforcement systems, although this is still an area of development (e.g. work is ongoing to harmonise the categorisation of infringements), the objectives do not explicitly aim at the harmonisation of controls, and hence this issue is not adequately targeted by the operational objectives. In this sense, the objectives are not relevant/proportionate to address the problem of divergent controls. As noted by the High Level Group, the main progress in terms of harmonisation of enforcement has been concentrated in the areas of driving and working times (since the impact on competitiveness is considered to be highest in this area), but it is recommended that the Commission extends this work to other areas (Bayliss, 2012).

In light of the continuing issues around ensuring a high level of social protection and of road safety, it can be concluded that the operational objectives of the Regulation to improve compliance in this area remain important and relevant to target the needs of the sector. Increased cost pressure in the industry following the economic recession may also have increased the incentives for non-compliance with social and safety rules, making the risk factors higher today compared to when the Regulations was introduced. The proportionality of the objectives is also justified by the fact that the Regulations work alongside other legislation as part of an integrated approach to ensure compliance with road social and safety rules. The means by which the Regulations aim to target the problems of competitive distortion are also closely linked with the non-compliance with road social and safety legislation, and hence the same conclusions apply.

The problem of high levels of empty running is still relevant in the context of the need to reduce fuel consumption and GHG emissions from transport. However, there is little

evidence that increased cabotage can improve the environmental efficiency of transport in practice. Hence, the operational objectives of the Regulations in this area do not appear to be relevant. A more relevant objective that should replace the goal to reduce empty running would be to complete the single market for transport and improve *economic efficiency* (rather than environmental efficiency) of transport.

### **6.12. Coherence: How do the Regulations interact with and if relevant, have an impact on the objectives of other related legislation?**

How do the Regulations interact with and if relevant, have an impact on the objectives of the following acts:

- Directive 96/71/EC on posting of workers;
- Regulation (EC) No 593/2008 on contractual obligations ('Rome I Regulation');
- Directive 92/106/EC on combined transport;
- Social provisions in road transport (Directive 2002/15/EC on working time of mobile workers, Regulation (EC) No 561/2006 on driving time and rest periods, Directive 2006/22/EC on enforcement of social provisions in road transport, Regulation (EC) No 165/2014 on the digital tachograph)?

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

Regulations 1071/2009 and 1072/2009 interact with several and different legal instruments at EU level. The analysis for this question considers (i) the coherence between the objectives and specific provisions of Regulation 1071/2009, Regulation 1072/2009 and the EU legal instruments listed above, as well as (ii) any possible impact on the coherence between these provisions.

#### **6.12.1. Regulation 561/2006 and Directive 2002/15/EC**

Regulation 561/2006 lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport. In this sense, the Regulation applies to the carriage by road of goods where the maximum permissible mass exceeds 3.5 tonnes, or passengers by vehicles that may carry more than 9 persons.

Directive 2002/15/EC applies to mobile workers employed by undertakings covered by the abovementioned Regulation or by the AETR Agreement (European Agreement on the Work of Crews of Vehicles Engaged in International Road Transport). The purpose of this Directive is to set minimum requirements for the organisation of working time in order to improve the health and safety of persons performing mobile road transport and to improve road safety and competition.

##### **6.12.1.1. Interactions**

The main interactions between Regulation 561/2006 (driving time and rest periods), Directive 2002/15/EC (working time) and Regulation 1071/2009 relate to certain obligations imposed on road transport operators as regards the requirement of good repute and the consequences of the infringements of such obligations.

Pursuant to Article 6.1 b) of Regulation 1071/2009, in order to satisfy the requirement of good repute laid down in Article 3.1 b) of this Regulation, undertakings and transport managers shall meet, among other conditions, the driving time and rest periods of drivers as well as the working time.

In addition, Annex IV point 1 a) and b) of Regulation 1071/2009 establishes as "most serious infringements" (that may lead to loss of good repute) the non-respect of the following social rules:

- Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25 % or more; and

- Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more without taking a break or without an uninterrupted rest period of at least 4.5 hours.

A serious infringement of Regulation 561/2006 and/or Directive 2002/15/EC may lead (through the application of Article 22 and Annex IV of Regulation 1071/2009) to the declaration of unfitness of the transport manager, the suspension or even the withdrawal of the authorisation.

These time limits can be appraised in Table 6-18.

**Table 6-18: Overview of driving and working time provisions**

	Driving time and rest periods Regulation	Working time Directive
Maximum daily working/driving time	9h/10h driving time	/
Weekly working/driving time	56h driving time	Average 48 hour week working time
Fortnightly working/driving time	90h driving time	/
Maximum work/drive at night	/	10h max for every 24h period working time
Breaks	45 min; may be divided into two, one at least 30min; and shall be taken after no more than 4.5h drive.	Total working hours: 6h-9h, then break(s) at least 30 min in total.
Daily rest periods	11h; may be reduced to 9h three times a week	11h; may be reduced to 9h three times a week
Weekly rest periods	45 continuous hours, even though it can be reduced every second week to 24h.	45 continuous hours, even though it can be reduced every second week to 24h.

#### 6.12.1.2. **Impacts on the objectives**

The objectives pursued by Regulation 561/2006 and Directive 2002/15/EC (i.e. improvement of working conditions for road transport operators and road safety) are coherent with the objectives of the Road Transport Package, as they all aim to improve social and working conditions for transport workers in Europe. In particular, Regulation 561/2006 and Directive 2002/15/EC define specific rights and obligations for road transport operators that implement and develop (in a detailed manner) the general requirements provided for in Regulation 1071/2009.

#### 6.12.1.3. **Consistency of references and definitions, and overlaps in provisions**

The references to and definitions of the infringements contained in the Road Transport Package and in the driving and working time rules as described above appear to be consistent. No contradiction has been identified between these legal instruments as regards the definitions of infringements.

However, it should be noted that Regulation 1071/2009 does not contain a specific reference to Regulation 561/2006 or to Directive 2002/15/EC when establishing the requirements of driving time, rest periods and working time (Article 6) or when defining in Annex IV the most serious infringements related to driving and working time limits. The only reference to Regulation 561/2006 and to Directive 2002/15/EC is made in Annex I of Regulation 1071/2009 (subjects to be known by operators for the purposes of the requirement of professional competence).

An additional aspect of consistency pertains to the issue of who is liable for these infringements. Regulation 561/2006 contains provisions on liability of transport undertakings (including consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies) for infringements committed by drivers of such undertakings (the so-called co-liability). However, neither Regulation 1071/2009 nor Regulation 1072/2009 contains such co-liability provisions. In this respect:

- Regulation 1071/2009 establishes the requirements for an undertaking/individual to enter the profession of road transport operator. Accordingly, any possible sanction for an infringement of Regulation 1071/2009 would only be imposed to these operators. As regards this particular point, the co-liability principle established in Regulation 561/2006 does not raise coherence concerns. For example, a consignor or a freight forwarder that hires a road transport operator for a limited time or for a particular service may logically not be sanctioned because such road transport operator does not comply with the four requirements to access the occupation.
- Regulation 1072/2009 contains provisions for the regulation of the operation of the road transport (e.g. rules on cabotage). This is, Regulation 1072/2009, as well as Regulation 561/2006, contain provisions applicable to the carrying out of the activity. However, only Regulation 561/2006 provides for the principle of co-liability. As a result, a freight forwarder having hired a road transport undertaking may be held liable for an infringement of driving time limits committed by a driver, but it may not be held liable for an illegal cabotage operation. A coherence concern arises in this regard.

At least two stakeholders interviewed for the purposes of this study among the group of transport undertakings' associations have indicated that although logistics companies develop a wider range of tasks within the road transport sector, they are submitted to a degree of liability lower than the liability imposed on transport undertakings when it comes to cabotage.

#### **6.12.1.4. Scope to streamline the regulatory framework**

Considering the above, the following actions may be undertaken in order to address the coherence concerns identified:

- To include in Regulation 1071/2009 specific reference to Regulation 561/2006 and to Directive 2002/15/EC when establishing the requirements of driving time, rest periods and working time (Article 6) and when defining in Annex IV the most serious infringements related to driving and working time limits.
- To analyse the possibility of amending Regulation 1072/2009 in order to establish a co-liability regime as regards the infringement of cabotage rules and, therefore, to achieve a more harmonised treatment of infringements in the road transport sector.

#### **6.12.2. Directive 2006/22/EC**

The objective of this Directive is to lay down clear, common rules on minimum conditions for checking the correct and uniform implementation of social legislation applicable to road transport.

##### **6.12.2.1. Interactions**

Enforcement of Regulation 561/2006 is regulated by Directive 2006/22/EC, which has been amended by Directive 2009/4/EC on counter measures to prevent and detect manipulation of records of tachographs. Directive 2006/22/EC established that, as from 1 January 2012, a minimum of 4% of days worked by drivers of vehicles falling within the scope of Regulation 561/2006 should be checked. The Directive also established that Member States shall ensure that checks (random rotation roadside checks; roadside

concerted checks at least six times per year; and/or checks at the premises of the undertakings) are executed efficiently and quickly.

Interactions with the Road Transport Package occur via several main areas:

- **Ensuring compliance with Regulation 561/2006:** Regulation 1071/2009 and Directive 2006/22/EC provide for an obligation for Member States to check the compliance with driving time and rest periods as well as working time.
- **Use of a risk-rating system to target checks:** pursuant to Article 12 of Regulation 1071/2009, Member States shall apply the risk rating system established in Article 9 of Directive 2006/22/EC to all possible infringements of the requirements of good repute as defined in Regulation 1071/2009.

#### 6.12.2.2. Impacts on the objectives

The objectives pursued by Directive 2006/22/EC are complementary to the implementation of Regulation 1071/2009, of Regulation 561/2006 and of Directive 2002/15/EC. In particular, as stated in Recital 3 of Directive 2006/22/EC, “[i]t is therefore necessary to ensure proper application and harmonised interpretation of the social rules on road transport through the establishment of minimum requirements for the uniform and effective checking by the Member States of compliance with the relevant provisions. Those checks should serve to reduce and prevent infringements”.

Therefore, the objectives of Directive 2006/22/EC are coherent with those pursued by the Road Transport Package and by the social rules applicable to road transport operations. However, as explained below, a closer look at the specific provisions of these legal instruments reveals some inconsistencies.

#### 6.12.2.3. Consistency of references and definitions, and overlaps of provisions

These lists are not concomitant and differ. Annex III of Directive 2006/22/EC contains a shorter list of infringements that diverge from those listed in Annex IV of Regulation 1071/2009, which in its turn contains a much more detailed list of infringements related not only to driving periods and rest time but also to installation and use of recording equipment, producing information and fraud.

**Table 6-19: List of inconsistencies between infringements identified in Regulation 1071/2009 and Directive 2006/22**

	Most serious infringement (Regulation 1071/2009)	Infringement (Directive 2006/22)
Exceeding maximum driving time	Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25 % or more.	Exceeding the maximum daily, weekly or fortnightly driving times;
Not respecting breaks	Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more without taking a break or without an uninterrupted rest period of at least 4.5 hours.	- disregarding the minimum daily or weekly rest period;  - disregarding the minimum break;
Lack of tachograph	Not having a tachograph or using a fraudulent device able to modify the records of the recording equipment or falsifying record sheets or data downloaded from the tachograph.	Failure to fit a tachograph in accordance with Regulation (EEC) No 3821/85.

As the table above shows, infringements listed in Annex III of Directive 2006/22 are very general whereas Annex IV 1071/2009 indicates most serious infringements and therefore the level of detail is higher. However, this does not mean that lists are inconsistent. Annex IV includes the following infringements as most serious which are not included in Directive 2006/22: (i) driving without a valid roadworthiness, (ii) inappropriate transportation of dangerous, (iii) driving with a driver card that has been falsified, (iv) driving with a considerable excess in the maximum permissible laden mass. These infringements are not included in Directive 2006/22 since they are not directly related to social aspects of the road transport.

There are overlaps / inconsistencies between Regulation 1071/2009 and Directive 2006/22/EC as regards the requirements for monitoring in terms of frequency of checks, types of checks and the possible (minimum) number of operators under control. For instance, Regulation 1071/2009 requires Member States to carry out checks at least every 5 years to verify that undertakings fulfil the requirements established by the regulation, whereas the criterion followed by Directive 2006/22 to require checks on the social aspects of road transport is based on a minimum percentage of days worked by drivers. In addition, the Directive establishes the proportion of checks that shall be carried out at the roadside and at the premises, which is not included the Regulation.

In addition, Regulation 1071/2009 and Directive 2006/22/EC provide for different types of cooperation between national authorities as regards the relevant information gathered. Thus, whereas Article 24 of Regulation 1071/2009 establishes a mutual assistance system by way of which Member States shall exchange relevant information for the pursuit of the occupation of road transport operator, Directive 2006/22/EC promotes cooperation between Member States by way of: (i) not only exchanging information, but also (ii) through an intracommunity liaison to ensure coordination for, *inter alia*, respect the principle of *ne bis in idem*. This is, unlike Regulation 1071/2009, Directive 2006/22/EC provides not only for an exchange of information but also for more developed levels of cooperation between authorities.

#### **6.12.2.4. Scope to streamline the regulatory framework**

Several stakeholders among the group of transport ministries and enforcers have indicated that the adoption of a harmonised list of categories, types and degrees of seriousness of infringements leading to the loss of good repute would help achieve uniformity in the implementation of the abovementioned provisions. Some of the stakeholders among the group of transport ministries and enforcers have also indicated that an approximation of legislation as regards sanctions could be positive. However, they acknowledge that the latter could be a difficult process taking into account that the application of sanctions falls under the competence of Member States.

It should be noted that the European Commission has already adopted and published a proposal for a Commission Regulation that would supplement Regulation 1071/2009 and amend Annex III of Directive 2006/22/EC. The proposal contains detailed lists of harmonised serious infringements that may lead to the loss of good repute of a road transport operator, including a new Annex III of Directive 2006/22/EC to ensure legal consistency between Regulation 1071/2009 and Directive 2006/22/EC. However, the European Parliament did not adopt the proposal<sup>58</sup>, pointing out that the list contained in the proposal “*failed to include a complete list of serious infringements of Regulation (EC) No 1072/2009, since point 10 of Annex 1 to the draft Commission regulation does not include illegal cabotage, which, given its negative impact on drivers, should clearly be regarded as a serious infringement*”. In its follow-up to the Parliament’s resolution

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<sup>58</sup><http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2014-0325+0+DOC+XML+V0//EN>



(document of 31 March 2005)<sup>59</sup>, the Commission indicated its intention to examine possibilities of submitting an amended draft measure to address the concerns of the European Parliament, but also pointed out that some demands cannot be accommodated. One such point is the demand to address infringements of the national laws applicable to cabotage operations, since the classification operated by the proposed Regulation deals only with the relevant EU acquis<sup>60</sup>.

Finally, it would also be advisable to harmonise the rules on monitoring of compliance of social rules and cooperation between the national enforcers, considering that the rules contained in Directive 2006/22/EC are more complete. In this sense, the existing extension of the Directive 2006/22/EC risk rating system to Regulation 1071/2009 could serve as a model for further synergies.

### **6.12.3. Tachograph rules (Regulation 3812/85 and Regulation 165/2014)**

Recording equipment must be installed in vehicles registered in a Member State which are used for the carriage of passengers (more than 9 persons) or goods by road (more than 3.5 t). The tachograph is a device that records the driving time, breaks, rest periods as well as periods of other work undertaken by a driver.

#### **6.12.3.1. Interactions**

Compliance of road social provisions (i.e. limits of mandatory rest and driving hours) is monitored via the tachograph installed in the vehicles. Tachographs were mainly regulated by Regulation 3821/85 -the Tachograph Regulation- amended ten times to take into account the relevant technical developments. Tachographs are mandatory for all vehicles exceeding 3.5 tones; for vehicles registered after 1 May 2006 a digital tachograph is mandatory.

In January 2014, the Commission adopted Regulation No 165/2014 on tachographs in road transport. The new Regulation is intended to regulate the introduction of "smart tachographs" and the establishment of new and easier control measures to improve compliance. It is expected that smart tachographs will allow better enforcement of rules on driving and resting times. While currently tachographs only record the country in which the driver is travelling, these devices will integrate a GPS to capture data for at least the start and the end of the working periods and after three hours of accumulated time. Smart tachographs will have to be installed into new vehicles within three years after the Commission has set out the technical specifications for such devices.

The main interactions between the tachograph rules and the Road Transport Package are:

- The non-compliance with tachograph rules can lead to loss of good repute as established in Regulation 1071/2009.
- The possible use of tachographs for the enforcement of cabotage rules contained in Regulation 1072/2009.

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[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2014/2859\(RPS\)#tab-0](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2014/2859(RPS)#tab-0)

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[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2014/2859\(RPS\)#tab-0](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2014/2859(RPS)#tab-0)

### **6.12.3.2. Impacts on the objectives**

The objectives pursued by Regulation 165/2014 are complementary to the implementation of the Road Transport Package and the social rules applicable to road transport and, therefore, coherent in that they aim to ensure the compliance with the requirements and an effective checking of such compliance. However, some inconsistencies as regards the specific provisions of these legal instruments have been identified as explained below.

### **6.12.3.3. Consistency of references and definition, and overlaps of provisions**

New exemptions are also introduced by the 2014 tachograph Regulation, i.e. vehicles with a maximum permissible mass not below 7.5 tonnes, which carry materials, equipment or machinery for the driver's use in the course of his work, and which are only used within a 100 km radius from the base of the company, are not subject to this instrument.

In relation to the above, Regulation 1071/2009 is applicable to vehicles with a laden mass of more than 3.5 tonnes. This means that it is not consistent with the exemption established in Regulation 165/2014 and applicable to vehicles with a laden mass not exceeding 7.5 tonnes. Especially considering that, in accordance with point 2 of Annex IV of Regulation 1071/2009; not having a tachograph constitutes a most serious infringement of this provision.

### **6.12.3.4. Scope to streamline the regulatory framework**

Several stakeholders among the groups of freight forwarders and trade unions have called for the use of tachograph data when enforcing rules related to cabotage. However, although in Recital 18 of Regulation 1072/2009 it is stated that "*in order to perform efficient controls of cabotage operations, the enforcement authorities of the host Member State should, at least, have access to data from consignment notes and from recording equipment*". It may be advisable to analyse whether Regulation 1072/2009 may be amended and include a specific provision providing for the compulsory use of tachographs when performing cabotage.

It appears that the use of tachographs can help enforcement. However, digital tachographs are only mandatory for new vehicles registered after 1 May 2006. Thus, there is no obligation for older vehicles to install digital tachographs. These older vehicles are allowed to use the analogical tachograph *sine die*, even if the tachograph gets broken or needs repair or replacement. In this scenario it is likely that digital tachographs will coexist with analogical ones for decades.

Finally, it would be advisable to address the inconsistency identified above between the exemptions contained in the 2014 tachograph Regulation and Regulation 1071/2009.

### **6.12.4. Combined transport Directive 92/106/EEC**

Directive 92/106/EEC on combined transport was adopted in order to promote combined transport operations by way of reducing restrictions, eliminating authorisation procedures and granting financial support through fiscal incentives. Pursuant to Article 1 of this directive, "combined transport" means the transport of goods between Member States where the lorry, trailer, semi-trailer, with or without tractor unit, swap body or container of 20 feet or more uses the road on the initial or final leg of the journey and, on the other leg, rail or inland waterway or maritime services where this section exceeds 100 km as the crow flies and make the initial or final road transport leg of the journey;

- between the point where the goods are loaded and the nearest suitable rail loading station for the initial leg, and between the nearest suitable rail unloading station and the point where the goods are unloaded for the final leg, or

- within a radius not exceeding 150 km as the crow flies from the inland waterway port or seaport of loading or unloading”.

#### **6.12.4.1. Interactions**

In accordance with recital 16 of Regulation 1072/2009, this legal instrument is without prejudice to the provisions concerning the incoming or outgoing carriage of goods by road as one leg of a combined transport journey as laid down in Directive 92/106/EEC. This is, the road legs of combined transport operations are exempted from the limitations on cabotage contained in Regulation 1072/2009 as long as the conditions established in Article 1 of Directive 92/106/EEC are fulfilled.

#### **6.12.4.2. Impacts on the objectives**

The Combined Transport Directive seeks to boost operations through liberalisation of road cabotage, the elimination authorisation procedures for Combined Transport operations and to grant financial support through fiscal incentives for certain of these operations. In this sense, the objectives of this Directive are to promote the modal shift of long distance freight transport away from road, which will help to reduce congestion and emissions and is consistent with the overarching goals of the EU enshrined in the Transport White Paper (2011).

Recital 15 of Regulation 1072/2009 states that cabotage operations should not be prohibited as long as they are not carried out in a way that creates a permanent or continuous activity within that Member State. In this sense, it is the exemptions for cabotage transport with regard to combined transport were therefore intended to support this objective.

#### **6.12.4.3. Consistency of references and definition, and overlaps of provisions**

As indicated in a recent study elaborated by KombiConsult et al (2015), combined transport was a precursor of the liberalisation of cabotage. Pursuant to Article 4 of Directive 92/106/EEC, Member States are allowed to fully exempt combined transport operations from the cabotage ban. However, later on, Regulation 1072/2009 limited the number of cabotage operations.

The exemptions for combined transport apply the same way to all combinations of combined transport operations, whether accompanied or unaccompanied, and does not depend on whether the road leg crosses a border or not. However, the above does not necessarily equal the absence of tensions between Regulation 1072/2009 and Directive 92/106/EEC, as explained below.

In summer 2014, the Commission launched a public consultation in order to analyse the implementation of Directive 92/106/EEC and whether an update is now necessary. The results of this consultation<sup>61</sup> suggest that two-thirds of the (industry) stakeholders<sup>62</sup>

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<sup>61</sup><http://ec.europa.eu/transport/media/consultations/doc/2014-combined-transport/summary.pdf>

<sup>62</sup> The Commission received 93 full questionnaires, 6 position papers (from which 5 were in addition to a questionnaire) and 10 respondents had chosen not to provide full questionnaires and their input was hence limited to general comments. The respondents came from 18 Member States and from 2 non-EU countries. The majority of respondents were business representatives (73%), with some NGO's and individuals also contributing. The participation of public authorities from Member States was unfortunately not comprehensive, with replies

gave overall positive feedback in the sense that the Directive had been helpful for the operation of their business. In general, they indicated that the exemption from cabotage rules was particularly helpful and welcomed. It is indicated in the KombiConsult study abovementioned that *"according to the findings of this study and the stakeholders of the CT industry, the provisions under Article 4 have been very effective in promoting CT operations. They have stimulated the cost and quality competition for pre- and on-carriage road legs. Furthermore, they enable road hauliers to deploy their own lorries in initial and final road legs in other MS than where they are established and this facilitate the control of these operations. This has also contributed to enhance the economics of CT operations"*.

However, a few stakeholders participating in the public consultation indicated that this exemption leads to social dumping where operators employ drivers from central and east European countries to perform the road legs of combined transport in western European countries, which leads to unfair competition against local SMEs that pay higher salaries. As regards this possible failure, the KombiConsult study argues that *"the study has not identified any comprehensive evidence that would confirm this argument. In contrast, national authorities in MS such as Germany could not identify a significant negative impact of cabotage on inland road transport markets"*.

With regard to the main concern identified by stakeholders in relation with EU rules on combined transport (i.e. lack of clarity when it comes to make a differentiation between the road legs of combined transport and cabotage), it is worth noting that 38% of the stakeholders in the Commission's public consultation considered that combined transport was not completely free from cabotage restrictions. This is, a significant percentage of operators submitted to the combined transport provisions and to Regulation 1072/2009 may be unaware of their correct implementation. Indeed, most of the concerns flagged by stakeholders in this consultation were related to differences in the national implementation of Directive 92/106/EEC among Member States.

In line with the above, one stakeholder from Sweden interviewed for the purpose of the present study has pointed out that the difference between cabotage and combined transport is not crystal clear in practice and that possible abuses could occur on the basis of a large (mis)interpretation of what is cabotage. This has been confirmed by other stakeholders who agreed in that in some circumstances it is not easy to prove that the driver has been performing the road haulage leg(s) of a combined transport and not cabotage.

In addition, A stakeholder from an association active in logistics has pointed out that in countries such a Denmark, where distances are not far and the carrier is always within 150km far from the port it is fairly easily to make an operation to be combined transport. In this sense, enforcers often find that what initially looks as illegal cabotage turns out to be combined transport and therefore are somehow discouraged to control this type of transport.

In this respect, several stakeholders raised the issue of disparities between the documentation requirements for cabotage and combined transport. In this sense, stakeholders in the 2014 Commission consultation suggested that the establishment of a single document for combined transport operations, similar to the CMR, could solve the current issues related to documentation.

As regards the enforcement of Directive 92/106/EEC, the majority of the Member States exempt the road leg of combined transport operations from any cabotage ban for companies established in EU (only Belgium, Czech Republic, Romania and Slovakia do not provide for exemptions). Only three Member States place restrictions on combined transport operations as regards cabotage journeys by road, allowing cabotage only in

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from only 6 Member States relevant Ministries and 6 replies from regional or sector-specific authorities.

accordance with Regulation 1072/2009: Czech Republic, Netherlands, and Slovakia (KombiConsult, 2015).

A proposal suggested by the results of the Commission's consultation on the Combined Transport Directive was to review the definition of combined transport, considered outdated by 60% of respondents who would prefer an absolute distance driven by road using appropriate motorways or a percentage of the total combined transport trip rather than the current "as the crow flies" definition. Some stakeholders consulted for the purposes of the present study indicated the need for updating the provisions on combined transport or even (according to few stakeholders) to remove the provisions altogether.

#### **6.12.4.4. Scope to streamline the regulatory framework**

In certain Member States the first and final leg of a combined transport journey are considered as a cabotage operation and not as a combined transport operation. Several stakeholders called the need for a common definition as to how cabotage relates to combined transport. They consider that the provisions of the Combined Transport Directive currently in force do not provide an appropriate and binding guidance to address this particular issue. In addition, the majority of stakeholders asked for better enforcement of the existing rules, especially as far as cabotage and cross-border road legs are concerned.

A clearer definition of combined transport that preferably avoids the term "as the crow flies" is needed. This should be accompanied with a more efficient system (for instance, a specific combined transport document) to prove that the road leg of this transport is indeed a part of a whole journey carried by road in combination with other means of transport and not cabotage. Notwithstanding this, the appropriate instrument to be amended as far as this is concerned is the Combined Transport Directive.

#### **6.12.5. Posting of Workers (Directives 96/71/EC and 2014/67/EU)**

Directive 96/71 (the Posting of Workers Directive) applies to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers to the territory of another Member State.

Directive 2014/67/EU on the Posting of Workers Enforcement was adopted on 15 May 2014 and shall be implemented by Member States within 2016. This new instrument aims at improving enforceability of the Posting of Workers Directive by, *inter alia*, clarifying the concept of posting, improving cooperation between national authorities, increasing monitoring over companies and ensuring that effective, proportionate and dissuasive.

##### **6.12.5.1. Interactions**

Directive 96/71/EC regulates the posting of workers, i.e. the situation where workers employed in one EU Member State are sent by their employer on a temporary basis to carry out their work in another EU Member State. This is obviously relevant in this field because of the nature of the tasks entrusted to haulage drivers.

Directive 2014/67/EC aims at a better and more uniform implementation, application and enforcement of the Posting of Workers Directive by, *inter alia*, (i) improving cooperation between national authorities, (ii) clarifying the definition of posting so as to increase legal certainty and to tackle the problem of 'letter-box' companies; and (ii) reinforcing the handling of complaints and the penalties. Member States need to implement the provisions of this Directive within the early summer of 2016.

##### **6.12.5.2. Impacts on the objectives**

This Directive aims at avoiding "social dumping" where foreign service providers may undercut local providers because their labour standards are lower. It establishes mandatory rules regarding the terms and conditions of employment to be applied to an

employee posted in another EU Member State. These rules will reflect the standards of local workers in the host EU Member State (that is, where the employee is sent to work).

The core idea of this instrument is that if an EU Member State has provided for certain minimum terms and conditions of employment, these shall also apply to workers posted to that State. These minimum terms may be established by national laws, administrative provisions, collective agreements or arbitration awards.

The impact on the objectives of the Road Transport Package, this Directive seem coherent, as they all intend to improve social and working conditions and to ensure common rules for transport workers in Europe.

### **6.12.5.3. Consistency of references and definition, and overlaps of provisions**

Recital 17 of Regulation 1072/2009 refers to Directive 96/71 in order to indicate that the latter applies to transport undertakings performing a cabotage operation. As some authors pointed out<sup>63</sup>, this raises several questions. Since cabotage for road transport purposes necessarily takes place after an international transport, it is not clear what are the rules that apply to international drivers if they do not carry out cabotage operations. Furthermore, it is not clear if an international transport, especially if regularly repeated, falls within the scope of Directive 96/71.

The European Commission reaffirmed that the Posting of Workers Directive applies to cabotage operations and that point-to-point international road transport falls outside the scope of this Directive<sup>64</sup>. This seems a logical interpretation since it would become extremely burdensome to apply the labour legislation of each country to each segment of an international transport.

However, it has been indicated in a subsequent study prepared for the European Commission (van Hoek & Houwerzijl, 2011b) the need to formulate a sub-rule for the application of Directive 96/71/EC to transport workers. The study specifically emphasizes that “[t]hough the Directive does apply to transport workers (...), the system of the Directive is ill fitted to deal with workers who do not work in a specific country but rather from a specific country. The PWD is most often deemed to apply to cabotage, but the effectuation of the monitoring of the protection is highly problematic. Furthermore, certain requirements in the PWD (notably the presence of a service contract between the employer and a recipient in the host state) may block application of the protection to transport workers, even in the case of cabotage. It seems advisable to formulate a sub-rule for applying the PWD to transport workers. In its absence, and awaiting a European solution, Member States may involve the national social partners in the sector to determine the proper application and enforcement of the PWD to this sector”.

With regard to the enforcement of Directive 96/71/EC, and leaving purely international transport aside, it is still unclear if the application to cabotage operations is smooth, both for operators and enforcers. For example, it does not seem an easy task for an undertaking to calculate and assure that all drivers performing cabotage pursuant to Regulation 1072/2009 in each country are remunerated accordingly. The same difficulty may arise for authorities in charge of monitoring compliance with social provisions.

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<sup>63</sup> See “The inspection activity within posting of workers in the road transport: a guide for control authorities” [http://www.tagliacarne.it/files/141031/guida\\_transpo\\_inglese.pdf](http://www.tagliacarne.it/files/141031/guida_transpo_inglese.pdf) page 14

<sup>64</sup> COM (2006) 439 Commission Staff Working Document: Commission's services report on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

More particularly, there is indication that not all Member States expressly recognise the application of the Posting of Workers Directive to cabotage. For instance, in Italy, the Netherlands and Estonia the application of the Posting of Workers Directive is unclear (SDG, 2013a). As pointed out in a 2011 complementary study elaborated for the European Commission (van Hoek & Houwerzijl, 2011a) *"The current study also confirms the special status of transport workers, both as regards the exact criterion for application of the protection offered by the PWD and as regards the practical application and enforcement thereof. HU, SK, CZ have or until recently had specific conflict of laws rules for transport workers. Cross-border mobility of transport workers may not qualify as posting under domestic law and/or the implementation measure in AT, HU, SI and PT. These findings underscore the relevance of a separate implementation of the PWD for transport workers, as was recommended in the first study. In absence of and awaiting a European solution, Member States may involve the national social partners in the sector to determine the proper application and enforcement of the PWD to this sector."*

Moreover, Directive 96/71 requires an "employment relationship" between the undertaking making the posting and the worker during the period of posting<sup>65</sup>. This is a current source of problems since, for instance, stakeholders in Sweden have indicated that such requirement would mean that there has to be a contract between the transport company and a service recipient operating in the state where the cabotage takes place. In Sweden, such a contract is deemed to be absent when the contract with the transport company was entered into by a forwarding or freighting agency established outside the country of cabotage. In the transport sector, workers are often posted by an agency or within a group (not on the basis of a contract) and most of the other relationships with foreign undertakings are based on transport contracts to which rules on protection of workers' rights in subcontracting chains do not apply (Ghent University, 2012).

#### **6.12.5.4. Scope to streamline the regulatory framework**

A proposal made by the High Level Group is to divide cabotage into linked (to international movements) and non-linked cabotage (Bayliss, 2012).

- The first one would be regarded as an international operation and be focused on the reduction of empty running. Therefore, it would neither be subject to pre-registration nor to Directive 96/71. This possibility would imply reviewing the Directive to amend its scope. The High Level Group also proposes to reduce the 7-day rule established in Regulation 1072/2009 to a 4-day rule but without limitations on the number of cabotage operations. The latter has been seconded by certain stakeholders in the groups of medium sized undertaking associations and freight forwarders interviewed for the purposes of this Study. This issue is not influenced by the 2014 enforcement Directive.
- By contrast, non-linked cabotage could take place: (i) after an international movement per se; (ii) after an international movement plus linked cabotage; or (iii) entirely independent of these two types of operations. Therefore, a road transport operator should be free to enter another EU Member State with an empty vehicle and participate in the domestic market. For such operations, and in line with Directive 96/71 which covers road transport cabotage, the core conditions of this directive should effectively apply to all cabotage operations, and without regard to the current requirement under the directive for a contractual relationship between the operator and the final recipient of the goods.

The High Level Group on the Development of the EU Road Haulage Market also proposed a further restriction of days per year depending on the type of vehicle.

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<sup>65</sup> See Article 1 of the Regulation.

The High Level Group's proposal, although pragmatic, could be difficult to implement. On the one hand, assessing the type of cabotage at a check may not be an easy task. On the other hand, the proposal to limit the time but not the operations may not suit all countries due to their geographical characteristics. A Swedish stakeholder (a freight forwarder association) consulted for the purposes of this Study indicated that for countries with a considerable geographical extension where the main cities are distant from one each other, reducing the time-limit from 7 days to 4 days may not be useful since no more than two or three cabotage operations may be carried out in such period of time.

It is safe to affirm that an appropriate enforceability of the Directive to cabotage operations is highly questionable due to the inherent difficulty to check whether drivers performing cabotage are granted the minimum conditions of the workers in the country where they perform cabotage and for the part of their trip where they are performing such cabotage. Furthermore, certain requirements of the Posting of Workers Directive, such as the existence of a service contract between the employer and a recipient in the host state may impede the protection granted by the Directive to transport workers.

In the line with what has been previously suggested, a recent study has indicated that the present system of cabotage is not working correctly, as there is no way of controlling the number of days of cabotage (Broughton et al., 2015). In this sense, stakeholders seem to indicate that it is very difficult to control, including via the Posting of Workers Directive, since there are too many intermediary bodies involved, meaning that contractual issues are tough to be checked.

It appears obvious that certain legal loopholes exist in this respect and that the current obligation to apply the provisions of the Posting of Workers Directive to drivers performing cabotage under the rules established by Regulation 1072/2009 are too burdensome to be implemented and almost impossible to be controlled and enforced. This means that the coherence between Regulation 1072/2009 and the Posting of Workers Directive is not evident, at least from the practical perspective.

There is room for an amendment to the Posting of Workers Directive in order to reinforce the obligation of applying its provisions to cabotage. In addition, operators should be allowed to calculate the salaries and conditions applicable to their workers performing cabotage in an easier manner (i.e. by establishing percentages or quotas depending on the amount of cabotage performed in a concrete country). This could also help labour authorities to verify the correct application of this Directive, which in view of the imminent national implementation of [Directive 2014/67/UE](#) (in 2016 as required by the Directive) could contribute to improve the enforcement.

#### **6.12.6. Rome I Regulation**

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I Regulation) is designed to establish which law governs the interpretation of contracts.

##### **6.12.6.1. Interactions**

Even though Rome I Regulation has not been specifically designed for the road sector, its application and enforcement has a significant impact on the overall working and social conditions of workers in this sector given the mobile and international character of road transport operations (TRT, 2013).

##### **6.12.6.2. Impacts on the objectives**

The interaction of Regulations 1071/2009 and 1072/2009 with the Rome I Regulation is not direct, and therefore they pursue different objectives. While Regulations 1071/2009 and 1072/2009 pursue the objectives of modernising the rules governing admission to the occupation of road transport operator and ensuring a coherent framework for



international road haulage, respectively, the Rome I Regulation is focused on guaranteeing legal certainty in the EU judicial area.

However, this does not mean that the objectives are contradictory or incoherent. The Rome I Regulation regulates the law governing contracts in the sector, from employment contracts between drivers and operators to service contracts between the latter and freight-forwarders. In this sense helps to ensure common rules to boost the correct functioning of the transport activities at EU level.

#### **6.12.6.3. Consistency of references and definition, and overlaps of provisions**

For all the cases in which a driver carries out his/her activity either in or from the country of his habitual workplace, or abroad without fulfilling the conditions of posting covered by Directive 96/71/EC (i.e. for all international transport which does not qualify as cabotage), the worker is covered by the provisions of Rome I Regulation.

The provisions on the law applicable to employment contracts contained in Rome I Regulation have the same objective as in Directive 96/71/EC, that is, avoiding "social dumping" where foreign service providers may undercut local providers because their labour standards are lower. Some take the view that in order to eradicate social dumping in road transport it is necessary to: (i) ensure an effective enforcement of Rome I Regulation, (ii) eradicate the letter box company practice by correctly enforcing the requirement of an effective and stable establishment of Regulation 1071/2009 and (iii) ensure the enforcement of the current cabotage rules as laid down in Regulation 1072/2009 (ETF, 2012a).

Article 8 of Rome I Regulation which provides that:

*"1. An individual employment contract shall be governed by the law chosen by the parties in accordance with [principle of freedom of choice as stated in] Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.*

*2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.*

*3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.*

*4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply".*

Therefore, to ensure a correct enforcement of Rome I Regulation and to fight against social dumping in the road transport sector, some stakeholders have recommended to include the non-compliance with Rome I Regulation within the list of most serious infringements that, under Regulation 1071/2009, lead to the loss of good repute and withdrawal of authorisation to perform road transport activities (ETF, 2012a), as provided for in Article 22 of Regulation 1071/2009.

In this sense, concerning the application of Article 8 of Rome I Regulation, Belgian trade unions recently raised their concerns with regard to the current incoherence between the case-law of the Court of Justice of the EU when applied to road transport: . .

In the 2011 *Koelzsch* judgment<sup>66</sup>, the Court of Justice of the EU established that the law of the Member State in which the worker conducts the 'major part' of his or her role (i.e. loading/unloading of goods, reception of instructions etc.) shall apply.

It stated that "*in a situation in which an employee carries out his activities in more than one [Member State], the country in which the employee habitually carries out his work in performance of the contract (...) is that in which or from which, in the light of all the factors which characterise that activity, the employee performs the greater part of his obligations towards his employer*" (paragraph 50 of the judgment).

Subsequently, the judgment delivered in 2013 in the case *Schlecker*<sup>67</sup> established that even where an employee carries out the work in performance of the contract habitually, for a lengthy period and without interruption in the same country, the national court may, under the concluding part of that provision, disregard the law of the country where the work is habitually carried out, if it appears from the circumstances as a whole that the contract is more closely connected with another country (paragraph 45 of the judgment).

For the Belgian trade unions there is an evident lack of coherence between the two judgments:

- In the *Koelzsch* judgment, the Court states that the employment contract should be governed by the law of the country in which the employee performs the greater part of his obligations towards his employer (i.e. A Polish driver is employed by a Polish company but he performs the greater part of his job in Germany. The employment agreement should be governed by German law); while
- In the *Schlecker* judgment, the Court states that the national court may disregard the law applicable in the country where the work is habitually carried out, if it appears from the circumstances as a whole that the contract is more closely connected with another country (i.e. The Polish driver is employed by a Polish company and he performs the greater part of his job in Germany. The employment agreement could be governed by Polish law, as there are more connections between him and this country –i.e. nationality, residence of the driver, place of registry of the company, plate of the vehicles, etc.- than with Germany).

#### **6.12.6.4. Scope to streamline the regulatory framework**

Further clarification on the above-mentioned issues by Court of Justice of the EU seems necessary. Alternatively, as claimed by the Belgian trade unions, an amendment of Article 8 of Rome I Regulation could be envisaged as follows:

These trade unions suggest that, in case of a dispute, the applicable law should not be determined by the place where the employee performs the greater part of his/her obligations or by the closest connection, but be established taking into account the strongest social protection for workers. In the example above, the law that applies would not be established by either the criterion on the place where the greater part of the worker's obligations is performed (Germany) or the place with greater connections to the contractual relationship (Poland) but by the country that offers better labour

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<sup>66</sup> Judgment of the CJEU of 15 March 2011, case C-29/10, *Heiko Koelzsch v Luxembourg*

<sup>67</sup> Judgment of the CJEU of 12 September 2013, case C-64/12, *Anton Schlecker v Melitta Josefa Boedeker*.

conditions. However, this would necessarily require a legislative amendment of Rome I Regulation and to open a legislative procedure as provided by the TFEU.

In sum, there is not a lack of coherence *per se* between the analysed regulations and Rome I Regulation. However, the correct enforcement of Regulations 1071/2009 and 1072/2009 has an impact on the correct implementation and enforcement of Rome I Regulation. *Vice versa*, it has been suggested that a breach of Rome I Regulation (i.e. depriving the driver from the law that better protects his/her interests) should be included as one of the infringements that may lead to loss of good repute and withdrawal of the community licence, pursuant to Regulation 1071/2009.

#### **6.12.7. Interaction with the ECMT (European Conference of Ministers of Transport) multilateral permit system and possible bilateral agreements**

The European Conference of Ministers of Transport ("ECMT") is an international forum for policy issues of relevance to the different transport modes, among which, road transport and intermodal transport. It has 43 full members; therefore its scope is larger than the EU.

##### **6.12.7.1. Interactions**

This section addressed the coherence and possible overlaps of third country aspects of the Road Transport package (particularly Regulation 1072/2009) with existing agreements and structures governing the international carriage of goods including EU and non EU members. These include the ECMT and any multilateral permit system and any bilateral agreements of EU Member States with non-EU countries.

##### **6.12.7.2. Impacts on the objectives**

One of the objectives of the ECMT is to ensure a gradual liberalisation of road freight transport which *a priori*, is consistent with the objectives pursued by Regulation 1072/2009.

##### **6.12.7.3. Consistency of references and definition, and overlaps of provisions**

The ECMT is an intergovernmental organisation established by a Protocol signed in Brussels on 17 October 1953 ("the 1953 Protocol"). By a decision of the ECMT's Council of Ministers at their meeting in Dublin in May 2006, the ECMT was transformed into the International Transport Forum ("ITF") and integrated as an intergovernmental organisation within the OECD. In the vein of the former ECMT, the ITF operates a system of multilateral road transport permits between its members<sup>68</sup>. The ECMT multilateral quota of transport licences was seen as a practical step towards the gradual liberalisation of road freight transport<sup>69</sup>. ECMT licences are multilateral licences, delivered by the ITF/ECMT, for the international carriage of goods by road for hire or

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<sup>68</sup> Countries participating in the ECMT quota system are Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, FYR Macedonia, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom.

<sup>69</sup> ECMT Multilateral Quota: User Guide, [www.internationaltransportforum.org/Pub/pdf/13MQguide.pdf](http://www.internationaltransportforum.org/Pub/pdf/13MQguide.pdf), January 2014, p. 5.

reward by transport undertakings established in an ECMT Member country. They cover, on the basis of a quota system, the transport operations being performed:

- a) between ECMT Member countries; and
- b) in transit through the territory of one or several ECMT Member country(ies) by vehicles registered in an ECMT Member country<sup>70</sup>.

For instance, ECMT licence delivered will apply on (i) the transport operations between the Russian Federation and Latvia, and (ii) on the transport operations between the Belarus and Italy as well as the ECMT countries crossed in transit (Poland, the Czech Republic and Austria).

EU Member States also have **bilateral agreements** with several non-EU countries, which allow hauliers to travel to or through those countries as long as the hauliers hold a permit for the country with which the bilateral agreement has been made.

Pursuant to Article 3 of Regulation 1072/2009, international carriage shall be carried out subject to possession of a Community licence, which is issued by an EU Member State, in accordance with this regulation, to any haulier carrying goods by road for hire or reward who (i) is established in that EU Member State and (ii) is entitled in the Member State of establishment to carry out the international carriage of goods by road, in accordance with legislation concerning admission to the occupation of road haulage operator (Article 4 of Regulation 1072/2009).

At the same time though, based on Article 1.2 of Regulation 1072/2009, in the event of carriage from an EU Member State to a third country and vice versa, the Regulation shall apply to the part of the journey on the territory of any Member State crossed in transit. It shall not apply to that part of the journey on the territory of the EU Member State of loading or unloading, as long as the necessary agreement between the EU and the third country concerned has not been concluded.

As an example, Regulation 1072/2009 shall apply to the transport company for a journey between Italy and Belarus. This Regulation will be applicable in the EU transit countries (Austria, the Czech Republic and Poland), but will not be applicable in Italy neither to the part of the journey on the territory of Belarus, as long as there is no agreement between the EU and Belarus.

There are possible overlaps between Regulation 1072/2009 and the ECMT mechanisms.

EU hauliers who are holders of Community licences should be permitted to carry out national transport services within a Member State on a temporary basis in conformity with Regulation 1072/2009, without having a registered office or other establishment therein (recital 13). This Regulation should apply (i) to the international carriage of goods by road for hire or reward for journeys carried out within the territory of the Community and (ii) as provided in Article 1.2, in the event of carriage from an EU Member State to a third country and vice versa, to the part of the journey on the territory of any Member State crossed in transit.

However, some stakeholders have claimed that the "third country" aspect of Regulation 1072/2009 could overlap with the ECMT multilateral road haulage permits and possible bilateral agreements.

First of all, in accordance with recital 3, Regulation 1072/2009 should apply to all international carriage on the EU territory in order to ensure a coherent framework for international road haulage throughout the EU. In 2009, carriage from Member States to third countries was still largely covered by bilateral agreements between the Member States and those third countries. Therefore, Regulation 1072/2009 should not apply to

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<sup>70</sup> *Idem*, p. 15, n° 3.1.

that part of the journey within the territory of the Member State of loading or unloading, as long as the necessary agreements between the EU and the third countries concerned have not been concluded.

This means that, as long as the necessary agreement between the EU and a third country has not been concluded, a same journey might have to be covered by permit issued under a bilateral agreement and a Community license. Nevertheless, Regulation 1072/2009 should apply to the territory of the Member State(s) crossed in transit.

It also appears that when EU hauliers coming back from or going to a third country are subject to a check in the territory of an EU Member State different from the place of loading or unloading, the Community license may not be enough and these hauliers would also be required to have an additional permit, such as an ECMT permit or a permit issued under a bilateral agreement.

This would explain why ECMT licences are still delivered between EU Member States and why EU Member States continue to exchange between them third country permits within the framework of their bilateral agreements.

Taking into account that based on Regulation 1072/2009, (i) EU hauliers holders of Community licences should be permitted to carry out transport services within a Member State on a temporary basis, (ii) including in the event of carriage from an EU Member State to a third country and vice versa, but excluding the part of the journey on the territory of any Member State crossed in transit (as long as the EU has not concluded an agreement with the third country concerned):

- The authorities of the Member State of loading or unloading may require the hauliers to hold an additional permit (such as an ECMT permit or a permit issued under a bilateral agreement) than the Community license, as long as the EU has not concluded an agreement with the third country concerned;
- The authorities of the Member States crossed in transit should not be authorized to require the hauliers to hold an additional permit than the Community license which should be enough.

#### **6.12.7.4. Scope to streamline the regulatory framework**

Based on the above, it is questionable whether the authorities of the Member States crossed in transit should be authorised to require the hauliers going to or coming back from a third country to hold an additional permit than the Community license, which in principle could be enough. Any check of a EU haulier going to or coming back from a third country in the territory of an EU Member State crossed in transit where he/she is required to hold an ECMT permit or a permit issued under a bilateral agreement besides his/her Community license could constitute a breach of Regulation 1072/2009.

#### **6.12.8. Summary and conclusions**

##### **6.12.8.1. Conclusions**

Overall, the legal framework is not fully coherent. There are certain difficulties in the correct implementation of Regulations 1071/2009 and 1072/2009 and the satisfactorily achievement of the objectives of these EU instruments, considering the relation with the other EU legislation interacting with the Road Transport Package.

The objectives pursued by **Regulation 561/2006 and Directive 2002/15/EC** on driving, rest and working time for road transport operators are coherent with the objectives of the Road Transport Package, as they all aim to improve social and working conditions for transport workers in Europe. However, it should be highlighted that:

- Article 6 of Regulation 1071/2009 (requirements of driving time, rest periods and working time) does not contain specific references to Regulation 561/2006 or to Directive 2002/15/EC.

- Annex IV of Regulation 1071/2009 (containing the list of most serious infringements related among others to driving and working time limits) does not make either a specific reference to Regulation 561/2006 or to Directive 2002/15/EC.
- The co-liability principle established by Regulation 561/2006 (i.e. liability of transport undertakings such as consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies; for infringements committed by drivers working for such operators) is not provided for by Regulations 1071/2009 and 1072/2009. In this sense, at least two Spanish stakeholders (a transport undertakings association and an undertaking) have highlighted that when it comes to cabotage services, although logistics companies provide a wider range of road transport services, they are submitted to a degree of liability lower than the liability thresholds applicable to transport undertakings.

As regards **Directive 2006/22/EC**, which contains provisions for the enforcement of Regulation 561/2006, we have identified the following inconsistencies between the Directive and Regulation 1071/2009:

- Differences on the lists of infringements contained in Annex IV of Regulation 1071/2009 and Annex III of Directive 2006/22/EC and referring to the requirements on (i) good repute and (ii) driving time and rest periods.
- There are also certain inconsistencies between Regulation 1071/2009 and Directive 2006/22/EC concerning the requirements for monitoring the compliance with both provisions, as well as the types of cooperation between national authorities. It should be noted that Regulation 1071/2009 extends the application of the risk rating system established in Directive 2006/22/EC to all possible infringements of the requirements of good repute as defined in Regulation 1071/2009. Therefore, the mentioned inconsistencies could make the common use of the risk rating system more complicated, should contradictory or non-coherent data be included in the system for the same operators.

Compliance of road social provisions is monitored in practice via the tachograph installed in the vehicles. New exemptions are also introduced by the 2014 **tachograph Regulation 165/2014**. Regulation 1071/2009 is applicable to vehicles with a laden mass of more than 3.5 tonnes. This means that it is not consistent with the exemption established in Regulation 165/2014 and applicable to vehicles with a laden mass not exceeding 7.5 tonnes. Especially considering that, in accordance with point 2 of Annex IV of Regulation 1071/2009; not having a tachograph constitutes a most serious infringement of this provision. The Swedish and Spanish stakeholders interviewed for the purposes of this Study (i.e. freight forwarders, drivers' associations and transport undertaking association groups) have also called for the use of tachograph data when enforcing rules related to cabotage. In the view of the consultants, this proposal may reinforce the monitoring and enforcement of cabotage rules.

The **Combined Transport Directive 92/106/EEC** seeks to boost operations through liberalisation of road cabotage, the elimination authorisation procedures for Combined Transport operations and to grant financial support through fiscal incentives for certain of these operations. A European Commission consultation carried out in 2014 indicated that a great number of stakeholders agree in that the exemption from cabotage rules under the Combined Transport Directive was particularly helpful and welcomed. However, this consultation has also shown that some provisions may be outdated and its application gives rise to certain inconsistencies among Member States (for instance, 38% of the stakeholders consulted by the Commission indicated that combined transport was not completely free from cabotage restrictions). In the opinion of the consultants, an amendment of this instrument that allowed a clarification of the concept of Combined Transport and the introduction of specific documentation would be positive; without the need of an amendment in Regulation 1072/2009.

The enforceability of the **Posting of Workers Directive** with regard to cabotage operations is highly questionable. There is an inherent difficulty in checking whether drivers performing cabotage are granted the minimum conditions of the workers in the country where they perform cabotage and for the part of their trip where they are performing such cabotage. Furthermore, certain requirements of the Posting of Workers Directive, such as the existence of a service contract between the employer and a recipient in the host state, may impede the protection granted by the Directive to transport workers. It is expected that Directive 2014/67/UE will improve the means of controlling that the provisions of the Posting of Workers Directive are being correctly implemented, especially to avoid the use of letter-box companies in order to circumvent the application of the Posting of Workers Directive and Regulation 1071/2009.

There is not a lack of coherence between Regulations 1071/2009 and 1072/2009 and **Rome I Regulation**. However, certain stakeholders, such as the European Transport Workers Federation in 2012<sup>71</sup> have suggested that a breach of Rome I Regulation (i.e. depriving the driver from the law that better protects his/her interests) should be included as one of the infringements that may lead to loss of good repute and withdrawal of the community licence, pursuant to Regulation 1071/2009. Although this suggestion is positive, its implementation and enforcement would be, in the opinion of the consultants, difficult at this stage. It would be disproportionate to withdraw the licence on the basis of an infringement of Rome I Regulation at the stage when Directive 2014/67/UE (regulating specific requirements for undertakings posting workers) is not fully implemented yet.

Possible overlaps with the **European Conference of Ministers of Transport ("ECMT")** and any multilateral permit system and any bilateral agreements of EU Member States with non-EU countries have been analysed. In this regard, it is questionable whether the authorities of the Member States crossed in transit should be authorised to require the hauliers going to or coming back from a third country to hold an additional permit than the Community license, which in principle could be enough. Any check of a EU haulier going to or coming back from a third country in the territory of an EU Member State crossed in transit where he/she is required to hold an ECMT permit or a permit issued under a bilateral agreement besides his/her Community license could constitute a breach of Regulation 1072/2009.

#### **6.12.8.2. Recommendations**

Certain actions could be taken to enhance the consistency of references between the Road Transport Package and the **road social legislation** (Regulation 561/2006, Directive 2002/15/EC and Directive 2006/22/EC), in particular regarding the definition of infringements. In this respect, it could be recommended to:

- Include in Regulation 1071/2009 specific reference to Regulation 561/2006 and to Directive 2002/15/EC when establishing the requirements of driving time, rest periods and working time (Article 6) and when defining in Annex IV the most serious infringements related to driving and working time limits.
- Ensure a harmonised list of categories, types and degrees of seriousness of infringements across all instruments.
- Harmonise the rules on monitoring of compliance of social rules and cooperation between the national enforcers, considering that the rules contained in the enforcement Directive 2006/22/EC are more complete. In this sense, the existing extension of the Directive 2006/22/EC risk rating system to Regulation 1071/2009 could serve as a model for further synergies.

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<http://www.etf-europe.org/files/extranet/-75/37898/ETF%20MANIFESTO%20on%20working%20conditions%20of%20professional%20drivers%20EN.pdf>

- It could also be advisable to analyse the possibility of amending Regulation 1072/2009 in order to establish a co-liability regime as regards the infringement of cabotage rules and, therefore, to achieve a more harmonised treatment of infringements in the road transport sector.

Regarding **combined transport**, there are several issues:

- **There is a need for a common definition as to how cabotage relates to combined transport:** In certain Member States the first and final leg of a combined transport journey are considered as a cabotage operation and not as a combined transport operation. A clearer definition of combined transport is needed that preferably avoids the term "*as the crow flies*".
- **Improved documentation:** Improved documentation: In this respect, more than 70% of stakeholders raised the issue of disparities between the documentation requirements for cabotage and combined transport. The establishment of a single document for combined transport operations, similar to the CMR, could solve the current issues related to documentation.

The enforceability of the **Posting of Workers Directive** with regard to cabotage operations is still questionable. There is room for an amendment to the legislation, in line with the proposals made by the High Level Group. In this sense, as part of its work programme for 2015, the Commission has set as one of its priorities to carry out a review of the Posting of Workers Directive

To ensure a correct enforcement of the **Rome I Regulation** and to fight against social dumping in the road transport sector, some stakeholders, such as the European Transport Workers' Federation, have recommended that non-compliance with Rome I Regulation (i.e. depriving the driver from the law that better protects his/her interests) should be included as one of the infringements that may lead to loss of good repute and withdrawal of the community licence, pursuant to Regulation 1071/2009 (ETF, 2012a). It has also been suggested that in case of disputes the applicable law should not be determined by the place where the employee performs the greater part of his/her obligations or by the closest connection, but be established taking into account the strongest social protection for workers. In the example above, the law that applies would not be established by either the criterion on the place where the greater part of the worker's obligations is performed (Germany) or the place with greater connections to the contractual relationship (Poland) but by the country that offers better labour conditions. However, this would necessarily require a legislative amendment of Rome I Regulation and to open a legislative procedure as provided by the TFEU.

In terms of the interaction with structures regulating trade with third countries, the authorities of some Member States crossed in transit require the hauliers going to or coming back from a third country to hold a permit additional to the Community license. In this situation, it is questionable whether this requirement for an additional permit is in line with Regulation 1072/2009.

Overall, there appear to be certain difficulties in the correct implementation of Regulations 1071/2009 and 1072/2009 and the satisfactorily achievement of the objectives of these EU instruments, considering the relation with the other EU legislation interacting with the Road Transport Package. This situation may be improved by updating obsolete legislation and enhancing harmonisation at the level of national transposition and enforcement.



### **6.13. Coherence: How do the effects of the two Regulations relate to the goals of EU transport policy and the wider economic, social or environmental challenges of EU policies?**

In terms of their effects, how do the two Regulations relate to the goals of EU transport policy (as set out in the 2011 White Paper) and the wider economic, social or environmental challenges of EU policies? Have they contributed to these policy objectives? In particular, do Regulations contribute towards the 2020 Road Safety aims and to the general objective to reduce the GHG emissions (if so, to what extent)?

This question examines how the two Regulations relate, in terms of objectives and actual effects, to a number of key EU transport and broader EU policy goals concerning social conditions, road safety, development of the internal market and reduction of GHGs.

#### **6.13.1. Contribution to EU goals on social conditions and road safety**

Considering the social context of the Regulations, there are notable challenges around the harmonisation of social conditions in the sector. The Transport White Paper calls for:

- A higher degree of convergence and enforcement of social and safety rules, while recognising that pursuing market opening and competitiveness needs to be balanced with the social agenda in order to ensure quality jobs and working conditions.
- A goal to achieve close to zero fatalities in road transport by 2050 and to halve road casualties by 2020 (European Commission, 2011a).

At the level of policy objectives and the respective provisions, the two Regulations are clearly coherent with the goals of EU transport policy, as their objectives are to contribute to increased compliance with EU road transport social and safety legislation. However, as discussed in detail in Evaluation Questions 5 and 6 (see Section 6.5 and 6.6), the actual impact of the Regulations on social conditions and road safety remains largely indirect and difficult to quantify.

Nonetheless, it is also clear that the Regulations can play a supporting role in creating the right framework conditions to ensure compliance with the social and safety legislation, and hence can be considered coherent in this respect.

#### **6.13.2. Treaty on the Functioning of the European Union (TFEU)**

Particularly relevant is the role of Road Transport Package in establishing minimum requirements to avoid the establishment of letterbox companies and abuse of the principle of freedoms derived from the Treaty. In terms of actual impacts, as already presented in Evaluation Question 1, it appears that the problem of letterbox has not been entirely solved by the introduction of the Regulation.

One of the issues that has been raised is the question of whether the freedom of establishment under Article 49 TFEU<sup>72</sup> could actually (perversely) support the establishment of letterbox companies. The ultimate objective of Article 49 TFEU is to ensure a common market for goods and services within the EU which is consistent with the objectives of Regulations 1071/2009 and 1072/2009.

In principle, the freedom of establishment applies if a company qualifies as an establishment. If the company is formed without any activities or without the intention of having any activities (i.e. it is a letterbox company), then there is no establishment and consequently it would fall outside the protection of Article 49 (Sørensen, 2015).

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<sup>72</sup> Under which establishing a subsidiary is covered by the freedom of establishment

On the other hand, Article 54 TFEU concerning the rights of free movement and the freedom to provide services provides a very broad definition of the companies that are covered, which identified that companies must have “their registered office, central administration or principal place of business within the Union”. Companies with their registered office within the EU can exercise the right of establishment and the freedom to provide services if “... *their activity shows a real and continuous link with the economy of a Member State*”. The implication is that letterbox companies formed without any activities in the Union cannot rely on the right of establishment or the freedom to provide services (Sørensen, 2015). However, even though there should be some activities within the EU, this does not mean that the activity should be in the Member State of incorporation. That is, if a company manages to establish in a Member State with laxer rules, a letterbox company may then exercise the free movement rights.

The EU has therefore tried to introduce legislation that aims to make it easier for Member States to prevent letterbox companies from undermining the internal market. The Road Transport Package through Article 5 of Regulation 1071/2009, which sets out the conditions for genuine and effective establishment in a Member State, is therefore contributing to strengthening the legal framework concerning the need for stable and effective establishment.

### **6.13.3. Reducing empty running (reducing GHGs)**

In relation to empty running, the Transport White Paper (2011) anticipates that the removal of the restrictions to cabotage would allow hauliers to take up contracts as these become available, hence also reducing fuel consumption and GHGs. The European Parliament has called for the gradual opening up of the road haulage transport markets in numerous resolutions and reports – including greater liberalisation of cabotage to cut the level of empty running (European Parliament, 2015). However, as established earlier in Evaluation Question 4 (see Section 7.4), the ability of cabotage to increase fill rates is not clear and it is difficult to establish any contribution to these objectives.

### **6.13.4. Development of a single European transport area**

The continuing importance of pursuing a single European transport area and removing competitive distortions is reiterated in the Commission’s 2011 Transport White Paper. The White Paper calls for a review of the market situation of road freight and of the degree of convergence in enforcement and implementation of legislation – noting that “*a further integration of the road freight market will render road transport more efficient and competitive*” (European Commission, 2011a). As such, removing competitive distortions will allow for the provision of more efficient and better transport services. Given the dominant role of road transport in industry's production and distribution systems, it will contribute to the EU's competitiveness and efficiency, supporting the EU 2020 goals for smart, sustainable and inclusive growth.

In this respect, by aiming to ensure a level-playing field between resident and non-resident hauliers, improving clarity in relation to existing provisions and laying down clear common rules, the Regulations are clearly coherent with the development of the single European transport area.

With regard to Regulation 1072/2009 and cabotage, completion of the single market is a highly relevant goal. Further integration of the internal market is identified as one of the key drivers for growth and jobs, and the Report of the Commission on the State of the Single Market Integration 2013 pointed to opening cabotage as a key priority for improving market performance. The remaining cabotage restrictions may limit the possibilities to optimise fleet management and match supply and demand, thereby reducing transport efficiency, creating an impediment to competitiveness and growth and reducing the attractiveness of the EU as a base for manufacturing and trading (European Commission, 2013a).

At the same time, the European Parliament has repeatedly emphasised that liberalisation must go hand in hand with harmonisation, and that social aspects and

safety must be guaranteed. Evaluation Question 5 (see Section 7.5) also points to the continuing social and economic differences between Member States, which suggests that further liberalisation of cabotage is premature. If further harmonisation of social conditions is not first achieved, there is a serious risk that the success of road hauliers would be due to their ability to get access to the most favourable labour provisions (legally or illegally), rather than their competitiveness and economic efficiency (EPRS, 2014).

#### **6.13.5. Summary and conclusions**

In terms of improving social conditions and road safety, the Regulations help to incentivise high compliance with the social and safety legislation. In this respect the Regulations can be considered coherent with overarching EU transport policy goals to improve social conditions and road safety, although it is not possible to quantify the exact impact and the effects are indirect.

In relation to the TFEU, there have been some questions raised on whether interaction with the Treaty on the right of establishment actually encourages the formation of letterbox companies. In this area there is no contradiction with the Regulations in theory. If an existing company that is doing business in one Member State wants to re-incorporate in a different Member State, but without the intention of having any establishment in the new Member State, this transaction will *not* be protected by the freedom of establishment.

