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**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

accompanying the proposal for a directive of the European Parliament and of the Council amending Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities

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*This report commits only the Commission's services involved in its preparation and does not prejudge the final form of any decision to be taken by the Commission*

**Lead DG:** DG TREN

**Other involved services:** Secretariat General, DG EMPL, DG ECFIN

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## 1. INTRODUCTION

Community legislation on the organisation of working time was introduced with the establishment of the internal market in order to ensure minimum harmonized social rules throughout the Community. On 23 November 1993 the Council adopted the general working time Directive 93/104/EC<sup>1</sup> which aimed to ensure that workers are protected against adverse effects on their health and safety caused by working excessively long hours, inadequate rest or disruptive working patterns. This general working time Directive excluded from its scope certain sectors and activities, including transport, with the provisions that separate measures could be adopted for this sector.

Following intensive consultations with the social partners, main elements to be taken into consideration for Community rules for the road transport sector were identified and the Commission made a series of legislative proposals in November 1998. It firstly proposed an amendment to the general working time directive, to extend four of its provisions to road transport mobile workers, namely, 'adequate rest', four weeks' paid annual leave, a free of charge annual medical check-up for night workers and an average maximum weekly working time of 48 hours. This was introduced by Directive 2000/34/EC<sup>2</sup> of 22 June 2000 with the transposing deadline set for 1 August 2003. All the provisions of the general working time Directive, as amended, have been consolidated in Directive 2003/88/EC<sup>3</sup> of 4 November 2003.

The Commission secondly proposed a sectoral working time directive introducing specific working time provisions for the transport sector. This became Directive 2002/15/EC<sup>4</sup>, whose aim is not only to protect the health and safety of mobile workers, but also to avoid possible distortions in competition and to improve road safety. This Directive establishes minimum requirements in relation to the organisation of working time of persons performing mobile road transport activities.

The rules that entered into force on 23 March 2005 impose an average maximum weekly working time of 48 hours over a period of 4 months (extensible to 6 months by collective agreements) and the absolute maximum weekly working time of 60 hours. Other key provisions concern night work (night workers may not work longer than 10 hours in each 24 hours period) and obligatory break after 6 consecutive hours of work (at least 30 minutes if working hours total between 6 and 9 hrs, and at least 45 minutes if working hours are more than 9 hrs).

This sectoral Working Time Directive takes precedence of the general Working Time Directive 2003/88/EC<sup>5</sup> as far as it contains more specific provisions as regards mobile workers in road transports sector.

The Directive supplements the provisions of the main instrument applicable to all professional drivers, namely Regulation (EC) No 561/2006<sup>6</sup>, which entered into force on 11 April 2007

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<sup>1</sup> OJ L 307, 13.12.1993, p. 18

<sup>2</sup> OJ L 195, 1.8.2000, p. 41

<sup>3</sup> OJ L 299, 18.11.2003, p. 9

<sup>4</sup> OJ L 80, 23.3.2002, p. 35

<sup>5</sup> OJ L 299, 18.11.2003, p. 9

<sup>6</sup> OJ L 102, 11.4.2006, p. 1

updating and clarifying the 20-year old legislation on driving time and rest periods of professional drivers.

The Regulation sets a weekly limit of maximum 56 hours of driving time with a maximum fortnightly driving time of 90 hours, establishes rules on daily and weekly rest and breaks (regular daily rest of minimum 11 consecutive hours, or reduced daily rest of 9 hours taken maximum 3 times a week; regular weekly rest of 45 hours every week at least once every fortnight, reduced weekly rest of 24 hours must be compensated). These new driving time and rest period rules constitute important social advances for professional drivers. The Regulation's provisions apply to both salaried as well as self-employed drivers.

Moreover, the Regulation renders the rules more easily enforced. It is accompanied by the Directive 2006/22/EC<sup>7</sup>, which enhances enforcement regime and the correct implementation of the provisions of the driving time Regulation by establishing minimum requirements for the uniform and effective checking by the Member States of compliance with the relevant provisions.

Box 1 summarises these different pieces of EU legislation.

The Commission's original proposal from 1998 of what has become Directive 2002/15/EC covered all employed mobile workers and self-employed drivers. However, as a result of an extensive conciliation procedure, an agreement was reached between the European Parliament and the Council that self-employed drivers would be temporarily excluded from the scope of the Directive.

Article 2(1) of the Directive prescribes that its provisions shall apply from 23 March 2009 to self employed drivers once the Commission presents a report to the Council and the European Parliament, which would analyse the consequences of the exclusion of the self-employed drivers from the scope of the Directive in respect of road safety, conditions of competition, the structure of the profession as well as social aspects. Further it requires that on the basis of the report, the Commission should submit a proposal either (a) to set out the modalities for inclusion of self-employed drivers which undertake purely national transport activities and for whom particular situations pertain or (b) not to include self employed drivers within the scope of the Directive.

In December 2005 the Commission launched a study investigating consequences of the exclusion of self employed drivers from the scope of the Directive through a thorough examination of relevant literature and data, interviews with representatives of both sides of industry, national administrations and Commission services concerned. The consultant's final report is available at the Commission website under the following link: [http://ec.europa.eu/transport/road/studies/index\\_en.htm](http://ec.europa.eu/transport/road/studies/index_en.htm)

In the light of the conclusions set out in the consultants' report, the Commission prepared the comprehensive report<sup>8</sup> presenting key findings of the analysis in respect of road safety, conditions of competition, structure of profession as well as social aspects. The report was presented to the European Parliament and the Council in May 2007 as a part of the road package adopted by the Commission. The Council did not discuss this report and the European Parliament discussed a draft report at the time of finalizing this impact assessment.

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<sup>7</sup> OJ L 102, 11.4.2006, p.35

<sup>8</sup> COM(2007)266 final, 23.05.2007

In order to prepare the adequate legislative proposal with regard to self-employed drivers, as envisaged in the Article 2(1) of the Directive, the Commission Directorate-General for Energy and Transport (TREN) launched an impact assessment to investigate economic, social, environmental and administrative aspects of possible policy options. The aim of the analysis is to identify the best policy option, which would be enforceable, avoid unnecessary administrative burden as well as potential negative side-effects of the proposed arrangements and which would, at the same time, contribute to improving road safety, fair competition and social conditions of mobile workers.

### **Box 1: Summary of the different social rules concerning the drivers**

#### *1. Specific working time directive*

- The working time for mobile workers in road transport (mainly drivers) is regulated by Directive 2002/15/EC<sup>9</sup>.
- The Directive was adopted 11 March 2002 with a final implementation date for the Member States on 23 March 2005. The Directive will also be applied to self-employed as from 23 March 2009 under certain conditions: the Commission must adopt a report and a legislative proposal.
- The main content of the directive is as follows:
  - Average weekly working time is 48 hours (during a reference period of 4 months, extensible to 6 months)
  - Maximum weekly working time is 60 hours
  - Maximum daily working time is 10 hours, if it involves night work
  - A 30 minutes break is obligatory after 6 hours of work; this break shall be 45 minutes if the working day is more than 9 hours
  - Definition of night work and a limit of 10 hours of work when night work is performed

#### *2. General working time directive*

The general working time directive 2003/88/EC<sup>10</sup>, covers most of the employed workers. Mobile workers in road transport are covered by the general working time directive in those areas where the specific directive 2002/15/EC has no requirements. The general working time directive does not cover self-employed persons in any areas.

Due to its complementary nature, the main elements from the general working time directive for mobile workers in road transport are:

- Paid annual leave of 4 weeks

<sup>9</sup> DIRECTIVE 2002/15/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities

<sup>10</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9.



- Free annual medical check if night work is performed

### *3. Driving time regulation*

The main part of the working day of a driver is covered by rules that regulate the driving, breaks in driving as well as daily and weekly rest periods under Regulation (EC) 561/2006<sup>11</sup>.

The main provisions include:

- Maximum weekly driving time of 56 hours
- Maximum driving time in two weeks of 90 hours, leading to a maximum average weekly driving time of 45 hours
- Obligatory break of 45 minutes after 4.5 hours of driving
- Maximum daily driving time of 9 hours (extensible twice a week to 10 hours)
- Minimum daily rest of 11 hours (possibility to shorten it to 9 hours three times a week)
- Weekly rest of 45 hours (possibility to shorten it to 24 hours every other week, but with compensation three weeks later)
- Co-responsibility of the employer and other actors in the transport chain for infringements

### *4. Hierarchy of the rules*

In this context it is important to call that the main instrument for social rules in road transport is Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85<sup>12</sup>, which have precise rules for maximum driving times as well as minimum breaks and rest periods. The additional effect of the working time directive is not significant for road safety and is mainly intended to complement the protection of workers, receiving salary.

The general working time directive does not regulate the working time of self-employed persons as it is applicable only to employees (workers).

The specific working time directive overrules the general working time directive, but comes only in addition to the Driving time regulation (covering all drivers, including the self-employed drivers) and regulates other activity than driving, for example loading, unloading, other work, waiting (availability).

The driving time and rest periods as well as working time and availability are registered with a recording device in the lorry, a tachograph according to Regulation 3821/85, as amended at

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<sup>11</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, OJ No L 102, 11.4.2006, p. 1

<sup>12</sup> OJ No L 102, 11.4.2006, p. 1

the latest by Regulation 561/2006. All new lorries from 1 May 2006 have a digital tachograph with electronic driver's cards, whereas the older lorries have an analogue tachograph with paper sheets.

Driving time is the most important activity of professional drivers which can account for up to 56 hours out of the maximum of 60 hours of weekly professional activity. Thus, the provisions of the sectoral working time directive are to be considered as secondary to the driving time and rest period provisions.

## **2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

### **2.1. Organisation and timing**

This impact assessment has been prepared with a view to revise Directive 2002/15/EC on the organisation of working time of persons performing mobile road transport activities, which is part of the Commission's 2008 Work Programme under reference 2008/TREN/065.

It has been conducted by DG TREN with the contribution of an Interservice Steering Group in which DG EMPL and DG ECFIN actively participated. Also the Secretariat General, DG ENTR and DG MARKT were invited to participate. It builds on various studies carried out during 2003, 2006, 2007 and 2008<sup>13</sup> including two consultations with a wide range of stakeholders.

Work on this impact assessment started early in 2007 with the preparation and adoption in May 2007 of the *Report from the Commission to the Council and the European Parliament on the consequences of the exclusion of self employed drivers from the scope of the Directive 2002/15/EC* (COM(2007) 266 final). By this report the Commission fulfilled one of its obligations specified in Article 2(1) of the Directive. The key findings presented in the report confirm that advantages and disadvantages of inclusion or non-inclusion of self-employed drivers are very mixed and should be further investigated in terms of economic, social and administrative impacts in order to find the most appropriate direction for policy development.

After the adoption of the Report, the outline of an impact assessment has been prepared defining main problem and policy objectives and identifying initial policy options to be examined.

In August 2007 the Commission retained consultants (contractor: PricewaterhouseCoopers) to carry out a thorough survey and to analyse in detail all possible impacts of proposed policy options. The kick-off meeting with consultants was held on 5 September 2007 with the aim to verify the full understanding of the scope of the assignment, discuss the extent of the analysis, general approach to the impact assessment and the project timetable.

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<sup>13</sup> Business impact assessment concerning sectors whose mobile workers are excluded from the general working time Directive 93/104/EC (Cambridge Policy Consultants, 2003); Study on self employed drivers and night time provisions of the working time Directive 2002/15/EC (TNO, 2006); Impact of the working time directive on collective bargaining in the road transport sector (European Foundation for the Improvement of Living and Working Conditions, 2007), Impact assessment concerning the scope of the working time Directive 2002/15/EC with regard to self employed transport workers (PwC, 2008),

The Interservice Steering Group was established in September 2007 and it met three times (October 2007, November 2007 and January 2008) in order to gain a wider perspective, build mutual understanding, discuss specific problems of the analyses, fine-tune policy options, review the progress, consider desired policy developments and revise the consultant's final report.

During the work on this impact assessment, particular attention was paid to the issue of ensuring consistent, effective and efficient application and enforcement of the working time rules. Thus criteria for identifying the sought policy option included: improving policy objectives achievement (fair competition, road safety, health and safety of mobile workers), avoiding creation of administrative burdens for businesses, citizens and administrations and, in the same time, ensuring enforceability of the proposed measures. The impacts of a legislative proposal and the present report should be considered in this light.

It should be noted that the legislative proposal for amending Directive 2002/15/EC attached to this impact assessment is required by the Directive itself with the aim to finally solve the issue of the scope of the Directive with regard to self-employed drivers, which has been retained at the time of adoption of the Directive.

## **2.2. Consultation and expertise**

The Commission services used several information sources to prepare this impact assessment:

- Firstly, it drew upon the results of the external study commissioned by the Commission in December 2005 with the aim to provide an overview of the state of implementation of the Directive 2002/15/EC, to examine the potential consequences of exclusion of self-employed drivers from the scope of the Directive, to assess the night time provisions. The final consultant's report is available at the internet address [http://ec.europa.eu/transport/road/studies/index\\_en.htm](http://ec.europa.eu/transport/road/studies/index_en.htm)
- Secondly, it maintained regular contacts with Member States and various stakeholders as regards transposition and application of the Directive
- Thirdly, due to the complexity of the issue DG TREN outsourced an expertise to carry out a study examining and assessing possible economic, social, environmental and administrative impacts of different policy options. The contract with PricewaterhouseCoopers was signed in August 2007. The consultant's report is available on the DG TREN website at the following internet address: [http://ec.europa.eu/transport/road/studies/index\\_en.htm](http://ec.europa.eu/transport/road/studies/index_en.htm)
- Fourthly, views of different stakeholders have been collected and analyzed in the framework of two mentioned above studies.

The findings of both studies have been extensively discussed within the Interservice Steering Group and they fed in own analysis and assessment of possible solutions.

A variety of relevant actors have been contacted in order to obtain insight in the problems, the possible solutions and the impacts of these solutions. This exercise respected minimum standards for consultation of interested parties set out in the Commission Communication of 11 December 2002 (COM(2002)704 final).

The stakeholders have been consulted twice. First broad consultation has been carried out in 2006 by external consultants (TNO) in the framework of a study on consequences of exclusion of self-employed drivers from the scope of the Directive.

The consultation aimed at gathering views of different stakeholders regarding, *inter alia*, the existing situation with regard to the distinction between self-employed drivers and mobile workers, the consequences of the exclusion of self-employed drivers in terms of working conditions and the development of salaries for professional drivers, the main difficulties arising from the temporary exclusion of self-employed drivers in each Member State, the possible consequences of the inclusion of independent drivers within working time rules.

Three main categories of stakeholders have been consulted: national authorities, industry representatives and social partners in the sector. In total 72 stakeholders participated in the consultation process, including 22 employers' organizations, 17 employees' organizations and 2 self-employed.

The consultation has been performed by means of a questionnaire for national case studies in 3 countries: the Netherlands, the United Kingdom and Hungary and by face-to-face, e-mail and phone interviews with national stakeholders in other 22 Member States.

In addition to the interviews, the preliminary results have been presented at an European expert meeting for road transport in Brussels attended by government' and employers' representatives of all Member States and at a meeting of European Transport Worker's Federation in Brussels, attended by a number of employees' representatives. Their views have also been taken into account at the analysis.

