

## ANNEX III

### TASK SPECIFICATIONS to award of a Specific Contract under DG MOVE's Framework contract for impact assessment and evaluation studies in the field of transport (MOVE/A3/2017-257) for the assignment:

#### IMPACT ASSESSMENT SUPPORT STUDY FOR THE REVISION OF DIRECTIVE (EU) 2015/413 FACILITATING CROSS-BORDER EXCHANGE OF INFORMATION ON ROAD-SAFETY-RELATED TRAFFIC OFFENCES

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#### 1. INTRODUCTION

This document provides the terms of reference of a study to be carried out by a consultant to support the Commission in the impact assessment exercise concerning a possible revision of Directive (EU) 2015/413, facilitating cross-border exchange of information on road-safety-related traffic offences<sup>1</sup> ('CBE Directive'). Following the feedback on the published Inception Impact Assessment<sup>2</sup> concerning the revision, the study also includes an analysis on mutual recognition of driving disqualifications that might suggest the need for adaptations in other items of EU legislation, Directive 2006/126/EC on driving licences<sup>3</sup> ('Driving Licence Directive'), to ensure consistent approach in cross-border enforcement of road traffic rules. Of course any initiative for such revisions will be subject to separate impact assessments.

The objectives of this support study are to develop and assess evidence-based policy to improve road safety through better cross-border enforcement of road traffic rules. A 2016 ex-post evaluation<sup>4</sup> of the CBE Directive application pointed to areas for improvement particularly regarding the effectiveness of the Directive, which however may depend on the application of the procedures not covered by the Directive (e.g. mutual assistance in cross-border investigation of road traffic offences or mutual recognition of financial penalties). This study will inform the Commission Impact Assessment in the revision of the Directive, which will have to extend to other policy areas such as police and justice cooperation.

The purpose of this Terms of Reference (ToR) is to describe the aim and scope of the impact assessment support study and to give instructions and guidance about the nature of the study to the companies willing to submit offers. The ToR shall also serve as the contractor's mandate during the implementation of the study, after selection of the successful tenderer/offer. They will become part of the contract that will be concluded after the award of the tender.

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<sup>1</sup> OJ L 68, 13.3.2015, p. 9

<sup>2</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1732201\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1732201_en)

<sup>3</sup> OJ L 403, 30.12.2006, p. 18

<sup>4</sup> Evaluation of cross-border exchange of information on road traffic offences ([SWD \(2016\) 355 final](#)) <https://ec.europa.eu/transport/sites/transport/files/swd20160355.pdf>; Support study: Grimaldi Studio Legale, 2016, [ISBN 978-92-79-59136-5](#)

## **2. BACKGROUND – PRELIMINARY ASSESSMENT**

### **2.1 Political and legal context**

#### Rationale and legal basis of the CBE Directive

According to the 2008 impact assessment<sup>5</sup> accompanying the proposal for the CBE Directive, non-resident drivers accounted for approximately 5 % of road traffic in the EU. Approximately 15 % of detected speed offences were committed by non-resident drivers/foreign vehicles and non-resident drivers are three times more likely than resident drivers to commit traffic offences. In some transit countries, such as France, speeding offences committed by foreign vehicles reached approximately 25 % of the total number of speeding offences committed, with the figure going up to 40-50 % during peak tourist periods. The proportion of foreign vehicles involved in accidents ranged between 1 % and 21 % (on average 3 % of vehicles involved in road accidents in the EU-25 were foreign registered).

One of the identified reasons for why non-residents were more likely to infringe road traffic rules was that non-residents perceived that they were less likely to be sanctioned when driving in a Member State where they did not reside and that in any case they were less likely to face judicial action if they did not pay fines imposed by foreign authorities.

The CBE Directive was originally adopted on the basis of Article 87(2) TFEU<sup>6</sup> - the police cooperation legal basis that allowed the UK, Denmark and Ireland to opt out of applying the Directive. The European Court of Justice judgement of 6 May 2014 on Case C-43/12<sup>7</sup> annulled the Directive on the grounds that it was not valid to adopt it based on the police cooperation legal basis, and the Directive should have been adopted based on the transport legal basis (Article 71(1)(c) of the Treaty establishing the European Community, now Article 91 of Treaty on the Functioning of the European Union), as originally proposed by the Commission. The judgment maintained the effects of the originally adopted Directive for a period of time not exceeding 12 months from the date on which the judgement was delivered. The new Directive (EU) 2015/413 was adopted in March 2015 based on the modified legal basis, without any amendments to the substance of the annulled Directive and covering all Member States.

The CBE Directive aims to ensure a high level of protection for all road users by facilitating the cross-border exchange of information on road-safety-related traffic offences, and thereby facilitating the enforcement of sanctions, where those offences are committed with a vehicle registered in a Member State other than the Member State in which the offence took place.

The CBE Directive provides Member State authorities with access to each other's vehicle registers via an electronic information system that enables to identify the presumed non-resident offender in the case where it was impossible to stop the vehicle and/or identify the driver. The offences covered by the Directive are: speeding, failing to use a seat belt, failing to stop at a red traffic light, drink-driving, driving while under the influence of drugs, failing

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<sup>5</sup> Commission staff working document, COM(2008) 151. See also Consultation Paper, Respecting the rules, Better Road Safety Enforcement in the European Union, 6 November 2006; Impact assessment on road safety enforcement and cross-border cooperation, Ecorys Nederland BV, Rotterdam, 16 March 2007

<sup>6</sup> Directive 2011/82/EU facilitating the cross-border exchange of information on road safety related traffic offences, OJ L 288, 5.11.2011, p. 1

<sup>7</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0043>

to wear a safety helmet, the use of a forbidden lane, and illegally using a mobile telephone or any other communication devices while driving. Once the person suspected of having committed a road safety related traffic offence has been identified, the Member State in which the offence was committed decides whether to initiate follow-up proceedings.

The CBE Directive also specifies the way in which the offence should be communicated to the person concerned and provides a (non-obligatory) template for the letter to be sent. This letter shall be written in the same language as the vehicle's registration document or in one of the official languages of the Member State where the vehicle is registered.

#### Interactions of the CBE Directive with other EU policy areas

The CBE Directive harmonises neither the nature of the offences nor the sanctions schemes for the offences, where the national rules in the Member State of offence apply. The Directive plays a vital role only in few steps of cross-border enforcement of sanctions - especially in the identification of the owner/holder of the vehicle concerned after a road traffic offence has been detected. Cross-border investigation procedures aimed at, inter alia, collecting additional evidence to identify the driver who has committed the offence might be covered by Directive 2014/41/EU regarding the European Investigation Order in criminal matters<sup>8</sup> and the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU<sup>9</sup>. Cases where the offender refuses to pay a financial penalty may be covered by Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties.<sup>10</sup>

Another very specific and closely related policy area is the cross-border application of driving disqualifications inflicted for road traffic offences committed abroad. EU law on mutual recognition in this area is currently missing. Council Act of 17 June 1998, drawing up the Convention on Driving Disqualifications<sup>11</sup>, was abolished by Regulation (EU) 2016/95, repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters<sup>12</sup>. It was abolished since only seven Member States ever ratified the Convention which had therefore never entered into force.

The Driving Licence Directive partially covers mutual recognition of driving disqualifications. However, the Directive cannot be considered as a cross-border enforcement tool, since it does not cover the mutual recognition of driving disqualifications as the result of committing road traffic offences abroad. It only applies to road traffic offences committed in the Member State where the offenders have normal residence, but they are holders of a driving licence issued by another Member State<sup>13</sup>.

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<sup>8</sup> OJ L 130, 1.5.2014, p.1 ((DK and IE do not participate in the adoption of this Directive and are not bound by it or subject to its application)

<sup>9</sup> Council Act 2000/C197/01 (EL, IE and HR are not parties to the Convention)

<sup>10</sup> OJ L 76, 22.3.2005, p. 16

<sup>11</sup> OJ C 216, 10.7.1998, p. 1

<sup>12</sup> OJ L 26, 2.2.2016, p. 9

<sup>13</sup> Article 11(2) of the Driving Licence Directive stipulates that 'Subject to observance of the principle of territoriality of criminal and police laws, the Member State of normal residence of a holder of driving licence, who has committed road traffic offence on its territory and has a driving licence issued by another Member State, may apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive and, if necessary, exchange the licence for that purpose'. It means that the Member State which issued the driving licence de facto has to recognise the disqualifications imposed by the Member State of the holder's normal residence

On 30 October 2015, the UK and IE signed an international agreement on the mutual recognition of driving disqualifications, which came into effect on 1 August 2017. The agreement is partially based on the Convention of 1998 and allows mutual recognition and execution of driving disqualifications issued by national courts to British and Irish drivers. The Commission is not aware of any other similar agreement in the EU.