Overall, there is little evidence to suggest that the cabotage rules have contributed to reducing empty running and GHGs from transport. Rather, the issue of cabotage has a stronger link the EU level goals on completion of the Single Market and ensuring European competitiveness. Further liberalisation of cabotage in line with long-term policy goals is foreseen in order to complete the Single Market. However, a fully integrated EU road freight market would first need a greater degree of harmonisation of socio-economic-legal conditions.

**6.14. EU added value: To what extent could a different level of regulation (e.g. at national level) be more relevant and/or effective and/or efficient than the applicable one to ensure common rules?**

To what extent could a different level of regulation (e.g. at national level) be more relevant and/or effective and/or efficient than the applicable one to ensure common rules for:

- a) Admission to the occupation of road haulage operator,
- b) Access to the international road haulage market,
- c) The conditions under which non-resident hauliers may operate within a Member State other than the one of registration?

To what extent could a different level of regulation (e.g. national regulation) improve the enforcement of these rules?

This question considers the added value of an action at the EU level compared to other actions that could be taken by Member States, or even by the industry itself and (ii) should an action at the EU level be the most suitable one, whether an action by way of Regulation has been the most effective, efficient and relevant.

**6.14.1. EU actions vs. multilateral agreements**

By definition, national legislation cannot ensure common rules at EU level, due to its limited geographical scope and therefore some level of international legislation is needed – either at the EU level or else in the form of bilateral or multilateral agreements.

The Impact Assessment that preceded the adoption of Regulation 1071/2009 and 1072/2009 showed that there were considerable disparities across Member States in terms of the definitions of legal terms contained or relevant for the purposes of applying the rules, application and control/enforcement of rules on access to the profession and to the international transport market. This resulted in low effectiveness and efficiency of the rules. The impact assessment also concluded that in the case of the "no change" option such problems would remain and would even increase given the strong growth of international transport.

It would have been illogical to solve such issues by means of bilateral or multilateral agreements, which are less efficient than EU rules both in terms of procedure and substance where a large number of Member States are involved. The adoption of a "classic" international agreement is subject in each Member State to different timing and rules, needs to be ratified or even incorporated in national law and it is not subject to unique interpretation by a common judicial body such as the European Court of Justice. On the contrary, EU Law is "monist" as compared with public international law and subject to a common timeline and judicial interpretation body. The choice for classic "international public law" rules would then lead to different rhythms and disparities between member states.

As for today, a vast majority of stakeholders among all groups interviewed for the purpose of this study (i.e. transport ministries, enforcers, transport undertakings associations, freight forwarders and trade unions) have called for further harmonisation in this field in the sense that the rules established by Regulations 1071/2009 and 1072/2009 should be more homogeneously interpreted in all Member States. Based on this and considering the above, it is self-evident that a high degree of efficiency could not be achieved only with international public law instruments.

Thus, from a relevance, efficiency and effectiveness perspective, EU law instruments appear to have been a much more suitable than classic international law instruments. Indeed, previous experience of multilateral and bilateral systems in place prior to Regulation 1072/2009 governing cabotage agreements have shown that this cannot ensure an appropriate degree of homogeneity across the EU, and could even have the perverse effect of increasing the disparities between Member States.

#### **6.14.2. EU actions vs. self-regulation**

The aim of the European Union's land transport policy is to promote a mobility that is efficient, safe, secure and environmentally friendly. Compliance with social and road safety rules are therefore important in order to ensure a level playing field all across the EU. Those are by definition matters of public policy that (i) could risk not being the first priority of the industry in every circumstance, especially at times of economic crisis and (ii) transcend national boundaries. Self-regulation schemes may not achieve sufficient business coverage, and thus be ineffective (OECD, 2015). To achieve efficient results at a pan-European level merely through industry self-regulatory schemes seems impractical and it would be unrealistic to embrace all of those goals and policies by using only self-regulatory schemes.

Different levels of compliance with existing regulations across Member States confirm that business practices vary across Member States and that, therefore, self-regulation would not be sufficient to overcome the problems still encountered. Moreover, effective compliance regimes are an integral part of this process, which is precisely the underlying issue that needs to be addressed.

The majority of stakeholders from all groups interviewed (i.e. transport ministries, enforcers, transport undertakings associations, freight forwarders and trade unions) expressed a strong preference for legislation by means of a regulation over a directive in this field. In their view, a regulation would reduce the margin of discretion of Member States which would mean a lower risk of different application of the EU rules.

#### **6.14.3. EU Regulation vs. EU Directive**

Before the adoption of the Road Transport Package access to the occupation of road transport operator and to the international transport market were regulated by means of Directives and Regulations (see Section 2.1). Practical experience and the relevant impact assessment showed severe inconsistencies in the application of the previous Directive 96/26/EC and related instruments by Member States. These problems created distortion of competition between operators and resulted in poor effectiveness and efficiency of the rules. As such, the Impact Assessment clearly indicated the need for a Regulation as the most appropriate instrument in order to achieve a more uniform situation (European Commission, 2007c).

Based on the above, it is safe to conclude that a different type of instrument under EU law, such as a Directive, could not be more effective and/or efficient than the current Regulations.

#### **6.14.4. Summary and conclusions**

In general, Regulations 1071/2009 and 1072/2009 are broadly considered to have led to positive effects compared to the situation prior to when they entered into force, those positive effects show that there is a clear added value of regulating the road transport and cabotage through EU legal instruments.

Nevertheless, some failures remain in the current system, so more still needs to be done to support further harmonisation. This provides support to the conclusions that an EU approach in the form of a Regulation is the most suitable way to ensure a level playing field in the road transport and cabotage.

#### **6.14.5. Recommendations**

This section considers the most appropriate level of intervention that could be used to solve the identified issues with enforcement. Regulations 1071/2009 and 1072/2009 came from a set of pre-existing EU instruments, so from a pure procedural and technical point of view it would not seem logical to set up at this stage new rules or implementing rules on the basis of different legislative proceedings and switch back to a "non EU"

system. Besides, the majority of respondents to the high level survey consulted felt that it was somewhat or highly unlikely that Member States would attempt to implement common rules in the absence of EU-level rules.

Since the most suitable instruments to improve the current system should be adopted at a the EU level, question is how to ensure the most appropriate interaction between different types of instruments.

An amendment of the Regulation containing sufficiently precise rules could then seem more suitable, in the sense that it would remain in line with the existing legal architecture. There are also possible arguments for a Directive-based approach for enforcement.

A parallel can be drawn with the control of compliance with the social legislation by Member States' competent authorities, which is governed by Directive 2006/22/EC. This does not give the Member States great leeway in control measures of working conditions rules (such as roadside or premises checks) and imposes quite burdensome obligations. The choice to use a separate enforcement Directive for Posting of Workers over a revision to the existing Directive was mainly due to a desire to clearly express the Commission's view that the key problems lie with the enforcement of the existing rules and not with the rules themselves (European Commission, 2012b). A similar situation exists concerning the Road Transport Package, and hence the use of an enforcement Directive could be beneficial.

One could argue that the new rules to be adopted at the EU level to improve the current system should focus (for example) on the level or range of penalties for infringements of the provisions of Regulation 1071/2009 or on the level and/or intensity of monitoring. Meanwhile, focusing on those aspects does not necessarily imply that the most suitable instrument to do so is a Directive (as with the regime laid down by Directive 2006/22/EC). The level of monitoring could indeed be addressed by means of a Directive, in order to leave the Member States enough margin of manoeuvre to adapt monitoring rules to their own internal structure and policy. Nevertheless, other enforcement gaps could need a new Regulation or an amendment of the existing ones, as differences in implementation would be leading to the application of double standards. This would be the case for the notion of "good repute" and the different approach of Member States on liability (as shown in Evaluation Question 2, in some Member States the employer would be held fully responsible for mistakes or infringements of his drivers, while in others this would not be the case).

The question also arises as to whether the outstanding issues identified could have been dealt only by means of hard law instruments (i.e. the amendment of the existing Regulations) or also through the adoption of soft law instruments, such as guidance notes or new guidelines by the European Commission. The common issue with these processes is that while all have normative content (as they interpret or complete Regulations, Decisions or Directives), they are not formally binding. Furthermore, experience shows that the elaboration on guidance notes is difficult and takes time and, as they remain non-binding documents, the Commission cannot sanction Member States that do not follow them. Therefore, from both an effectiveness and efficiency aspect, for legal concepts which, according to the practice of Member States, entail the greatest level of discrepancy or difficulties, the clarification needed should be included in the Regulations themselves.

The mere clarification of existing legal concepts (such as, for instance, how to apply the European classification of infringements, i.e. annex IV of Regulation 1071/2009) could be left to new Guidelines to be issued by the Commission, provided that there is not a great discrepancy between Member States in terms of the relevant definition of those concepts.

If, on the contrary, important discrepancies exist or certain aspects remain an important source of difficulty for enforcement agencies, clarification should most probably be included in the text of the Regulation itself. This would be the case for the provisions on

what should be considered a stable and effective establishment under Regulation 1071/2009, or whether multi-drop operations are to be considered as a single operation or several transport operations.

Thus, the conclusion is that a combination of (i) a new Regulation (or an amendment of the existing ones) when it leads to the imposition of new obligations to the industry and the Member States, (ii) an enforcement Directive for pure enforcement issues that, for practical reasons, may not be addressed with a Regulation together with (iii) new guidelines to clarify unclear legal concepts where there is not great discrepancy on their meaning may be the most suitable way to tackle the issues identified above

**6.15. EU added value: Is there any evidence that in certain cases a different level of regulation could have been more relevant and/or effective and/or efficient to achieve the objectives?**

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

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

The problems of competitive distortion, compliance with road transport social legislation and road safety are all closely interlinked, as shown in the intervention logic. Therefore, this question assesses them together as a whole. This section assesses the available evidence on what legislative approaches have been used, and whether there is any evidence pointing to a higher level of success compared to the current Regulations.

Drawing on the analysis of effectiveness, it can be seen that the Regulations have not been entirely successful in achieving the related objectives. The main issues with respect to the non-achievement of the overarching objectives arise from:

1. The existence of letterbox companies, and
2. Different interpretations of the cabotage rules.

The issue of letterbox companies has been a recurring problem in many areas of European law and has resulted in sector-specific legislation. Relevant areas include the enforcement Directive to improve the enforcement of the Posted Workers Directive (2014/67/EC), the revised proposals for Money Laundering Directive and revisions to the Parent-Subsidiary Directive in November 2013, which intend to make it easier for the Member States to combat certain types of tax fraud and tax evasion.

One of the most closely related areas is in the Posting of Workers, where there have been increasing problems with companies that claim to be established in other Member States and are thus apparently complying with the legislation there. Consequently, they claim that they cannot be fully subject to the legislation in the Member States where they post workers in order to supply services.

The problems have recently been targeted by the enforcement Directive of the Posting of Workers (2014/67/EC). This Directive does not change the fundamental rules, but rather seeks to introduce procedures that will better control letterbox companies. Although the expected impacts of the enforcement Directive of the Posting of Workers proved difficult to quantify during the underlying Impact Assessment, the main argument of the revisions is that increased regulatory certainty and cooperation between Member States will create positive effects on the development of the single market. The costs were also considered to be "*relatively small and well-contained while the benefits are significant.*" (European Commission, 2012b). Since the problems it aimed to address are largely similar to those pertaining to letterbox companies in the context of Regulation 1071/2009, this provides some evidence that legislation via an enforcement Directive could be relevant, effective and efficient.

The different interpretations of the cabotage rules are another main issue contributing to competitive distortion. Although a non-binding approach could help to explain the intended interpretation of the cabotage rules, drawing for example on the existing case law, these criteria would not be legally binding. Guidelines, Recommendations or interpretative Communication may not tackle the issues an entirely satisfactory way, and could become a source of criticism in cases where stakeholders feel the case law has not been reflected correctly.



A case in point are the previous attempts to clarify cabotage rules through guidelines and FAQs, which have not been incorporated by Member States. Following the entry into force of the cabotage provisions on 14 May 2010, several Member States and stakeholders raised questions regarding its correct application. To clarify the interpretation, the Commission organised in 2011 a committee meeting to go through the main critical points on the cabotage provisions, as well as publishing a list of FAQs clarifying aspects such as the starting date of the cabotage period, the possibility of a cabotage operation to allow for several loading and/or unloading points (multi-drops) and the calculation of the 7-day period. Despite these FAQs, differences in interpretation remain. Prior to this and before the introduction of Regulation 1072/2009, the Commission had adopted an interpretive communication<sup>73</sup> to help clarify matters. Despite this, several Member States still saw a need to adopt their own guidelines or national rules on road cabotage and this framework left hauliers without legal certainty that their cabotage operations were lawful (European Commission, 2007a). These experiences strongly indicate that a different level of regulation would be less relevant, effective and efficient.

#### **6.15.1. Summary and conclusions**

Experience from other legislative areas that aim to tackle the problem of letterbox companies points to procedures that may enable better control and hence reduce competitive distortion. The enforcement Directive of the Posting of Workers provides a good example, since the problems it aimed to address are largely similar to those pertaining to letterbox companies in the context of Regulation 1071/2009. This some evidence that legislation via an enforcement Directive could be relevant, effective and efficient (as assessed in Evaluation Question 1).

Concerning the lack of harmonisation in the interpretation of the cabotage rules, previous efforts using Directives as well as non-binding measures have not been sufficient to ensure harmonisation. This suggests that the objectives of more uniform interpretation rules could not have been achieved at any level of legislation other than through Regulations.

More generally, the possible approaches to improve EU added value in the context of this Evaluation Question are identical to the conclusions of Evaluation Question 14 (see Section 6.14).

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<sup>73</sup> Commission Interpretative Communication on the temporary nature of road cabotage in the movement of freight (2005/C 21/02), 26 January 2005.

## 7. CONCLUSIONS

On the basis of the analysis presented in Section 7, we present the main conclusions arising in relation to each of the overall evaluation questions.

### 7.1. Effectiveness

The questions on effectiveness aim to assess the extent to which the Regulations have achieved their objectives. Overall, there is strong support for the Regulations in terms of the provisions and consider them an appropriate framework through which to achieve the objectives of more harmonised conditions for access to the profession and to the international road transport market. The problems that currently prevent the full achievement of these objectives mainly relate to the existence of letterbox companies, interpretation of cabotage rules and a lack of effective enforcement.

#### 7.1.1. General objectives

##### *General objective 1: Improve social conditions in the transport profession and the level of road safety*

The Regulations had general objectives to **improve the level of road safety and to improve social conditions** by improving compliance with EU road transport social legislation.

In this sense, the provisions laid down in Regulation 1071/2009 aimed to reinforce the level of compliance with the social and safety rules. However, since the expected magnitude of these impacts were not quantified due to the indirect nature of these impacts, there was no indicator against which the extent to which the objective has been achieved could be assessed. In terms of ex-post outcomes, it appears that any impacts have been minimal and are likely to have been neutral or slightly positive.

Conversely, Regulation 1072/2009 was not expected to have direct impacts on compliance with the **social and safety rules**, and in practice there do not appear to have been any discernible direct effects. Indirect impacts may have occurred due to increased price competition following cabotage market opening. There was consistent agreement in the literature that the mechanisms by which cabotage liberalisation could affect social/safety conditions was via increase competition in the sector, combined diverse wage levels and national labour/tax rules. This leads to hauliers trying to remain competitive by lowering salaries for drivers, and creates greater incentives to circumvent the rules. Nevertheless, none of the studies found could quantify the extent to which the problems occur.

In conclusion, the achievement of Regulation 1071/2009 against this general objective has been positive (although impossible to quantify). The direct impacts of Regulation 1072/2009 have been negligible, whereas the indirect impacts caused by increases in competition are likely to have been negative in terms of social and safety impacts. Overall, the Regulations have been ineffective in significantly promoting social and safety improvements.

##### *General objective 2: To ensure a level playing field between resident and non-resident hauliers*

As general objectives, the Regulations aimed to **support the completion of the internal market in road transport by ensuring a level-playing field between resident and non-resident hauliers**.

Several issues that prevented the achievement of the objective to ensure a level playing field were discovered, relating mainly to:

- The continuing existence of letterbox companies, which distort the market by undercutting legitimate operators;

- Differences in interpretation of the provisions in the Regulations, leading to fragmentary national rules. For example, differences in which penalties are considered in assessment of good repute (see below for further details)
- Uneven approaches to monitoring and enforcement, in terms of penalties and organisation of checks for both Regulations (see below for further details).

Firstly, an important market distortion is the presence of **letterbox companies**. Although there are no comprehensive statistics on the number of letterbox companies, available evidence does strongly suggest that the problem has not been solved, and that the practices of letterbox companies are highly detrimental to the industry as they can undercut legitimate businesses that fully comply with the rules. Significant cost differentials between Member States remains the key underlying driver of this problem while, at the same time, enforcement of the provisions on **stable and effective establishment** were considered to be more difficult due to:

- The lack of a clear definition of an operating centre; and
- The frequent need for cross-border investigations and related difficulties in gaining support from authorities from other Member States.
- A lack of resources and administrative capacity, combined with the more demanding nature of the checks of stable and effective establishment, makes the enforcement of the requirement for all undertakings a challenge

Differences in the **interpretation and implementation of the provisions** of the Regulations also impede the achievement of a level playing field. A key example is that the official monitoring data strongly suggests that there is variation in terms of the stringency with which **good repute** is checked (i.e. in many Member States there were no reported withdrawals on the basis of loss of good repute). There are two main issues linked to this uneven application, namely:

- A perceived lack of clarity in definitions of precisely which infringements should lead to the loss of good repute.
- Inconsistent approaches and incomplete implementation concerning administrative procedures to determine whether loss of good repute would be disproportionate.

Overall, the other requirements of the Regulation are generally considered possible to enforce to effective enforcement and ensuring a level playing field. Still, variations were uncovered concerning other provisions that may jeopardise the achievement of a level playing field:

On the requirements of **financial standing**, there is a high degree of harmonisation in terms of the minimum thresholds required by Member States. However, most terms used in the Regulation cause (e.g. capital and reserves, insurance, accredited persons) are considered unclear by at least one ministry, suggesting that problems may arise specifically with regard to the interaction with national laws/business practices/translation.

The revisions to the **cabotage rules** in Regulation 1072/2009 can be considered to have led to clearer rules that ensure more harmonised conditions of access to the international road haulage market. At the same time, it is clear that there is still more work needed to ensure common rules with respect to cabotage. Despite the changes introduced by Regulation 1072/2009 and additional guidance released by the Commission, there are still different interpretations of specific issues, which impedes the smooth functioning of the internal market by creating fragmentation

Evidence collected for this study showed an **uneven approach to monitoring and enforcement**. There was a distinct lack of quantitative data on the number of checks and infringements of the various provisions of Regulation 1071/2009. Qualitatively, it appears that the requirements are verified for all new applicants in the Member States

that reported information, whereas additional checks may be conducted on the basis of a risk rating system (e.g. in Denmark). Reviewing **enforcement practices** related to cabotage across different Member States showed a range of approaches to control and demonstrated that there is no consistent recipe to determine the most effective enforcement techniques; however, it appears that for most countries, both a high frequency of controls and dissuasive level of penalties are needed. In countries where the enforcement of cabotage is a political priority (e.g. France and Denmark), penalties are relatively high, budgets for control have been increased in recent years and issues of a lack of manpower do not appear to be a current concern in these countries.

In terms of the **penalties in place** for infringements of Regulation 1071/2009, the variation of financial penalties between Member States is often to a level that cannot be justified on grounds solely of socio-economic differences, and there is also wide variation in the typology of infringements (criminal or administrative). The variation between countries may be because the current categorisation of infringements in Annex IV is not considered clear/appropriate by some Member State ministries, and the need for further guidance was highlighted, especially by EU-13 respondents. The level of fines applicable to cabotage infringements varies greatly across Member States, as well as the possibility of other penalties (such as immobilisation of the vehicle) and liability of other actors in the transport chain. The variation means that there is not a level playing field in Europe.

Partial progress has been made in terms of ensuring a more level playing field regarding the establishment of common minimum requirements for access to the profession and to the international haulage market. This has been achieved especially in terms of improving the harmonisation of definitions. However, the general objective of achieving a level playing field for hauliers has not been fully achieved due to the continuing presence of letterbox companies, differing national interpretations of the rules and uneven monitoring/enforcement.

### **General objective 3: To improve transport market efficiency**

The mechanism through which the Regulations aimed to improve transport market efficiency was by reducing empty running due to clarifications in the cabotage rules. In terms of whether the provisions on cabotage have contributed to reductions in empty running, there is mixed evidence that points to both increases and decreases in fill rates.

Overall therefore, it seems unlikely that the provisions of Regulation 1072/2009 have had any significant positive or negative impacts in terms of improving transport market efficiency (reducing empty running), but the effects on individual carriers vary.

#### **7.1.2. Specific objectives**

##### **Specific objective 1: Reductions in administrative burdens**

As specific objectives, both Regulations aimed to **reduce the administrative burden** for national authorities and transport undertakings through allowing for improved monitoring and administrative simplification via the introduction and interconnection of national registers, harmonisation of control documents and new provisions on financial standing. As discussed in the next section of efficiency, the expected reductions in administrative burden have not been achieved in practice. This is largely due to delays in the establishment of **ERRU** and a lack of administrative cooperation.

Concerning the establishment of ERRU, only 13 Member States were interconnected in 2014, rising to 20 Member States in 2015, despite the deadline of 31 December 2012. Many of the difficulties that have been reported are technical. Nevertheless, there is a high level of support among ministries and industry stakeholders for the completion of the interconnection.

Good practices in terms of administrative cooperation appear to be carried out in Bulgaria, the Netherlands and Luxembourg, where information exchanges took place and additional infringements were detected as a result. This shows that in some Member

States, the effectiveness of enforcement has been improved due to cooperation, and there has been some progress towards achieving the objectives of the Regulations in this respect. At the same time, the evidence strongly suggests that implementation and progress is unequal across the Member States.

In conclusion, the measures on administrative simplification and cooperation are still very much a work in progress, and as a result the objectives have still not been met.

### ***Specific objective 2: Ensure a higher level of professional qualification of road transport operators***

Through setting higher standards for the examination granting access to the occupation and conditions for good repute, Regulation 1071/2009 aimed to achieve **a higher level of professional qualification of road transport operators**.

In this respect, Regulation 1071/2009 compels transport undertakings to have specific knowledge on a list of subjects (as laid down in Annex I of the Regulation). The direct impact is not possible to quantify. Qualitatively, both ministries and undertakings gave overall positive views in their survey responses that the requirement of professional competence had raised the standards of professional competence in the industry. For several Member States, the requirements were already in place, but they still may have benefitted from higher standards of foreign hauliers.

The requirements for gaining professional competence still vary across Member States as permitted by the Regulation in terms of the type of examinations (e.g. oral examinations are used in Slovakia, Hungary, Austria, Belgium and optionally in Germany). Objections raised in this respect relate to possible differences this may create in terms of the difficulty of the exams and the degree of professional competence that is required to pass them. Differences in the standards of professional competence create competitive distortions and consequently impede the smooth functioning of the internal market. The pass rate does indeed vary widely between Member States, from 20-25% in Spain to 96% in Estonia, although it is not clear to what extent this variation is due to other factors. For example, information provided by stakeholders indicates that the level of prior training is an important factor in determining pass rates.

A related concern is that “diploma tourism” could occur, resulting in competitive distortion. The data does not reveal any trends that suggest that countries with higher pass rates attract a higher number of applicants relative to their transport market size, the number of enterprises or vehicles. A possible explanation is that language barriers prevent applicants from transferring. Finally, the total number of exemptions granted is usually relatively small in Member States where this is allowed – hence for the most part, this does not appear to be a significant cause of market distortions.

In conclusion, the requirements of Regulation 1071/2009 concerning professional qualification may have contributed to an improvement in the standards for Member States where previous similar requirements were not already in place (more usually the EU-13 countries). Potential weaknesses that may undermine the achievement of this objective are concerns over varying standards across the EU and related issues of diploma tourism, although no conclusive evidence of these effects could be found.

### ***Specific objective 3: Enhance compliance with EU road transport social and safety legislation***

As previously discussed under General Objective 1, the Regulations have been ineffective in significantly promoting social and safety improvements.

### ***Specific objective 4: Enhance compliance with requirement of the temporary nature of cabotage***

Regulation 1072/2009 aimed to **better define the temporary nature of cabotage operations**, in order to improve the clarity and eliminate legal uncertainty for

Community hauliers. The changes enacted by Regulation 1072/2009 are widely considered to be an improvement on the previous situation by national ministries in terms of clarifying the definition of the temporary nature of cabotage, enabling greater harmonisation. Nevertheless, there are still different interpretations of the cabotage rules. The most problematic area appears to be how to count multi-drops, but several other areas have been mentioned including the calculation of the seven day period, what constitutes a cabotage trip, transport of empty pallets, interactions with other legislation and the need for improved documentation.

The clearer definition introduced by the Regulation was also meant to **improve compliance with requirements on the temporary nature of cabotage operations**. Compliance with the **cabotage provisions** is shown in official statistics to be high in most countries. It is not clear how well the official infringement detection rates reflect the true situation, since examples were found of the official statistics being relatively accurate, as well as both over- and under-estimating the true infringement rate. The problems are likely concentrated in the heavily cabotaged EU-15 Member States, potentially to a greater extent than is reflected in official statistics – a view that is supported by analysis of statistics and bottom-up modelling estimates.

Attempts to establish trends over time (and to conclude on the contribution of the Regulation to reducing illegal cabotage) encounter great difficulties due to a lack of data. There was little evidence in the literature or provided by stakeholders that could be used to develop robust conclusions. Indications from a small sample of countries (Denmark, Germany, Poland) show that the compliance rate has slightly improved or remained consistently low in recent years, but it is difficult to extrapolate from these cases to the rest of Europe.

The most important contributing factor to **difficulties in enforcement** was identified as a lack of manpower. However, responses to the enforcers' survey indicated that many other factors also contributed to difficulties in enforcement, including a lack of clarity in provisions, differing interpretations across Member States, as well as difficulties in cross-border cooperation. This indicates that enforcement is considered challenging in many different circumstances and across diverse national situations.

Confirming the legality of cabotage on the basis of only the **CMR consignment note** was highlighted as an issue due to two main factors: Firstly, the CMR document does not necessarily contain all of the information needed to verify whether a cabotage operation is in compliance with the rules. Particular difficulties were mentioned around verifying the start of cabotage operations, its link to international carriage, the calculation of the 7-day period and the identification of the number of journeys carried out within the period. Secondly, there is a possibility that documents are falsified or hidden, although the extent of such practices is unknown.

In conclusion, the first part of the specific objective concerning the establishment of a better definition of the temporary nature of cabotage has been partially achieved and progress can be considered positive. Nevertheless, clarifications of specific aspects may still be needed to ensure the full achievement of this part of the objective. There was insufficient data to assess the achievement of the second part of the objective concerning improvements in compliance with the cabotage provisions. Qualitatively, indications of difficulties around enforcement suggest that there is a risk of illegal cabotage activities, especially in heavily cabotaged Member States.

#### **Specific objective 5: Reduce the level of empty running**

As previously discussed under General Objective 3, it seems unlikely that the provisions have had any significant positive or negative impacts, but the effects on individual carriers varies.

### **7.1.3. Unintended consequences**

Possible **unintended consequences** of Regulation 1071/2009 were identified in that the requirement of financial standing may exclude firms that are otherwise considered reliable – due to for example, unforeseen market changes or a temporary loss of a major client. It appears that difficulties in meeting the requirement have been exacerbated following the recession, and may particularly affect smaller operators, leading to greater firm exit than intended.

Possible **unintended consequences** of Regulation 1072/2009 (sometimes in combination with 1071/2009) were identified as follows:

- The potential for operators to switch to vehicles of less than 3.5t in order to avoid the rules of cabotage (and to a lesser extent, Regulation 1071/2009): There is very little concrete data to support claims of operators switching to lighter vehicles. This is in part due to a lack of monitoring, as well as the difficulty in attributing switching behaviour to the Road Transport Package (as opposed to other legislation). Overall, it appears unlikely that the Road Transport Package has made a significant contribution to switching due to economic factors and the fact that many Member States have extended the provisions to cover lighter vehicles.
- Freight forwarders and shippers are not subject to the rules of the Road Transport Package. Although the requirements of the Regulations dictate to a certain extent the operational conditions and details of the transport, they are generally not liable for potential infringements to the transport legislation during the transport. As a consequence, hauliers can come under intense pressure to infringe regulations due to, for example, short delivery deadlines set by forwarders who are not held responsible.
- The problem of “systematic” cabotage, where hauliers spend the majority of its time in another EU country, appears to affect some Member States in particular, e.g. this activity has been reported in Denmark, and to a lesser extent in Norway.
- Overall, the possibility that hauliers have difficulty in proving legal cabotage and unintentionally break the rules has been suggested in literature and in some individual cases, but the extent of the problem was difficult to confirm.

## **7.2. Efficiency**

Overall, the benefits experienced to date due to reductions in administrative cost are much lower (92-95% lower) than the amount originally anticipated. Total savings from improved monitoring, requirements of financial standing and harmonised control documents are estimated at €8 million to €14 million per annum to date, compared to the expected savings of €175 million. The shortfall is mainly due to the fact that the ERRU system is not fully functional and negligible benefits could be calculated to date, meaning that the expected benefits have not been achieved. Stakeholders are however optimistic that the system will eventually lead to cost savings once the interconnection is complete, although the savings that could be expected once this is achieved could not be quantified. The additional compliance costs are estimated at €15 to €34 million per annum, which is broadly comparable to the ex-ante estimates of €20 million per annum. The main uncertainty is the extent to which firms have been affected by the requirement for a designated transport manager in practice, considering the possible need to increase their salary commensurate with their increased responsibilities.

The only provision that made a significant contribution to implementation costs was the setting up of national electronic registers and their interconnection with ERRU. Overall, the estimated ex-post cost for all 28 Member States is €18.2 million for the setting up

/ upgrading of national registers (excluding any costs incurred prior to the adoption of the Regulation) and €2.83 million for their interconnection (a process that is still ongoing with only 20 Member States being interconnected to date). This totals to €22.1 million, which is around 70% lower than the ex-ante cost estimates of €73 million.

Since the system has not been completed to date, the benefits achieved at the moment are also much lower than the ex-ante estimates (as discussed previously in Evaluation Question 8). Current estimates of the benefit-cost ratio are around 0.2 (assuming a discount rate of 4% and a time period of 10 years), indicating that the system has not been cost-effective so far. This is largely because the benefits are assumed to be rather small, due to the incomplete status of interconnection – however, it was not possible to develop quantitative estimates of the expected benefits of the fully functioning system. As for ongoing enforcement costs, indications from both the survey responses and literature are that there have not been any significant changes in enforcement costs, since most of the activities were already being carried out.

Best practice examples from the UK and the Netherlands indicate that a higher use of the risk rating system to target checks could result in greater cost-effectiveness – the risk rating systems in both these countries go beyond the minimum requirements of the Regulation by including factors other than good repute.

### **7.3. Relevance**

Overall the Regulations are still considered relevant tools in order to meet the objectives of reducing competitive distortion, improving compliance with road social legislation and improving road safety. They work alongside other legislation as part of an integrated approach and their objectives support the EU goals.

The remaining problems mainly arise due to issues of interpretation and/or enforcement of the provisions in the Regulations, rather than from the objectives or targeting of the rules themselves. For example, concerning letterbox companies, the targeting of the objectives is appropriate/relevant to the problem, but further specific actions should enhance the measures and ensure that they are fully adequate to address the needs (i.e. more precise definition of an operating centre and greater cooperation between Member States). The issue of divergent control and enforcement systems is still an area of development (e.g. work is ongoing to harmonise the categorisation of infringements). However, the objectives do not explicitly aim at the harmonisation of controls, and hence this issue is not adequately targeted by the operational objectives.

The objective to address high levels of empty running is still relevant in the context of the need to reduce fuel consumption and GHG emissions from transport. However, evidence is mixed as to the extent to which cabotage has been an adequate means to improve fill rates.

### **7.4. Coherence**

Overall, the legal framework is not fully coherent- i.e. there are certain difficulties in the correct implementation of Regulations 1071/2009 and 1072/2009 and the satisfactory achievement of their objectives of these EU instruments, considering the relation with the other EU legislation. The main interactions are described below.

The objectives pursued by **Regulation 561/2006 and Directive 2002/15/EC** on driving, rest and working time for road transport operators are coherent with the objectives of the Road Transport Package, as they all aim to improve social and working conditions for transport workers in Europe. There are possible inconsistencies where Regulation 1071/2009 does not contain a specific reference to Regulation 561/2006 or to Directive 2002/15/EC – e.g. when defining in Annex IV the most serious infringements related to driving and working time limits. Furthermore, the co-liability principle established by Regulation 561/2006 is not provided for by Regulations 1071/2009 and 1072/2009.



As regards **Directive 2006/22/EC** which contains provisions for the enforcement of Regulation 561/2006, there are differences in the lists of infringements contained in Annex IV of Regulation 1071/2009 and Annex III of Directive 2006/22/EC and referring to the requirements on (i) good repute and (ii) driving time and rest periods. There are also certain inconsistencies between Regulation 1071/2009 and Directive 2006/22/EC concerning the requirements for monitoring the compliance with both provisions, as well as the types of cooperation between national authorities.

Regulation 1071/2009 is applicable to vehicles with a laden mass of more than 3.5 tonnes. This means that it is not consistent with the exemption established in **tachograph Regulation 165/2014**, which is applicable to vehicles with a laden mass not exceeding 7.5 tonnes.

This is, the road legs of combined transport operations are exempted from the limitations on cabotage contained in Regulation 1072/2009 as long as the conditions established in Article 1 of **the Combined Transport Directive 92/106/EEC** are fulfilled. However, some provisions may be outdated and its application gives rise to certain inconsistencies among Member States. There are also possible disparities between the documentation requirements for cabotage and combined transport.

The enforceability of the **Posting of Workers Directive** with regard to cabotage operations is highly questionable. There is an inherent difficulty in checking whether drivers performing cabotage are granted the minimum conditions of the workers in the country where they perform cabotage and for the part of their trip where they are performing such cabotage. Furthermore, certain requirements of the Posting of Workers Directive, such as the existence of a service contract between the employer and a recipient in the host state may impede the protection granted by the Directive to transport workers.

A lack of coherence between Regulations 1071/2009 and 1072/2009 and **Rome I Regulation** has not been identified.

In relation to the TFEU, there have been some questions raised on whether interaction with the Treaty on the right of establishment actually encourages the formation of letterbox companies. In this area there is no contradiction with the Regulations in theory. If an existing company that is doing business in one Member State wants to re-incorporate in a different Member State, but without the intention of having any establishment in the new Member State, this transaction will *not* be protected by the freedom of establishment.

### **7.5. EU added value**

In general, Regulations 1071/2009 and 1072/2009 are broadly considered to have led to positive effects compared to the situation prior to when they entered into force, and those positive effects show that there is a clear added value of regulating the road transport and cabotage through EU legal instruments. The analysis also suggests that the adoption of an EU Regulation has had certain advantages in comparison to alternatives. In particular, previous efforts using Directives as well as non-binding measures (e.g. guidance notes) have not been sufficient to ensure common rules and harmonisation. Therefore the use of a Regulation appears to be the most appropriate, effective and relevant instrument to achieve the objectives.

## **8. RECOMMENDATIONS**

The practical recommendations from this evaluation fall mainly into three categories:

1. Measures to combat letterbox companies;
2. Clarification of the cabotage rules;
3. Guidance and sharing of best practice; and
4. Longer-term considerations.

### **8.1. Measures to combat letterbox companies**

The recommendations to combat letterbox companies more effectively and efficiently aim to directly target the problem areas identified, namely: a lack of clarity over how to define an operating centre and a lack of effective cooperation between Member States.

In the view of the study team, a more precise definition as to what constitutes an operating centre should be introduced at the European level, in keeping with the objectives to ensure common rules on access to the profession. Cooperation is also particularly important in the control of letterbox companies, since it frequently requires cross-border investigations.

In our judgement, the Enforcement Directive of the Posting of Workers Directive (2014/67/EU) provides a good blueprint of more detailed criteria that could be used to define an operating centre, and also provides a good and transferable example of provisions on better cooperation.

It is therefore recommended that a similar approach be considered to amend Regulation 1071/2009 directly, or to introduce a supporting enforcement Directive. This recommendation should not entail substantial additional costs to enforcement authorities, since there are not any substantial changes to the actions that should be taken already. The Impact Assessment for the Enforcement Directive of the Posting of Workers Directive assesses precisely the administrative burdens of introducing a clearer definition of an operating centre and greater cooperation and did not find any significant additional costs. Since the recommendations of this study are to follow closely the revisions to the Directive, it is logical that the cost assessment will be similar and that there will not be substantial additional costs.

Concerning the infrastructure needed to ensure cooperation, the current priority with regards to ensuring the effectiveness and efficiency of the rules should be to ensure that full implementation of the existing provisions (such as the full setting up of ERRU) is achieved, rather than attempting to introduce additional measures. As such, the completion of the interconnection of national registers via ERRU is vital for the achievement of the regulatory objectives and to ensure the efficiency of enforcement.

The benefits of such a measure would be in the form of avoided losses for stakeholders – specifically, the fiscal and labour losses per truck to Member States have been estimated at around €40,875 per year. The benefits to legitimate firms will be in the form of income gains that were previously lost to letterbox companies, which were estimated command a cost advantage of around 10-30%. Considering the limited costs, alongside the significant benefits to Member States and companies, the benefits associated with this recommendation appears to be proportionate to the costs.

### **8.2. Clarification of cabotage rules**

In light of the continuing difficulties in achieving harmonised interpretations of the cabotage rules (despite the additional guidance released by the Commission), this suggests that a clarification of the provisions in the Regulations will be the only effective solution.

More specifically, the intended interpretations of the rules have already been clarified by the Commission in the FAQ document on cabotage. However, since these are not legally binding the interpretations have not been taken up.

The practice of systematic cabotage is not strictly prohibited under the current form of the Regulations. If this is to be addressed, there additionally needs to be an amendment to the rules to allow some sort of waiting period.

Overall, introducing clarifications to the cabotage provisions seems to entail limited additional costs since most of the activities should already be carried out, and this assumption seems to be supported by the assessment of marginal costs arising from the previous change when Regulation 1072/2009 was first introduced. The benefits on the other hand would accrue to enforcement authorities due to the ability to carry out more efficient checks. This would enable the achievement of the operational objective to introduce clearer, more harmonised rules on cabotage.

### **8.3. Guidance and sharing of best practice**

Additional guidance and sharing of best practices is recommended by the study team in several areas (outlined below). These areas are where the main problems identified related to a lack of clarity in the provisions, *and* where guidance has not already been tried as a measure to improve the consistency of application.

For Regulation 1071/2009, areas that could be targeted by guidance and sharing of best practice are recommended as follows:

- **Stable and effective establishment:** Provide guidance on the development of risk-rating indices, such as those used in France, in order to identify organisations at higher risk of infringing the requirements. This would help to prioritise the scarce enforcement capability by targeting higher risk undertakings for more detailed checks.
- **Financial standing:**
  - Guidance on procedures for verifying the financial standing of newly established enterprises. Examples of the approaches used were given for the UK, where bank statement evidence will be accepted, so long as the requisite amount is available, and a finance condition will be put in place requiring a further set of bank statements (Traffic Commissioner for Great Britain, 2015). The Irish authorities accept a current state of affairs for a new business.
  - Guidance on how to monitor if the financial standing requirement is met continuously. This could be based on the risk rating system developed in the Netherlands.
  - Clarification of terms used in the Regulation, including:
    - What can be considered as “capital and reserves”;
    - What exactly is meant by “professional insurance” and what liability should be covered;
    - What exactly is meant by “bank guarantee” and who is to be declared on it;
    - Who could be the mentioned duly accredited person having a right to certify the annual accounts of transport undertaking.
- **Good repute:**
  - Provide clearer definitions of precisely which infringements should lead to the loss of good repute, and clarification of whether administrative fines, arrangements out of court and on-the-spot payments should be counted as “penalties”.

- Provide examples of best practices for procedures to determine whether the loss of good reputation would be disproportionate, to encourage a more consistent approach and help to avoid over-use of this provision.
- Clearer definitions of who should be included in the list of relevant persons to be checked for good reputation in addition to the transport manager. Examples from individual Member States suggest that the list of other relevant persons to be checked could include: CEOs and general partners in partnerships (Finland) or legal representatives of the undertakings (Latvia).
- **Professional competence:** guidance on the subject areas to be covered is already provided in the Regulation, but comments received from stakeholders indicate some concerns over diverging levels of difficulty. One example from Spain could be used as a possible way forward for ensuring greater harmonisation at EU level – the regions implement their own examinations, but guidance and a sample paper are provided on the ministry's website
- **Transport manager:**
  - A more detailed list of the responsibilities/activities of the transport manager, to ensure that a "genuine link" is demonstrated.
  - Guidance on methods to clarify the link between the transport manager and the undertaking. One option to improve this link would be wider take-up of the approach used in the UK, where transport managers are "added" to an operating licence, making the link very robust.
- **Administrative cooperation:** In order to further improve the level of cooperation, agreement on acceptable response times may also be helpful so that the expectations of national authorities are clear, along with a procedure for escalation if these timescales are not met.

For Regulation 1072/2009, aside from clarifications to the cabotage rules as mentioned above, additional guidance could be provided in the following areas:

- Best practice on specifically how to conduct cabotage checks effectively and efficiently, in particular how to use supplementary evidence from sources other than the CMR consignment note (such as tachograph data).
- Encouraging Member States to provide information on their national cabotage rules, so that this can be provided on the Commission website.
- More guidance on the harmonised categorisation of infringements, supplemented by explanations and participation in working group discussions.

Guidance, rather than strict rules, would allow Member States adjust the conditions to suit the national context and take best advantage of existing monitoring systems in order to keep the costs minimal. In other areas where guidance has already been tried and has not worked, or as a longer term consideration, legislative measures may be considered.

#### **8.4. Longer-term considerations**

In the longer term, switching to electronic documents and making use of digital tachograph data appears to be an attractive solution to improve the effectiveness of cabotage enforcement, but currently there are legal and technological barriers to implementation that mean this would not be effective in the short- and medium-run.

In the future, additional measures such as requiring ERRU to be made accessible to roadside officers (as suggested by some stakeholders) could be considered. The study team consider that attempting to introduce additional measures such as this on a mandatory basis while Member States are still experiencing technical difficulties would only exacerbate such problems, and hence recommend the priority should be to focus

on implementation of the existing provisions instead. Nevertheless, making ERRU accessible to roadside officers could be considered at a national level by interested authorities for implementation on a voluntary basis.

The unintended effects of the requirements of financial standing leading to greater firm exit may be mitigated by extending the maximum permissible grace period to rectify the lack of financial standing to 12 months, instead of the current maximum of 6 months. The additional costs of this measure to enforcement authorities are expected to be minimal on the basis that the existing verifications should already be carried out (expect now at 12 months rather than 6).

The problem of letterbox companies occurs in many industries and there have been several recent actions taken in other areas in order to reduce the problem. For example, steps have been taken to try to extend liability to those who are responsible for using letterbox companies in an abusive way– including extending liability to those who are responsible for setting up and managing the letterbox company. This may be a possible approach to consider to address letterbox companies in the transport sector, and the success of these initiatives in other areas should be closely monitored to see if similar approaches would be appropriate.

Another area of work is the harmonisation of sanctions. Should problems persist and additional guidance prove insufficient, a stronger approach could be via harmonisation in *criminal law*, where EU competence is established in the TFEU, Article 83. This could be justified on the grounds that the most serious infringements are already sanctioned in many Member States with criminal sanctions and all criminal systems foresee financial penalties as criminal sanctions. Appropriate levels of proportionate and dissuasive *minimum* levels of pecuniary fines have been suggested by Grimaldi (2013a):

- Most serious infringement: €2,000 for employees, €20,000 for employers;
- Very serious infringement: €1,000 for employees, €10,000 for employers.

The study team consider the recommendations from Grimaldi to be a starting point for negotiations, which would be needed to secure any progress in this area. However, it is unlikely to be practical to fix maximum levels of fines, as some Member States apply sanctions proportionate to the wage and the turnovers of transport operators (Grimaldi, 2013a). These penalties could be accompanied by sanctions such as confiscation or immobilisation of the vehicle, and of the withdrawal of the driving licenses and of the Community licenses, which are seen as effective complementary measures, because they do not allow the operators to gain the advantage from infringements of the relevant rules.

Certain actions could be taken to enhance the consistency of references between the Road Transport Package and the road social legislation (Regulation 561/2006, Directive 2002/15/EC and Directive 2006/22/EC), in particular regarding the definition of infringements. In this respect, it could be recommended to:

- Include in Regulation 1071/2009 specific reference to Regulation 561/2006 and to Directive 2002/15/EC when establishing the requirements of driving time, rest periods and working time (Article 6) and when defining in Annex IV the most serious infringements related to driving and working time limits.
- Ensure a harmonised list of categories, types and degrees of seriousness of infringements across all instruments.
- Harmonise the **rules on monitoring** of compliance of social rules and cooperation between the national enforcers, considering that the rules contained in the enforcement Directive 2006/22/EC are more complete. In this sense, the existing extension of the Directive 2006/22/EC risk rating system to Regulation 1071/2009 could serve as a model for further synergies.
- It could also be advisable to analyse the possibility of amending Regulation 1072/2009 in order to establish a **co-liability regime** as regards the

infringement of cabotage rules and, therefore, to achieve a more harmonised treatment of infringements in the road transport sector.

Finally, several recommendations were made to improve the coherence of the legislation. Regarding combined transport, there are several issues:

- **There is a need for a common definition as to how cabotage relates to combined transport:** In certain Member States the first and final leg of a combined transport journey are considered as a cabotage operation and not as a combined transport operation. A clearer definition of combined transport is needed that preferably avoids the term "*as the crow flies*".
- **Improved documentation:** In this respect, several stakeholders raised the issue of disparities between the documentation requirements for cabotage and combined transport. The establishment of a single document for combined transport operations, similar to the CMR, could solve the current issues related to documentation.

The enforceability of the Posting of Workers Directive with regard to cabotage operations is highly questionable. There is room for an amendment to the legislation, in line with the proposals made by the High Level Group to divide cabotage into linked (to international movements) and non-linked cabotage (Bayliss, 2012).

To ensure a correct enforcement of the Rome I Regulation and to fight against social dumping in the road transport sector, non-compliance with Rome I Regulation (i.e. depriving the driver from the law that better protects his/her interests) should be included as one of the infringements that may lead to loss of good repute and withdrawal of the community licence, pursuant to Regulation 1071/2009.

There are possible arguments for a supplementary enforcement Directive on the basis that enforcement is a sensitive issue for Member States and national authorities are organised differently. Greater cooperation between Member States could also be mandated if guidance and voluntary cooperation proves insufficient. A parallel can be drawn with the control of compliance with the driving time rules (Regulation 561/2006), which is governed by Directive 2006/22/EC.

## **9. ANNEX A: SUPPLEMENTARY TECHNICAL ANALYSIS**

This annex contains additional supporting evidence and analysis for each of the evaluation questions, that is referred to in the main report.

### **9.1. Monitoring data**

#### **9.1.1. Monitoring information submitted under Article 26 of Regulation 1071/2009**

**Article 26** requires that Member States must draw up a report every two years, which shall include:

- a) An overview of the sector with regard to good repute, financial standing and professional competence;
- b) the number of authorisations granted by year and by type, those suspended, those withdrawn, the number of declarations of unfitness and the reasons on which those decisions were based;
- c) The number of certificates of professional competence issued each year;
- d) Core statistics relating to the national electronic registers and their use by the competent authorities; and
- e) An overview of exchanges of information with other Member States pursuant to Article 18(2), including in particular the annual number of established infringements notified to other Member States and the replies received, as well as the annual number of requests and replies received pursuant to Article 18(3).

The first report under Regulation 1071/2009 covers the period from 4 December 2011 until 31 December 2012. The next reporting period will cover the full two-year timeframe from 1 January 2013 till 31 December 2014.

Despite the obligation under the Regulations, six Member States, namely Belgium, Denmark, Finland, Germany, Luxembourg and Portugal, did not submit their national reports in time for the first report (European Commission, 2014a). Several Member States experienced severe delays and data was missing in several cases.

As noted by the Commission in its 2014 report, the quality and timeliness of submissions will likely have been affected by the fact that this was the first reporting period; however, the lack of data makes it difficult to assess the implementation on the basis of information provided (European Commission, 2014a).

##### **9.1.1.1. Authorisations granted**

Table 9-1 shows the reported data from Member States regarding the authorisations granted in the first reporting period. On the basis of the Member States that reported authorisations, around 171,000 were granted in the reporting period. However due to a lack of information about national systems<sup>74</sup>, this does not provide a clear picture on numbers of undertakings pursuing the occupation of road transport operator. Member States have therefore been encouraged by the Commission to prepare an outline of their national arrangements for authorisations in order to allow for a collection of consistent data in the next reporting period (European Commission, 2014a).

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<sup>74</sup> Depending on the national schemes, there is a range of scenarios; an authorisation might be a prerequisite to obtain a licence for national transportation and/or a Community licence in order to carry out international carriage, it might be an equivalent of a licence for national transportation or it might mean a licence for national and international transport granted by means of the single authorisation (European Commission, 2014a).

**Table 9-1: Authorisations granted (Over the period 4.12.2011 – 31.12.2012)**

Member States	Authorisations granted		Community licences		Licenses for national transportation	
	Road haulage	Passenger transport	Road haulage	Passenger transport	Road haulage	Passenger transport
<b>AT</b>		166			0	
<b>BE</b>	No report provided					
<b>BG</b>			4301	381		
<b>CY</b>			8		34	8
<b>CZ*</b>	4667		1607	170		
<b>DK</b>	No report provided					
<b>EE*</b>			1026	120		
<b>FI</b>	No report provided					
<b>FR<sup>1</sup></b>	4484	5412				
<b>DE</b>	No report provided					
<b>EL</b>	2268 <sup>2</sup>				1248	
<b>HU</b>	27174	4402				
<b>IE</b>	616	295				
<b>IT</b>	75072	5985				
<b>LV*</b>			808	70	45	3
<b>LT*</b>			940	60	166	26
<b>LU</b>	No report provided					
<b>MT*</b>			8	0	8	16
<b>NL*</b>	809			92		
<b>PL*</b>	7182	644				
<b>PT</b>	No report provided					
<b>RO</b>			8699	785		
<b>SK*</b>	1067	106				
<b>SL</b>			13135	1962		
<b>ES*</b>	30534	444				
<b>SE</b>	1149	56				
<b>UK</b>	No information provided**					

Source: (European Commission, 2014a), Annex I

Notes: \* Numbers cover only the year 2012.

\*\* No official monitoring report provided – estimates from DfT indicate that 4,996 authorisations were granted in the reporting period

1: Number of undertakings engaged in road transportation fulfilling requirements to access the profession, extended to vehicles below 3.5 tonnes of permissible laden mass and carrying below 9 people, including a driver.

2: The number includes authorisations to pursue the occupation of national transport operator as well as international or national-international transport operator. It also includes the renewals.



### 9.1.1.2. *Withdrawals and suspended authorisations and declarations of unfitness of transport managers*

Table 9-2 summarises the number of penalties imposed per type by each Member State in the first reporting period 4.12.2011- 31.12.2012. Only a small number of Member States provided breakdowns of the reasons for these penalties. The official monitoring data suggests that total withdrawals are less than 100 in most Member States (Austria, 10 – of which nine were due to infringements of the requirement of financial standing); Estonia (2); Ireland (2); Hungary (31); Italy (31); Latvia (58); Lithuania (4); Poland (62). Member States where withdrawals were particularly high included CZ (956); FR (3344); EL (222); NL (2038); SK (1219); ES (27595); SE (892). Data on declarations of unfitness were not provided by many Member States or not split between road haulage and passenger transport. Nevertheless, total declarations were relatively high in IT (348) and HU (123) compared to less than 20 reported for all other Member States that provided data. The number of suspensions was less than 50 in all Member States that provided data apart from CZ (373) and ES (12493).

**Table 9-2: Withdrawals and Suspended Authorisations, and Declarations of Unfitness of Transport Managers (Over the period 4.12.2011 – 31.12.2012)**

Member States	Authorisations withdrawn		Authorisations suspended		Number of declarations of unfitness	
	Road haulage	Passenger transport	Road haulage	Passenger transport	Road haulage	Passenger transport
AT		10				0
BE	No report provided					
BG	No data					
CY	No information provided					
CZ*	956		373			0
DK	No report provided					
EE*	2		0			14
FI	No report provided					
FR	3344	1424	No information provided			3
DE	No report provided					
EL	222		48			0
HU	31	2	3	0	123	6
IE	2	0	No information provided			
IT	31	0	0	0		348
LV*	58		No information provided			
LT*	4		13		No information provided	
LU	No report provided					
MT*	0		0			0
NL*	1038	No data	No data	0	0	No data
PL*	62	6	No information provided			0
PT	No report provided					
RO	0		1		No information provided	
SK*	1219		0			0

Member States	Authorisations withdrawn		Authorisations suspended		Number of declarations of unfitness
<b>SL</b>	592	20	No information provided		
<b>ES*</b>	37595	19	12493	1	No information provided
<b>SE</b>	892	73	No information provided		
<b>UK</b>	No information provided				

Source: (European Commission, 2014a), Annex II

Note: \*Numbers covering the year 2012

For EE: the number of Authorisations Withdrawn refers to the Community license

For FR: Numbers cover only the year 2012. Number of authorisations withdrawn in relation to undertakings engaged in road transportation fulfilling requirements to access the profession, extended to vehicles below 3.5 tonnes of permissible laden mass and carrying below 9 people, including a driver.

### 9.1.1.3. Certificates of professional competence issued

Table 9-3 shows data on the certificates of professional competence issued. Between December 2011 and December 2012, more than 52,000 certificates of professional competence were awarded in EU Member States. This number includes certificates granted on the basis of an examination as provided by Article 8 of Regulation EC (No) 1071/2009 and through recognition of experience, following an exemption specified in Article 9 of this Regulation. This figure also includes certifications for passenger transport operators, since most Member States do not report any split between road haulage and passenger transport; however in general it appears that the majority of certificates were be for road haulage operators. Among the Member States that reported data, only Malta reported that there were no certificates of professional competence issued in the reference period (European Commission, 2014a).

**Table 9-3: Certificates of Professional Competence Issued (Over the period 4.12.2011 – 31.12.2012)**

Member States	Certificates of professional competence		Comments
	Road haulage	Passenger transport	
<b>AT</b>	71		
<b>BE</b>	No report provided		
<b>BG</b>	1547	171	
<b>CY</b>	21		
<b>CZ*</b>	4295		802 certificates issued on the basis of an examination which had been successfully passed. In 3493 cases, certificates of professional competence issued under Directive 96/26/EC were replaced at the request of holders
<b>DK</b>	No report provided		
<b>EE*</b>	303	109	
<b>FI</b>	No report provided		
<b>FR</b>	3375	1794	For road haulage: 559 – examination, 674 – equivalency of diplomas and 2542 – recognition of experience

Member States	Certificates of professional competence		Comments
			For passenger transport: 108 – examination, 133 - equivalency of diplomas and 1553 - recognition of experience
<b>DE</b>	No report provided		
<b>EL</b>	2294		
<b>HU</b>	1183	153	For road haulage: 1183 of certificates of professional competence and 1507 certificates after 10-year periodic training For passenger transport: 153 of certificates of professional competence and 510 certificates after 10-year periodic training
<b>IE</b>	273	150	
<b>IT</b>	3977	242	A road transport manager needs to successfully pass an examination based on attendance of a specific vocational training course, which is mandatory for candidates not having an upper secondary school diploma.
<b>LV*</b>	516		
<b>LT*</b>	1028		
<b>LU</b>	No report provided		
<b>MT*</b>	0	0	
<b>NL*</b>	566	38	
<b>PL*</b>	2469	345	
<b>PT</b>	No report provided		
<b>RO</b>	12488	3977	
<b>SK*</b>	1294		
<b>SL</b>	231		
<b>ES*</b>	4904	957	
<b>SE</b>	3051		
<b>UK</b>	No information provided		

Source: (European Commission, 2014a), Annex III

Note: \*Numbers covering the year 2012

### 9.1.2. Monitoring information submitted under Article 17 of Regulation 1072/2009

**Article 17** lays down requirements for *reporting*. Every two years, Member States must inform the Commission of the number of hauliers possessing Community licences, the number of certified true copies corresponding to the vehicles in circulation and the number of driver attestations issued and in circulation. Table 9-4 shows data reported for 2014. The total number of Community Licences in the EU has been slightly fluctuating around 270,000 over the past few years (figures available between 2007 and 2013) without a clear negative or positive trend (unpublished DG MOVE dataset). However, some Member States are replacing their national licences with Community Licences, so the figures are potentially upward biased.

**Table 9-4: Member State reporting under Article 17 of Regulation 1072/2009 (2014 data)**

Member State	Hauliers possessing community licences at the end of 2014	Certified true copies in circulation at the end of 2014	Driver attestations issued in 2014	Driver attestations in circulation at the end of 2014
BE	8,351	54,354	120	114
BG	10,378	69,655	8	89
CZ	11,552	79,459	455	727
DK	5,016	34,941	0	3
DE*	40,440	340,510	953	2,883
EE	2,458	13,202	166	357
IE	2,346	11,298	0	0
EL	1,965	3,344	5	14
ES	27,724	104,633	4,994	8,321
FR	23,439	319,012	132	287
HR	2,762	13,121	10	10
IT	14,638	58,552	1,275	4,098
CY	146	358	0	12
LV	3,294	13,213	2,144	1,433
LT	3,641	28,486	6,715	3,895
LU	365	4,925	32	33
HU	6,426	41,423	194	251
MT	49	348	22	22
NL	11,668	98,330	37	145
AT	3,596	32,060	374	1,590
PL	29,488	168,645	9,255	6,809
PT	5,726	58,829	610	3,148
RO	36,162	129,665	3	31
SI	5,279	21,508	5,461	6,056
SK	6,563	41,070	347	474
FI	10,526	45,892	302	761
SE	3,469	13,399	4	39
UK	9,416	39,479	0	0

There are considerable disparities among Member States in the charges applied to obtain the Community licenses and their certified true copies.

## **9.2. Effectiveness: To what extent are compliance levels with the new provisions satisfactory?**

### **9.2.1. Evidence of the extent of letterbox companies in Europe**

The Commission has reported that letterbox companies still exist in certain Member States (European Commission, 2014b). There are no comprehensive EU statistics or studies of the extent to which letterbox companies are still a problem in Europe. The examples below have been collated from the literature in order to help inform the assessment of the problem.

Even within a single country, stakeholder views on the situation differ. For example, one Spanish association of road transport operators interviewed for this study felt that letterbox companies have never been a problem in Spain, whereas a Spanish trade union responded that there is a problem that is not being properly detected, citing a recent example of fake subsidiaries in the area of Murcia and Alicante. The Spanish enforcement authority instead reported that letterbox companies were seen as a problem all over Europe. None of the stakeholders in question could provide concrete evidence on the extent (or not) of the problem and hence the situation remains unclear.

ETF (2012a) claims that letterbox employment schemes “proliferate”. They demand that Regulation 1071/2009 be amended to combat this practice by ensuring that undertakings have parking spaces for all registered vehicles as a condition of stable and effective establishment, that Member States are required to conduct checks every 2 years (as opposed to every five years), that the transport manager may only manage one undertaking and that the authorisation of undertaking found in breach of Regulation 1071/2009 to be immediately withdrawn.

In a question to the Commission dated 11 September 2013 (Parliamentary questions, 2013a), attention was drawn to a possible breach of the provisions of Regulation (EC) No 1071/2009 in the transport sector. In its answer, the Commission stated that the information on which the question was based did not allow it to establish whether the companies referred to in the question were infringing the provisions of Regulation (EC) No 1071/2009. In its response, the Commission requested that the German authorities carry out an individual check to verify whether the undertaking met the conditions governing admission to the occupation of transport operator, under the procedure laid out in Article 12(3). The Commission also noted that it is ultimately the duty of the Member States concerned to ensure that the provisions of the regulation are enforced. Exploring the validity of these reports in more detail via interviews demonstrates how difficult it is to investigate and verify the existence of letterbox companies. During interviews conducted for this study, German stakeholders were asked to comment on this specific issue and in general appeared to recognise there were some problems: a German trade union reported that the problem of letterbox companies in the Flensburg/Luebeck area is well known (although there are also legitimate companies operating from these regions), and also highlighted a problem at the border to the Netherlands. They consider the incentives for this behaviour are that Germany provides cheaper drivers and has less restrictive laws concerning wages and social security payments compared to Denmark and the Netherlands. The German ministry also supported the view that letterbox companies are a problem in Northern Germany. When asked about incentives driving this, they note that Eastern European letterbox companies are frequently established in Germany to get access to permits that allow them to operate in non-EU countries in the East, such as Russia. A German industry association further recognised the issue of letterbox companies but suggested that it is a very local problem. In their view, the main reason for these companies are (in addition to fiscal reasons), the fact that companies that are registered in Germany can ask for exemption of the driving ban of trucks on Sundays. In Schleswig Holstein there are many applications for these exemptions. Outside of Schleswig Holstein, they feel that there are not any noteworthy letterbox companies in Germany. Finally, five German undertakings interviewed for this study believed that letterbox companies cannot exist

long term in Germany as the controls by the BAG (Federal Office for Freight Transport) and the tax office are too frequent and thorough.

Danish stakeholders were similarly asked during interviews conducted for this study to expand on the media coverage of certain Danish firms with subsidiaries in Germany that are not meeting the "stable and effective establishment". The Danish Ministry and Danish enforcement authorities emphasised that these were only claims and that there is not established proof of such illegal practices taking place. The Ministry explained that it is difficult to say what the effect of letterbox companies has been and no effect has been measured. The enforcement authority commented that they must rely on the German authorities for further information in this case, but typically they do not receive any responses, although they further emphasised that they certainly did not blame their German counterparts. A Danish trade union elaborated that there were journalists trying to go investigate the issue in Flensburg, who sent pictures of the letterbox companies' sites to the Danish administration: they claim that the photographs showed the establishment was a residential site, and that the information was sent to the Commission. Their understanding of the most recent developments were that the Commission sent a letter to the German authorities, who in turn confirmed that in their opinion they were legitimate hauliers where there were actual activities.

The European Trade Union Institute (ETUI) has collated several reports from court cases against alleged letterbox companies (ETUI, 2014), which reports on the case of a Dutch company setting up a Hungarian subsidiary in Budapest. The drivers employed by this company were directly engaged by the Dutch parent company, while the Hungarian company employed only one half-time administrative employee and stationed none of its trucks in Hungary. The drivers were reportedly "*subjected to constant pressure because the 'Hungarian way' was cheaper*".

The Belgian trade journal *Truck & Business* (2012) published an article alleging similar practices involving Slovakian letterbox companies being set up by businesses that really operate from Belgium. These companies are thought to have a much lower cost base than their Belgian competitors as a result of several factors, such as wages and social insurance payments, which are typically much lower for transport workers in Slovakia than in Belgium<sup>75</sup>. The secretary general of ČESMAD Slovakia stated a belief that these companies were in fact paying the Slovakian minimum wage, i.e. even less than the typical Slovakian transport worker's wage. In addition, the standard corporate tax rate in Slovakia is roughly 10 percentage points lower than in Belgium, and according to the *Truck & Business* article, at the time of printing, transport businesses relocating to Slovakia were even eligible for complete relief from road tax on vehicles not used for transport activities in that country.

The Belgian transport workers' union, FGTB (2012), conducted its own investigation of alleged letterbox companies in Slovakia and even went as far as assembling a list of names of alleged letterbox companies, which it shared with Slovakian authorities and published online. The union visited the premises of some of these businesses in Slovakia 18 months after it had named them, and found that only one of the 12 premises it visited appeared to have any trucks at their registered offices.