The 2006 consultation revealed that the majority of stakeholders regard the Directive having mixed negative and positive impacts on different aspects. On one hand working time rules are regarded by the majority as having positive impacts on health and safety and working conditions, but on the other hand they bring about numerous negative side-effects such as loss of salary, lack of drivers and increase of costs of the sector. Almost all stakeholders regarded enforcement as being a problematic issue, mainly due to vague definitions and lack of enforcement power. As regards foreseen impacts of inclusion or exclusion of self-employed there were diverging views of different stakeholders, in particular with regard to implementation and enforcement issue and added value in terms of road safety and fair competition.

The detailed results of consultation including the consultation paper are included in the final consultant's report, which is available at the DG TREN website at the internet address [http://ec.europa.eu/transport/road/studies/index\\_en.htm](http://ec.europa.eu/transport/road/studies/index_en.htm)

In addition to this broad survey, a much more limited, but targeted consultation took place in 2007, which was conducted by PwC within the study on impacts analysis. This consultation had three inter-related objectives: to assess the general definition of "dependent self-employed" mobile worker, to gain knowledge on current compliance with the Directive by mobile workers as well as to identify specific issues and bottlenecks with regard to potential inclusion of self-employed drivers in the scope of the Directive.

An overall number of 38 actors (employers' organizations, employees' organizations and major transport companies) in the EU-27 countries were contacted. The participation rate in this small additional consultation was low, as only 34% stakeholders responded. This

confirms the lack of interest in the working time directive, which is regarded as less affecting the industry and the profession than the driving time regulation (Regulation (EC) No 561/2006).

Whilst majority of respondents regarded that the Directive causes enforcement problems which would even increase if self-employed drivers were included, the consultation revealed diverging views of different stakeholders with regard to impacts of inclusion on fair competition, social aspects and road safety. The consultation also confirmed that there is no consistent interpretation and application in Member States of definitions of self-employed and mobile workers as laid down in the Directive. This proves that the distinction between the two categories should be clarified to avoid misinterpretation or even fraud. The detailed results of the stakeholder consultation are given in the consultant's report.

### **2.3. Impact Assessment Board**

The Impact Assessment Board treated the draft Impact Assessment in its meeting on 16 April 2008 and gave valuable comments to improve the text in its opinion of 22 April 2008. The main comments concerned the lack of explanation of the relation of the specific working time directive with other applicable instruments, the weak problem definition, the fact that none of the examined options was chosen and the incompleteness of the analysis of social impacts. Taking into account of these comments, the relationship between different acts is explained in sections 1 and 2, the problem definition has been made more clear and precise in section 3, the policy options have been revised in section 5 and the social impacts have been assessed in a qualitative manner in section 6. Other precisions and improvements according to questions and suggestions of the Impact Assessment Board have been undertaken throughout the document. The second resubmitted draft was treated by the Impact Assessment Board in its opinion of 26 June 2008. The opinion notes the improvements in the draft Impact Assessment, but underlines that the problem definition should be strengthened, the options should be made more explicit, the indicators should be improved and the analysis of social impacts should be deepened. Taking into account of these comments, the problem definition includes the shortcomings of the current directive in section 3, the options are explained more in detail in section 5, the indicators in sector 6 have been made more consequent and more closely related to the problem definition and social impacts have to the extent possible been analyzed in all options.

## **3. PROBLEM DEFINITION**

### **3.1. What is the issue or problem that may require action?**

This impact assessment and the subsequent legislative proposal deal with **two issues**, the main problem being the **scope of the Directive** and the other the problem of **low level of compliance** with the Directive's provisions concerning the "false" self-employed drivers. The action in the second field is necessary in order to ensure that the Community rules are respected and evenly and effectively applied by all actors who are in scope of them.

#### *Scope of the directive*

As regards the first issue, the action is foreseen by the Directive, which prescribes in its Article 2(1) the review of certain provisions together with a description of the content of the modifications. This issue can be tackled solely by the action at the EU level, as a modification

of the Community legislation is only possible at the Community level and not possible by action of Member States.

### *Compliance with the directive*

The current regulatory regime regarding social rules in road transport, as described in section 1, contributes to the sustainable objectives of the transport policy, namely aligning the conditions of competition, improving road safety and enhancing the health and safety protection of persons performing mobile road transport activities.

Whether the goals set can be achieved in practice depends largely on the compliance of all actors concerned with the standards that have been set by the current regulatory regime. The EU legislation is only efficient and effective if it is implemented by all Member States, applied equally to all actors concerned and controlled on a regular basis and in an efficient manner.

Compliance with and enforcement of Community law are a joint responsibility of both Member States and the European institutions. Member States play a crucial role in this respect as it is their obligation to ensure correct implementation and application of prevailing Community law in practice even if the ultimate responsibility is borne by the Commission as the "Guardian of the Treaties".

During the earlier studies as well as at impact assessment process carried out to prepare the legislative proposal it turned out that the working time rules set out in the Directive were applied and complied with throughout the Member States with significant delay. Further investigations and stakeholder consultations carried out proved the low level of compliance with the Directive's provisions concerning "false" self-employed drivers that should already be fully covered by the provisions of the directive.

This is based on the fact that the Directive does not contain any specific or even general provisions concerning the control of its application. The Member States have only the unspecific general obligation to see that laws are applied. Such situation differs from the control of driving times and rest periods, where Directive 2006/22/EC prescribes qualitatively and quantitatively the checks that Member States must undertake both at roadside and in the premises of undertakings. The Commission originally proposed that working time rules would be controlled together with driving time rules under Directive 2006/22/EC, but the legislator did not adopt this approach.

This in fact undermines the Community rules and puts at stake achievement of the key policy objectives underlying the Directive, as uneven level of monitoring and controls of the application of the Directive creates the distortions of competition between those transport undertakings and drivers who abide by the rules, and therefore bear the corresponding compliance costs, and those who deliberately ignore the rules. In addition to this, transport undertakings that disobey the rules put at risk the health of drivers by consciously excluding them from the social protection measures provided by the Directive.

The **low level of compliance** was thus identified as the **main additional problem related to the basic problem of the scope of the Directive with regard to self-employed drivers**, which needs to be finally resolved as foreseen by the Directive. This situation undoubtedly calls for an action at the EU level, as it would be unproductive and against the objectives of

the Commission's Better Regulation strategy to maintain the law in a form, which is not enforceable.

### **3.2. What are the underlying drivers of the problems?**

Consultations with stakeholders, various studies and review of the Directive's transposition as well as regular contacts with relevant national authorities and social partners revealed diverging application of the working time rules between Member States, which has several underlying causes. These may be clustered into three main groupings of causes related to:

- (1) the quality of transposition of the Directive
- (2) the behaviour of some mobile workers, namely "false" self-employed
- (3) the lack of obligations concerning the enforcement of the rules.

#### ***The quality of transposition***

The first group of problems relate to the **quality of transpositions** by Member States. The timely and accurate transposition of the Community law is undoubtedly one of the prerequisites for the EU transport policy to function well and vital to guarantee the level playing field in the sector.

Member States were given three years since the adoption of the Directive for accommodating their national systems and restructuring the working time organisation, where necessary, in order to implement the Directive's provisions. Yet, by the transposition deadline set on 23 March 2005 only four Member States had adopted the necessary national transposing measures giving effect to the Directive. By the end of the year 2005 ten Member States were still subject to infringement proceedings due to failure to implement the adequate national rules and the last two Member States notified the transposition of the Directive only in January 2008.

The review of national laws notified to the Commission also revealed numerous inaccuracies. The delays and inaccuracies detected in national transposing measures resulted mainly from a complex process of public consultations with social partners and other stakeholders in a majority of countries and objections of various interest groups of the industry, mainly with regard to the scope of the Directive, which hindered the adoption of appropriate law. In addition, the national debates revealed that some national definitions were perceived as vague or contradictory to other legislation or rules, which was another cause of delay and/or inaccurate transposition.

On top, the transposition of the Working Time Directive came with the process of adoption and then preparing of national measures for application of the Driving Time Regulation. Unlike other social road transport measures, where active enforcement is considered necessary and undertaken either at national level or within a Community regulatory framework, it appears that Member States do not accord working time rules the same level of priority as the enforcement of Community driving time and rest period rules. This comes from the hierarchy of these instruments: the directive is only supplementary to the regulation and all the main road safety features come from the regulation as it clearly stipulates the maximum driving times with obligatory breaks during driving periods and the minimum daily and weekly rest requirements, having direct road safety effects in addition to equal

competition and social protection of drivers. In addition to this, the working time directive lacks obligations to perform control activities.

### ***The behaviour of some mobile workers, i.e. "false" self-employed***

The other group of problems contributing to the low compliance rate concerns the **bad behaviour** of a certain group directly concerned by the Directive's provisions, namely the "false" self-employed drivers. This is due to many reasons, including the low compliance discipline of the "false" self-employed, which in fact are mobile workers as well as by transport undertakings, perceiving some definitions as ambiguous, no interest in complying with the rules by some undertakings due to, for instance, compliance costs to be borne by businesses and related to the restructuring of the organisation of working time (one time costs), to recruiting additional workers as well as to administrative costs of ensuring compliance internally and proving it externally.

Even some employed mobile workers find no interest in complying with the Directive as in its result they would lose additional income gained thanks to working long hours. The reluctance of some transport undertakings to follow the rules, in turn, stems from perceiving only short term negative impacts of the Directive on their business, such as lower cost-effectiveness, higher administrative costs and higher operational costs.

The bad behaviour problem concerns especially those drivers who regard themselves self-employed, as they have no employment contract, but who should be treated as employed mobile workers in the understanding of the Directive as they do not fully satisfy the criteria of the definition of self-employed driver laid down in the Directive. These drivers are so called "false" self-employed. The directive prescribes this group under a "negative" definition. In its article 3 e) it first defines that

*"self-employed driver" shall mean anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out the aforementioned transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom to, individually or through a cooperation between self-employed drivers, have commercial relations with several customers.*

Then the current legal provisions go on stating by negation that

*For the purposes of this Directive, those drivers who do not satisfy these criteria shall be subject to the same obligations and benefit from the same rights as those provided for mobile workers by this Directive.*

For this reason it is possible that some 'false' self-employed drivers, which should be covered by the directive, do not infringe the rules intentionally, while others do so.

In any case, it is likely that "false" self-employed drivers would be detected with a fine-tuned definition and enforcement of mobile workers.

### ***Enforcement of the rules***



This situation is directly linked with the third grouping of causes related to **enforcement** regime, which depends mainly on administration. The difficulties with enforcement create additional occasion for "bad entrepreneurs", which are not adhering to common standards.

The correct application of the Community law depends largely on an effective and efficient enforcement practice. This appears to create serious difficulties to Member States. There are several reasons behind such a situation.

The Directive does not set any minimum systematic inspection requirements for working time rules. There are no clear principles for monitoring and control in a consistent manner of the application the rules. The enforcement in some Member States is therefore mainly bound to rely on complaints from drivers or on investigations following an accident, only the latter presumably applying to the self-employed while in other Member States working time is controlled at the same time as driving time. Consequently, the controls are carried out by Member States with different extent and frequency and the uneven level of monitoring and controls creates distortions of competition, both within a Member State between operators committed to be fully compliant and those deliberately ignoring the rules as well as within the Community road transport market between Member States which apply rigorous monitoring practice and those who fail to check the proper application of the rules.

The only requirement related to enforcement regime imposed on Member States by the Directive concerns the obligation to lay down a system of effective, proportional and dissuasive penalties for breaches of the national provisions adopted pursuant to this Directive. Almost all countries have laid down a system of penalties; but still their application remains sporadic due to the lack of a regular effective monitoring and control arrangements in most of the countries. Apart from the problem with broadness of definitions and difficulties with their translation into company's administration and enforcement practice, some Member State have also signalled the poor enforcement capacity (not enough inspectors) as a cause of a low effectiveness of enforcement of the rules.

The shortcomings in enforcement create mainly a problem in situations when the dependent worker is not interested in the social protection provided by this legislation. It must be noted that the deliberate misapplication or unintentional misinterpretation of certain definitions and provisions coupled with a poor quality of enforcement results in the phenomenon of '**false self-employed**' drivers. It is not a new phenomenon that an operator encourages its drivers to become nominally self-employed but working exclusively for him, known as 'false' self-employed drivers. However, since the distinction between the definitions of 'mobile workers' and 'self-employed' in the working time directive is perceived vague, compliance discipline is low and the lack of clear harmonized requirements for monitoring and controls make the application of the definitions ineffective, if not impossible.

The category of 'false' self-employed is composed of drivers that are formally self-employed since they operate on hire or reward and are not tied to an employer by an employment contract or by any type of working hierarchical relationship, but they work regular hours for the same shipper or transport firm on a long-term basis, hence they depend on a single entrepreneur for their source of income. Even though this category is not explicitly defined in the Directive, such drivers are subject to the same obligations and benefits as those provided for mobile workers, as they do not satisfy the criteria of the definition of 'self employed driver' given in Article 3 (e) of the Directive. In other words, a "false" self-employed driver is in fact a mobile worker.

The particular distinction between definition of 'mobile worker' and 'self-employed driver' seems not to be applied correctly, which results in enhancement of the phenomenon of 'false' self-employed. Definitely the direct effect of this phenomenon is the distortion of competition as such operators and their in-house sub-contractors ('false' self-employed) would compete on an unfair basis.

### 3.3. Who is affected, in what ways, and to what extent?

Several categories of stakeholders are directly or indirectly affected by the issue.

- **Transport undertakings** – employers who are committed to comply with the rules are directly affected because they are confronted with the competitive advantage of those who deliberately ignore the rules. The compliance costs that the 'good' entrepreneurs need to incur put them in a disadvantaged position in a short term compared with 'bad' entrepreneurs. These costs are in fact offset by a number of direct and indirect benefits that they gain by complying with the rules, but these benefits appear usually in a longer term.

- **Mobile workers** – in fact it is generally in the interest of employed drivers to report all their working time, because their salary primarily depends on the number of hours they have worked, and they enjoy the social protection measures. Hence, the non-compliance with the rules by their employers affects them directly by exposing them to the adverse effects of working excessive hours and disruptive working conditions putting at stake their health and safety. They are also faced with discrimination compared with those who are employed by 'complying' employers.

- **Genuine self-employed drivers** – who are for the time being excluded from the scope of the Directive, are affected directly by non-compliance of both operators who engage 'false' self-employed drivers as well as by 'false' self-employed drivers themselves. The first group gains the competitive advantage by lowering the operating costs due to using the services of 'false' self-employed, which in consequence allows them to offer lower prices on the market and gain the additional market shares. The second group benefits from the same situation of non-limited and non-controllable working hours as genuine self-employed but they do not bear all the burden and costs related to running own business.

- **Enforcement authorities** – lack of clear and harmonized principles for the enforcement regime as well as uneven interpretation and application of certain definitions and provisions create difficulties for those who have to enforce them.

### 3.4. How would the problem evolve, all things being equal?

The evolution of the current situation, if no changes are initiated, should be considered in two aspects that are underlying the need for EU action.