Political background for the revision of the CBE Directive and other relevant EU law

According to the recent Commission evaluation of the application of the CBE Directive by Member States<sup>14</sup>, the Directive has been found to be relatively effective – even if some problems still persist – in removing the *anonymity* of offenders who committed a road-safety-related traffic offence abroad. However, the measures under the Directive have been found as inadequate to remove their *impunity*. In 2015, approx. 50% of detected road traffic offences committed by non-residents were not investigated and approx. 50 % of the financial penalties for those road traffic offences that had been investigated were not successfully enforced. Practically all offences where offenders refused to pay financial penalties were not enforced i.e. all successfully enforced penalties were due to voluntary payments.

In June 2017, the Transport Council adopted conclusions on ‘Road safety endorsing the Valletta Declaration (Valletta, 28 – 29 March 2017)’. Transport Ministers called upon the Commission to explore the strengthening of the Union's road safety legal framework with a particular focus on Member States' cooperation on the mutual recognition of the driving disqualifications of non-resident drivers, without prejudice to the appropriate legal base(s) for such proposals. The aim is to reverse the stagnation in the number of road fatalities over the last three years. The persistently high number of road traffic fatalities and serious road traffic injuries in the EU (**25 100 people still lost their lives** and about **135 000 were seriously injured** in 2018) pose a major societal problem. In monetary terms alone, the yearly cost of road crashes in the EU has been estimated to be around **EUR 280 billion**, equivalent to about **2% of the EU annual GDP**. This is an unacceptable and unnecessary human and social price to pay for mobility.

Building on the strong political impetus of the Valletta Declaration, the Commission has outlined the principles of road safety policy framework for 2021-2030, adopted on 17 May 2018 as part of the Third mobility package. In an accompanying action plan, the Commission announced that it would start assessing options to improve the effectiveness of the CBE Directive by the end of 2018.

Furthermore, the Commission consulted Member States on mutual recognition of driving disqualifications in several meetings organised in 2017-2018. It appears that there are no Member States which would, at least as a matter of principle, be against the idea of establishing an EU-wide mutual recognition system for non-resident drivers. However, no general consensus has been reached among the Member States on how the system, including the legal procedures should be designed.

Stakeholders

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<sup>14</sup> Commission Staff Working Document on the evaluation of cross-border exchange of information on road traffic offences ([SWD \(2016\) 355 final](#)) and Report from the Commission to the European Parliament and the Council on the application of Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences ([COM \(2016\) 744 final](#) + [Annex](#))

Enforcement of road traffic rules concerns European citizens - road users/victims - (for the same reason, it concerns most businesses, particularly transport companies), as well as transport, police, justice and personal data protection authorities (national, regional and local) of EU Member States, EEA countries (EFTA Secretariat) and Switzerland. Further relevant (international and national) road safety stakeholders include road users' associations (e.g. FIA, national automobile clubs), road transport associations (e.g. IRU), business associations involved in road transport activities (e.g. LEASEUROPE), driver associations (e.g. UICR), debt recovery/collection companies (e.g. FENCA), international car insurance associations (e.g. INSURANCE EUROPE), non-governmental road safety organisations (e.g. ETSC), road police network organisations (e.g. TISPOL<sup>15</sup>), personal data protection associations and groups.

## **2.2 Problem definition**

This section presents a short list of the Commission's current understanding of the problem definition the Impact Assessment exercise will be based on. Please also take note of the description of tasks relating to verification and elaboration of the problem definition in this document.

The problems, their drivers and effects linked to the application of the CBE Directive, including the follow-up procedures, which the Commission has so far identified, are described in Annex I (Chapter 11) of the ToR. The diagram in the Annex provides a first outline of the drivers and effects of the identified problems. It also shows areas of possible solutions, as well as 'contextual drivers' (non-harmonized content of vehicle registers, non-harmonized traffic rules and sanction schemes, non-harmonized administrative/criminal proceedings) which have important impact on the enforcement of road traffic rules. So far, five main groups of problems have been identified, as follows:

### Problem 1 Inadequate investigation of road traffic offences

- Problem 1a – Issue with vehicle detection
- Problem 1b – Issue with vehicle register
- Problem 1c – Information on the offence, including the evidence, not delivered/provided

### Problem 2 Inadequate recognition of decisions on financial penalties

### Problem 3 Inadequate cross-border enforcement of driving disqualifications

### Problem 4 Different levels of fundamental rights protection

### Problem 5 Further issues

- Problem 5a – Insufficient reporting requirements
- Problem 5b – Possible future data requirements
- Problem 5c – Scope

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<sup>15</sup> To be likely renamed ROADPOL in September 2019

- Problem 5d – Personal data protection

## **2.3 Objectives**

### **2.3.1 General objective**

General objective of the revision of the CBE Directive is to improve road safety by better cross-border enforcement of road traffic rules i.e. primarily to decrease socio-economic costs linked to road fatalities, injuries and material damage by better compliance of non-residents with road traffic rules through the deterrent effect of sanctions.

### **2.3.2 Specific objectives of the Impact Assessment**

The positive impact of the CBE Directive on non-resident road users' compliance with road traffic rules, through the deterrent effect of sanctions, can be only sustainable if the sanctions are properly enforced (especially in the case of intensive automatic detection of road traffic offences), citizens' aware of their rights and obligations, and the citizens' fundamental rights respected. The specific objectives mentioned below reflect this approach.

#### *Specific objective 1*

- Streamline mutual assistance and recognition procedures between Member States in investigation of road traffic offences.

#### *Specific objective 2*

- Streamline existing procedures for mutual recognition of administrative or judicial decisions on financial penalties.

#### *Specific objective 3*

- Establish effective system for cross-border enforcement of driving disqualifications at EU level.

#### *Specific objective 4*

- Improve the protection of non-residents' fundamental rights in legal proceedings related to cross-border enforcement of road traffic rules.

#### *Specific objective 5*

- Improve reporting of Member States to ensure the consistency with future evaluation and data provision requirements linked to the initiative.

#### *Specific objective 6*

- Establish adequate scope of the revision and take into account the new EU rules on personal data protection.

## **2.4 Policy alternatives - Policy measures and options**

To date, the Commission has identified the following preliminary groups of measures which respond to the problems outlined in Annex I (Chapter 11) of the ToR. Please note that, once specific measures have been developed for these groups, they will be combined to a set of possible policy options for the subsequent assessment of costs and benefits.

## Typology of measures

- 1) Measures to improve the investigation of road traffic offences: This includes, for instance rules to overcome differences between Member States' legal liability regimes and to simplify and digitise (electronic exchange of data and documents)<sup>16</sup> existing EU mutual assistance and recognition procedures in investigation of road traffic offences;
- 2) Measures to improve the mutual recognition of administrative or judicial decisions on financial penalties: This includes, for instance, rules to simplify and digitise existing mutual recognition procedures (electronic exchange of data and documents by means of cross-border digital infrastructures such as European e-Justice Portal, including eDelivery network and the e-CODEX<sup>17</sup> which enable access to justice systems across the EU);
- 3) Measures to establish effective system for cross-border enforcement of driving disqualifications at EU level: Driving disqualifications are normally imposed together with financial penalties and the acceptance/payment of financial penalties by offenders is often a precondition for the application of driving disqualifications. Therefore, the measures concerning the investigation of road traffic offences and mutual recognition of the sanctions for road traffic offences should be legally coherent (i.e. identical, similar or complementary procedures should be applied to financial penalties and driving disqualifications). The main elements of possible cross-border system for enforcement of driving disqualifications are described in Annex I (Chapter 11, Problem 3) of the ToR;
- 4) Measures to improve the protection of non-residents' fundamental rights: This includes, for instance, providing clear information on appeal procedure and sanctions to be imposed on presumed offender, translating all relevant information concerning the offence and specifying consequences for Member States which violate fundamental rights;
- 5) Measures to improve reporting rules to ensure adequate monitoring evidence on effectiveness and efficiency of the initiative that has to be consistent with future evaluation and data provision requirements;
- 6) Measures to establish adequate scope of the revision and reflect on the new EU personal data protection rules.

