

Supporting study for an Impact Assessment for the revision of the social legislation on road transport

Interview Checklist- Industry Associations

1 Objectives of the study

An evaluation of the social legislation carried out by Ricardo in 2016 revealed certain problems, and consequently the Commission is considering whether policy intervention is justified to address these problems.

Furthermore, following the Commission proposal for sector-specific legislation to address the challenges faced by transport sector regarding the application of the Posting of Workers Directive (Directive 96/71/EC), the Commission now intends to conduct an impact assessment for a possible revision of this legislative framework.

The aims are to assess the potential impacts of a number of policy options and measures. Your responses will be used to help us assess the effectiveness, possible costs and feasibility of the policy options considered. It is therefore important that you complete this questionnaire as fully as possible. If you have any queries, please contact social.legislation@Ricardo.com

Use of your input

The study team will keep detailed notes of the discussion and will make use of your contribution (information/data provided) only for the needs of this study. Please indicate how you would like us to present the information provided during our discussion and any other information or data you provide to us:

- Publication of your contribution indicating the name of the organisation;
- Anonymised publication of statements made (without the name/ name of the organization);
- No publication but use of the contribution for statistical and analytical purposes

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3 Analysis of proposed policy options

3.1 Regular weekly rest

3.1.1 Required regular weekly rest (calculation system and organisation of work) (Art.8 561/2006)

The ex-post evaluation found issues regarding (i) uncertainty over whether or not the regular weekly rest can be taken in the vehicle; (ii) long periods away from home base (phenomenon of 'nomadic' drivers); (iii) lack of flexibility in organising driving and resting periods.

The table below outlines the changes to the current Regulation as proposed by the new measure on regular weekly rest..

	Current provisions	New provisions considered
Standard minimum weekly rest periods	In any two consecutive weeks a driver shall take at least two regular weekly rest periods of minimum 45 h OR one regular weekly rest period and one reduced of minimum 24 h.	A minimum of 45 h regular weekly rest to be taken, calculated as a minimum average weekly resting time over a reference period of rolling 4 weeks.
Definition of Compensation for reduced weekly rest	The reduction should be compensated by an equivalent period of time taken <i>en bloc</i> and attached to another rest of at least 9 hours.	A reduced weekly rest period of less than 45 h in any week should not be less than 24 h and any reduction should be compensated by an equivalent period taken <i>en bloc</i> and attached to another weekly rest period.
Maximum period during which compensation should be taken	Within 3 weeks from taking that reduced weekly rest	Within the reference period of 4 weeks

1. Do you think the proposed additional requirements will help in more efficient planning of long distance transport operations?

No. Although the proposed provisions are aimed at guaranteeing a wider flexibility, they do not help in improving the efficiency of the planning of long distance transport operations. Indeed, with a reference period of 4 weeks, they make the calculation even more complicated.

2. Do you see any issues for undertakings/your members to comply with the above?

a. What are the main issues/problems?

A difficult planning hampers flexibility. In addition, SMEs do not have the capacity to buy ad hoc software (Transportation Management Sysyem – TMS) for the calculation of resting time, thus these requirements would put SMEs in a disadvantaged position by endangering their competitiveness.

b. How can they be overcome (if any)?

The best solution would be the establishment of requirements that do not need complex calculation, thus easier to be applied by SMEs. Some propositions by our Members are:

- The reference period of 3 weeks for the compensation should be maintained.

- Reduced weekly rests are allowed at any time, as long as the reduction is compensated within 3 weeks “en bloc” after a rest of at least 9 hours. As a consequence, it should be possible to take 2 reduced weekly rest times in 2 consecutive weeks.
- The possibility to attach the compensation to the daily rest period should be maintained.

3. Do you expect any significant costs/benefits?

- a. Software costs? **SMEs would be obliged to buy ad hoc software in order to avoid counting mistakes.**
- b. Other costs/benefits **SMEs would need specialised human resources who follow the process, facing additional costs (hiring and training of employees).**
- c. Do you expect the costs to outweigh the benefits? **Yes**

3.1.2 Requirements on spending regular weekly rest on the vehicle

The ex-post evaluation suggested that the current rules are considered unclear as to whether driver is allowed or not to spend the regular weekly rest on board of the vehicle.

The proposed measures below intend to clarify such rules and also to ensure that decent accommodation is available when taking a regular weekly rest:

1. Forbid spending the regular weekly rest periods **of more than 45 h** in the vehicle. It should be taken either at adequate accommodation provided/paid by the employer, or at the home base or at another private place of rest. Include a definition of ‘adequate accommodation’ in the legislation.
2. Allow for spending a regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances, such as lack of resting facilities;
3. Allow for spending (up to) every second regular weekly rest in the vehicle;

4. Do you consider that the proposed measures can help clarify the current rules concerning whether or not the regular weekly rest can be spent in the vehicle?