First aspect concerns the scope of the Directive. If no new legislation is approved by the legislator (the Commission being under a legal obligation to submit a proposal), self-employed drivers will automatically fall in the scope of the Directive as prescribed in its Article 2(1). This would mean a need for additional enforcement capacity and efforts to be made to ensure the correct application of the rules by the expanded group of actors concerned. Bearing in mind the existing difficulties with correct application of the rules by those mobile workers who are currently in scope (especially "false" self-employed), the situation will significantly worsen, if no action mitigating existing problems is taken. Checking the working

time of persons that do not need to note it down for salary purposes and who do not have an interest to register it accurately would be extremely difficult. It would also mean that the non-compliance could significantly increase once all self-employed drivers will be in the scope, unless a tight control system would be established to efficiently monitor every activity of these persons. Given that driving is the main activity of drivers and that all driving activities are efficiently controlled through the recording equipment, it is evident to conclude that the concerns of road safety are already addressed sufficiently by the existing legal provisions.

Another aspect calling for action is the low compliance rate among the "false" self-employed, hampering the successful implementation of the existing regulatory regime. If no change is introduced with a view to improving compliance level, the problem with misinterpretation, misapplication or deliberate violation of the working time rules will subsist and most probably deteriorate. This will make the Directive a 'dead law' and in consequence will negatively influence the EU transport policy objectives.

### **3.5. Does the EU have the right to act – Treaty base, ‘necessity test’ (subsidiarity) and fundamental rights limits?**

The problems as described above have a trans-national dimension, as they affect the wider EU common transport policy objectives. The implementation and enforcement failures cannot be sufficiently solved by the Member States themselves and call for a more harmonised approach to this issue. The Directive's provisions cannot be amended or repealed at national level. Hence, EU action, undertaken on the basis of Articles 71 and 137 of the Treaty, is necessary to ensure that the Community rules are uniformly applied and allow the internal road transport market to function more efficiently. Due to subsidiarity principle and the fact that all legislation in the area of working time consists of directives, a directive should be used in spite of the aspect that problems connected with the implementation of a directive could be overcome with a regulation which would ensure a uniform application of the rules.

The proposal is proportionate to the problem at hand. It does not go beyond what is necessary to achieve the objective of ensuring the effective and efficient enforcement and full compliance to the rules within the existing legal framework.

Hence, the proposed actions comply with the principles of '**subsidiarity**' and '**proportionality**' cemented in the Treaty.

## **4. OBJECTIVES**

The White Paper on Transport "*European transport policy for 2010: Time to decide*"<sup>14</sup> indicated that with the road transport sector open to fierce competition, more attention should be devoted to the effective implementation and enforcement of rules improving working conditions, road safety and fair competition on the internal road transport market.

The Communication "*Keep Europe moving – Sustainable Mobility for our continent, Mid-term review of the European Commission's 2001 Transport White Paper*"<sup>15</sup> confirmed that the effective implementation of the existing EU legislation on working conditions in road transport sector is of a paramount importance for creating a level playing field and achieving

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<sup>14</sup> COM (2001) 370, 12.9.2001

<sup>15</sup> COM (2006) 314, 22.6.2006

fundamental goals of the common transport policy. Further the Commission announced that it would examine the rules on working conditions in road haulage and propose adjustments, where needed.

The revision of Directive 2002/15/EC is thus in line with the general policy objectives set out in the strategic policy documents. Its underlying aim is to ensure that the working time rules are better complied with and by this better contribute to achieve the EU road transport policy objectives, which in this issue mainly concern the social protection of employees by guaranteeing the safety and health of persons performing mobile road transport activities as workers or persons assimilated to them.

This translates into specific objectives of the proposed EU action. The following table gives an overview of specific objectives and their indicators of achievement. The indicators will enable to assess the progress towards the achievement of the objectives set and to measure the broader results achieved through actions undertaken. It must be however noted that the proposed quantification and timeline of indicators is only indicative, as it is based on the assumption that the amending Directive as proposed by the Commission is adopted and implemented smoothly.

**Table 1. Overview of the objectives and indicators**

<i>Objectives</i>	<i>Indicators</i>
<b><i>Policy objective</i></b>	
<i>1. Improving working conditions</i>	<i>1. "False" self-employed drivers get the adequate social protection of workers</i>
<i>2. Preventing distortion of competition</i>	<i>2. Level playing field provided by ensuring the inclusion of "false" self-employed drivers</i>
<b><i>General objective</i></b>	
<i>Improving the level of compliance with the working time rules in road transport</i>	<i>Compliance rate increased to 90% by the end of year 2012</i>
<b><i>Specific objectives</i></b>	
<i>1. Clarify the scope of the Directive with regard to self-employed drivers</i>	<i>1. The amending Directive adopted and implemented by the end of 2009</i>
<i>2. Ensure harmonious application of rules concerning self-employed and mobile workers</i>	<i>2. Relevant definitions clarified and the assistance on correct application of the provisions provided by the EC, end of 2009</i>
<i>3. Ensure a common understanding of the current legal provisions</i>	<i>3. Guidelines issued in 2010</i>
<i>4. Provide for effective, efficient and uniform enforcement of the rules by Member States</i>	<i>4. Monitoring and control arrangements in place in MS, by end of 2010; number of controls, costs of controls, timely submission of biennial reports by MS to the EC</i>
<i>5. Promote effective cooperation among Member States and between Member States and the Commission in the field of monitoring compliance</i>	<i>5. System of exchange of information and good practice on monitoring compliance and identifying 'false' self-employed established</i>
<i>6. Reduce / prevent the phenomenon of 'false' self-employed</i>	<i>6. Reduction of 'false' self-employed by 80% by end of 2012</i>

All these specific objectives correspond with the identified problems. Their underlying aim is to ensure clarity, consistency of the rules as well as making them better enforceable. These are pre-requisites for attaining the general Community transport policy objectives.

The transposition problem is to be solved by means of the Commission services' standard procedures concerning the monitoring of transposition of Community law. Therefore the objective of improving the accuracy of transpositions is not mentioned here as it is beyond measures considered in the analysis of the policy options.

The revision, aiming at better enforcement of the rules and by this at achieving EU transport policy objectives, contributes to the objectives of the Lisbon strategy to strengthen the competitiveness of the European economy as well as the drive towards "Better Regulation".

As indicated in the Communication "A Europe of results – Applying EC law"<sup>16</sup>, better enforcement of Community law, including improvements in the dialogue with Member States to ensure timely implementation and effective and equitable application, remains a priority for the Commission in 2008. The action proposed contributes thus to the achievement of the Commission's horizontal objectives of the Work Programme for 2008.

Community Charter of the Fundamental Rights of the European Union contains certain provisions related to fair and just working conditions. These include the right of every worker to working conditions which respect his or her health and safety as well as the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. All these aspects are in the heart of the current regulatory regime in road transport. Hence, the EU action aimed at enhancing of the implementation of working time rules specified in Directive 2002/15/EC is, at the same time, the mean to observe and promote the respect for fundamental social rights of workers. Lack of the Community action would significantly affect one of the fundamental rights specified in Article 31 of the Charter and concerning fair and just working conditions.

## 5. POLICY OPTIONS

The previous analysis has shown that the existing Directive leaving a lot of flexibility to Member States as to enforcement and containing transitory provisions as regards the scope of the Directive does not seem to work efficiently and is having increasingly unintended negative effects. In addition, the public consultation has shown that there is no consent on the *status quo* and there is a great expectation for a revision of the current regulatory regime, in particular with regard to the situation of self-employed drivers from the viewpoint of the Directive as well as various practices in applying and enforcing the Directive's provisions. The outcome of the stakeholder consultations provided valuable information, which has been used to identify the policy options.

The following policy options have been identified to remedy the drawbacks that are associated with the current situation. Three of them (options A, B and D) deal with the scope of the Directive as this issue is the driving force for the EU action prescribed in the Directive itself. Option C, with its two sub-options, additionally embarks upon the issue of the enforcement regime to solve the problem of low compliance. It must be, however, noted that

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<sup>16</sup> COM(2007) 502

compliance costs have been calculated additionally for all policy options to gain the full picture of the costs of achieving the goal of full compliance under each option. These analyses are presented in section 6.5 of this report.

### **Option A: "do nothing"**

This option would not require any action from the European Parliament and from the Council; however it would not mean maintaining the *status quo*. In accordance with Article 2(1) of the Directive, the automatic inclusion of self employed drivers within the scope of the Directive as of 23 March 2009 becomes reality when the Commission makes a proposal on the scope of the Directive. Without the proposal the Commission has not fulfilled its obligations from Article 2 of the Directive, which states that *"On the basis of this report, the Commission shall submit a proposal, the aim of which may be either, as appropriate*

- *- to set out the modalities for the inclusion of the self-employed drivers within the scope of the Directive in respect of certain self-employed drivers who are not participating in road transport activities in other Member States and who are subject to local constraints for objective reasons, such as peripheral location, long internal distances and a particular competitive environment, or*
- *- not to include self-employed drivers within the scope of the Directive."*

The report referred to is the report adopted by the Commission on 23 May 2007.

This option means in practice the expansion of the scope of the Directive. Hence it is not a "no change" option that could be referred to as the base case scenario. This option would provide for a level playing field in terms of social rules for all persons engaged in mobile road transport activities. As regards consistency with other policy instruments this option would result in full alignment of the Directive with Driving Time Regulation, which covers both employed and self-employed drivers. The commitment of various stakeholders to this solution is diverging.

### **Option B: Extending the scope of the Directive by including all self-employed drivers, except for self-employed drivers that are only performing national transport**

This option provides for including only self-employed drivers performing international transport in the scope of the Directive, while leaving out of scope those self-employed drivers who carry out solely domestic transport operations. This option would require revision of the Directive with regard to its scope. The revision would involve the amendment of Article 2 of the Directive by specifying and defining the additional category of drivers falling in its scope. All other provisions would remain unchanged. This option would ascertain the level playing field among international hauliers, but could put them in a disadvantaged competitive position towards their domestic counterparts.

### **Option C: Enhanced enforcement of the Directive with modalities to ensure the inclusion of "false self-employed" into the scope while keeping the genuine self-employed workers out of the Directive**

This option provides for inclusion of the "false" self employed drivers in the scope of the Directive by providing for clarification of certain provisions and adding monitoring and control requirements.

Three sub-options have been considered:

### **C.1.: legal clarification within the framework of the Directive**

This sub-option envisages the issuing of a legal clarification to the definition of mobile worker, which encompasses 'false' self employed drivers. This would involve an amendment of the existing Directive with a view to clarify certain definitions so that no room for interpretation is left as to who is subject to its provisions. This option could also involve publishing guidance notes or interpretative communications in order to ensure the harmonised interpretation and application of definitions provided in the Directive by Member States. By providing for a better distinction between drivers in scope and out of scope it would contribute to a reduction of the 'false' self-employed phenomenon.

A better definition would be to complement the definition of mobile worker by clearly stating that

"mobile worker" shall also mean a person although is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, but

- i who does not have the freedom to organise the relevant working activities,
- ii whose income does not depend directly on the profits made,
- iii who does not have the freedom, individually or through a cooperation between self-employed drivers, to have relations with several customers.

This option does not involve any significant direct costs from the Community budget. Effectiveness and efficiency in solving the problem is expected to be high.

### **C.2.: administrative measures imposing full enforcement together with clarification of the categories "self-employed driver" and "mobile worker"**

From the problem analysis it may be assumed that implementation and enforcement is insufficiently regulated in the Directive. Therefore, this sub-option envisages an amending Directive for the introduction of administrative measures to enhance efficiency and effectiveness of the enforcement and at the same time modify the definition of "mobile worker" in the same way as explained in option C1 in order to clearly put the "false self-employed" to the category of mobile workers, while excluding the genuine self-employed from the scope. This would again require a revision of the Directive with a view to introducing certain requirements concerning monitoring arrangements and cooperation to ensure equitable application of the rules and full compliance to them throughout the Union.

The enforcement measures would include the following elements:

- (1) Member States shall organise a system of appropriate and regular monitoring and controls in order to guarantee the correct and consistent implementation of the rules contained in this Directive. They shall ensure that the national bodies responsible for enforcement of the Directive have an adequate number of qualified inspectors and shall take whatever measures are appropriate.
- (2) Member States shall communicate to the Commission details of the monitoring and controls arrangements set up.

- (3) Member States shall take the necessary measures to ensure that transport undertakings and mobile workers have access to information, assistance and advice in the field of working time rules and work organisation.
- (4) With a view to ensuring the effective, efficient and uniform implementation of the Directive throughout the Community, the Commission shall support dialogue between Member States with the following aims:
  - (a) to reinforce administrative cooperation between their competent authorities, through the adoption of effective systems of exchange of information, the improvement of access to information and the promotion of exchange of information and good practices in enforcement of working time rules;
  - (b) to promote a common approach to the implementation of this Directive;
  - (c) to facilitate dialogue between the transport sector and enforcement authorities.

This option would involve certain costs, mainly to be borne by Member States, related to introduction or enhancement of enforcement regimes. However, these costs would be offset by benefits stemming from an increased level of compliance to the rules. Full compliance will further lead to better achievement of the policy objectives. Hence, the net effectiveness and efficiency of this option would be satisfactory.

### **C.3. : 'phasing-in' for 'false' self-employed**

This sub option envisages modalities for the inclusion of the 'false' self-employed workers by a clarification of the definition of mobile worker in the first phase in years 2009 to 2011 (as in Option C.1 and C.2) and from 2011 onwards, by introducing monitoring and control requirements (as in Option C.2). This would involve a revision of the Directive by introducing the amendments and new provisions mentioned in both preceding sub-options with a timeline for the implementation of the respective amendments and new requirements laid down.

### **Option D: Exclusion of self-employed drivers**

This policy option provides for the full exclusion of all self-employed from the scope of the Directive without taking any action against 'false' self-employed drivers. This option is explicitly foreseen by the Directive as one of the two possibilities. It would require amending Article 2 of the Directive concerning the scope by specifying that the Directive's provisions do not apply to self-employed drivers. This option could result in maintaining the phenomenon of 'false' self-employed drivers and would therefore not bring about the remedy for the problem of low compliance rate.

This option reflects the existing situation, when self-employed drivers are at least temporarily excluded from the scope, as it does not generate any changes in terms of impacts and their indicators with relation to the current situation. Hence, this status quo option is referred to as the base case scenario against which the other options are measured.

Another more radical option of repealing the Directive was initially considered. This option would in fact leave the situation substantially unchanged in comparison with the policy option



D, as mobile workers would be subject, to some extent, to the provisions of the general working time Directive 2003/88/EC. However, it must be recalled that the initiative to establish a sectoral working time rules for road transport workers was based on recognition of the specificity of the profession that requires working and staying away from home frequently.

In fact, scrapping the Directive would neither solve the problem of 'false' self-employed nor of low compliance. Savings in compliance and administrative costs, which could be expected in a result of scrapping the Directive, would be offset by the same type of costs related to compliance with the general working time directive. Moreover, such solution would undermine all the efforts made so far and costs incurred on EU, Member States and business levels to transpose the Directive and to adjust to the working time rules stipulated in it. For the above mentioned reasons this option has been discarded.