In the Netherlands, irregularities with respect to the transport of dangerous goods have occurred, concerning companies employed by Dutch hauliers, but recruited through their foreign branches in Poland and Hungary. These subsidiaries have been reported as "fictitious", and the companies involved are associated with allegations of paying low wages, providing poor working conditions and encouraging drivers to work long hours (TRT, 2013).

The Italian trade union FILT-CGIL reports cases of illegal cabotage operations in the Marche region, where international companies employ drivers under letterbox

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<sup>75</sup> The article claims that Slovak drivers receive salaries that are between one-fifth to one-third that of a Belgian driver.

companies. Eastern European drivers (mainly from Bulgaria, but also from Poland and Ukraine) are employed, (but never return to their countries of origin) and drive trucks that are registered in Bulgaria or Poland. According to the trade union, through such unfair practices, companies can offer transport prices that are between 20% and 25% lower than the minimum tariff set by the national legislation, with subsequent disruptive effects on the market (TRT, 2013).

In France, several cases have been reported of the establishment of 'fake' foreign subsidiaries or transnational contractual relationships with the sole aim to provide 'low cost' labour. Such practices recently featured in media reports on the activities of the Norbert Dentressangle group. In one case a French transport operator set up a subsidiary in Poland which recruited one hundred drivers to perform road haulage in France (European Commission, 2012b). The usual schedule of Polish drivers included six weeks of work in France and one week of rest in Poland. The Polish drivers were working six days per week and, during their stay in France, they stayed in flats provided by the French company. The vehicles were owned by the French mother company; the Polish subsidiary rented the trucks from the mother company and then it rented them back while providing the posted drivers. The French courts established that a proper but disguised employment relationship existed between the French company and the Polish drivers, as the former organised and directed in detail the work of the latter. A similar case involved another French company which established a subsidiary in Slovakia. Slovak drivers were actually working for up to 15 weeks in France and were part of the mother company workforce. In particular, the French company entrusted the Slovak subsidiary to carry out its own transport contracts, while the foreign firm did not have any independent activity in Slovakia and all of its trailers were provided by the mother company. Again the foreign subsidiary did not show any independent entrepreneurial activity and was established with the only purpose to provide drivers at a lower cost to the French mother company. In other cases, the provision of drivers for on-going operations in France is organised through agencies (European Commission, 2012b).

Another question submitted to the European Parliament concerns possible Greek transport operators transferring to neighbouring countries in order to take advantage of lower taxes<sup>76</sup>. Allegedly, these are "bogus" transfers, since the undertakings in question are not fulfilling the terms of Article 5(a), (b) and (c) regarding the core premises and transport activities of an undertaking. In its reply, the Commission noted that Article 12 of the Regulation requires Member States to verify regularly by means of targeted checks that transport undertakings established on their territory fully comply with the criteria defined in the Regulation. They further note that the Regulation does not set rules on the corporate taxation levels applied to road transport operators.

### ***9.2.2. Review of empirical evidence on labour cost convergence in Europe***

Ismieri Europa (2012) examine average hourly labour cost data and compute a measure of dispersion (coefficient of variation). Hourly labour costs dispersion shows a decreasing trend in EU27, EA17 and EU12, more pronounced in EU12 and stable in EU15. Therefore it seems to be evidence of very slow "labour costs converging process" between the EU12 and EU15 countries. They complete a literature review and conclude that there seems to be evidence of very slow "labour costs converging process" between the EU12 and EU15 countries.

Analysis of datasets for the manufacturing sector from the OECD covering 1974-1998 in Abraham (2001) shows overall convergence between countries with higher and lower labour costs, although progress is slow and patchy. Convergence is found to be more pronounced when the gap in labour costs between countries is larger. Productivity differentials explain a large part of the differences.

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<sup>76</sup><http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-002553&language=PL>

Data from Dullien and Fritsche (2007) do not support the hypothesis of unit labour cost (ULC) growth in the European Monetary Union (EMU), although for some countries there is evidence of relative rather than absolute convergence. Lebrun and Perez (2011) show that nominal and real unit labour costs growth differentials between euro area members have continued and even widened in the EMU due to divergent evolutions in capital-output ratios, nominal effective exchange rates and country-specific institutional features, coupled with an increased sensitivity of real unit labour costs to fundamentals following the shift in the monetary regime. Arpaia and Pichelmann (2007) find persistent cross-country differences in wages and labour cost development in the Euro area, which are indicative of an insufficient degree of nominal and real wage flexibility. Šlander and Ogorevc (2010) confirm absolute convergence of wages within the EU, and reveal narrowing in the wage gap between high- and low- wage regions even after controlling for their different productivity growth rates.

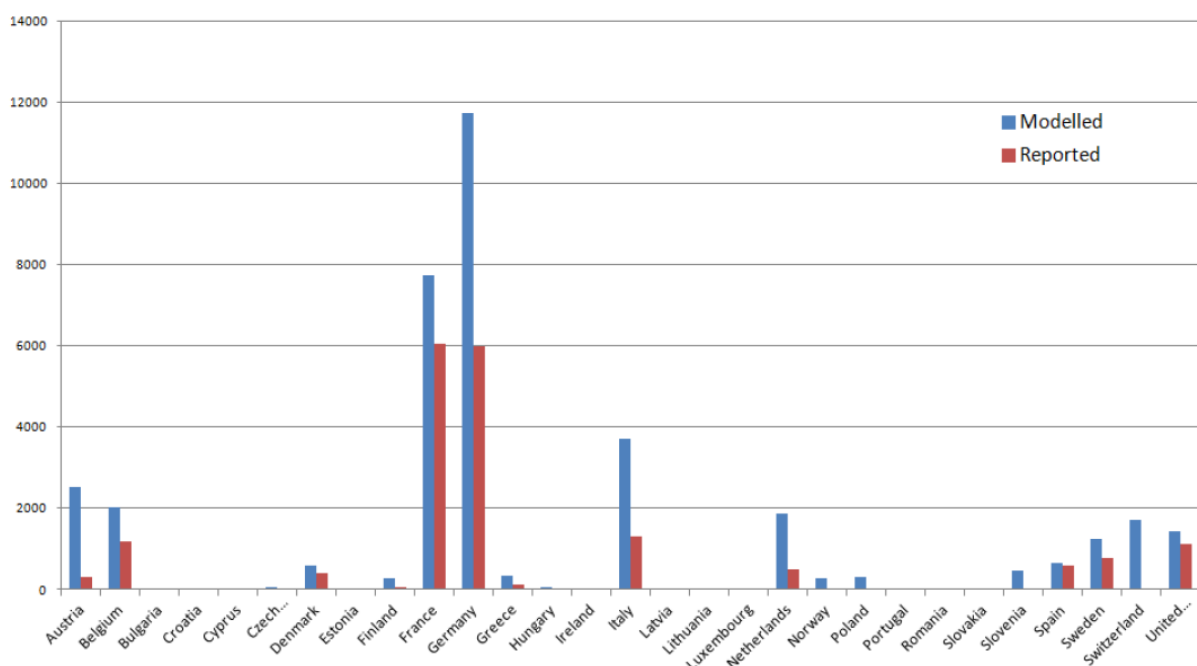
### 9.2.3. Analysis of modelled versus reported cabotage

Figure 9-1 shows the total volume of activity that is reported as cabotage within each member state, alongside the estimated total activity, from AECOM (2014c). Estimated total activity is based on bottom-up estimates of the total contestable markets (i.e. hat market within National Haulage that is most relevant for cabotage activity, which tends to exclude highly specialised trade) and the level of cost differential:

- Where the Cost Differential between Country Pairs is greater than 0.83, the cabotage rate is equal to the reported cabotage rate in Eurostat, or is equal to 53 (average cabotage rate) where no rate is reported by Eurostat; or
- Where the Cost Differential between Country Pairs is less than 0.83, the cabotage rate is estimated using a trendline in which cabotage rates start at 130 tonne-km/tonne and rise to maximum values in excess of 500 tonne-km/tonne.

Figure 9-1 shows potentially large discrepancies (more than 2,000 million t-km) between cabotage levels reporting in Eurostat and the expected activity for Germany, Austria and Italy. Discrepancies of between 500 and 2,000 million t-km were also found for France, the Netherlands, Switzerland and Belgium. In aggregate, unreported activity is estimated at 1.94 times the reported level of cabotage across the EU27. Unreported activity includes flagging out (the dominant cause) as well as illegal activity (that may be viewed as legitimate flagging out by some companies).

**Figure 9-1: Analysis of modelled versus reported cabotage (million t-km)**





Source: AECOM (2014c)

The analysis shows that the actual level of haulage activity undertaken by non-domiciled hauliers is considerably higher than that suggested by cabotage statistics. It is considered that the unreported activity comprises flagging out activity (which remains a grey area) and other illegal activities.

### **9.3. Effectiveness: To what extent are the new enforcement measures effective?**

#### **9.3.1. Implementation of requirements in Regulation 1071/2009 concerning checks**

Some information on the enforcement procedures in place in different Member States was provided in the official monitoring reports (European Commission, 2014a): Estonia reported that checks are carried out according to a risk-based system and mainly undertakings which have an increased risk of committing serious or frequent infringements to road transport rules are targeted. In Ireland checks of good repute, financial standing and professional competence are performed at least every five years in the framework of an authorisation renewal process for each undertaking. In addition, these checks might take place more frequently for some operators who are deemed high risk or come to the attention of the competent authority. In Latvia, checks of compliance with financial standing are performed by means of information from the annual reports provided by the Register of Enterprises. Hungary indicated the numbers of checks on conditions of good repute (11062), financial standing (7197) and professional competence (5329) during this reporting period (4/12/2011 – 31/12/2012).

In order to better understand how the enforcement systems were developed and applied in different Member States, additional details were sought via surveys and interviews carried out for this study. Only a small number of respondents were able to give further information on how checks were conducted, but these case studies present a more detailed picture of how enforcement functions in certain Member States. The examples below are sourced from interviews carried out for this study, unless otherwise indicated.

The **Polish** authority commented that their risk rating system is used in the manner as prescribed by Directive 2006/22/EC. In Poland there are 400 inspectors are responsible for checks at the roadside and at the premises. The information collected by the inspectors are then forwarded to the International Transport Office and to local authorities issuing the community licenses and checking for the 4 requirements of Regulation 1071/2009 (stable and effective establishment, good repute, financial standing and professional competence).

**Estonia's** risk-based system mainly targets undertakings that have an increased risk of committing serious or frequent infringements to road transport rules (European Commission, 2014a).

The **German** ministry reports that previously there was only a risk rating system at the regional level, whereas now it operates country-wide thanks to Regulation 1071/2009. As of July 2014 the infringements are rated with either 5 points (most serious infringements), 3 points (more serious/serious infringements) or 1 point (other infringements). An undertaking is then rated as having an increased risk if it has accumulated either 5 points (for undertakings with to 10 vehicles), 8 points (up to 50 vehicles), or 11 points (more than 50 vehicles) (BAG, 2014). The enforcement authority reports that the mandatory checks take place and penalties are imposed, but they would always prefer to carry out even more checks. The ministry reports that previously there was only a risk rating system at the regional level, whereas now it operates country-wide thanks to Regulation 1071/2009.

The **UK's** Driver and Vehicle Standards Agency has had a system known as OCRS (Operator Compliance Risk Score) since 2006 which was refined in 2012 to improve its

predictive ability. The OCRS goes beyond the minimum requirements of the legislation by integrating information on roadworthiness infringements, which are correlated with other infringements (SDG, 2013a).

The respondent from **Denmark** indicated that all new applicants for a licence to operate were checked for financial standing, professional competence, debt and stable establishment. Checks of good repute are only conducted if the police have reported a problem or there is any other indication that there might be a problem. Infringements in the system are registered for 5 years and comprise the infringements that are detected by the police during roadside checks. The Danish authority typically checks all new applicants as well as around 250 additional ones. These additional firms are selected on the basis of the risk rating system. The Danish authority considered that the risk-rating system works well - it has been in place for around 20 years but it has constantly been updated and improved.

The **Romanian** authority reported that they have a risk rating system to target checks of infringements reflecting all offences in road transport for each transport company. They reported that if a company opens a branch, checks are done on its stable and effective establishment, and they considered this to be an effective system.

In **the Netherlands**, the Dutch Road Haulage Organisation for National and International Transport has developed a method to detect transport operators that are in risk of no longer fulfilling the requirement of financial standing. Transport operators that are at risk will be closely monitored. In the event that a high risk transport operator is not able to satisfy the requirement of financial standing within the given timeframe as laid down in Article 13 of Regulation 1071/2009, the Community license will be withdrawn. With this method, transport operators are obliged to satisfy the requirement of financial standing during the whole period of validity of the Community license and not only during the application period. According to the Dutch enforcement authority questioned for this study, the result of this method is that only financially stable transport operators will keep their Community license. The Dutch enforcers also report that risk rating applies to professional competence.

The **Finnish** enforcement authority explained that the risk rating system in Finland is linked to checks of good repute. Systematic checking of good repute concerning all the relevant persons is considered to be a demanding task, which is precisely why risk rating is needed.

The **Irish** system targets undertakings that are deemed high risk or have come to the attention of the competent authority (European Commission, 2014a). The monitoring report indicated that good repute is checked by vetting the transport manager and any other relevant person with the National Vetting Service provided by the National Police Force. This vetting service provides the competent authority with a list of convictions that can be used to determine good repute (European Commission, 2014a). During the 5-year period of validity of an operator's licence, there will ordinarily be no need for an operator to furnish additional information to the licensing authority. This would only happen when the authority has detected a risk in respect of that operator (ICF, 2014).

Specifically concerning checks of stable and effective establishment, several enforcement authorities (as described below), commented on the demanding nature of the checks:

- A Bulgarian enforcement authority interviewed for this study commented that *"there is a problem of administrative capacity, and thus it is difficult to perform checks of stable and effective establishment"*.
- The German authorities reported that current enforcement capacities are often insufficient to thoroughly verify whether an establishment is really stable.

- The Finnish ministry commented that *“It is nearly impossible to monitor effectively all the establishments of approx. 15,000 road transport undertakings in Finland. This is largely due to lack of resources.”*
- The respondent from the Netherlands pointed out that checks of establishment take more effort compared to regular checks.

### **9.3.2. Implementation of administrative procedures to determine whether the loss of good repute would be disproportionate**

Table 9-5 provides an overview of the administrative procedures in place in selected Member States, for the purposes of determining whether the loss of good repute would be disproportionate.

**Table 9-5: Overview of procedures in place for determining whether loss of good repute would be disproportionate**

Member State	Details of procedure
Austria	No data
Belgium	No data
Denmark	Assessment on a case-by case basis according to section 12 of “lov om godskørsel” or section 14 of “lov om buskørsel”.
Finland	Written warnings, loss of good repute (declarations of unfitness of transport managers) and other sanctions such as information on those undertakings, which are classed as posing an increased risk, are registered in Vallu, which is the Finnish national register of road transport undertakings.
France	Detailed procedures in place – see below
Germany	The question of the assessment of disproportionality is carried out by means of an individual examination. In Annex IV to Regulation 1071/2009, a means of interpretation is given to the most serious violations
Ireland	No data
Luxembourg	No data
Sweden	Assessments are made primarily on the basis of internal policies and existing practices, in accordance with the EU-regulations.
UK	The Senior Traffic Commissioner Statutory Document provides guidance.
Italy	No data
Estonia	Detailed procedures in place – see below
Poland	No data
Slovak Republic	the information could be found on the Electronic register of Undertakings
Bulgaria	We do not have specific rules of procedure in such cases.
Croatia	No data
Latvia	Cabinet Regulation of 21 February 2012 No121 The Procedures for the Issue, Withdrawn and Temporary Suspension of Special Authorisations (Licences) and Licence Cards in Relation to Road Transport Vehicles for Commercial Carriage and the Issue of Professional Competence Certificates for Road Transport Operations Managers" "
Lithuania	No additional requirements.
Cyprus	Chief of Cyprus Police
Czech republic	§ 35a of the road transport act

Source: Survey of ministries

Estonia has set out detailed procedures based on concrete indicators to determine the most proportionate response. The competent authority (MKM) notifies the undertaking that an administrative procedure has been initiated for determining whether a loss of good repute of that transport undertaking would constitute a disproportionate response. The transport undertaking has a right to present explanations concerning the infringement and to submit an overview of the measures taken by the undertaking itself to avoid infringements in future. The explanations will be examined by the Road Transport Commission (consisting of nine members from the MKM, Police Board, Labour Inspectorate, Road Administration as well as from organisations of transport undertakings). The appropriate proposals available to the Road Transport Commission are defined according to the number of penalties for most serious infringements that the undertaking has received in the last 12 months and the total number of certified true copies of the Community licence (i.e., the number of vehicles) that the transport undertaking holds, which are multiplied together to form an index.

In France, the procedure applied by the competent authority is that the regional prefect convenes a regional commission for administrative sanctions consisting of representatives of trucking companies (employers' organisations) and truck drivers of representatives (unions). The person concerned may orally present his defence and to be assisted by a lawyer. After the hearings a decision is made, and this decision may be further appealed to the administrative court. It can also be the subject of a disciplinary complaint to the Minister of Transport who will decide the meeting of the National Commission for administrative penalties, consultative body, which was also attended by representatives of trucking companies and truck drivers and during which the person involved can again

In addition, Italy reported in 2014 that it is in the process of drawing up procedural measures to decide whether the loss of good repute would be disproportionate to the infringement committed (European Commission, 2014a).

### **9.3.3. Typology and level of sanctions applied in Member States for infringements of the Road Transport Package**

Table 9-6 shows the type of sanctions (administrative and/or criminal) applied by Member States for infringements of the Road Transport Package.

**Table 9-6: Member State sanctions of infringements of the Road Transport Package**

Member State	Administrative sanctions	Criminal sanctions
Austria	✓ Mainly	✓ In case of recidivism. In some cases such as transport of dangerous goods the penalty reaches €50,000 and therefore should be qualified as criminal in nature
Belgium	×	✓ The sanctions for infringements of EU rules are all possibly criminal in nature
Bulgaria	✓	×
Cyprus	✓	✓
Czech Republic	✓ Mainly	✓ Some - administrative sanctions could be qualified as criminal ones for most of the very serious and most serious infringements of EU law.
Denmark	×	✓

Member State	Administrative sanctions	Criminal sanctions
Estonia	✓	✓ Very serious and most serious infringements are sanctioned with criminal sanctions
Finland	✓ Some	✓ Mainly
France	✓	✓
Germany	✓	✓
Greece	✓	✓ For very serious infringements, only tachograph frauds are sanctioned with criminal sanction
Hungary	✓	×
Ireland	×	✓
Italy	✓	Administrative sanctions that could be classified as substantially criminal are only applicable to some of the most serious infringements such as driving without a community licence and transport of dangerous goods
Latvia	✓ Mainly	✓ Only two infringements
Luxembourg	✓ Some	✓
Poland	✓ Mainly	✓ Some most serious infringements are not sanctioned with criminal sanctions but with administrative ones.
Portugal	✓	×
Romania	✓	✓ Only two infringements
Slovakia	✓ Mainly	✓ Some
Slovenia	✓	✓ Only one infringement
Spain	✓	×
Sweden	✓	✓ Only two infringements
Netherlands	✓	✓
UK	✓ Some	✓ Mainly

*Notes: Administrative infringements are those that are defined as such in administrative regulations. Criminal are those that are defined as such in the special part of the criminal code and/or in special statutes/acts*

*Source: (Grimaldi, 2013a).*

The dissuasive effect of sanctions differs enormously across those Member States that have qualified infringements of commercial road transport as criminal offence. For example, the sanctions of the most serious infringement “*exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more without taking a break or without an uninterrupted rest period of at least 4,5 hours*” is punished as follows (Grimaldi, 2013a):

- Luxembourg - imprisonment from 8 days to 5 years and or a fine of €251 to €25,000.
- Malta - the criminal sanction would amount to a fine of €58.

Turning now to the *level* of the penalties in place, infringements categorised at the same level may attract vastly different fines with ten-fold differences reported in some areas. For instance, the first infringement qualified as most serious in Annex IV of Regulation 1071/2009 is “*exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more*”. This is sanctioned differently across the EU, for example (Grimaldi, 2013a):

- Germany - a fine of up to €15,000;
- Italy - a fine from €400 to €1,600;
- Latvia - a fine of up to €300.

As another example, again referring to most serious infringements listed in Annex IV of Regulation “*transporting dangerous goods that are prohibited for transport (A) or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle*” is sanctioned variously as follows (Grimaldi, 2013a):

- Austria – a monetary penalty of up to €50,000;
- Greece with a monetary penalty of approximately €150.

The Grimaldi (2013a) study was very extensive and it would not have been possible to repeat the study and verify that all the findings are still up-to-date currently. To see if anything substantial had changed from the above, legal experts from the study team analysed the situation in the case study countries (see Annex C, case studies for more details). Fines were confirmed to be tailored to the seriousness of the offences in Spain, Romania and Germany, although the levels of fines imposed are different. The most serious infringements are fined €1,001-6,000 in Spain, €2,040-2,720 in Romania and up to €200,000 in Germany. Serious infringements are fined at €401-1,000 in Spain, €910-1,360 in Romania and up to €100,000 in Germany<sup>77</sup>. The German authorities commented in interviews conducted for this study that the fines indicated were the absolute maximum, and are in practice only charged in court rulings in case of repetitive infringements. Both the Spanish and Romanian ministries commented in their survey responses that they felt the categorisation of infringements in Article IV was both clear and appropriate. The Romanian enforcement authorities commented during interview that they felt the penalty system should be improved. In Romania one a check is carried out, fines cannot be more than double of the most serious infringement detected. If three fines are applied, they are summed up but their total cannot be more than the double of the fine for the most serious infringement detected.

Concerning the other case study countries, in Denmark, the Road Traffic Act No. 1386 (Bekendtgørelse af færdselsloven) as reviewed by the legal experts, does not seem to provide for differentiated fines in line with Annex IV. According to Grimaldi (2013a),

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<sup>77</sup> On a PPP basis: for most serious infringements approx. €1,650-9,850 in Spain, €5,700-7,600 in Romania and up to €282,400 in Germany. For serious infringements approx. €650-1,650 in Spain, €2,550-3,800 in Romania and up to €141,200 in Germany

the specific level of fines imposed for infringements of Regulation 1071/2009 are not regulated by law or administrative regulations in Denmark, but based on case law, with recommended levels of DKK 400-4,000 (€53-530) depending of the offence, rising to DKK 10,000-25,000 (€1,340-3,350) under aggravating circumstances (i.e. if the violation occurs over a longer period such as 3-6 months).

Regulation 1071/2009 was implemented into Polish law through the Road Haulage Act, where according to Grimaldi (2013a), the Act does not contain any provisions referring to loss of good repute in case of committing the most serious infringements, described in Annex IV to Regulation No 1071/2009. The review for this study showed that penalties are defined in the Act and range from 500PLN (€118) for failing to meet administrative demands (e.g. to show certificates of professional competence within 14 days) up to 8,000PLN (€1,888) for carrying out road transport operations without the required authorisations to pursue the occupation, although it was not possible to verify this information with Polish stakeholders. The Polish enforcers interviewed for this study considered the level of sanctions to be a political issue and could not comment on their effectiveness or whether they were proportionate.

The Dutch ministry commented that "*Discretionary flexibility given to Member States (based on the principle of subsidiarity) contributes to inequality and has negative impact on harmonisation*". The Irish enforcers replied that there are different enforcement approaches between countries and different interpretation of breaches. The French authorities felt that the problem is the fact that each Member State has its own system and information is not shared. The respondent to the survey of ministries from Bulgaria urged the completion and adoption of the list of categories, types and degrees of seriousness of offences in order to achieve uniformity in the implementation. The Finnish authority also called for EU action to ensure harmonisation of seriousness of infringements and sanctions, and the respondent from Slovakia felt the current list in Annex IV is not sufficient. The German ministry noted that the levels of infringements are confusing and lead to inconsistent application.

#### **9.3.4. Staff involved in checks of cabotage**

Concerning the **lack of manpower**, details were gathered through stakeholder interviews carried out for this study, indicating a range of staffing levels and degrees of satisfaction

- According to the Bulgarian authority, there are 480 staff responsible for carrying out checks concerning Regulation 1072/2009. In their view, this is not enough but it is not possible to increase this number due to a lack of financial resources.
- The Latvian enforcement authority reported that they need more staff but don't have the budget, which was cut following the economic crises. They report that this year the number of inspectors have been increased (10 more inspectors, up to 28) but it is still not enough.
- A Swedish trade union interviewed for this study reported a lack of police resources and claimed that the police stick to easy checks to meet the legal target. According to a recent study, there are 450 officers in Sweden of which only 160 have specialist knowledge (Sternberg et al, 2015).
- The Irish authority reports that they are under resourced, with only 11 staff, and this contributes to the poor effectiveness of checks. The 11 staff are also responsible for checks of drivers hours & tachograph regulations; mobile workers working time directive; drivers CPC. The Garda Síochána share responsibility for checks.
- The Dutch authority commented that it would be better to have more staff. They reported that 5 full-time equivalent staff were added (total is unknown)

as additional staff dedicated to the enforcement of the cabotage rules. Next to that, police officers from the National Police contribute to enforcement. The National Police is going through a reorganisation and is reorienting on tasks, therefore the exact number is not yet known.

- The Spanish ministry estimated in their survey response that Spain employs 400 traffic agents and 150 employees of the administrative organs of the regions that carry out checks on cabotage and reports that the number of staff makes some contribution to enforcement difficulties. The Traffic Civil Guard have reported a significant increase in vehicle being detected with irregularities concerning cabotage, which has motivated plans for increased controls in 2015 (Ministry of Infrastructure and Transport, 2015c).
- The Romanian enforcers estimate that there are around 317 enforcers and that staffing levels are a significant concern.

Table 9-7 shows the information on the level of staffing that could be collected from enforcers in the survey, alongside their judgement on whether staffing levels are adequate and the size of the cabotage market. It shows that there is no clear trend concerning any optimum size of staff, either in absolute terms or relative to the size of the cabotage market. For example, the UK has a similar ratio of staff to cabotage market size as Sweden and Spain, whereas Bulgaria has the highest ratio of staff to cabotage market size.

**Table 9-7: Level of staffing in selected Member States and ratio of staff to size of cabotage market**

Member State	Cabotage t-km in 2013	Number of Full Time Equivalent staff (FTE)	Approx ratio of staff per 100,000 t-km cabotage	Are staffing levels considered adequate?
SE	1,240,880	450 officers in Sweden of which only 160 have specialist knowledge	36	No
ES	962,136	400 traffic agents and 150 employees of the administrative organs of the regions	42	No
BG	18,766	480	2,558	No
LV	4,743	28	590	No
IE	3,251	11	338	No
FR	7,360,496	500 dedicated control officers in France, are supported in their activities by other forces totalling more than 7,000 people	7 (95)	Yes
PL	68,024	400	588	Yes
UK	1,056,109	300	28	Yes

Source: Survey of enforcement authorities





#### **9.4. Effectiveness: To what extent are the measures on administrative cooperation effective?**

This section provides additional details on the content and development of national electronic registers and their interconnection.

The introduction of electronic registers was intended to modernise the rules, in line with the Action Programme for Reducing Administrative Burdens in the European Union (EESC, 2008). The European TUNER (Transport UNDertakings Electronic Register) project identified that each Member State had some kind of existing register of road Transport Undertakings, although they varied greatly in terms of their technical architecture, the data they held and the users and processes they support (Wilson et al, 2009). Article 16(2) of the Regulation therefore defined the elements that should be included in national electronic registers. Regulation 1072/2009 also requires certain information to be entered into the databases. As well as basic information such as the name and address of the operator, data should be held on serious infringements and penalties that have resulted in a conviction in the last two years. The types of convictions and penalties that must be held in the register are listed in the Regulation.

The national registers were intended to be interconnected from 31 December 2012, as laid down in Article 16(5) of Regulation 1071/2009. The linked-up database is known as the European Register of Road transport Undertakings (ERRU). ERRU is intended to allow for better information exchange between Member States, so that the competent authorities can better monitor the compliance of road transport undertakings with the rules in force. The ERRU system provides a means to interconnect the national registries through the exchange of structured (XML) messages to a central hub. Member states can chose to exchange XML messages via a central hub or peer-to-peer.

A first decision on the format of the national electronic registers was adopted in 2009 on minimum requirements for the data to be entered in the national electronic register of road transport undertakings (2009/992/EU). Regulation 1213/2010 establishes common rules concerning the interconnection of national electronic registers on road transport undertakings. The Regulation defines the format of the national electronic registers in terms of minimum requirements for the data to be entered.

To understand in more detail what the difficulties involved in establishing interconnection were, national ministries in all Member States were invited to describe any issues they faced. The reasons for delays in interconnection given mainly related to technical issues as follows:

- The performance of the system is still is not sufficient yet (response times are too long) (Austria);
- Due to delays in terms of the conception of the system and functioning of the ERRU on the national level (Poland);
- Delays from the Commission on the classification of offences provided for in Article 6, as well as the extensive preparatory work was needed. This included the need to create the national electronic register, to create records for managers who previously did not exist in the ministry's system; initial problems regarding the definition of process management services relating to offenses (Italy);
- The German authorities noted that there were some problems with ERRU in the beginning, but these have now been resolved.

**9.5. Effectiveness: To what extent have the Regulations contributed to the smooth functioning of the internal market for road transport?**

**9.5.1. Interpretation of specific cabotage provisions**

Table 9-8 shows the interpretations of key cabotage provisions in selected Member States, based on the responses of ministries to the survey and during interviews.

**Table 9-8: Interpretation of specific cabotage provisions in selected Member States**

	Germany	Denmark	Romania	Netherlands	Belgium	Poland	Ireland	Bulgaria	Latvia
<p>Multi-drops: how to count the number of operations when there are several loading and unloading points</p> <p>EC guidelines are: <i>A cabotage operation can involve several loading points, several delivery points or even several loading and delivery points, as the case may be</i></p>	<p>One cabotage operation can have more loading and/or unloading points, as long as everything is one single freight contract</p> <p>Otherwise each loading point or each client counts as one operation</p>	<p>One cabotage operation can have multiple drop-off OR multiple loading points (but not both)</p>	<p>No information</p>	<p>Follows EC guidelines:</p>	<p>1 cabotage operation can include several loadings and unloadings but these must be for the same sender and receiver.</p>	<p>If part loads are for the same customer – than it is one operation, if they are for certain number of customers, than it should be counted as separate cabotage operations.</p>	<p>This interpretation is a problem, the Regulation is not clear</p>	<p>Partial loading/unloading is not counted as</p>	<p>No information</p>
<p>To what degree does a vehicle have to be loaded when entering a country (partial load, full load, pallets enough) to carry out cabotage? To what degree does a vehicle have to be unloaded?</p> <p>EC guidelines are: <i>All goods carried in the course of the incoming transport must have been delivered</i></p>	<p>Cabotage starts in Germany only after the complete unloading of the vehicle</p>	<p>International transport that enters a country can be empty, partial or full loads</p>	<p>Only considered when a transport operation is carried out from its beginning until its end in Romania. Operation has to be unique, -partial operations are not counted as cabotage</p>	<p>No level of load defined</p>	<p>There are no specifications accordingly</p>	<p>Any loading is a cabotage</p>	<p>No level of loads are set</p>	<p>There are no criteria concerning the level of load</p>	<p>No specific criteria: the vehicle should be loaded before entering in Latvia but the level of load has not been discussed</p>
<p>Is the CMR obligatory or are other documents valid as well?</p>	<p>The documents that can be used for proving</p>	<p>An according consignment note (or any other documents</p>	<p>CMR document is compulsory and it is on this basis that cabotage</p>	<p>CMR is legally required</p>	<p>CMR is obligatory. There are no other documents.</p>	<p>CMR is valid for international transport only</p>	<p>CMR is obligatory</p>	<p>The CMR is obligatory. No other documents are valid</p>	<p>CMR is not obligatory for transport companies, but they</p>

	Germany	Denmark	Romania	Netherlands	Belgium	Poland	Ireland	Bulgaria	Latvia
EC guidelines are: <i>No additional document [other than the CMR] is required in order to prove that the cabotage rules have been respected</i> <sup>78</sup> .	cabotage are in line with what is allowed in Reg 1072 - there are no additional requirements	that prove cabotage - as set out in the Regulation - there is not any additional requirement	operations are checked.						usually use it. They may use other documents proving the same information
Is it necessary for vehicles to return to their 'home' territory first before re-entering with a new load or is it sufficient if they have left the country to any other territory?	Vehicles do not need to return home and can immediately re-enter the German territory with an international load in order to be allowed to carry out new cabotage operations - they only need to cross the border.	No information	it suffices to leave Romania	it is sufficient if they have left the country for any other territory	it is sufficient if they have left the country	It is sufficient, if they left the country	It is sufficient if they have left the country to any other country	They have to return to their own country	No information
How is transport of empty pallets/containers counted?	The operation must be an "economic activity" - international shipping documents provide a good indication for that; there is however no	Transport of empty containers and empty returns does not give access to legally perform cabotage operations, if the carriage of	If pallets are described in the CMR document they count as a transport operation, otherwise the vehicle is	no special rules, it is a transport operation as well	Is considered also as cabotage	As any other commodity	Transport of empty pallets is a transport operation	Transport of empty containers are not cabotage	No information

<sup>78</sup> This provision, however, does not mean that control authorities cannot use other evidence required by road transport legislation e.g. the tachograph data, to establish whether a cabotage operation is carried out according to the rules.

	Germany	Denmark	Romania	Netherlands	Belgium	Poland	Ireland	Bulgaria	Latvia
	threshold/guidelines on how full the truck has to be loaded.	the empty containers and return packaging is not considered an actual carriage	considered empty.						

Source: Stakeholder interviews with national transport ministries and/or enforcers

### 9.5.2. Requirements for stable and effective establishment

Table 9-9 shows the requirements for stable and effective establishment in selected Member States, as reported in survey responses for this study.

**Table 9-9: Requirements for stable and effective establishment in selected Member States**

Member States	Implemented as per Regulation	Requirement for a parking space	Requirement to own certain property	Other	Details
<b>Austria</b>	Yes	No	No	No	
<b>Belgium</b>	Other requirements	No	No	Yes	The Belgian legislation also stipulates that the CMR Consignment notes must be available
<b>Bulgaria</b>	Other requirements	Yes	No	No	Requirement for parking space
<b>Croatia</b>	Yes	No	No	No	
<b>Cyprus</b>	Yes	No	No	No	
<b>Czech Republic</b>	Yes	No	No	No	
<b>Denmark</b>	Yes	No	No	No	
<b>Estonia</b>	Yes	No	No	No	
<b>Finland</b>	Other requirements	No	No	Yes	Undertaking must be registered in Finnish Trade Register and its municipality of residence must be in Finland.
<b>France</b>	Yes	No	No	No	
<b>Germany</b>	Yes	No	No	No	
<b>Ireland</b>	Other requirements	Yes	No	No	Requirement for parking space
<b>Latvia</b>	Yes	No	No	No	
<b>Lithuania</b>	Yes	No	No	No	
<b>Luxembourg</b>	Yes	No	No	No	The establishment has to be appropriate to the size of the company; the manager has to be present on a regular basis; the existence of a parking space is checked; however it is not a legal requirement
<b>Poland</b>	Other requirements	No	No	Yes	Additional definition of what constitutes an operating centre
<b>Slovakia</b>	Other requirements	Yes	No	No	Requirement for parking space
<b>Sweden</b>	Yes	No	No	No	
<b>UK</b>	Other requirements	Yes	Yes	Yes	Licence holders (undertakings) must provide a self declaration that either they themselves own the premises they intend to use as an operating centre or have permission from the site owner.
<b>Italy</b>	Yes	No	No	No	

Member States	Implemented as per Regulation	Requirement for a parking space	Requirement to own certain property	Other	Details
<b>Romania</b>	Other requirements	No	No	No	
<b>Spain</b>	Other requirements	No	No	No	Spanish legislation requires undertakings to have any type of premises (a private domicile may suffice) as long as they keep all relevant documentation there and have the appropriate technical equipment (e.g. a computer).

Source: survey of national transport ministries

### 9.5.3. Options permitted to demonstrate financial standing in selected Member States

The minimum requirements for financial standing are that an undertaking must demonstrate every year, that it has at its disposal capital and reserves totalling at least EUR 9 000 when only one vehicle is used and EUR 5 000 for each additional vehicle used. This may be demonstrated on the basis of certified annual accounts. Member States may also permit undertakings to demonstrate this level of financial standing by way of a bank guarantee (allowed in 18 Member States) or an insurance (8 Member States).

**Table 9-10: Options that operators are allowed to use to demonstrate financial standing**

	Certified annual accounts	Bank guarantee	Professional insurance	Other details
Austria	Allowed	Allowed	Allowed	
Belgium	Allowed	Allowed	Not allowed	
Bulgaria	Allowed	Allowed	Allowed	
Croatia	Allowed	Allowed	Allowed	
Czech republic	Allowed	Allowed	Allowed	
Denmark	Allowed	Allowed	Allowed	
Estonia	Allowed	Allowed	Allowed	
Finland	Allowed	Allowed	Not allowed	Bank deposit as a security, closed account
France	Allowed	Allowed	Not allowed	The financial guarantee is capped in French regulations, half of the required financial capacity.
Germany	Allowed	Allowed	Allowed	
Ireland	Allowed	Allowed	Not allowed	We accept a certified statement of affairs for a new business
Latvia	Allowed	Allowed	Allowed	
Lithuania	Allowed	Not allowed	Not allowed	
Luxembourg	Not allowed	Allowed	Not allowed	Currently LU is evaluating whether the financial standing could also be demonstrated by



	Certified annual accounts	Bank guarantee	Professional insurance	Other details
				certified annual accounts. No decision has been taken yet.
Poland	Allowed	Allowed	Allowed	
Slovak Republic	Allowed	Allowed	Not allowed	Establishment contract, foundation carter; record from business register
Sweden	Allowed	Allowed	Allowed	
UK	Allowed	Allowed	Not allowed	
Italy	Allowed	Allowed	Allowed	Surety by insurance companies or other financial companies, duly authorised by the Bank of Italy.

Source: Survey of ministries

#### 9.5.4. Professional examinations in selected Member States

An overview of requirements in some Member States for professional examinations is shown in Table 9-11, highlighting the differences.

**Table 9-11: Overview of requirements for professional examinations in selected Member States**

		Slovakia	Hungary	Sweden	Ireland	Czech Republic
Mandatory oral exam		✓ < 1 hour	✓	✗	✗	✗
Length of written exam	Multiple choice	> 2 hours	-	2.25 hours	2.5 hours	> 2 hours
	Open ended	-	-	-		-
	Exercises or case studies	> 2 hours		2 hours	2.5 hours	> 2 hours
Training prior to the exam		✗	✓	-	✓	✗
Exemption granted – education qualifications		✓	✓	✓	✓ <sup>a</sup>	✓
Exemption granted – continuously managing a road undertaking for a period of 10 years prior to 4 Dec 2009		✓	✓ <sup>b</sup>	-	✗	✗

Source: (Hvizdáková, 2012) and updated with stakeholder responses for the study (the Irish respondent indicated that preparatory training was required prior to the exam)

Notes: a) only for persons to passed the exam in Institute of Road Transport Engineers

b) Only for persons who provide proof that they have continuously managed a road undertaking, but only in Hungary

Preparatory training in mandatory only in some Member States, and furthermore the duration varies. For example, the duration of preparatory training is 108 hours in Denmark, 76 hours in Estonia and 110 hours in Ireland. In Belgium, it is only obligatory to attend the course (duration 115 hours) if the applicant fails the exam.

Table 9-12 shows that the pass rate varies widely between Member States.

**Table 9-12: Total applicants and pass rates in selected Member States**

	Total applicants (2013)	Pass rate in 2013 (%)
Belgium	692	44%
Bulgaria	2,518	35%
Croatia	1,045	91%
Cyprus	121	54%
Denmark	183 in 2013; 202 in 2014	80% in 2013; 87% in 2014
Estonia	420	96%
Finland	No data	Goods transport: 83%, (year 2014)
France	1,846	39%
Germany	3,063 (road transport)	51%
Ireland	461	85%
Lithuania	3,038	46%
Poland	5,971	56%
Sweden	1,218	61%
UK	9,600	60%

Source: Stakeholder consultation – survey of national transport ministries and enforcement authorities

Figure 9-2 shows that there are no clear relationships between the number of applicants relative to the national transport market (million t-km) and the pass rate in that country.

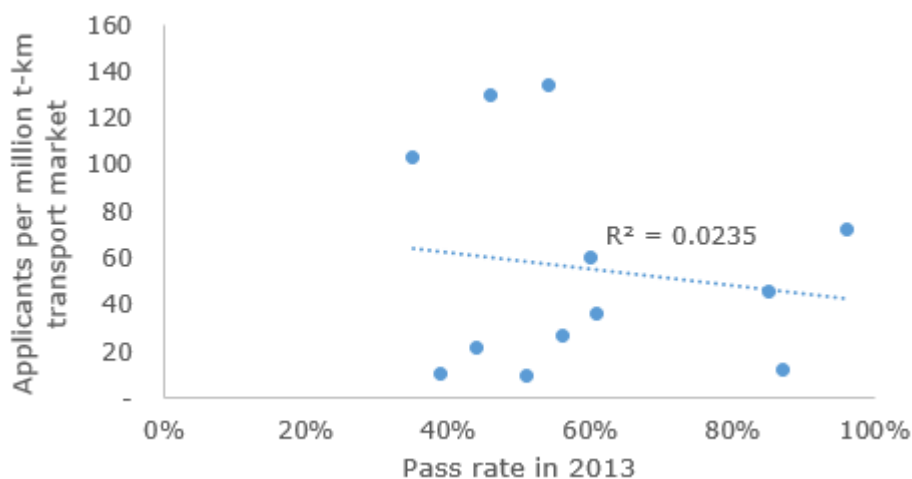
**Figure 9-2: Applicants per million t-km versus the pass rate**

Table 9-13 shows the conditions under which exemptions are granted in selected Member States.

**Table 9-13: Summary of exemptions permitted in a selection of Member States**

	Previous qualifications	Persons who have continuously managed a road haulage undertaking for a certain period of time	Number of exemptions granted
<b>Austria</b>	Several qualifications are granted by law.	x	-
<b>Belgium</b>	Several awarded. For example a person holding the Master of Laws degree is exempted from the following subjects in annex I of Regulation 1071/2009: civil, commercial, social and fiscal law (A, B, C and D).	x	-
<b>Bulgaria</b>	Persons who have an IRU Academy diploma for professional competence which were issued between 19.11.2002 and 29.07.2010	x	188 (0.01% of total managers)
<b>Croatia</b>	Pursuant to Article 21 (2) of the Regulation (A certificate issued before 4 December 2011)	x	-
<b>Cyprus</b>	x	x	-
<b>Czech republic</b>	x	x	-
<b>Denmark</b>	x	x	-
<b>Estonia</b>	The transport manager is exempted from the training course and examinations in case the person holds a university diploma or a diploma of an institution of professional higher education in a specialisation in a relevant area	The transport manager is exempted in case the person certifies that they have continuously managed a transport undertaking over a term of ten year preceding 4 December 2009.	Approx. 30 in total
<b>Finland</b>	Finnish Transport Safety Agency can grant an exemption (straight to written examination without the four weeks study program), to a person, who holds higher education qualification in e.g. business, administration, technical education or logistics and has worked in these tasks for at least one year.		Approx. 800 in total (6% of total managers)
<b>France</b>	Applicants can be exempted from the written examination if they hold certain diplomas	Recognition of professional experience is still in place but expected to be repealed eventually.	7,166 (2012-2014) (78% of total managers)
<b>Germany</b>	Provided they have commenced training before 4 November 2011. Some qualifications are also recognised as sole proof of competence	Provided they have managed a company continuously for 10 years	No data
<b>Ireland</b>	x	x	-
<b>Latvia</b>	x	x	-
<b>Lithuania</b>	x	x	-
<b>Luxembourg</b>	Natural or legal persons who provide evidence that they have been authorised in a Member State to exercise the profession concerned, are exempted in Luxembourg.	There is no exemption from the examination. With 5 years of managing experience in a road haulage company, an exemption from the	Less than 10 since 2010

	Previous qualifications	Persons who have continuously managed a road haulage undertaking for a certain period of time	Number of exemptions granted
		preparatory training may be granted.	
<b>Netherlands</b>		In case the transport manager passes away or is unable to fulfil his job because of a physical or legal disability the Dutch Road Haulage Organisation for National and International Transport can decide to exempt an employee from the examinations. The person that replaces the transport manager must have continuously managed the relevant transport operator for a period of 10 years before 4 December 2009	20 (0.8%)
<b>Poland</b>	x	x	232 in total
<b>Slovak Republic</b>	Yes	Yes	No data
<b>Sweden</b>	Exemptions may be granted according to Article 8(7)	Exemptions may be granted according to Article 9	Very few
<b>UK</b>	Previous holders of equivalent qualifications have been allowed to maintain their exemptions.	Previous holders of an exemption for 'grandfather' rights from the 1970s have been allowed to keep their exemptions if they have managed an undertaking during the 10 year qualifying period.	13,000 in total

Source: Stakeholder consultation – survey of national transport ministries and enforcement authorities

**Table 9-14** shows the total applicants and pass rates in selected Member States.

**Table 9-14: Total applicants and pass rates in selected Member States**

	Pass rate in 2005 (%)	Preparatory courses?	Total applicants (2013)	Pass rate in 2013 (%)
Belgium	35-42%	Yes – only obligatory if the exam is failed before another attempt. 115 hours	692	44%
Denmark	90%	Yes – 108 hours	183 in 2013; 202 in 2014	80% in 2013; 87% in 2014
Finland	Unknown	Unknown	No data	Goods transport: 83%, (year 2014).
France	10%	No	1,846	39%
Germany	53%	No	3,063 (road transport)	51%
Ireland	75%	Yes – 110 hours	461	85%
Sweden	Unknown	Unknown	1,218	61%

	Pass rate in 2005 (%)	Preparatory courses?	Total applicants (2013)	Pass rate in 2013 (%)
UK	"high"	No	9,600	60%
Spain	Unknown	Unknown	Unknown	Varies per region. As low as 20-25% in some regions
Lithuania	50%	No	3,038	46%
Poland	75%	Unknown	5,971	56%
Croatia	N/A	No	1,045	91%
Cyprus	100%	No	121	54%
Estonia	Unknown	Yes (76 hours)	420	96%
Bulgaria	Unknown	No	2,518	35%

\*Have preparatory courses

Source: Stakeholder consultation – survey of national transport ministries and enforcement authorities and NEA (2005) for pass rates in 2005

#### 9.5.5. What is considered in the assessment of good repute

Regulation 1071/2009 provides that Member States must take into account any convictions or penalties for a serious infringement when assessing good repute. Member States take a range of approaches in terms whether administrative fines, arrangements out of court and on-the-spot payments count as penalties, as shown below.

**Table 9-15: Overview of whether administrative fines, arrangements out of court, and on-the-spot payments count as "penalties" in selected Member States**

Member State	Do administrative fines, arrangements out of court, and on-the-spot payments count as "penalties"?	Details
<b>Austria</b>	Yes	Administrative fines
<b>Belgium</b>	Yes	Every payment that drops the criminal prosecution, for example on-the-spot-fines and administrative fines.
<b>Bulgaria</b>	No	N/A
<b>Croatia</b>	No	N/A
<b>Cyprus</b>	No	N/A
<b>Czech Republic</b>	Yes	Final decision on guilt and punishment
<b>Denmark</b>	Yes	Arrangements out of court.
<b>Estonia</b>	Yes	Administrative fines and arrangements out of court.
<b>Finland</b>	Yes	On-the-spot fines and driving bans are taken into account.

Member State	Do administrative fines, arrangements out of court, and on-the-spot payments count as "penalties"?	Details
		Another example is the check of driving time limits, which are often checked by the Finnish Occupational Safety and Health Administration. This authority reports infringements to ELY, which takes them into account when assessing good repute. Police also reports regularly these infringements, though the on-the-spot payments are often directed to the driver, not the undertaking in question. Finnish Occupational Safety and Health Administration checks also that the undertakings operate in accordance with Employment Contracts Act, Collective Agreements Act, Working Hours Act, Annual Holidays Act and Employment Accidents Act. If gross negligence is detected, this must be taken into account.
<b>France</b>	Yes	Only immediate payments (on-the -spot payments) are concerned in this case. These payments roadside for 3rd or 4th class offenses are minor offenses. In isolation, these violations are not intended to call into question the reputation of the manager of the company's transport activities. However, the reputation may be withdrawn if the review of the offender's situation highlights a significant recurrence in the commission of such offenses.
<b>Germany</b>	Yes	Fines and judgments are considered as sanctions. Extrajudicial settlements and instant payments may also be taken into account.
<b>Ireland</b>	Yes	On the spot fines Prohibition notices Penalty points Fixed penalties
<b>Latvia</b>	Yes	Assessing good repute the imposed administrative fines in the sphere of road transport are taken into account.
<b>Lithuania</b>	Yes	Administrative
<b>Luxembourg</b>	No	N/A
<b>Poland</b>	No	N/A
<b>Slovakia</b>	Yes	No details given
<b>Sweden</b>	Yes	Administrative fines count as penalties. On-the-spot payments are applied but that is not considered as a sanction in itself, but merely a way to ensure that penalties are being paid
<b>UK</b>	Yes	See STC Statutory document No. 1
<b>Italy</b>	Yes	No details given

### 9.5.6. Procedures in place for appeals and rehabilitation after loss of good repute

Enforcement authorities were asked whether there was a procedure for appeals against loss of good repute in their Member State.

**Table 9-16: Procedures for appeals against loss of good repute**

Member State	Is there a procedure?	Please explain the procedure and any conditions that must be met
Poland	Yes	In accordance with Polish provisions haulier is entitled to pledge an appeal to General Inspector of Road Transport (14 days from the date of delivery of administrative decision) and then possibly refer the case to the court.
Romania	Yes	Yes. For challenging administrative action regarding the withdrawal of good repute, the carrier may file a complaint prior to the institution which decided to withdraw good repute within 30 days and if the answer is negative it may submit a complaint to the court within 30 days.
Latvia	Yes	No information
France	Yes	No information
Netherlands	Yes	According to national law, article 8.1 of the Wet wegvervoer goederen to be more precise (Dutch law), any transport operator or transport manager is able to appeal against every decision made by The Dutch Road Haulage Organisation for National and International Transport concerning an application, a withdrawal, a suspension of the Community license or a declaration of unfitness of the transport manager. An appeal process will be examined by a national court of law that has jurisdiction.
Denmark	Yes	The appeal takes place in court
United Kingdom	Yes	No information
Luxembourg	Yes	No information
Finland	Yes	No information

Source: survey of enforcement authorities and of ministries

Enforcement authorities were asked whether there was a procedure for rehabilitation after loss of good repute in their Member State. The procedures vary, as outlined in Table 9-17

**Table 9-17: Procedures for rehabilitation after loss of good repute**

Member State	Is there a procedure?	Please explain the procedure and any conditions that must be met
Romania	Yes	According to our national legislation Order 980/2011, the transport operator is rehabilitated after one year from the date of the loss of good repute respecting the conditions relating to the requirement of good repute.
Latvia	No	No information
Bulgaria	No	No information
France	Yes	Any loss of good repute is accompanied by a deadline set by the regional prefect (authority which pronounced the loss of good repute) in compliance with the provisions of the Code of Criminal Procedure.
Netherlands	Yes	The Dutch national legislation gives the additional possibility to impose a cease and desist charge for violations of the rules of the Regulation 1071/2009.
Denmark	Yes	When a transport manager has lost his good repute, he gets a quarantine period up to 3 years. Before a person can be

Member State	Is there a procedure?	Please explain the procedure and any conditions that must be met
		reinstated as a transport manager, he must follow a course and pass an examination.
United Kingdom	Yes	An undertaking must satisfy the Traffic Commissioner that they are 'rehabilitated' before their good repute is regained, at the discretion of the Traffic Commissioner.
Luxembourg	Yes	Legislation does not provide for a specific rehabilitation procedure, however: 10 years after the facts that led to the loss of good repute have arisen, they cannot be taken into account anymore. It is considered as a second chance.
Finland	No	There are no specific rehabilitation procedures after loss of good repute, time limits are in place: fines and other sanctions (as stated above) are taken into account for the past two year period. Corporate fines and prison sentences are taken into account for the past five year period
Austria	No	No information
Belgium	Yes	One who has been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements as set out in Annex IV shall be rehabilitated after 2 years (or 4 in case of repetition) regarding the requirement of good repute
Croatia	No	No information
Cyprus	Yes	No information
Czech Republic	No	No information
Germany	Yes	No information
Ireland	No	The legislation is currently being drafted to provide for rehabilitation measures.
Lithuania	Yes	Validity of conviction or administrative penalty shall expire in itself or shall be recalled.
Sweden	Yes	Good repute is rehabilitated through elapse of time or through a written exam in accordance to article 8.1 (in part or fully) (2 kap. 5 § , 4 kap. 2 § and 3 § SFS 2012:210)
Italy	Yes	Rehabilitation after 6 months

Source: survey of enforcement authorities and of ministries

## **9.6. Effectiveness: To what extent have the Regulations had an impact on road safety, particularly in terms of fatigue of drivers, and helped to address the road safety concerns identified at the time of adoption?**

### **9.6.1. Driver fatigue and road safety**

It is often difficult to confirm whether an accident was caused by fatigue or not, since the degree of fatigue is difficult to measure - any measurement is dependent on interviews with the driver and interpreting his statements. Understandably drivers rarely admit to being fatigued as this would be considered reckless driving and could have legal consequences (Amundsen and Sagberg, 2003).

Alternatively, data on the extent of fatigue is estimated from other variables (for example, characteristics of accidents), or from specially constructed studies collecting new material on the incidence of tiredness in relation to accidents. Therefore, while the typical representation of fatigue in official road accident statistics may be around 3% or less, the actual contribution of fatigue is hidden by systematic under-reporting (Aworemi et al., 2010).

In the UK, where more recent figures from UK regarding the year 2013 indicate that fatigue related fatal crashes involving goods vehicles accounts for 2% of all fatigue-related accidents, an analysis (TRL, 2009) of the data with which the Heavy Vehicle Crash Injury Study (HVCIS) database has been populated over the years 1995 to 2007



inclusive, shows that out of a total of 3,069 accidents where commercial vehicles were involved (e.g. HGVs, LGVs and passenger service vehicles), 1,217 crashes were due to behavioural factors. To these accidents fatigue, excess hours and the combine defect of fatigue and excess hours contributed in a proportion of respectively 10%, 3% and 1.6%.

Narrowing the focus to HGVs, fatigue was the most important contributory effects with a proportion of 4.1% of all accidents were this group of vehicles was involved (N=691), while excess hours were the main cause of accidents in only 1.9% of circumstances. In this respect, it is worth noting that, compared to HGVs, LGVs reported a greater proportion of accidents where fatigue was the main cause (5.5%, N=41 accidents).

Finally, in terms of accident severity, Accidents involving HGVs show an increased level of severity when the driver is fatigued (1.26 fatalities per accident involving a fatigued driver) in comparison with all HGV accidents (1.11 fatalities per accident involving a fatigued driver) (TRL, 2009). For LGVs there appears to be no difference in severity.

In the Netherlands, in a survey undertaken by SWOV, truck drivers reported falling asleep while driving more frequently than car drivers (23% to 10%). They also said that in the past year they had continued or started to drive although they felt they were too tired to do so (37% HGV drivers vs. 20% of car drivers) (Goldenbled et al, 2011).

In Poland, a study conducted between 2005 and 2007 found that truck drivers caused 26.5% of total fatigue-related accidents involving 25.3% of injuries and 34% of fatalities (Smolarek and Jamroz, 2013).

External studies in Sweden indicate that 10% to 20% of all single accidents are caused by fatigue (Anlund et al., 2004) while Swedish accident statistics from 1994 to 2001 indicate a proportion of fatigue related accidents involving lorries of 3% (Volvo, 2013).

**9.7. Effectiveness: Have the Regulations led to any positive and/or negative unintended effects (both in terms of impacts and results) other than mentioned in previous questions?**

**9.7.1. Impacts of the financial standing requirements on firms**

Under Regulation 1071/2009, operators must demonstrate that they have enough finance to support their vehicle (with the minimum levels set at €9,000 for the first vehicle and €5,000 for subsequent vehicles).

The requirement of financial standing was also implemented in order to prevent companies with relatively limited financial backup from entering the market and to avoid some of the negative impacts (damage to creditors, etc.) associated with bankruptcies (European Commission, 2007a). Some stakeholders have made remarks regarding the issue of insolvency proceedings in Spain ("*Concurso de acreedores*"). This system is designed to find an arrangement with creditors and to allow the viability of the company in order to avoid winding up. As soon as the company is declared to be in insolvency or bankruptcy by a judge and the parties start to try to reach an agreement, the road transport company is deemed to have lost financial capability and may lose authorisation to operate.

Therefore, this requirement has a perverse effect in Spain with regard to companies that apply for bankruptcy proceedings. Firstly, if declared insolvent, the company cannot operate and cannot have any income that allows viability or a settlement with creditors. Secondly, some creditors use this situation in bad faith to threaten the company, as they know the request for insolvency proceedings may force the company to irreversible bankruptcy. The Spanish authorities have indicated that Article 46 a) LOTT has been drafted as an exemption and that the judge that hears the case in an insolvency proceeding may allow the company to continue operating if the competent authority that issues the authorisation considers that it is realistic to expect a financial rehabilitation of the company within a reasonable time.

According to the **Czech** enforcement authorities, they perceive a problem with financial standing requirements to be in their domestic legislation, because natural persons are allowed to use a simplified version of tax evidence, rather than the more formal "book-keeping" required of larger firms. Since Regulation 1071/2009 uses the term "book-keeping", the ministry been demanding the more comprehensive evidence of natural persons. Despite discussions on the matter, it is not clear that both options should be acceptable. The result of this national situation is that smaller firms are disproportionately affected.

**9.8. Efficiency: To what extent have the Regulations helped to reduce costs (i.e. compliance and administrative) both for transport undertakings and national authorities?**

**9.8.1. Detailed benefit (cost saving) calculations**

**9.8.1.1. Improved monitoring**

The main savings from improved monitoring were assumed to arise from more targeted and effective checks (largely due to implementation of ERRU). In the ex-ante assessment, it was calculated that improved monitoring would reduce administrative costs to industry by €33 million and for national authorities by €42 million per year (European Commission, 2007a) – this was largely due to time savings from avoided checks and greater automation.

Since ERRU is not fully functioning, the actual impacts in practice have been very limited so far. Most respondents to the survey of ministries could not report any impacts on efficiency to date (most indicated they did not know or had not connected yet, i.e. 55%). Four respondents felt that efficiency had improved due to ERRU (Bulgaria, Estonia, Sweden, Ireland) and four felt there had been no material impact (Denmark, France, Germany, UK). However, as reported in Evaluation Question 3, stakeholders (including ministries, enforcement bodies and trade unions) were generally optimistic as to the future efficiency savings and urged the completion of the ERRU.

For industry, the ex-post benefits in the lower-bound are estimated to be negligible. This is because the main benefits of the ERRU that affect industry are due to the avoided checks, which can only occur in practice once the interconnection takes place. Since there were no estimates of possible benefits to industry that could be found either in the literature or from stakeholder inputs, the upper-bound estimate is also assumed to be negligible. Once the system of ERRU is fully functioning, it may be possible that there are benefits to industry, but these could not be estimated or quantified in the current study.

As a conservative ex-post estimate of the lower-bound possible benefits to public authorities due to avoided checks, it is considered that the impacts so far are also negligible. This is because the Member States that reported no material impact or could not report an effect constitute the major share of road haulage activity in Europe.

The second part of the benefits that accrue to public authorities are the savings from greater automation. That is, it will reduce the time taken because the process of completing and submitting information for road haulage will be faster if an electronic, rather than a paper-based, system is used. Since limited data could be obtained directly from stakeholders in this respect, we use literature estimates.

To inform the lower bound ex-post figure, an estimate of savings to date is needed. A recent study carried out in 2014 by ICF also highlighted problems of obtaining data. They estimated administrative burden reductions of €1 million in a sample of five Member States (UK, Hungary, Latvia, Ireland, Slovenia). The total savings were estimated to be around 21% compared to the baseline administrative burden in each country. These savings arise mainly because submitting information for road haulage transport will be faster if an electronic, rather than a paper-based, system is used.

In fact, the ICF study estimate was extrapolated to the five Member States on the basis of information obtained for only three (UK, HU, LV), making extrapolation to the whole EU rather uncertain. Responses from Denmark, Italy, Malta, the Netherlands, Austria, Slovakia, Lithuania and Germany reported in ICF (2014) indicate that the administrations think the savings have been negligible, and show that the savings have not been uniform across all countries. Because of this, only the data for the five Member States included in the ICF study are counted in the ex-post estimate, making the lower-bound ex-post estimate for public authorities a total of €1 million.

There were no other sources of information on possible benefits to public authorities other than the ICF (2014) study, hence there is no upper-bound estimate. Once the system of ERRU is fully functioning, it may be possible that the benefits are higher (especially due to the network effects), but these could not be estimated or quantified in the current study.

### 9.8.1.2. Financial standing requirements

It was estimated ex-ante that the use of bank guarantees would avoid the need for time-consuming regular reporting and checks, which would save €33 million for industry and €27 million for national administrations (European Commission, 2007a), assuming that 270,000 firms opted to use them. This equates to a cost saving per firm of €100 for administrations and €122 for firms.

These ex-ante estimates may have been optimistic given that many countries had previously allowed the use of bank guarantees (NEA et al, 2005). This is backed up by stakeholder views - enforcement authorities largely felt that the requirement of financial standing had no material impact on their costs (either positive or negative).

Table 9-18 shows the previous provisions in place in the Member States and the number of Community Licences in each at the end of 2013.

**Table 9-18: Overview of previous provisions in Member States and number of Community Licences**

Member State	Hauliers possessing Community Licences at the end of 2014	Previously allowed the use of bank guarantees?	Number of firms benefitting
AT	3,596	Yes	0
BE	8,351	Yes	0
BG	10,378	Yes	0
CY	146	Yes, but only for firms starting transport activities	146
CZ	11,552	Yes	0
DE	40,440	Yes	0
DK	5,016	Yes	0
EE	2,458	Unknown	0 - 2,458
EL	1,965	Yes	0
ES	27,724	Required only in special cases	27,724
FI	10,526	Yes	0
FR	23,439	Up to 50% of the required capacity	23,439
HU	6,426	Yes	0
IE	2,346	Yes	0
IT	14,638	Yes	0
LT	3,641	Yes	0
LU	365	No	365
LV	3,294	Unknown	0-3,294
MT	49	Unknown	0-49
NL	11,668	No	11,668
PL	29,488	No	29,488

Member State	Hauliers possessing Community Licences at the end of 2014	Previously allowed the use of bank guarantees?	Number of firms benefitting
PT	5,726	Yes	0
RO	36,162	Unknown	0-36,162
SE	3,469	Yes	0
SI	5,279	No	5,279
SK	6,563	Unknown	0-6,563
UK	9,416	No	9,416
<b>Total</b>	284,121		107,525 – 156,051 (average 131,788)

Notes: Number of firms benefitting in each country due to the introduction of bank guarantees is assumed to be zero in countries that already permitted the use of bank guarantees, and all firms in the case where this was not previously allowed. Where the previous situation was unknown, the lower bound assumes that no firms benefit and the upper bound assumes that all firms benefit. Source: Previous rules from NEA et al (2005); Number of Community Licences from national reporting

The total number of Community Licence holders that are in countries that did not previously allow this option was around 107,525 to 156,021 in 2014 (the average value of 131,788 was used in calculations). For the purposes of estimating ex-post impacts, it is assumed that all of these firms opted to use bank guarantees<sup>79</sup>. This may represent an upper bound estimate, as not all of the firms may opt for bank guarantees if there is a cheaper option available.