### 3. DESCRIPTION OF TASKS

The description of tasks shall be read with the study's general objective in mind, namely to provide the Commission with a robust evidence base in support of an impact assessment. For further detail, please therefore refer to Section 2.3, particularly Sections 2.3.1 (General Tasks) and 2.3.2 (Support to impact assessment and ex-ante evaluations) of **Annex I of Tender Specifications to the Framework Contract**.

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<sup>16</sup> Attention should be paid to ensuring synergies with other ongoing initiatives, in particular the eEvidence Digital Exchange System project aimed at the exchanges between Member States for the purposes of the European Investigation Order and the Convention on Mutual Assistance. Coordination with the eEvidence Digital Exchange System is needed in order to avoid overlapping or duplication. The eEvidence Digital Exchange System is established following the EU Council Conclusions of 9 June 2016 on improving criminal justice in cyberspace, in which Member States called for the establishment of "a secure online portal" for requests and responses concerning electronic evidence  
<https://ec.europa.eu/futurium/en/egovernment4eu/action-21-it-platform-exchange-electronic-evidence-between-judicial-authorities>

<sup>17</sup> e-Justice Communication via Online Data Exchange <https://www.e-codex.eu/>. The eEvidence Digital Exchange System may be expanded to include other mutual recognition instruments, such as Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties

The tasks described below should be considered as a minimum requirement. In their offer, the tenderer should outline the initial methodology for the fulfilment of these tasks.

The contractor shall carry out the impact assessment support study in three main phases as described in Sections 3.1. – 3.3. of the ToR. These phases are complemented by horizontal tasks on data collection in Section 3.4. of the ToR.

### **3.1. Design phase**

#### Task 1a: Verification and update of identified problems, their drivers and effects

The contractor shall first analyse and substantiate the main problems identified by the preliminary assessment of the Commission.

The contractor shall **verify the identified problems, their drivers and effects, as well as the subsidiarity issue and the EU dimension to the problems.** As a starting point of this analysis the contractor shall consider the preliminary assessment made by the Commission, described in Annex I (Chapter 11) of the ToR. The contractor shall consider any evidence needed to fully substantiate and validate the problem definition together with the identified underlying causes of the problem (problem drivers).

The verification shall be based on stakeholder evidence, existing literature or studies, as well as statistical data linked to the application of existing EU law in the field of enforcement of road traffic rules. For each relevant driver and effect, the contractor shall propose the information and data to be collected<sup>18</sup>.

The contractor shall take stock of all relevant **existing research and documents** issued or endorsed by the EU institutions, European, national or international stakeholder associations, individual stakeholders, as well as Member States' authorities.

Based on the evidence gathered in the verification process, the contractor shall **update the problems, their drivers and effects,** as necessary, including **the diagram** in Annex I (Chapter 11) of the ToR. The final problem definition requires the approval of **the inter-service steering group established by the Commission.**

#### Task 1b: Legal analysis of mutual assistance and recognition procedures in investigation of road traffic offences upon which financial penalties are inflicted and legal analysis of mutual recognition procedures to enforce decisions on the financial penalties

The contractor shall **analyse the EU mutual assistance and recognition procedures under administrative/criminal proceedings in investigation of road traffic offences upon which financial penalties** are inflicted. The contractor shall also analyse **the EU mutual recognition procedures under administrative/criminal proceedings to enforce decisions on the financial penalties.** The contractor shall put particular attention to overcoming the problems between Member States applying **different legal liability regimes.** The outcome of the task shall be to outline **correct legal approach, including the possible mutual**

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<sup>18</sup> For instance, regarding the legal liability regimes (driver vs vehicle owner/holder liability) applied by Member States, the type of data and evidence exchanged between Member States under mutual assistance procedures when investigating road traffic offences, the number of issued administrative/judicial decisions to non-residents who committed road traffic offence, the number of such decisions which were not executed, etc.



**assistance and recognition procedures**, which will serve as a ground for setting up the measures under Task 2.

On the basis of the gathered information, the contractor shall **answer the minimum set of questions** in Annex II (Chapter 11) of the ToR. **The Commission inter-service steering group can expand** the set of other questions, if needed.

Task 1c: Legal analysis of cross-border enforcement of driving disqualifications in the EU

The contractor shall **analyse the state of play of cross-border enforcement of driving disqualifications in the EU, including bilateral or multilateral arrangements and explain the reasons for non-implementation of the Convention on Driving Disqualifications of 1998 by Members States**. Furthermore, the contractor shall **analyse the existing national Member States' driving disqualification schemes** (e.g. the offences covered by the schemes, the types of disqualifications and demerit/penalty points applied<sup>19</sup> and established virtual driving licences for non-residents). The contractor shall **analyse which cross-border execution of driving disqualifications is procedurally the most feasible/effective (direct or indirect)**, as described in Annex I (Chapter 11, Problem 3) of the ToR **and under what conditions**. In this context, the contractor shall **analyse possible mutual assistance and recognition procedures under administrative/criminal proceedings in investigation of road traffic offences** upon which **driving disqualifications** are inflicted. The contractor shall also analyse **possible mutual recognition procedures under administrative/criminal proceedings to enforce decisions on the driving disqualifications**. The outcome of the task shall be to outline **correct legal approach, including the possible mutual assistance and recognition procedures**, which will serve as a ground for setting up the measures under Task 2.

On the basis of the gathered information, the contractor shall **answer the minimum set of questions** in Annex II (Chapter 11) of the ToR. **The Commission inter-service steering group can expand** the set of other questions, if needed.

Task 1d: Legal analysis of possible extension of the revision scope and proposal for appropriate legal basis

The contractor shall **analyse legal consequences of possible extension of the revision scope to the offences not directly related to road safety or road traffic** described in Annex I (Chapter 11, Problem 5c) of the ToR and **propose appropriate legal basis** for the revision. The outcome of the task shall be to outline **correct legal approach regarding the scope and legal basis of the revision**, which will serve as a ground for setting up the measures under Task 2.

On the basis of the gathered information, the contractor shall **answer the minimum set of questions** in Annex II (Chapter 11) of the ToR. **The Commission inter-service steering group can expand** the set of other questions, if needed.

Task 1e: Legal analysis of personal data protection rules

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<sup>19</sup> cf. [Best Point Handbook: Getting the best out of demerit-point-system](#), SWOW (2012)

The contractor shall analyse **new EU rules concerning personal data protection** as described in Annex I (Chapter 11, Problem 5d) of the ToR. The outcome of the task shall be to outline **correct legal approach, including necessary modifications of personal data protection rules**, which will serve as a ground for setting up the measures under Task 2.

On the basis of the gathered information, the contractor shall **answer the minimum set of questions** in Annex II (Chapter 11) of the ToR. **The Commission inter-service steering group can expand** the set of other questions, if needed.

#### Task 2: Identification of the most appropriate/feasible/effective measures

On the basis of the objectives established by the Commission and validated by **the inter-service steering group**, the contractor shall submit **the list of the most appropriate/feasible/effective legal and technical measures to solve the verified problems**. On the basis of the analysis carried out under Tasks 1a, 1b, 1c, 1d and 1e, and the objectives of the intervention, the contractor shall either validate or modify the preliminary list of individual measures (Section 2.4). The contractor shall in particular suggest how to **simplify and digitise** the mutual assistance and recognition procedures under administrative/criminal proceedings. In this regard, the contractor **shall consult the stakeholders**, especially the relevant public authorities on technical aspects (e.g. software applications and informatics systems/platforms to be used) regarding possible electronic exchange of information within the procedures.

The contractor shall pay particular attention to the scope for **efficiency savings** from a reduction of cost, particularly administrative costs, point out areas for simplification and suggest efficiency measures.

Following the analysis carried out under Task 1, according to which the objectives set by **the Commission inter-service steering group shall be fine-tuned**, the contractor shall propose **an intervention logic diagram**, as well as **a plan for the implementation of the measures** in short, mid and long term.