It must be remembered that, regardless the decision on inclusion or non-inclusion of self-employed drivers within the scope of the Directive, self-employed drivers are, equally with employed mobile workers, subject to driving time, break and rest periods rules established by Regulation (EC) No 561/2006. They have identical obligations related to organisation of drivers' hours and benefits concerning minimum social protection standards, which are safeguarded by the Regulation. As driving time constitutes a lion's share of the driver's working time, respecting driving time rules has direct effect also on working time of a driver.

## **6. ANALYSIS OF IMPACTS**

This section addresses the assessment of impacts of policy options described in the previous section. Policy options have been analysed with regard to:

- (1) Type of impact - economic, social, environmental and additionally administrative impacts;
- (2) Policy objective – social protection (including health and safety) of drivers, fair competition and additionally efficient and effective enforcement.

Road safety has not been taken as policy objective, as this aspect is tackled already by the Regulation on driving times and rest periods.

Having in mind the Commission's commitment to Better Regulation strategy, particular attention was paid to analysing the enforceability of each policy option by identifying the possible enforcement system and costs associated with its delivery.

The quantified estimates and monetized values of impacts have been provided, where possible. However, due to the lack of reliable data or no data at all in certain domains, some analysis had to be based on assumptions and some benefits and costs are provided in qualitative terms describing mainly the magnitude of the impacts. The detailed assumptions used for the analysis are in Annex 1 to this report.

### **6.1. Base case scenario**

In order to assess the effects of introduction of each policy option first the base case indicators must be analysed. This section presents the analysis of the base case scenario (policy option D – exclusion of self-employed), which reflects the current situation projected to the year 2009,

when the scope of the Directive is to be automatically extended to cover self-employed drivers, if no action is taken by the Commission.

The main base case scenario indicators are following:

- **Competition and economic indicators** - include aspects of employment, freight transported (market shares), turnover and transport costs.

It must be noted that although the main characteristic of the EU road transport sector is fragmentation (95% of road haulage companies are micro-enterprises of less than 10 employees, only 1% are companies with more than 50 employees), there are substantial differences between Member States as to the market share of self-employed and the share of employment by large companies. In order to get more insight into conditions of competition Member States have been grouped into four clusters of countries with similar characteristics with regard to the structure of the freight transport market (share of self-employed and of employment in large companies) and trends (consolidation or fragmentation of the market). The details of each cluster are presented in Annex II to this report. For the purpose of this report all indicators and impacts are presented in aggregated form as EU average.

The share of self-employed drivers in the total number of all persons engaged in road freight transport activities is about 30%, ranging from 94% in Malta to 5% in Netherlands. It is expected that, for the base case scenario, the number of self-employed will increase by 0,2%, whereas the number of employed drivers is expected to decrease by -0,1% on annual basis till 2009. Hence, the total number of all drivers is expected to remain substantially unchanged over the next years till 2009.

The table below shows the estimate numbers of drivers currently covered and not covered by the working time rules.

**Table 2. Drivers affected and not affected by the Directive (projection EU-27, 2009)**

<i>Total number of drivers</i>	<i>Employed drivers (affected)</i>	<i>Self-employed drivers (not affected)</i>			
<b>2.629.477</b>	<b>1.821.629</b>	<b>807.848 (31% of all drivers)</b>			
	<i>(69% of all drivers)</i>	<i>national</i>	<i>International</i>	<i>genuine</i>	<i>False</i>
		768.021	39.827	525.101	282.747 <sup>17</sup>

Assuming the full compliance with the rules 2.104.376 drivers (employed and 'false' self-employed) should be subject to the Directive's provisions, and 525.101 genuine self-employed drivers are excluded. In fact, the number of those who are really affected is much lower due to the low compliance rate.

The fact that all 20% of all professional drivers who are considered genuine self-employed are excluded from the working time rules is sometimes perceived as hampering the establishment

<sup>17</sup> The number of 'false' self-employed was estimated based on assumption that 50% of those self-employed who work on behalf of large companies are 'false' self-employed, for more details see Annex 1

of the level playing field in road transport industry. However, it must be noted that common minimum competition, road safety and social protection standards concerning maximum driving time and minimum breaks and daily and weekly rest periods are safeguarded by Regulation (EC) No 561/2006, which covers all employed and self-employed persons performing mobile road transport activities. The Working Time Directive can mainly contribute to social protection of workers. The main potential source of distortion of competition is the employment of drivers as dependent workers by circumventing the rules on social protection, i.e. the establishment of a working relationship as 'false' self-employed.

In fact, the distortion of competition is rather rooted in non-compliance with the rules. The current level of compliance is estimated for 20% and will remain substantially unchanged if no mitigation measures on EU and Member States levels are undertaken. The estimation of the compliance rate takes into account those businesses and individuals who unintentionally do not follow the Community rules, those who deliberately ignore the law and those who consider themselves self-employed whereas they are in fact 'false' self-employed, hence should be covered by the Directive together with mobile workers.

As regards trends in freight transport over the period 2006-2009, the annual average increase of total freight transported within the national borders is expected to be 2,8% and the annual average growth of the international freight market 2,5%.

The overall EU-27 sector turnover is expected to increase on average by 7,2%, and average yearly costs by 2,2% over the period 2006-2009.

- **Road safety indicator** – concerns number of fatalities involving Heavy Goods Vehicles (HGVs) and caused by fatigue will not be used due to the following reasons.

There are few data on road safety that provide insight into the causes of accidents and no data that relate accidents to the working hours of professional drivers. Moreover, data on accidents do not distinguish between employed workers and self-employed drivers. Therefore it is difficult to draw from available data firm conclusions on the impact of inclusion or non-inclusion of self-employed drivers on road safety.

The latest available statistics on fatalities involving HGVs dating from 2006 cover 7 Member States. These data do not indicate the causes of fatalities. The latest study available, European Truck Accident Causation<sup>18</sup>, indicates that fatigue is an important factor in around 6 % of road accidents. It must be noted that fatigue cannot be directly attributed to working long hours, which could be only one of the numerous factors contributing to driver's fatigue. The main instrument to tackle this problem is the Driving Time Regulation 561/2006 that regulates in detail the maximum driving time, breaks and rest and that provides for efficient control. It is assumed that the main reasons for fatigue are the monotonous, uninterrupted driving hours. Therefore, the driver's fatigue is prevented by strict enforcement of driving time and rest period rules that apply to all drivers. Because of the disputable benefit of additional working time provisions on road safety, no quantitative analysis of impacts of policy options on a number of fatalities has been carried out.

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<sup>18</sup> [http://ec.europa.eu/transport/roadsafety/publications/projectfiles/etac\\_en.htm](http://ec.europa.eu/transport/roadsafety/publications/projectfiles/etac_en.htm)

- **Social aspects indicators**<sup>19</sup> – cover aspects of structure of profession (working environment), physical health, psychological health and stress, work-life balance, remuneration.

The working environment in the sector is generally characterized by the following features:

- Psychosocial work profile is unfavourable compared with other sectors: workers in transport show relatively low skills discretion, low job control and high job demands (e.g. just-in-time deliveries) resulting in high work pressure, little variation in work and isolation, little support from supervisors and colleagues, detrimental work patterns (irregularity of shifts, night work);
- Ergonomic and ambient conditions: high exposure to physical load (loading and unloading trucks), prolonged sitting, violence and harassment by customers, threat to personal security from theft and physical assault, noise vibrations, extreme cold temperatures, variations in temperature, air pollutants;
- Driver related factors: overweight, lifestyle, unhealthy meals, lack of physical exercise;

These features concern in general employed as well as self-employed drivers. However, self-employed report to have a better job control, less monotonous work, higher job demands and tasks variety, but they work longer hours than mobile workers who comply with the working time rules.

In freight transport the average weekly working time of self-employed drivers is estimated for 66 hours on average in national haulage and for 52 hours in international service. In passenger transport self-employed drivers work, on average in national and international carriage, no longer than 48 hours per week. Consequently, no major potential impact is expected in the passenger transport sector in any of the policy options. Therefore only road freight transport has been considered in further analysis.

All these working environment factors prove to have adverse effect on drivers<sup>20</sup>:

- physical health – musculoskeletal disorders (30%), backache (37%), problems with vision (12%), headaches (18%);
- psychological health and stress – stress (35%), sleeping problems (12%), overall fatigue (30%);
- work-life balance – due to working irregular shifts combined with overnight stays away from home drivers report difficulties in conciliating work and family life/social commitments outside work (25%).

Working fewer hours undoubtedly diminishes the exposure of drivers to all these factors that affect occupational safety and health risks. Hence, in general drivers should have an interest in complying with the social protection measures provided by the Directive.

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<sup>19</sup> No data on effects of introduction of the Directive on structure of profession are available, the social aspects have been thus described in qualitative terms based on the description and some figures presenting the situation in social sphere prior to the Directive's implementation.

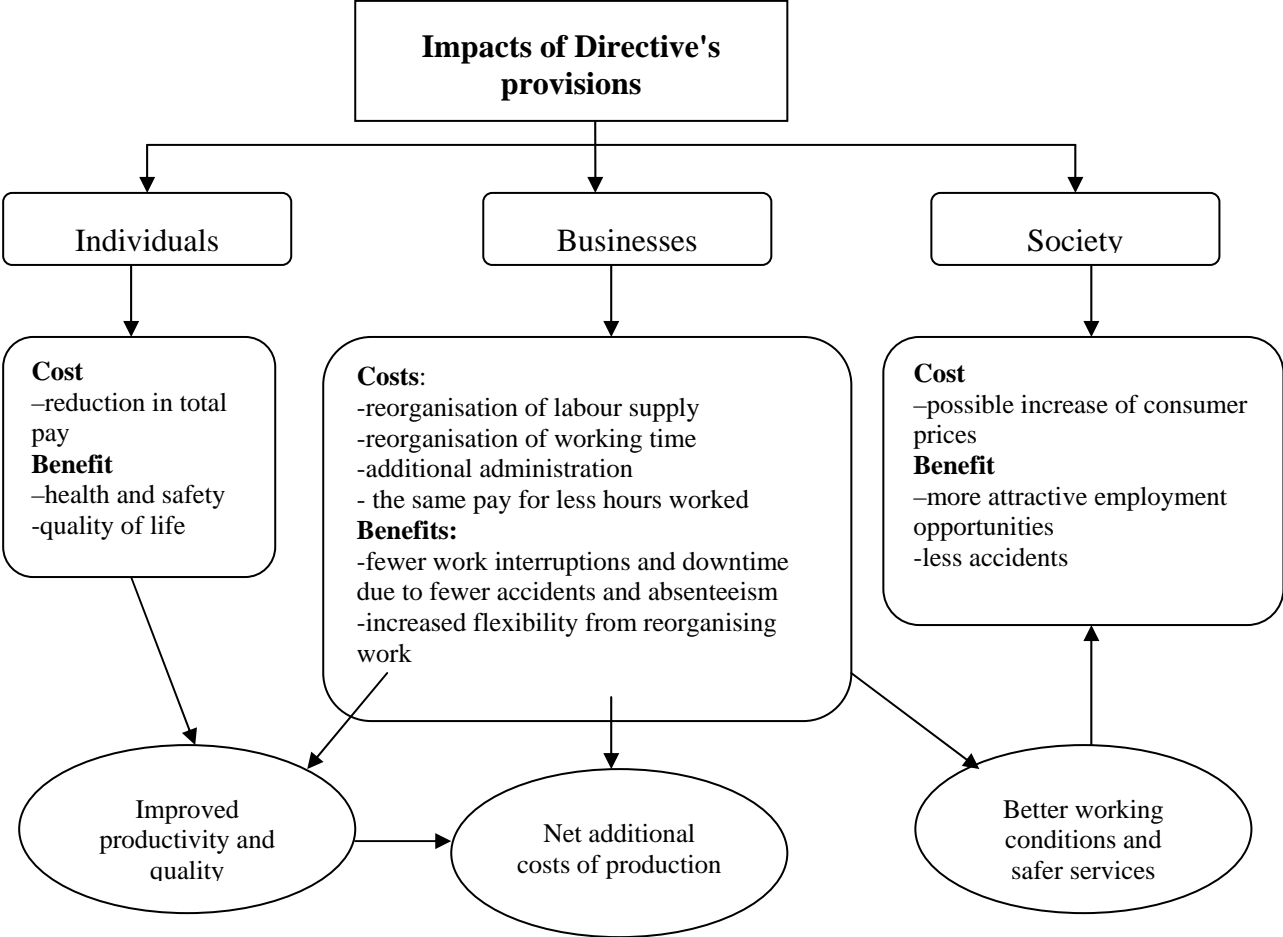
<sup>20</sup> Figures describe the situation prior to the introduction of the Directive

Self-employed drivers, being currently excluded from the working time rules, are thus more exposed to the adverse effects on their health and safety as well as on work-life balance due to working long hours. On the other hand they benefit from their income level remaining unaffected by the reduction of working hours. In addition, they have a different mentality towards work, as they are not in a hierarchical position, but their own bosses, which mean that the negative effects are psychologically diminished.

A decrease in income due to the introduction of the Directive does not, in general, concern employed workers whose salaries are usually safeguarded by means of collective bargaining. However, several drivers lose some part of their income related to working overtime, which results in higher stress and fatigue caused by taking on additional jobs to compensate for the lost income. These consequences of a reduction of the income, to some extent, offset the benefits stemming from the compliance with the rules.

The described above base case situation reflects the impacts of introduction of the Directive. The Figure 1 illustrates these impacts in terms of costs and benefits for industry resulting from compliance with the working time rules.

**Figure 2. Costs and benefits of compliance with the Directive**



Source: Business Impact Assessment Working Time Directive – Supplementary report for mobile workers in sea transport and road transport, Cambridge Policy Consultants 2003

## 6.2. Economic impacts

In the economic analysis the following aspects have been considered: changes in weekly driving time due to limitation of weekly working time, changes in weekly profit, demand for road transport not satisfied due to reduction of working hours, number of additional drivers required to satisfy the demand, additional yearly and one time costs related to recruiting additional drivers, redistribution of market shares, changes in total costs of transport service, administrative costs. The impacts of policy options A, B, C are analysed against the current situation which is presented in option D (*status quo*) serving as the base case scenario.

The assessment of impacts is based on the assumption of the 20% compliance rate.

### Option A: "do nothing"

As indicated in section 5 of this report policy option A, although it does not require any action by the European Parliament and by the Council, but would require the Commission to adopt a proposal on the scope of the directive, would not mean maintaining the *status quo*. In fact, it would result in changing of the scope of the Directive by automatic inclusion of self-employed drivers as of 23 March 2009.

Self-employed drivers performing national freight transport operations work on average 66 hours per week, and those engaged in international haulage work on average 52 hours per week. The inclusion of self-employed drivers envisaged in this option would thus require a reduction of weekly driving time (by 27% for drivers performing national transport and 8% for international freight transport drivers) due to abiding by weekly working time limit of average 48 hours.