No conclusive data on the cost or saving per firm was found, but the ex-ante estimates may have been optimistic. Around half of undertakings responding to the survey reported no material impact on their businesses. A significant minority (7%) reported negative impacts, although these respondents were mainly from Germany (where there is an additional national requirement for an insurance, see **Annex C**). When asked specifically to estimate the costs and savings of obtaining bank guarantees, almost all respondents did not answer. 27 responses were received giving quantitative estimates – the average of these was a net cost of €450, and the median was €100. Overall, it is difficult to say what could be used as an updated figure, so an approach to develop a weighted estimate was used. The additional costs were taken from the 27 estimates received. The estimated savings that applied to 7% of firms were assumed to be equal in magnitude (but opposite in sign, i.e. a saving of €100) to the estimate of “some increase in costs”, since no quantitative estimates of the savings were received.

**Table 9-19: Development of a weighted estimate of the impact of bank guarantees**

Response from undertakings survey	Share of responses (weighting)	Assumed impact per firm (EUR)
Significant increase in costs	7%	450 (average of 27 estimates)
Some increase in costs	29%	100 (median of 27 estimates)
Neutral	48%	0 (no impact)
Some reduction in costs	7%	100 (equal in magnitude to “some increase in costs”)
Significant reduction in costs	0%	N/A
Don't know / no opinion	9%	0 (no impact)

<sup>79</sup> Noting that the requirement of financial standing is an ongoing requirement that must be demonstrated continuously, i.e. not just for new applicants

Response from undertakings survey	Share of responses (weighting)	Assumed impact per firm (EUR)
Weighted average impact per firm		EUR 53

Source: survey of undertakings (N=75). Assumed impact per firm based on 27 numerical estimates of costs.

The weighted average cost per firm is therefore €53. Only one specific estimate of the possible impacts of the financial standing requirement was found in the literature to cross-check this figure – in the UK, it was assumed by the DfT that the majority of businesses produced accounts already but an estimated additional cost of £500 was expected to affect 5% of firms (DfT, 2010). This equates to an average cost per firm of £25 (approx. €35), which corresponds well to the estimated figure above.

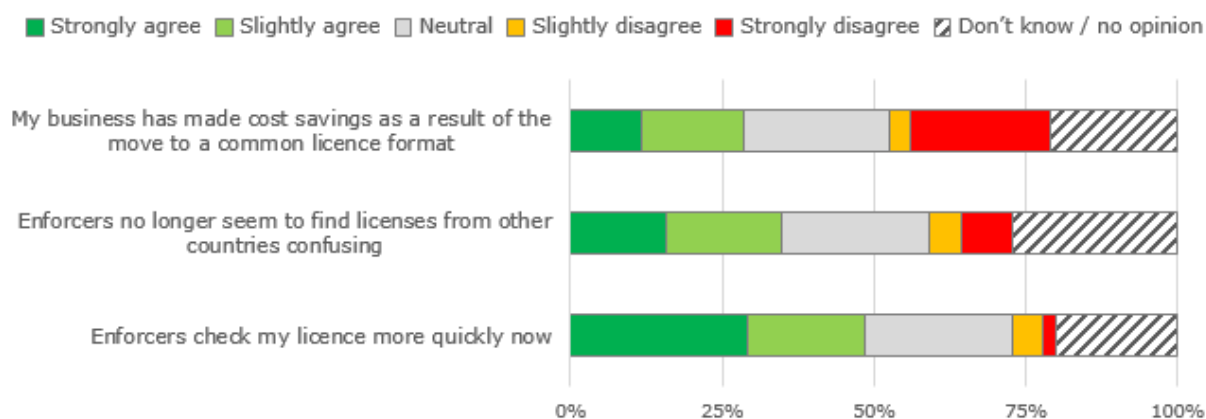
No estimates of the administrative costs or savings for public authorities were obtained from any stakeholders, nor found in the literature – in the absence of more up-to-date information, it was not possible to develop ex-post estimates. The ex-post estimates are therefore an increased cost of €4-6 million for industry, whereas savings for public authorities could not be estimated.

### 9.8.1.3. Harmonised control documents

The use of harmonised control documents was predicted to speed up roadside controls considerably, leading to administrative cost savings of €20 million per year each for industry and public authorities. The underlying assumptions are not clear in the Impact Assessment, but it could be assumed that the major cost savings are due to reductions in time taken for checks.

Undertakings showed a high level of support when asked whether enforcers were able to check their licences more quickly, although there was less support on the matter of whether the requirements had led to a cost saving (see Figure 9-3).

**Figure 9-3: Undertakings responses to questions on the impact of common control documents**



Source: Undertakings survey

Qualitatively, responses from the interviews also support the conclusion that there has been a reduction in *time taken* during checks due to harmonised control documents. A Bulgarian association remarked that “*harmonisation of forms used in checks always facilitates better control. However we have no quantitative information on the benefits.*” An Italian undertaking commented that “*the standardisation of document is a positive step forwards to accelerate the control actions and to save time during this process.*” A Romanian undertaking commented that checks were faster now, confirmed that documentation was more standardised and felt that the time their business had to spend on compliance had reduced. However, they were not able to quantify the extent of these impacts.

Half of the enforcement authorities that responded to the survey also confirmed that checks were significantly or somewhat faster due to the introduction of harmonised control documents. Those that were able to quantify the time savings indicated a reduction of around 15 minutes. An average labour cost of €20.5/hr<sup>80</sup> for public authorities was assumed.

Only three undertakings were able to quantify the reduction in time taken due to faster checks – with estimates of 1-2 hours saved per vehicle. This seems rather high compared to the estimate from enforcement authorities, but also includes time for preparation. In any case, the lower estimate of 1 hour saved was used as the total amount of time saved per check. For industry, the operating cost of a vehicle per hour provides a more representative estimate of the costs. Bayliss (2012) shows the operating costs of a truck are €45/hr to €80/hr depending on the country. Adjusting this to exclude the cost of fuel (which will not be relevant if a truck is stationary during a check) gives an average operating cost of €50/hr, which is taken as the indicative cost saving for industry for time saved for roadside checks. For back-office time savings, the same wage rate of €20.5/hr as used for public authorities was assumed (i.e. 15 minutes at €50/hr and 45 minutes at €20.5/hr).

Assuming a vehicle is only checked once per year, and noting that the cost savings only become relevant / accessible once a vehicle is checked, it can be very roughly assumed that the total number of roadside cabotage checks can be used as a proxy to estimate the total time savings.

The total number of checks is only known for certain countries as follows.

**Table 9-20: Number of cabotage controls in selected countries and cost savings**

Country	Period	Inspections
Italy	January 2012 – October 2012	220,965
Poland	2013	233,118
UK	March 2012 – March 2013	114,500*
Germany	2014	183,200
France	2013	50,928
Denmark	2014	4,794
Slovenia	2013	300
Ireland	2013	185

\* based on a reported 229 infringements and a detection rate of 0.2%

Source: survey responses and European Parliament (2013a); (Sternberg et al, 2014).

Since there is no further data on the number of checks carried out in other countries, we can only very roughly approximate the total number of checks in the EU. Countries appear to fall into two groups:

- Those that carry out a high number of checks: With the total number of checks in numbering hundreds of thousands (Italy, Poland, UK, Germany, France);
- Those that carry out a lower number of checks: Denmark, Slovenia, Ireland.

To scale up to the EU level, countries were divided into whether they were likely to carry out a relatively high or low number of checks based on the amount of cabotage carried out in the country and the size of the transport market. A high category was assigned if the national transport market was greater than 100 billion t-km in 2013 OR if the amount of cabotage performed in the country was more than 1 million t-km. These thresholds were chosen on the basis that they captured the known countries that carry out a high number of checks, and that the level of activity tended to drop of very quickly

<sup>80</sup> Total hourly labour costs in public administration, Eurostat, 2014 – Labour cost survey

after these points. The number of annual checks for the high category was estimated as the average of the number of checks in Italy, Poland, UK and Germany. The number of annual checks in the low category was estimated as the average of Denmark, Slovenia and Ireland.

**Table 9-21: Estimation of total number of relevant checks in the EU-28**

Category	Number of annual checks	Number of Member States	Total number of checks
High	160,500	8	1,284,000
Low	2,000	20	40,000
Total	N/A	28	1.3 million

*Notes: High category assigned if: national transport market was greater than 100 billion t-km in 2013 OR if the amount of cabotage performed in the country was more than 1 million t-km (DE, PL, ES, FR, UK, IT, SE, BE)*

Using this scaling approach, a total of 1.3 million checks in the EU per year was estimated. This may seem high, although as a benchmark almost 9.7 million vehicles were controlled in the EU in 2009-2010 under the social legislation (SWD(2012) 270). It does not seem reasonable to assume that every one of these checks would be quicker. Rather, for the upper bound, 48% of checks are assumed to be quicker – this is in line with the percentage of undertakings that slightly OR strongly agreed that enforcers check their documents more quickly now (see Figure 9-3). For the lower bound, 29% of checks are assumed to be quicker, in line with the proportion of undertakings that strongly agreed that checks are quicker now.

Accordingly, the total annual savings for public authorities are around €2 million in the lower bound case and €3 million in the upper bound case. For industry, the annual savings are around €11 million in the lower bound case and €18 million in the upper bound case.

## 9.8.2. Detailed compliance cost calculations

### 9.8.2.1. Professional competence

The requirement of professional competence was expected to result in an increase in compliance costs of €16 million per year for industry and of €2 million per year for public authorities. The industry costs in the ex-ante estimates were mainly due to the **training fees for undertakings**, using an assumption that a training course costing €1,200 would be needed and 50% of applicants would need a course.

The average cost of training used in the ex-post calculations, as estimated by IRU in (Machenil, 2014), was slightly lower compared to the ex-ante assumption, at €1,030 (summing an average cost of €881 for the training classes plus an average cost of €149 for the exam), with only 33% of applicants taking a course (Machenil, 2014), but the overall number of applicants has been higher than anticipated in the Impact Assessment. A rough estimation of the number of certificates of professional competence issued in 2012-2013 is 44,000 according to the official monitoring data submitted, which gives the lower bound estimate of the number of certificates issued.

However, seven Member States did not provide data. Gap-filling was based on assuming an average turnover rate of 22% in the industry (calculated from the Member States that did provide data as the ratio of hauliers possessing community licences at the end of 2014 to the number of new certificates of professional competence issued). This leads to an upper-bound estimate of 61,000 certificates issued (see Table 9-22).



**Table 9-22: Gap-filling calculations to estimate the number of certificates of professional competence issued for countries that did not provide monitoring reports**

Member States	Certificates of professional competence issued 2012–2013		Hauliers possessing community licences at the end of 2014	Gap-filled data
	Road haulage	Passenger transport		
AT	71		3,536	71
BE	No report provided		8,351	1,799
BG	1,547	171	10,378	1,547
CY	21		146	21
CZ*	4,295		11,552	4,295
DK	No report provided		5,016	1,080
EE*	303	109	2,458	303
FI	No report provided		10,526	2,267
FR	3,375	1794	23,439	3,375
DE	No report provided		40,440	8,710
EL	2,294		1,965	2,294
HU	1,183	153	6,426	1,183
IE	273	150	2,346	273
IT	3,977	242	14,638	3,977
LV*	516		3,294	516
LT*	1,028		3,641	1,028
LU	No report provided		365	79
MT*	-	0	49	-
NL*	566	38	11,668	566
PL*	2,469	345	29,488	2,469
PT	No report provided		5,726	1,233
RO	12,488	3977	36,162	12,488
SK*	1,294		6,563	1,294
SI	231		5,279	231
ES*	4,904	957	27,724	4,904
SE	3,051		3,469	3,051
UK	No information provided		9,416	2,028
Total of MS that provided reports	44,000		204,281	61,000

Average % new certificates for MS that provided reports	22%
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Assuming that 33% of those applicants took a course (in line with Machenil, 2014), leads to an overall cost of training of €15 million in the lower bound, which is broadly in line with the ex-ante costs (i.e. 33% of 44,000 applicants paying €1,030 each). The upper-bound estimate is €21 million (based on 61,000 applicants).

The additional costs for public authorities were from the **authorisation of training centres**. The estimated compliance cost of €2 million per year was calculated on the basis that 500 centres would be needed for the whole EU, given that seven Member States already accredited centres. Most Member States consulted for this study reported that they did not authorise centres since there was no demand for this service – of those that did authorise centres, a total of 300 additional accreditations (excluding countries that already accredited centres) were reported. As such, the original estimate of 500 centres appears appropriate. Two Member States provided estimates of the cost of accreditation (averaging €200 per centre), and on this basis the total cost of accreditation is €0.1 million, only a fraction of the initial estimate.

#### 9.8.2.2. Transport manager

According to the responses received to the undertakings survey carried out for this study, the vast majority (91%) of responding operators reported that the requirement for a designated transport manager did not imply any significant change in costs, largely because they already fulfilled this requirement, whereas 8% did not know – hence overall costs to industry are assumed to be negligible (i.e. significant increases in costs were identified by only 1% of respondents). Normally, the Transport Manager is employed by within the company and holds already all the competences necessary to

be able to carry out this role. As such, the lower-bound estimate is assumed to be negligible.

Only a few undertakings were able to provide estimates of the additional costs, which were mainly gathered through interviews. Overall, 30 respondents provided quantified costs of which half indicated that this cost was zero or negligible. Of the remaining answers that estimated some level of additional costs, there was a range of between €1,000 and €60,000 but this largely depends on whether a new transport manager was recruited or whether the salary of an existing employee had to be increased due to increased responsibilities. On average, small undertakings with up to 50 people returned a, average cost of €7,000, whereas the overall median was €4,750 (excluding respondents who identified zero costs), suggesting a slightly greater impact on SMEs.

In any case, the ex-ante costs only accounted for the additional cost of training more transport managers, and did not consider the need for greater salaries due to increased responsibilities (or bidding up costs of existing managers). Consequently, the original ex-ante estimate of €6 million per year could be an underestimate. To find an upper-bound estimate for the ex-post costs to industry, it is assumed that 1% of all firms experienced a cost in connection with the requirement, which corresponds to the proportion of undertakings that reported significant cost increase in the survey. Assuming that 2,900 firms are affected and they each incur costs of €4,750 (the median estimate provided, as explained above), the total costs to industry would be €13 million per year (Table 9-23). This indicates that the calculation is highly sensitive to the underlying assumptions.

**Table 9-23: Calculation of upper-bound cost to industry of transport manager requirements**

	Data	Source	Comments
Average additional cost per firm (EUR)	4,570	Undertakings survey	Overall median cost estimate from all respondents
Share of firms affected (high)	1%	Undertakings survey	1% of firms that indicated significant cost increases
Total number of community licences	286,883	Monitoring data	Total Community Licences in circulation in 2014
Number of firms affected (high)	2,900	1% of 286,883	
Estimated total costs (EU-28, EUR millions)	13		Increased wages for transport manager

### 9.8.2.3. Other costs

To explore any possible impacts in more detail and to support the responses from the undertakings survey, interviews with hauliers were carried out. A Polish undertaking reported no costs associated with the Regulation. A Romanian undertaking replied that the only cost was linked to the requirement in Romania to renew the licence documents every year, at a cost of €60 per truck (for 300 trucks, i.e. €18,000 per year). One German undertaking felt that ensuring the correct documentation for cabotage could account for 25% of a dispatcher's role (i.e. €10,000 per year). On the other hand, three other German undertakings explained that there had not been any changes in costs due to documentation. One Danish undertaking estimated a 10% increase in administrative effort, but considered this was balanced by the positive effects of the Regulations. Another Danish undertaking reported that there had been no costs. Two Italian undertakings confirmed that there had been no costs.

Overall, the interviews confirm that in many cases the cost impacts of the Regulations have been negligible. In cases where costs have been incurred, the increase in costs does not appear to have been systematic across the industry.

## 9.9. Efficiency: Are there costs related to the implementation of the new provisions? If so, are they proportionate to the benefits achieved?

### 9.9.1. Data provided by stakeholders

Table 9-24 provides an overview of cost estimates provided by national transport ministries via the stakeholder surveys.

**Table 9-24: Overview of costs associated with setting up and maintaining national registers and their connection to the ERRU (disregarding any costs incurred prior to the adoption of the Regulations)**

✓ = Yes; × = No; n/a = not applicable (indicated by respondent)

Member State	Register already existed pre-Regulations	Previous investment in TACHOnet?	Set-up of national register (one-off cost in €)	Connection to ERRU (one-off cost in €)	Running costs (€/year)
Austria	×	✓	550,000	140,000	116,000
Belgium	✓	✓	561,000	80,000	103,000
Bulgaria	×	✓	Unknown	40,500	8,100
Croatia	×	✓	200,000	Not applicable	Not applicable
Cyprus	×	×	14,755	Included in set up costs	Unknown
Denmark	✓	×	N/A	120,600	26,800
Estonia	×	✓	126,000	21,600	7,500
Finland	n/a	×	Not applicable	Not applicable	1,000
France	✓	✓	400,000 (upgrading pre-existing register)	540,000	120,000
Germany	✓	×*	2.1 mio.	Included in set up costs	80,000
Ireland		✓	500,000	Included in set up costs	50,000
Italy		×*	593,425	49,650	110,000
Latvia	✓	✓	95,000	Included in set up	7,000
Lithuania	×	✓	1.5 mio.	Included in set up cost	133,000
Poland	×	×	2.5 mio.	Not applicable	Not applicable
Slovakia	n/a	✓	Not applicable	Not applicable	30,000

Member State	Register already existed pre-Regulations	Previous investment in TACHOnet?	Set-up of national register (one-off cost in €)	Connection to ERRU (one-off cost in €)	Running costs (€/year)
Sweden	✓	✓	Unknown	1.5 mio.	48,700
United Kingdom	✓	✓	1.2 mio.	Included in set up costs	41,400

\*Note: Connected with ERRU through EUCARIS.

Source: Stakeholder responses to survey of national transport ministries

### 9.9.2. Costs of setting up national registers

#### Ex-ante estimates

Firstly, we analyse the ex-ante estimates of the cost to set up national registers. The Impact Assessment underlying the Regulations does not appear to make any explicit reference to set-up costs in its ex-ante estimates, noting only that Member States typically had existing registers that would limit the investment needed. As such, the estimated cost referred to in the Impact Assessment for establishing the system of registers appears to refer exclusively to the interconnection to ERRU (where it matches the lower cost estimates of €15 million in Wilson et al, 2009).

In order to find appropriate ex-ante costs for comparison, the TUNER project was used as the main source, and this was one of the studies that informed the original Impact Assessment (Wilson et al, 2009). The TUNER noted that national registers were of varying quality and sophistication, and in any case would require some upgrades to ensure they met the new requirements set out in the Regulations. Hence it was not realistic to expect there to be zero cost. This is confirmed by the feedback from stakeholders, where incremental investment costs were identified in most countries despite having pre-existing registers.

The ex-ante estimates were therefore assumed to be in line with the estimates from the TUNER project. The only additional assumption is that Croatia has a small register, due to the relatively small number of undertakings in the country. This allowed the extrapolation of the calculations to cover 28 Member States and allow for a like-for-like comparison with the ex-post estimates. The total cost for setting up and upgrading the national registers in the ex-ante case is therefore €52.75 million.

**Table 9-25: Comparison between ex-ante and ex-post costs for set up / upgrading of national registers (disregarding any prior costs)**

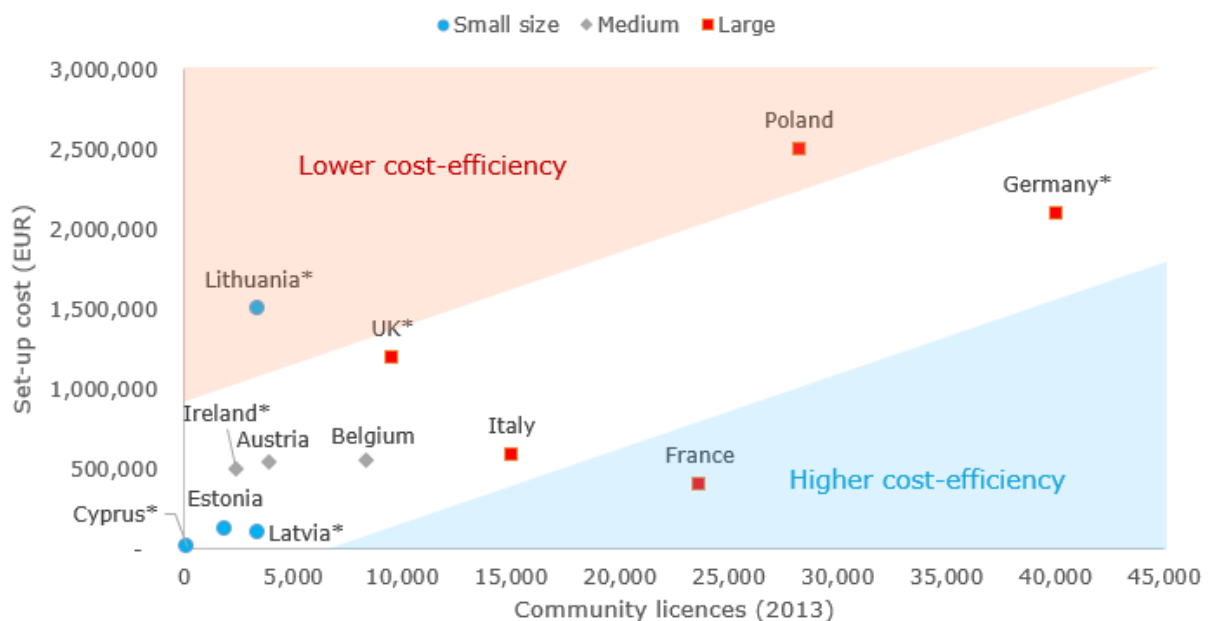
Register size	Number of Member States	Ex-ante set up cost ("worst case" € millions)
Small	9	0.75
Medium	12	1.5
Large	7	4.0
Total	28	52.75

### Ex-post estimates

Since only 11 countries provided ex-post cost estimates, these needed to be extrapolated to estimate the total investment for setting up national registers in all EU-28 countries. The data provided by 11 Member States (shown in Table 9-24), was assessed visually in order to ascertain the most appropriate basis for extrapolation.

As can be seen in Figure 9-4, it can be seen that the costs are broadly proportionate to the "size" of the national register. The categorisation of small, medium and large registers as shown in Figure 9-4 is consistent with the TUNER project (Wilson et al, 2009), because the characteristics on which the categorisation was made are still relevant and will not have changed. On this basis it can be seen that the costs of implementation tend to scale with the size and complexity of the required system. Hence, the size categories of each Member State were retained for the calculations of the ex-post impacts.

**Figure 9-4: Overview of set-up costs by size of national register (disregarding any costs incurred prior to the adoption of the Regulations)**



\* Cost estimate provided also includes interconnection

Notes: Categorisation of small, medium and large registers is taken from the TUNER project (Wilson et al, 2009). Large registers comprise a large number of transport undertakings, manage a large part of the process and are highly automated. Small registers manage a small number of undertakings, manage only some of the process and have some automation. "lower cost efficiency" region indicates a higher cost to community licence ratio.

Source: Responses to the survey of Member State transport ministries

Looking at the ratio of costs compared to the number of Community licences as a rough measure of cost-efficiency, the regions of higher and lower cost-efficiency are indicated on the diagram. The inclusion of interconnection costs in the overall estimate does not appear to systematically affect the overall cost-efficiency of the systems, with some showing above-average cost-efficiency (Latvia, Germany – as identified from Figure 9-4) and others showing below-average cost-efficiency (Lithuania, Ireland). The most cost-efficient system is found in France due to the relatively low investment cost. The survey respondents indicated that this was because the register was implemented as an upgrade of the previous system. The least cost-effective systems (with the highest cost to community licence ratio) are found in Poland and Lithuania. According to the Polish authorities, the large size in terms of national vehicle fleets and the significant number of companies has made setting up the register and its interconnection particularly complicated. In Lithuania, the set-up cost also included the cost for interconnection, which may contribute to the apparently low cost-efficiency.

There was an issue with the data provided by some Member States because the estimate included both set-up and interconnection costs. In order to correct for this, the data needed to be adjusted – the calculations are shown in Table 9-26. Five countries provided separate estimates of the set-up and interconnection costs. For four out of the five, the interconnection cost was 8-25% of the set-up cost, whereas only in France was the interconnection cost higher than the set-up cost. Due to the high level of skew, the median connection cost as a percentage of the set-up cost (i.e. 17%) was used to adjust the cost estimates from countries that did not provide separate costs (i.e. Germany, Ireland, Latvia, Lithuania, UK).

**Table 9-26: Adjustment calculations made to estimate set-up costs without interconnection based on data provided by ministries**

Member State	Set up of national register (one-off investment cost)	Connection to ERRU (one-off investment cost)	Size of register (from TUNER project)	Connection cost as % of set-up cost	Adjusted cost (set-up only, excluding interconnection*)
Estonia	126,000	21,600	S	17%	126,000
Italy	593,425	49,560	L	8%	593,425
Belgium	561,000	80,000	M	14%	561,000
Austria	550,000	140,000	M	25%	550,000
France	400,000	540,000	L	135%	400,000
Poland	2,500,000	n/a	L	-	2,500,000
Cyprus	14,755	n/a	S	-	14,755
Germany	2,100,000	Included in set up	L	-	1,740,000
Ireland	500,000	Included in set up	M	-	414,286
Latvia	95,000	Included in set up	S	-	78,714
Lithuania	1,500,000	Included in set up	S	-	1,242,857
UK	1,200,000	Included in set up	L	-	994,286
				Median connection cost as % of set-up	17%

\*Median used to adjust costs instead of average due to very high skew

Source: MS register size categories from Wilson et al (2009). Ex-post cost estimates from survey of national ministries

The average set-up costs for registers in each size category (small/medium/large) were then calculated as the average of the estimated provided by countries in each category. For example, the set-up costs for a small register were estimated as the average of the estimates provided by Estonia, Cyprus, Latvia and Lithuania. Similar calculations were carried out for the medium and large size categories.

The total ex-post set-up costs were then calculated by extrapolating these estimates to cover all 28 Member States, as shown in Table 9-27.

**Table 9-27: Ex-post costs for set up / upgrading of national registers (disregarding any prior costs)**

Register size	Number of Member States	Member States	Ex-post set up cost (€ millions)*
Small	9	HR, CY, DK, EE, FI, LT, LU, MT	0.37
Medium	12	AT, BE, BG, CZ, EL, HU, IE, PT, RO, SE, SI, SK	0.51
Large	7	FR, DE, IT, NL, PL, ES, UK	1.25
Total	28		18.20

\* Cost estimates of set-up costs provided by Germany, Latvia, Lithuania, UK and Ireland were adjusted to take account of the fact that their cost estimates also included interconnection costs. Source: MS register size categories from Wilson et al (2009), plus assuming that HR has a small register. Ex-post cost estimates from survey of national ministries

### 9.9.3. Costs of interconnecting national registers

#### Ex-ante

The ex-ante estimates of interconnection costs were calculated depending on the ease of the implementation process. According to the ex-ante study, a straightforward interconnection would require (Wilson et al, 2009):

- National registers are in place that have high degrees of automation;
- Information required by the Regulations to be already available;
- Good ICT infrastructure already in place.

Conversely, if these conditions are not met, the interconnection process would be more difficult.

Table 9-28 shows that the estimated ex-ante cost estimates. The interconnection costs and the number of Member States experiencing easy, medium and difficult implementation are taken from the TUNER project. The total ex-ante costs were estimated to be around €20 million.

**Table 9-28: Ex-ante cost estimates for interconnection**

Ease of implementation	Number of Member States	Ex-ante interconnection cost (€ millions)
Easy	10	0.58 (medium) (0.4 - 0.7)
Medium	11	0.68 (medium) (0.5 - 0.8)
Difficult	7	0.98 (medium) (0.8 - 1)
Total	28	20.14 (medium) (15.1 - 22.8)

*Notes: Number of Member States with easy, medium and difficult implementation processes taken from TUNER project (Wilson et al, 2009). Only overall numbers were identified, and difficulty levels were not assigned to individual countries. Croatia assumed to have a medium difficulty implementation. Low, medium and high interconnection costs depend on whether low, medium or high staff costs were assumed. Costs include staff time, maintenance, hardware, software & interface connections*

#### Ex-post

To date, 20 Member States<sup>81</sup> are connected to the ERRU (plus Norway, which is not included in the calculations since it is not part of the EU-28). Hence, the ex-post calculations only cover these 20 Member States.

Ex-post interconnection cost estimates were received from eight Member States. A further five Member States provided estimates of the total costs for set-up and interconnection, from which the share related to interconnection could be estimated (using the median share of 17%, see previous section).

<sup>81</sup> Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Malta, Netherlands, Romania, Slovak Republic, Slovenia, Spain, Sweden and the UK

**Table 9-29: Ex-post interconnection costs, derived from survey responses**

Member State	Ex-post interconnection cost (EUR)	Source
Estonia	21,600	Ministries survey - separate estimate received
Bulgaria	40,500	
Italy	49,650	
Belgium	80,000	
Denmark	120,600	
Austria	140,000	
France	540,000	
Sweden	1,500,000	
Germany	360,000	Estimated from data covering set-up + interconnection cost
Ireland	85,714	
Latvia	16,286	
Lithuania	257,143	
UK	205,714	

Source: Survey of ministries

Notes: For Member States that only provided a single cost estimate covering interconnection and set-up costs, the share of interconnection costs was assumed to be 17%

The average ex-post cost of easy, medium and difficult interconnections were estimated from the available data by assuming that "easy" implementation corresponded to the lower quartile of the data, "medium" corresponded to the median and "difficult" corresponded to the upper quartile.

In order to extrapolate these costs from 13 Member States to 20 Member States, the level of difficulty of interconnection needed to be estimated. However, only the overall numbers of Member States experiencing easy, medium or difficult interconnection processes were identified in the ex-ante study, and the difficulty levels were not assigned to individual countries. In the absence of more up-to-date information, the same proportion of Member States experiencing easy, medium and difficult connections was assumed in order to extrapolate the partial information received. This was assumed to be a reasonable approximation since the original classification in the TUNER project was based on the infrastructure in place prior to the Regulations, and the basis of the categorisation should not have changed.

Table 9-30 shows the ex-post cost estimates for interconnection, which reach a total of nearly €3 million for the 20 Member States that have connected to ERU so far.

**Table 9-30: Ex-post cost estimates for interconnection**

Ease of implementation	To-date		Full interconnection	
	Number of Member States	Ex-post interconnection cost € millions)	Number of Member States	Ex-post interconnection cost € millions)
Easy	7	0.05	10	0.05
Medium	8	0.12	11	0.12
Difficult	5	0.31	7	0.31
Total	20	2.83	28	3.94

Source: Number of Member States with easy, medium and difficult implementation processes assumed to have the same proportion as the estimates from TUNER project (Wilson et al, 2009), scaled to cover the 20 MS that have connected so far



### 9.9.4. Running costs

#### Ex-ante

The activities involved in maintenance, management and operation of the registers represent an ongoing cost of enforcement. The ex-ante cost estimate for ongoing maintenance at the EU level was €6 million per year (European Commission, 2007a), although this was not broken down at a Member State level.

#### Ex-post

To estimate the ex-post costs it was assumed that the maintenance costs scale with the complexity of the national registers. The ex-post annual maintenance costs were provided by 15 Member States, shown in Table 9-31, and scaled up to cover all 28 Member States.

**Table 9-31: Ex-post maintenance costs, provided by Member States**

Member State	Annual maintenance cost (from ministries survey)	Size of register (from TUNER)
Austria	116,000	M
Belgium	103,000	M
Bulgaria	8,100	M
Denmark	26,800	S
Estonia	7,500	S
Finland	1,000	S
France	120,000	L
Germany	80,000	L
Ireland	50,000	M
Italy	110,000	L
Latvia	7,000	S
Lithuania	133,000	S
Slovakia	30,000	M
Sweden	48,700	M
UK	41,400	L

The average cost of maintenance of a small register was assumed to be equal to the average of all cost estimates provided by countries with small registers (i.e. the average of estimates from Estonia, Finland, Latvia and Lithuania, as shown above). Similarly, the cost of maintenance of medium and large registers was estimated as the average of the costs provided by Member States in those categories.

As shown in Table 9-32 the ex-post cost outcomes appear to be around 73% lower than the ex-ante estimates, with the total for all 28 Member States estimated at €1.6 million.

**Table 9-32: Ex-post costs for maintenance of registers**

Register size	Number of Member States	Ex-post maintenance cost (average €)*
Large	7	35,000
Medium	12	59,000
Small	9	88,000
Total	28	1,639,000

### 9.9.5. Cost-benefit analysis

Net present value calculations were carried out using a timescale of 10 years and a discount factor of 4%. Table 9-33 shows the cost amounts and net present value (NPV) for each cost and benefit category. The total NPV of the costs is €34.9 million. The net present value of benefits to public authorities is €8.4 million, which gives a benefit-to-cost ratio of 0.2.

**Table 9-33: Net Present Value calculations for ERRU (€ millions)**

Cost	Cost amount	NPV
<b>One-off (implementation) costs – occur in year 1</b>		
Set up	18.20	18.20
Interconnection	2.83	2.86
<b>Annual costs</b>		
Running costs	1.64	13.83
<b>Annual benefits</b>		
Firms	-	-
Public authorities	1.0	8.44

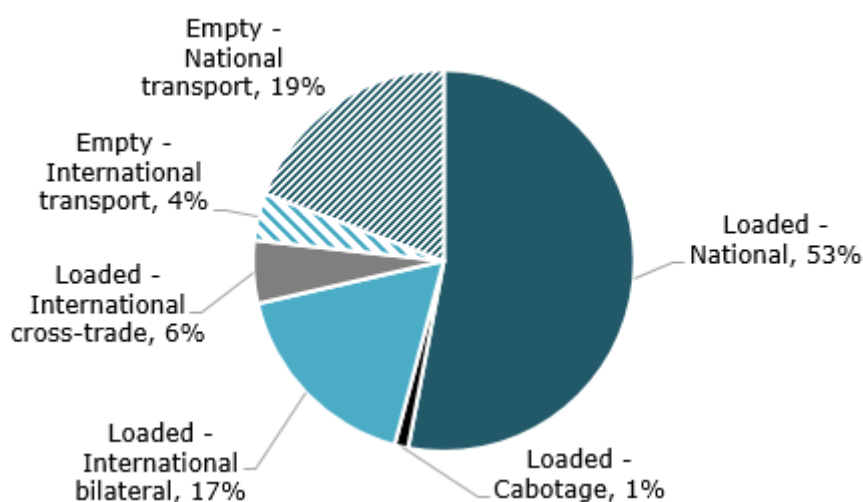
Notes: Assuming a discount factor of 4%. Costs in the first year are not discounted, following standard NPV conventions and consistent with guidance in the Better Regulations Guidelines

### 9.10. Relevance: To what extent are the operational objectives of the Regulations relevant and proportionate to address the problems of the sector?

#### 9.10.1. Levels of empty running

Almost a quarter of all goods vehicle km in the EU28 are empty runs. The share of empty runs in national transport is higher than in international transport (Figure 9-5). This is likely because empty running being more common on shorter distance operations. There is generally an inverse relationship between journey length and share of empty running (Huber, 2013).

**Figure 9-5: Share of empty vehicle km across different operations**



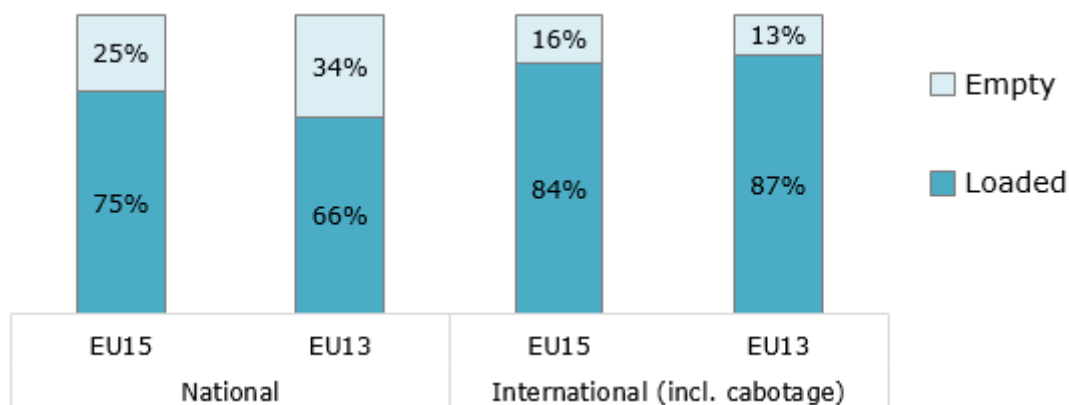
Source: Eurostat dataset "road\_go\_ta\_tott"

Notes: excludes Italy, Belgium and Romania as no data on empty runs was provided for these countries.

In terms of regional variation, the share of national empty vehicle km in the EU13 is significantly higher than in the EU15 (Figure 9-6). There is some negative correlation

between the share of domestic empty running and personnel costs, labour productivity or GDP per capita. It is not clear from the available data whether the seemingly more efficient freight transport practices in higher income countries are attributable to the more developed logistics infrastructure associated with the higher demand, to higher labour costs, to higher competitive pressure or to a combination of these and other factors.

**Figure 9-6: Share of empty vehicle km: EU15 vs. EU13, national vs. international**



Source: Eurostat dataset road\_go\_ta\_tott

Notes: excludes Italy, Belgium and Romania as no data on empty runs was provided for these countries.

The share of empty runs in international operations is slightly lower in the EU13. This gap is mainly attributable to the Netherlands reporting a significantly higher share of empty running (26%) than all other EU15 Member States. It is not clear whether the share of international empty vehicle km have been over-estimated, or whether the Netherlands' geographical and economic situation leads to significantly higher empty vehicle km in international haulage.

## 10. ANNEX B: SUMMARY OF STAKEHOLDER CONTRIBUTIONS

### 10.1. Organisation of the consultation

The consultation consisted of targeted surveys distributed to different stakeholder groups, supported by telephone or face-to-face interviews. Questionnaires were drafted by the study team on the basis of desk research and exploratory interviews. Each survey was then pilot-tested with one or two relevant organisations and revised based on the feedback received. After the European Commission approved the surveys, they were distributed among the target groups and open for responses for at least 8 weeks, and up 3 months in some cases.

Follow-up interviews were scheduled on the basis of responses to the final question in each survey, where participants could indicate whether or not they were willing to be contacted for further input to the study.

The stakeholder engagement activities are summarised in Table 10-1

**Table 10-1: Summary of stakeholder engagement**

Type of stakeholder	Approached	Responded	% response rate
<b>Interviews</b>			
National transport ministries	6	4	67%
Enforcement authorities	18	13	72%
Industry associations	20	14	70%
Trade unions	12	6	50%

Type of stakeholder	Approached	Responded	% response rate
Undertakings	72	16	22%
<b>TOTAL (interviews)</b>	<b>128</b>	<b>54</b>	<b>42%</b>
<b>Surveys</b>			
National transport ministries	47	20	43%
Enforcement authorities	78	20	26%
Undertakings survey	N/A <sup>A</sup>	122	-
High level (general) survey	154	37 <sup>B</sup>	24%
<b>TOTAL (surveys)</b>		<b>199</b>	<b>-</b>

Notes: Stakeholder engagement activities were conducted from October 2014 until July 2015. Response rates are approximate, as some organisations forwarded the request to participate to other organisations on our behalf.

A) Undertakings surveys were distributed via national associations, hence it is not known how many organisations were contacted. B) A number of coordinated responses were received from trade unions and transport operator associations. Due to the breadth and depth of issues that needed to be covered in the evaluation, the questionnaires were necessarily rather long and complex, and may have been difficult for some stakeholders to find the time to answer. The inputs received from those stakeholders that responded are highly appreciated. Overall, the stakeholder response rate can be considered to be very good in light of this, and also considering the highly technical and specific nature of the Regulations.

Due to the breadth and depth of issues that needed to be covered in the evaluation, the questionnaires were necessarily rather long and complex. This may have made it more difficult for some stakeholders to find the time to answer, and it is likely that this impacted on the response rate. Nevertheless, many stakeholders took the time to participate in the surveys and the interviews, and their inputs have been highly appreciated. Overall, the stakeholder response rate can be considered to be very good in light of this, and also considering the highly technical and specific nature of the Regulations.

## 10.2. National transport ministries

The consultation of national transport ministries focussed on national implementation of the Regulations, especially on national derogations, flexibilities and additional provisions. It also requested information about the situation in place prior to the Regulations and how this had changed, as well as national level impacts.

Responses were received from the national transport ministries of 20 Member States as follows: Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Ireland; Italy; Latvia; Lithuania; Luxembourg; Poland; Slovak Republic; Sweden; UK. There was one response per Member State, often submitted as a combination of inputs from different departments. These survey results contained a mixture of qualitative and quantitative information.

### 10.2.1. Regulation 1071/2009

#### 10.2.1.1. Stable and effective establishment

Regulation 1071/2009 introduced a requirement for transport undertakings to demonstrate their "effective and stable establishment". Around half of the Member States responded that there were no specific problems with the interpretation of provisions<sup>82</sup>. The remaining Member States identified difficulties around the following areas:

<sup>82</sup> Austria, Denmark, Ireland, Luxembourg, Sweden, UK, Italy, Poland, Latvia, Cyprus, Czech Republic

- The Belgian respondent noted that it was not clear how to interpret the notion of “appropriate technical equipment and facilities”, which leads to problems of letterbox companies.
- The Bulgarian respondent noted that it is difficult to define when a transport undertaking does not satisfy the requirement on stable and effective establishment since the Regulation does not include specific criteria with which the operating centre needs to comply.
- The respondent from Germany suggested that the requirements should be more stringent than previously stipulated – i.e. that an establishment must be an economically independent unit, in order to avoid problems of the same company owning licences in several countries.
- The respondent from Finland suggested that the Regulation could be improved by making the requirements less vague. They also note that there have been few occasions where a company from another Member State or outside the European Union has applied a Community license from Finland. They have not agreed to register in Finland appropriately, so the applications have been denied.
- The respondent from France is of the view that the wording of Article 5 of the Regulation does not raise any difficulty. The issue is rather the lack of control in Member States on whose territory letterbox companies are established. They suggest that the European Commission should be systematically informed of these practices.
- The respondent from Lithuania noted that they are unable to check the requirements of Article 5(b) prior the granting of the authorisation (i.e. the requirement for an undertakings to have at its disposal at least one vehicle).

Five Member States reported that they suspected letterbox companies were being established on their territory (Germany, Luxembourg, Estonia, Slovakia, Bulgaria). Another five Member States identified the reverse problem - that they suspected companies from their own countries were setting up letterbox companies in other Member States (Belgium, France, Germany, Sweden, Slovakia). The impacts of letterbox companies were similarly reported as:

- Movement of jobs to other countries due to the use of low cost labour (Belgium, Denmark, France, Germany);
- Unfair competition in the road haulage sector (Belgium, Bulgaria, France);
- A decrease of tax revenues (Belgium, Bulgaria, France);
- Loss of earnings for drivers (France);
- Negative impacts on safety (Bulgaria)
- Undermining of the financing of social security systems (Belgium, France);
- A higher risk of letter box companies performing illegal cabotage operations (Belgium).

In terms of identifying letterbox companies, the French Ministry has identified multiple indices to indicate a higher risk of non-respect for Article 5 of the Regulation 1071/2009:

- The place of establishment of these subsidiaries is generally a building located in an urban residential area, and obviously does not include the local operating and facilities appropriate technology;
- Transport operations from or to the establishment of the said Member State seem marginal in terms of all transactions. In reality, the transport operations are carried out from or to the Member State headquarters of the parent company to which the subsidiary;

- The drivers rarely have the same nationality as the establishment said Member State: they are usually effectively employed in the Member State headquarters of the parent company.

The Swedish respondent has also observed the drivers often not come from the same country as where the agency is located.

Most respondents did not feel there were any loopholes (11 out of 20<sup>83</sup>) or gave no answer to this question (4 out of 20<sup>84</sup>). Specific loopholes were mentioned by other respondents as follows: The Bulgarian respondent felt there were loopholes related to the condition of conducting operations effectively and continuously with the necessary administrative equipment and with the appropriate technical equipment and facilities at an operating centre. The respondents from France and Denmark felt that enforcement of the provisions needed more attention.

#### **10.2.1.2. Good repute**

The good repute of transport managers (or undertakings) is conditional on their not having been convicted of a serious criminal offence or having incurred a penalty for one of the most serious infringements of road transport rules. Member States are responsible for determining good repute according to these conditions, which are described in detail in Article 6 of Regulation 1071/2009.

In over half of the Member States (13)<sup>85</sup>, there are no differences between current rules under Regulation 1071/2009 and the previous systems they had in place. Where differences were reported, they concern:

- Differences in the categorisation of the seriousness of offences (Belgium, Estonia, Finland,
- Differences in the list of relevant persons to be checked (Finland)
- The conduct of the transport undertaking was not previously taken into account in determining the requirement of good repute (Belgium, Finland)
- Time period of convictions taken into account (Belgium)
- Other types of infringements led to loss of good repute (Belgium, Czech Republic)

Most (14)<sup>86</sup> Member States confirmed that there were no additional requirements for good repute above those in the Regulations. Variations from the core requirements of the Regulation were around the type of offenses taken into consideration and the relevant persons to be checked.

Article 6(1) states that Member States shall consider "convictions, penalties or infringements". However, Member States vary in terms of whether they consider aspects such as administrative fines, arrangements out of court, and/or on-the-spot payments for the purposes of assessing good repute. Some respondents were of the view that this was an important part of the condition of good repute and should therefore be harmonised between Member States. Currently there is a high degree of variation between Member States. Bulgaria, Croatia, Cyprus, Luxembourg and Poland do not consider any of administrative fines, arrangements out of court and on-the-spot

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<sup>83</sup> Belgium, Finland, Ireland, Luxembourg, Sweden, UK, Italy, Estonia, Latvia, Lithuania, Czech Republic

<sup>84</sup> Austria, Poland, Slovakia, Cyprus

<sup>85</sup> Austria, Denmark, Ireland, Luxembourg, Sweden, UK, Poland, Slovakia, Bulgaria, Croatia, Latvia, Lithuania, Cyprus

<sup>86</sup> Austria, Belgium, Denmark, France, Germany, Ireland, Poland, Slovakia, Bulgaria, Croatia, Latvia, Lithuania, Cyprus, Czech Republic

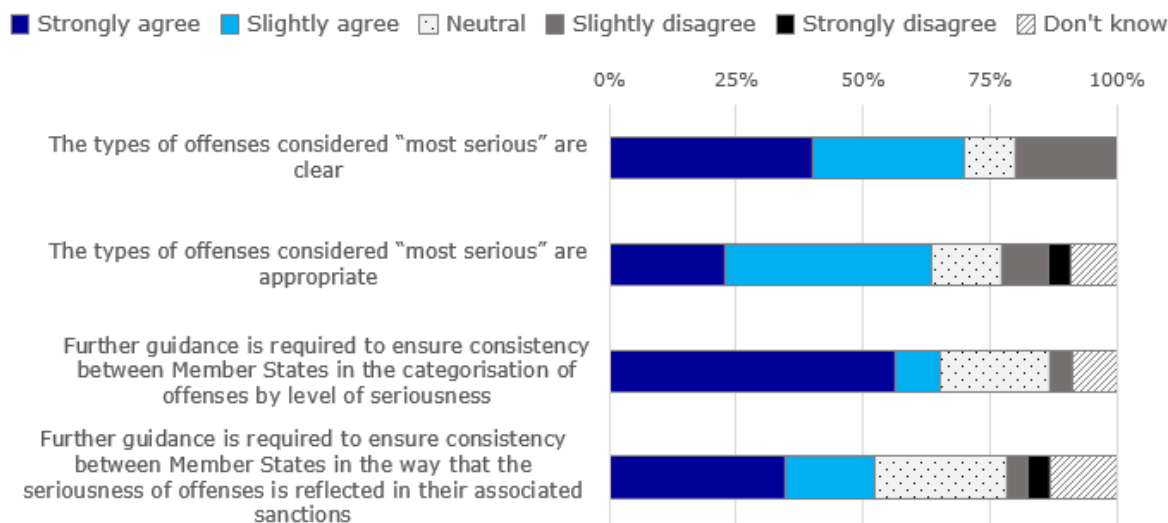
payments as penalties. Administrative fines are considered in Austria, Sweden, Lithuania, Belgium, Estonia, Germany and Latvia; Arrangements out of court are considered in Denmark, Germany and Estonia; On-the-spot payments are considered in France, Belgium, Finland and Germany.

Procedures for rehabilitation after a loss of good repute are not prescribed in the Regulation, and as a result there some Member States do not have any defined procedure at all (e.g. Ireland, Latvia, and Bulgaria). Several Member States may require a person to follow specific training, pass an examination, or otherwise satisfy the competent authorities that they are rehabilitated (UK, Sweden, Denmark). In many cases, good repute is reinstatement after a certain period of time - as examples:

- Belgium: rehabilitation occurs after two years (or four in the case of repeated infringements).
- Denmark: rehabilitation occurs after three years, provided the person passes a test.
- Estonia: rehabilitation occurs after two years
- France: any loss of good repute is accompanied by a deadline set in compliance with the provisions of the Code of Criminal Procedure.
- Italy: six months after the penalty imposed for illegal practice or breach of the obligations of nature and social security imposed on the employer.

The aspect that varies most between Member States appears to be the way in which the seriousness of the offenses are defined (see Figure 10-1). The majority of Member States strongly or slightly agree that the types of offenses considered “most serious” are appropriate (70%) and clear (64%). At the same time, most Member States also strongly or slightly agree that further guidance is required to ensure consistency between Member States in terms of the categorisation of offences by level of seriousness (65%), as well as the way in which their sanctions are aligned (52%).

**Figure 10-1: Member State responses to the question: Is the way most serious offenses are defined in Annex IV of Regulation 1071/2009 both clear and appropriate?**



In terms of improving implementation, the Lithuanian respondent suggested that procedures for exchanging information on good repute between Member States should be established, so that persons who had lived in another Member State would not need to submit documents proving the good repute. At present, even determining the appropriate body to issue such documents is challenging.

### **10.2.1.3. Requirements for financial standing**

The minimum requirements for financial standing are that an undertaking must demonstrate every year, that it has at its disposal capital and reserves totalling at least EUR 9 000 when only one vehicle is used and EUR 5 000 for each additional vehicle used

Most Member States (17)<sup>87</sup> indicated that there were no additional requirements for financial standing beyond the minimum level set out in the Regulation, and furthermore in the majority of cases the current rules had not changed compared to the previous situation before Regulation 1071/2009. The main changes appear to have involved relatively small adjustments to the minimum capital and reserve requirements per vehicle (e.g. in Finland, prior to Regulation 1071/2009, requirement for financial standing was €10,000 for every truck and €4,000 for every additional vehicle), as well as the means by which an undertaking could demonstrate this (e.g. there was no requirement for presenting certified accounts).

It is relatively rare for Member States to require a higher level of capital and reserves per vehicle than the minimum levels set out in the Regulations, although some countries have imposed higher thresholds (e.g. €50,000 for the first vehicle and €5,000 for each additional vehicle in Italy). A few Member States require that applicants must not have substantial arrears (such as in Austria and Denmark).

When asked about any provisions that could lead to difficulties or inconsistencies in interpretation, a range of issues were identified:

- It is not clear what exactly is meant by professional insurance (Austria)
- It's unclear what should be understood by the notion capital and reserves (Belgium, Finland)
- The mechanism of checking if transport undertakings are capable of meeting their financial obligations throughout the business year is problematic (Croatia)
- It is not clear enough who could be the mentioned duly accredited person having a right to certify the annual accounts of transport undertaking (Estonia)
- With regard to the bank guarantee, it is not clear who is to be declared on the guarantee (Germany, Italy, Slovakia)
- No clear explanation of liability covered by insurance (Latvia, Slovakia)
- It is undefined how a newly established enterprise has to prove its financial standing if it was established in the course of current year and has not drawn up its financial statement (annual account) as yet (Lithuania)
- The wording of Article 7.1 suggests that an undertaking must demonstrate yearly, that it has adequate resources at its disposal. Community licenses are issued for five year period, so there is no need to demonstrate financial standing every year (Finland).
- Article 13.1(c)<sup>88</sup> needs to be clarified (Ireland)

### **10.2.1.4. Professional competence**

Professional knowledge shall be demonstrated by means of a compulsory written examination which, if a Member State so decides, may be supplemented by an oral examination. Most Member States (13)<sup>89</sup> report that there are no additional requirements for professional competence above those set out in the Regulation. Other Member States report that they require:

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<sup>87</sup> Belgium, Finland, France, Germany, Luxembourg, Sweden, UK, Italy, Estonia, Poland, Slovakia, Bulgaria, Croatia, Latvia, Lithuania, Cyprus, Czech Republic

<sup>88</sup> a time limit not exceeding 6 months where the requirement of financial standing is not satisfied

<sup>89</sup> Finland, France, Germany, Luxembourg, Sweden, UK, Poland, Slovakia, Bulgaria, Croatia, Lithuania, Cyprus, Czech Republic



- Supplementary oral exams (Austria, Belgium, Germany, Slovak Republic);
- Preparatory training (Denmark, Estonia, Ireland). The duration of preparatory training is 108 hours in Denmark, 76 hours in Estonia and 110 hours in Ireland. In Belgium, it is only obligatory to attend the course (duration 115 hours) if the applicant fails the exam.

The French ministry mentioned their concern that the examinations are not of comparable levels of difficulty in all Member States, and hence could lead to diverging standards.

Most Member States have not exercised their rights under Article 8(4) to accredit centres for examination and training<sup>90</sup>, with the most common explanation being that there is no demand for accreditation and the current system is functioning well (e.g. in Croatia, Czech Republic, Luxembourg, Sweden).

The provision of national grants to cover the cost of training does not appear to be a widespread practice, and we did not find any evidence to suggest that it is a source of market distortion. Only Ireland reported that grants were provided for long-term unemployed, who constitute around 5% of total applicants – no other Member States identified that grants were available.

When asked if any of the provisions were unclear, the following responses were received:

- It is not clear, why the exemption for persons who provide proof that they have continuously managed a road haulage undertaking or a road passenger transport undertaking in one or more Member States for the period of 10 years" must have occurred before 4 December 2009 although the Regulation applies with effect from 4 December 2011 (Austria)
- The passing standards in the regulation are related to all subjects together and do not seem to allow Member States to take into account serious deficiencies on individual subjects (Belgium)
- The comparability of the level of professional qualification across the EU should be studied, particularly regarding the level of difficulty of the written examinations (France)
- Article 21 paragraph 1 of Regulation 1071/2009: It lacks a list of all authorities and bodies in the EU Member States, which are empowered to issue certificates as well as pictures of patterns of issued thence audit certificates with the relevant safety features (Germany)
- We have some problems with documents approvals, per Article 21, para 2 (Slovakia)
- The meaning of "...have continuously managed a road haulage undertaking or a road passenger transport undertaking" is not clear (Sweden)
- According to the Swedish Transport Agency there is no consolidated list of authorities according to article 27 (Sweden)
- Possibilities of exemption in Article 8.7 are difficult to interpret and lead reasonably to different interpretations in different countries (Sweden)

The only possible loophole was identified by the German respondent, who reported that although Art. 8 No. 2 of Regulation 1071/2009 stipulates that the examination is taken in the Member State where the person has their personal residence or where they want to work, the wording of Article 8 appears to allow a loophole.

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<sup>90</sup> Austria, France, Luxembourg, Sweden, UK, Poland, Slovakia, Bulgaria, Croatia, Latvia, Cyprus, Czech Republic

#### **10.2.1.5. Designation of a transport manager**

Regulation 1071/2009 sets out that the transport manager may manage the transport activities of up to four different undertakings with a combined maximum total fleet of 50 vehicles. Member States may decide to lower the number of undertakings and/or the size of the total fleet of vehicles which that person may manage. This option has been exercised in some Member States, for example: Finland allows the transport manager to manage only one undertaking with a maximum of 50 vehicles; in France, an external manager is limited to two companies with a total maximum of 20 vehicles.

The concept of a transport manager was only introduced into law due to the Regulation in Austria, Finland. France and Germany did not previously have the concept of an external transport manager.

The limits of a maximum of four companies and 50 vehicles were not applied in several Member States:

- Previously the condition of a maximum total fleet of 50 vehicles was not applied in Czech Republic
- In Lithuania, the transport manager could previously manage the transport activities of up to two different undertakings carried out with a combined maximum total fleet of 30 vehicles.
- Belgium did not apply either limits of 50 vehicles or four companies
- Cyprus (previously only one company was allowed).

The respondent from France considered that the actual degree of involvement that external managers can have in the management of a company could be called into question (considering they can handle up to four). However, they note that it is too early to form a definite opinion since the Regulation has only been in force for a few years. Nevertheless, France has imposed a stricter limit for external managers of handling two companies for a total twenty vehicles. However, they consider that this problem can lead some persons holding the certificate of professional competence for rent it, so as to allow some trucking companies to comply with the rule, without having to invest sufficiently in the current management of these companies.

Issues highlighted by respondents are as follows:

- The notions "owner" and "shareholder" in article 4, 1, b are not clear. First of all, these aren't professional positions within an undertaking (Belgium)
- It is possible to become transport manager without being employed by the undertaking. It increases the risk of the undertakings uses a stooge (Denmark)
- Transport Manager should always manage effectively and continuously the activities of the undertaking. In case of designated Transport Manager, controlling this may be quite difficult. The Finnish licencing authority requires a written contract in which the designated managers' responsibilities are clearly defined. These contracts come in all shapes and forms and it is not fully understood by the undertakings, what the minimum responsibilities of a Transport Manager should be (Finland)
- Role of transport manager is not defined accurately and particular discrepancies arise in practice (Slovakia)
- It could be argued that there is a gap between authority and responsibility in cases when the transport manager is an employee or a designated person outside the undertaking. (Sweden)

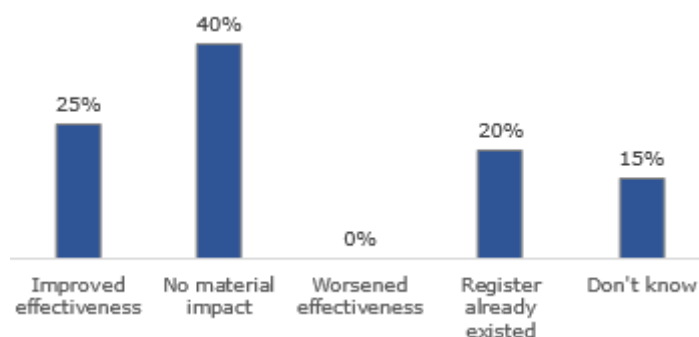
Several ministries suggest including in the Regulation a more detailed list of the responsibilities/activities of the transport manager in order to avoid the use of "front men" (Germany, Finland, Slovakia, Sweden).

A possible loophole identified by Finland is the possibility to use fake transport managers who do not actually manage an undertaking, but merely lend their good repute.

### 10.2.1.6. Administrative simplification and cooperation

Member States were asked whether they felt that setting up a national register had improved the effectiveness of their enforcement activities. Around 40%<sup>91</sup> of Member States reported that setting up the register had no material impact on effectiveness – these typically included larger Member States with significant transport volumes. Those that reported improvements in effectiveness (25%)<sup>92</sup> were generally smaller Member States (in terms of transport volumes), who did not have a system already in place. No substantial comments were offered to shed further light on these trends, but it can be expected that the major effectiveness gains would stem from the international cooperation via ERRU once interconnection is completed.

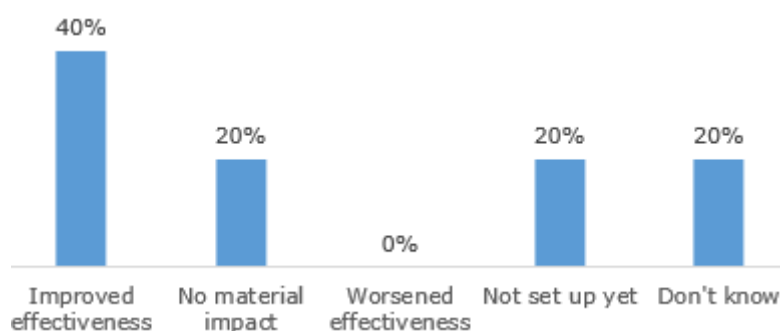
**Figure 10-2: Member State responses to survey question: Have you found that setting up a national electronic register of road transport undertakings has changed the effectiveness of enforcement by facilitating better coordination of different administrative bodies within your Member State?**



Source: Ministry survey (N=15)

Member States were asked about the impact of participating in ERRU on the effectiveness of their cooperation. Encouragingly, many Member States that are participating have reported that they feel the effectiveness has improved<sup>93</sup>, whereas others report that they have not noticed any effect<sup>94</sup>.

**Figure 10-3: Member State responses to the question: How has participation in ERRU affected the cooperation between you and other Member States?**



The reasons for not having connected to ERRU were given as:

- The performance is not sufficient yet (response times are too long) (Austria);

<sup>91</sup> Austria, France, Germany, Ireland, UK, Italy, Slovakia, Bulgaria

<sup>92</sup> Finland, Estonia, Croatia, Lithuania, Cyprus

<sup>93</sup> Belgium, Ireland, Sweden, Estonia, Bulgaria, Latvia, Lithuania, Cyprus

<sup>94</sup> Denmark, France, Germany, UK

- Croatia as a new Member State is currently at the testing stage
- Cyprus reports that it is at the testing stage
- Poland do not participate in the ERRU due to delays in terms of the conception of the system and functioning of the ERRU on the national level.
- Extensive preparatory work was needed (Italy)

Since a number of Member States are not yet connected to ERRU, stakeholders were also asked whether they expected any significant impacts. Most ministries consulted were hopeful that improvements in control should be achieved (Bulgaria, Denmark, Estonia, Finland, France and Sweden), indicating a high level of support for the measures. The respondents from Belgium and Germany noted that it was too early to tell. Conversely, only the Austrian ministry reported that they still did not expect any substantial impacts. They explained that language barriers impede information sharing between Member States, since Member States must report infringements in the language of the host Member State. They consider that translation would be "*far too much administrative burden*" and considered that it does not add anything to road traffic safety. Responses from the high level survey from both trade unions and industry associations called for the completion of ERRU as a matter of urgency.

#### **10.2.1.7. Additional requirements**

Article 3(2) of the Regulation allows Member States to impose additional requirements next to the four requirements given in Article 3(1) of the Regulation (i.e. next to having an effective and stable establishment; being of good repute; having an appropriate financial standing and having the requisite professional competence).