#### Task 3: Developing policy alternatives: measures and options

The contractor shall **propose at least four possible policy options** to address the measures identified under Task 2, **in addition to the baseline scenario**. The options shall be presented in the form of policy packages – the measures which are not mutually exclusive shall be combined in different policy packages (given the various interlinks and overlaps of the problems and their drivers, the depth and strength of the intervention in one group of measures could decrease the level of intervention required in another area).

The policy options shall take into account **suggestions from stakeholders** from the public and targeted consultations. Both soft law (e.g. interpretative guidelines and voluntary agreements) and hard law (proposal for a legislative initiative amending the CBE Directive or possibly other relevant legal acts) instruments shall be considered when establishing the options. The options may have several sub-options and shall be clearly explained.

The proposed policy options for further analysis will be submitted to **the Commission inter-service steering group**, which may decide to add, reject or modify certain options.

The final set of policy options shall be validated by **the Commission inter-service steering group** before the contractor proceeds with the next step of the study. The contractor shall in particular refer to tools #14 and #15 of the Better Regulation ‘Toolbox’.

### **3.2. Analytical steps**

#### Task 4: Identification of the baseline scenario

The description of the baseline scenario (‘doing nothing’ or ‘no-policy change’ scenario) against which all policy options shall be analysed, have to include all relevant socio-economic developments. The analysis shall include also endogenous factors (e.g. other related initiatives or legislation both existing and in the pipeline), as well as exogenous factors (e.g. technological developments, demographic trends, shift in transport volumes). The baseline scenario shall build on the EU Reference scenario<sup>20</sup> that is a regular exercise by the Commission, coordinated by DGs ENER, CLIMA and MOVE in association with the JRC and the involvement of other services, if necessary. The scenario shall provide macroeconomic, techno-economic and safety measures assumptions which are crucial for the assessment. As regards existing legislation, first of all the impacts of the application of the CBE Directive, especially on the number of investigated road traffic offences committed by vehicles registered in another Member State (by non-residents), shall be analysed and compared with the findings of the evaluation finished in 2016. The underlying assumptions of the baseline scenario shall be clearly presented and justified.

#### Task 5a: State of play evaluation in specific areas

Subject to the verification under Tasks 1a and 1b, the contractor shall complement the analysis of impacts by a **state of play evaluation** in the areas such as non-transparent use of debt recovery/collection companies, detention of vehicle or vehicle registration documents, or application of guarantees (in road-side controls) in cross-border enforcement of road traffic rules. Specific information/statistical data e.g. on the number of road traffic offences where debt recovery/collection companies are involved in the enforcement, on existing practice in Member States concerning confiscation of vehicles or application of various guarantees and the reasons behind such actions shall be gathered from the stakeholders and through desk research to support the evaluation. The findings of the evaluation shall be taken into account in the comparison of the policy options.

#### Task 5b: Analysis of impacts

The consultant shall assess the economic, social and environmental impacts (positive and negative, direct and indirect, intended and unintended) against the baseline scenario for each policy option identified under Task 3.

A preliminary, non-exhaustive, **list of impacts** is presented below based on current expectations around the most relevant impacts. The contractor shall treat this list as a starting point, verify the assumptions on magnitude of impacts and further refine the list on the basis of a preliminary analysis, the completion of the first analytical tasks and **the stakeholder**

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<sup>20</sup> Recently, the EU Reference scenario 2016 (<https://ec.europa.eu/energy/en/data-analysis/energy-modelling>), including few policy measures adopted after its cut-off date (end of 2014) and some updates in the technology costs assumptions was used for the baseline scenario in the impact assessment accompanying the revision of Directive 2008/96/EC on road infrastructure safety management and Directive 2004/54/EC on minimum safety requirements for road tunnels in the trans-European road network

**evidence.** The final list of the impacts to be assessed shall be approved by the Commission no later than at the stage of the final interim report.

The initial **methodological approach for the analysis of impacts** (appropriate analytical methods (e.g. causality analysis, risk analysis, sensitivity analysis, econometric modelling, cost benefit analysis, cost-effectiveness analysis, sample analysis etc.) shall be presented in the offer and shall comply with the Better Regulation guidelines and toolbox<sup>21</sup>, namely Tool#19.

The methodology presented in the proposal shall not be only limited to qualitative methods. Qualitative assessments of impacts shall be used where it is preferable. If qualitative analysis is used, the contractor shall also clearly describe the quantitative methodology that should have been ideally applied (including required evidence/data). The contractor shall describe the factors (e.g. data gaps; lack of robust literature on pathway) which make the quantitative analysis impossible and explicitly state the consequences of the choice to use qualitative analysis for the robustness and certainty of the assessment of impacts. The contractor shall take into account the remarks made by **the Commission inter-service steering group** on the proposal, in order to refine and improve the approach. The final methodology shall be agreed with the Commission no later than at the stage of the final interim report.

For each policy option, the contractor shall duly explain the expected chain of events, which leads to changes and shapes/drives its possible benefits and costs. Expected changes in quantifiable indicators shall be estimated. Where possible, for example where established approaches exist or e.g. monitoring data can be used, impacts have to be monetised. Key assumptions have to be tested. The degree of uncertainty around results of the assessment shall always be made explicit, and where appropriate sensitivity analysis shall be carried out.

Collecting additional stakeholder evidence for the analysis may become necessary. It is the responsibility of the contractor to plan and carry out the evidence collection.

## **Preliminary List of Impacts**

### **Social Impacts**

**Safety benefits for EU society:** these are expected to be the key source of positive impacts of the impact assessment<sup>22</sup>. Enforcement is assumed to affect road users' incentives to behave in a safer way and therefore reduce the number of road traffic offences which are committed by vehicles registered in another Member State (by non-residents). For each policy option, the key channel of benefits shall be described and expected reduction in road fatalities, fatal accidents and serious injuries shall be quantified and monetised. The degree of uncertainty around the results shall be made explicit and where appropriate sensitivity analysis shall be carried out.

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<sup>21</sup> [https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en)

Of particular relevance for Impact Assessments: [chapter III of the Better regulation guidelines](#) and [chapter II of the Better regulation toolbox](#); Tool #19 (Identification/screening of impacts); Tools #20 to Tool #35 (on various impacts); Tool #58 (Typology of costs and benefits); Tool #59 (Methods to assess costs and benefits); Tool #60 (The standard cost model); and Tool #61 (Discount rates)

<sup>22</sup> cf. [Handbook on the External Costs of Transport](#) (IMPACT Study 2019)

**Impacts on fundamental rights:** the options' effects on the application of EU Charter of Fundamental Rights, namely on the protection of personal data (Article 8 of the Charter), the right to an effective remedy and fair trial (Article 47 of the Charter) and the presumption of innocence and right of defence (Article 48 of the Charter) shall be analysed and described. The resulting impact public welfare through the application of the fundamental rights shall be assessed in line with Better Regulation Tool#28.

## **Economic Impacts**

**Public Sector:** Expected negative cost impact - the main cost from improving cross-border enforcement of road traffic rules in the EU is expected to fall on the public sector. Depending on the details of the options, it is expected to lead at least to some additional cost, linked to introducing changes in organisational systems and recurrent administrative costs for Member State administrations and police. The negative impact may be offset by efficiency savings through digitisation (lower operating costs).

Focus on regulatory burden: As a legislative revision, this initiative falls by default under the Commission's REFIT Programme and as such shall include a robust quantitative assessment of the expected impact on regulatory burden for EU and national public authorities and of the potential to reduce their costs (Tool #2 of the Better Regulation 'Toolbox').

**Private Sector:** Expected small benefits from reduced legal uncertainty: Cost savings for businesses in the road transport sector (particularly for SMEs and self-employed drivers) from reduced legal uncertainty in the context of road traffic sanctions are expected to be small. A negative impact on SMEs and self-employed drivers is currently not expected.

**Wider Economic Impacts:** The macroeconomic impact on the EU economy from private sector benefits may be negligible. No impacts are currently envisaged on trade and investments in the EU. The options are currently not expected to have any adverse effect on the international competitiveness of the EU economy in the road transport sector.

## **Environmental impacts**

Improved compliance of non-residents with road traffic rules due to better-enforced sanctions is expected to reduce speeding on roads. This in turn would lead to lower fuel consumption and so reduce the emission of CO<sub>2</sub> and possibly other air pollutants. Emission savings for each vehicle is expected to be small and even though a considerable number of non-residents would slow down to meet speed limits due to the initiative, the overall impact may be small

Digitisation, as part of the measures to address enforcement, may have a positive environmental impact by removing paper work.