#### *Calculation method for weekly working time*

*The weekly average working time was calculated by adding a maximum average weekly driving time of 45 hours and a weekly time devoted to other activities included in the definition of working time (loading, unloading, waiting at logistics centres, maintenance, etc.). Weekly time devoted to activities other than driving was calculated based on a number of weekly full trips per class of distance x unit time of the activity (e.g. unit time of loading of 1 ton or unit waiting time). In case of time for loading this is additionally multiplied by an average load of a truck for a class of distance.*

*Example [of Denmark] for distance class of average 200 km:*

*Total weekly loading and unloading time = 11,7 trips/week \* 70% of full trips \* 9 minutes (time unit of loading + unloading of 1 ton) \* 9,9 tons/trip = 12,16 hours/week.*

*Total weekly waiting time = 11,7 trips/week \* 30 minutes = 5,85 hours/week*

*Total weekly working time = 45 hours driving + 12,16 hours loading and unloading + 5,85 hours waiting + 1 hour of other activities = 64.01 hours*

*Hence in case of self-employed drivers [in Denmark] performing trips on 200 km average distance the reduction of working time would equal 25% (change from 64 hours to 48 hours per week).*

The reduction in weekly working time would result in inability of the self-employed to transport the same amounts of tons. In order to maintain the same level of turnover they would have to employ another driver and hence to incur additional related costs. This would lead consequently to a loss of income, which is considerable in case of self-employed drivers performing national transport. It is estimated that their weekly profits would reduce by more than 72% on average, which would cause leaving the entrepreneurial activity by them. In case of international drivers (who constitute 5 % of all self-employed and 1,5% of total number of drivers in the sector) their weekly profit would decrease by 20% on average in result of reducing working time, hence it is assumed that they would remain in the business.

*Calculation method for change of weekly profits*

*Reduced number of weekly trips = (reduced driving time / distance class) \* commercial speed per distance class. Example [of Denmark]: 33,7 driving hours/week / 200 km \* 52 km/hour = 8,76 trips/week*

*Average number of tons transported weekly per 1 km = average load per trip \* number of weekly trips \* % of full trips \* average distance class. Example [of Denmark]: 9,9 tons/trip \* 8,76 trips/week \* 200 km \* 70% = 12.141 tkm/week*

*Weekly turnover = average tons transported weekly per 1 km \* national unit value of turnover/tkm. Example [of Denmark]: 12.141 tkm/week \* 0,23 €/tkm = 2.793 €/week*

*Weekly profit = weekly turnover – weekly costs. Example [of Denmark]: 2.793 €/week – 1.967 €/week = 826 €/week*

*The weekly profit before reduction of working time (calculated based on the same methodology) equalled 1.822 €. Hence, the reduction in weekly profit in this example is 55%.*

The reduction of working time of self-employed drivers would also indirectly affect transport companies who sub-contract self-employed drivers to benefit from certain flexibility in capacity needed to face workload peaks. In effect, these companies, in order to maintain the same amount of freight transported, would have to either hire additional drivers or sub-contract other self-employed. Both scenarios would entail additional considerable costs to be borne. These costs would consist in the case of employing new drivers of cost of personnel, maintenance, insurance, fuel, toll, taxes, one-off costs (e.g. driver's training) and in the case of sub-contracting other self-employed of costs of additional outsourcing of transport services. The second scenario is however unlikely due to limited capability of existing self-employed drivers for taking on additional contracts. Limited possibility for outsourcing freight transport services and a need to employ additional drivers would also lead to losing the flexibility, which companies currently enjoy by sub-contracting some transport services to self-employed.

In summary, a reduction of working and therefore driving time of self-employed drivers would entail the following consequences on employment and market shares redistribution:

- (1) Current number of professional drivers on the market would not be able to satisfy the same amount of freight transport<sup>21</sup>. It is estimated that in order to meet the market

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<sup>21</sup> unsatisfied yearly demand would reach 1.340 million tons in case of full compliance and 268 million tons in a situation of 20% compliance level

demand for freight transport services approximately 59.000 of new drivers would need to appear on the market.

- (2) 19 % of self-employed drivers (ca. 153.500 drivers) would not be able to continue their business due to reduction of weekly profit and hence would close down their entrepreneurial activity. *The reduction rate of self-employed drivers was calculated assuming that the maximum impact of this option will be that all self-employed drivers performing national freight transport (95% of all self-employed) will close down their business due to the considerable reduction of more than 50% of their weekly profit. The realistic (based on current level of compliance of 20%) reduction rate of self-employed will thus be 19% which represents 20% \* 95% of all self-employed*
- (3) In order to meet an unsatisfied market demand for freight transport (created due to decreased number of self-employed and reduced working capacity of those who remained in business), big transport companies would absorb former self-employed drivers who close down their businesses and would additionally need to employ 59.000 new drivers. In total transport companies would have to employ ca 212.500 drivers in order to satisfy the market demand for transport of goods;
- (4) If new drivers are found on the market then total employment in the sector would increase by 2,2%, and the structure of employment would change in the following way: a number of employed drivers in total employment would increase by 8% and a share of self-employed drivers in total employment would decrease by almost 6%;
- (5) If the additional drivers needed are not found on the market then it would lead to a shortage of drivers and difficulties with satisfying the market demand for freight transport.
- (6) In result of increased employment in transport companies their operating costs would increase significantly and in effect the overall EU-27 cost of transport would increase by 1,1% (around 3.500 million euros). The impact of additional transport costs on GDP would be around 0,02%. This would cause an increase in the final consumer prices, which are not possible to estimate;
- (7) Further consequence of the changes in employment structure would be a substantial change in the structure of the market with a redistribution of market shares. It is expected that large companies would gain additional 1.5% market shares<sup>22</sup> connected with the service that former self-employed drivers used to provide as shippers. Small and medium enterprises (SMEs) would manage to maintain the same market share, but they would lose market power due to concentration process.

As regards administrative costs of this option, no additional costs related to reporting (monitoring system, data collection and analysis, elaboration of the biennial report) by Member States to the Commission on the implementation of the Directive will be borne.

The option will, however, impose additional administrative requirements (recording working time and reporting obligations) on the self-employed. This will entail additional administrative tasks ensuring the compliance internally and proving the compliance externally

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<sup>22</sup> In a situation of 100% compliance this gain would reach 7,3%



including restructuring the organisation of working time, setting up and operating system for monitoring the working time. These general administrative activities are not, however, counted as working time of self-employed; hence they do not require a reduction of rewarded working / driving time and consequently do not entail direct administrative costs.

Employers who will recruit additional drivers will incur higher administrative costs relating to recording, elaborating and reporting of data collected on these newly employed drivers. It is estimated that these enterprises would incur € 1.275.887 additional administrative costs<sup>23</sup> related to employing 212.500 new drivers.

On one hand inclusion of self-employed drivers is seen as providing for level playing field for all professional drivers and aligning conditions of competition between self-employed and companies. On the other hand inclusion is perceived as unfair towards self-employed, as it will give a competitive advantage to large companies who, realizing economies of scale, are able to adjust their work organisation to the rules much easier without losing business and market position.

#### *Positive impacts*

- Level playing field for all persons performing mobile road transport activities;
- Elimination of 'false' self-employed phenomenon;
- Increase in number of employed drivers in large companies and potential increase of total employment in the sector;
- Increase of competitive advantage of large companies (which are better suited to cope with reduced working hours by realising economies of scale) resulting in a further strengthening of consolidation process in the structure of the road freight transport in countries where large companies are dominant.

#### *Negative impacts*

- Adverse effects on entrepreneurship development - a number of self-employed (who generally rely on low costs and long working hours) leave the market because of decrease in turnover or increase in operating costs due to recruiting a second driver – both resulting in loss of income; becoming self-employed drivers becomes less attractive; decrease in the number of self-employed in total employment;
- Disruptive effect on the position of the sector in countries with a high share of self-employed in the total employment – their competitiveness would decrease significantly compared with those countries where large companies are dominant;
- SMEs lose their market power due to concentration process;
- risk of a shortage of drivers and unsatisfied market demand for freight transport services, if additional drivers needed are not found on the market;
- Loss of flexibility by large companies who will not be able to outsource the same amount of transport services to self-employed and in order to meet the market demands will have to employ additional drivers;

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<sup>23</sup> Details of calculation are provided in the section 6.5 of this report concerning administrative impacts

- Slightly higher administrative costs for employers related to monitoring, recording and reporting working time of additionally recruited drivers;
- Rise in transport costs resulting from bearing by large companies additional yearly and one-time costs of recruiting new drivers;
- Risk of increase in the final consumer prices of freight transport services;
- Maintaining or lowering the low compliance rate – a number of genuine self-employed and current 'false' self-employed drivers, in order to maintain the level of income, will disregard the working time rules counting on no or poor effectiveness of monitoring and controls regime. This further result in rising non-compliance costs (penalties).

**Option B: Extending the scope of the Directive by including all self-employed drivers, except for self-employed drivers that are only performing national transport**

In case of international transport, the reduction of driving time due to the compliance with the working time rules would be approximately 8% (decrease from 52 to 48 hours of average weekly working time). As a result, part of the demand (ca. 3,3 million tons per year) could not be satisfied by the same number of drivers. Having in mind high labour costs it is unlikely that self-employed drivers would hire a second driver to maintain the same level of turnover. It is thus considered that these drivers would accept a slight reduction of their turnovers and a consequent decrease in their incomes by 4% in order to remain on the market.

It is estimated that in order to meet the market demand for transporting the same amount of freight large companies would need to employ additionally 579 new drivers, which represents increase by 0,02% in total employment in the sector (increase of number of employed by 0,03%). In the same time the share of self-employed drivers in total employment would decrease by 0,06 %. Hence, no substantial change in employment in the sector would appear.

The cost of transport would increase by 0,012% (ca. 35 million euros), which would not have a noteworthy impact on a level of GDP, therefore no increase in final consumer prices is expected.

Large companies would absorb the exceeding demand for transport from market shares of self-employed drivers working as shippers and would gain market shares in international market insignificantly taking over only 0,02% of market shares.

International self-employed drivers would gain benefits stemming from social protection measures, but in the same time they would find themselves in a disadvantaged position towards their domestic counterparts, without evidence that they are more prone to fatigue, stress and other adverse effects of unlimited and uncontrolled working hours than domestic self-employed drivers. Effectiveness in achievement of the fair competition objective could thus appear to be low.

As for Option A no additional administrative costs will be borne by Member States' national administrations due to reporting obligation and the increase in annual administrative costs (recording and reporting working time) incurred by road transport enterprises due to recruiting additional drivers will be insignificant € 3.659 (0.3% of the respective costs in option A).

*Positive impacts*

- Level playing field for all drivers involved in international road transport activities;
- Significant reduction of 'false' self-employed phenomenon among international drivers;
- Slight increase of employment rate in large companies operating internationally;

#### *Negative impacts*

- The problem of the phenomenon of 'false' self-employed drivers continues in national transport (only insignificantly reduced);
- International self-employed drivers experience a slight reduction in turnover and consequently a loss of income;
- Disruptive effect on the competitive position of international self-employed drivers against their domestic counterparts;
- Small rise in transport costs resulting from additional yearly and one-time costs of recruiting new drivers;
- Slightly higher administrative costs for employers related to monitoring, recording and reporting working time of additionally recruited drivers;
- Maintaining the low compliance rate;

### **Option C: Enhanced enforcement of the Directive with modalities to ensure the inclusion of “false self-employed” into the scope while keeping the genuine self-employed workers out of the Directive**

In accordance with the Directive all those drivers who do not fall under the category of 'mobile worker', but who do not satisfy all the criteria of the definition of 'self-employed driver' should be treated as mobile workers and comply with the working time rules. In practice, however, many such drivers regard themselves as self-employed in order to circumvent the working time rules. These are called 'false' self-employed drivers. The purpose of this policy option is to eliminate or at least significantly reduce the phenomenon of 'false' self-employed drivers, which will consequently contribute to increasing the compliance rate and eliminating the risk of distorting the competition.

#### **C.1.: legal clarification within the framework of the Directive**

A legal clarification of definitions of self-employed driver and of mobile worker as well as recognition of other category of drivers that do not satisfy fully the criteria of neither of the two definitions would help to avoid misinterpretation regarding scope of the Directive. Clear distinction between who is and who is not subject to working time rules would contribute considerably to reducing the number of 'false' self-employed who regard themselves self-employed due to wrong interpretation of legislation. It would, however, not eliminate from the market those 'false' self-employed who intentionally disobey the rules. It is estimated that around 10%<sup>24</sup> (28.275 drivers) of all 'false' self-employed would be affected as a consequence of legal clarification.

Due to a weak financial capability of 'false' self-employed they would, most probably, become employees of companies for whom they have been working so far rather than start

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<sup>24</sup> This calculation is based on the assumption that 50% of 'false' self-employed are those who do not comply due to misunderstanding/misinterpretation of the law.

their own business and become real self-employed. Consequently the number of employed drivers would increase by 1,5% and the total employment in the sector would remain unchanged as these drivers would only change their status from being officially self-employed to an employee.

'False' self-employed are normally recorded in national statistics as self-employed, therefore the reduction of the number of 'false' self-employed by 10 % would result in a reduction in the total number of self-employed by 3,5%. However, this should be seen as a positive aspect as it is connected with the reduction of 'false' self-employment phenomenon. No significant change in total employment in the sector would appear as the reduction in the number of self-employed (due to reduction of 'false' self-employed) would be offset, to some extent, by increased employment in large companies.

In general 'false' self-employed tend to be less expensive than the real self-employed. Therefore, large companies who used to outsource transport services to 'false' self-employed, would rather employ the former 'false' self-employed than sub-contract more expensive genuine self-employed. They would not face additional costs by employing these drivers as it is assumed that their wages (with additional costs of fuel, tolls etc.) would equal the costs previously paid for the outsourced service.

However, in order not to lose completely their flexibility in meeting market demands in peak seasons and to be able to transport the same amount of freight, large companies would need to outsource to real self-employed drivers the service connected with the transport of the exceeding demand. This would create additional costs for these companies estimated for 631 million euros every year (0,2% of total transport costs). On the other hand genuine self-employed drivers outsourced by large companies would increase their turnover by around 1% (in a situation of 100% compliance rate the turnover could increase by almost 5%).

By recruiting additional drivers (former 'false' self-employed) companies would face additional annual administrative costs of €160.729 related to recording and reporting working time of these drivers.

No redistribution of market shares would happen as 'false' self-employed drivers work anyhow as subcontractors of large companies. As the rise in transport costs are expected to be insignificant this sub-option would not have an impact on consumer prices.

#### *Positive effects*

- Reduction of the number of 'false' self-employed (those who misinterpret the law) leading to some improvement of compliance rate;
- Possible increase of the turnover of real self-employed;
- Increased attractiveness of the profession (resulting from increased demand for outsourcing services and elimination of 'false' self-employment) which could lead to new businesses creation;
- Aligning the conditions of competition between salaried mobile workers and some 'false' self-employed.

#### *Negative effects*

- Large companies incur additional costs to relocate the unsatisfied demand for transport and additional annual administrative cost related to reporting for newly recruited drivers;

- Large companies who employ additional drivers to satisfy the freight transport demand lose partly their flexibility.
- Phenomenon of 'false' self-employed continues in force.

## **C.2. : administrative measures imposing full enforcement together with clarification of the category of "mobile worker"**

This sub-option envisages introducing new provisions concerning monitoring general compliance as well as proposing new measures aiming at full enforcement of the working time rules to 'false' self-employed drivers in addition to a clear definition of "mobile worker" with a view of ending the phenomenon of "false" self-employed drivers.