Yes. A clarification would be very helpful because currently Member States interpret the rules differently which makes it difficult and costly for business to comply.

It seems unrealistic to find a common definition of “adequate accommodation”, as the perception of the latter varies in each country and for each driver. It is thus necessary to identify a clear rule without room of interpretation.

5. Would there be any issues/problems for transport undertakings/your members to comply with such additional requirements? (e.g. forbid spending weekly rest in the vehicle, provision of adequate accommodation) What are these? How can they be overcome?

It would be difficult for the transport undertakings to monitor the accomplishment of the requirements, either whether the weekly rest is spent at the home base or in the vehicle. In general, the transport operators prefer the driver to spend the weekly rest at home, as it is difficult for them to provide adequate accommodations out of the base. Moreover, it has to be considered that leaving the loaded lorry for such a long time is never appropriated, if not prohibited in case of dangerous goods.

6. In your view, what criteria could be used to represent “adequate accommodation”? For example:

- a. What amenities?
- b. Type of location?
- c. Are there any quality rating systems that you use / are aware of?

7. What related costs and benefits that you would expect? Are any of them expected to be significant? **The costs would be significant and would outweigh the benefits.**

- a. Additional costs to operators to provide adequate accommodation?
- b. Do you expect the costs to outweigh the benefits?

3.2 Posting of workers

3.2.1 Definition of time spent in a Member State (Posting of Workers Directive-PWD)

The proposed measures intend to define clear rules based on the time spent by drivers in a given country as a basis for determining when a situation of posting occurs and the PWD rules should apply.

For the purposes of calculations, clear definitions of day/time spent in a Member State are necessary. The proposed definitions are:

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

8. Do you consider that the proposed definitions are appropriate and help clarify the rules related to the application of the PWD?

European rules on posting of workers do not match the realities of the transport sector that is often characterised by short-term cross-border services.

The transport sector needs specific rules that take account of the regular mobility of workers and do not impede daily business by placing additional administrative burden on companies.

We do not believe the proposed definitions are appropriate, considering the nature of cross-border transportation. It is quite common for some drivers to pass through more than one Member State within the same working day. It is the case of the smaller Member States: as their drivers often spend more time in other Member States than in the one in which they are based, these countries would result in a disadvantaged position although, in the moment of applying the rules, these drivers are subject to the social legislation of their home country because that is where those drivers receive their orders, start from and come back to, etc.

Moreover, it is not unlikely that a driver spends the majority of the time in one country during a month and then, during the following month, he spends more time in another country, because of the variability of the orders. As the application of the PWD foresees for these cases a different remuneration according to the given Member State, the proposed definitions would also lead to a legal uncertainty for both the drivers and the employers.

9. Do you see any issues for undertakings/your members to comply with the above? What would be the main issues/problems (if any)?

These rules would lead to extra administrative burdens for the employers, as they would be obliged to keep records for each driver on the amount of time he spends in each Member State.

10. Are there any additional criteria you would propose?

When the principles, as laid out by Koelsch jurisdiction, are followed, it would already be easier to determine the state where, of from where, the drivers usually works, where he receives his orders, where he starts and comes back to. Following these principles would

already stop a big part of the current forms of social dumping, where drivers are paid according to social rules of a country where they rarely work.

3.2.2 Applicability of posting of workers provisions

The current PWD already envisages the possibility that Member States exclude from the application of the minimum rates of pay those activities whose duration does not exceed a certain amount of time (1 month per year) or where the amount of work to be done is not significant. Therefore, clear rules based on the time spent by drivers in a given country should be the basis for determining when a situation of posting occurs. Whenever that would be the case, employers would have to pay their drivers according to the conditions of the place of work for the time spent there.

The following time periods are being considered:

- 5 days/month
- 7 days/month
- 9 days/month

11. What do you think would be the most appropriate time threshold (in days) for PWD operations to be applied to the transport sector? (i.e. 5 days? 7 days? 9 days?) Please explain your answer.

Due to the high mobility, each suggestion seems too short: in this regard, we propose an extension of the time threshold (ex. to half a month). If the posting applies after only 5 days, we fear that some operators could circumvent the legislation by hiding the posting with a cabotage activity.

12. Do you expect any issues/problems from the adoption of any of the above time thresholds? How can they be overcome?

Companies with a bigger human and financial capital might be able to adjust to these rules: they can organise the work so that a driver stays below the time threshold in the given Member State. As SMEs do not have the same possibilities to arrange the work, these rules would be a disadvantage for them, as well as for companies in the small and peripheral Member States. Moreover, without proper control tools, it is not possible to monitor the compliance to the rule.

13. Do you expect the proposed additional requirements to assist transport undertakings/your members in avoiding burdensome pre-notifications for each operation and costs of translating all work related documents into all relevant EU languages?