The contactor shall describe all pathway leading from the policy options to each of the environmental impacts. In addition, they shall verify, through a first back-of-the-envelope assessment or on the basis of existing literature, whether the order of magnitude of these impacts is likely small enough to justify treating them as negligible (as a simplifying assumption) in the final assessment. Any non-negligible impacts are to be assessed in line with the Better Regulation Guidelines.

### **3.3. Synthesis steps**

#### Task 6: Comparison of options

Based on the analysis of the impacts in Task 5b, the consultant shall compare the different options in line with the Better Regulation Guidelines<sup>23</sup>. In particular this task requires:

- mapping the advantages and disadvantages of different options including any positive and negative impacts;
- analysing overall (EU wide) economic, environmental and social impacts;
- analysing and comparing the coherence, effectiveness and efficiency of options in terms of the specific objectives;
- considering the trade-offs and synergies e.g. between different stakeholder groups resulting from each option;
- analysing the proportionality and EU added value of the different options.

The comparison of options shall take into account both quantitative data as well as qualitative findings.

#### Task 7: Preferred policy option and operational objectives

After validating the impact analysis and the initial comparison of options, **the Commission inter-service steering group** will identify the preferred policy option for the revision of the CBE Directive. This might also include a recommendation to revise other EU legislation to address problems that cannot be covered by transport legal base. In most cases, the contractor shall be expected to assess, as requested, different combinations of options (and sub-options), if such a solution is justified at this point on the basis of the comparison of options.

As next step (if) the contractor shall:

- 1) Define operational objectives for the preferred option;
- 2) Define metrics/monitoring indicators to measure performance and progress towards the declared operational objectives;
- 3) Assess the administrative costs for different stakeholder groups for setting up the monitoring regime (for both specific and operational objectives);
- 4) Assess how the effects of the preferred policy option will differ for different implementation regimes/legislative tools as regards effectiveness, efficiency and coherence;
- 5) **SME test:**
  - Assess how the effects of the preferred policy option will differ as regards effectiveness, efficiency and coherence, if SMEs are fully or partially excluded from the scope of the intervention (SME test);
- 6) **Summarise the assessment of costs and benefits** for different stakeholders in the format determined in Annex V (Chapter 11) of the ToR. If no preferred option is specified, the same tabular presentation shall be made for each of the retained policy options;
- 7) **Subsidiarity test** (using the Model grid to assess Subsidiarity and Proportionality established by the Task Force on Subsidiarity):
  - Assess if the scope of the option is limited to those aspects that Member States cannot achieve alone;
  - Assess if the preferred policy option goes beyond what is necessary to achieve the objectives;

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<sup>23</sup> See particularly Tool #57 (Analytical methods to compare options or assess performance)

- Assess the EU added value of the option;

Based on the assessment of impacts and the comparison of options, the contractor shall identify possibilities for mitigating negative impacts and the risks related to the policy options, including **political feasibility and potential obstacles to compliance**.

### **3.4. Horizontal tasks – information and data collection**

The contractor shall collect the relevant data/information to fulfil Tasks 1a-7. The contractor shall present to **the Commission inter-service steering group** its consultation programme accommodated to the needs of the respective stakeholders group and the respective impact assessment step. The contractor shall ensure the balanced division of the consultation between the different phases of the project. The contractor shall ensure however a sufficient degree of flexibility to deal with unexpected issues arising in the data collection phase and potentially during the data analysis phase to cover identified gaps. Any potential risks to the initial strategy shall be duly justified and timely signalled to the Commission. At the same time, the contractor shall present to **the Commission inter-service steering group** an approach to overcome the identified vulnerability.

The methodology regarding stakeholder consultations (surveys, interviews, meetings) and preliminary list of the data to be collected shall be fine-tuned in the inception steps following **the Commission inter-service steering group** comments at the kick-off meeting. The aim of the consultations may not be only to hear stakeholders' views, but also to identify relevant evidence. In particular cases where it is known that the data collection is seriously hindered (e.g. in the case of scarce data or non-cooperating stakeholders), the contractor shall establish a back-up solution rectify insufficient evidence.

#### Task 8: Desk research

The contractor shall take stock and analyse all relevant existing research and statistical documents issued or endorsed by the EU institutions, European, national or international stakeholder associations, individual stakeholders, as well as Member States' authorities.

The desk research shall be undertaken in the whole course of the impact analysis with a view to collate existing quantitative and qualitative evidence that is relevant to the structuring and preparing of the field research tools and undertaking the relevant analysis for the various stages of the impact analysis.

#### Task 9: Field research

##### **Targeted consultations**

The contractor shall collect the evidence from all relevant stakeholders' groups to ensure cross-referencing of information and complete the information/data gaps. The final list of all consultation materials (e.g. questionnaires, interview guides, requests for case studies, etc.) shall be agreed with **the Commission inter-service steering group**. The targeted consultations shall cover relevant authorities and representative organisations not only in the field of road safety but also in other areas such as police and justice co-operation.

The Commission will supply a preliminary **stakeholder strategy** at the kick-off meeting which the contractor shall develop further. The contractor shall develop a **stakeholder consultation methodology** (surveys, interviews, meetings) and a **list of the evidence** to be collected. The aim of the consultations is not only to collect stakeholders' views, but also

relevant evidence to support the views. Consultation documents (e.g. questionnaires) have to be agreed with **the Commission inter-service steering group** before the start of the consultation activities.

The contractor **shall identify relevant stakeholders** to be consulted in the verification process (stakeholder mapping – tool #53 of the Better Regulation ‘Toolbox’) and agree a list with the Commission. The consultations shall cover all relevant stakeholder groups, including authorities and representative organisations not only in the field of road safety but also in other areas such as police and justice co-operation in **all Member States**.

Whenever it becomes known that the evidence collection is seriously at risk (e.g. in the case of scarce data or non-cooperating stakeholders), the contractor shall notify the Commission and agree on a back-up solution.

The contractor shall choose appropriate tools and methods to ensure the coverage of all areas selected for this impact analysis and all relevant stakeholders in **all Member States**. As a minimum requirement the field research shall take the form of:

a) Surveys

Surveys shall be adapted to the needs of a relevant category of stakeholders. Targeted questionnaires shall be distributed as widely as possible to the interested groups of stakeholders and individual players shall be consulted in parallel to their representative organisations (as organisations do not always fully reflect the views of their individual members). The contractor shall at least develop 5 separate questionnaires for specific stakeholder groups.

The aim of the surveys is to collect both quantifiable and generalizable information and qualitative evidence. The content of the questionnaires shall be agreed with **the Commission inter-service steering group**. Sufficient time shall be allowed by the contractor for approval of these documents. Analytical summary of the surveys shall be prepared and be annexed to the stakeholder consultation report.

If the answers to the questionnaires are inconclusive (e.g. low response rate, lack of and/or conflicting data), the contractor shall take necessary additional steps to clarify uncertainties and acquire a representative sample of the opinions of relevant stakeholders (e.g. follow-up surveys/interviews).

b) Interviews

The contractor shall conduct a series of minimum 15 interviews with the stakeholders by phone or face-to-face, if needed. Interview questions shall be tailored to the target group and shall be based on the desk and field research completed so far. The interviews shall be complementary to the findings of the questionnaires (see point a) above).

The tenderer shall explain how they intend to select the interviewees, along with a preliminary list of potential stakeholders to be consulted including their profiles. The final list of interviewees will be agreed with **the Commission inter-service steering group** on the basis of the agreed methodology in the course of the contract.

Interview reports shall be drafted by the contractor to summarise the key points made during the interview programme.



Collecting additional stakeholder evidence for the analysis may become necessary later for Task 5b (analysis of impacts). The contractor's programme shall indicate the small number of interviews, set aside for this purpose. In addition to the main interview programme the contractor shall carry out additional 5 pilot interviews in support of Task 1. The contractor shall draft analytical summary of the key points made during the interview programme. The summary shall be annexed to the stakeholder consultation report.

c) Stakeholder workshop

Once the inception steps are finished i.e. draft policy options are identified under the Task 3 (the intermediate report approved by **the Commission inter-service steering group**), the contractor shall organise a stakeholder workshop. The organisation of the workshop shall include:

- identification and invitation of relevant stakeholders;
- drafting relevant questions for the stakeholders;
- presenting the preliminary results/findings of the study;
- drafting minutes of the workshop;
- drafting conclusions which will be used for the final report of the study and included in the stakeholder consultation report.