There are two types of measures considered in this sub-option:

- (1) Fine-tuning of the definitions in order to make the concept of mobile worker clear without ambiguity to cover also the "false" self-employed drivers.
- (2) New provisions in the amending Directive imposing on Member States obligation to establish monitoring and control arrangements in order to enhance enforcement, to cooperate among themselves and with the Commission in the field of common understanding and application of the rules, to exchange best practices and experience in identifying and mitigating the phenomenon of 'false' self-employed. These provisions also envisage the commitment of the Commission to support and facilitate dialogue between Member States as well as between industry and enforcement authorities.

These measures entail some enforcement efforts and related costs to be borne mainly by Member States. These measures include:

- Identification of 'false' self-employed – involves coverage in the enforcement of working time also those mobile workers that were in the grey area of "false self-employed" in order to identify them. This enforcement would be carried out by checking the outsourcing contracts at outsourcing enterprises' premises, self-employed drivers' premises or based on the information available in labour inspectorates or other national entities. It is estimated that annual EU-27 costs of inspections would vary from €1,9 million for checking 5% of self-employed drivers to €7,9 million for a 20% target.

*The method of calculation: Average annual cost of inspection aimed at identifying 'false' self-employed = average duration of a check 60 minutes \*average cost 49 €/check (2009 prices) \* % of self-employed drivers checked (targets analyzed 5%, 10%, 15%, 20%). Average cost per check was calculated taking account of: cost of inspector 40 €/hour in 2003 prices (including the equipment and indirect costs) + additional costs 3 € per check in 2003 prices (legal and administrative preparations, initial training of inspectors, communications and software, etc.). These costs were then projected to 2009 prices considering expected average EU-27 inflation rate.*

- Enforcement system – involves development of a more harmonized system of checks on compliance with working time rules. This system would be based on the example of enforcement regime set up for checking compliance with the driving time Regulation's provisions. These checks would be performed at intermodal freight

terminals, at client's premises and at other places where goods are collected or delivered. This system would enable to check activities which are currently not possible to be verified by enforcers checking driving time rules, that is loading and unloading, waiting time at logistic centres. The cost calculations have been made based on different targets that is 1%, 2%, 3% and 4% % of working days checked. It is estimated that the annual costs of carrying out of checks would vary from €182million (1% target) to €726 million (4% target).

*The method of calculation: average duration of a single check of 40 minutes means that an inspector will perform 1,5 check per hour. Cost of inspection is 33,80 €/check. Annual cost of checks = number of all drivers concerned\* 200 days worked by each driver each year \* target of days worked to be checked (1%, 2%, 3%, 4%) \* unit cost per check. Example: total number of drivers affected by the Directive (employed and self-employed) 2.688.000 drivers \* 200 days/driver/year \* 4% days worked per year\* 33,80 €/check = 727 million €/year.*

The enforcement actions proposed here affect all employed mobile workers as well as all self-employed (genuine and 'false') and they aim not only at identifying and eliminating 'false' self-employed but also at improving the compliance by employed mobile workers. This sub-option addresses completely the problem of low compliance rate by removing its main causes (ambiguous definition, bad behaviour of drivers and enterprises, inefficient enforcement).

In a situation of full compliance this action would affect 100% of 'false' self-employed. However, as the analyses are based on the current low compliance rate it is thus expected that around 20% (56.550 drivers) of 'false' self-employed will disappear from the market and that the overall compliance rate will increase significantly. The reduction of 'false' self-employed coupled with an improvement of compliance discipline of employers and mobile workers (stimulated by threats of checks and penalties for infringements) and the fully correct national transpositions would result in a full compliance in longer term.

The reduction of 'false' self-employed will be reflected in national statistics as the reduction of the total number of self-employed by 7%. This shall be seen as the positive phenomenon as the decrease is connected with the reduction of 'false' self-employed, which is the objective of this sub-option.

As a consequence of reducing the number 'false' self-employed the unsatisfied demand for freight transport would be doubled (468.807.712 tons) compared with sub-option C1. This means that in order to maintain the current amount of freight transported large companies would:

- (1) face additional costs by outsourcing transport services of the exceeding demand to genuine self-employed (who are normally more expensive than the 'false' self-employed), it is expected that additional annual costs would amount 1.2 million euros, that is increase by +0,4% of total transport costs;
- (2) loose partly its flexibility by employing some of the former 'false' self-employed – this would not cause additional significant costs for employers.

The new outsourcing service required by large companies would result in 2% increase of the average yearly turnover of genuine self-employed drivers. This would enhance attractiveness of the profession and stimulate the creation of new entrepreneurs.

The administrative costs borne by companies who employed additional drivers in order to take over the market share that self-employed would not be able to satisfy would rise by € 321.459. However, these costs would not be significantly high, as they are connected with the additional recording and reporting efforts (time and cost of the company's administration staff) for newly employed drivers.

As the increase in total transport costs (around 0,4%) is expected to be low the final consumer prices will not be affected.

The distortion of competition between those employed drivers who comply with the rules and those salaried and non-salaried drivers ('false' self-employed) who disobey the law would be prevented. In addition the competitive position of genuine self-employed would not be put at stake by 'false' self-employed who equally (although unlawfully) benefit from unlimited working time (with all its consequences), but do not bear the same costs, responsibilities and risks related to running own business.

#### *Positive impacts*

- Significant reduction of 'false' self-employed phenomenon, which in a situation of full compliance would lead to almost full elimination of the phenomenon of 'false' self-employed from the market;
- Possible increase of the turnover of real self-employed;
- Increased attractiveness of the profession which could lead to new businesses creation;
- Clear definition of mobile workers;
- Harmonized enforcement regime across EU and improved transparency of application of working time rules;
- Significantly improved compliance rate resulting from reduction of 'false' self-employed and better compliance by employed drivers and companies;
- Reduced, and in longer term eliminated risk of distorting the competition between drivers and undertakings covered by the Directive's provisions;
- Safeguarded competitive position of genuine self-employed.

#### *Negative impacts*

- Large companies incur additional costs to relocate the unsatisfied demand for transport and additional annual administrative costs related to reporting for newly recruited drivers;
- Large companies who employ additional drivers to satisfy the freight transport demand lose partly their flexibility;
- Additional costs of carrying out enforcement measures to be borne by national authorities.

### **C.3. : 'phasing-in' for 'false' self-employed**

This sub-option envisages 'phasing-in' procedure for the inclusion of 'false' self-employed drivers within the scope of the Directive. It splits the measures proposed in sub-option C2 by a timescale:

- (a) providing a legal clarification of definitions - in the first phase (years 2009-2011), in order to eliminate 'false' self-employed linked to misinterpretation of the law;
- (b) introducing administrative and enforcement measures - in the second phase (from 2011 onwards), in order to eliminate the remaining majority of 'intentional' 'false' self-employed from the market.

In fact the impacts (positive and negative) of this sub-option would be very similar to those of sub-option C2, with some figures (e.g. regarding increase of turnover of real self-employed, increase of transport costs) only insignificantly higher or lower. However, these results are expected to materialize later than in the sub-option C2, hence problems underlying the action would be solved at a later stage.

Administrative costs borne by businesses and enforcement costs incurred by Member States would also be the same but spread over the longer period of time.

### **6.3. Social impacts**

Working time is one of the key dimensions of working conditions, a dimension which has an impact well beyond work. The length, scheduling and organisation of working hours are important determinants of the quality of work which has a direct effect on worker's health and safety, work-life balance and job satisfaction. Another important key dimension of working conditions is remuneration, which also considerably influences worker's quality of life. Taken together, all these aspects contribute to an image of the profession, one which to date has proved insufficiently attractive to counteract the continuing shortage of professional drivers throughout the Union.

Work can impact on health in numerous ways, and a worker's state of health can in turn impact on how work is being carried out. In case of professional drivers a job quality performance has a wider social impact as it directly may involve road safety including safety of persons, vehicle and its load. Therefore, it is of interest of all to ensure a high quality working conditions of professional drivers.

In terms of income, the studies show that for those Member States where self-employed drivers form a large proportion of the sector, income is considered to be in the high bracket – this reflects the long hours that such drivers normally are expected to work. For those Member States, where a relatively small percentage of self-employed drivers serve mainly larger transport companies as subcontractors, a lower income bracket is the norm. Exclusion of the self-employed allows them to maintain their income level, as well as their competitive position within the sector. While the Directive does not address the issue of profitability it is evident that this is a key aspect for the future viability of the self-employed driver. Applying the Directive's provisions directly to self-employed drivers would have an inevitable impact by rendering the profession less financially attractive.

The studies have confirmed that inclusion of self-employed drivers would reduce the physical workload to be undertaken by them. For the psycho-social work profile in the sector, the studies note that work demands would have to be managed within a shorter timeframe, leading to a loss in job control.



It should be remembered that the profile of the self-employed driver is a young entrepreneur. Given the continuing chronic shortage of drivers within the sector, such drivers have the choice of becoming a mobile worker or a self-employed driver. The latter offers them the possibility of increased job control and higher income, with the need to invest more time and energy to make it profitable.

While exclusion of self-employed drivers from the Directive is not contributing to additional health or better work/life balance, their inclusion would generate additional stress and administrative workload for the self-employed and at the same time would reduce their income. The social balance in the options is therefore related to which extent and under which conditions the self-employed are expected to be covered by the legislation.

Geographical illustration of social aspects of all workers in the sector is assessed contain the following aspects:

- North (Denmark, Sweden and Finland)
  - irregularity in working hours
  - need of skill development
  - physical load
  - less work-related health problems, but still more absences from work
- Middle (Belgium, Germany, Luxemburg, Austria, The Netherlands, the United Kingdom and Ireland)
  - relatively low income
  - regular working times
  - less responsibilities
  - exposure to ambient conditions, exposure to violence and intimidation
  - less work-related health problems, but still more absences from work
- South (Spain, Portugal, France, Italy and Greece)
  - many self-employed
  - relatively high income
  - regular working times
  - less control and less skilled work (including training opportunities)
  - physical risks, but not violence and intimidation
  - more work-related health problems
- New Member States (Cyprus, Estonia, Hungary, Malta, Poland, Slovenia, Slovakia and the Czech Republic) and Lithuania+Latvia:
  - long working days, but not in the evening/nights
  - desire to work more hours
  - exposed to ambient conditions, but low physical workload, violence and intimidation
  - mixed profile on psychosocial risks: less skilled work, low control over working times

It seems from the experience in these different geographical areas that tradition has shaped the market, the actors and the attitude towards work and working conditions, which will stay different even when Community legislation on working time has been applied. The same rules have had different consequences in different regions and absences from work seem not to correlate to real underlying causes.

In this context the policy options have been analyzed with a view to establish positive and negative impacts of each option in terms of physical health, psychological health and stress, work-life balance and road safety.

## **Option A**

Limiting working hours of self-employed drivers by including them within the scope of the Directive (Option A) would reduce the exposure to job-related physical load and violence. Self-employed drivers would be indeed protected against adverse effects of working excessive long hours on their health and safety. Providing that the intensity of work will not increase due to limited working hours, the inclusion would further contribute to improving self-employed drivers' health and safety and to lessening the fatigue and stress. This would lead to improving driving quality and could in turn have a small effect on the overall improvement of road safety.

Working time is obviously a vital element in linking and balancing work and life. Hence, reducing hours spent at work would help self-employed drivers in reconciling work and non-working activities (family and social commitments).

However, this cause-effect relation is highly simplified. The positive effects are offset by a number of negative impacts. The inclusion would impose on self-employed drivers to:

- (1) Either resign from a part of their turnover and hence lose a significant part of their income, which would cause higher stress related to the need of lowering living costs, greater fatigue and stress resulting from taking on extra jobs illegally<sup>25</sup> to compensate for lost income;
- (2) Or to employ a second driver in order to maintain amount of freight transported, resulting in increasing the operating costs and hence in lowering the profits, which would further lead to higher stress due to worsening living standards;
- (3) Or to maintain the operating costs and the level of freight transported by increasing the intensity of own work, which would in turn lead to a very high time pressure, lower job control, greater fatigue, health problems and stress - all contributing to endangering road safety.

Work-related stress could, in addition, negatively affect family life diminishing the gain of better life-work balance gained by working fewer hours.

When considering the social impacts of inclusion of self-employed drivers it must be remembered that the Directive only covers a proportion of a self-employed driver's work. Such driver is still able to work excessive hours as the following activities are excluded from the self-employed working time: going to see the accountant/lawyer, general administrative work not linked to the specific transport operation underway. The risk arises that in order to compensate the lost income self-employed driver would take on an extra job.

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<sup>25</sup> Taking on extra job legally is restricted by Regulation (EC) No 561/2006, which requires that all work carried out by a driver, within or outside transport sector, should be recorded. Hence, in order to compensate for the lost income by taking on extra job drivers would work illegally by not respecting the rest periods as prescribed in the Regulation.

On the other hand it must be noted that self-employed drivers make money essentially by driving, and this is the element that has been successfully targeted by the driving time rules. The opinions of stakeholders with regard to the impact of inclusion or exclusion of self-employed on the road safety are diverging. Some state that the Regulation on driving and rest time is sufficient to guarantee road safety and that accidents might even increase when working hours are limited (more trucks on the road, higher pressure on drivers). Others indicate that a reduction of working time is necessary from the viewpoint of safety, particularly in countries where a significant number of drivers is self-employed. However, only minority of stakeholders expect that exclusion of self-employed drivers might have a negative impact on road safety.

Taking into account the very limited contribution of working time to road safety and the importance of negative side-effects of imposing working time limits to self-employed, it is assumed that the estimated improvements in health/safety and work-life balance will be largely undermined by the loss of earnings and the overall impact of inclusion of the self-employed will be very negative.

### **Option B**

The qualitative positive and negative impacts of this option would be the same as in option A. Only the overall dimension of these impacts would be much smaller, as the number of affected self-employed drivers is lower. It is expected that around 8.000 of complying self-employed drivers performing international freight transport (out of ca. 40.000 of all international freight transport self-employed) would be affected by the reduction of working time hours and its consequences<sup>26</sup>. Moreover self-employed drivers performing international freight transport work on average shorter hours (52 hours) than those involved in national transport (average 66 weekly). The reduction in their working time will be thus minor, by only 8%. Consequently also the effects in terms of the overall fatigue reduction prevention are expected to be insignificant, if any. In addition, work-life balance is not improved by a smaller amount of working hours, as these additional free hours incur abroad, but the negative effects of loss of earnings stay.

### **Option C**

All three sub-options C aim, in general, at mitigating and preventing a phenomenon of 'false' self-employed. Options C2 and C3 additionally provide for measures to enhance compliance with working time rules of all drivers covered by these rules by enhancing enforcement regime. Hence, social impacts of option C1 will be limited by relatively small number of 'false' self-employed drivers (approximately 28.000 of 'false' self-employed who misinterpret the law) affected by the working time rules. As 'false' self-employed give usually higher value to their spare time than real self-employed they are expected to truly benefit from an improved work-life balance as a consequence of following working time rules. Their job will become less stressful, as being salaried worker does not involve a risk losing an income in case of an entrepreneur's failure. Shorter working hours will reduce driver's exposure to factors influencing occupational safety and health risks. Coupled with less stressful job demands drivers affected will gain, in longer term, better psychological and physical health, less fatigue. Yet the contribution to better road safety will be insignificant.