An useful measure would be the institution of a uniform EU system of pre-notification, that facilitates the companies to fulfil with the administrative requirements. Some suggestions for the EU notification system by our Members are:

- one notification every six months ahead of time comprising all potential drivers;
- no obligation for the driver to carry documentation in the vehicle;
- documentation is available at the operator's place of establishment in the sending Member State upon request from the competent authority.

14. What are the related costs and benefits that you would expect? Are any of them expected to be significant? E.g.

- a. Additional costs to operators to meet the criteria? (Please select among the following ranges: <EUR 1k/year, EUR 1k-10k/year, EUR 10k-100k, EUR 100k – 1 million/year, EUR, > 1 million/year)
- b. Do you expect the costs to outweigh the benefits?
- c. Do you expect any specific impact on SMEs?

The costs are expected to be very high. The employers would need to pay consultants and experts for the correct application of the relevant national legislation. As already

said in other sections of this survey, SMEs do not have the financial capacity to face these costs.

3.3 Performance-based pay

The ex-post evaluation study found issues concerning the interpretation of performance-based payments that could “endanger road safety”. However, variable payments make up a large part of drivers’ salaries in many cases. The following option is considered:

- Forbid all performance based payment (strict prohibition of payments based on distances travelled / amount of goods carried)

15. What will be the impact of such a measure on transport undertakings with regard to the payment system in place?

a. Would drivers be compensated partially or fully through changes in fixed pay?

The situation would not change because from our point of view, performance-based pay always influences road safety in a negative way.

b. Would there be additional costs overall? **No because no change is expected.**

16. Do you see any issues for undertakings/your members to comply with the above? What would be the main issues/problems (if any)? **No**

3.4 Flexibility of transport operations

3.4.1 Adaptation of breaks

To address the problem of intended or unintended non-compliance with requirements on breaks 'forced' by circumstances, and to better adapt to the needs of the sector, more flexibility in arranging for obligatory breaks could be foreseen:

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

17. Do you think that the proposed changes allow for more flexibility to transport undertakings in arranging the daily work of drivers?

Yes. It would mean a partly return to an old provision of the Regulation 3820/85, which gave more flexibility to transport operations in terms of break distribution. This would significantly improve the situation for our members, who identify this change as the most urgent.

18. Do you expect any significant impacts on the costs of passenger transport by coach? What are they?

We expect a positive impact.

19. Do you see any issues for undertakings/your members to make use of this provision? What would be the main issues/problems (if any)?

We foresee only advantages.

3.4.2 Derogation for passenger transport by coach

The current rules allow for a 12-day derogation for international occasional passenger transport by coach. However, there have been calls to increase the flexibility of passenger transport operations further.

The proposed measures below intend to address these issues:

1. Abolish the obligation of taking two regular weekly rest periods after the use of a 12-day derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest to be taken *en bloc*, (minimum 69

hours), without any compensation for the reduced rest (**abolish compensation for reduced rest after 12-day derogation**);

2. Extend the current 12-day derogation to domestic occasional transport of passengers by coach, under the current conditions. (**12-day derogation to domestic occasional transport of passengers by coach**)
3. Only in the case of domestic occasional transport of passengers by coach, introduce a 8-day derogation provided that a driver takes regular weekly rest of minimum 45h before and after the use of the derogation. Other conditions remain unchanged. (**8 day derogation for domestic occasional transport of passengers by coach**)

20. Do you think that the proposed measures requirements will provide adequate flexibility to occasional passengers transport operators (international or domestic)?

The measures would be positive

21. Do you expect any significant impacts on the costs of passenger transport by coach? What are they?

We expect significant positive impacts. They offer the possibility to take into account operational needs of occasional transport operators characterised by high seasonality in service demand. We expect reduced cost for relief drivers in case of domestic multi-day services of more than six days. We expect a reduction of unnecessary downtime (improvement to the current legal situation requiring the driver to take a 90h or 69h weekly rest time + compensation).

22. Do you see any issues for undertakings/your members to comply with the above? What would be the main issues/problems (if any)? How could they be overcome?

We do not see any issue.

3.4.3 Multi-manning

A number of organisations have suggested changes to the definition of multi-manning in Regulation (EC) No 561/2006 and where multi-manning may not be mandatory. The change considered is:

- • Allow one driver for the first two hours or the last one hour of the journey.

23. Do you expect the proposed additional requirements to allow for more flexibility in organising multi-manning operations?

Yes. With the proposed requirement, it will be possible to pick up a colleague-driver not only at the beginning but also at the end of the trip. The measure is a step forward a wider flexibility.

24. Do you expect any significant impact on costs of operations? What are they?

No.

25. Do you see any issues for undertakings/your members to comply with the above? What would be the main issues/problems (if any)?