The Commission will provide the workshop room in Brussels.

### **Open public consultation**

d) Analysis of the open public consultation

The Commission will provide the contractor with the output of **the mandatory 12-week open public consultation** to be launched by the Commission ([https://ec.europa.eu/info/law/contribute-law-making\\_en](https://ec.europa.eu/info/law/contribute-law-making_en)), which the contractor shall process and analyse (statistical analysis of the input, analysis of the responses, validating results – identification of the main issues, etc.) and take it into account in the final report of the study. **The contractor shall annex the summary report with the analysis of the open public consultation to the stakeholder consultation report.**

Nevertheless, the results of the open public consultation shall be regarded as a secondary source of information used for the impact assessment. The contractor shall consider data gathered under paragraphs a), b) and c) as a primary source of information.

### **Consultations reporting**

e) Stakeholder consultation report

The contractor shall prepare a **stakeholder consultation/synopsis report**<sup>24</sup> which covers both **the open public consultation and the targeted consultations**. In the report, the contractor shall inform on participating stakeholder groups, which interests they represent and whether all stakeholder groups have been reached. The contractor shall also assess the representativeness of stakeholders covered by the exercises, present the methodology (including questions put forward and timing), compare the results of the different consultation activities, including interdependencies, inconsistencies or contradictions and explain how far

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<sup>24</sup> See Chapter VII of Better Regulation Guidelines  
[https://myintracomm.ec.europa.eu/sg/better\\_regulation/Documents/guide\\_7.pdf](https://myintracomm.ec.europa.eu/sg/better_regulation/Documents/guide_7.pdf)

the results have been taken into consideration in the impact analysis. The Commission will provide the contractor with the report's structure.

#### 4. EXISTING DOCUMENTATION AND INFORMATION, MONITORING SYSTEM

List of available background documents and analytical tools is presented in Annex III (Chapter 11) of the ToR. All other data necessary for completing the study shall be gathered by the contractor.

The contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to this study and which have been identified in writing as confidential.

#### 5. METHODOLOGY TO BE FOLLOWED

The methodology for each of the tasks mentioned in Chapter 3 and especially for the stakeholder consultations (surveys, interviews, meetings), **as well as preliminary list of the data to be collected** shall be presented in the contractor's offer. In particular, the offer and any further presentation of the methodology and/or its updates shall explain how different tasks under the assignment are linked.

As a general principle, the study methodology shall respect the principles of objectivity, reliability and evidence based assessment, and shall comply with the requirements of the Better Regulation Guidelines. Where relevant the Better Regulation 'Toolbox' shall be taken into account. Administrative burdens shall be quantified using the Standard Cost Model. Regulatory costs and benefits shall be defined according the study on 'Assessing the Costs and Benefits of Regulation'<sup>25</sup>. In the Cost and Benefit analysis the contractor shall consider the 'Guide to Cost-Benefit Analysis of Investment Projects'<sup>26</sup>. For ICT impacts, the contractor shall consult Tool #27 of the revised Better Regulation Toolbox on ICT issues.

The study shall be based on recognised techniques and conducted in such a way that the results are supported by evidence and rigorous analysis. Soundness and robustness of the analysis shall be ensured and justified.

Considerable emphasis shall be put on the analytical tasks of the impact analysis. Assumptions of the analysis shall be clearly presented and justified. In case of the uncertainties, the sensitivity analysis shall be carried out. Clear links between the conclusions and findings shall be always presented and justified.

Unless clearly and objectively justified, the contractor shall preferably make use of sources of quantitative data favoured by DG MOVE. This includes in particular the most recent Statistical Pocketbook<sup>27</sup> and the EU Reference scenario (see Task 5) and Eurostat data (for transport activities). The contractor shall demonstrate to **the Commission inter-service steering group** that all necessary steps were undertaken to overcome the absence of the quantifiable data. In any case, findings and conclusions shall be substantiated by explaining the degree to which these are based on opinion, analysis and objectively verifiable evidence. Where opinion is the main source, the degree of consensus and the steps taken to test the opinion shall be given.

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<sup>25</sup> [http://ec.europa.eu/smart-regulation/impact/commission\\_guidelines/docs/131210\\_cba\\_study\\_sg\\_final.pdf](http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf)

<sup>26</sup> [http://ec.europa.eu/regional\\_policy/sources/docgener/studies/pdf/cba\\_guide.pdf](http://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/cba_guide.pdf)

<sup>27</sup> [https://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2017\\_en](https://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2017_en)

In the course of the analysis of impacts the contractor shall also analyse the underlying factors causing particular effects. The magnitude and direction of these factors shall be clearly analysed and discussed.

## **6. REPORTING AND DELIVERABLES**

The contractor must ensure that all reports under the contract are clear, concise and comprehensive. Reports shall be drafted in English, descriptions, also of technical topics, have to be expressed in a way so as to be understandable for a non-specialised audience. Technical explanations in a less accessible technical language shall be provided in annexes.

In view of its publication, the stakeholders report and the final report (and their respective annexes) must be of high editorial quality. In cases where the contractor does not manage to produce the reports of high editorial quality within the timeframe defined by the contract, the Commission can decide to have the final report professionally edited at the expense of the contractor (e.g. deduction of these costs from the final payment).

**Wherever relevant, revised reports shall be delivered in two versions, one final and one with track changes. The track-changed version of the report shall include explanations (i.e. in comments fields) describing if and how all comments made on the previous deliverable have been taken into account, on a comment by comment basis.**

All relevant evidence underpinning the analysis (questionnaires, survey results, detailed analysis, explanations of models used and assumptions etc.) has to be annexed in a transparent manner to enable a reader to follow and verify the report's argumentation and analysis.

The use of adequately designed and labelled visual communication tools (graphs, charts, etc.) is highly encouraged.

**Please note that key requirements concerning content, structure and graphic of the deliverables for this study are specified in Chapter 3 of Annex I of Tender Specifications to the Framework contract and are not repeated here.**

The contractor must ensure that there are no restrictions based on confidentiality and/or intellectual property rights expected from a third party that could limit the Commission's ability to publish the final report and disseminate impact assessment findings based on it.

The contractor is requested to present:

- 1) A **progress reports every two weeks** (by email; 1-2 pages A4) summarising for each task the state of play, the progress made and the next steps. The reports shall mention issues encountered, including the possible impacts on the work programme and planning, as well as possible mitigation options.

In particular, the contractor shall flag up early if they encounter any difficulties in collecting the expected quantitative evidence.

Upon the request of the contractor, the progress reports may take the form of a conference call. In this case, minutes of the call shall be drafted by the contractor within 2 working days, and shall be agreed to by all participants.

- 2) An **inception report** specifying the methods and planning of the study in order to complete the tasks as listed in Chapter 3 of the ToR. The report shall describe the proposed methodological approach and working assumptions, and note any areas where there is need for additional Commission's assistance and approval. The report shall:

- include a detailed programme (timetable and work plan) of the project, including the allocation of number of person-days per expert per task;
- describe the problem definition;
- provide the contractor's understanding of the key causal pathways to the economic, social and environmental impacts as part of an intervention logic;
- elaborate further possible policy options;
- present the methodology for the baseline, taking into account information received from **the Commission inter-service steering group** at/just after the kick-off meeting (including on DG MOVE's Reference Scenario);
- present an evidence gap analysis;
- identify any additional needs for information to be collected during the evidence collection phase, based on the evidence gap analysis;
- present the contractor's approach to evidence collection, including type and number of stakeholder consultation tools, based on the above needs;
- suggest a list of contacts for each tool;
- present an updated stakeholder consultation approach based on the preliminary stakeholder consultation strategy provided by the Commission at the kick-off meeting. The contractor shall present the number of foreseen interview guides and survey questionnaires and their target groups and a draft list of stakeholders to contact. The contractor shall programme-in sufficient time to discuss and agree the consultation documents with **the Commission inter-service steering group** after this date and before the start of the consultation activities.