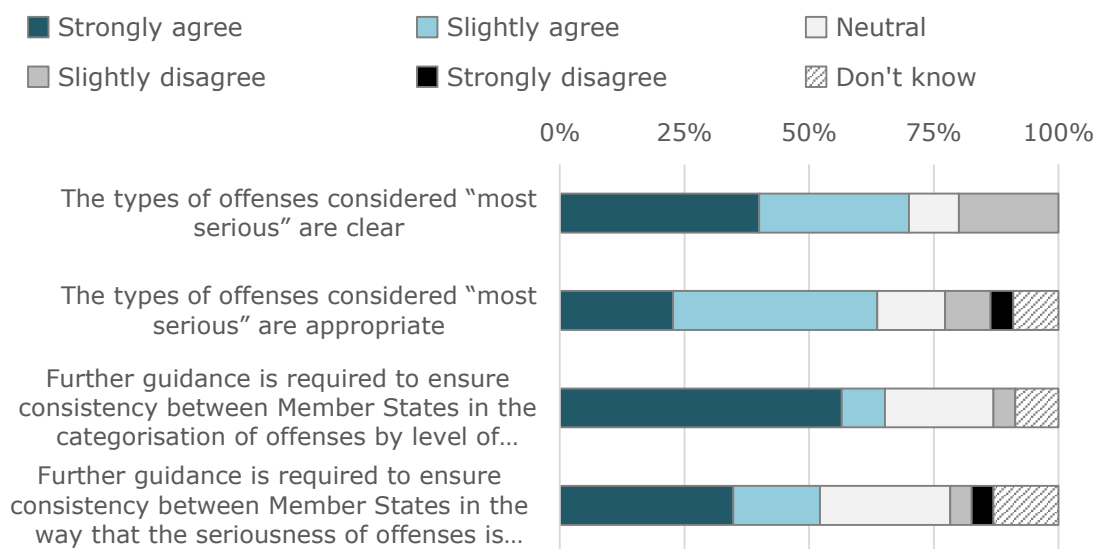
Few Member States have reported any additional requirements under Article 3(2).

- Estonia: A licence applicant and a licence holder must be registered in the commercial register or in the register of non-profit associations and foundations; The licence issuer may refuse to issue a licence if the applicant has non-staggered tax arrears or the court has declared the applicant bankrupt; The licence issuer may refuse to issue a licence if the applicant's previous licence was revoked on the basis of clauses 191 2) to 6) of this Act less than two years ago; The licence issuer may refuse to issue a licence if the applicant is subject to an occupational ban in the field of road transport imposed by a final judgment in a business-related criminal offence or a prohibition on enterprise or a prohibition on business arising from law or a judicial decision.
- Sweden: The competent authority may prescribe conditions under which a transport undertaking is authorised to engage in the occupation of road transport operator, when authorisation is given or later. (2 kap. 7 § SFS 2012:210). Specific reasons are required for the authority to announce such conditions. Conditions shall be in accordance with Art 3.2. For example, licensees could be required to report their financial situation at certain intervals.

#### **10.2.1.8. Penalties**

As shown in Figure 10-1, the majority of Member States consulted for this study strongly or slightly agree that the types of offenses considered "most serious" are appropriate (70%) and clear (64%).

**Figure 10-4: Member State responses to the question: Is the way most serious offenses are defined in Annex IV of Regulation 1071/2009 both clear and appropriate?**



At the same time, most Member States also strongly or slightly agree that further guidance is required to ensure consistency between Member States in terms of the categorisation of offences by level of seriousness (65%), as well as the way in which their sanctions are aligned (52%).

## 10.2.2. Regulation 1072/2009

### 10.2.2.1. Cabotage provisions

None of the Member States that responded to the survey identified any additional provisions in their country relating to requirements on fees, providing advance warning or requirements for specific additional documentation. In Belgium the client can be held co-responsible for having given instructions to the carrier which have led to the non-compliance of the cabotage rule.

The documentation needed to prove lawful cabotage was raised as a potential issue in interviews and in the survey. Regulation 1072/2009 does not require that these documents must be on-board the vehicle when it is stopped for control purposes. According to the French ministry, obtaining the documents is therefore time-consuming because the drivers have often to request it from his/her company. A lot of time is then lost to the associated administrative cost for authorities and companies. Denmark requires on-the-spot provision of the required documentation in order to avoid this problem, or alternatively electronic forwarding within a quite short time is accepted (see Annex C, case study on Denmark – Section 11).

Member States reported generally positive impacts in terms of achieving the objectives, with 89% of respondents saying that the Regulations had a significant or slight positive effect in terms of clarifying definitions of the temporary nature of cabotage. 95% of respondents felt that there had been a significant or slight positive effect in terms of ensuring common rules, and 79% felt there were significant or slight positive effect in terms of enabling enforcement. Importantly, no Member States identified any slight or significant negative impacts in any of these areas.

The majority of respondents felt that EU rules and guidelines were clear for certain provisions, including:

- When a haulier is permitted to start cabotage operations (i.e. requirements on what the preceding transport operation must have been) (63% of respondents feel that rules and guidelines are clear);
- When the 7-day period starts and how it is calculated (73%);
- Interaction with the ECMT (European Conference of Ministers of Transport) multilateral permit system (63%)

Member State ministries participating in the survey identified “significant ambiguities” regarding, in particular:

- How to count the number of operations when there are several loading and unloading points (44% of respondents);
- Interaction with rules regarding combined transport (as per the Combined Transport Directive, 92/106/EEC) (33% of respondents);
- Concerning the three day limit and performing cabotage operations in several Member States (32% of respondents); and
- Provisions regarding what documentary proof is required of the caboteur and what use enforcers are permitted to make of other evidence (22%).

The majority of Member States consulted for this study (13)<sup>95</sup> felt that there were no imbalances of supply and demand created by the cabotage provisions. Most others provided no opinion (Cyprus, Finland, Luxembourg, and Sweden). Ireland and the UK mention specific problems with movement of new cars and vans during the peak registration periods. The respondent from Belgium felt that small countries were disadvantaged because a haulier can easily bypass these limitations by performing a new international transport after the three cabotage operations.

In the event of “serious disturbance(s) of the national transport market” that occur due to (or are aggravated by) cabotage, Regulation 1072/2009 permits governments to refer to the Commission with a view to adopting safeguard measures, as per Article 10(1). When asked whether these provisions were still required, Member State responses were split –with nine Member States in favour of keeping them (Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Sweden, Italy) and five in favour of dropping them (Bulgaria, Czech Republic, Ireland [in view of further liberalisation], Lithuania, Poland).

Around half of the Member States consulted for this study apply the same cabotage rules to vehicles <3.5t (Belgium, Czech Republic, Denmark, Finland, France, Latvia, Poland, Slovak Republic, Sweden), whereas the remainder have less restrictive rules.

One possible impact of excluding vehicles <3.5t from cabotage rules is that operators may switch to lighter vehicles. There is very little hard data on the extent of this in practice, since it not explicitly monitored in most countries. The majority of Member States participating in the survey felt that there was no or very little impact, but respondents from Germany and France both felt that there was a significant impact on switching to lighter vehicles, whereas an authority from Belgium suggested that this practice was being used especially by Polish hauliers (although no quantitative data was available). A Danish stakeholder suggested that there was a role to play for lighter touch regulation of vehicles <3.5t, since Danish businesses in the <3.5 market are becoming concerned about the bad reputation these businesses have – for business, road safety, and behaviour.

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<sup>95</sup> Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Latvia, Lithuania, Poland, Slovakia, Italy.

### **10.2.2.2. Control documents**

Around half of the Member States consulted for this study report that they made changes to the format of certified true copies of Community Licences in order to comply with Regulation 1072/2009 (Austria, Denmark, Finland, Germany, Ireland, Sweden, Italy, Bulgaria, Croatia, Czech Republic). The changes mainly related to adding security features and updating the formatting to be consistent with the requirements in Annex I and II.

According to Article 4(2), the Community licence shall be issued for renewable periods of up to 10 years. Member States typically issue licences for periods of 5 years (Austria, Belgium, Cyprus, Finland, Ireland, UK) or 10 years (Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Latvia, Lithuania, Germany, Slovak Republic, Sweden). One stakeholder remarks that having renewal periods as long as 10 years can complicate the monitoring of companies.

Finally, the German respondent noted a particular issue with the translation of the legal text: the English term "certified true copy" is reproduced in the German text as only "certified copies". In practice, this has already led to a photocopies of a license issued by the licensing authority to be created authenticated by a non-competent authority.

### **10.3. Enforcement authorities**

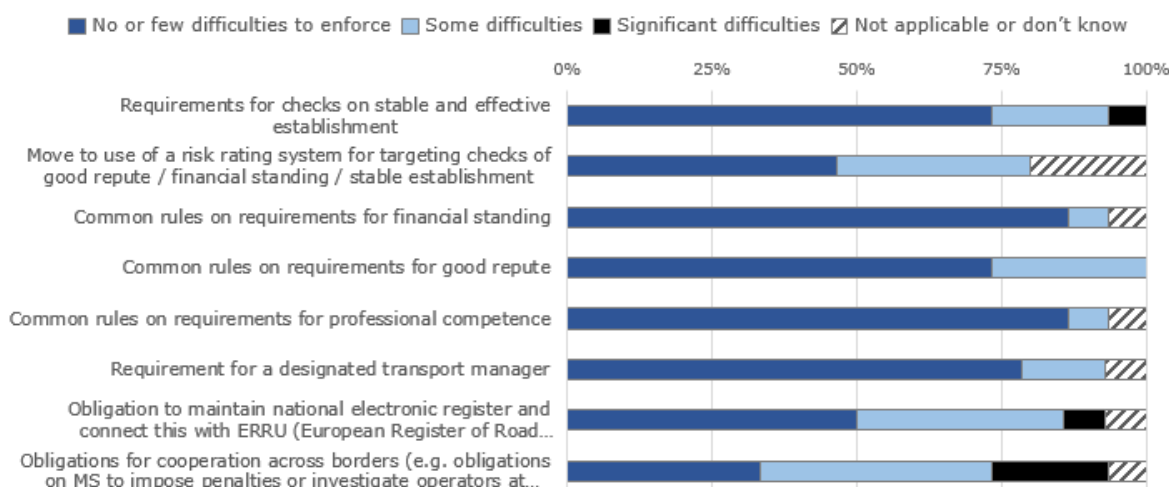
The consultation of enforcement authorities aimed to gather much of the quantitative information needed to answer the evaluation questions on efficiency and effectiveness.

A total of 20 different enforcement authorities responded to the survey. The questions were split into separate parts covering the two Regulations, since (multiple) different authorities may have responsibility for one or both Regulations. 15 responses were received to the first part on Regulation 1071/2009, including authorities from 14 different Member States, of which nine were EU15 (France; Netherlands; Denmark; Austria; Ireland; UK; Luxembourg; Spain; Finland) and five were EU13 (Poland; Czech Republic; Bulgaria; Romania; Latvia). 15 responses to the second part on Regulation 1072/2009, including authorities from 11 different Member States, of which five were EU15 (France; Netherlands; Denmark; Austria; Germany) and six were EU13 (Czech Republic; Poland; Romania; Slovenia; Latvia; Bulgaria).

#### **10.3.1. Regulation 1071/2009**

The majority (as shown in Figure 10-5) of enforcement authorities reported that most provisions of Regulation 1071/2009 did not cause difficulties with enforcement. The main area of contention appears to be the obligations for cooperation across borders.

**Figure 10-5: Responses from enforcement authorities to the question: Are there any parts of the provisions in Regulation 1071/2009 that may lead to difficulties in monitoring and enforcement?**



Source: survey of enforcement authorities (N=15)

It is difficult to assess any systematic differences between responses from EU-13 and EU-15 Member States since there was a relatively low number of overall responses (five concerning EU-13 Member States). Overall, a higher share of EU-15 Member States reported no or few difficulties with enforcement of specific requirements. Cooperation across borders stood out as the requirement that attracted the highest number of "significant difficulties" (Denmark, Luxembourg and Germany).

**Table 10-2: Responses split by EU-13 versus EU-15 Member States**

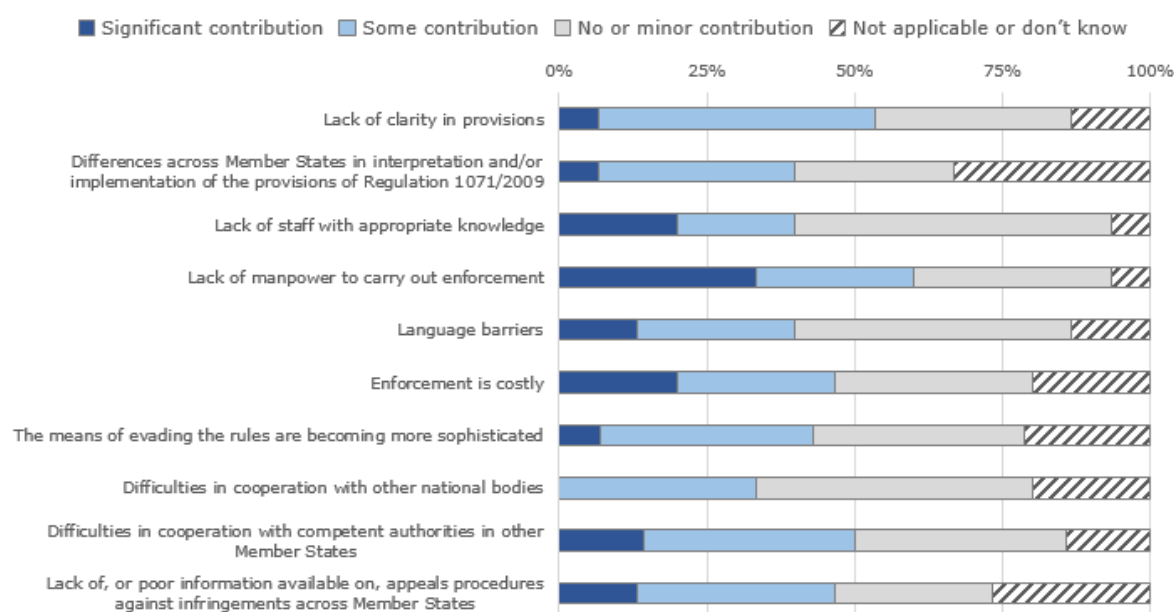
		No or few to difficulties to enforce	Some difficulties	Significant difficulties	Not applicable or don't know
Requirements for checks on stable and effective establishment	EU-15	90%	10%	0%	0%
	EU-13	40%	40%	20%	0%
Move to use of a risk rating system for targeting checks	EU-15	60%	20%	0%	20%
	EU-13	20%	60%	0%	20%
Common rules on requirements for financial standing	EU-15	90%	0%	0%	10%
	EU-13	80%	20%	0%	0%
Common rules on requirements for good repute	EU-15	100%	0%	0%	0%
	EU-13	20%	80%	0%	0%
Common rules on requirements for professional competence	EU-15	80%	10%	0%	10%
	EU-13	100%	0%	0%	0%
Requirement for a designated transport manager	EU-15	78%	11%	0%	11%
	EU-13	80%	20%	0%	0%
Obligation to maintain national electronic register and connect this with ERRU	EU-15	70%	20%	10%	0%
	EU-13	0%	75%	0%	25%
Obligations for cooperation across borders	EU-15	40%	20%	30%	10%
	EU-13	20%	80%	0%	0%

Source: survey of enforcement authorities (5 respondents from EU-13 and 10 from EU-15)



The main contributing factor to the difficulties was reported to be a lack of manpower to carry out enforcement (Figure 10-6). Specifically, the respondent from France noted that in-depth examination of the files requires significant resources in human resources. This is also likely to be related to the second-most important contributing factor identified by the respondents: lack of staff with appropriate knowledge. That is, it is important to have staff with a high level of skill due to the complexity of the legislation.

**Figure 10-6: Responses from enforcement authorities to the question: What are the main reasons that contribute to difficulties in enforcement of Regulation 1071/2009?**



Source: survey of enforcement authorities (N=15)

Other potential areas contributing to enforcement problems received a broadly similar ranking overall, with around 40-50% of respondents identifying them as having at least some contribution, which indicates that there are many different issues at work, and it was similarly identified as the factor making the most significant contribution by EU-15 and EU-13 respondents. There were small differences in the identification of contributing factors between the EU-15 and EU-13. A higher share of EU-13 respondents felt that lack of clarity, differences in interpretations, lack of staff with appropriate knowledge and poor information on appeals procedures made a significant contribution to difficulties in enforcement, but this was mainly due to the responses from the Polish authority. Minor differences in the distribution of response were received for the contribution of other factors, but due to the low number of respondents these shares are strongly affected by the choices of each individual and do not provide a very robust insight into overall conditions.

**Table 10-3: Responses split by EU-13 versus EU-15 Member States**

		Significant contribution	Some contribution	No or minor contribution	Not applicable or don't know
Lack of clarity in provision	EU-15	0%	40%	40%	20%
	EU-13	25%	50%	25%	0%
Differences across Member States in interpretation and/or implementation of the provisions of Regulation 1071/2009	EU-15	0%	30%	30%	40%
	EU-13	25%	50%	25%	0%
	EU-15	10%	30%	50%	10%

		Significant contribution	Some contribution	No or minor contribution	Not applicable or don't know
Lack of staff with appropriate knowledge	EU-13	25%	0%	75%	0%
Lack of manpower to carry out enforcement	EU-15	30%	30%	30%	10%
	EU-13	25%	25%	50%	0%
Language barriers	EU-15	20%	10%	50%	20%
	EU-13	0%	50%	50%	0%
Enforcement is costly	EU-15	20%	20%	30%	30%
	EU-13	25%	25%	50%	0%
The means of evading the rules are becoming more sophisticated	EU-15	11%	33%	22%	33%
	EU-13	0%	50%	50%	0%
Difficulties in cooperation with other national bodies	EU-15	0%	40%	30%	30%
	EU-13	0%	25%	75%	0%
Difficulties in cooperation with competent authorities in other Member States	EU-15	22%	33%	22%	22%
	EU-13	0%	50%	50%	0%
Lack of, or poor information available on, appeals procedures against infringements across Member States	EU-15	10%	20%	30%	40%
	EU-13	25%	50%	25%	0%

Source: survey of enforcement authorities (5 respondents from EU-13 and 10 from EU-15)

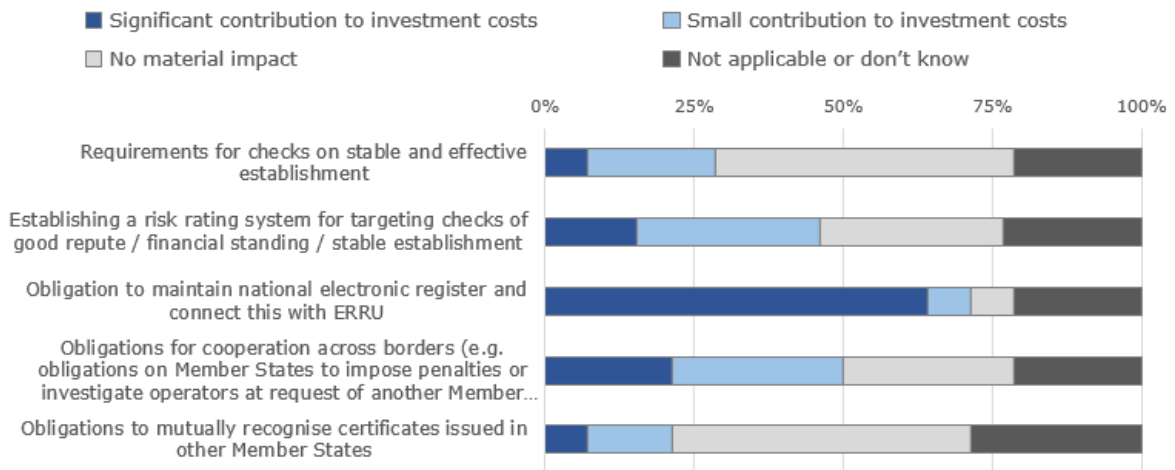
The respondent from France felt that the requirement of establishment and the designated transport manager help to make circumvention of the Regulation more difficult. The respondent from the Netherlands felt that the main problem was the lack of an European Road Transport Agency and the lack of commitment in some Member States to invest in cooperation within Euro Contrôle Route. Concerning difficulties in cooperation between Member States, the respondent from Denmark reported that they do not receive any data from other countries, whereas the French respondent claimed that there is not always feedback from the liaison offices of the various member countries.

When asked about potential loopholes in the Regulation, respondents were split: seven felt there were loopholes (Poland, Romania, France, Netherlands, UK, Finland)) and five felt there were not (Denmark, Austria, Luxembourg, Spain, Germany). When asked to comment on their answers, the potential loopholes were explained as:

- Discretionary flexibility given to Member States (based on the principle of subsidiarity) contributes to inequality and has negative impact on harmonisation (Netherlands)
- Member States could be more vigilant in the operators they are prepared to authorise (UK)
- Exchanging information on infringements between Member States is not at the level it was supposed to be (Finland)
- One of the most significant issues that have recently arisen is the phenomenon of so called letter box companies (Poland)
- More details are needed on how one can determine whether the withdrawal of good reputation is disproportionate (Romania)

Authorities were asked to qualitatively rank the most important factors that could contribute to investment costs (Figure 10-7). The responses indicated that the national register and ERRU were by far the most important.

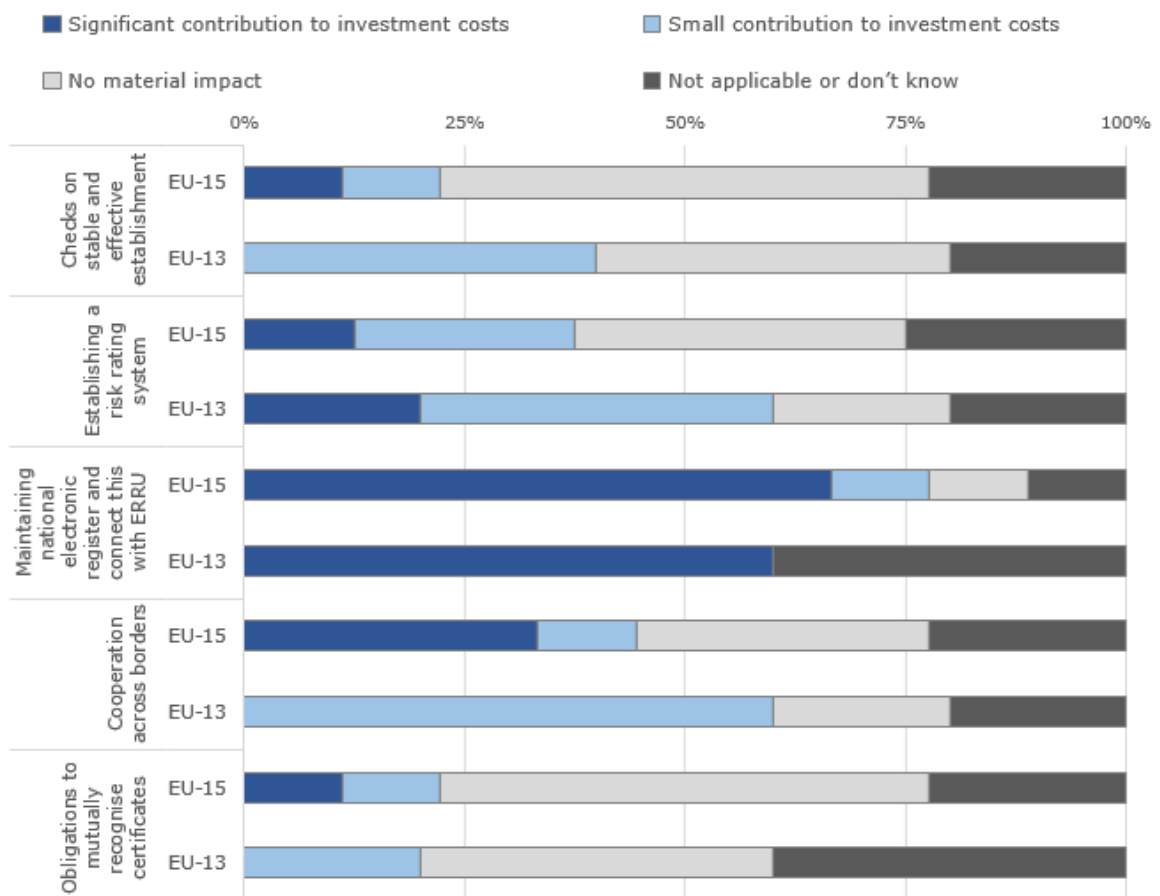
**Figure 10-7: Responses to the question: What factors contributed to the one-off investment costs?**



Source: survey of enforcement authorities (N=15)

The relative importance of the obligations to maintain a national electronic register and connect this with ERRU are also clear when examining the responses split by EU-13 and EU-15 Member States, where it remained by far the most important contributor to investment costs identified by both groups (Figure 10-8). EU-13 respondents identified the establishment of a risk rating system as a slightly higher cost. Responses across other categories of costs were broadly similar.

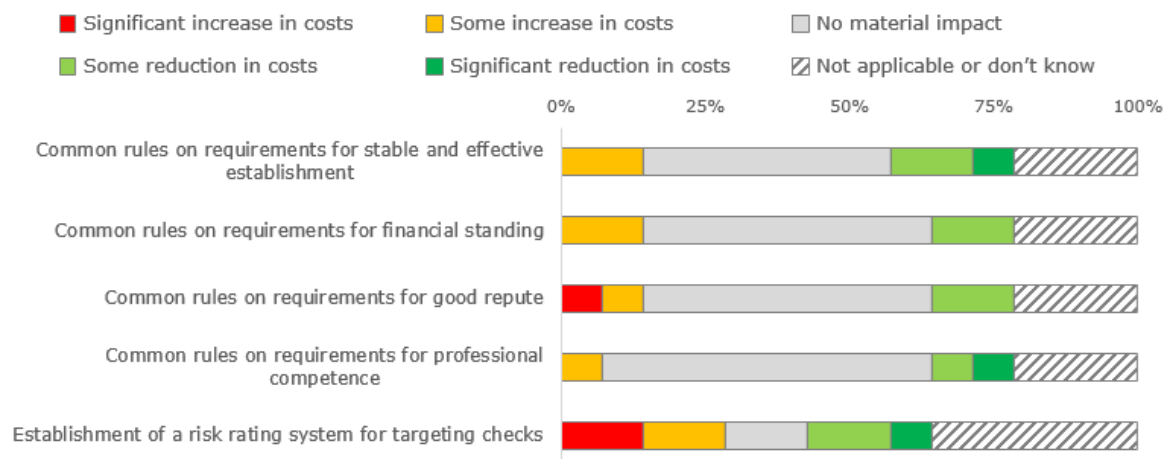
**Figure 10-8: Responses split by EU-15 and EU-13 respondents to the question: What factors contributed to the one-off investment costs?**



Source: survey of enforcement authorities (5 respondents from EU-13 and 10 from EU-15)

Respondents were also asked about the effect of the Regulation on ongoing (annual costs). The results show slight mix of reactions (Figure 10-9), with roughly equal numbers reporting increases and decreases in costs, whereas the majority reported that there was no material impact. This seems to indicate that on balance there have not been increases or decreases due to most of the provisions – the provision that causes the most uncertainty among the respondents is the risk rating system, where 36% of respondents could not provide a qualitative estimate.

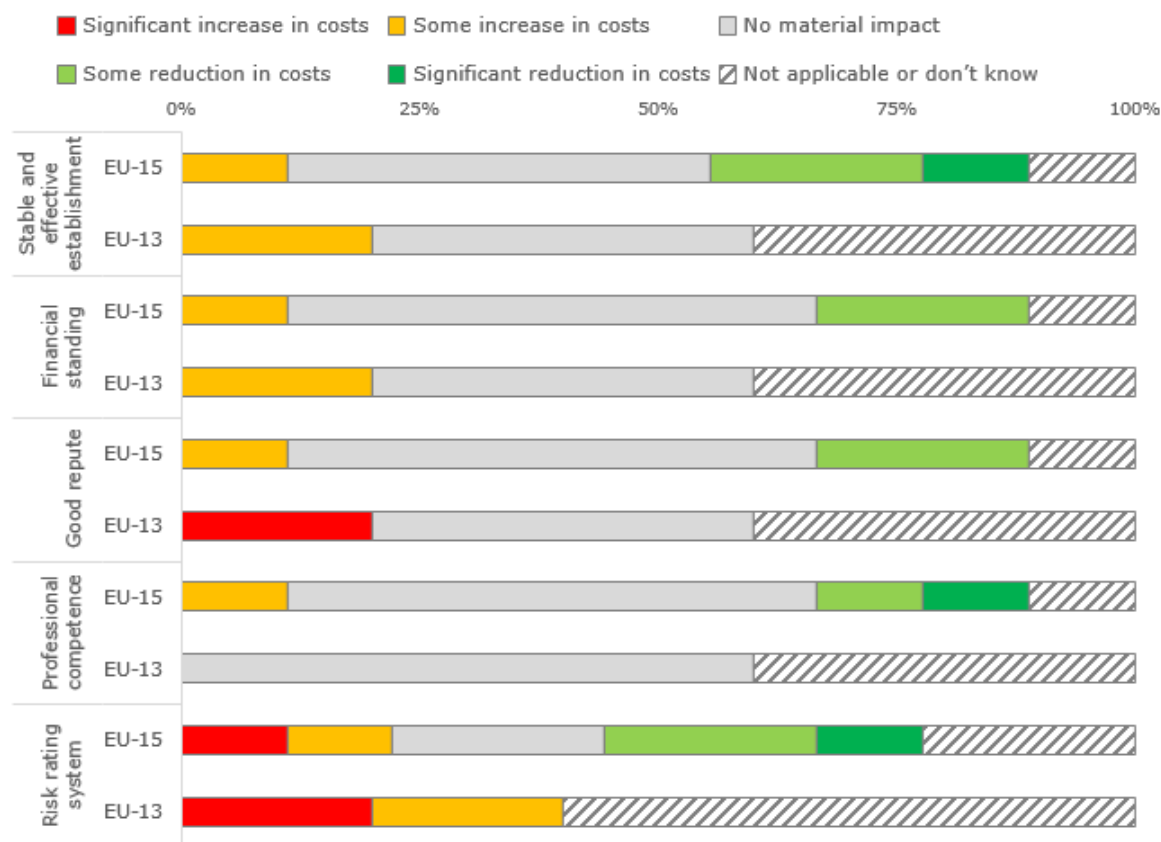
**Figure 10-9: What effect on ongoing (annual) costs has each of the following provisions had since the adoption of the Regulation?**



Source: survey of enforcement authorities (N=15)

When split by EU-15 and EU-13 Member States (Figure 10-10), the responses still indicate that both groups largely experienced no material impact. However, the reductions in costs appear to have benefitted EU-15 respondents, whereas most of the significant increases were reported by EU-13 respondents (Poland, who commented that this was due to the cost of creation of a national register and Bulgaria, who did not substantiate their reply).

**Figure 10-10: Responses split by EU-15 and EU-13 Member States: What effect on ongoing (annual) costs has each of the following provisions had since the adoption of the Regulation?**



Source: survey of enforcement authorities (5 respondents from EU-13 and 10 from EU-15)

One comment from Latvia suggested that there were some increases in costs due to additional maintenance of the national register. The respondent from Romania highlights that for checking the stable and effective establishment of the undertaking, the enforcer checks the specific documents at the address of the premises. For checking the good repute, the officer checks the criminal records of the transport manager and of the transport undertaking and in data base the infringements that led to the loss of good repute. The respondent from Finland commented that as resources have become scarcer there has been urgent need to build electronic interfaces between different national authorities. Building and maintaining these connections has led to some costs.

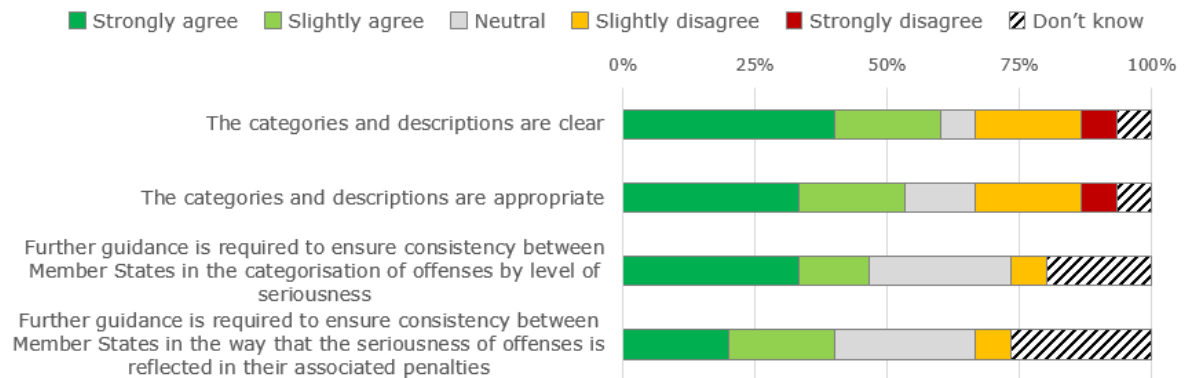
When asked for suggestions as to how the cost of the Regulations could be improved, respondents provided the following suggestions:

- Clear unambiguous, easy to apply and enforceable rules (Netherlands);
- Redesign ERRU into a simple multipurpose system also suitable for direct enforcement and risk rating (Netherlands);
- Motivate and stimulate international cooperation of the ECR (Netherlands);
- Desk based compliance assessments (UK);
- Earned recognition for compliant operators (UK);
- Develop and implement automatic control system by using IT applications that contribute to information flow and improve the efficiency of enforcement (Romania).

The other respondents did not provide any suggestions.

Regarding the need for further guidance on the categorisation of infringements and associated penalties, enforcement authorities appeared to be broadly supportive of the current form of Annex IV of Regulation 1071/2009, but still showing some uncertainty of the clarity and appropriateness of the categories (Figure 10-11).

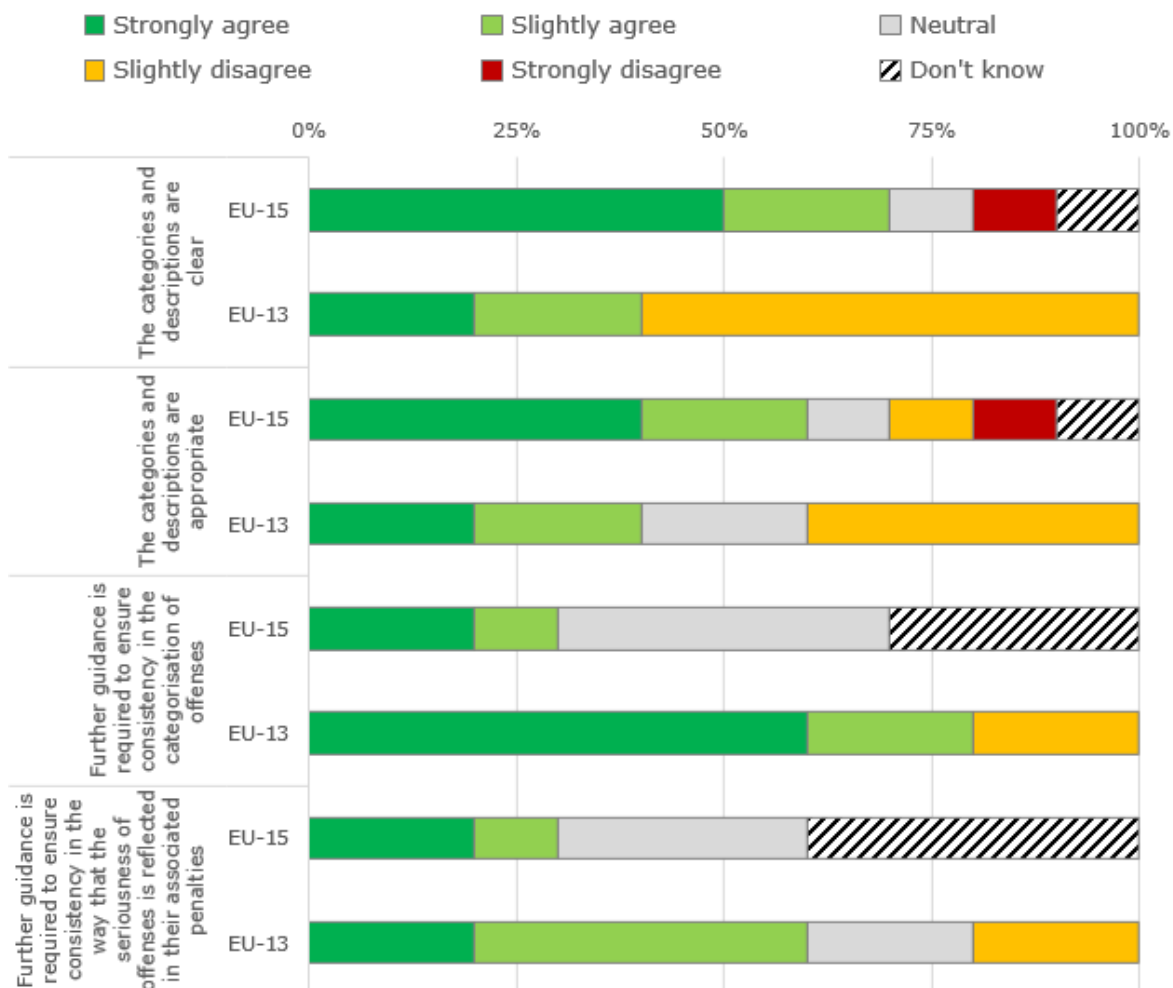
**Figure 10-11: Responses from enforcement authorities to the question: Is the way the Commission has described serious offenses and categorised the most serious offenses in Annex IV of the Regulation both clear and appropriate?**



Source: survey of enforcement authorities (N=15)

When split by EU-15 versus EU-13 responses (Figure 10-12), there appears to be more agreement that current categories and descriptions are clear/appropriate among the EU-15 respondents. Respondents calling for additional guidance included the authorities from Poland, Romania, Latvia, Bulgaria, Netherlands, Denmark and Finland.

**Figure 10-12: Responses from enforcement authorities to the question: Is the way the Commission has described serious offenses and categorised the most serious offenses in Annex IV of the Regulation both clear and appropriate?**



Source: survey of enforcement authorities (5 respondents from EU-13 and 10 from EU-15)

Respondents were asked to specify which provisions in particular are considered unclear or inappropriate. Replies received included:

- Point 1, letter b of the Annex IV of Regulation 1071/2009 – the respondent called for more guidance (Romania);
- A practical approximation of sanctions between Member States could be explored. However, this is an area that touches the penal systems of the Member States, introducing a serious element of complexity to advance the process (France);
- The drivers hours offences are ambiguous. An expired driving licence by e.g. one day is seen as a serious offence, although in national legislation this is a minor offence (Netherlands);
- There are major differences within Member States related to who in case of an offence is addressed; the driver, the transport manager, the transport company as legal entity or a combination of these actors. When the driver is addressed as defendant, ERRU is left out totally by not leaving traces in the system (Netherlands);
- The Serious Infringements of Annex 4 also must include infringement of the cabotage rules (Denmark)

When asked whether they felt the current penalty systems in their respective Member States were proportionate and dissuasive, none of the respondents responded negatively. The replies were approximately evenly split between strong agreement, slight agreement and neutral. One Irish enforcement authority interviewed for this study commented that the time delay between the detection and the subsequent appearance in court reduces the effectiveness of the penalty.

Enforcement authorities were asked whether setting up a national electronic register of road transport undertakings led to changes in the effectiveness of enforcement by facilitating better coordination of different administrative bodies within their Member State. In several countries, the register already existed and as such there was no change (France, Latvia, Denmark). Three respondents felt that the risk rating system had improved the effectiveness of checks (Luxembourg, Spain, Finland), while three felt it had improved the efficiency of checks (UK, Spain, Finland). The UK respondent noted that *"Although there has been an improvement, there is still room for significant further improvement."* The Spanish authority commented that the risk rating system is not mandatory in their view according to the Regulations.

When asked specifically about whether they could now conduct fewer checks in total due to Regulation 1071/2009 than they otherwise would have, most enforcement authorities were unable to give an answer. Several felt that they did not conduct fewer checks (Latvia, Romania, France, Finland, and Germany). Denmark felt that they did conduct fewer checks although were not able to quantify the number. The UK felt they conducted fewer checks as a result of their national targeting methodology, rather than the implementation of Regulation 1071/2009.

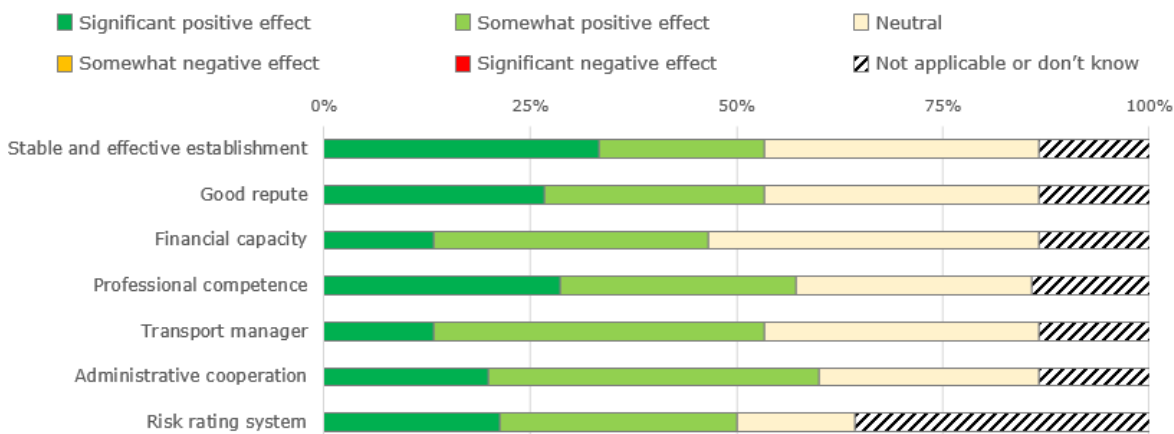
Respondents were asked how the requirements for administrative cooperation might be made more effective. The respondent from Poland reported that *"In our opinion current legislation in field of minimum requirements for administrative cooperation across borders is sufficient. It enables Member States to enhance cooperation and on the other hand ensures leeway."* Suggestions included:

- Administrative cooperation across borders will be more effective once ERRU is set up (Romania);
- By providing an unified forms for information requests (Latvia);
- The implementation term of a European control agency for road transport could be the right framework of coordinated initiatives and sharing best practices (France);
- Lack of an European Road Transport Agency and the lack of commitment in some member states to invest in European cooperation within, e.g. Euro Contrôle Route (Netherlands);
- It should be a requirement that Member States should answer the inquiries they receive from other member States. Today critical questions are not answered (Denmark);
- Through ERRU, but ERRU has informational purposes only (Spain);
- For German operating inspectors it must be allowed to perform inspections in the foreign companies with their foreign supervisory authorities (Germany).

Enforcement authorities were asked about the extent to which they felt the Regulation had achieved a positive/negative effect on compliance with road transport social legislation (i.e. the EU driving/rest/break time Regulation and the EU road transport working time Directive). Responses showed broad support for the Regulation, with around 50-60% reporting positive effects for each provision, and no authorities felt there were negative impacts (Figure 10-13).



**Figure 10-13: Responses to the question - To what extent do you think the following measures had a positive/negative effect on compliance with road transport social legislation?**



Source: survey of enforcement authorities (N=15)

Respondents were not able to quantify the effect. The enforcement authority from the Netherlands specifically commented that *"These effects, if existing, are either not known or measurable."* When asked to quantify the additional number of infringements of social legislation that had been detected as a result of Regulation 1071/2009, most respondents were unable to provide information. The respondent from Romania estimated that 58 infringements had been found, or 0.002% of the total. The respondent from Poland estimated that an additional 5% of infringements of road transport social legislation were detected.

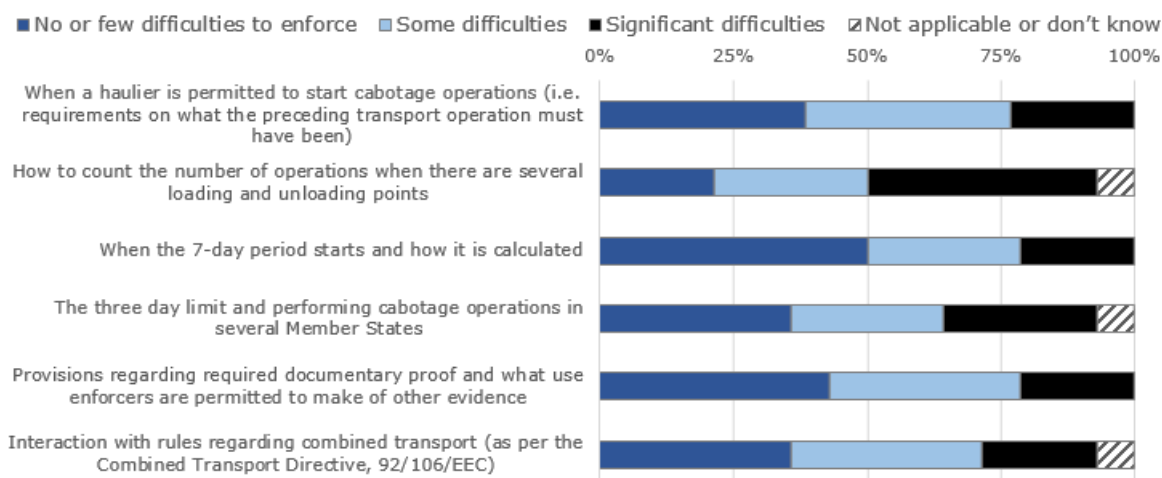
When asked about any other positive effects of the legislation. The French respondent noted that the French legislation was inspired by the 1071/2009 Regulation to strengthen and improve the conditions of access to carriers occupation resorting to light vehicles. The respondent from the Netherlands emphasised the improvements in international contacts, cooperation, improved information and harmonisation. The respondent from Luxembourg noted that now a minimum standard for professional qualification has been achieved.

Similarly, respondents were asked about any other negative impacts. The French respondent warned about the risks of excluding vehicles under 3.5 tonnes from the scope and felt that consequently, they are increasingly used for the same purposes as heavy vehicles to enter the same market. The respondent from Latvia noted that the additional information processing required extra staff.

### **10.3.2. Regulation 1072/2009**

Enforcement authorities were asked whether there were any specific difficulties with enforcement of Regulation 1072/2009 (Figure 10-14). They identified the most significant difficulties around how to count the number of operations when there are several loading and unloading points, similarly to the responses received from national ministries. The majority of respondents (between 50-60%) identified at least some difficulties with the other provisions, suggesting that overall the enforcement of Regulation 1072/2009 is more challenging than for 1071/2009. Despite this, some enforcer claimed that they faced no difficulties regarding the enforcement – the difficulties therefore appear to be highly influenced by the national situation.

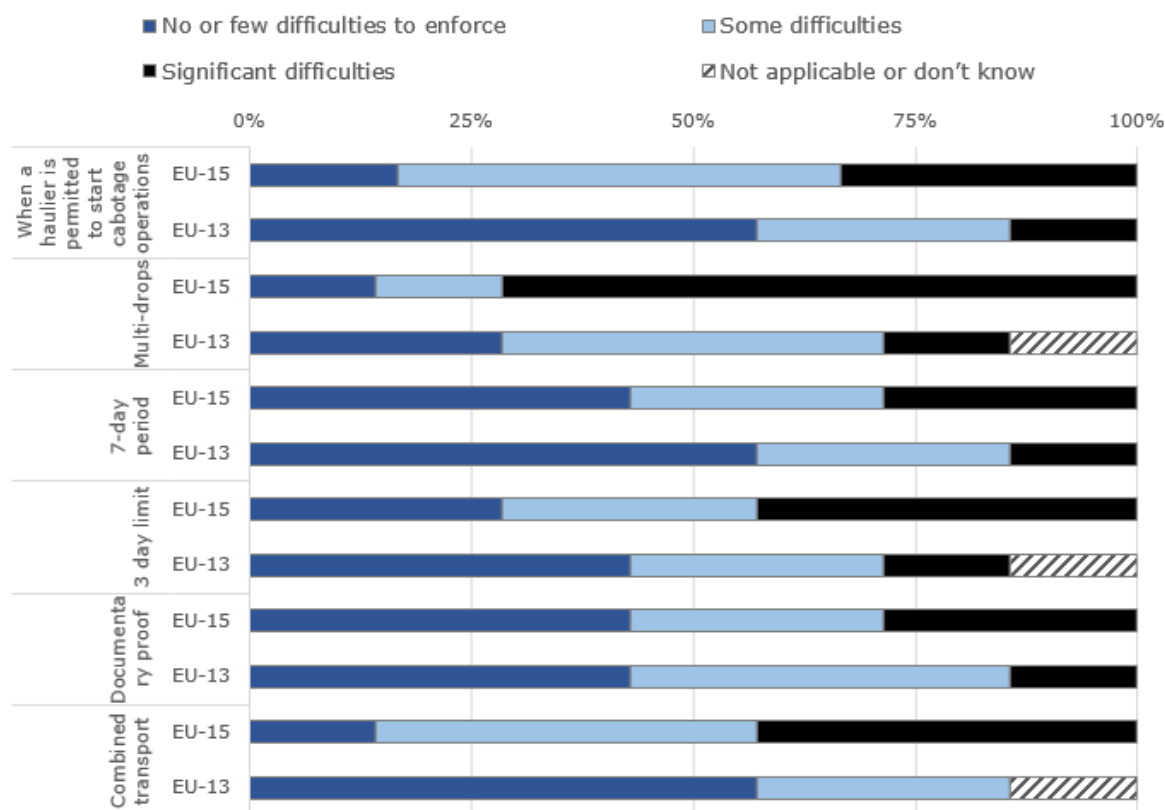
**Figure 10-14: Responses from enforcement authorities to the question: Are there any parts of the provisions in Regulation 1072/2009 that may lead to difficulties in monitoring and enforcement?**



Source: survey of enforcement authorities (N=14)

Respondents from EU-13 countries reported overall fewer difficulties in enforcement across all of the categories, with the largest discrepancy relating to the interpretation of multi-drop transit (Figure 10-15).

**Figure 10-15: Responses split by EU-15 and EU-13 respondents from enforcement authorities to the question: Are there any parts of the provisions in Regulation 1072/2009 that may lead to difficulties in monitoring and enforcement?**



Source: survey of enforcement authorities (7 respondents from EU-13 and 7 from EU-15)

Specific comments were sought in order to substantiate these responses. The respondent from Latvia noted that there were no problems with cabotage in their country. The French authority identified ambiguities with respect to certain provisions,

the differences in interpretation and the heterogeneity of controls in other Member States. They also reported that *"monitoring compliance of the period of three days is impossible to perform"* and suggested that *"the obligation to mention the time and date of loading and unloading, should be added to the evidence referred to in art. 8.3 of Regulation 1072/2009, since data are lacking for the controllers"*. They also note that *"There was conflict between standards Directive 92/106 and Regulation 1072/2009 in the beginning, but since then the interpretative notes of the French authorities as the Commission has resolved the situation and it is clear that a transaction coming within the scope of Directive 92/106 is not considered a cabotage operation. That said, other multimodal transport situations arise: it is the case of multimodal dimension to operations that do not fall within the scope of the Directive because, for example, the leg of the route taken by sea is below the threshold prescribed by the directive (Channel crossing). A need for regulatory clarification or interpretation is needed at EU level for these situations. The ECMT system prohibits cabotage: so there is no interaction between the two legal regimes."*

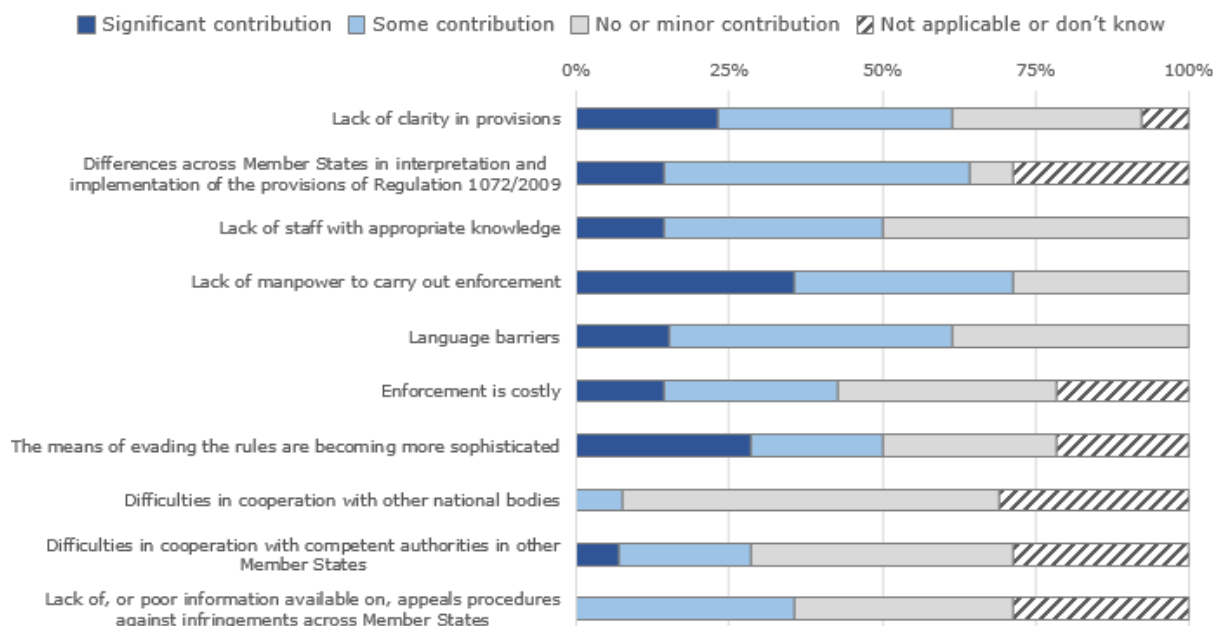
The respondent from the Netherlands highlighted that the provisions in article 8 are not clear on whether or not the driver has to produce the required documents at the roadside during a roadside check. The determination of the date and the place of entry in NL is also considered a problem, as well as the number of journeys in relation to loading and unloading in the Member State. Finally, the respondent noted issues with the CMR transport documents and the other required administration, in order to determine the number of cabotage trips in the member state.

The respondent from Ireland also pointed out ambiguity as to whether an operator is permitted to produce documentation to show compliance with cabotage rules after a roadside check. The national enforcement practice is that such documentation must be presented to the inspecting officer at the time of the roadside check and not after the event. Non-standard forms and documentation leave the regime open to fraudulent activity by unscrupulous operators.

The contributing factors to any difficulties in enforcement were similar to those listed for Regulation 1071/2009, with lack of manpower and staff with appropriate knowledge identified as leading factors. This similarity in contributing factors is to be expected since checks of both Regulations are often carried out at the same time.

The lack of clarity in provisions, differing interpretations across Member States and increasingly sophisticated means of evading detection were identified as more important factors for Regulation 1072/2009, as well as difficulties in cross-border cooperation (Figure 10-16).

**Figure 10-16: Responses from enforcement authorities to the question: What are the main reasons that contribute to difficulties in enforcement of Regulation 1072/2009?**



Source: survey of enforcement authorities (N=13)

Overall, EU-15 respondents highlighted several categories as making a more significant contribution to difficulties in enforcement, including: lack of clarity in the provisions, differences in interpretation of the provisions, cost of enforcement, increasingly sophisticated means of evading the rules. Conversely, EU-13 respondents reported a lack of staff with adequate knowledge and lack of manpower as being more significant factors compared to EU-15 respondents. Overall, the profile of responses was not widely differentiated – lack of manpower, differing interpretations and a lack of clarity in the provisions were highlighted as the most major issues in both groups, with EU-13 respondents reporting additional major issues (more than half reporting at least some contribution to problems) concerning language barriers.

**Table 10-4: Responses split by EU-13 versus EU-15 Member States**

		Significant contribution	Some contribution	No or minor contribution	Not applicable or don't know
Lack of clarity in provisions	EU-15	33%	50%	17%	0%
	EU-13	17%	33%	33%	17%
Differences across Member States in interpretation and/or implementation of the provisions of Regulation 1072/2009	EU-15	14%	57%	14%	14%
	EU-13	0%	50%	0%	50%
Lack of staff with appropriate knowledge	EU-15	0%	43%	57%	0%
	EU-13	33%	17%	50%	0%
Lack of manpower to carry out enforcement	EU-15	29%	43%	29%	0%
	EU-13	50%	17%	33%	0%
Language barriers	EU-15	17%	33%	50%	0%
	EU-13	17%	50%	33%	0%
Enforcement is costly	EU-15	29%	14%	29%	29%

		Significant contribution	Some contribution	No or minor contribution	Not applicable or don't know
	EU-13	0%	33%	50%	17%
The means of evading the rules are becoming more sophisticated	EU-15	43%	14%	14%	29%
	EU-13	17%	33%	50%	0%
Difficulties in cooperation with other national bodies	EU-15	0%	17%	33%	50%
	EU-13	0%	0%	83%	17%
Difficulties in cooperation with competent authorities in other Member States	EU-15	14%	14%	57%	14%
	EU-13	0%	33%	17%	50%
Lack of, or poor information available on, appeals procedures against infringements across Member States	EU-15	0%	43%	29%	29%
	EU-13	0%	33%	33%	33%

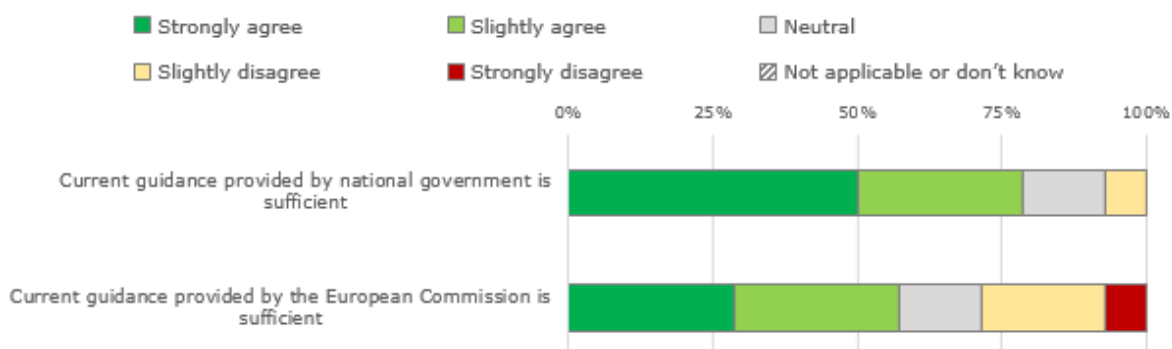
Source: survey of enforcement authorities (6 respondents from EU-13 and 7 from EU-15)

With the limited resources available, the Irish enforcement authorities report that their priorities have to remain with driving time rules and tachograph regulations, from the perspective of road safety.

Concerning a move to electronic consignment notes and tracking of vehicle movements using GNSS (Global Navigation Satellite System), enforcement authorities were split over whether this would improve the effectiveness of enforcement. Two strongly agreed that this would be an effective solution (Slovenia, Germany), on the basis that it would help to avoid manipulation of records. Three respondents were neutral (Czech Republic, Ireland, UK), noting that greater harmonisation through shared training/exchanges would provide enforcers with real life experience of best practice and is probably more likely to improve enforcement rather than using technology such as GNSS. Several authorities (France, Netherlands, and Austria) also pointed to difficulties related to data protection and the fact that extensive tracking of vehicles should not be an objective of the Regulation.

Around half of respondents strongly agreed that guidance on the interpretation of Regulation 1072/2009 provided by their national government was sufficient (Figure 10-17), whereas only 29% strongly agreed that EC guidance was sufficient. Furthermore, while only 7% slightly disagreed that national guidance was sufficient, this increased to 21% when considering EC guidance. When asked to specify the areas that needed further guidance, respondents identified: multi-drops (Poland, Ireland), documentation issues (Poland, France, and Ireland), the 7-day period (Poland); combined transport (Netherlands, Ireland)

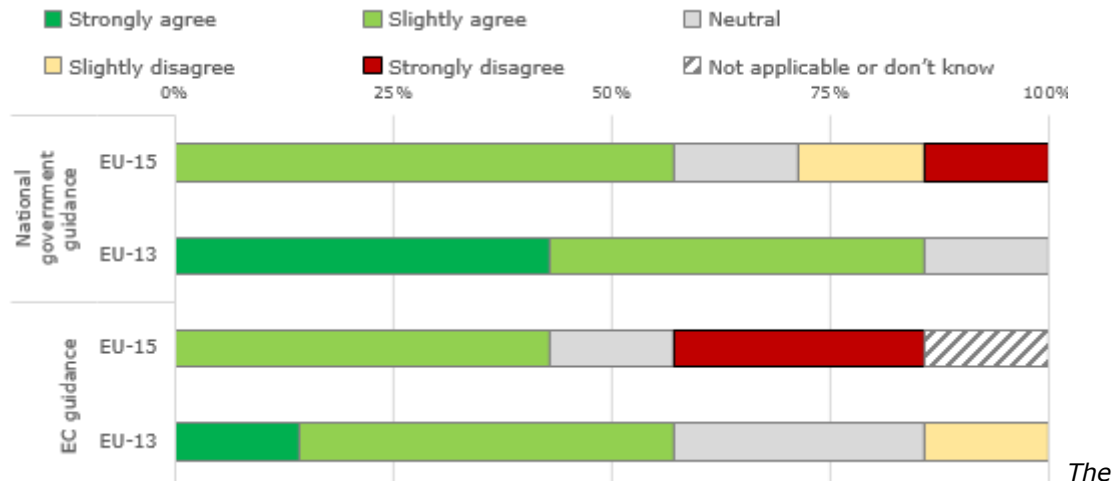
**Figure 10-17: Responses to the question: Do you feel the guidance you have received on the interpretation of Regulation 1072/2009 is sufficient?**



Source: Survey of enforcement authorities (N=14)

A breakdown of responses by EU-15 versus EU-13 (Figure 10-18) reveals that there are higher levels of agreement that current guidance issued by national governments and the EC among the EU-13 Member States is sufficient, whereas more EU-15 Member States disagree that the guidance is sufficient.

**Figure 10-18 Responses to the question: Do you feel the guidance you have received on the interpretation of Regulation 1072/2009 is sufficient?**

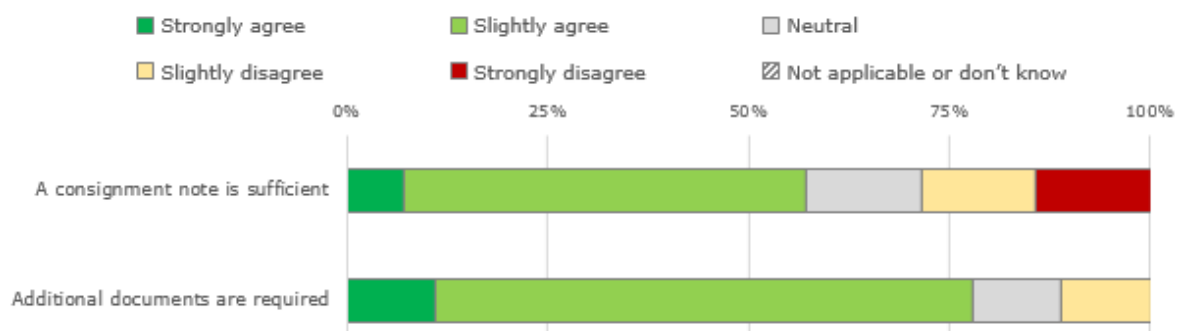


Source: survey of enforcement authorities (7 respondents from EU-13 and 7 from EU-15)

The French authority elaborated Regulation 1072/2009 provides for mandatory documentation for verification of prior international transport cabotage, but says nothing about the cabotage operations themselves. Authorities should be able to request additional information, including on the date and precise time management and delivery of goods in order to ensure effective controls, and to the count of the number of cabotage operations.

Concerning the adequacy of the consignment note as a means of enforcement in more detail, most respondents slightly agreed that a consignment note is sufficient, and at the same time agreed that additional documents are required (Figure 10-19). This apparent inconsistency is resolved when looking at the responses split by EU-13 and EU-15 (see below).