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<sup>26</sup> Compared with ca. 161.000 complying self-employed (out of 808.000 all self-employed drivers) affected by reduced hours in option A.

In case of option C2 and C3 social impacts are expected to be of the same type, but larger in their scope. This is due to that measures proposed address much broader group of drivers, namely all 'false' self-employed (not only those who misinterpret the law unintentionally) and all employed who do not comply with the rules. As "false" self-employed drivers will get the social protection of workers, it is estimated that they gain in health and safety, in work-life balance and job satisfaction, while they will not be subject to loss of earnings or in any case to a very limited loss. Therefore the overall social impact is estimated to be very positive. .

#### **6.4. Environmental impacts**

In theory all options could result in the modal split of the freight transport industry and/or in an increase of the number of trucks on the roads. These could have direct environmental impacts. However, as a reduction of working time affects mainly drivers engaged in short and medium distance freight transport, it is very unlikely that unsatisfied market demand would be shifted to rail or air transport modes. Hence, no positive environmental impact by shifting the service to more environment-friendly mode of transport such as rail is expected.

A reduction of working hours may also result in recruiting additional drivers and hence engaging additional vehicles. However, as it does not entail the increase of quantity of freight to be transported, thus no more vehicles are needed to run simultaneously, hence no negative effects on the environment are expected.

#### **6.5. Administrative impacts**

The revision of the Directive should also be seen in the light of compliance costs. Compliance costs mean the costs incurred by the Commission, Member States public authorities, enterprises and citizens in meeting legal obligations stemming from the Community rules. In other words these are all costs that are necessary to bear in order to ensure that the rules are effectively, efficiently and equitably implemented. These costs include generic costs specific to functioning of a given sector, transposition costs, enforcement costs and administrative costs<sup>27</sup>.

The low level of compliance with the Directive's provisions identified as the main problem besides the scope of the directive will not be solved by simply revising the scope of the Directive. Without ensuring effective enforcement of the rules exclusion of self-employed drivers could lead to enhancing the phenomenon of 'false' self-employed, and inclusion could result in deliberate disobeying the rules counting on weakness (or lack) of the monitoring and control system. Both situations would lead in fact to lowering the level of compliance.

Therefore, to gain a better picture of costs of all policy options from the viewpoint of ensuring compliance, the enforcement measures proposed in option C2 (and C3) have been analysed for each policy option.

The table below presents the summary of annual costs related to ensuring compliance with the Directive. These costs include administrative and enforcement costs borne by Member States (management of data, checking the status of self-employed in order to identify 'false' self-

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<sup>27</sup> Administrative costs mean the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their activities either to public or to private parties. – "Measuring administrative costs and reducing administrative burdens in the European Union", Commission Working Document, COM(2006)691 final.

employed, carrying out checks at intermodal freight terminals to verify the compliance with working time rules by all drivers concerned) and administrative costs borne by private sector (costs of recording, monitoring and reporting working time). These costs do not include administrative costs borne by Member States in relation to preparation of a biennial report to the Commission on implementation of the Directive, as these costs will not change.

The details of calculations of annual enforcement and administrative costs to be borne by EU, national public sector and private sector can be found in Annex III to this report.

	Parties affected by cost	Identifying of "false" self employed drivers (20% target)	Enforcement system (costs for 4% target)	Monitoring and reporting <sup>28</sup>	Total
Op. A	EU				0
	MSs		727.047.048		727.047.048
	Private sector			1.275.887	1.275.887
Op. B	EU				0
	MSs		509.626.991		509.626.991
	Private sector			3.659	3.659
Op. C.1	EU				0
	MSs		533.532.100		533.532.100
	Private sector			160.729	160.729
Op. C.2	EU				0
	MSs	7.916.505	570.549.464		578.465.969
	Private sector			321.459	321.459
Op. D	EU				0
	MSs		494.774.878		494.774.878
	Private sector			No change	0

*Source: Own calculations and Impact assessment concerning the scope of the working time directive 2002/15/EC with regard to self-employed transport workers, PricewaterhouseCoopers, February 2008.*

The results of analysis show that Option A is the most costly as it imposes the highest costs for Member States related to establishing enforcement system and carrying out checks and the highest costs for private sector related to recording, monitoring and reporting of working time. In addition Option A was proved to be the most difficult from the viewpoint of enforceability, as it is almost impossible to verify the reliability of working time records done by self-employed drivers and control all activities such as waiting time at client's premises. Hence the effects and costs that would be needed to provide for a reasonable level of compliance would be disproportionate to the results achieved.

<sup>28</sup> Including collection and elaboration

The least costly, in general, is option D (base case scenario). This option, which maintains the current temporary regime, does not involve any actions that could create additional costs. This option, however, results in high non-compliance costs as it does not solve the problem of non-compliance.

The cheapest option considered is option B (30% less compliance costs compared with costs of option A). It entails insignificant administrative costs for private sector equalling only 0,3% of respective costs in option A; and around 2% of compliance costs in options C. On the other hand enforcement costs of option B borne by Member States due to carrying out checks are only slightly lower than those in options C (5 % less than option C1 and 12 % less than option C2 and C3). Hence option B is the cheapest from the viewpoint of administrative costs for businesses and almost as expensive as options C in terms of enforcement costs. However, option B does not significantly improve the situation with regard to the phenomenon of 'false' self-employed. Options C.2 and C.3 seem to represent the best effectiveness in solving the problem of low compliance by eliminating its underlying causes and in the same time their efficiency in achieving the expected results is achieved without excessive costs involved. The funds invested and administrative efforts made seem to balance best in options C.2 and C.3.

The main options may also be put to a simplified table:

	Parties affected by cost	Identifying of "false" self employed drivers (20% target)	Enforcement system (costs for 4% target)	Monitoring and reporting <sup>29</sup>	Total	Total additional costs, euro per year *
Op. A	EU				0	233.548.057
	MSs		727.047.048		727.047.048	
	Private sector			1.275.887	1.275.887	
Op. C2 (= approximately B)	EU				0	84.012.550
	MSs	7.916.505	570.549.464		578.465.969	
	Private sector			321.459	321.459	
Op. D	EU				0	0
	MSs		494.774.878		494.774.878	
	Private sector			No change	0	

\* As the enforcement costs in option D are costs that are assumed to be borne already today by the Member States, these costs may be set as zero and count the cost of options as the additional cost of the option.

<sup>29</sup> Including collection and elaboration

## 7. COMPARING THE OPTIONS

This section presents strengths and weaknesses of each policy option based on comparison of economic, social and administrative impacts of all options and from the perspective of the achievement of specific policy objectives. The policy options are compared based on the following criteria: effectiveness (level of achievement of policy objectives), efficiency (resources needed to achieve these objectives), consistency (balance of positive and negative, direct and indirect impacts), compliance costs (net increase or decrease), proportionality (complexity of proposed intervention) and subsidiarity (to what extent does the intervention leave scope to national decisions?). It must be noted that the impacts concern those drivers who are affected by the policy option and who comply with the provisions, and not all drivers who should comply.

**Table 3. Main impacts of policy options per policy objective compared to base case scenario option D**

<i>Policy objective</i>	<i>Type of impact</i>	<i>Option A</i>	<i>Option B</i>	<i>Option C.1</i>	<i>Option C.2<sup>30</sup></i>
<b>Working conditions</b>	<i>Physical health and safety, psychological health and work-related stress</i>	+ /- <i>Reduced exposure to physical load and safety risks, but increased workload, fatigue and stress due to taking on extra job illegally, stress due to reduced income</i>	+	+	++ <b>Many FSE benefit</b>
	<i>Work-life balance</i>	+/- <i>Better fit, but risk of worsening family life due to lower income</i>	+	+	++ <b>Many FSE benefit</b>
	<i>Remuneration of SEN</i>	- 72% reduction of weekly profit	=	+ 1% increase of turnover	+ 2% increase of turnover
	<i>Remuneration of SEI</i>	- 4,2% reduction of weekly profit	- 4,2%	=	=
<b>Road safety</b>	<i>Scarce, incomplete and incomparable data, implausible assumption on share of fatalities caused by fatigue and lack of information on causes of fatigue make it impossible to analyse the quantitative impacts of policy options on number of fatalities which could be prevented under each option. However, generally it can be concluded that working time as such does not have effect on road safety as this question is mainly dealt with by the Driving time regulation.</i>				
<b>Conditions of competition</b>	<i>New jobs in the sector</i>	+ /- 2,2% increase in total employment if additional drivers are found	= level of total employment maintained (+ 0,02% increase of employed offset by -0,01	=	= + <b>Increasing number of new entrepreneurs in longer term</b>

<sup>30</sup> Option C3 is option C2 phased in over 2 years

<i>Policy objective</i>	<i>Type of impact</i>	<i>Option A</i>	<i>Option B</i>	<i>Option C.1</i>	<i>Option C.2<sup>30</sup></i>
		<i>(change of employment structure: + 8% of employed drivers and - 6% of self-employed in total employment)</i>  <i>Risk of shortage of drivers if additional drivers are not found</i>	<i>decrease of self-employed in total employment )</i>		
<i>No. of SE</i>	- -	-	=	=	
	<i>19% reduction and remaining SE loose competitive position and market share</i>	<i>SEI disadvantaged compared to SEN</i>	<i>No. of genuine self-employed remains unchanged</i>  <i>However, due to elimination of 'false' self-employed, the national statistics will show decrease by 3,5% in a no. of self-employed</i>	<i>No. of genuine self-employed remains unchanged</i>  <i>However, due to elimination of 'false' self-employed, the national statistics will show decrease by 7% in a no. of self-employed</i>	
<i>No. of FSE</i>	<i>n.a.</i>	<i>=/- may reduce by a number of international 'false' self-employed affected</i>	<i>Reduction of 10%</i>	<i>Reduction of 20% to be further reduced in long term due to more effective enforcement</i>	
<i>SMEs</i>	<i>=/- maintain market share but loose market power</i>	<i>=</i>	<i>=</i>	<i>=</i>	
<i>Large Companies</i>	<i>++ Gain market share 1,5%</i>	<i>+ Gain market share 0,2%</i>	<i>=</i>	<i>=</i>	
<i>Cost of transport</i>	<i>+ 1,1%</i>	<i>+ 0,01%</i>	<i>+ 0,2%</i>	<i>+ 0,4%</i>	
<i>Consumer prices</i>	<i>Increase</i>	<i>=/insignificant increase</i>	<i>=/insignificant increase</i>	<i>=/insignificant increase</i>	
<b><i>Compliance</i></b>	<i>Probability of inclusion of FSE</i>	<i>Full (in theory as they may not comply)</i>	<i>Very low (small no. of FSE affected)</i>	<i>Low (affected only those FSE who misinterpret the law)</i>	<i>High (affected all FSE and all employed drivers, due to better enforcement regime)</i>
	<i>General compliance</i>	<i>- Reduce (broader group of drivers concerned coupled with the same low level of</i>	<i>= insignificant improvement if international FSE are</i>	<i>+ Improve</i>	<i>++ Improve significantly</i>



<i>Policy objective</i>	<i>Type of impact</i>	<i>Option A</i>	<i>Option B</i>	<i>Option C.1</i>	<i>Option C.2<sup>30</sup></i>
		<i>compliance discipline and weak enforcement)</i>	<i>eliminated is offset by the risk that SEI ignore rules</i>		
<i>Identification of FSE</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<b>Increase</b> <b>€ 1,9 to 7,9 million (depends on target 5%, 20%)</b>
<i>Enforcement (checks on compliance)</i>	<b>Increase</b> <b>€ 182 to 727 million (depends on target level 1%-4%)</b>	<b>Increase</b> <b>€ 127 to 509million</b>	<b>Increase</b> <b>€ 133 to 534 million</b>	<b>Increase</b> <b>€ 143 to 571million</b>	<b>Increase</b> <b>€ 143 to 571million</b>
<i>Administrative costs by public sector (reporting by MS)</i>	=	=	=	=	=
<i>Administrative costs by private sector</i>	<b>Increase (annual)</b> <b>€ 1.275.887</b>	<b>Increase</b> <b>€ 3.659</b>	<b>Increase</b> <b>€ 160.729</b>	<b>Increase</b> <b>€ 321.459</b>	<b>Increase</b> <b>€ 321.459</b>

Legend: **FSE** – 'false' self-employed, **GSE** - genuine self-employed, **SEI** – self-employed performing international transport, **SEN** – self-employed performing national transport

They key conclusions of options comparison are summed up below:

- (1) The "no change" option D – used here as base case scenario - would leave the situation generally unchanged, self-employed drivers who are temporarily excluded would be permanently excluded from the working time rules. Assuming that the transposition problem is solved by the Commission standard action, the problem of low compliance rate would remain unsolved. In fact the compliance rate could even worsen with a time passing by, as the low compliance discipline and weak enforcement are not removed. This would further lead to undermining the key policy objectives. Hence, the effectiveness and efficiency of this option is low. The balance of impacts is negative. As it does not foresee any complex interventions there would be no effects from the viewpoint of proportionality and subsidiarity.
- (2) The "full inclusion" Option A – clarifies the issue of the scope of the Directive making all professional drivers subject to the rules. It will only partly and indirectly addresses the problem of low compliance by including 'false' self-employed (together with all self-employed) within the scope of the Directive. Changing the scope does not ensure that these drivers will comply with the rules. On the contrary, broader target group of the Directive coupled with 'unwanted' rules and with weak enforcement would result in worsening the general compliance. It will maintain the existing room left to Member States (subsidiarity) as regards the enforcement regime. The effectiveness of achieving the policy key-objectives would be overall lower than expected although higher than for base case scenario. The intervention will not be complex (proportionality) but may occur unenforceable with regard to monitoring the compliance by self-employed, which would be very difficult, costly and inefficient.

This option increases significantly administrative costs for private sector. The balance of impacts is negative.

- (3) Option B – changes the scope by including only self-employed drivers performing international transport, who are in fact less affected by working time rules than 'domestic' self-employed drivers. It does not solve the problem of low compliance and does not improve the effectiveness in achieving policy objectives compared to the "no change" option. It leaves room to Member States (subsidiarity) as regards the enforcement regime. The complexity of intervention is low but it causes adverse effects in terms of uneven conditions of competition between international and domestic self-employed drivers. The administrative costs for businesses are the lowest of all options. The impacts are insignificant from the perspective of policy objectives, main problem to be solved and enforceability of the Directive.
- (4) Option C1 – provides only for legal clarification which will lead to reducing those 'false' self-employed who misinterpret the law. The impact of this action on reducing the phenomenon of 'false' self-employment and improving compliance level is minimal. Also the effectiveness and efficiency in achieving policy objectives does not significantly improve compared to base case scenario. This non-complex action (proportionality) provides for better understanding of the scope of the Directive leaving room to Member States (subsidiarity) as regards the enforcement of the rules. The balance of impacts is slightly positive.
- (5) Option C2 (and option C3) – tackles almost entirely the problem of both the definition of the mobile worker and the low compliance by introducing a better definition as well as an effective enforcement regime. The effectiveness in reducing the phenomenon of 'false' self-employed, and consequently in solving the compliance problem, is the highest of all options. This further leads to improved effectiveness in achieving policy options. However, the relatively high enforcement costs to be borne by public sector and complexity of intervention bears the possibility of a risk of low proportionality compared to results achieved. Still, administrative costs borne by private sector are 4 times lower than in option A. The option imposes enforcement requirements on Member States that leave room for national decisions (in accordance with subsidiarity). The positive impacts are lowered by some additional costs.