The methodology in the inception report shall be more developed than in the offer and shall take into account the comments made by **the Commission inter-service steering group**, in particular in the kick-off meeting. It shall not exceed **40 pages** (annexes excluded).

- 3) **Questionnaires and interview guides** agreed upon in the inception report and submitted to all stakeholders.
- 4) An **intermediate report** which is produced when the core of the desk and field research on the problem definition has been completed. The report shall:
  - present the final problem definition, final key causal pathways and final list of positive and negative impacts to be estimated;
  - present the final baseline scenario;
  - present the results of Task 5a;
  - present an updated draft set of policy measures and options to be assessed;
  - present up-dated draft methodology for the assessment of impacts (including flagging any change of plans or the initially planned methodology);
  - summarise the results reached until that moment, in particular report on the available findings of the targeted stakeholder consultations;
  - present an updated draft gap-analysis, including on any risks or issues encountered with respect to evidence collection and specify mitigation measures and/or likely impact on the upcoming assessment of impacts;
  - take account of the comments made by **the Commission inter-service steering group** earlier in the process; present an updated work programme (clear indications and detailed planning of the work to be carried out during the rest of the contract period) ;

- include a proposal for the structure of the final report which shall be agreed with **the Commission inter-service steering group**;
- include an executive summary of the interim report providing an overview of preliminary findings and, if possible, preliminary conclusions.

The report shall mention which parts of the document have been carried over from the inception report or other documents and which parts represent progress of the work carried out under the contract.

Approval by **the Commission inter-service steering group** of the intermediate report is the pre-condition for the contractor being entitled to the interim payment according to the Framework Contract. The intermediate report shall not exceed **45 pages** (annexes excluded).

- 5) A **feasibility report on establishing effective system for cross-border enforcement of financial penalties and driving disqualifications**, which shall cover analytical work carried out under Tasks 1b, 1c, 1d, and 1e.
- 6) A **stakeholder consultation report** that have been carried out for the impact assessment shall be provided.

This shall cover the field research carried out by the contractors under Tasks 1a, 1b, 1c, 1d, 1e and 5b and analysis of the Commission consultation activities as described under Task 9 (i.e. analysis of the open public consultation and analysis of the written contributions).

The report shall provide which stakeholder groups participated, which interests they represented and whether all stakeholder groups have been adequately reached. It shall assess the representativeness of stakeholders covered by the exercises. It shall present the methodologies used (including questions asked and timing) and discuss the associated limitations. Finally, it shall compare the responses and evidence gathered from the different consultation activities, including interdependencies, synergies or contradictions and gaps. The report shall explain how far the results have been taken into consideration in the assessment in the draft final report.

The report shall contain the following annexes:

- summary of the open public consultation;
- analytical summary of any written contributions;
- analytical summary of the targeted surveys;
- interview reports;
- meeting minutes of the expert groups;
- and analytical summary of any other relevant consultation activities launched by the contractor.

The individual answers of the targeted consultation shall be provided to the Commission in excel format.

The contractor is expected to follow the guidance in Annex IV (Chapter 11) of the ToR as a “minimum standard” when reporting stakeholder results. It shall not exceed **25 pages** (annexes excluded).

- 7) A **draft final report** shall cover all tasks and take account of the comments made earlier in the process. It shall provide a sound analysis of findings along with evidence-based preliminary conclusions and recommendations, in line with Chapters 2 and 3 of the ToR.

The report shall take into account the outcome of all consultation activities, including the open public consultation and the stakeholder workshop.

The content and structure of the draft final report shall follow a template proposed in the Better Regulation Toolbox.

The draft final report shall include an analytical annex, where the detailed analysis can be presented in technical language.

The methodological section of the draft final report shall include three parts: 1) final methodological section describing the methodological approach per task in Section 3.1; 2) analysis of the evidence gaps and 3) methodological approaches for support Tasks in Section 3.2.

For **key requirements regarding the (draft) final report and its annexes** please refer particularly to requirements under Section 3.1.2.c, 3.1.3 - 3.1.5, 3.2 and 3.3 of **the Annex I of Tender Specifications to the Framework Contract**. The report shall not exceed **90 pages** (annexes excluded).

- 8) A **final report** follows in principle the same structure as the draft final report while taking into account **the Commission inter-service steering group** comments and requests. An accompanying executive summary shall present a clear overall synthesis of the findings, limitations and conclusions of the report.

## **7. ORGANISATION AND TIMETABLE**

### **7.1. Organisation**

The contract will be managed by Unit C.2 of DG MOVE. The Commission will appoint a technical officer in charge, who will participate in the meetings with the contractor, facilitate access to information, monitor the work and validate the results of the services of the contractor. **The Commission inter-service steering group** will be involved in assessing the quality of the work and reports submitted by the contractor.

The contractor shall ensure that activities progress properly, are reported upon regularly and for that purpose designate a person responsible for permanent and regular contact with the Commission.

### **7.2. Meetings**

It is expected that the contractor (the team leader and other relevant experts) participate in **four meetings** in Commission premises in Brussels with the Commission, usually in inter-service group format. Minutes of the meetings shall be drafted by the contractor within **5 working days**, and must be agreed among the participants.

### 7.3. Timing

The Specific Contract shall enter into force on the date on which it is signed by all contracting parties. The indicative starting date of the study is **January 2020**. The period of execution of the contract is 12 months.

The table below outlines the work plan and indicative timetable. However, it can be adapted if necessary (e.g. to accommodate holiday periods).

Deadline (from starting date)	Task
Signature (T0)	
Kick-off meeting (T0+10 working days)	The project is kicked off at the meeting between the contractor and the Commission. The kick-off meeting will ensure that the contractor has a clear understanding of the terms of the contract and the objectives of the project. The contractor will be provided with all relevant available documents and be informed of useful information sources for data collection.
Inception report (T0+6weeks)	The contractor submits the inception report. Within two weeks the report shall be discussed in a meeting with the Commission.
Questionnaires and interview guides (T0+9 weeks)	The contractor submits all targeted stakeholder consultation documents for the Commission approval.
Intermediate report and feasibility report on establishing effective system for cross-border enforcement of financial penalties and driving disqualifications (T0+27 weeks)	The contractor submits intermediate and feasibility reports. Within two weeks the reports shall be discussed in a meeting with the Commission. If necessary, the contractor will revise the reports and the amended reports will be sent to the Commission within two weeks from the receipt of the Commission comments.
Stakeholder workshop (T0+34 weeks)	The intermediate and feasibility reports will be discussed in the stakeholder workshop which has to be organised as soon as possible after the reports are approved by the Commission.
Draft final report and <b><u>stakeholder consultation report</u></b> (T0+38 weeks)	The contractor submits the draft final report and stakeholder consultation report. The comments shall be discussed in a meeting with the Commission within 2 weeks. If necessary, the contractor will revise the

	report and the amended report will be sent to the Commission within two weeks from the receipt of the Commission comments.
Final report (receipt of Commission comments+2 weeks)	The contractor submits the final report, which reflects the comments of the Commission.
Approval of the Final Report (15 working days from the reception of the final report)	The Commission approves the final report. In the event of inadequate quality of the final report, Article II.15 (Liquidated Damages) and Article II.16 (Reduction in Price) of the General Conditions of the Framework Contract applies.

## **8. OWNERSHIP OF THE RESULTS**

The Commission retains all rights relating to the reports produced under this contract and to their reproduction and publication under the conditions as specified in Article II.13 (Intellectual Property Rights) of the General Conditions of the Framework Contract. The Commission services will be responsible for deciding the possible dissemination of the findings and conclusions of the assessment and its related materials produced under this work contract.

## **9. CONFLICT OF INTERESTS**

To ensure the objectivity and independence of the study, the contractor shall assure that no conflict of interest arises neither for the consortium or any of the proposed subcontractors as a whole, nor any team member of the proposed project team specifically. This means no one shall participate in a study which may bring their own interests into conflict with the Better Regulation Guidance's requirements of carrying out an objective and independent assessment. Where such a risk relates to one or more specific task(s) of the support study, the team member or the company in question shall be excluded from carrying out this/ these task(s). Any potential risk of a team member or company having a conflict of interest shall also be clearly flagged up in the technical part of the tender and concrete mitigation measures shall be proposed how the risk is addressed.

## **10. PRICE**

The maximum price of the contract is EUR 290 000. In the case the offer will exceed this amount, it will be excluded from the further evaluation and will not be ranked.