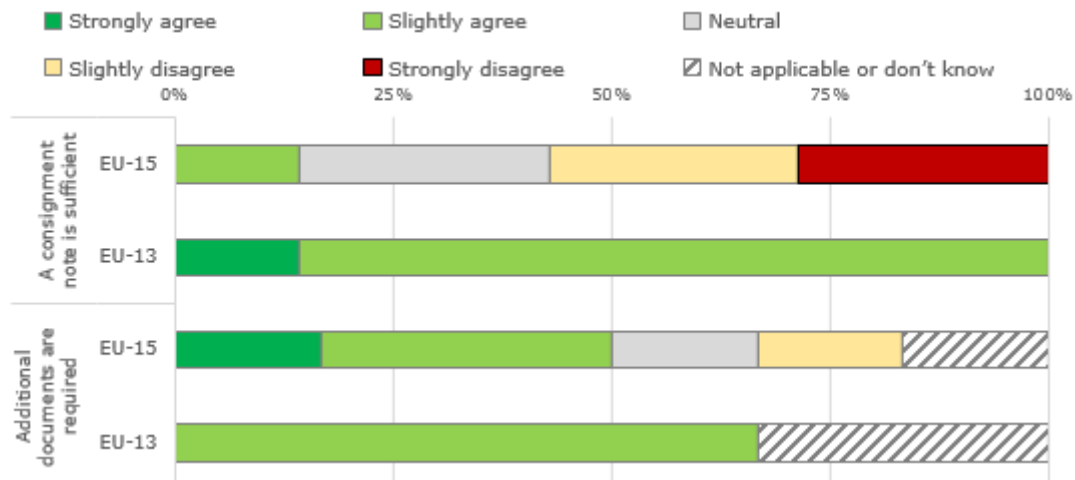
**Figure 10-19: Responses to the question: Is a consignment note sufficient for proving lawful cabotage, or are additional cabotage documents required?**



Source: Survey of enforcement authorities (N=14)

EU-13 respondents show greater agreement that the consignment note is sufficient, whereas the respondents that disagreed were from EU-15 Member States (Figure 10-20).

**Figure 10-20: Responses to the question: Is a consignment note sufficient for proving lawful cabotage, or are additional cabotage documents required?**



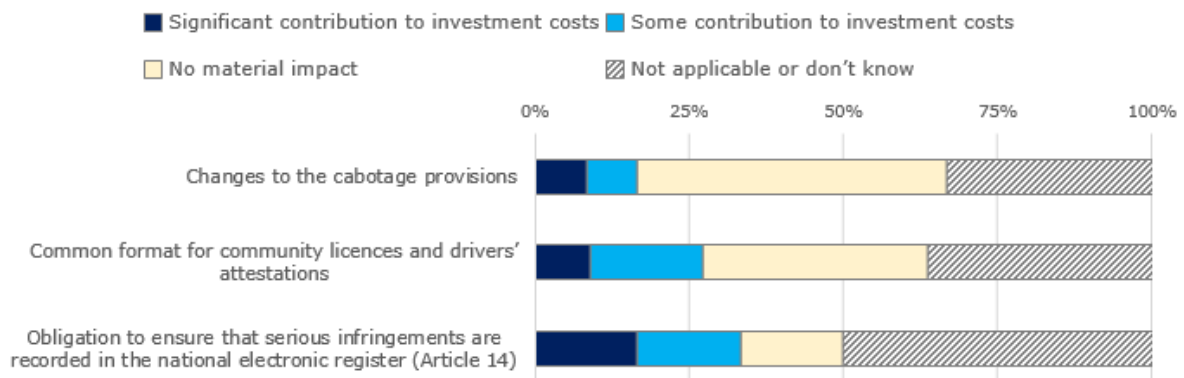
Source: survey of enforcement authorities (7 respondents from EU-13 and 7 from EU-15)

Suggestions for additional documentation included: Tachograph records (Romania, Ireland, Czech Republic); Records of time and date of loading and unloading (France); ferry tickets/fuel receipts/accommodation/drivers diary (Ireland).

Enforcement authorities were asked to estimate the implementation costs incurred as a result of Regulation 1072/2009. The majority were unable to provide data. Only Slovenia estimated a modest increase of €10,000. The respondent from Bulgaria noted "a slight increase in the administrative costs for our control authorities." The respondent from the UK thought there had been no implementation costs, whereas the respondent from the Netherlands felt that there had been a need for five additional staff.

When asked to qualitatively rate the factors that contributed to implementation costs, a high number of respondents reported that they did not know or the costs were not applicable (Figure 10-21). Overall, the implementation costs appear to have been modest.

**Figure 10-21: Responses to the question: Which provisions were the one-off (implementation) costs attributable to?**

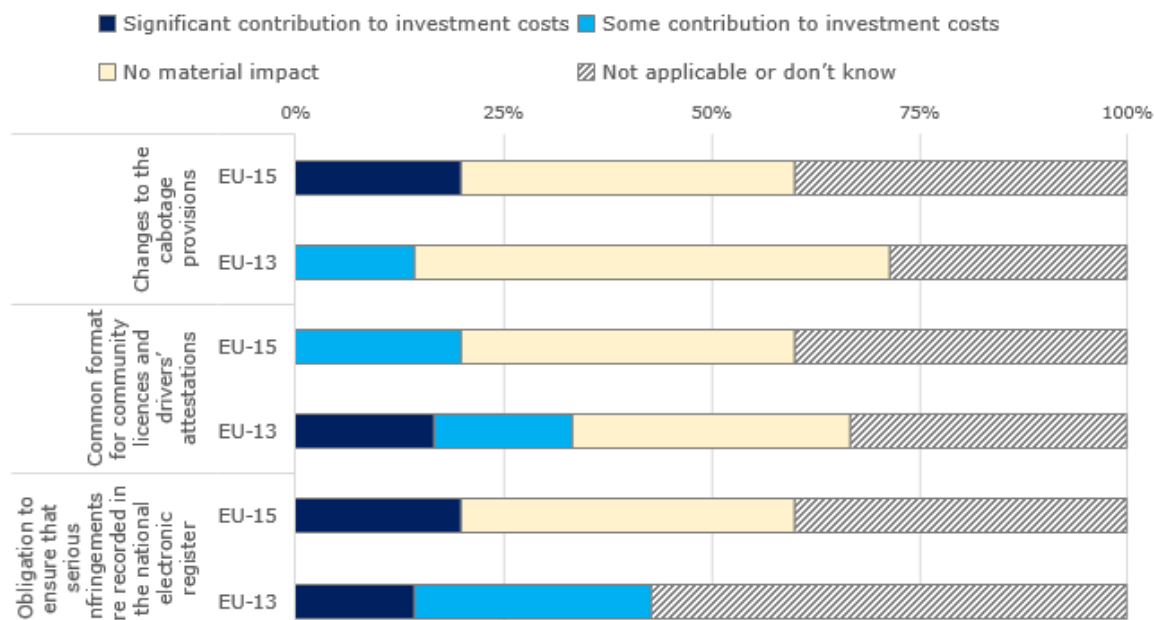


Source: survey of enforcement authorities (N=12)

Overall, both EU-13 and EU-15 groups reported relatively modest / no material impacts for the changes to cabotage provisions and common formats for licence documents and driver attestations, with only Poland and the Netherlands reported any contribution and the remaining respondents identifying no material impact or that they did not know (Figure 10-22). Concerning the obligation to ensure that serious infringements are

recorded in the national register, the respondents from Poland and the Netherlands reported significant contributions (these show as different percentages because of the different number of respondents in each group), whereas Slovenia and Bulgaria also identified some contribution in the EU-13 group.

**Figure 10-22: Responses to the question: Which provisions were the one-off (implementation) costs attributable to?**



Source: survey of enforcement authorities (7 respondents from EU-13 and 5 from EU-15)

Authorities were asked to estimate the amount of time needed to conduct checks of the provisions. The responses received are shown below. 21% of respondents reported that checks were significantly faster now, 29% felt they were somewhat faster, and the remaining 50% felt that there had been no material change. All of the respondents from EU-15 countries reported no material change, whereas of the EU-13 Member States, 38% reported that checks were "significantly faster" and 50% responded that checks were "somewhat faster".

**Table 10-5: Time taken to conduct checks**

Member State	Changes to the cabotage provisions	Common format for community licences and drivers' attestations
Czech Republic	20 min. max.	5 min. max.
Poland	Average timespan of roadside check with infringements found out is around 45 minutes. As for roadside check without infringements detected this period is reduced to around 30 minutes.	No data
Romania	1/2 hours	10 minutes
Slovenia	25 minutes	15 minutes
Latvia	30 min - 1h	30 min - 1h
Bulgaria	Don't know	10 minutes
France	Between 30 minutes and 2 hours depending on whether the documents are in rules or not	Between 30 minutes and 2 hours depending on whether the documents are in rules or not
Netherlands	1 hr / inspection	N/A
Austria	30 minutes	30 minutes



Member State	Changes to the cabotage provisions	Common format for community licences and drivers' attestations
Ireland	30 minutes	Don't know

When asked about the effect of Regulation 1072/2009 on ongoing annual costs, all respondents except the Netherlands reported that there had either been no material impact or they did not know. The respondent from the Netherlands indicated that five additional full-time staff had been required due to political and public pressure, resulting from public order and safety issues.

Finally, respondents were asked whether performing checks on cabotage more efficient/effective now, with the implementation of Regulation 1072/2009, compared to the situation before the legislation. Around half of respondents felt that the effectiveness had improved (Czech Republic, Poland, Slovenia, France, UK, Spain), whereas the remainder reported that there had either been no material impact (Germany, Romania, Austria) or they did not know (Latvia, Bulgaria, Netherlands, Ireland). Three respondents felt that checks were more efficient (Slovenia, France, Spain), and the remainder reported that there had either been no material impact (Romania, Austria, UK, Germany) or they did not know (Czech Republic, Latvia, Bulgaria, Netherlands, Ireland). No respondents felt that checks were less effective or efficient.

When asked how the costs of the Regulation could be reduced, suggestions were received concerning: clarification of the provisions (Romania); a move to electronic forms (Romania, France, Netherlands); a common database of issued licenses of all countries (Slovenia); Uniform system for risk assessment (Slovenia).

#### **10.4. Undertakings consultation**

Undertakings were invited to respond to a confidential survey via national associations. This survey aimed to evaluate how well the Regulations are working and the impacts on transport undertakings. Table 10-6 provides an overview of the number of associations contacted in order to request their participation in the study.

**Table 10-6: Overview of organisations contacted in order to distribute undertakings survey**

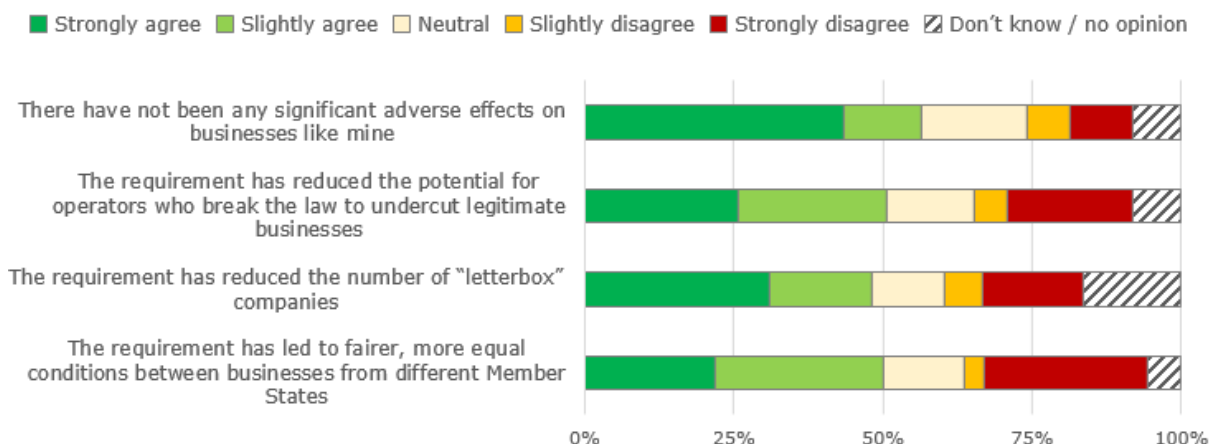
Distribution of undertakings survey		Contacted	Confirmed
Case study countries	DE	4	2
	DK	4	2
	ES	7	3
	PL	4	3
	RO	4	2
All other Member States		75	11

#### **10.4.1. Regulation 1071/2009**

##### **10.4.1.1. Stable and effective establishment**

Respondents were asked about the impacts of the requirement of stable and effective establishment (Figure 10-23). Most respondents (56%) strongly or slightly agreed that there had not been any significant adverse effects on them. Respondents from Germany and Denmark were more likely to strongly *disagree* that the requirement had led to fair competition and/or a reduction in letterbox companies.

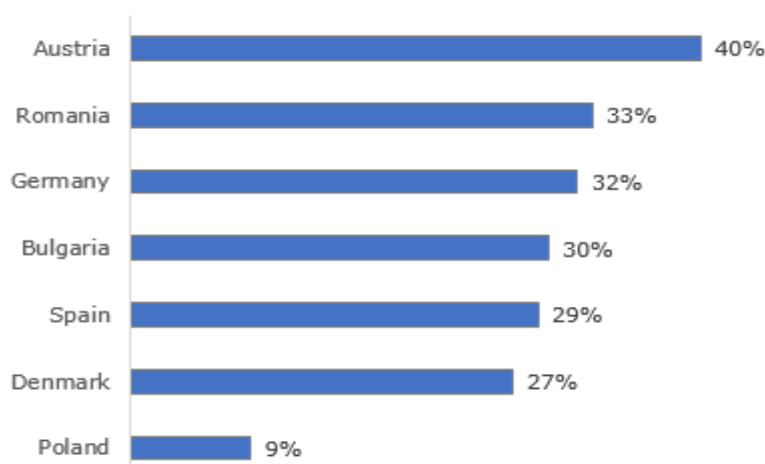
**Figure 10-23: To what extent do you agree that the introduction of the requirement for “effective and stable” establishment has had the following effects?**



Comments offered on the types of negative impacts that had resulted mainly referred to the adverse effects of letterbox companies on legitimate businesses arising from increased pressure on prices and loss of business. It was further posited that the additional administrative costs of the legislation would be justified if the intended market impacts had been achieved, but letterbox companies still exist. Some stakeholders indicated that their labour costs had been affected by the requirement, with estimated increases ranging from 5% to 30%, whereas others reported that there had been no impact on labour costs.

Respondents were asked to estimate the cost advantage of letterbox companies compare to a company that fully complies with the transport rules. The highest estimates were from Austrian respondents, who predicted an advantage of 40%, whereas respondents from Poland only estimated a 9% advantage. The median estimate was 17.5%, which indicates a positive skew in the results (i.e. a relatively smaller number of estimates of very large cost advantages are pulling the mean upward).

**Figure 10-24: Estimated cost advantage of letterbox companies compared to a company that fully complies with road transport rules (weighted average)**



Wages of drivers, taxes and social contributions were all identified as significant factors contributing to this overall cost advantage. Wages were particularly strongly identified by respondents from Denmark and Germany, where wages are among the highest in Europe.

Around half of the respondents reported that they had never been checked for stable and effective establishment. Of the 84 respondents who had been checked, 48% strongly or slightly agreed that the checks would be sufficient to detect letterbox

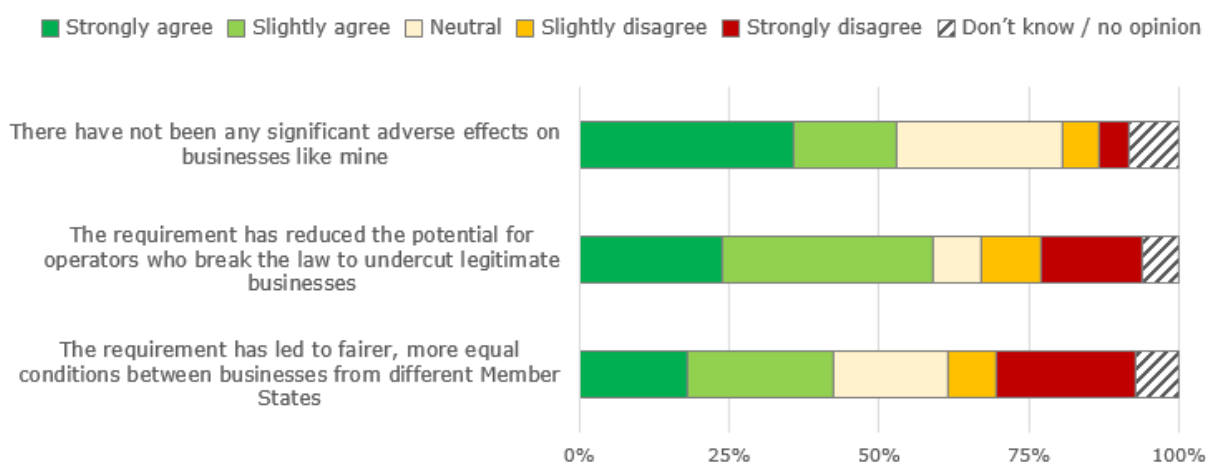
companies (the weakest support was in Poland, where none of the respondents felt that checks were sufficient). This suggests that in most countries the existing checks are considered thorough enough by many undertakings, but the level of enforcement is inconsistent. Several respondents called for more thorough checks, and claimed that current controls were too cursory. Furthermore, the level of undertakings that have not been checked suggests that Member States are not meeting the requirement to check stable and effective establishment before granting access to the profession, although these physical checks may be conducted on a risk-based prioritisation.

Overall, 78% of respondents felt that there was still a need for requirements on stable and effective establishment. The main reasons given for this continuing need were due to the need to ensure a level playing field.

#### 10.4.1.2. Good reputation

Out of all the core requirements of Regulation 1071/2009, good reputation was viewed by undertakings as having the strongest positive effect in terms of reducing the potential for operators who break the law to undercut legitimate businesses (59% strongly or slightly agree).

**Figure 10-25: To what extent do you agree that the requirement for good reputation has had the following effects?**

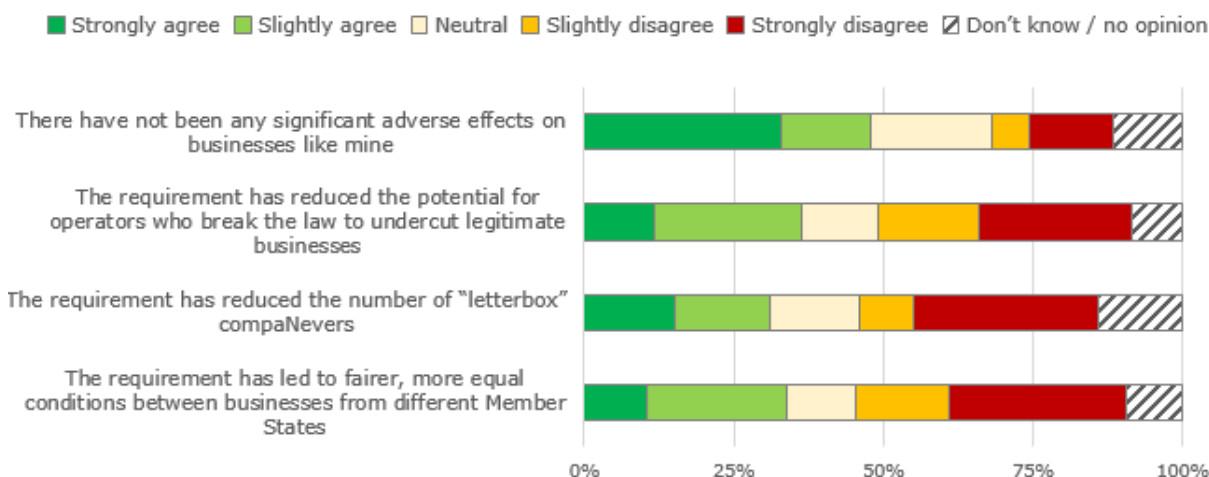


The main issues with this part of the legislation were highlighted as being the different treatment across Member States – several undertakings felt that the legislation was not equally controlled and sanctioned in all Member States.

#### 10.4.1.3. Financial standing

The responses on the issue of financial standing indicated that around half (48%) undertakings slightly or strongly agree that there were no significant adverse impacts on them. Views on whether the requirement of financial standing had helped to achieve its market objectives were mixed, with much weaker support for positive impacts (around one-third slightly or strongly agreeing) than for the requirement of good reputation and stable and effective establishment (around 40-60% of respondents slightly or strongly agreeing).

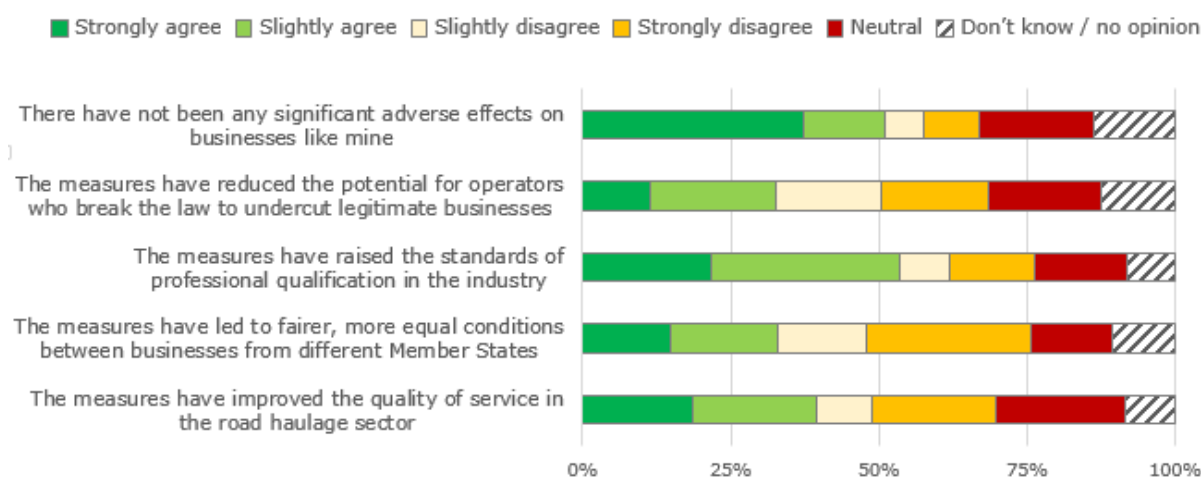
**Figure 10-26: To what extent do you agree that the requirement for appropriate financial standing has had the following effects?**



**10.4.1.4. Professional competence**

The majority of undertakings felt that the requirement for professional competence had not impacted them adversely (51% of respondents slightly or strongly agree), although it was also not viewed as being completely effective in achieving its objectives. Overall, the views were broadly positive (Figure 10-27).

**Figure 10-27: To what extent do you agree that standards for professional qualification of transport managers have had the following effects?**



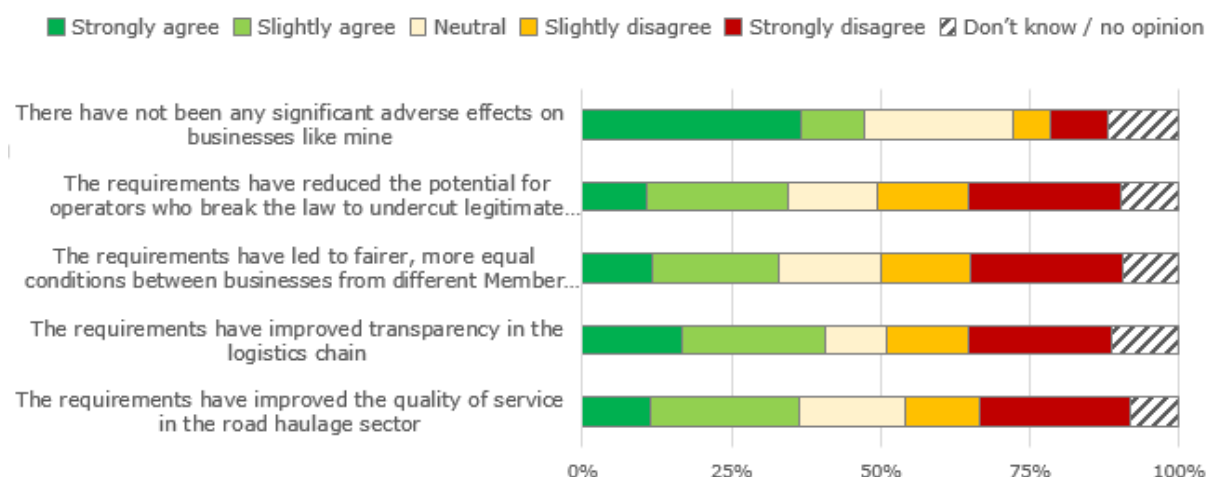
Many of the respondents who voiced strongly negative answers were from Austria (40%). In the view of these respondents, the approach across countries is not harmonised. Two Austrian respondents felt that the procedures in their country were overly bureaucratic, which penalises undertakings in Austria.

**10.4.1.5. Transport manager**

The requirement for a designated transport manager received broadly neutral responses overall (Figure 10-28), with a relatively higher share of strongly negative views compared to any of the other requirements. The responses indicate a more negative response from self-employed respondents, as well as companies with 50-100 employees (possibly due to the cut-off point in the Regulation that refers to an external manager being permitted to handle only up to 50 vehicles).

**Figure 10-28: To what extent do you agree that the introduction of requirements surrounding the good repute of transport managers, and the**

**requirement for operators to have a designated 'transport manager', have had the following effects?**



Respondents from Romania were overall more positive about the impacts of this provision, which may also need to be considered in light of the additional provisions in national law that restricts a transport manager to a single company (as opposed to a maximum of four). Nevertheless, one Romanian respondent pointed out that a transport manager may still not have a decision-making role – for example a small company may still be led by the business owner.

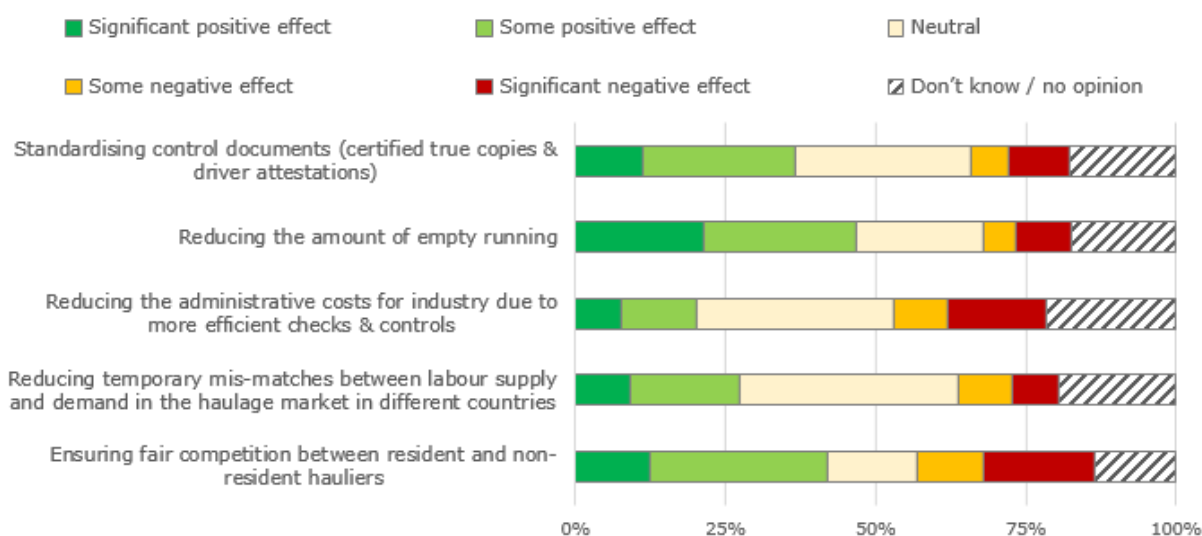
The main issue reported was the potential to install false transport managers or front men, which reduces the effectiveness of this requirement.

**10.4.2. Regulation 1072/2009**

**10.4.2.1. Rules on cabotage**

The majority of undertakings participating in the survey (65%) reported that cabotage activates accounted for less than 1% of their deliveries. Most of the remaining respondents reported that cabotage accounted from less than 20% of their deliveries. Only two companies reported that cabotage accounted for 80% of more of their deliveries, but both indicated that it accounted for less than 1% of their revenue – it is not clear what the underlying reason for this is, but the discrepancy suggests there was a response error since the share of cabotage operations and revenue showed a very close correspondence in all other responses.

Almost half of respondents felt that the cabotage rules had resulted in reduced empty running to at least some extent. The effects on other aspects were on balance considered slightly positive, which indicates the overall impacts are probably positive overall, but rather diffuse and with some stakeholders negatively impacted.

**Figure 10-29: What impacts do the current requirements on cabotage have on road haulage in the European market?**

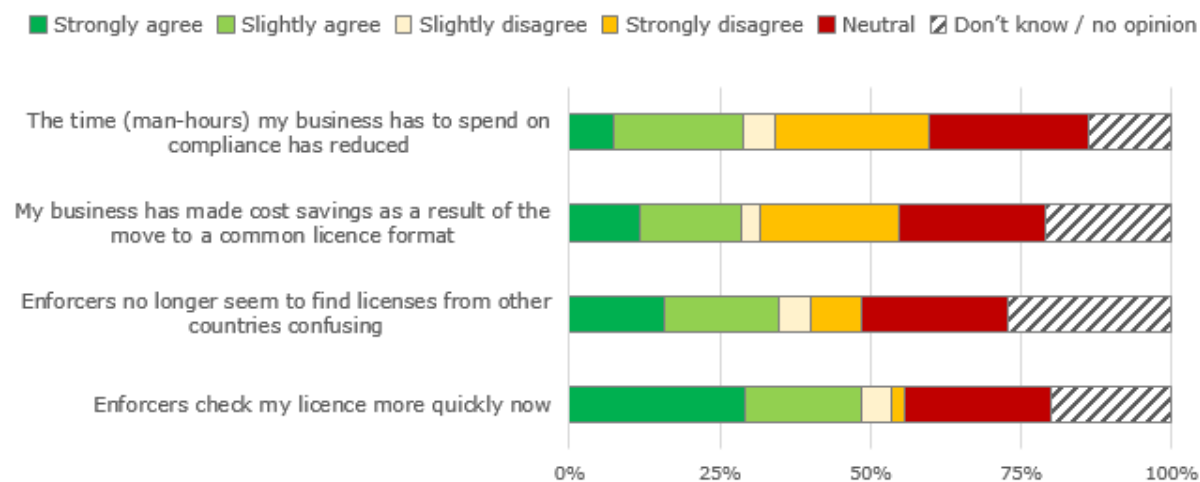
There was no clear-cut split between Eastern and Western European respondents on these issues, as might be expected. Representatives from both Eastern and Western European countries, and respondents from within the same country, gave both positive and negative answers on all aspects. Since the sample of undertakings did not include many companies with a high reliance on cabotage, this may have influenced the answers.

Comments received on the effectiveness of the cabotage rules identified the lack of effective controls as the major issue. Based on their own experience, around 65% of undertakings consider that checks of cabotage (when they do take place) are adequate to detect companies that break the rules. The main problems contributing to difficulties in demonstrating compliance with the rules were identified as being language barriers – i.e. enforcement officers being unable to interpret the requirement documents. In second place, problems of drivers losing or misplacing the documents were cited.

#### **10.4.2.2. Control documents**

Undertakings were asked about whether the introduction of more harmonised control documents had resulted in any specific efficiencies. The most positive responses were related to the time taken for enforcers to check licences (48% of respondents strongly or slightly agreed that time taken had reduced), whereas more mixed responses were received on other elements (Figure 10-30). Most of the strong disagreement was from German respondents (50%).

**Figure 10-30: Based on your experience of having Community Licences or driver attestations checked while in another country, to what extent do you agree with the following statements?**



### 10.5. High level consultation

The high level survey and interviews aimed to capture responses from stakeholders for which there is not a targeted survey. It was mainly targeted at associations and trade unions (national and European) who have a high-level overview of the impacts of the Regulations.

The high level survey was answered by a total of 37 organisations, mainly associations of transport operators (14) and trade unions (12), with a small number of NGOs and other types of association. There were nine responses from stakeholders based in the EU-12, eight responses from EU-level organisations, and the remaining respondents were from the EU-15 (20).

The following sections provide a summary of the responses. A number of trade unions and associations of transport operators submitted coordinated responses between themselves. Since it is not possible to correct for the effect of respondents submitting joint responses or not, a numerical analysis of the results is not appropriate and is therefore not included.

While the high level survey was not intended to be a representative sample, it does provide a collation of relevant views on the functioning of the Regulations. Rather, the objective of this survey and the supporting interviews was to gain high level indications of the main problems and positive impacts, in order to guide and feed into further research.

#### 10.5.1. Relevance

Stakeholders responding to the high level survey were asked about the extent to which certain problems still affected the road haulage sector today, which is an aspect that is important to assess the relevance of the Regulations.

**Responses to the high level survey cannot be directly interpreted numerically (due to the submission of coordinated responses, not all of which were clearly identified as such).** However, strong agreement in the results is still indicative of areas that are likely to be agreed upon more generally among the stakeholders groups. The main issues identified by 100% of respondents as a *significant issue* for the road haulage sector were:

- Illegal practices of letterbox companies;
- Lack of enforcement capabilities to enforce the provisions of the Regulations.

Other issues identified as significant problems by a majority (more than half) of respondents were:

- Unclear definition and control of temporary cabotage (identified by around half of industry associations);
- Uneven approaches to monitoring of compliance between different Member States (identified by trade unions in their joint response and around half of industry associations);
- Lack of provisions on administrative cooperation between Member States identified by trade unions in their joint response and around one-third of industry associations);
- Illegal practices of letterbox companies (companies without stable and effective establishment) (identified by trade unions);
- Lack of enforcement capacities to enforce the provisions of the two Regulations (identified by trade unions).

Relating to the core requirements of the Regulations, fewer respondents felt that these were still an issue (i.e. the requirement to demonstrate stable and effective establishment, non-comparability of certificates of professional competence, non-comparability of certificates of financial capability between Member States, lack of a clear link between the transport manager and the undertaking, common formats for control documents). Nevertheless, at least some respondents (industry associations) still felt that these requirements were still not being met, indicating that the Regulations have not been entirely effective and these areas are still relevant problems for the sector today.

Comments received from participants were typically as part of a coordinated response. Trade unions felt that the definition of cabotage is clear, but rather it is control of cabotage that is an issue due to lack of enforcement capacities and lack of political will from the legislators. They suggest:

- Mandatory regular automatic recording of vehicle location (geo-positioning). The access and the safe storage of this data will be possible with the new 'smart' tachograph, but only new vehicles will be equipped. Hence, they recommend retrofitting of all vehicle fleets;
- Pre-notification of each cabotage operation should be introduced, by which hauliers would inform a designated Member State service of each cabotage operation prior to carrying it out;
- Illegal cabotage must be part of the list of categorisation of infringements leading to the loss of good repute.

The trade unions report an increase in letter box companies in recent years, noting that the host Member States are less inclined to control compliance with the provisions of Regulation 1071/2009. They feel that the lack of administrative cooperation is rather a matter of will of the Member States than a matter of legal 'provisions'. Concerning social and labour conditions, they consider the "illegal practices of letter box companies" as the biggest problem for the sector. These practices have created considerable distortions in the EU labour market and on domestic labour markets of a number of Member States. They also mention that professional drivers subject to these schemes are mostly employed on individual labour contracts written in a language other than their own. Community rules such as the Posting of workers directives (Directive 96/71/EC, Directive 2014/67/EU) and the Rome I regulation (Regulation EC No 593/2008) have never been enforced in road transport although they do cover the sector. An effective enforcement of the three EU legal acts would address to a fair extent the above described situation.

The trade unions consider that the lack of enforcement capacities is the second most critical problem of the sector. This has been regarded in conjunction with: Lack of clear,



EU-wide, uniformly introduced enforcement measures; Lack of access - by enforcement and control authorities - to data that enables thorough enforcement and controls: plenty of data is in possession of hauliers (i.e. exact location of vehicles during the entire journey) or Member States (i.e. minimum requirements for the data to be entered in the national electronic registers) but is not available to enforcement authorities; and finally, delays in the full implementation and functioning of the ERRU system (due by December 2011, thus delayed by 4 years).

Some industry associations also submitted a coordinated response. They felt that the legislation leaves a lot of uncertainty and lack of clarity: *"lack of certainty that cabotage is a temporary activity; no clear rule on when provision of a service need to lead to establishment; no clear rules on applicable labour market rules; no clarity on link between this Regulation and the Directive on combined transport. Also serious delays in the implementation of the ERRU and the categorisation of infringements causes concerns. As regards the categorisation of infringements it will have to be considered to cover all relevant infringements, including - as requested by European Parliament - the infringements linked to cabotage issues"*

Another industry association highlighted concerns over insufficient enforcement on stable and effective establishment in the Member States where letterbox companies are set up. They reports that differences in interpretation and implementation of provisions are leading to the application of double standards (i.e. interpretation by MS of the word "penalty" in art 6 of 1071/09 leading to different application of provision by MS and consequent impact on the good repute of companies). They also point out that many MS are not yet connected to ERRU and until the end of 2015 only the most serious infringements from annex IV have to be taken into account. Another problem dealing with good repute: the different approach in the MS on liability. They recount that in some MS the employer is held responsible for mistakes/infringements of his drivers while in other MS this is not the case with the consequent difference in the convictions, penalties and fines imposed on the employer or company and the application of double standards within the EU.

Finally, an industry association pointed out specific areas of the legislation that lack clarity, namely:

- Articles 8 and 9 Regulation 1072/2009:
  - When the 7 day period starts
  - How to count several loading points possible
  - Which documents on board should be treated as a proof of cabotage?
- Recital 17 Reg. 1072/2009 – whether posting of workers applies to cabotage
- Whether road transport in Combined Transport a cabotage or not. The initial and/or final leg of the transport is not to be considered as cabotage but as part of combined transport. Are these transports part of Combined Transport or are to be considered as cabotage? Member States also differ in their opinion on whether combined transport is a 1 leg or a 2 leg operation.

Factors that have affected the road haulage market other than the Regulations were given by industry associations as follows:

- The impact of the economic crisis. Pre-existing differences in competition were exacerbated since the crisis that started in 2008-2009.
- Increased competition from operators registered in third countries, which are not sufficiently controlled for compliance with the provisions of the bilateral agreements;
- The issue of shared liability of the shippers and forwarders and the increase in subcontracting. The result of this development is that the real responsibility for a road transport operation can be far removed from the haulier/driver actually

doing the transport. The different approaches across Member States on liability was also highlighted. In some Member States the employer is held responsible for infringements committed by his drivers while in other Member States this is not the case;

- Shortage of qualified professional drivers;
- The lack of alignment in interpretation, implementation, application and enforcement of other road transport legislation, such as those relating to driving and rest times rules, use of tachographs, posting of workers, weights and dimensions of vehicles

Trade unions commented on delays in implementation of ERRU and a lack of controls leading to an increase in letterbox companies. The current needs of the haulage sector were identified by trade unions as:

- To start operating on the basis of the fair price of a transport operation. This would be a price which reflects the full compliance with the social, economic and environmental Community rules applicable to road transport;
- To cease practicing social fraud and dumping;
- To solve the unfair competition between hauliers on basis of social and labour costs, that deeply affects the sector;
- Significantly better enforcement capacities and resources.

Industry associations identified the critical needs as:

- Unfair competition;
- The challenge of insufficient priority for fair and efficient enforcement in the different Member States;
- The increased competition of operators registered in third countries, which are not sufficiently controlled for compliance with the provisions of the bilateral agreements
- The lack of alignment in interpretation, implementation, application and enforcement of the rules as those relating to driving and rest times rules, use of tachographs, posting of workers, weights and dimensions of vehicles which leads individual Member States to take unilateral actions with a negative impact on the functioning of the Single Market;
- The lack of a centralised, single information source about the specific national requirements in a working language (preferably English)
- The issue of shared liability of the shippers and forwarders;
- Qualified professional drivers shortage and difficulties of recruiting a new generation of drivers.
- Hauliers are not free to carry out transport operations freely, which can force them to travel with empty vehicles, or stop them from loading their vehicles in an optimal way, which creates efficiency losses. This is a constraint to the overall efficiency of the road haulage and logistics sector in the EU.
- There is a need to look into possible regulation of vehicles less than 3.5 t as there seems to be growing circumvention of existing EU legal framework by using vehicles below 3.5 t outside scope.

Concerning the scope of the rules, respondents were asked whether they felt that any changes to the scope or measures of the Regulations were needed in order to ensure that they still target the needs of the sector. Trade unions responded that "*The Regulations provide a fair set of rules. What the sector needs is better enforcement and clear enforcement measures of these rules.*" Industry associations identified a need for

more cooperation between Member States. Responses among the associations were split between those that called for cabotage as a temporary activity to be clarified and limited, especially until social and working conditions are harmonised (largely respondents from Western Europe and transport operators' associations), versus those that supported the completion of the internal market and lifting of cabotage restrictions (largely respondents from Eastern Europe and logistics/freight forwarder associations).

#### **10.5.2. Regulation 1071/2009**

Trade unions reported that expanding letterbox companies enabling companies to circumvent their labour and social obligations, while making it difficult to track down and hold responsible the real employer in cases such as unpaid wages, unemployment benefit or healthcare benefits. Although non-compliance is not solely restricted to letterbox companies, they are in a better position to breach the law since their complex structure makes it more difficult to detect – for example, the companies in question may falsely declare social security contributions being paid in any EU Member State without being subject to checks. They further posit that *"As long as letter box companies continue to exist, Regulation EC No 1071/2009 will have no material effect on a level playing field between resident and non-resident hauliers"*, and also that *"the existence of letter box companies have a negative impact on the level of compliance with road social legislation"*

They also highlighted that most of the letter box companies see a business opportunity in practising illegal cabotage. They emphasise that cross-border enforcement practice and cooperation is needed to control letterbox companies, which is almost unattainable as long as the host Member States have little interest to cooperate and as long as Member States across the EU experience shortages in enforcement capacity.

It was suggested by trade unions that letterbox companies have increased in number due to the delays in setting up ERRU. Furthermore, they highlight that the data registered in the ERRU is not accessible to enforcement authorities. This would facilitate enforcement of Regulation 1071/2009, as well as controls of labour and social legislation. Several stakeholders mentioned that certain Member States do not have a risk rating system. This was confirmed in interviews with representatives of several Member States – for example, Bulgaria has yet to adopt such a system.

Responses received from transport operators' industry associations were generally dismissive of the possibility that the Regulation had achieved any positive impacts, with responses indicating this group felt there had not been any material effect on compliance levels, partly due to tachograph manipulation and poor enforcement. Several also mentioned the issue of subcontracting in the sector, which makes enforcement more challenging.

One industry association interviewed for this study highlighted that the application of the stable and effective establishment is "gold plated" in the UK. The standards for establishing a transport undertaking go over and above what is set out in Regulation 1071/2009, and include, for example, requirements to publish a notice in the press when intending to set up a new operating centre. These additional requirements were seen positively by the industry association as they help to maintain a more positive image for the industry.

Trade unions called for a better definition of stable and effective establishment, which might improve control. For example, the original proposal from the Commission made explicit mention of a number of parking spaces having to be available.

Concerning the provisions that require a designated transport manager, some stakeholder report developments in the use of "front men", where the real transport manager is different from the registered transport manager. Other stakeholders pointed out the practice of switching transport manager, for example when companies with owners who get barred from the industry may return with a new transport manager the next day. One industry association interviewed for this study highlighted the UK as

potential best practice in this area, since transport managers are “added” to an operating licence, making the link very robust.

A number of stakeholders also called for the establishment of the same exams and certification for professional competence, as well as updates to the professional training processes. It was noted that the EU system requires harmonised rules on access to the profession but there’s not an EU system for ensuring the quality of training given.

A general comment made by both associations and trade unions was the lack of effective enforcement of the requirement of good repute.

In terms of whether there have been any disproportionate impacts for SMEs, the main factor identified was an increase in administrative burdens. Potentially there may also have been a deterioration of conditions due to the position of SMEs at the end of the subcontracting chain, leading to greater price pressure. The SMEs cannot be as flexible as larger companies and they cannot outflag or subcontract, which places them at a disadvantage.

### **10.5.3. Regulation 1072/2009**

In their joint response, trade unions reported that *“In the absence of controls, non-compliance of cabotage rules leaves an open door to hauliers who want to operate low-cost on a high-cost domestic transport market of a Member State. Uncontrolled and unsanctioned illegal cabotage proved to have negative effects on fair competition between hauliers and created distortions on the labour markets of the Member States which are subject to cabotage”*. They recommended that enforcement of cabotage provisions could be made easier through mandatory recording of vehicle location (geo-positioning), electronic documents (e-waybills), adding illegal cabotage to the list of infringements leading to the loss of good repute and retrofitting of vehicles with smart tachographs. Their coordinated response also called for mandatory pre-notification of cabotage activities, although they noted that the European Commission treats these measures as free movement barriers.

Trade unions considered that Regulation 1072/2009 was indeed effective in ensuring common rules for cabotage, but the problem is that the rules are not enforced and respected. So as long as cabotage rules fail to be effectively enforced, performing illegal cabotage without being controlled and sanctioned will always represent an incentive for the setting-up of new and more letter box companies. They reports that there has been no material evidence (statistics) that cabotage has a positive impact on reducing the amount of empty runs.

The problems of inconsistencies in cabotage rules are compounded by a lack of information on national implementation. Some stakeholders indicated that providing the information in English would be an improvement that could help hauliers avoid accidental infringements.

Several associations submitted a response that points out that *“individual Member States are continuously trying to impose their own interpretation of the provisions in absence of clear guidance from the European Commission”*.

Transport operators’ associations point out the cabotage provisions need clarification and need to be complemented with rules on labour market and social legislation applicable for cabotage, combined transport and international operations. They feel that there is still no clear definition of:

- What constitutes a cabotage trip
- Whether freight with different destinations can be counted as one trip
- What constitutes a vehicle – i.e. whether it needs to be the exact same combination or if there can be changes
- How to calculate 7 days

- A need for improvements of documentation, including documentation of the trailer
- Clarification of which rules have been infringed
- How to apply posting of workers directive to cabotage.

Effective controls and sanctioning require well-functioning cross-border enforcement practices, which is difficult under the current conditions due to a lack of necessary data, lack of data exchange, and lack of cooperation between Member States.

During interviews, industry associations were sceptical as to whether cabotage has decreased empty running. In the highly competitive road haulage market, any operator with significant empty runs will go out of business. Conversely, a Spanish trade union felt that cabotage has indeed helped to reduce empty runs. One stakeholder suggested that further liberalisation of cabotage could lead to more empty runs, since it could become more attractive to pick up loads that are more remote.

#### **10.5.4. Harmonisation (EU added value)**

Respondents to the high level survey were asked about the extent to which they felt it was likely that Member States would have attempted to ensure common rules in the absence of EU Regulations. Trade unions in their coordinated response did not express a view. Industry associations in general returned a majority in favour of viewing it as unlikely (around 50-60% responding that it was highly or somewhat unlikely, compared to around 30-40% responding that it was highly or somewhat likely).

#### **10.6. Summary of stakeholder consultation**

There was generally a high level of support among all stakeholder groups for the Regulations as a fair set of rules for the sector, but lack of enforcement has hampered the effectiveness of the Regulations in achieving their objectives in practice.

It is very clear from the responses received that effective enforcement is regarded as a significant issue across the board, which in turn leads to illegal practices and unfair competition affecting conditions in the sector. The major areas of concern were highlighted as being the rules on cabotage and the existence of letterbox companies. Potential reasons underlying the current situation were suggested variously as a lack of political will, a lack of enforcement capability, differing interpretations of the rules due to a lack of clarity, delays in setting up ERRU and lack of cross-border cooperation.

All of these factors appear to contribute to difficulties in enforcement to at least some extent – overall it appears that there is no single issue that could resolve the problems with enforcement. However, stakeholders generally express support for a combination of more guidelines/clarifications to enable a uniform interpretation of the rule and, further cooperation between different authorities and Member States.

Undertakings in particular felt that the requirements of stable and effective establishment and good reputation had positive effects in terms of achieving their objectives. These specifically referred to creating a more level playing field and to reducing the possibility that businesses who break the rules will undercut legitimate businesses. The majority of undertakings did not identify any significant adverse impacts on their businesses; however, those that felt impacted were mainly SMEs, indicating that these firms may be experiencing disproportionate impacts.

## **11. ANNEX C: CASE STUDIES**

The case study investigations were carried out in order to conduct more in-depth analysis of specific situations, which would not be possible for all Member States. The analysis was conducted for five Member States, as follows:

- 1 Denmark;
- 2 Spain;
- 3 Germany;
- 4 Poland; and
- 5 Romania.

### **11.1. Denmark**

#### **11.1.1. Market situation and developments**

##### **11.1.1.1. Market overview**

The road transport industry in Denmark is characterised by many small businesses, although there has recently been a structural adjustment in the sector, as the average company size (measured in number of permits) was 15% larger in 2012 compared to 2002 (ITD, 2014a).

The sector suffered considerably in the years following the economic crisis. Between 2007 and 2012, the number of trucking companies in Denmark declined from just over 6,300 to just under 5,400, with the majority of firms leaving due to bankruptcy (ITD, 2014a).

While international comparisons are difficult due to the lack of detailed European data on individual industries, it appears that the decline in Denmark has been far more significant compared to other Member States (including UK, France, Germany, Sweden and the Netherlands). At least part of this is likely due to a loss of competitiveness due to a decline in road transport productivity<sup>96</sup> of around 30% in 2010 compared to 2000, which has been accompanied by an increase in driver wages (Jespersen et al, 2012). At the same time, there is growing competition from German and Polish truckers, or from foreign subsidiaries of Danish hauliers (Jespersen et al, 2012).

The issue of wages is highly relevant, since they typically constitute a major proportion of total haulage costs. It is nevertheless difficult to identify concrete data - while some information is available on driver pay, this does not include information about working hours and components of remuneration, which vary widely. Nevertheless, it is generally believed that the level of driver wages in Denmark is among the highest in Europe (Jespersen et al, 2012); (Transportministeriet, 2008). It is estimated that driver costs account for around 56% of total haulier costs in Denmark, compared to 48% in Germany and only 20% in Poland (AECOM, 2013a).

The contraction of the trucking sector was accompanied by considerable job losses. During the period from 2008 to 2010 there was a sharp decline in employment with around 8,000 job losses (a 22% decline) (Jespersen et al, 2012). Of these 8,000 job losses, an estimated 1,800 job losses were as a result of relocation<sup>97</sup>. To put this in context with the overall market size, this would equate to every Danish freight haulage

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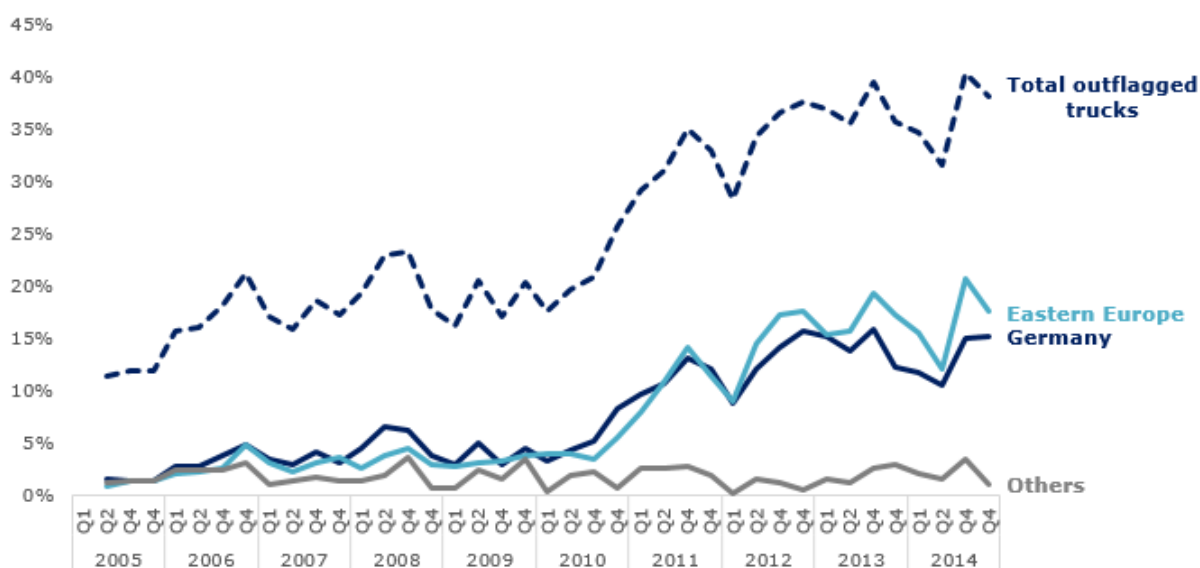
<sup>96</sup> Calculated as gross value added in constant prices with 2005 as the base year, divided by the total number of hours worked.

<sup>97</sup> "Flagging" activities refers to work that is moved to subsidiaries abroad, whereas "relocation" includes both flagging and activities that have been subcontracted to firms abroad that are outside of their group.

firm with more than 20 employees having relocated 5.5 jobs over the three-year period. The impact of these job losses on the national economy depends on whether displaced workers can find employment elsewhere, and if so, whether they displace other workers in turn. Assuming in the worst case that these relocated jobs led directly to an increase in unemployment, the impact of relocation between 2008 and 2010 would bring about 117 to 485 million DKK<sup>98</sup> in the form of costs to the state and unemployment benefits (€15 to 63 million).

The growing trend toward establishment abroad is also accompanied by a declining share of Danish trucks. Since 2005, the ITD has published counts of the number of trucks owned by the Danish foreign affiliates. In 2005 1,150 trucks that were flagged out from Denmark were counted (i.e. owned by subsidiaries of Danish companies set up abroad). By 2011, this number had almost doubled to 3,257 (Jespersen et al, 2012). Around half of the flagged trucks were owned by German subsidiaries, a sixth were re-flagged to Poland and the remainder divided between a number of Scandinavian, Baltic and other European countries. Responses from interviews conducted for this study with Danish stakeholders indicate that the main reasons for relocation are to take advantage of lower costs abroad (especially due to high driver wages in Denmark)

**Figure 11-1: Share of trucks with non-Danish licence plates that are owned by Danish subsidiaries**



Source: (ITD, 2014a).

The future developments of these trends are highly uncertain, but it is likely that additional competitive pressure (such as further liberalisation of cabotage) would lead to more relocation. Despite this, there have not been further job losses in the road transport sector since 2010, when the new cabotage rules entered into force – while in the same period Denmark lost 175,000 jobs in the private sector due to the economic crisis (Trafikstyrelsen, 2013).

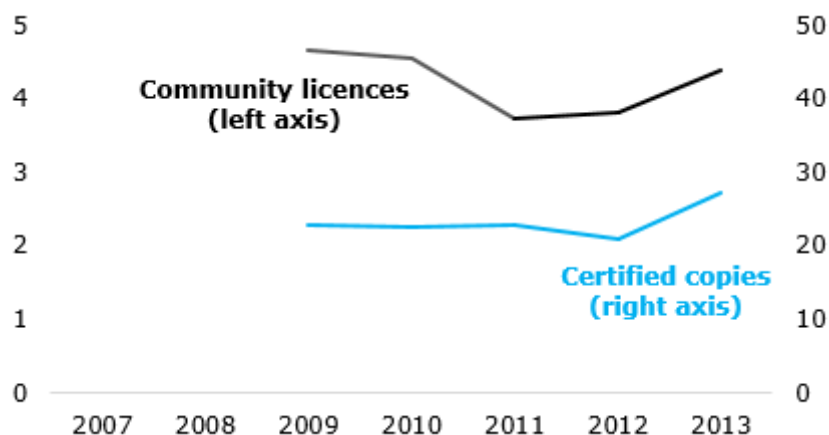
#### **1.1.1.1 Community licenses, certified copies and driver attestations**

After a period of stagnation or decline, demand for community licenses and certified copies in Denmark increased in 2013 (see Figure 11-2). The increase in 2013 despite

<sup>98</sup> According to the Ministry of Employment, the annual cost of an unemployed worker is 65,000kr and the maximum benefit rate is 204,880kr.

the reduction in tonne kilometres of international transport at the same time is because Denmark replaced the national licence with the Community licence in 2012.

**Figure 11-2: Haulier community licences and certified copies in Denmark (thousands)**



Source: Ricardo-AEA analysis of Member State reportage to the Commission pursuant to Regulations 684/92, 881/92, 1072/2009

Driver attestation data indicate that very few attestations exist in Denmark; only 3 were in circulation in 2012 and 2013.

#### **11.1.1.2. Cabotage**

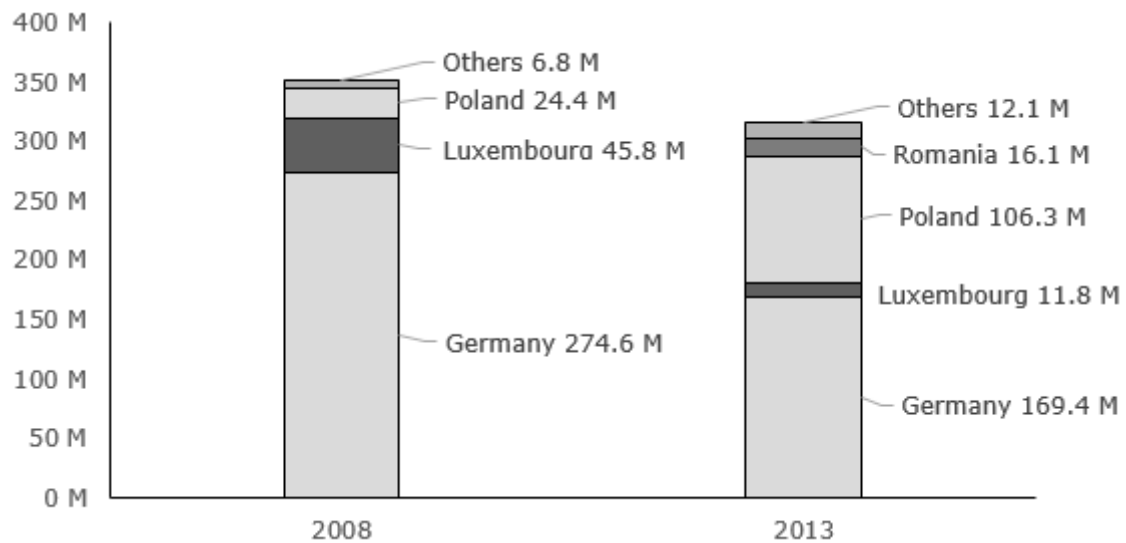
Danish hauliers have a very dominant position on the national transport market, while the reverse is true for international transport (Statistics Denmark, 2014). This is in part because a large share of domestic freight transports carried out in Denmark (and neighbouring countries) have specific vehicle combinations that are not useful for the international transport of goods (e.g. forest products, agriculture) (Sternberg et al, 2015).

##### **In Denmark**

The overall volume of cabotage performed on Danish territory has been roughly stable, and there has not been any significant change in the share of Danish trucks since the new cabotage rules entered into force. According to Eurostat data there has been a sizeable shift in the control of this market: German hauliers, previously accounting for 78% of all cabotage t km in 2008, have seen their market share dwindle while Poland's expands (see Figure 11-3).



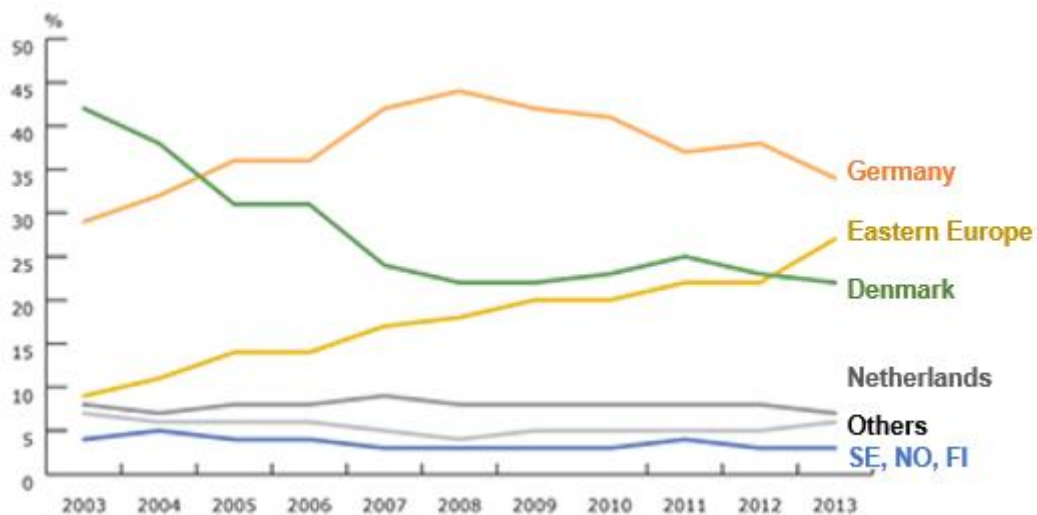
**Figure 11-3: Tonne-km of cabotage in Denmark by Member State of registration of haulier**



Source: Ricardo-AEA analysis of Eurostat

Cabotage transport has been investigated by the Danish Transport Authority, who note that the available statistics on cabotage are not necessarily representative of the true situation (Trafikstyrelsen, 2013). The accuracy of the Eurostat cabotage statistics for Denmark has been called into question on the basis of several studies. According to border censuses, Danish trucks accounted for 22% of trucks passing Danish borders in 2008 and also 20% in 2013. The share of German trucks has declined (from 44% in 2008 to 34% in 2013) while the share of trucks from Eastern Europe has steadily increased (from 18% in 2008 to 27% in 2013 – mainly from Poland) (ITD, 2014a). The figures for the carriage of goods by Danish trucks are nonetheless subject to large uncertainty.

**Figure 11-4: Market share of registered vehicles going into Denmark**



Source: (ITD, 2014a)

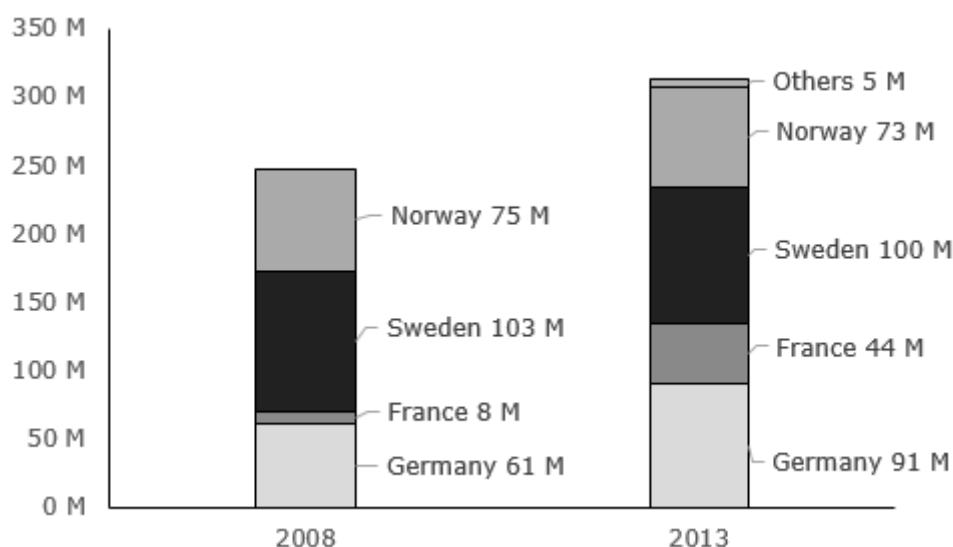
A comparison with Eurostat and observational data collected under the Cabotagestudien shows obvious differences, where several of the most observed countries have confidential statistics (Sternberg et al, 2015).