## Conclusions

From the above analysis it can be concluded that of the analysed options C2 is optimal. Options A, B, C1 do not solve the problem of low compliance and consequently do not lead to better achievement of policy objectives. Option C2 (followed by C3) is the most effective in addressing the problem and achieving policy objectives, being at the same time complex with additional costs, but guaranteeing nearly full compliance.

Therefore it is recommended that the EU intervention concerns clarifying the scope of the Directive and introducing administrative requirements concerning the enforcement of the rules.

The proposed alternative is thus option C2. This option means in a nutshell:

- (1) a legal clarification of definitions providing a clear distinction between those who are and who are not in the scope of the Directive and ensuring that 'false' self-employed are covered by the Directive;
- (2) requirements imposed on Member States to establish an effective system of monitoring the compliance, to notify the Commission of the national enforcement arrangements, to ensure the assistance and advisory services to those concerned by the rules, to cooperate with other Member States and with the Commission in order to ensure a harmonized understanding and application of the rules, to exchange information, experience and best practices;
- (3) commitment of the Commission to support the dialogue between Member States and the industry and enforcement authorities.

This option imposes general enforcement requirements on Member States and highlights their responsibility for compliance (proportionality) while leaving the particular solutions to the discretion of individual national decisions (subsidiarity). This will ensure that the enforcement regime is tailored to the existing national arrangements and enforcement capabilities of each country while providing for common understanding of the rules and harmonized general approach to their implementation.

It is assumed that this option would entail the following qualitative impacts:

- a reduction of 'false' self-employed phenomenon and in a number of transport companies and drivers non complying with the rules resulting from enhanced enforcement by MS, better clarity of provisions, improved responsibility of Member States for monitoring compliance, raised corporate social responsibility within the sector,
- improvement of an overall compliance rate in longer term,
- eliminated distortions of competition between companies and drivers who comply and those who used to disobey the rules – resulting from improving compliance discipline and better enforcement,
- better working conditions for drivers who were excluded (against their will or knowledge) from social protection measures provided for in the Directive by their employers who used to disobey the rules and who start to comply as a result of national enforcement actions and awareness campaigns carried out,
- improved overall level of health and safety of drivers covered by the Directive,
- possible increase of turnover of genuine self-employed drivers as a result of additional need for outsourcing services due to elimination of 'false' self-employed,
- possible increase of total employment in the sector resulting from the need for additional drivers in order to meet the unsatisfied market demand connected with elimination of 'false' self-employed and of non-complying mobile workers,
- road safety slightly improved in longer term due to reduction of non-complying drivers,
- no increase in transport costs and no affect on consumer prices,

- long term gains for transport companies resulting from fewer work interruptions due to fewer accidents, better health of employees and less absenteeism, as well as less costs related to paid overtime,
- no significant additional administrative costs for private sector,
- enforcement costs and efforts of public sector tailored to the individual country's enforcement and financial capacity,
- improved cooperation between Member States enforcement authorities and between Member States and the Commission in the field of ensuring common understanding of the rules and harmonized approach to enforcement.

The table below illustrates the summary of qualitative evaluation of each policy option from the perspective of contribution to attaining policy objectives.

**Table 4 – Summary of policy options assessment**

<i>Policy option/ Policy objective</i>	<i>Health &amp; Safety of drivers</i>	<i>Road safety</i>	<i>Competition</i>	<i>Compliance</i>	<i>Enforcement cost</i>
<i>A</i>	+ / -	=	-	- -	€€€
<i>B</i>	+	=	-	=	€
<i>C1</i>	+	=	+	+	€€
<i>C2</i>	++	+ growing	++	++ growing	€€
<i>C3</i>	++	+ growing	++	++ growing	€€

## 8. MONITORING AND EVALUATION

The Commission will continuously monitor the developments in the sector and evaluate on a regular basis the impact of the revised legislation. This will be done through:

- Regular biennial reports from Member States on the implementation of the Directive, including the views of the industry and of enforcers on positive and negative aspects of implementation of the working time rules;
- Communication by Member States on their national arrangements for monitoring the compliance;
- Regular dialogue with Member States, industry representatives and social partners on the effects of the revised working time rules on the developments in the sector and on achievement of policy objectives;
- Benchmarking to ensure an equitable implementation of the rules throughout EU;

- Statistics on road safety, employment in the sector, market shares.

## 9. ANNEXES

### ANNEX 1 – Assumptions

The following assumptions have been made for the purpose of the analysis:

- **Modal shift** - due to the fragmented origins and destinations of short-medium distance road transport, no modal shift is likely to happen for that kind of service. Rail or air transport would not replace the service. Modal shift could be assumed for long distance service. However, the limited impact of the adoption of the policy options on that segment of the market allows to assume that no modal shift will occur
- **Self-employed workers working on behalf of:** large companies - 70% of all self employed workers
- **Self employed workers performing their activity as shippers:** 30% of all self employed drivers
- **“False” self employed** - 50% of self employed drivers working for large companies
- **Level of compliance with the Directive:** 20%, this assumption is based on the analysis of the current situation with regard to the quality of transposition (national transposing laws), compliance discipline (behaviour of employers and mobile workers), and quality of enforcement regime (national systems and their effectiveness)
- **Passengers transport** - on the basis of the analysis of average weekly hours worked by self-employed drivers in passenger transport, no major impact is expected on this sector in result of limits imposed by the Directive. Self-employed drivers are currently working on average approximately 48 hours per week and a second driver is commonly used when night shifts are performed. For this reason, impact analysis has been carried out only with regard to freight transport.

*Source: Impact assessment concerning the scope of the working time directive 2002/15/EC with regard to self-employed transport workers, PricewaterhouseCoopers, February 2008.*

### ANNEX 2 - Clusters of countries

Name of the cluster	Countries
North	Denmark, Finland, Sweden
Middle	Austria, Belgium, Germany, Ireland, Luxemburg, Netherlands, United Kingdom
South	France, Greece, Italy, Portugal, Spain,
NMS	Cyprus, Czech Republic, Estonia, Hungary, Malta, Poland, Slovakia, Slovenia
Latvia + Lithuania	Latvia, Lithuania

Main characteristics of countries belonging to each cluster are:

- **North:**

Structure of the freight transport market: small share of self employed workers and large share of employment in the largest firms. Low share of international freight transport.

Social aspects of the freight transport market: Self employed earn high incomes<sup>31</sup> and experience a high job control, however they face a very high time pressure.

– **Middle:**

Structure of the freight transport market: small share of self employed workers and large share of employment in the largest firms. International freight transport market share is higher than in other clusters, but is decreasing because of competition from new MSs.

Social aspects of the freight transport market: Self employed workers earn low incomes and experience a low job control. Control over working hours is high.

– **South+ NMS:**

Structure of the freight transport market: large share of self employed workers and small share of employment in the largest firms. International freight transport market share is low but increasing (especially in New MSs because of low cost services provided).

Social aspects of the freight transport market: Self employed workers earn high incomes and experience a low job control. Control over working hours is high. Self employed appear to be a very high risk category with regard to overall fatigue.

– **Latvia+ Lithuania:**

Structure of the freight transport market: small share of self employed workers and small share of employment in the largest firms. International freight transport market share is high.

Social aspects of the freight transport market: Self employed workers earn high incomes and experience a low job control. Control over working hours is high. Self employed workers appear to be a very high risk category with regard to overall fatigue.

*Source: Impact assessment concerning the scope of the working time directive 2002/15/EC with regard to self-employed transport workers, PricewaterhouseCoopers, February 2008.*

## **ANNEX 3 – Compliance costs**

### **Checking the “status” of self employed drivers**

The table below presents estimated costs for the inspection and the identification of the “false” self employed.

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<sup>31</sup> Source: TNO Report (2006)

**Table 62: Estimation of cost of inspection to identify “false” self employed drivers to be performed under different targets (1'000 euros 2009 prices)**

Cluster	Number of self employed drivers	Cost of inspections according to different targets ('000 euros 2009 prices)			
		Target 5%	Target 10%	Target 15%	Target 20%
North	14.478	35	71	106	142
Middle	95.885	235	470	705	940
South + NMS	671.453	1.645	3.290	4.935	6.580
Latvia + Lithuania	26.032	64	128	191	255
<b>EU – 25</b>	<b>807.848</b>	<b>1.979</b>	<b>3.958</b>	<b>5.937</b>	<b>7.917</b>

Source: PwC calculations on Eurostat (2007), ICF Consulting (2003) and TNO (2006)

The calculations are based on the following assumptions:

- *The duration of a typical inspection* is unknown and it is likely to vary significantly depending on the place where it is performed. However, in order to estimate the costs, the following has been assumed:
- 30 minutes for performing a check with information available at desk: 20 minutes for analysing the available information and 10 minutes for writing a report and uploading the results on the central database.
- 40 minutes for performing a check at the premises of enterprises: 20 minutes for performing the control of contracts, 10 minutes for transportation and planning the inspection and 10 minutes for writing a report and uploading the results on the central database. In this case several self employed drivers can be checked, thus the average duration for a single check could be low but slightly higher than a check of the previous type.
- 110 minutes for performing a check at the premises of self employed drivers: 20 minutes for arranging an appointment; 50 minutes for transportation; 30 minutes for performing the check on contracts and 10 minutes for writing a report and uploading the results on the central database.

Based on this, the average duration of a check has been estimated to be 60 minutes. Hence an inspector can perform 1 check an hour.

- *Cost of an inspector*: 40 euros/hour (2003 prices) including the equipment and the indirect costs.
- *Additional costs*: 3 euros (2003 prices) per check due to the initial costs (legal and administrative preparations; initial training of inspection staff; training on use of databases, communications and software) and ongoing support costs for training, systems etc.<sup>32</sup>.

<sup>32</sup> This analysis is based on the methodology from: ICF Consulting, “Costs-Benefit Analysis of Road Safety Improvements”, 2003



These costs were then projected to 2009 prices, considering the expected rate of inflation in EU-25<sup>33</sup>. Thus the average cost is 49 euros/check (2009 prices).

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<sup>33</sup> On the assumption that in the period 2003-2009 the average annual inflation rate in EU-25 is 2,2%.

## Costs of setting up a new system of controls

The following table shows the summary of costs to be borne in EU-25 countries to establish a system of checks at intermodal freight terminals.

**Table 1 – Annual costs of establishing a system of checks at intermodal freight terminals in EU25**

	Categories of employees subject to controls	Number of employees affected (1000s)	Annual cost by percent working days checked (1000s €)			
			Target 1%	Target 2%	Target 3%	Target 4%
Op. A	Mobile workers and self employed	2.688	181.762	363.524	545.285	727.047
Op. B	Mobile workers and self employed drivers performing international transport	1.884	127.407	254.813	382.220	509.627
Op. C.1	Mobile workers and "false" self employed that misinterpreted the law	1.973	133.383	266.766	400.149	533.532
Op. C.2	Employed and "false" self employed	2.110	142.637	285.275	427.912	570.549
Op. C.3	Employed and "false" self employed that misinterpreted the law / Employed and "false" self employed	1.973 / 2.110	133.383	266.766	427.912	570.549
Op. D	Only mobile workers	1.830	123.694	247.387	371.081	494.775
Op. E	None	0	0	0	0	0

*Source: PwC calculations on Eurostat (2007), ICF Consulting (2003) and TNO (2006)*

To calculate these costs the following assumptions have been made:

- 25 minutes for performing a check at intermodal freight terminals: 15 minutes for downloading the information from the tachograph and performing the check of the worked time, 5 minutes for transportation and planning of the inspection and 5 minutes for writing a report and uploading the results on the central database. In this case several drivers can be checked, thus the average duration of a single check could be slightly lower than a check of the next type.
- 55 minutes for performing a check at clients' premises and at other places where the drivers commonly load and unload freight: 15 minutes for downloading the information from the tachograph and performing the control of the worked time, 5 minutes for transportation and planning the inspection, 30 minutes for time wasted in waiting and 5 minutes for writing a report and uploading the results on the central database.

Based on this, and assuming that an equal number of checks of the two types will be performed, the average duration of a single check would be 40 minutes. Hence an inspector would be able to perform 1,5 check an hour. Based on the unit costs the average cost for an inspection amounts to 33,80 euros (2009 prices).

It is also assumed that drivers (both mobile workers and self-employed) will work on average 200 days a year once the Directive enters into force towards self-employed drivers too. Such assumptions make it possible to calculate the annual costs for checking 1%, 2%, 3% and 4% of drivers' working days across the EU.

### Monitoring system and reporting by MS

The following table shows the calculations for the estimation of the total cost for reporting by MS.

**Table 2 – Estimation of two-yearly monitoring and reporting costs of MS**

	Time effort per report (man-day)	Labour cost per man-day (€) <sup>34</sup>	Cost per country report (€)	Number of countries	Total cost per cluster (€)
North	15	238	3.574	3	10.721
Middle		221	3.312	7	23.184
South + NMS		124	1.864	13	24.273
Latvia + Lithuania		46	695	2	1.391
EU 25					59.533

*Source: PwC elaboration on Eurostat Data(2007)*

The country reports consist of the following main activities:

- Data collection from companies, self employed drivers and systems of controls;
- Data input and elaboration;
- Drafting of the report.

The time effort needed is likely to be different for each activity and to vary country by country. However, we can assume that on average the effort for each activity might be appreciatively of 5 man-days. Thus, the effort to prepare a country report would be of 15 man-days.

### Costs of compliance by private sector

The activities to be performed by enterprises and self employed drivers for being compliant to the WTD cover:

- Reorganisation of work;
- Recording working time by drivers;
- Elaboration and reporting of data collected.

The calculation of costs to be borne by private sector was based on assumption that cost of reorganisation of work is one-time cost which does not apply to self-employed (one-worker

<sup>34</sup> Average labour cost per cluster has been elaborated on the basis of Eurostat data on hourly labour cost for the sector "Public administration and defence; compulsory social security" for the year 2006.

companies), and enterprises have already incurred these costs with introduction of the Directive, hence they will not bear additional costs when hiring new drivers.

As regards elaboration and reporting of data collected it was assumed that this activity would require 2 minutes of work of administrative employee per month per each newly employed driver. The method for calculating additional annual costs is following:

Additional annual administrative cost = number of additional employed drivers \* 2 minutes of labour/month \* 12 months \* hourly labour cost.

The following table shows the summary of costs to be borne by road transport enterprises to carry out the administrative obligations set by the Directive.

**Table 3 – Estimation of additional annual costs for the activities of data collection, elaboration and reporting under different policy options (2009)**

	Additional employed drivers	Reporting activity (hours)	Labour cost per man-hour (€)	Reporting activity cost (€)
North	4.020	1.608	28,81	46.326
Middle	24.750	9.900	26,79	265.225
South + NMS	178.466	71.387	13,38	955.093
Latvia + Lithuania	5.319	2.127	4,35	9.244
EU 25	212.556	85.022		1.275.887

*Source: PwC calculations on Eurostat (2007)*