We do not see any major issue, but we believe that a clarification whether the daily rest period can be spent in the running vehicle in case of multi-manning is needed (for example on tour busses).

3.5 Clarification and scope of Regulation (EC) No 561/2006

The following clarifications of existing or additional definitions, as well as suggestions on revising the scope of Regulation (EC) No 561/2006 are proposed:

1. Define “occasional driver” and “operations for private purposes”, and exclude these from the scope of Regulation 561/2006;
2. Include a Review Clause: i.e., an obligation on the EC to review in 5 years' time the scope of the legislation to verify whether or not it would be justified and proportionate to include drivers of

Light Commercial Vehicles (of below 3,5t), to exclude self-employed, to update derogations and exemptions.

26. To what extent do you expect the proposed definition (point 1) to help clarify the scope of Regulation 561/ 2006?

In general, we are against new exclusions and any enlarging of current exemptions. Adding new categories exempted by the Regulation in question would indeed create more legal uncertainty. Consequently, it comes that, according to us, “occasional drivers” and “operations for private purposes” cannot be excluded from the scope of the Regulation.

27. Do you think the proposed definition will reduce the differences in interpretation of the Regulation and consequent low-compliance?

No

28. Do you expect the proposed exclusion “occasional driver” and “operations for private purposes” to have any impact on transport operators?

Yes. We have concerns on the impact these exclusions would have on competition: the more drivers/operations are exempted the more unfair competition is possible. Another issue regards road safety: being occasional drivers not used to drive heavy vehicles, this category should be particularly bound to the obligations foreseen by the Regulation (EC) No 561/2006, because it is less experienced and more vulnerable for what concerns road safety.

29. Do you consider that the proposed review clause is appropriate and necessary? Are there any possible issues? (e.g. expected data availability?)

We believe that these changes are not necessary.

30. Are there any other aspects that you think should be covered under the proposed review clause?

Excluding the self-employed from the scope of regulation 561/06 would be really stupid; they should only be excluded from the working time directive. If they would be excluded from Reg. 561/06, you would see immediately a boost in self-employed drivers. Companies would not want to have employees any more but would look for self-employed subcontractors that do not have to respect the driving and rest times. This would have a mayor negative impact on road safety and social level; many drivers would be forced to become self-employed.

We could accept a widening of the scope below 3.5 t only for professional transport, excluding transport for own account, as a first step.

3.6 Working time directive (WTD)

3.6.1 Requirements on calculations and enforcement of working time provisions

Beyond the measures already discussed, a number of additional measures are proposed to improve the implementation of the working time directive 2002/15/EC, its coherence with the Regulation (EC) No 561/2006, and improve the working condition of drivers by reducing accumulated fatigue.

1. Reduce the reference period used for the calculation of the maximum average weekly working time (of 48h) from 4 months (or 6 months according to national law) to 4 weeks in order to avoid accumulated fatigue and to enable the controls of working time at roadside via tachograph records and hence render enforcement more efficient. (Reduce the reference period used for the calculation of the maximum average weekly working time);
2. Establish minimum threshold for controlling compliance with working time provisions in line with requirements for checks at the premises under Directive 2006/22 (extend roadside

checks and checks at premises to include also control of compliance with working time, which should be made easy if the calculation of the maximum average working time is done over 4-weeks reference period) (Minimum threshold for controlling compliance with working time provisions);

3. Establish reporting template for biennial national reports on results of controls of compliance with WTD similar to reporting template for checks on Regulation 561/2006. (Establish reporting template for biennial national reports)

31. Do you expect any issues/problems for transport operators in the country from their adoption?

We are against the idea of reducing the reference period used for the calculation of the maximum average weekly working time of 48h to 4 weeks, because it would imply a major administrative burden and a limitation in flexibility for operators. In particular, the adoption of these rules would be almost impossible for companies heavily affected with peaks and slow periods due to the nature of the goods transported. On the contrary, we are in favour of an extension (6 months/1 year), rather than a reduction of the reference period.

Moreover, we are also against the extension of roadside checks to include controls of compliance with working time. We consider the current legislation into force appropriate to guarantee road safety and protection of the workers (Regulation (EC) 561/2006 and Directive 2002/15). Summing up, instead of modifying it, we suggest to simply apply the current WTD.

32. Do you expect the proposed change to impact on:

- a. the level of fatigue of drivers?
- b. the health and safety of drivers?
- c. the overall working conditions?
- d. the amount of time spent away from home?

The change would have a negative or no impact.

33. What, if any, do you think will be the impact on transport operations?

- a. Costs for hauliers
- b. Flexibility of operations
- c. Other impact?

4 Other comments

Please discuss any other issues you feel are relevant. [Click here to enter text.](#)

Thank you for your participation.