**Table 11-1: Comparison with Eurostat and observational data (counts)**

Country	%	sights	Eurostat t-km	Eurostat %c
PL	22%	4,739	106,314	30%
RO	20%	4,204	10,060	5%
BG	17%	3,663	<i>Confidential</i>	?%
LT	12%	2,554	6,095	2%
DE	10%	2,139	169,353	48%
LV	3%	611	<i>Confidential</i>	?%
EE	2%	462	4,632	1%
SK	2%	432	<i>Confidential</i>	?%

**By Danish companies**

Danish companies perform cabotage in Norway, Sweden, France and Germany, and the overall volume of cabotage performed has grown modestly since 2008, largely as a consequence of growing volumes in France and Germany.

**Figure 11-5: Tonne-km of cabotage performed by Danish hauliers in other Member States**

Source: Ricardo-AEA analysis of Eurostat.

Note: In instances where data is flagged as confidential, it is necessarily omitted from this graph

**11.1.2. Regulation 1071/2009****11.1.2.1. Implementation and status**

Regulation 1071/2009 has been implemented into Danish legislation by (i) the Act No. 1051 of 12 November 2012 on road haulage (Lov om godskørsel), and (ii) the Road Traffic Act No. 1386 of 11 December 2013 (Bekendtgørelse af færdselsloven).

The provisions in Regulation 1071/2009 were similar to the existing Danish entry requirements – as a result, few changes were needed and the additional impact of Regulation 1071/2009 specifically is limited. The points of departure from the standard requirements of the Regulations are outlined below.

The Regulation made it possible for Member States to impose requirements in addition to those in Article 3 of Regulation 1071/2009, hence Denmark retained its additional conditions that an applicant:

- 1) Is not undergoing restructuring proceedings or bankruptcy,
- 2) Has no significant debts due to the public for an amount in the range of 50,000 DKK or more, and
- 3) Assures that it will lead business in a responsible manner and in accordance with good practice within the industry.

In order to check whether a road haulage operator has a debt of more than 50,000 DKK, the Danish Transport Authority makes an enquiry to the Danish Tax Authorities.

Concerning the requirement of good repute, arrangements out of court also count as penalties for the purpose of this requirement in Denmark.

In addition to the requirements laid down in Article 4 of Regulation 1071/2009, the company must have an approved transport manager that:

- 1) Is of legal age and not under guardianship or under curatorship by the Guardianship Act
- 2) Is not under restructuring proceedings or bankruptcy,
- 3) Has no significant debts due to the public for an amount in the range of 50,000 DKK or more
- 4) Has not have been convicted of a criminal offense that constitutes an immediate danger of abuse of the right to perform haulage, and
- 5) Assures that he will be able to business in a responsible manner and in accordance with good practice within the industry.

A specific requirement in Denmark for access to the occupation is that applicants for a Community Licence (valid for 10 years) must take preparatory training is required; representing a total of 144 lessons of 45 minutes each, that is, around 3 weeks. The cost of this is around 20,000 DKK (€2,700), and it takes around three weeks (Confederation of Danish Industry, 2013). The pass rate of the exam was 80% in 2013 (183 applicants) and 87% in 2014 (202 applicants); all examination and training centres in Denmark (12) are accredited by the Danish Transport Authority. To obtain such an accreditation, Danish authorities report that the applicant must submit an application outlining aspects such as the proposed curriculum.

Operators must meet an initial **financial capability requirement** of 150,000 DKK (around €20,100) to obtain the first two licences whereas the EU rules only require reserves of €9,000 for the first vehicle. For each additional vehicle DKK 40,000 are required (around €5,300)<sup>99</sup>. Further, the company must not have arrears to the government exceeding 50,000 DKK (around €6,700). The Danish Transport Authority makes an enquiry to the Danish Tax Authorities on this matter when verifying the financial capability of the undertaking. The higher requirements place an additional cost on businesses compared to neighbouring countries.

Danish authorities report that a **risk rating system** has been in place for over 20 years that has since been under continuous development. The system is considered to work well. Typically, the Danish Transport Authority checks each year all new applicants as well as around 250 additional undertakings that are mainly selected on the basis of the risk rating system. Checks are hence very targeted.

In order to consider how serious the infringements are weighed and when good repute is affected, Denmark uses a system where numbers of violations are related to the number of licenses through a five-year system, as long as this categorization processes is over. In practical terms, when the Danish Transport Authority has received five

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<sup>99</sup> <http://prague.aija.org/wp-content/uploads/2014/04/WsB-National-Report-Denmark.pdf>

reports of violations concerning a determined undertaking from the Danish Police or from EU Member States' authorities, the Danish Transport Authority gets a full transcript of violations concerning this undertaking from the criminal register. If the number of violations within the last five years compared to the number of vehicles exceeds a ratio of 0.15, the Danish Transport Authority will make an evaluation of whether there is basis for a reaction. The ultimate consequence could be that the undertaking loses its right to operate. New applicants are typically checked for financial standing, professional competence, the undertaking's debt and stable establishment. Checks on stable establishment are typically omitted from then onwards, since letterbox companies on Danish territory are not usually a problem; requirements for good repute are only checked in case the police has reported a problem or there is any other indication that there might be a problem.

Denmark is connected to the **ERRU** and reports that the connection has resulted in one-off costs of 900,000 DKK (around €120,000) and ongoing annual costs of 200,000 DKK (around €27,000). Authorities hope that this connection will result in an increasing number of notifications on infringements from other Member States in the future, although until now no material impact on the effectiveness and efficiency of enforcement activities could be observed thanks to the connection to ERRU. The Danish Transport Authority reports that critical questions addressed to other Member States' authorities frequently remain unanswered.

With regards to the **Transport Manager**, the Danish Transport Authority reports that external transport managers are required to have a "clear link" to the company. However, the meaning of this "clear link" is defined on a case-by-case basis: Typically the transport manager has to be the owner or an employee of the company; an external transport manager that only owns a negligible share of the company will typically not be considered as being a lawful external transport manager. In practice it is the enforcement officer's responsibility to judge whether the link of the transport manager to the company is sufficient.

#### **11.1.2.2. Enforcement and compliance**

Denmark did not provide a country report on the implementation in the period from 4 December 2011 until 31 December 2012 of certain provisions of Regulation (EC) No 1071/2009, hence there are no statistics on authorisations or certificates of professional competence granted/withdrawn over that period available (EC, 2014a).

The strict enforcement of the rules on **stable and effective establishment** would also give Danish carriers with foreign-registered trucks a significant incentive to move their entire business abroad (Jespersen et al, 2012). The issue of "letterbox" companies set up by Danish companies has frequently featured in the media, with a particularly high-profile debate concerning companies that allegedly set up letterbox companies in Flensburg, Germany (Parliamentary questions, 2013a). The debate culminating in the European Commission requesting that a specific carrier based in Germany be investigated. However, it has been reported that after contact with German and Romanian authorities, no concrete evidence of illegal Danish-owned letterbox companies could be detected (IDAG, 2014). Hence, the extent to which Danish-owned letterbox companies are a problem is not clear.

To ensure better enforcement and for the avoidance of potential loopholes, the Ministry of Transport and the Danish Transport Authority take the view that it should be compulsory that the nationality of the Community license is consistent with the one of the vehicles, and that the registered user of the vehicle is also consistent with the name on the Community license. According to the Danish Transport Authority, this would already be compulsory and, as a consequence, this would be an additional requirement. However, this would only apply to Danish undertakings and this would not be enforced for undertakings/vehicles of other EU Member States.

According to the Transport Authority, the good repute can be re-established after a 'waiting period' of 3 years, after retaking the obligatory preparatory courses and passing the exam.

In Denmark, the Road Traffic Act No. 1386 (Bekendtgørelse af færdselsloven) does not seem to provide for differentiated fines, as reviewed by the study team. According to Grimaldi (2013a), the specific level of fines imposed for infringements of Regulation 1071/2009 are not regulated by law or administrative regulations in Denmark, but based on case law, with recommended levels of DKK 400-4,000 (€53-530) depending of the offence, rising to DKK 10,000-25,000 (€1,340-3,350) under aggravating circumstances (i.e. if the violation occurs over a longer period such as 3-6 months).

### **11.1.3. Regulation 1072/2009**

#### **11.1.3.1. Implementation and status**

Regulation 1072/2009 has been implemented into Danish legislation by the Act No. 1051 of 12 November 2012 on road haulage (Lov om godskørsel).

There has been extensive debate in Denmark over the issue of cabotage, with no clear conclusions. Participating stakeholders formed two main groups that were generally (as a simplification) in direct opposition on most of the discussed issues. Although positions showed some variation, it was generally that case that the first group, which included Danish Transport and Logistics (DTL), Free Danish Truck Drivers (FDL) and 3F (trade union), tended to advocate measures that would better control (illegal) cabotage. In the second group, the Danish freight forwarders, DI Transport, Employers' Association for Transport and Logistics (ATL) and International Transport Denmark (ITD), were more in favour of maintaining the current rules.

The major source of debate in Denmark regarding cabotage is whether cabotage services should be permitted on a "systematic" basis, i.e. on a very frequent and year-round basis. This is linked to the national debate over the legitimacy of seeking cost advantages by performing national transport in Denmark as cabotage rather than normal national transport. DTL, FDL and 3F claim that legal cabotage can be carried out systematically in Denmark, leading to competitive distortion (Trafikstyrelsen, 2013). On the other side of the debate, Danish freight forwarders, DI Transport, ATL and ITD, believe that the cabotage is legal based on the common EU rules and that special national rules to curtail systematic cabotage would limit the internal market and lead to retaliatory protectionist measures abroad (Trafikstyrelsen, 2013).

A recent study (Sternberg et al, 2014) gives the following figures with regards to the nationality of vehicles in Denmark:

Country	%	Number of trucks
Poland	19%	744
Bulgaria	18%	718
Lithuania	15%	601
Germany	12%	467
Romania	9%	362
Estonia	4%	165
Latvia	4%	156
Slovakia	3%	125

Most of the vehicles accounted for in the abovementioned table have only been sighted once or twice, which means that they have most likely been carrying out an international transport. In terms of frequency of observation figures are slightly different:

Country	%	Number of trucks
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Poland	22%	4739
Romania	20%	4204
Bulgaria	17%	3663
Lithuania	12%	2554
Germany	10%	2139
Latvia	3%	611
Estonia	2%	462
Slovakia	2%	432

The issue of systematic cabotage appears to arise because of Denmark's specific geography – its small size means that it is possible for a truck to carry out international transport on a daily basis, with subsequent cabotage. A study of cabotage in Denmark suggests that 150-200 foreign trucks are engaged in systematic cabotage (Sternberg et al, 2014). This is expected to grow, given the major cost differences between Danish and new Member States' hauliers. The issue of systematic cabotage seems to mainly be an issue for Denmark – it does not appear to significantly affect Sweden, and has only been observed to a small extent in Norway (Sternberg et al, 2015).

In order to prevent systematic cabotage, the idea of a "waiting period" has been discussed, under which a certain amount of time would be required before a new international carriage could be associated with cabotage. However, the Commission has stated in a letter of 4 July 2012 that such a waiting period has no support in the Regulation (Trafikstyrelsen, 2013).

The Danish Ministry of Transport considers that the 2011 European Commission's guidelines raise a large number of problems with the definitions. In particular, concerning the definition of "cabotage operation", these guidelines provide that cabotage operation can involve several loading points, several delivery points or even several loading and delivery points, as the case may be. The Danish Ministry of Transport seems to consider that it would be better to specify a determined number of loading/unloading points. The Ministry of Transport also recognises that its interpretation on how to count the number of operations when there are several loading and unloading points is different from the European Commission's guidelines.

A further issue of contention is the transport of empty containers and empty returns (pallets, flower transport stands or the like). Currently this does not give access to legally perform cabotage operations, if the carriage of the empty containers and return packaging is not considered an actual carriage, cf. § 16 b, subsection 1 in ministerial order on haulage. These are not considered to be goods for consumption, sale, or manufacture, so their international carriage into Denmark does not give foreign hauliers the right to perform cabotage operations in Denmark.

Concerning the 7 day period, the Danish Ministry of Transport wonders whether it should be allowed to be systematic or a minimum period should be required before entering the Member State again in order to be allowed to carry out cabotage.

#### **11.1.3.2. Enforcement and compliance**

In Denmark, roadside checks are carried out by the police. The Danish Transport Authority assists in case of interpretation problems and carries out itself checks at premises.

Danish authorities report that significant ambiguities remain regarding the definition of cabotage operations. In order to comply with Regulation 1072/2009, cabotage rules are (as reported by the Danish Transport Authority) enforced in the following way:

- A cabotage operation can have multiple drop-off or multiple loading points (but not both) – this is irrespective of the number of different receivers *or* senders of the transport (it is not possible to have multiple receivers *and* multiple senders);
- There is no requirement concerning the return of the vehicle to the home country, before the vehicle is allowed to re-enter Danish territory for carrying out an international transport operation;
- There is not requirement concerning the period the vehicle has to spend outside of Danish territory before it can re-enter the country for carrying out an international transport operation;
- There is no specific requirement on the type of the international transport operation that allows an undertakings to carry out a subsequent cabotage operation on Danish territory (i.e. the transport of empty pallets or partial loads is sufficient).

These rules are not considered stringent enough by the Danish Transport Authority. The authority further reports severe difficulties in proving illegal cabotage operations, one reason being the difficulty of proving the number of cabotage operations that have already been carried out. Consignment notes can be discarded or sent back to the undertaking to avoid any evidence of such operations in the vehicle. To improve the enforcement system, tests are currently being carried out on a system that takes pictures of trucks entering and leaving the territory: with such a system the duration of the periods that trucks spend in Denmark can potentially be retraced, which can help pointing to potential illegal cabotage activities.

In Denmark, the cabotage rules are also enforced for vehicles with a total mass of below 3.5 tonnes. Shifts to lighter vehicles in transport operations were hence not observed.

There are no costs for undertakings to obtain a community licence, a certified true copy or a driver attestation. The renewal period for the community licence is 10 years. In order to improve and facilitate enforcement practices, the Danish transport authority suggests among other measures EU-wide requirements that ensure that

- The nationality of the community licence is the same as the Member State where the vehicles are registered;
- The registered user of the vehicle is the same person for who the Community licence was issued;
- The community licence is always also issued in Roman characters.

Concerning compliance, DTL, FDL and 3F have raised significant concerns over the extent of illegal cabotage, claiming that it has been increasing in recent years (Trafikstyrelsen, 2013). As discussed elsewhere in this report, there is scant evidence of widespread illegal cabotage – however, systematic cabotage (legal under the Regulation) appears to be in practice in Denmark. The latest statistics from the Danish police indicate illegal cabotage at 0.5% (Brøndum, 2014).

According to the Danish Transport Authority, additional 10 million DKK in 2013 and 17.5 million DKK in 2014 were allocated to increase policing on cabotage. In order to improve control of cabotage, the following measures have been implemented:

- **Additional staff and equipment;**
- **Use of cameras at border crossings**, including existing cameras for the enforcement of the road tax (Eurovignette) that are based on licence plate recognition.
- **Restated waybills.** Discussions have been held regarding a voluntary document that gives an overview of cabotage. Although this must be voluntary (since the Regulation does not allow for demands on documentation design), this should allow police the option of faster and more effective verification of compliance with the cabotage rules.

- **Hotline for the police.** The National Police state that there is a training programme for relevant employees. Furthermore, they state that there is a hotline to provide advice to police districts.
- **Increasing the level of fines** for very serious offenses, with a differentiation of fines for minor offenses.
- **Increased efforts to improve information and reporting.** Comprehensive reporting of cabotage statistics may be challenging due to local monitoring and reporting structures. For example, in Denmark the IT system used by the national police does not allow for easy reporting of enforcement efforts, and extraction of the relevant data requires a comprehensive manual review of the individual cases (Trafikstyrelsen, 2013).
- **Increased use of tachograph data.** The increased use of tachographs as a means of control were discussed, although the Ministry of Justice notes that the amended tachograph legislation was only designed to facilitate the monitoring of driving times and rest periods, and not for cabotage. Nevertheless, experience with the new recording equipment could help to reinforce the controls on cabotage (Trafikstyrelsen, 2013). The police already have the possibility to use the tachograph for control of cabotage. However, it has the limitation that only the start and end point must be specified (Trafikstyrelsen, 2013).

Statistics have indicated that, at least based on initial data, the increased controls have been effective. The National Police believe that the enhanced controls (higher fines and increased resources) have contributed to positive developments, which reveal fewer violations of the rules, with a decrease in the number of cases 83 percent from 2012 to 2013 (Report to the Transport Committee, 2014):

- In 2012: 350 cases of illegal cabotage on the basis of 1500 controls of trucks;
- In 2013: 180 cases on the basis of 4,500 controls of trucks;
- Initial data for the first months of 2014 show similar trends to 2013

They further report specific challenges with enforcement of cabotage:

- Missing receipts on freight documents;
- Performing cabotage operations before international transport is completed;
- Difficulties with controlling vehicles after three cabotage movements, where the drivers announced they were leaving the country but actually drove the goods to Padborg and continued driving in Denmark interpretations (Trafikstyrelsen, 2013)

Depending on the circumstances, a freight forwarder will be able to be penalised for complicity in a foreign haulier's illegal cabotage operation, cf. the general rules on complicity in the Code of Penal Law, paragraph 23. Experience shows that the prosecution is often difficult to implement in practice since there are considerable challenges in proving they have knowledge of illegal practices (Trafikstyrelsen, 2013).

A representative of Danish Operators interviewed for this study suggested that the need to provide **proof of lawful cabotage** often entails significant costs for operators: there is a high fine for failing to provide even one element of the necessary evidence. According to the 2014 Danish guidelines on cabotage, "Documentation is to be available at the time the vehicle is stopped and is to be presented to the enforcement authorities on demand, cf. § 16 a in the ministerial order on haulage. This means that documentation should be able to be presented within a reasonable time after the stopping of the vehicle. Electronic forwarding within a quite short time is accepted. However, providing of documentation must not cause a considerable delay of the inspection of the police". (Trafikstyrelsen, 2014).

The fine structure was revised in 2013. The offenses are divided into less serious offenses, serious infringements and very serious infringements, with corresponding



levels of fines at 5,000 DKK, 15,000 DKK and 35,000 DKK respectively<sup>100</sup>. The fine may be doubled or tripled if aggravating circumstances are present. This will be based on a specific assessment of each individual case. According to the Ministry of Transport, the Commission has questioned Denmark on a total of four matters regarding provisions in freight transport, one of which was the level of fines. At the time of writing this report, the case is still open and, in the meantime, fines remain in place.

Breach of the cabotage rules is an offence established by § 17, subsection 1, n. 3 of the Law on Road Haulage. In line with the abovementioned, fines for breach of cabotage rules start at DKK 5,000 (EUR 670 approx.) for minor infringements (ex. lack of information about specifications of goods), at DKK 15,000 (EUR 2,010 approx.) for serious infringements (ex. lack of documentation for the international carriage) and at DKK 35,000 (EUR 4,680 approx.) for very serious infringements (ex. illegal cabotage operations).

The police may impound the vehicle (but not the semi-trailers / trailers) if deemed necessary to ensure the payment of the fine and costs, or in case of serious and repeating offences. Impoundment shall be lifted once the amounts are paid or secured<sup>101</sup>. . Conversely, the issue of holding the entire vehicle (including trailers) has raised the issue of legal security and proportionality (Trafikstyrelsen, 2013).

Depending on the circumstances, a freight forwarder will be able to be penalized for complicity in a foreign haulier's illegal cabotage operation, cf. the general rules on complicity in the Code of Penal Law, paragraph 23<sup>102</sup>.

Some stakeholders (DI Transport, ATL, ITD and Danish freight forwarders) believe the fines, especially for minor offenses, are not proportional (Trafikstyrelsen, 2013). Others (3F, DTL, FDL) believe that the fines act as an important deterrent for illegal cabotage, especially given the differences in pay and working conditions in Denmark compared to Baltic and Eastern European countries.

The police also have the option to hold the motor vehicle (but not the semi-trailers / trailers) until the fines are paid. Conversely, the issue of holding the entire vehicle (including trailers) has raised the issue of legal security and proportionality (Trafikstyrelsen, 2013).

## **11.2. Spain**

### **11.2.1. Market situation and developments**

#### **11.2.1.1. Market overview**

In Spain, The economic crisis led to a sharp reduction in the number of companies authorised to use HDVs from 75,965 firms in 2008 to 60,918 firms in 2015 (Ministry of Infrastructure and Transport, 2015b). In 2015 there were 304,648 HGVs (vehicles above 3.5t) registered in Spain (Ministry of Infrastructure and Transport, 2015b). The market is fragmented, with many small businesses. Most of the firms (52%) have only one vehicle; however these companies together account for only 15% of total HDVs (Ministry of Infrastructure and Transport, 2015b).

Table 11-2 shows that the total operating costs of HGVs in Spain are relatively low compared to other EU-15 countries, although they still exceed those of new Member States. In part, this is because driver wages in Spain are on a par with those in Eastern Europe, averaging at €1,000 to €2,000 per month – similar to a driver in Poland or

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<sup>100</sup> Cabotage Guidelines published by the Danish Transport Authority in September 2014.

<sup>101</sup> *Ibidem*

<sup>102</sup> *Ibidem*.

Bulgaria (€1,000 to €1,200 per month) and lower than other Western European countries (AECOM, 2014a). Fuel is also relatively cheap compared to neighbouring countries, with a typical pump price of €1.374/litre compared to €1.411/litre in Portugal and €1.387/litre in France (AECOM, 2014a).

**Table 11-2: Hourly cost of operating an HGV**

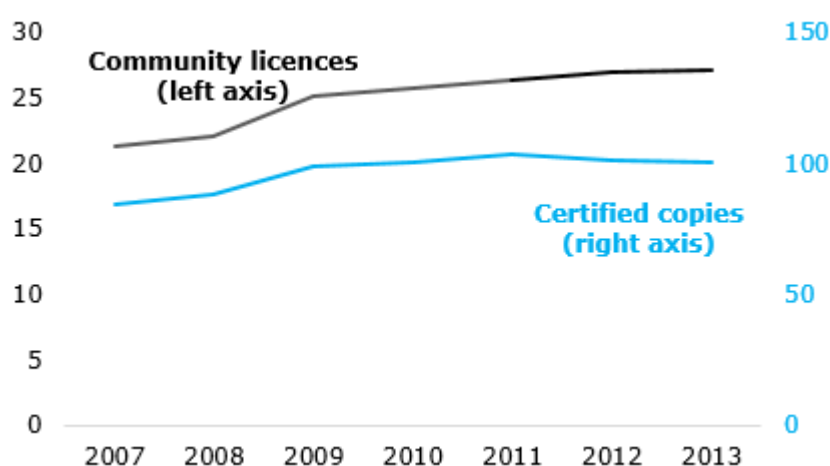
Country	Total operating costs ( per hour)	Driver costs (as a percentage of total operating costs)
Spain	58.87	34.7%
France	80.10	38.9%
Germany	79.06	33.3%
Italy	76.94	33.5%
Austria	74.38	34.3%
Slovenia	60.14	30.5%
Poland	52.05	23.0%
Hungary	51.44	27.5%
Romania	44.6	24.9%

Source: AECOM (2014a)

#### 11.2.1.2. Community licenses, certified copies and driver attestations

Although the number of transport companies in Spain fell between 2009 and 2013, the number of Community licences increased slightly during the same period (see Figure 11-6). The number of certified true copies has remained roughly flat over the same period, which may suggest a reduction in average fleet size of international hauliers based in Spain. Although the average size of road haulage companies had gradually increased from 1.93 vehicles in 1999 to 3.14 vehicles in 2008 (Ministry of Infrastructure and Transport, 2015b), this trend levelled off between 2008 and 2015 in part due to the economic crisis, and also partly due to changes in national regulations (Order FOM/734/2007).

**Figure 11-6: Haulier community licenses and certified copies in Spain (thousands)**



Source: Ricardo-AEA analysis of Member State reportage to the Commission pursuant to Regulations 684/92, 881/92, 1072/2009

As of 31 December 2014, the number of Community Licences was 27,724 and the number of Certified Copies was 104,633 (Ministry of Infrastructure and Transport, 2015b). The majority of licences were issued to individuals, whereas the majority of certified copies were issued to corporations.

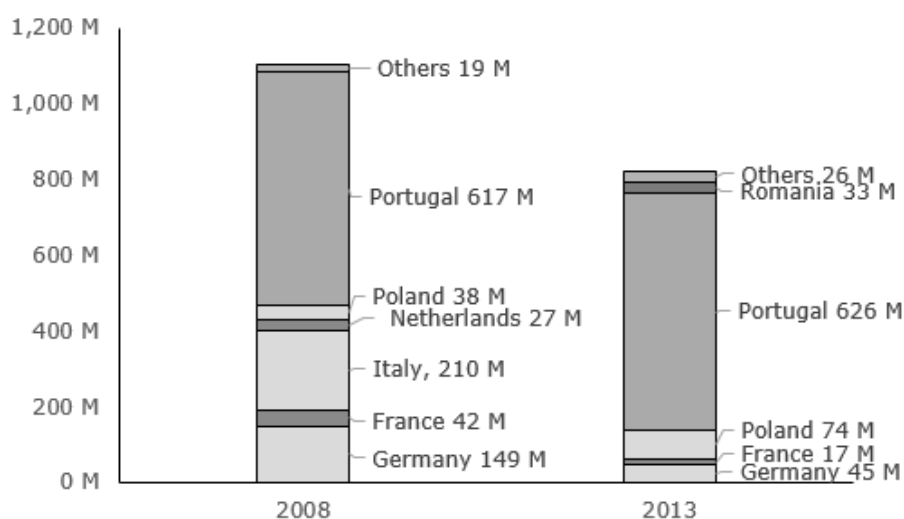
Driver attestation data from Spain suggest that the use of drivers from third countries may have recently decreased, but Spain makes relatively frequent use of foreign drivers (at least compared to other Member States) with as many as seven or eight drivers from third countries for every 100 Community licenses or certified copies.

### 11.2.1.3. Cabotage

#### In Spain

After falling steadily since 2007, the total amount of cabotage activity in Spain partially rebounded in 2013, although it remains much lower than it was before the financial crisis. The cabotage penetration rate in Spain is low (0.8% in 2013) and it mainly hosts caboteurs from Portugal (see Figure 11-7).

**Figure 11-7: T-km of cabotage in Spain by Member State of registration of haulier**



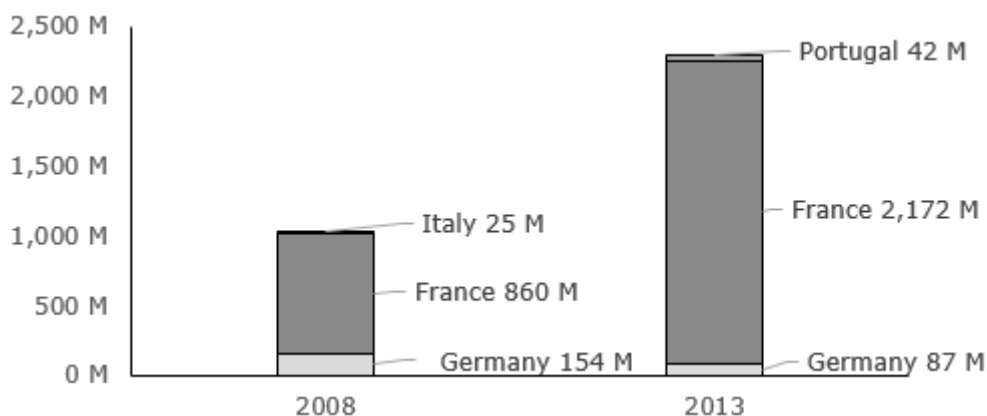
Source: Ricardo-AEA analysis of Eurostat

Note: In instances where data is flagged as confidential, it is necessarily omitted from this graph

#### By Spanish Companies

Cabotage carried out by Spanish companies is focussed almost entirely on France (see Figure 11-8), where Spanish hauliers have exploited their competitive advantages (mainly due to lower wages) (European Parliament, 2013a).

**Figure 11-8: Tonne-km of cabotage performed by Spanish hauliers in other Member States**



Source: Ricardo-AEA analysis of Eurostat

Note: In instances where data is flagged as confidential, it is necessarily omitted from this graph

Overall, these figures reveal that Spanish operators have a significantly favourable competitive position when compared to France but a less favourable position when compared to Portugal. This balance is partly the result of the average cost base, including labour costs and trade flows between these markets. Also the internationalisation of the national fleet plays a role (75% of vehicles in Portugal carry out both national and international transport, while only 4% of vehicles in Spain do) (European Parliament, 2013a).

## **11.2.2. Regulation 1071/2009**

### **11.2.2.1. Implementation and status**

Access to the profession is regulated under the national Law on Land Transport (LOTT)<sup>103</sup> and its implementing legislation the Royal Decree 1211/1990 (ROTT)<sup>104</sup>. Both the LOTT and the ROTT were amended in 2013 in order to adapt the legislation to Regulations 1071/2009 and 1072/2009. The 2013 amendment included a disposition indicating that a further amendment of the ROTT would occur within two years of the entry into force of this new regime. However, the deadline has already elapsed and the new amended ROTT has not been adopted.

The previous national system concerning access to the profession met the minimum requirements of the Regulations, and hence did not need substantial modification (Ministry of Infrastructure and Transport, 2011).

Additional provisions were introduced to ensure **effective and stable establishment**. The Spanish legislation requires undertakings to have any type of premises (a private domicile may suffice) as long as they keep all relevant documentation there and have the appropriate technical equipment (e.g. a computer). Some stakeholders have raised concerns that physical persons who act as independent operators may access the occupation by registering their own domicile as establishment in the sense of Regulation 1071/2009. In their view, inspection activities could be hindered since accessing a domicile would require to obtain a prior legal warrant. By contrast, at least one stakeholder has indicated that there would be no such obstacle since these operators are obliged to sign a declaration to allow the authorities to access their domicile for the purpose of inspection activities.

There is an **additional requirement that applicants must have three vehicles representing at least one payload of 60 tonnes**. Such vehicles may not exceed a maximum age of five months from its first registration in the time of application the application. (Art 19 ORDER FOM / 734/2007, of March 20). Recently, there have been debates over whether to remove the additional requirement for three trucks (TLT, 2015). Accordingly, one of the main obstacles is to acquire sufficient capital to purchase three nearly new trucks (estimated at €330,000). This can be avoided by either joining a cooperative<sup>105</sup> (estimated at €14,000 total<sup>106</sup>) or transferring the authorisation from another firm (€27,000 per transfer) (Domenech, 2014). Recently, there have been debates over whether to remove the additional requirement for three trucks (TLT, 2015). Several stakeholders have expressed their confidence in that the law will be amended soon, although this was not confirmed by the Spanish Authorities. However, both the European Commission and the Spanish competition authority will be analysing whether this requirement creates a barrier to enter the market.

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<sup>103</sup> Ley de Ordenación de los Transportes Terrestres

<sup>104</sup> Reglamento de Ordenación de los Transportes Terrestre

<sup>105</sup> A group of transport professionals who organise joint production of goods/services

<sup>106</sup> Including €2,000 social contributions, €5,000 security deposit and €7,000 for a truck (not necessarily new).

The conditions of **financial capability** (Article 46 LOTT) match the thresholds set in Regulation 1071/2009. Certified annual accounts, bank guarantees and professional insurance are allowed to prove financial standing. All Spanish stakeholders interviewed have confirmed that this is proportionate and necessary.

Article 45 LOTT covers provisions related to **good repute**: neither the company nor the transport manager may have been condemned for serious criminal offences or misdemeanours.

The test of **professional competence** includes two stages: the first stage consists of 100 multiple choice questions with four alternative answers. The second stage consists of six practical case studies (Ministry of Infrastructure and Transport, 2015a). The tests can only be carried out by the administration of each region (19 centres in total).

Pass rates for the examinations are reported to vary from region to region but were estimated by an interviewee to be on average 20-25%. Navarre is allegedly one of the most difficult regions to pass the exam with a success rate of only 12% while regions such as Andalusia or Catalonia are thought to be considerably easier. Stakeholders are divided with regard to the degree of difficulty of the exam. Some have indicated that it is suitable in its current form and it is feasible to obtain the title subject with appropriate prior study. Others have indicated that the syllabus and the degree of difficulty exceed what it is needed for operating in the market and therefore the exam is unnecessarily difficult for persons without a university background.

Before the implementation of Regulation 1071/2009 freight forwarders and hauliers were required to pass different exams, whereas now they the same despite the different requirements for these two professions.

The only exemption from the exams for professional competence applies to applicants who have obtained the title of superior technician in transport and logistics. This degree requires around 2,000 hours of vocational training and is regulated by the Royal-Decree 1572/2011. It contains all subjects specified by the Regulation as well as additional content.

Regarding the role of **transport manager**, there is a possibility of managing different companies as long as these companies are linked, for instance a parent company and its subsidiary. This provision requires that at least 50% of all companies must belong to the same owner to be allowed to be managed by the same person holding the title of transport manager. Most stakeholders have indicated that the fact that linked companies share their transport manager is rather exceptional. Normally there is one transport manager per company. If a company loses its transport manager (for instance if the employee who holds the title leaves the company) it is mandatory to notify the authority. The company may operate ad interim for three months without a transport manager.

The Ministry of Development mentioned that the development of further regulation is in progress in order to: (i) concretise the functions of the manager within the company; (ii) require clear legal links between the manager and the company.

Spain already had a national registry prior to the implementation of Regulation 1071/2009 and fully participates in ERRU. The Ministry of Development emphasised in the interview for this study that the national registry facilitates management and inspection. The cooperation on the international level is still scarce since many Member States are still not fully participating. So far Spain only exchanged information on operators infringing the regulations with Denmark, the UK and Slovenia.

Article 35.3 of Law 9/2013 states that the Inspectorate will focus on companies with greater risks (in compliance with Article 12 of Regulation 1071/2009). To that end, the inspection authorities shall draw up an inspection plan in close collaboration with other transport authorities that should be guided by the principles of transport safety and free competition.

### **11.2.2.2. Enforcement and compliance**

According to European Commission (2014a), in 2012, Spain issued one of the highest quantities of authorisations (almost 31,000 for both passenger and goods transport). The withdrawals were either (i) due to failure to provide proof of meeting the conditions needed for an authorisation to be granted, (ii) on the request of an applicant or (iii) the cease of operations. (European Commission, 2014a). The breakdown of the share of withdrawals due to each of these different reasons was not indicated.

Planning of controls is carried out jointly through collaboration in the National Committee on Road Transport, in order to achieve proper coordination in carrying out the different levels of inspection (Ministry of Infrastructure and Transport, 2015c). The bodies involved include national (Guardia Civil) and by regional (Policías de las comunidades autónomas) and local administrations. The Ministry specifically mentions the need to control behaviours that distort the market in order to improve confidence in the transport industry and to ensure fair competition.

The national enforcement authorities therefore consider that it is even more important to strengthen control measures against unfair competition in the sector, since the current conditions following the economic crisis could lead to an increased risk of infringements of the rules, particularly with a view to reducing costs (Ministry of Infrastructure and Transport, 2015c). The Ministry recognises that the reduction of unlawful conduct can only bring benefits for the sector, since its reduction will improve competition between companies (Ministry of Infrastructure and Transport, 2015c).

Authorisations are granted without a specific duration. However, their validity is subject to a periodic "visa" (visado) carried out every two years (Article 45 ROTT). At this point, they again need to show compliance with the requirements for access to the occupation. Therefore, there are no "ad hoc" or random inspections to check compliance with stable and effective establishment, but rather these checks are conducted only when applying for an authorisation and obtaining a renewal. The extent of any problems with letterbox companies in Spain is not clear from publically available data. Although overall no specific incidents in recent years could be identified by the study team, problems in identifying "ghost companies" have been reported (European Parliament, 2013a).

The vast majority of stakeholders interviewed for the purposes of this study have raised concerns about the current situation **regarding letterbox companies**. While some stakeholders have indicated that there is no such problem in Spain and that the only issue would be that some companies are being relocated or have opened law-abiding subsidiaries abroad, the majority of stakeholders have indicated that some Spanish companies would be illegally out-flagged in countries such as Poland and Romania, without an effective and stable establishment. When asked about whether the Road Transport Package rules have effectively reduced the number of letterbox companies in Spain, stakeholders were divided. The vast majority indicated that it had indeed reduced the number and that the tendency is to continue to decrease, although there are still a number of deficiencies in enforcement that should be corrected. By contrast, there are at least two stakeholders that consider that the number of letterbox companies is currently increasing. One of these stakeholders has indicated as one of the reasons behind this situation could be the less strict enforcement measures in the countries that attract more letterbox companies (i.e. Poland, Romania and Bulgaria) together with the unsatisfactory implementation of the European Register of Road Transport Undertakings (ERRU).

Regarding the requirement of **financial standing**, an undertaking association interviewed for this study claimed that the limits are proportional and do not create barriers to entry. Nevertheless, it raised a specific concern due to insolvency procedures in Spain. **Insolvency procedures** aim to allow a company to come to an arrangement with its creditors; however, once a company enters into the insolvency proceedings, the company loses its financial standing and hence also its authorisation to operate. As a consequence, the company cannot have any income that allows viability or a settlement with creditors. Therefore, this requirement has a perverse effect with regard to

companies that apply for bankruptcy proceedings. Firstly, in that insolvency proceedings are empty of content since the loss of financial capability does not allow the company to operate, and therefore no transport company can really benefit from the chance to negotiate with creditors. Secondly, some creditors use this situation in bad faith to threaten the company, as they know the request for insolvency proceedings may force the company to irreversible bankruptcy and winding up. The Spanish authorities have indicated that Article 46 a) LOTT has been drafted as an exemption and that the judge that hears the case in an insolvency proceeding may allow the company to continue operating if the competent authority that issues the authorisation considers that it is realistic to expect a financial rehabilitation of the company within a reasonable time.

In this sense, the judgment delivered by the *Audiencia Provincial* of Almeria on 8<sup>th</sup> March 2013 indicates that the court that deals with the insolvency proceedings cannot order the competent authority to issue a new visa for the transport undertaking as this exceeds its competence. By contrast, it may declare that the undertaking complies with the requirements to obtain the visa so that the authority may take the decision as a basis to renew the visa.

The withdrawal of **good repute** has never been used in Spain, which stakeholders view as undermining the effectiveness of this sanction. In order to improve the effectiveness of this sanction, amendments to the LOTT/ROTT were made in 2013. With this amendment, operators and transport managers may lose their good repute after incurring in very serious infringements (Article 143 (5) LOTT). Nevertheless, the legal provision requires a firm decision on the infringement, i.e. against which no further appeal is possible. Therefore, it is still too soon to see companies or transport managers losing their good repute.

There is no formal procedure to re-establish good repute: After the first loss of good repute, good repute is automatically re-established after 6 months. This period might be extended to 12 months in case of recidivism.

Concerning **transport managers**, at least one stakeholder was concerned that some operators could still be hiring the title. However, the overwhelming majority of stakeholders has denied this situation and by contrast have stressed that controls over this condition are very strict.

In Spain, fines appear to be tailored to the seriousness of the offences:

- Very serious infringements €1,001-6,000 (up to €18,000 in case of recidivism) e.g. performing public transport without holding professional capacity, good repute and financial capability
- Serious infringements €401-1,000 e.g. not providing the authority with the licence or authorisation (or certified copies) once they have been revoked;
- Minor infringements €100-400 e.g. not carrying documentation in certain specific cases

### **11.2.3. Regulation 1072/2009**

#### **11.2.3.1. Implementation and status**

Spain introduced its national regulation of cabotage activities ahead of the approval of Regulation 1072/2009: The provisions for cabotage in Spain were enacted by Ministerial Order FOM/2181/2008, approved in July 2008. This Order limits the possibility of performing cabotage in Spain to three cabotage operations in seven days after an international transport (in accordance to the rule established by Regulation 1072/2009).

It is also possible to enter the Spanish territory with an empty vehicle and perform a single cabotage operation provided that: (i) this is carried out no later than three days

from the entry and until the seventh day from the entry; and (ii) the vehicle has performed a prior international transport which concluded in another Member State. An example of this situation would be the following:

- a Portuguese vehicle leaves Porto fully loaded on the 1st June.
- it unloads 50% of its load in Marseille (France) on 4th June and 50% in Perpignan (France) on the 5th June
- On 6th June it enters the Spanish territory running empty and stops in Zaragoza where it loads 50% of its capacity.
- On 7th June it unloads the goods picked up in Zaragoza in León (Spain)
- On 8th June it arrives back to Porto.

This interpretation is not followed by all other Member States. For instance, some Member States consider that if the vehicle unloads in three different points that belong **to the same client**, this would only count as one cabotage operation. On the contrary, in Spain it is considered irrelevant if the client is the same.

Spanish operators have increasingly reported concerns about the entry into the market of Romanian and Bulgarian hauliers. The Ministry is hence seen to be likely to intensify controls over trucks from these Member States (European Parliament, 2013a).

Vehicles under 3.5t do not need a Community licence and are not subject to cabotage rules. As a result, concerns have grown over the possible use of vans (<3.5t) and agricultural tractors in order to avoid using vehicles falling under the cabotage provisions (European Parliament, 2013a).

Recently, the association FENADISMER has filed a complaint before the Spanish authorities indicating that some foreign operators could be performing illegal cabotage in relation with some infrastructure projects for the high speed railway and highways in Spain (FENADISMER, 2015). Following this complaint the Spanish enforcement authorities carried out some checks in which some CMR documents were found to be counterfeited.

For Community Licences, the amount payable is € 119.59 for the issuance of the original Community certificate plus € 5.99 per copy (Ministry of Infrastructure and Transport, 2015a). An issue that has been reported by several stakeholders interviewed for this study is that, in order to renew the licence it is necessary to provide the authority with the old one, leaving the operators without a proper licence for a short period of time. The authority delivers a provisional one until the definitive one is ready but the former only allows the operator to travel in Spain and not abroad.

The Ministry of Development reported that they were currently working on a solution to allow the renewal of the licence online, which would improve the administrative process. The plan is to implement this system as mandatory in 2017.

### **11.2.3.2. Enforcement and compliance**

The enforcement of cabotage rules in Spain is overseen by the Ministry of Infrastructure and Transport (Ministerio de Fomento), and the Subdirección de Inspección del Transporte in particular. However, as a result of recent devolution reforms, roadside checks are carried out both by national (Guardia Civil) and by regional (Policía de las Comunidades Autónomas). The interface between local bodies and national authorities has been reported in the literature as problematic, for example in the communication of data (SDG, 2013a). The Ministry of Development estimates that Spain employs 400 traffic agents and 150 employees of the administrative organs of the regions that carry out checks on cabotage.

Given the trends towards increasing relocation of businesses, the National Transport Committee has called for greater controls on cabotage to prevent unfair competition and social dumping (Ministry of Infrastructure and Transport, 2015c). Furthermore, the



Traffic Civil Guard have reported a significant increase in vehicles being detected with irregularities concerning cabotage, which has motivated plans for increased controls in 2015 (Ministry of Infrastructure and Transport, 2015c).

Stakeholders in Spain have called for sufficient resources to be granted to control bodies, in order to improve their ability to perform wide-ranging controls (European Parliament, 2013a).

The fines for non-compliance with the cabotage rules range from €201 to €4001. Fines increase if the person liable had been fined for a very serious infringement within the previous 12 months. In addition to these fines, vehicle immobilisation and the loss of good repute can be applied as penalties for cabotage rules violations.

In 2013, there were two important amendments in Spain with regard to sanctions. First, Spain reduced the quantity of fines by 50%. Second, as for tachograph infringements, the operators may avoid the fine if they prove that a compliance programme has been implemented within the company and that the driver that did not follow the rules has been penalised internally. The Spanish competent authority has issued a document called "Baremo sancionador" with guidelines on the application of these fines within the assigned ranges. The "Baremo" is regularly updated and has no legal binding character, although it is frequently used by the enforcing authorities.

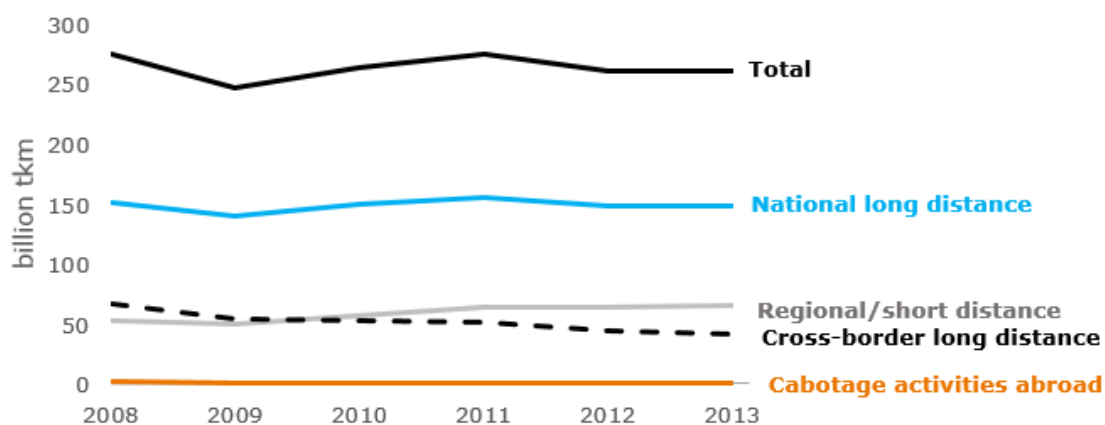
### 11.3. Germany

#### 11.3.1. Market situation and developments

##### 11.3.1.1. Market Overview

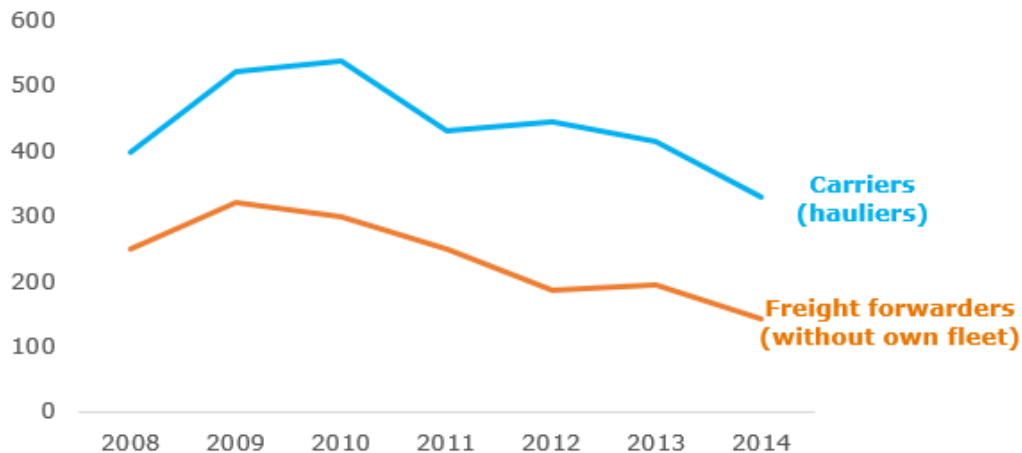
Figure 11-9 shows that the transport performance over the period from 2008 to 2013 fell from 276.2 to 261.8 billion tkm (5.2%), mainly due to decreases in cross-border long-distance transport. Short-distance transport has continuously increased during the same period.

**Figure 11-9: Road freight transport by German HGVs from 2008 to 2013**



Source: (BAG, 2014)

In the first half of 2014, road freight transport activities increased compared to the first half of 2013 (by 9% in terms of tonnage, and by 4% in t-km) (BAG, 2014). This upswing in 2014 is also reflected by the significant decrease in the number of registered insolvencies during the first half of the year in the road freight transport sector, as shown in Figure 11-10.

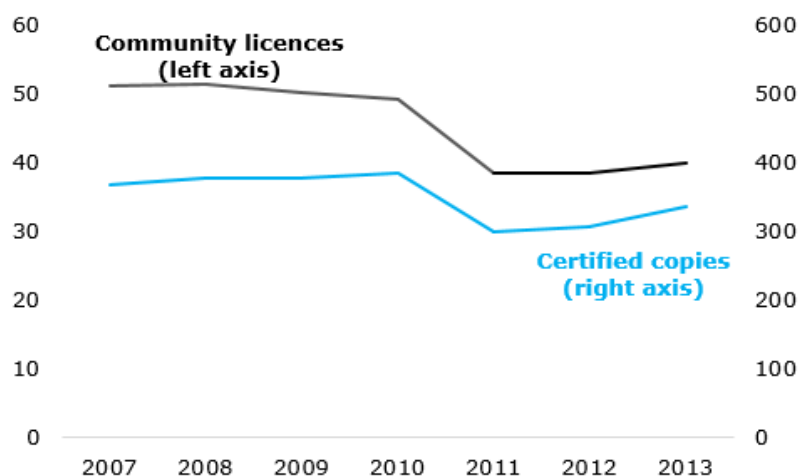
**Figure 11-10: Number of registered insolvencies in the first 6 months of the years 2008-2014**

Source: (BAG, 2014)

West German transport operators frequently focus on 'high quality' transport and increasingly outsource transport operations to their Eastern European or Eastern German subsidiaries (Guihery, 2008). East German drivers can be paid 30% less than Western German drivers, given that Eastern German undertakings are more exposed to competition from lower-wage countries. Downward pressure on prices also comes from the use of cabotage operations, as well as excess capacity in the relatively small domestic markets in the new Member States (European Parliament, 2013a). According to the BAG, the German federal office for goods transport, labour cost differences between Germany and other Member States have been gradually decreasing since the cabotage rules were introduced in 2009 and part of the remaining differences are outweighed by a higher efficiency of German hauliers (European Parliament, 2013a).

#### **11.3.1.2. Community licences, certified copies and driver attestations**

The number of Community licences in circulation is an indicator of the number of undertakings performing international transport, while the number of certified copies provides further information on international transport activity as it is related to the total fleet engaged in international transport. These indicators suggest that the total number of operators performing international transport was stagnant in Germany from 2007 onwards, until a sharp drop between 2010 and 2011 (see Figure 11-11) can be observed, which is in line with the observed insolvencies in the sector over the same period (as shown in Figure 11-10 above).

**Figure 11-11: Haulier community licences and certified copies in Germany (thousands)**

Source: Ricardo-AEA analysis of Member State reportage to the Commission pursuant to Regulations 684/92, 881/92, 1072/2009

Driver attestation data provided by Germany to the Commission indicate that the use of drivers from third countries is very infrequent in Germany: in 2013, for every 100 community licenses and certified copies there were just 0.6 driver attestations in circulation. This suggests that less than 1% of vehicles owned by German undertakings were being driven by individuals from third countries. Driver attestation data for other years has not been made available.

### 11.3.1.3. Cabotage

#### In Germany

In 2010, the BAG, the German federal office for goods transport, published a report on the effects of the opening of the cabotage market to the 'new' EU Member States in May 2009 (BAG, 2010). The report (published in April 2010) concludes that there had not yet been any significant impact other than in (i) the auto-transport market - possibly because the automotive industry was increasingly tendering their transport operations on an EU-wide level -, and (ii) the container transport market in Northern Germany - where the number of Czech and Polish trucks appeared to have increased. A possible reason for the limited impact was due to the slow growth in the sector following the economic crisis. However, the report did suggest that an impact could be expected in the future, mainly due to German undertakings that might increasingly operate via their subsidiaries in Eastern Europe.

The Germany market has shown greater resilience to foreign cabotage operations since the opening of the market in 2009 when compared to that of many other EU15 Member States (European Parliament, 2013a). Germany's requirement regarding liability insurance<sup>107</sup> is thought to be the main factor. For instance, following market opening in 2012 Romanian and Bulgarian hauliers were expected to need a supplemental insurance of around €500 per year per vehicle (BAG, 2012). In addition, the German market is protected by several factors (BAG, 2012):

- The geographic distance of the transport markets with partly non-matching freight flows;

<sup>107</sup> (§ 7 of the German Road Haulage Act, the GüKG, requires liability insurance against the damage of goods amounting to no less than €600,000 for each claim, and no less than €1.2 million for a year

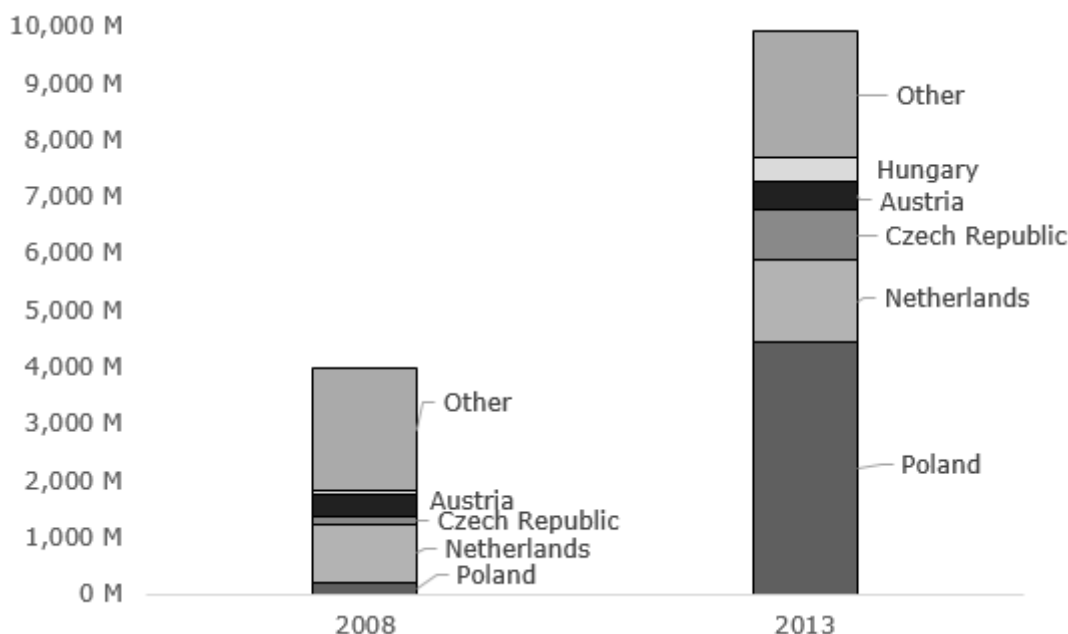
- Language barriers and differences in mentality;
- Quality differences. Domestic companies were expected to be able to charge a premium due to their higher quality of service, reliability and punctuality (European Parliament, 2013a).
- Competitive pressures from road transport undertakings from Poland, the Czech Republic; and the Baltic States that had already operated in the German market.
- High efficiency of German hauliers, which negates the labour cost advantage of other hauliers. For example, Romania's labour cost advantage is estimated fall from 50% to a total operating cost advantage of only 30%.

Stakeholders interviewed for this study further state that favourable conditions in Germany concerning vehicle leasing and maintenance contracts allows German undertakings to maintain some competitive advantage over Eastern European companies/drivers. Also, maintenance costs are typically lower, since German drivers, working under better working conditions and frequently operating the same vehicle, take better care of their vehicles.

However, not all stakeholders consulted for this study agreed that the quality of service could be a significant selling point in today's transport market, except in niche markets (e.g. transport of dangerous goods, food products, animal transport etc). A stakeholder states that a strategy of German transport operators has therefore been to either specialise on a specific type of transport operations, or to diversify away from classic transport operations to the provision of services such as the assembly of the product or other services adding value to the product being transported.

Figure 11-12 shows that cabotage activities in Germany have more than doubled. The biggest caboteurs in Germany were Polish undertakings in 2013, who increased their cabotage activities by 32% compared to the year 2012 (to 4.4 billion tkm). Despite these increases, the cabotage penetration rate in Germany is still lower than in countries such as Belgium (6.5%), Austria (5.2%), France (4.5%) and Sweden (3.9%) (BAG, 2014).

**Figure 11-12: Tonne-km of cabotage in Germany by Member State of registration of haulier**



Source: Ricardo-AEA analysis of Eurostat

Note: In instances where data is flagged as confidential, it is necessarily omitted from this graph

The analysis provided in European Parliament (2013a) suggests that the 2012 cabotage market opening had a more significant impact than expected: journeys realised by

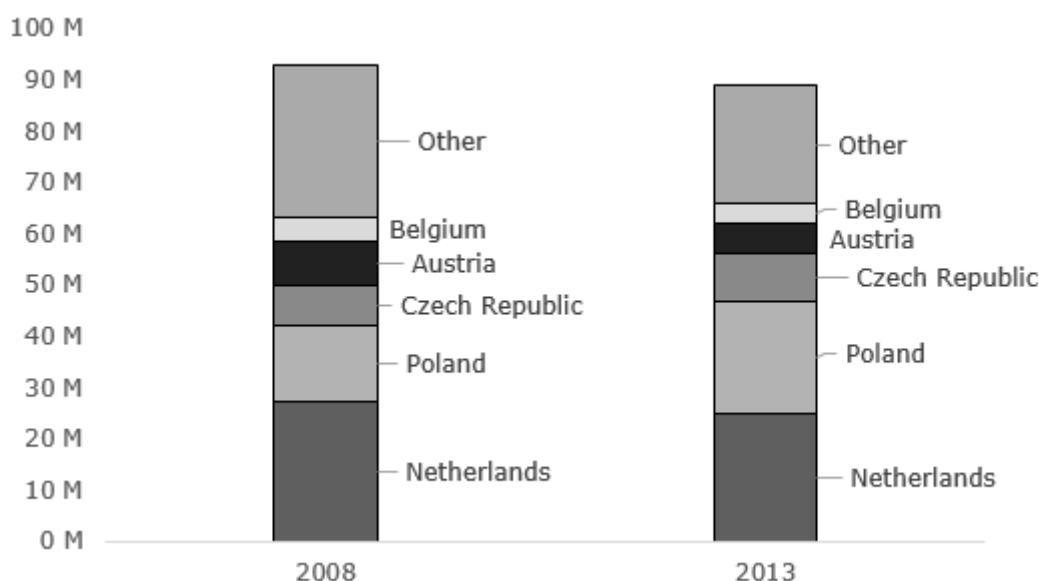
Bulgarian hauliers on German roads increased significantly more than the trade flows between these two countries in the period from 2011 to 2012. Part of this is seen to be due to cabotage activities that are carried out in the continuation of international transports to Germany.

The BAG has analysed cabotage activities through surveys/interviews that were carried out during roadside checks in 2014 (BAG, 2014). During a three-month period in 2014, 801 drivers that were carrying out cabotage activities were surveyed. The vehicles of the interviewees were registered in Poland (with a share of 55%), the Czech Republic (9%), the Netherlands (7%) and Rumania (6%). In 87% of the cases the nationality was the driver was identical to the country of registration of the vehicle. In 19 cases German drivers were found in non-German vehicles, mainly from the Netherlands and Luxembourg. The survey showed that the increase of cabotage activities in Germany has been largely promoted by the commissioning of such activities by German companies (customers of cabotage activities in Germany are mainly German companies), including both freight forwarders and manufacturing/trading businesses. Cabotage activities are carried out fairly regularly – typically five or more times per month and a significant share of cabotage can be attributed to “regularly recurrent” transport services<sup>108</sup>.

### **By German companies**

The cabotage activity of Germany hauliers reduced markedly after the financial crisis, and has not yet recovered to 2008 levels. German cabotage activity is spread across many neighbouring or nearby countries, especially Italy and France (see Figure 11-13).

**Figure 11-13: Tonne-km of cabotage performed by German hauliers in other Member States**



Source: Ricardo-AEA analysis of Eurostat

Note: In instances where data is flagged as confidential, it is necessarily omitted from this graph

<sup>108</sup> The meaning of ‘regularly recurrent’ is not defined, but might refer to same transport services that are carried out for the same client more frequently, having the same origin and destination; it is also possible that respondents had a different understanding of the meaning of ‘regularly recurrent’

### **11.3.2. Regulation 1071/2009**

#### **11.3.2.1. Implementation and status**

Regulation 1071/2009 (and 1072/2009) was adopted into German national law by the revision of the German Road Haulage Act (the "Güterkraftverkehrsgesetz", GüKG) on the 23rd of September 2011. The German Regulation on the access to the profession of the goods transport market (the "Berufszugangsverordnung für den Güterkraftverkehr", GBZugV), which is based on the GüKG, was accordingly amended on 21st December 2011. The implementation of the national register of transport undertakings was furthermore passed with the "Verkehrsunternehmens-Durchführungsverordnung" (VUDat-DV), which was also adopted on the 21st of December 2011 .

Regulation 1071/2009 (as well as 1072/2009) resulted in changes to the General Administrative Regulation to the road haulage law (the "Allgemeine Verwaltungsvorschrift zum Güterkraftverkehrsrecht", GüKVwV), which were released on the 10th of August 2012. The regulation on fees in the context of road haulage (the "Güterkraftverkehrskostenverordnung", GüKKostV) did not need any revisions due to Regulation 1071/2009 (it was last amended in 2004); it sets out the fees to be charged for official acts in relation to the provisions of the German Road Haulage Act.

The requirements regarding establishment, good repute, financial standing, professional competence and designation of a transport manager, are largely the same as set out in 1071/2009 (see § 3 Erlaubnispflicht of the GüKG and the GBZugV, which both refer to 1071/2009).

With the introduction of 1071/2009 there is no requirement anymore that such a qualified person is directly employed by the undertaking. Stakeholders consulted for this study took different views on whether external transport managers should be permitted at all, on whether the limit of managing up to 50 vehicles for four different undertakings is too stringent or too loose, and on whether such (or a similar) limit should be introduced for internal transport managers. Enforcement authorities state that it is very difficult to verify whether an external transport manager effectively and continuously manages the transport activities of the undertaking, given that there is no definition of the required degree of availability or their adequate remuneration are defined. As such, "sham" labour contracts are difficult to uncover.

Regarding the requirement of **professional competence**, Germany requires a supplementary oral **examination** that contributes to the total mark of the examination for transport managers. More specifically, there are two two-hour written exams (contributing 40% and 35% to the total grade) that combine multi-choice questions, with questions with a direct response and case study questions, and one oral exam of 30 minutes (contributing the remaining 25% to the grade). A minimum of 60% over all examination parts has to be achieved, while each part has to be passed with at least 50%. In case the written examinations are passed with over 60%, the oral examination is no longer necessary (it is also omitted in case the results of the written examination do not allow a positive mark to the overall examination anymore).

The costs for the examination amount to €195 (IHK Köln, 2012). Where a person had commenced training or passed the final examination before the 4th of December 2011, no further examination is required. Furthermore, professional competence can be established if a person has managed a transport undertaking for at least ten years prior the 4<sup>th</sup> of December 2009 in one or more EU Member States. Further, certificates of professional competence that were restricted to the performance of short-distance goods transport operations, transport operations for the purpose of relocations, or inner-city transport are valid. Job trainings or degree programmes that had previously been accredited to provide for proof of professional competence are no longer valid since the inception of the new GBZugV (IHK, 2015). According to questionnaire responses received for this study, the pass rate of the exams was 51% for goods transport and 77% for passenger transport in 2013.

Referring to Article 8 (2), German authorities report that despite the requirement that applicants shall sit the examination in the Member State in which they have their normal residence or the Member State in which they work, it does occur that candidates travel to another Member State (i.e. their home country) to sit the exam in order to avoid potential German language difficulties.

Regarding the requirement of **good repute**, the German Transport Act (GüKG) states that in case a designated transport manager or a licence holder has lost their good repute, this good repute is to be re-established upon request 'in case facts justify the assumption' that this reestablishment is legitimate (see §3(5b)). A more explicit description of these facts and/or how the procedure works in practice is not defined in national legislation.

Regarding the requirement of **financial standing**, the minimum level of financial standing is possible by the means of certified annual accounts, a bank guarantee, professional insurances and 'other' (as stated in Regulation 1071/2009) – a term that has not been defined any more explicitly in the German law and is hence interpreted differently across the different enforcement authorities leading to different practices across the control authorities. Questionnaire responses highlight the following issues in Germany:

- The previous version of the German law explicitly stated which types of assets and reserves were accepted, which made the assessment of financial standing easier – especially in the case of undertakings that are exempt from bookkeeping and accounting requirements (e.g. because of their size and/or legal status).
- Regarding the bank guarantee, it is questioned who the addressee of such a guarantee is supposed to be. Enforcement authorities also question how such a guarantee can possibly ensure that an undertaking can meet its liabilities at any point in time in practice.
- It is not clearly defined what type of proof is needed when an undertaking applies for a licence for the first time and thus has less documentary evidence of its financial standing.
- A stable financial standing over longer time periods is reported to be very difficult to verify.

In general, German enforcement authorities call for clearer and unambiguous definitions of which documentation and/or assets or reserves are necessary for proving financial standing.

While most German stakeholders interviewed for this study state that the financial standing requirement is definitely necessary, it is also thought to be the most difficult requirement for undertakings to comply with. By contrast, one German undertaking emphasised that the capital requirements are too low: they allow an increasing number of small businesses who can undercut average prices by up to 10% to enter the market. Such companies frequently have a high turnover of drivers.

Regarding the requirements on **stable and effective establishment**, German authorities highlight the difficulty in verification, mainly due to the different terms. Article 5 of the Regulation refers to both an establishment ("Niederlassung") in Article 5 (a) and an operating centre ("Betriebsstätte") in Article 5 (c). It has also been highlighted that current enforcement capacities are often insufficient to thoroughly verify whether an establishment is really stable.

According to German legislation, a company which has its seat in Germany may be granted a license for up to ten years provided that it complies with the requirements established in Article 3 of Regulation 1071/2009. A company that holds a Community license does not need a separate (German) license unless the carriage is between Germany and a state which is neither an EU Member State nor contracting party to the Agreement on the European Economic Area nor Switzerland.

Stakeholders interviewed for this study expressed that there is ambiguity concerning whether a **community licence** can only be granted in the Member State where the undertaking has its main establishment, or whether the licence can also be granted in the Member State where the undertaking has a registered subsidiary. As Member States appear to have different approaches in this respect, German authorities have been in contact with the Commission in order to address the problem. At the time of writing this report, the issue has not further advanced.

However, all German road transport undertakings that operate HGVs also require an additional **insurance** against the damage of transported goods. The minimum sum insured must not be lower than €600,000 per event of damage. The annual maximum limit of indemnity must not be lower than twice the insured minimum sum.

With regards to **liability**, the German Road Transport Act (GüKG) defines that a contracting party is required to request information from the haulier on the availability of the required documentation needed for carrying out road transport operations. More explicitly, Article 7c of the GüKG states that any organisation contracting transport services to another enterprise on a commercial basis, must not allow these services to be carried out in the event he has the knowledge, or negligently has no knowledge, that the contracted enterprise:

- does not hold an allowance, does not hold an entitlement, or alternatively a community licence that allows to carry out the transport operation (or illegitimately uses the allowance, entitlement or licence);
- deploys drivers in a manner not compliant with the provisions of the German Road Transport Act, or for who he does not hold a driver attestation in accordance with Articles 3 and 5 of Regulation (EC) No 1072/2009;
- subcontracts services to another freight forwarder or haulier which carries out the services under the conditions listed above.

According to a stakeholder interviewed for this study, contracting parties deal with this liability in practice by letting the contractor sign a form that states that all documentation and employment practices are in order. This signed form is enough for the contracting party to be immune against any potential charges. Interviewed authorities however say that such forms would not be sufficient to claim non-liability for potential infringements.

The **national electronic register** of transport undertakings (called "einzelstaatliches elektronisches Register" (EER)) is under the responsibility of the BAG. The public part of this register can be accessed since the 1<sup>st</sup> of October 2013. The parts of the register that are not publically available but accessible to all according responsible authorities in the Member States on request (and that provide information on infringements and related administrative decisions, as according to Regulation 1071/2009) are held separately. However, according to § 16 of the German Transport Act (GüKG), the BAG does maintain a file on completed sanctioning proceedings related to infringements of the GüKG (BAG, 2015) (BAG, 2014). The German Ministry of Transport reported for this study that the costs for setting up the EER and its connection to the ERRU to have been €2.1m. The annual running costs amount to €80,000. In general, the efforts are currently seen to greatly outweigh the benefits of the national register. However, it is acknowledged that this imbalance might change for the better thanks to the connection of the register to the ERRU via EUCARIS (which has taken effect on the 13 January 2015). EUCARIS is as a generic data exchange network used for vehicle and driver data (including driving licences, insurance information and personal data for collecting traffic fines from foreigners).

Previously, there was a risk rating system at regional level. However, with the entry into force of Regulations 1071/2009 and 1072/2009, a country-wide risk rating system was implemented. The German **risk rating system** is based on the classification of infringements into the four categories of most serious infringements (as according to Annex IV of Regulation 1071/2009). As of July 2014 the infringements are rated with



either 5 points (most serious infringements), 3 points (more serious/serious infringements) or 1 point (other infringements). An undertaking is then rated as having an increased risk if it has accumulated either 5 points (for undertakings with to 10 vehicles), 8 points (up to 50 vehicles), or 11 points (more than 50 vehicles). Undertaking with 'increased risk' are checked to confirm whether the conditions to the access to the professions are still met. If this is the case, but the increased risk of the undertaking persists, another check of the undertaking is carried out within two years. In order to account for the frequency of serious and very serious infringements, three serious infringements per driver per year is counted as one very serious infringement, and three very serious infringements per driver per year are counted as one most serious infringement (BAG, 2014).

The German authorities have indicated that in practice, the categorisation of infringements poses difficulties though, especially with regards to the infringements that are defined in Annex IV. In their opinion, the infringements should be better defined. The most serious infringements appear to be clear, but everything below poses difficulties. An 'infringement regulation' would be convenient in this context, as it was rejected by the European Parliament.

The German Transport Act (GüKG) currently applies to all vehicles with a mass of more than 3.5t (see § 1 (1) of the GüKG). It has been discussed whether professional licences should be a requirement for undertakings that only operate with vehicles with a maximum speed limit of 40km/h – undertakings that are clearly out of scope of Regulation 1071/2009 according to Article 1 (4c) (unless defined differently by a Member State). The industry association BGL (Bundesverband Güterkraftverkehr Logistik und Entsorgung) opposes the exemption, since this would put additional competitive pressure onto this market segment, typically operating in the agricultural sector. The BGL generally opposes any extension of the list of exemptions provided in § 2 of the GüKG). (BGL, 2014)

#### **11.3.2.2. Enforcement and compliance**

The German Road Transport Act (the GüKG) defines in detail the duties and competence of the BAG, an independent higher federal authority. The BAG is responsible for checks at the road side and at premises, establishing statistics, the Road Transport Act's legal development as well as for market monitoring. The office maintains the national register of transport undertakings as well as the register of committed offences. It furthermore acts as the national contact point, as defined in article 18 of Regulation 1071/2009.

The German undertakings association BGL highlighted that Danish companies have been outflagging vehicle fleets to Germany for many years (BGL, 2014). Recent reports had appeared that claimed that these companies were letterbox companies that only register vehicles in Germany while organising the vehicles' schedules from Denmark. This practice allowed them to benefit from lower labour costs, tax rates and social security payments and exemptions of the German driving ban for trucks on Sundays. German authorities interviewed for this study further report on letterbox companies that are established as a means to get access to transport permits established under bi- or multilateral agreements with non-EU countries.

Drivers protested against (at least 20) Danish undertakings that outflag their operations to Flensburg and Handewitt, without fulfilling the requirements of Regulation 1071/2009 on the conditions for establishment, which saves them up to EUR 1,000 of base salary per driver. Authorities however note that these companies create jobs in the area.

Several stakeholders believe that German authorities do not check/prosecute these companies properly; however, the authorities claim that it is not straight-forward to prove any illegal practices of these 'outflagged' companies (see for example (SHZ, 2013)).

With regards to checks and compliance statistics, Germany did not provide a country report on the implementation in the period from 4 December 2011 until 31 December

2012, hence there are no statistics on authorisations or certificates of professional competence granted/withdrawn over that period available (European Commission, 2014a). The BAG provides data as shown in Table 11-3. More detailed information on the explicit type or seriousness of infringements for 2013 or any previous years could not be identified.

**Table 11-3: Overview of roadside checks carried out by BAG in 2013 and identified infringements**

	Total		German vehicles		Non-resident vehicles	
Controlled vehicles	505,829	100%	201,031	40%	304,798	60%
Total number of infringements	217,267	100%	114,545	53%	102,722	47%
<i>Of which in the field of...</i>						
The German Road Transport Act (GüKG)	9,087	4.2%	4,558	4.0%	4,529	4.4%
Illegal Employment	378	0.2%	137	0.1%	241	0.2%
Driver regulations*	158,819	73.1%	95,324	83.2%	63,495	61.8%
Hazardous goods law	5,651	2.6%	1,937	1.7%	3,714	3.6%
Road traffic law	38,743	17.8%	10,648	9.3%	28,095	27.4%
Waste law	4,483	2.1%	1,880	1.6%	2,603	2.5%
Other (e.g. food legislation)	106	0.0%	61	0.1%	45	0.0%

\* Values refer to the total number of detected infringements, accounting for possible multiple infringements detected Source: Provided by the BAG for this study

Article 19 of the German Road Transport Act defines maximum fines for non-compliance with the rules. Three types of infringements are identified that can be penalised by fines of up to €200,000, €100,000 and €20,000 respectively. The highest fine can be charged in cases of unlawful employment of driving personnel, or in case of cabotage activities that are carried out by non-EU drivers that do not possess or carry a driver attestation. The fine of up to €100,000 can be charged when deploying security personnel or vehicles that are not in accordance with Regulation (EU) 1214/2011. The fine of up to €20,000 can, among others, be charged in case the undertaking is found not to fulfil the requirements for engaging in the occupation of a road transport operator (i.e. does not possess the necessary licence, hence the specific requirements of Regulation 1071/2009), in case customers (parties commissioning the transport) neglect their customer-specific obligations (see Article 7c of the GüKG), or in case international or cabotage activities are carried out without the undertaking holding a community licence. All these fines represent the absolute maximum fines and are in practice only charged in court rulings in case of repetitive infringements. In addition, Article 18 of the German Road Transport Act allows border authorities to send vehicles back if the necessary and mandatory documentation are not shown.

The "Buß- und Verwarnungsgeldkatalog GüKG" is of more importance in 'everyday' enforcement practice – it defines the fines for single infringements. This "catalogue" distinguishes between penalties for intentional and negligent infringements and furthermore separates between penalties for undertakings, drivers and parties commissioning transport operations (customers). The highest €5,000 penalty for the most serious infringements is charged to undertakings and customers only. The highest fee drivers can be charged amounts to €250. National guidance is also provided by the "Katalog der nationalen Straf- und Bußgeldtatbestände, die „Schwerste Verstöße" i. S. d. Anhangs IV der Verordnung (EG) 1071/2009 darstellen" – a catalogue that provides a list of infringements that are to be classified as serious infringements according to annex IV or Regulation 1071/2009.

In case an undertaking has lost its good repute, rehabilitation of the undertaking is possible: a new application has to be made and the exam has to be passed again, after the deletion of the records of the undertaking in the national register.

Enforcement authorities consulted for this study call for a clearer definition of when the loss of good repute and the resulting withdrawal of the licence can be seen as a disproportionate measure. Currently it is seen that the term 'disproportionate' leaves too much room for interpretation. Furthermore, enforcement authorities ask for clearer definitions of the categorisation of infringements according to their severity. The current use of terms causes confusion in practice. Some specific issues that were mentioned by authorities during interviews conducted for this study were further that:

- If falsifying record sheets is classified as most serious infringement, also the failure to keep them (for long enough) should be classified as most serious infringement;
- If the absence of a tachograph is classified as most serious infringement, also the non-functioning or an unused tachograph should be classified as most serious infringement;
- Long-established typically compliant undertakings should be treated differently than new applicants, especially since the loss of good repute of established undertakings is very difficult in practice anyway: enforcers typically avoid withdrawing a licence in case of a single most serious infringement of a long-established company, as this is seen as a disproportionate measure. However, this is a judgement to be made by the enforcement officer on a case-by-case basis as there is no official guidance in this respect.

### **11.3.3. Regulation 1072/2009**

#### **11.3.3.1. Implementation and status**

National legislation was not significantly affected by the entry into force of Regulation 1072/2009 as since 2008, provisions established in European law had already been in force to a large extent. In 2008 (prior to the introduction of Regulation 1072/2009), Germany introduced a rule allowing hauliers from other Member States to undertake 3 cabotage operations within 7 days, following the transportation of a cross-border load to Germany which involved the full or partial unloading of the vehicle. In addition, Article 7a of the Road Haulage Act established the requirement for hauliers conducting domestic transport operations in Germany to hold liability insurance against the damage of goods carried (European Parliament, 2013b). Following adoption of Regulation 1072/2009, an amendment of the German Road Haulage Act was issued on 31 July 2010, which introduced a more detailed description of a number of infringements was added (European Parliament, 2013b).

Regulation 1072/2009 was adopted into German national law by the revision of the German Road Haulage Act (GüKG) on the 23rd of September 2011 to ensure that the national legislation referred to Regulation 1072/2009. Article 17a (2) of the GüKGrKabotageV states that cabotage in Germany is allowed after a **full or partial unloading of the vehicle** following a cross-border transport. This is a more explicit definition of when a cabotage operation starts than provided in Article 8(2) of Regulation 1071/2009, which states that cabotage operations may be carried out "once the goods [...] have been delivered" (Regulation 1071/2009 hence does not make it this explicit whether a delivery must be a fully or partially unloaded before a cabotage operation starts).

Concerning multi-drops, the BAG takes the following stance: a cabotage service containing more than one loading or unloading point is seen as a single service in case there is only one single sender of the cargo or, respectively, only one single receiver of the cargo, irrespective of the number of loading or unloading points. In case there are multiple senders and/or receivers of the transported cargo, the operation cannot be counted as single a cabotage operation (HK Hamburg, 2015). According to German

authorities, an international transport operation into Germany (after which a cabotage operation can start) is counted as such if it can be seen as an 'economic activity' – in practice, international shipping documents provide the necessary evidence, however, no official threshold values/guidelines have been established here that make it evident which transport can or cannot be seen as a true 'economic activity'. There are no requirements for vehicles to return to their home country or to spend a certain period out of Germany before re-entering the German territory in order to carry out new cabotage activities. There are no additional requirements in Germany to the ones as set out in Regulation 1071/2009 as to how a cabotage operation can be proven.

German industry strongly opposes any further opening of the cabotage market. The industry association BGL highlights that empty runs cannot be reduced with increasing liberalisation of the market: empty runs are either due to specificities of certain transport operations (e.g. operations carried out by waste disposal vehicles, lumber trucks etc.) or due to unmatched operations (e.g. there is three times as much cargo that gets delivered into Berlin than out of Berlin). Furthermore, also the trip to/from the first/last loading/unloading points will necessarily always be empty. The share of empty runs of 20% (or 10% in long-distance transport) is expected to remain stable, as they have from 2005 onwards. Since then neither the introduction of toll roads in 2005, nor the increase of tolls in 2009 led to a reduction of empty runs (SVG Hamburg, 2014).

Stakeholders surveyed/interviewed for this study within the group of transport undertakings state that an increased use of vehicles below 3.5t (partly equipped with bunk beds) among foreign operators has been observed - possibly this is a result of the applicability of the German Transport Act (GüKG) only to vehicles above 3.5t and hence of attempts to circumvent the cabotage rules. Concrete data on this phenomenon could not be gathered, hence the extent of it remains unknown. Given this lack of data, it is also impossible to say whether these vehicles replace the heavier vehicle types or whether these lighter vehicles represent new, additional vehicles that have come into operation. However, German stakeholders interviewed for this study among the groups of trade unions and enforcers have the impression that this phenomenon has especially increased since 2014.

### 11.3.3.2. Enforcement and compliance

According to questionnaire responses for this study, cabotage rules are enforced by the (federal and local) police, the licence authorities as well as the BAG.

According to the numbers received from the BAG for this study (see Table 11-4), the number of cabotage checks has somewhat decreased over the past three years. Despite the decreasing number of checks, the number of detected infringements has however risen, resulting in an increase of the detection rate from 2.6% in 2012 to 8.3% in 2014. Even so, the overall detection rates are relatively low for Germany vehicles, but relatively higher for other EU vehicles.

**Table 11-4: Cabotage control statistics for Germany 2012 - 2014**

	Number of vehicles controlled			Number of detected infringements			Detection rate (in %)		
	DE	EU	Total	DE	EU	Total	DE	EU	Total
2012	98,283	108,837	207,120	52	484	536	<b>0.5</b>	<b>4.4</b>	<b>2.6</b>
2013	86,234	99,980	186,214	29	698	727	<b>0.3</b>	<b>7.0</b>	<b>3.9</b>
2014	76,608	106,592	183,200	87	1,433	1,520	<b>1.1</b>	<b>13.4</b>	<b>8.3</b>

Source: Provided by the BAG for this study

German stakeholders mention that monitoring compliance with the current law is not straightforward and control of certain requirements (e.g. the empty entry of vehicles) are almost impossible to monitor (European Parliament, 2013a). Some German authorities appreciated the fact that the legislation allows license documents to be issued 'up to 10 years', which allows them to differentiate between more or less reliable undertakings, with more or less proven financial standing, in case the need be. In

practice, the issuance of a licence valid for less than 10 years requires additional justification from the side of the enforcement authorities though. So only few enforcement authorities (or officers) make use of such shortened validity periods of licence documents. Also, given that many undertakings are hence only checked every 10 years, while infringements are only registered for a period of around two years, the likelihood of detecting unlawful practices of undertakings has decreased. Enforcement authorities have hence proposed to reduce the issuance period of licence documents to five years.

The respondent to the enforcers survey for this study indicated a minimum fine of €1,000 and a maximum fine of €20,000, for example, cabotage activities that are carried out by non-EU drivers that do not possess or carry a driver attestation. In the event that the required documentation (including the driver attestation) cannot be provided upon request, the BAG and other entitled authorities may impound the vehicle until these documents can be submitted (European Parliament, 2013b).

## 11.4. Poland

### 11.4.1. Market situation and developments

#### 11.4.1.1. Market overview

In 2013 Poland had a total of 28,227 businesses with a valid license for carriage of goods in the EU (GITD, 2015). In contrast to much of Europe, the number of enterprises has increased over recent years, rising from 26,418 in 2011.

**Table 11-5: Number and size of enterprises with a valid licence for carriage of goods in the EU (2013)**

Employees	Number of businesses	Number of vehicles
None	1,652 (6%)	0 (0%)
1	6,750 (23%)	6,749 (4%)
2-4	11,818 (40%)	32,652 (19%)
5-10	6,015 (20%)	40,554 (24%)
11-20	1,988 (7%)	28,206 (17%)
21-50	948 (3%)	28,609 (17%)
51-100	223 (1%)	15,215 (9%)
Over 100	94 (0%)	16,660 (10%)
Total	29,488	168,645

Source: (GITD, 2015).

Poland enjoys competitive advantages over many countries due to its relatively lower driver wages, fuel costs, maintenance and repair services (CNR, 2012). In recent years, foreign companies operating in Poland (notably from Germany) have given rise to additional competition in the sector. This has led to an observable **increase in the quality of service** that is provided, which is moving markedly towards the levels of Western competitors (CNR, 2012). The continued economic growth might point to gradual increases in the Polish **salary levels**, however, increased competition from Romanian and Bulgarian drivers may still keep them in check (European Parliament, 2013a).

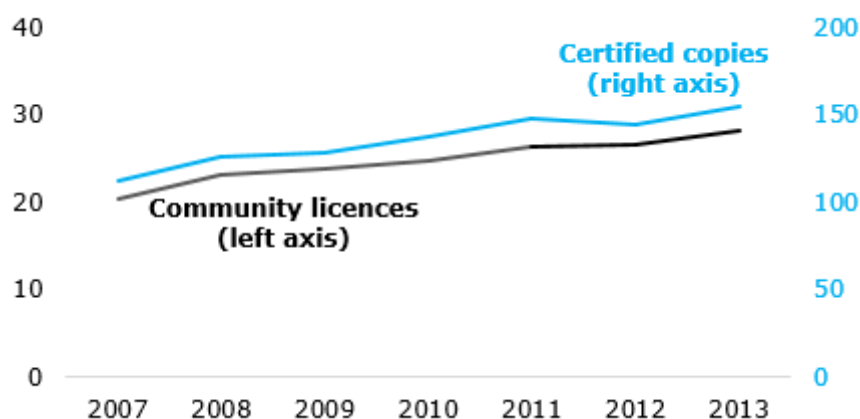
Besides increased market and cabotage activity, low wages in Poland have however also caused a driver migration from Eastern to Western European countries, resulting in observable **driver shortages** within Poland. In Poland this shortfall was estimated to amount to 30,000 drivers already in 2007 and is up until today seen to be particularly high in Poland (AECOM, 2014a). As a result several operators have started employing

drivers from other countries, “turning a blind eye to employment documentation and thus saving money”, such as from Romania and Bulgaria (AECOM, 2014a). The Polish enforcer (GITD – General Inspectorate of Road Transport) stated during the interview for this study that it was not aware of such practices.

#### 11.4.1.2. Community licences, certified copies and driver attestations

Community licence data suggest that there has been very significant growth in the international activity of Polish road hauliers: the number of community licences has grown by roughly 40% from 2007 to 2013 (see Figure 11-14 for total numbers of these licences).

**Figure 11-14: Haulier community licenses and certified copies in Poland (thousands)**



Source: Ricardo-AEA analysis of Member State reportage to the Commission pursuant to Regulations 684/92, 881/92, 1072/2009

In 2013, there were 5,641 driver attestations issued in Poland and 4,771 in circulation. The majority of these belonged to drivers from Ukraine (58%) and Belarus (35%) (GITD, 2015).

#### 11.4.1.3. Cabotage

##### Cabotage activities in Poland

Between May 2009 and the entry into force of Regulation (EC) No 1072/2009 in May 2010, the Road Transport Act specified that in order to perform cabotage operations on Polish roads, transport undertakings had to obtain a permit from the Ministry of Infrastructure. Cabotage activity carried out in Poland appears to be dominated by hauliers from just two Member States: Germany and Estonia. For all other Member States, Eurostat either indicates that no cabotage was performed or that the numbers are to be kept confidential. Eurostat applies confidentiality when there are less than 10 vehicle records in the surveys of any type of operation, so in practice confidentiality probably indicates that a negligible amount of activity has taken place (European Commission, 2003).

The total amount of cabotage activity in Poland – less than 50M tonne-kilometres in 2013 – is tiny in comparison to its neighbour Germany and has shown little growth.

##### By Polish Companies

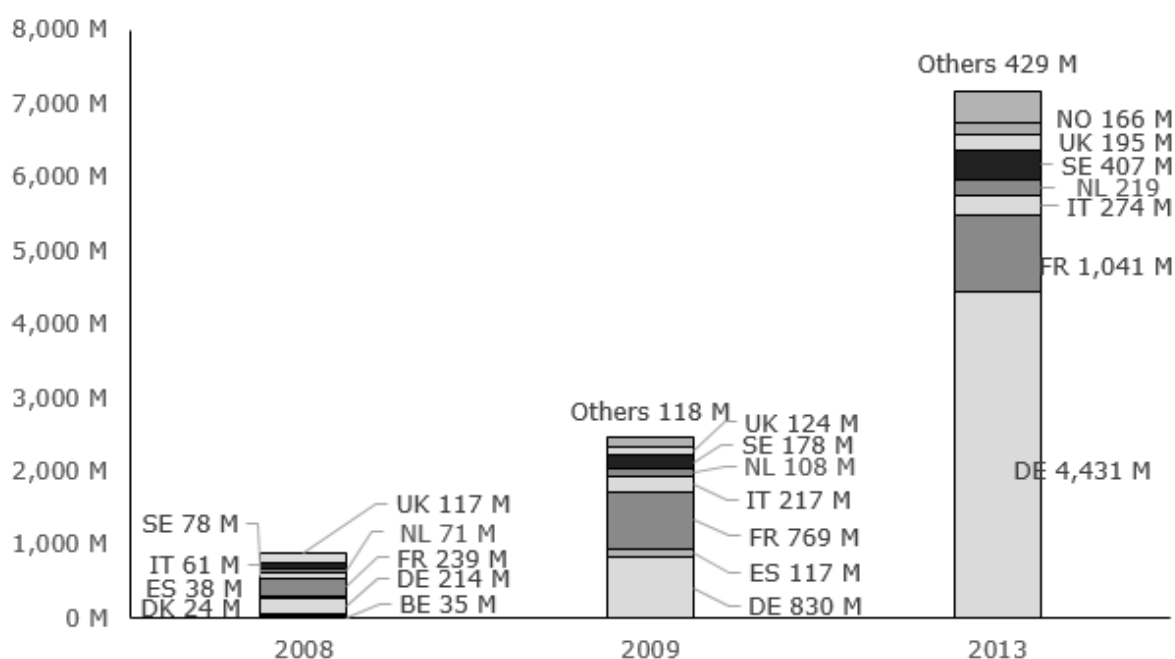
Poland was excluded from the EU cabotage market due to interim restrictions for new Member States between 2004 and 2009 (1<sup>st</sup> May). Poland is by far the largest provider of cabotage services across the EU (by comparison, the second largest provider is the Netherlands, where the cabotage activity is around one third of that in Poland (measured in t km). Polish hauliers are responsible of around 28% of all reported cabotage activities across the EU in 2013 (Eurostat). Poland’s strong cabotage position is certainly due to

several reasons, such as having a large fleet of vehicles, its location in relation to large markets such as Germany and its comparatively low rates compared to many EU15 countries. In certain circumstances Polish drivers however also operate at similar wages as local competitors under the directive on Posting of Workers (AECOM, 2014a).

The activity of Polish caboteurs is mainly concentrated on Germany – 62% of all tonne-kilometres by Polish caboteurs in 2013 were performed there. This reflects Germany's geographic proximity, its large market for national transport, and the cost differential between companies based in the two Member States. Aside from market liberalisation, an important factor in the success of the Polish goods road transport sector has also been the opening of new sections of motorways, which further reduced journey times for trips to/from Germany and Western Europe (European Parliament, 2013a). The remainder of the cabotage activity by Polish hauliers is spread over France (15%), Italy, the Netherlands, Sweden, the UK, Norway, and to a lesser extent other Member States (see Figure 11-15).

In all of these Member States, Polish hauliers in 2008 (before lifting of restrictions) performed a small fraction of the amount of cabotage they performed in 2013. With the lifting of the restrictions in 2009, the cabotage market has more than doubled between 2008 and 2009. Between 2009 and 2013, the number of tonne km of cabotage has almost tripled (Figure 11-15). In tonne-kilometre terms, the total amount of cabotage performed by Polish hauliers (over 7,000Mio t km) is now roughly the same as the size of the entire market for national transport in Ireland or Bulgaria.

**Figure 11-15: Tonne-km of cabotage performed by Polish hauliers in other Member States**



Source: Ricardo-AEA analysis of Eurostat

Note: In instances where data is flagged as confidential, it is necessarily omitted from this graph

#### 11.4.2. Regulation 1071/2009

##### 11.4.2.1. Implementation and status

The national legislation that covers Regulation 1071/2009 in Poland is the Road Transport Act (Ustawa z dnia 5 kwietnia 2013 r. o zmianie ustawy o transporcie drogowym oraz ustawy o czasie pracy kierowców (Kancelaria Sejmu, 2013). The changes to national law to reflect the requirements of European legislation are summarised in Table 11-6. The authorisations to pursue the occupation of road

transport operator in Europe replaced the previous national operating licences in 2007, which according to the Regulatory Impact Assessment would take place gradually and not entail any additional costs for business (Ministry of Transport, 2013). The fee for an authorisation to pursue the occupation of road transport operator is 1000 PLN (€236 approximately) and it is granted for an indefinite period.

**Table 11-6: Summary of amendments to national law**

	Before 3 December 2011	After 3 December 2011
Transport manager	The person managing the enterprise	The person managing the transport operations, who is an employee, shareholder, owner, entrepreneur or member of the management of a company.
Proof of professional competence	Separate certificates for national and international transport	National and international transport requires the same certificate. The exam consists of a compulsory multiple choice questions (64 questions) and a mandatory case study. Fees are 800 PLN (500 PLN for exam fee and 300 PLN for certificate). Subjects are specified in Reg 1071/2009
Good repute	Required for operator only	Required
Stable and effective establishment	Not required	Required
Financial standing	Required, based on available funds or assets	Required, based on capital and reserves

Source: (OZPTD, 2011)

Requirements for **stable and effective establishment** were introduced that require operators to have an operational base in which they conduct their activities with the necessary administrative and technical equipment. Reportedly, there was a lack of a clear interpretation of the concept of an operational base in practice, since the Regulation is the only instance of such a requirement in state law. As such, no other legislation has a specific legal definition of what standards should be met (e.g. for mandatory equipment) (ARENA561, 2012). Subsequently, the legal text was clarified in the 2013 amendment to the Road Transport Act (RCL, 2013). The amendment defined a stable and effective establishment as a place equipped with technical equipment and technical devices appropriate to carry out transport activities in a structured and continuous manner, which includes at least one of the following elements:

- A parking place;
- An unloading area;
- Equipment for maintenance of vehicles.

The Polish enforcer (GITD – General Inspectorate of Road Transport) reported that the definitions for stable and effective establishment improved the situation in Poland and had a positive effect.

The requirements for financial standing are in line with the minimum limits set out in the Regulation and had been in place prior to the amendment (RCL, 2013). According to the Ministry of Infrastructure and Development in Poland, all options regarding proving financial standing requirements are possible (e.g. certified annual accounts, bank guarantee, and a professional insurance). None of this study's respondents to the ministry, enforcement and high level questionnaires and interviews mentioned a specific problem with the financial standing values.

However, one issue reported in the media appears to have been that, under national accounting law, firms with income of less than €1,200,000 were not required to have audited accounts, leaving them with difficulties to demonstrate their financial standing



(Etransport blog, 2013). The regulation provided carriers with the opportunity to demonstrate their financial capability with "... security, such as a bank guarantee or insurance, including professional liability insurance from one or more banks or other financial institutions, including insurance companies, ...". According to media reports, such insurance products are being offered on the market, and although they represent an additional cost for operators it makes the process of obtaining a licence easier (LOG24, 2012).

The only exemption from the examinations to demonstrate professional competence that is foreseen by Polish law is having a diploma of higher education or postgraduate diploma in field of road transport. According to the questionnaire responses received by the Inspectorate of Road Transport (the Główny Inspektorat Transportu Drogowego, GITD) the pass rates for these exams was 60% in 2013 (or a typical year after the introduction of the new standards).

The Ministry of Infrastructure and Development has stated in their answers to the questionnaire that so far, Poland has not set up a national electronic register, however is in the process of its development. The delay is stated to be related to the complexity and size of the register given that Poland has one of the biggest fleets of trucks for international operations as well as a large number of transport companies.

#### **11.4.2.2. Enforcement and compliance**

The GITD is responsible for enforcing Regulation 1071/2009. Further organisations that are enforcing the rules are the District Authority Offices that issue authorisations to pursue the occupation of road transport operator in national transport and the Motor Transport Institute under the Ministry of Infrastructure and Development that carries out examinations and the issuing of certificates.

Based on the questionnaires received from Polish enforcement authorities, the obligation for cooperation across borders led to some difficulties in enforcement and monitoring in practice, although the minimum requirements are seen to be sufficient. Furthermore, some difficulties were experienced with requirements for checks on stable and effective establishments, common rules on requirements for good repute, requirements for a designated transport manager, obligation to maintain national electronic register and connect this with ERRU.

The main reasons named for these difficulties of enforcement are reported as the lack of clarity in provisions, the differences across Member States in interpretation and/or implementation of the provisions of Regulation 1071/2009 and the lack of, or poor information available on, appeal procedures against infringements across Member States.

Poland reported that 7,182 authorisations for road haulage operations were granted over the period from 4<sup>th</sup> December 2011 until 31<sup>st</sup> December 2012, and 62 were withdrawn in the same period (whereas there were no declarations of unfitness) (European Commission, 2014a). There were 2,469 certificates of professional competence granted in 2012 (European Commission, 2014a).

The GITD provided statistics on the enforcement of certain aspects of the Regulation 1071/2009 before and after it was implemented. Between the years 2008 and 2013 the number of checks for stable and effective establishment has almost doubled from 1386 to 2351. These checks have led to 30 licence withdrawals in 2013. In only 9 cases overall the International Transport Office refused to issue a licence. The Inspectorate of Road Transport estimated that the number of additional infringements of road transport social legislation detected as a result of the introduction of Regulation 1071/2009 are estimated to be around 5% of total annual infringements of road transport social legislation.

Penalties are outlined in the Road Haulage Act and range from 500PLN for failing to meet administrative demands (e.g. to show certificates of professional competence

within 14 days) up to 8,000PLN (€1,888 approximately) for carrying out road transport operations without the required authorisations to pursue the occupation.

Written responses received for this study from Polish stakeholders regarding the existence of a rehabilitation procedure are contradictory which suggests that the provisions are unclear in this respect.

### **11.4.3. Regulation 1072/2009**

#### **11.4.3.1. Implementation and status**

The **Road Transport Act** specifies the competencies of national institutions with regard to the provisions of Regulation 1072/2009 (Kancelaria Sejmu, 2013). The Act was first passed in 2001 and has been further amended numerous times since to take account of new Polish and EU legislation. Article 29a of the Act specifies that the driver of the vehicle performing cabotage operations in Poland is required to show upon request all relevant documents (including waybills and invoices) for the cabotage operations carried out on Polish territory (European Parliament, 2013a).

The Posted Workers Directive does not seem to apply to the transport and road haulage industry in Poland (European Parliament, 2013a).

The **costs of obtaining a road transport licence** in Poland (a 10 year licence costs close to €2,000; a certified copy costs around €211) are significantly higher than in Germany, the Czech Republic or, Slovakia, where the costs of obtaining a licence are €700, €40, and €7 respectively (European Parliament, 2013a). The costs of a true certified copy is 11% of the fee for issuing the community licence and a driver attestation is around € 10 for 5 years.

#### **11.4.3.2. Enforcement and compliance**

The Polish road haulage market is policed by its own enforcement agency, the **Inspectorate of Road Transport**. Other forces are allowed to conduct roadside checks of vehicles in Poland, including the road police, the border guard, the military police, and the customs service. However, the Road Transport Act requires these forces to create a co-ordinated plan of enforcement of road transport rules (European Parliament, 2013a). The General Inspectorate of Road Transport states that around 400 road transport inspectors are responsible for performing roadside checks in full scope as well as company checks.

**Infringements with regards to cabotage** regulations are a very small issue in Poland: The GITD conducted 157,000 roadside checks of vehicles between January and October 2012. Infringements with regard to cabotage regulations were identified in only three cases (European Parliament, 2013a). In the interview conducted with the GITD it was suggested that this low infringement rate is due to the Polish transport market not being appealing for undertakings from other countries.

The GITD estimates that the average time needed for carrying out a roadside check is around 45 minutes if infringements are detected and 30 min if no infringements are detected. These checks are reported to have become more efficient/effective as a result of the introduction of one common format of community licence and drivers' attestations and the harmonisation of the rules.

However, according to the Ministry of Transport and the GITD, significant ambiguities remain regarding the cabotage provisions. The following items have been specifically mentioned:

- The possibility of partial loading or unloading during the trip appears to be interpreted differently across Member States.
- While it appears clear that a limit of only one cabotage operation exists in case of unladen entry to a given Member State, it appears unclear whether this

cabotage operation needs to be preceded by an international carriage to a Member State other than the one in which the haulier is established.

- The counting of the first and last leg of combined transport operations as cabotage operations appears to be different across Member States.
- The required documentation for proving cabotage activities varies across Member States leading to ambiguities among undertakings as to what documentation should be carried by the driver.

The fines or sanctions for infringements regarding Community licences are as follows (European Parliament, 2013a):

- Company does not hold Community licence or one or more of its vehicles is not registered on the licence: 8,000 PLN (ca. €1,914) - penalty for haulage company;
- Absence of certified copy on-board the vehicle: 500 PLN (ca. €119) penalty for driver; 2,000 PLN (ca. €478) penalty for company;
- Fraudulent/false licence: regulated by criminal law;
- Performing cabotage operations by a foreign transport operator in violation of the rules set down by Regulation (EC) No 1072/2009 and the Road Transport Act is set to 10,000 PLN (ca. €2,392).

As stated by the GITD in an interview conducted for this study, enforcement authorities have the option to immobilise a vehicle until the undertaking pays the fine imposed.

## **11.5. Romania**

### **11.5.1. Market situation and developments**

#### **11.5.1.1. Market overview**

The Romanian road transport market experienced a big drop in activity during the financial and economic crises in the first decade of this millennium. Between 2008 and 2010, the market decreased by more than 50%, which is the sharpest fall in transport activity across the Member States. In 2010, the Romanian transport industry association UNTRR reported on the difficulties that the Romanian transport market was experiencing (UNTRR, 2010). According to UNTRR, Romanian hauliers first had difficulties in complying with legislative requirements from the EU in 2007, when international competition started to increase, and when distortions of competition came to light due to an inadequate enforcement of Romanian and EU legislation. In 2008, this led to national haulier protests: hauliers also protested due to the disastrous state of Romanian roads, the lack of parking facilities that made compliance with EU requirements concerning resting times difficult, abusive traffic controls, high fuel prices and the high fiscal burden prevalent in the sector. In the period from 2008 to 2009 - the most difficult year in that decade for the Romanian freight transport market - the overall number of goods transport vehicles (>3.5t) decreased by 20,000 vehicles (or by 15%).

In 2010, Romanian transport companies came under additional pressure due to cost increases in the range of estimated 10-15%. These stemmed from increases in taxes on vehicles, insurance premiums, diesel excise and administrative burdens (UNTRR, 2010).

In recent years, transport across the EU seems to have become the main driver of development for Romanian hauliers (Transporter, 2014).

The UNTRR reports to have observed an increase in competition from carriers of the new EU countries (Hungary, Poland, Lithuania, Bulgaria), some of them having bigger fleets than Romanian carriers. A great disadvantage of the Romanian carrier is reported to be the lack of trust from the direct customers and the lack of know-how concerning complex transport services (logistics of goods throughout the entire value chain)

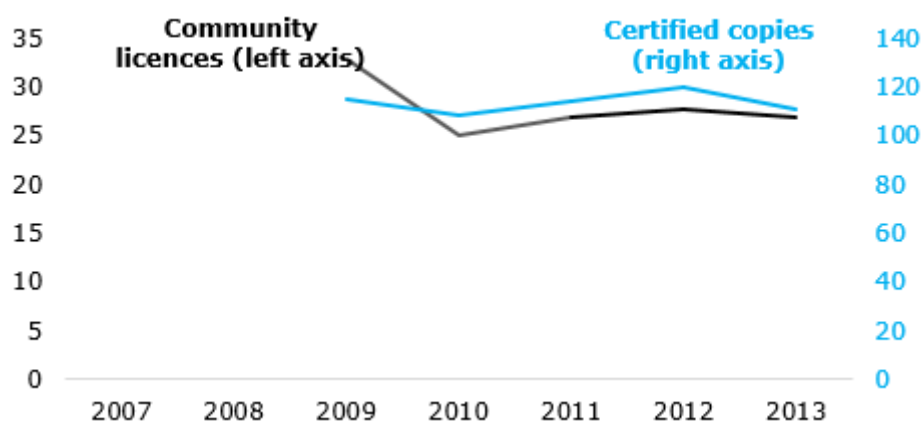
(UNTRR, 2013). The UNTRR identifies this imbalance between imports and exports as one of the biggest problems in the Romanian road haulage sector, leading to a high number of empty loads for trucks leaving the country.

The majority of Romanian transport companies are classified as small companies with either 0-10 employees (44%) or 11 – 50 employees (28%). Only 4 % of the companies have more than 500 employees. The turnover of the companies is largely proportional to their size (UNTRR, 2013).

#### **1.1.1.2 Community licenses, certified copies and driver attestations**

The data on Community licences do not provide any evidence of an increase in the number of Romanian haulage businesses with access to the international market between 2009 and 2013 (see Figure 11-16). The data are indicative of significant volatility in the market, with a fluctuation in certified copies of almost 10% in an individual year and a fluctuation in community licenses of almost 25% in a single year.

**Figure 11-16: Haulier community licences and certified copies in Romania (thousands)**



Source: Ricardo-AEA analysis of Member State reportage to the Commission pursuant to Regulations 684/92, 881/92, 1072/2009

According to the data provided by Romania to the European Commission, fewer than 100 driver attestations have ever been in circulation since 2011, suggesting the use of drivers from third countries by Romanian transport operators is negligible.

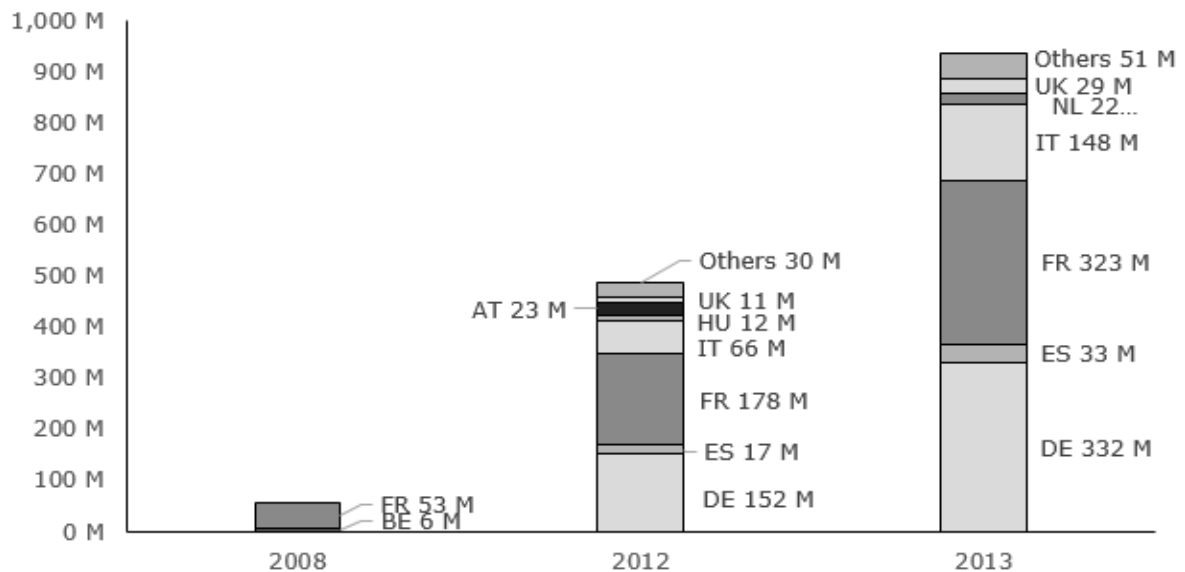
#### **11.5.1.2. Cabotage**

##### **Cabotage in Romania**

Romania's cabotage penetration rate (0.4% in 2013) is among the lowest in the EU.

##### **Cabotage by Romanian companies**

The share of cabotage as a percentage of all t-km that Romania hauliers perform is fairly typical, at 2.8%. As with other EU12 Member States, there has been a dramatic growth in the cabotage activity of Romania hauliers, given that Romania was subject to a transitional period preventing hauliers from performing cabotage in certain other Member States until the end of 2011. Cabotage activity in tonne-kilometres almost doubled in 2012 and then more than doubled again in 2013. The Eurostat data also show that Romanian hauliers perform a significant amount of cabotage in France, despite the distance from Romania (Figure 11-17).

**Figure 11-17: Tonne-km of cabotage performed by Romanian hauliers in other Member States**

Source: Ricardo-AEA analysis of Eurostat

Note: In instances where data is flagged as confidential, it is necessarily omitted from this graph

Both Romania and Bulgaria were subject to transitional periods preventing hauliers from these countries from performing cabotage in certain other EU Member States until the end of 2011. Since then, as shown in Figure 11-17, the cabotage market has almost doubled in the period from 2012 to 2013 only.

Regarding driver wages, reports are varied. Considering all remuneration elements, the wages of Romanian drivers in international transport appear to be reaching similar levels to those of Spanish hauliers (4-5 €/hour) (European Commission, 2014b). When compared to Poland, driver costs for Romanian hauliers are 92.5% of those incurred by Polish undertakings (European Parliament, 2013b). Anecdotal evidence further suggests that Polish operators employ drivers from Romania at rates of pay that are up to 50% less than what is paid to Polish drivers – rates that are only possible when ignoring requirements regarding employment documentation (AECOM, 2014a). It has also been reported that Spain reverts to drivers from mainly Romania (or Latin America), that accept net salaries in the range of EUR 1,000 per month (CNR, 2013). In conclusion, it is likely that the wage differential between Romania and other countries is falling, but the precise figures are difficult to determine.

## 11.5.2. Regulation 1071/2009

### 11.5.2.1. Implementation and status

The relevant legislation is Order No. 27/2011, approved by Order No MTI. 980 of 30 November 2011 creates the general legal framework for the application of the provisions of Regulation 1071/2009 and 1072/2009. The requirements for access to the occupation of road transport operator directly reference the requirements of Regulation 1071/2009 concerning the conditions of establishment, good repute, financial standing etc.

Undertakings can demonstrate financial standing by means of audited accounts, or if the undertaking does not prove ownership of capital and financial reserves in para. (1), it may demonstrate compliance by a certificate of financial capacity, such as a bank guarantee or insurance provided for in Article 7 paragraph (2) of Regulation 1071/2009 issued by one or more banks or other financial institutions including insurance companies (Romanian Government, 2011).

Once authorisation has been obtained, the company must have at least one vehicle registered and in circulation, whether owned, leased or rented. Previously, it was reported that companies operated without any registered vehicles (Blerot, 2010).

The certificate of competence of the transport manager is obtained on the basis of initial training followed by a two-hour examination. Holders of certificates of competence are required to attend regular professional training in the areas listed in Annex I to Regulation 1071/2009, at intervals not exceeding 10 years, and finally an assessment on updating knowledge on the conditions set by the competent authority. In order to update the knowledge they possess, transport managers are required to attend courses for continuing training (Romanian Government, 2011).

According to UNTRR, the market is very sensitive to training prices and companies frequently prefer to conduct their training for drivers and transport managers in-house. There are 200 training centres that are authorised to deliver these trainings. On average the costs for a 1-week training is €70. However, UNTRR criticises the quality of these training courses and highlights that the training centres that offer good quality training apply much higher prices which most Romanian companies cannot afford.

In Romania, an individual may act as transport manager for only *one* company (as opposed to a maximum of four) (Romanian Government, 2011). According to the questionnaire response from the State Inspectorate for Road Transport Control (ISCTR) for this study, this is in line with the provisions before the introduction of the Regulation 1071/2009, which have proven to be efficient. One transport manager being able to cover only one company is seen to prevent “false” managers and furthermore facilitates checks at the premises for control officers.

#### **11.5.2.2. Enforcement and compliance**

In Romania, the State Inspectorate for Road Transport Control (ISCTR) is the main responsible for enforcing road transport legislation. This body was created under Ordinance no. 26/2011 as a permanent specialised technical body of the Ministry of Transport and Infrastructure, and it was designed to ensure efficient inspection and enforcement. According to questionnaire responses received, the ISCTR employed 317 full-time road transport enforcers in 2015.

Furthermore, also the state police (covering 6 items) and the road administration (4 items) take on significant responsibility. Also the customs authority and other bodies are involved with very limited responsibility. The Romanian Road Authority – ARR – is the national contact point for the ERRU, is responsible for reporting to the Commission under the Regulation and shares responsibility with the ISCTR for maintaining the national electronic register. The ARR is furthermore responsible for issuing operators’ licences and certificates, and administers examinations and trainings for various qualifications in the road transport sector (ARR, 2015). According to UNTRR questionnaire response, there have been serious delays in the implementation of the European electronic register, which hampers the cross-border cooperation between Member States.

The ISCTR reports that its controls were improved in 2014 compared to the previous year by better targeting of controls, but also by increasing the level of training of its inspectors, and as a result they feel that compliance has improved (Traffic media, 2015). According to activity reports of the ISCTR, the more rigorous controls are reflected in the higher number of offenses detected (30,070 in 2014 compared to 26,075 in 2013).

In the first reporting period under Regulation 1071/2009, only one suspension was reported in Romania, and there were no withdrawals of authorisations for transport managers (European Commission, 2014a). The largest number of new certificates of professional competence of any Member State were awarded in Romania, with 12,488 in road haulage (European Commission, 2014a).

According to the national association, interviewed as part of this study, there is not thought to be a significant existence of **letter-box companies** in Romania. Foreign

companies that enter the Romanian market are typically big international freight transport companies that enter via the purchase of national companies (which comply with all requirements).

When establishing a transport undertaking in Romania, around 60% of transport companies use insurance as a fall-back option to demonstrate financial standing (Bleort, 2011). A transport association interviewed for this study reported that one of the main enforcement problems with Regulation 1071/2009 is the proof of financial capability.

According to the respondent to the enforcement authority survey, Romania has a risk rating system that targets checks of infringements of Regulation 1071/2009. In 2014, 23 sanctions were applied for not holding all the documents that maintain the conditions for access to the occupation of road haulage operator and road transport market.

The enforcement authority states in their questionnaire response that 58 additional cases of infringements of road transport social legislation have been detected in 2013 (or 0.002% of the total). In 2013, 7110 of the checks were conducted on own initiative, 511 checks were conducted due to tip-offs from other Member States.

Government Decision no. 76 of February 5 2014, amending Government Decision no. 69/2012 that classifies infringements into minor, serious and very serious infringements of Regulations 1071/2009, 1072/2009 and 1073/2009, revised the penalties for infringements of the Regulations. The main changes were to reduce the number of infringements categorised and very serious and serious, as well as to reduce the applicable fines. The main changes are summarised in Table 11-7. Further administrative sanctions are the suspension and withdrawal of the certified copy and of the transport license as well as the suspension of the right of use of the vehicle.

**Table 11-7: Categorisation of infringements and applicable fines**

Infringement type	Number of infringements in each category		Fines	
	2012	2014	2012	2014
Very serious	41	24	14,000-18,000 RON (€3,160-4,060)	9,000-12,000 RON (€2,040-2,720)
Serious	83	62	8,000-12,000 RON (€1,810-2,720)	4,000-6,000 RON (€910-1,360)
Minor	32	31	3,000-6,000 RON (€680-1,360)	500-2,000 RON (€110-450)

Source: Government Decision no. 76 of February 5 2014 and Government Decision no. 69 of February 1, 2012

These changes were due to concerns that the previous high level of fines and their wide application could drive transport operators out of business in the current economic climate – particularly in combination with the high number of very serious infringements (Ministry of Transport Romania, 2012). It was further noted that the previous rules could create difficulties for competent authorities regarding the enforcement of fine decisions and the collection of fines due to the risks of infringement being classified different by inspection staff (also leading to a lack of uniformity of controls). According to a national association (interviewed for this study), this situation might lead to different fines being applied to the same infringement and can, as a consequence, increase the risk of bribery.

The undertaking and/or its transport manager can lose their good reputation if they have been convicted according to Art. 6 para. (1) of Regulation 1071/2009; or committed serious infringements listed in Annex. IV to Regulation 1071/2009, or have been declared unfit according to Article 14 of Regulation 1071/2009. In the case of being declared unfit, the operator / transport manager is deemed rehabilitated after a period of one year from the date of the loss of good reputation. A carrier can file a complaint/appeal

within 30 days and if the answer is negative he may submit a complaint to the court within 30 days.

### **11.5.3. Regulation 1072/2009**

#### **11.5.3.1. Implementation and status**

The relevant national legislation for Regulation 1072/2009 is the same as for Regulation 1071/2009 – i.e. Order No. 27/2011. Romanian hauliers were not allowed to perform cabotage in most countries until 1 January 2012.

Cabotage is only considered when a transport operation is carried out from its beginning until its end in Romania. The transport operation has to be unique, Partial operations are not considered as cabotage. CMR document is compulsory and it is on this basis that cabotage operations are checked. As regards the origin and destination of vehicles, it suffices to leave Romania. Empty pallets will count as a transport operation if they are described in the CMR document, otherwise the vehicle will be considered empty.

#### **11.5.3.2. Enforcement and compliance**

The State Inspectorate for Road Transport Control is responsible for enforcing Regulation 1072/2009. To check if a cabotage operation is lawful, the Romanian authorities check the consignment note (CMR). As some drivers might not show all CMR applicable the inspectors often check tachographs as well. To ensure a complete control of cabotage the State Inspectorate for Road Transport Control states that an online database of CMRs would be necessary.

A national association suggests that many Romanian operators may still be 'afraid' of cabotage operations due to the lack of available information in Romanian on the provisions in place in the different Member States, since they do not want to risk to be subject of fines due to possible unwanted negligence of national rules.

The ISTCR indicated that only a single fine imposed for illegal cabotage was communicated to the Romanian authorities in 2013. They observe that compliance by Romanian hauliers is improving year by year. This subsequently improves the quality of the service provided as well as the enforcement controls.

It is the view of a national association that Regulation 1072/2009 has not imposed any significant additional administrative costs on operators, since similar requirements were in place before. The main cost impact that was mentioned relates to the **issuance of transport licences and the certified copies** to be held for each truck. While the licence is delivered for a period of 10 years, the certified copies are only valid for 1 year. As a result, even in case the registration number of a vehicle is not changed over the year, a new certified copy has to be issued. The cost of the certified true copy is 260 RON (about 58 Euro) per year, so for 10 years its cost is of 2600 RON (580 Euro). The certified true copies are personalised by issuer with the registration numbers of the vehicles for whom they have been issued. According to UNTRR, authorities take over 15 days to issue this certified copy, or, alternatively, charge around EUR60 for an accelerated issuing. In case a certified copy is to be issued for a longer time frame (> 1 year), authorities charge a multiple (i.e. EUR60 for each year of 'extension'). This additional charge for the issuance of certified copies is seen to be an illegal procedure.

A further issue raised by a national association is the observation that an increasing number of third country drivers (e.g. from the Philippines) are obtaining qualifications to become a professional driver in the EU. In the view of this stakeholder, these qualifications are not necessarily adequate and sufficient and that this increase in third country drivers might lead to an increased problem of social dumping across the EU.

As it is the case for Regulation 1072/2009, the infringements of 1071/2009 are classified into very serious, serious and minor infringements as set out in Government Decision no. 69 of February 1, 2012 and amended by Government Decision no. 76 of February 5 2014. See the section on Regulation 1071/2009 above for the penalties for each type



of infringement. The ISCTR confirmed that enforcement of Regulation 1072/2009 proves to be difficult. There is a debate as to which would be the best practices to apply this Regulation.

The State Inspectorate for Road Transport Control suggests in the interview that the penalty system should be improved. In Romania, when a check is carried out, fines cannot be more than double of the fines related to the most serious infringement detected, meaning that if three infringements are detected, the total fine being sanctioned is two times the maximum fine for a most serious infringement. This mechanism is reported to be perceived as disproportionate as it does not differentiate between companies according to their size (vehicle fleet).

## **12. ANNEX D: INFRINGEMENT CASES**

Several infringement cases relating to Regulations 1071/2009 and 1072/2009 have been initiated and handled both by the European Commission against Member States, mainly related to as to the lack of connection of national registers with the European Register of Road Transport Undertakings ("ERRU"), and by the authorities of the EU Member States.

### **12.1. Infringements at EU level**

Enquiries -either at the very first stages of investigation, without opening formal infringement procedures, or even following the opening of such procedures pursuant to Article 258 TFEU- are currently being carried out by the European Commission with regard to the application by Member States of the obligations contained in Regulations (EU) No 1071/2009 and (EU) No 1072/2009.

Below are described the (possible) infringements identified and investigated by the European Commission. This description has been elaborated on the basis of (i) the information made public by the European Commission and (ii) of the data provided by two officials of Directorate General for Mobility and Transport ("DG MOVE") interviewed for the purposes of this Study. It should be noted that part of the information gathered to complete this point was treated as confidential and could not be published.

#### **12.1.1. Infringements related to the non interconnection of national registers with the European Register of Road Transport Undertakings ("ERRU").**

Pursuant to Article 16 of Regulation (EU) No 1071/2009, each EU Member State shall keep a national electronic register of authorized road transport undertakings. Article 16.2 of this Regulation also requires the interconnection of national registers at EU level. For such purposes, and following the mandate contained in Article 16.2, the European Commission adopted the Regulation (EU) No 1213/2010 of 16 December 2010 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings<sup>109</sup> and created the ERRU. As established in Article 16.5 of Regulation (EU) No 1071/2009, accessibility through national registers and interconnection should be implemented by 31 December 2012. This is not the case for all the Member States.

The ERRU central hub is an electronic tool developed at EU level which allows national registers of transport undertakings to be interconnected. Both the European Commission and the EU Member States are responsible for the operation of ERRU. On the one hand, the Commission receives messages and consultations from Member States and forwards them to the relevant other Member States. On the other hand, each Member State shall connect its national registry to the ERRU central hub.

The European Commission has made public that infringement proceedings have been initiated against Czech Republic, Cyprus, Greece, Luxembourg, Poland and Portugal<sup>110</sup>. In particular, the Commission has addressed reasoned opinions requesting these six Member States to fully implement the EU rules concerning the interconnection of their national registers of road transport operators. Should the Member States not take the necessary measures to comply with this request, the Commission may decide to refer the matters to the European Court of Justice.

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<sup>109</sup> OJ L 335 of 18.12.2010, p. 21/29.

<sup>110</sup> See Commission's press releases available at: [http://ec.europa.eu/transport/newsletters/2014/11-28/articles/infringements\\_en.htm](http://ec.europa.eu/transport/newsletters/2014/11-28/articles/infringements_en.htm), [http://ec.europa.eu/transport/newsletters/2015/06-08/articles/infringement-germany\\_en.htm](http://ec.europa.eu/transport/newsletters/2015/06-08/articles/infringement-germany_en.htm), and [http://europa.eu/rapid/press-release MEMO-15-4871\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4871_en.htm)

### **12.1.2. Infringements of other provisions of Regulation (EU) No 1071/2009**

Enquiries (prior to the opening of possible formal proceedings) and infringement procedures have also been initiated by the European Commission against several Member States concerning:

- Alleged infringement of the provisions contained in Regulation (EU) No 1071/2009 that require undertakings engaged in the occupation of road transport operator to have an effective and stable establishment in a Member State. Based on the information available, several Member States would be allowing the so-called letterbox companies, i.e. undertakings operating in a Member State without having an effective and stable establishment in such country, or not carrying out enough compliance controls against them.
- Possible restrictions to the right of establishment in one Member State where establishment would be limited to road operators operating at least more than three vehicles.

### **12.1.3. Infringement of Regulation (EU) No 1072/2009**

On April 2015, the European Commission requested Finland –through a reasoned opinion- to fully implement the provisions of Regulation (EU) No 1072/2009 and, in particular, the provisions on cabotage. More precisely:

- (i) Based on Regulation (EU) No 1072/2009, road operators holding a Community licence should be allowed to carry out up to three national carriage operations (cabotage) in another Member State following an international carriage from another Member State or from a third country. Cabotage is not submitted to further limitations under Regulation (EU) No 1072/2009. Some legal provisions enacted in Finland subject the possibility of operating cabotage in this country to an additional condition, i.e. to operate up to ten operations in a three-month period.
- (ii) In addition, in accordance with Regulation (EU) No 1072/2009, each cabotage operation may involve several loading and unloading points. However, under Finish law, one single loading corresponds to one single cabotage operation.

Finland had two months to reply the reasoned opinion. Should Finland do not adapt its national rules to the requirements of the Commission, the latter may refer the infringement to the European Court of Justice.

## **12.2. INFRINGEMENTS AT NATIONAL LEVEL**

### **12.2.1. Case DOCTRANS-PRIMAFRÍO (Portugal) - France**

On 19 January 2015 the Portuguese company DOCTRANS TRANSPORTES RODOVIARIOS DE MERCADORIAS Lda, a subsidiary of the Spanish undertaking PRIMAFRÍO S.A. was sanctioned by the French authorities with a ban to perform cabotage in France for a period of 12 months<sup>111</sup>.

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<sup>111</sup> Decision number 20150119 – 0003 signed by the Prefect of the Region Center – Val de Loire in France.

It is estimated that DOCTRANS has approximately 1,000 vehicles circulating in France where it has been accused of 32 infringements between 2012 and 2014, out of which 16 correspond to irregular cabotage operations and the remaining ones to the misuse of the tachograph.

#### **12.2.2. Case Shanks Logistics (Belgium) - France**

France also sanctioned the Belgian road transport company Shanks on 15 July 2014 to a 12 month prohibition from carrying out cabotage operations. 7 out of the 9 infringements were related to illegal cabotage.

#### **12.2.3. Alleged lack of compliance with Regulation 1071/2009 indicated by one trade union in Spain**

The Spanish trade union CC.OO.<sup>112</sup> –interviewed for the purposes of this Study- has reported what in their view constitute a clear case of letterbox companies related to Coca-Cola transporters in Begano (Galicia) and transporters of milk from the brand CELTA.

The bottler manufacturer of Coca-Cola in Galicia communicated to its 24 transportation companies that it would no longer work with them since it will work with the Group Sesé from 2015 onwards. Sesé is a road transport company located in Aragón. However, the trade union and associations of hauliers such as FENADISMER have suggested that Sesé is being illegally out-flagged to Romania for tax purposes.

The same situation would be applicable to transporters of CELTA milk, subsidiary of the Portuguese group Lactogal. The company announced the termination of its contracts with 7 transporters in favour of the group Carreras. Due to social pressure, CELTA rectified its position<sup>113</sup>.

#### **12.2.4. Illegal cabotage and forgery of documentation in Spain**

The Spanish association FENADISMER has recently published in its website<sup>114</sup> that the Spanish enforcement authorities (Guardia Civil) have detected falsified documents in cabotage operations carried out in Spain. The foreign vehicles in question carried falsified CMRs in order to prove the international transport.

The association complains that this situation is taking place regularly in connection to great infrastructure projects such as the high speed train works or certain highways in Spain.

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<sup>112</sup> Confederación Sindical de Comisiones Obreras. [www.ccoo.com](http://www.ccoo.com)

<sup>113</sup> A summary of these two situations has been published in this transport and logistic website: <http://www.logisticaytransporte.es/noticias.php/Leche-Celta-y-Coca-Cola--Galicia--prescinden-de-sus-transportistas-repartidores./50321>

<sup>114</sup> The press release published by FENADISMER is accessible from the following link: [http://www.fenadismer.es/index.php?option=com\\_content&task=view&id=1140&Itemid=28](http://www.fenadismer.es/index.php?option=com_content&task=view&id=1140&Itemid=28)

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#### 14. ANNEX F: GLOSSARY

BAG	Bundesamt für Güterverkehr (German Federal Office of Goods Transport)
BGL	German Haulage Association
Cabotage	National carriage for hire or reward carried out on a temporary basis in a host Member State
CMR	<i>Convention des Marchandises par Route</i> , or consignment letter
DV	Danish Road Haulage Association
EC	European Commission
ERRU	European Register of Road Transport Undertakings
Flagging out	The relocation of a road haulage business from one Member State to another, or the establishment of a subsidiary in another member state to take advantage of perceived lower operating costs there
Freight forwarder	A freight forwarder is a person or company that organises shipments for individuals or firms. A forwarder is not typically a carrier, but is an expert in supply chain management.
GHG	Greenhouse gases. Pollutant emissions from transport and other sources, which contribute to the greenhouse gas effect and climate change.
HLG	High Level Group on Road Freight Transport
HGV	Heavy Goods Vehicle
IRU	International Road Transport Union
LCV	Light Commercial Vehicle
Letterbox companies	Companies "established" in a Member State where they do not carry out their administrative functions or commercial activities, in violation of Article 5 of Regulation (EC) No 1071/2009
REFIT	Regulatory Fitness and Performance programme
N category	Goods vehicles, including categories N1, N2 and N3
ZMPD	Polish Haulage Association