## 11. ANNEXES

### Annex I: Preliminary analysis of problems, drivers and effects

Below is presented a preliminary analysis of problems, their drivers and effects identified so far by the Commission, which will have to **be verified and updated** by the contractor and approved by **the Commission inter-service steering group**. The updated analysis will help to set up **intervention logic** of the revision under Task 2.

#### **Problem 1 Inadequate investigation of road traffic offences**

Financial penalties cannot be enforced, when the investigation to discover who has committed the offence is not initiated or fails.

##### Problem 1a – Issue with vehicle detection

Road traffic offences detected automatically or without the identification of the offender on the spot cannot be investigated (the CBE Directive not used for the investigation of the offences), when **the information from the checking equipment is not available or could not be processed** due to missing equipment, technical problems with vehicles' detection (problematic number plate recognition/missing automated number plate recognition), lack of IT systems, processing technology or personnel, or understaffed road traffic police (shift to other priorities like terrorism or refugees).

While this is a problem to be solved at national rather than EU level, it has nevertheless an influence on the correct application of the Directive.

Possible drivers of the problem:

- *inadequate investments to police enforcement equipment and related measures.*

##### Problem 1b – Issue with vehicle register

**Vehicle registration data** which are necessary to identify presumed offender are **not available or are incorrect or incomplete** due to:

- the lack of information on previous owner/holder where the vehicle was re-registered or sold abroad (non-harmonised **data retention periods/time limits for data storage and review**),
- limited cooperation between Member States/within Member States in vehicle registration data provision.

The provision of all data elements necessary to conduct the search as stipulated in Annex I of the CBE Directive is de facto optional which can also hinder the exchange of information on the vehicle owner/holder. Specific issue is the registration of final user (keeper) of a company or leased vehicle. This is not foreseen by the Directive that makes the data transfer of such users problematic.

Possible drivers of the problem:

- *different content of vehicle registers across Member States*<sup>28</sup>,
- *use of databases other than vehicle registers (e.g. driver registers) to correct or complement the data on vehicles owners/holders or to help to identify the offender (driver) is not allowed*<sup>29</sup>,
- *IT problems at national level (e.g. central vehicle register and regional registers are not properly interconnected or compatible).*

#### Problem 1c – Information on the offence, including the evidence, not provided/delivered

Information to presumed offender cannot be delivered in the following cases:

- Member States applying strict driver liability normally require additional evidence on driver's identity (self-incrimination of the presumed offender is strictly forbidden). If the Member State of the vehicle registration does not **provide additional evidence on the driver identity** (e.g. because of the issues described in Problem 1b) then the information letter cannot be sent,
- **The offender cannot be found** because for instance, he/she has deceased, moved to another Member State or to an unknown address. To be noted that in some Member States administrative/criminal proceedings are blocked, if there is no proof that the information related to the proceedings has been delivered to presumed offender.

Possible drivers of the problem:

- *differences between Member States' legal liability regimes (driver liability vs vehicle owner/holder liability), traffic rules and sanction schemes,*
- *complicated EU mutual assistance and recognition procedures in investigation*<sup>30</sup> (especially in the case where the offender could not be identified by the means established in the CBE Directive or where evidence of committed offence has to be delivered/exchanged).

#### **Problem 2 Inadequate recognition of decisions on financial penalties**

The proper enforcement of the financial penalties also requires that administrative or judicial decisions, in cases where non-resident offenders refuse to pay a financial penalty are mutually recognised/executed by Member States<sup>31</sup>.

**The existing EU procedures for mutual recognition** of the Member States' administrative or judicial decisions on financial penalties **are designed for criminal offences and not**

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<sup>28</sup> cf. Council Directive 99/37/EC on registration documents for vehicles (OJ L 138, 1.6.1999, p. 57), Point 1 of Chapter 3 of Annex to Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12) and Annex I to Directive (EU) 2019/520 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union (OJ L 91, 29.3.2019, p. 45)

<sup>29</sup> Article 4(4) of the CBE Directive

<sup>30</sup> Directive 2014/41/EU regarding the European Investigation Order in Criminal Matters, Article 5 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU

<sup>31</sup> Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties

**tailored to the situation where millions of financial penalties for automatically detected road traffic offences (usually minor administrative offences) have to be enforced.** Therefore, the decisions are often not recognised/executed which makes it impossible to enforce the financial penalties (and consequently driving disqualifications).

Some Member State authorities engage debt recovery/collection companies to force non-resident offenders to pay the penalties, often under non-transparent conditions. Another issue is that car renting companies collect the fines without any warning or explanation by using credit cards of presumed non-resident offenders (that however depends on the contractual relationship). Furthermore, in road-side controls where the offenders cannot pay the penalties on the spot, police authorities tend to detain vehicles or vehicle registration documents (vehicle number plates), or to apply various guarantees that raise the issue of non-discrimination and proportionality.

Possible drivers of the problem:

- *complicated mutual recognition procedures, partial coverage of administrative offences (differences in Member States' normative qualification of road traffic offences - criminal vs administrative)<sup>32</sup>, extensive grounds for non-recognition/non-execution<sup>33</sup>, absence of central national contact point (information exchange facilitator) and demotivating accrual of monies from enforced decisions (Council Framework Decision 2005/214/JHA),*
- *different Member States' deadlines for enforcement of the financial penalties (e.g. different deadlines for the submission of penalty notices (information letters) to non-resident offenders and for issuing administrative/judicial decisions to recognise the penalties) that results in statute barred execution of administrative/judicial decisions as laid down in Article 7(2)(c) of Council Framework Decision 2005/214/JHA i.e. the financial penalties are not enforced or only partially enforced (e.g. in the case where the penalties are paid by instalments).*

### **Problem 3 Inadequate cross-border enforcement of driving disqualifications**

A system for cross-border enforcement of driving disqualifications which are mutually recognised by Member States at EU level does not exist. This policy area has not been formally analysed in the evaluation of the CBE Directive application, under the Better Regulation programme. An earlier Commission analysis carried out for the High Level Group on Road Safety in 2017/2018 provides an indication of the magnitude of the problem at hand: The share of non-residents of the total number of disqualifications is 3% average. The number of disqualifications issued to non-resident drivers was estimated at 90 000 in 2016. Given that driving disqualifications, namely suspensions and withdrawals, are issued for either serious (criminal) offences or repeated offences (recidivism), the estimated number of driving disqualifications appears to be significant, justifying action at EU level. The analysis suggests

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<sup>32</sup> cf. ECJ Baláž Case (C-60/12) and Court of Chelmnice Case (C-671/18)

<sup>33</sup> Articles 7, 9 and 10 of Council Framework Decision 2005/214/JHA. In the case of insolvency of the offender who has no assets the procedure under Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States can only be used for the purpose of conducting a criminal prosecution or executing a custodial sentence or detention order. Special attention also requires financial compensation of road accident victims from the offender (Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime).

that setting up **main elements** for effective cross-border system for enforcement of driving disqualifications, **where normally driver legal liability has to be applied**, would require:

- defining **the scope** (i.e. what road traffic offences are covered by the system),
  - defining **the type of driving disqualifications** applied to non-residents (e.g. restriction, suspension, withdrawal or cancellation of the right to drive),
  - establishing **EU system for exchange of information** between Member States authorities **to identify the driver** who committed the offence, including **personal data protection**, and **for informing non-resident offenders**<sup>34</sup> on the sanctions to be imposed (the system established by **the CBE Directive** could constitute a basis),
  - **if applying indirect cross-border execution of driving disqualifications** (i.e. disqualifications are executed by the Member State which issued the driving licence of the offender or in which the offender has normal residence, that is the approach on which **the Driving Licence Directive** is based):
    - creating **EU rules for recognition of the demerit/penalty points** and/or **disqualifications i.e. sanctions** imposed abroad (e.g. rules on **evidence exchange** between Member States authorities<sup>35</sup>, rules to recognise **virtual/electronic driving licences** established for non-residents, or rules to cover the case where the executing Member State **doesn't have any demerit/penalty point scheme** or in which **a particular offence doesn't exist**) and applying **sanctions** on the entire EU territory,
- or**
- creating **uniform demerit/penalty point or other driving disqualification scheme** for **residents and non-residents at EU level**, including possible **harmonisation of road traffic rules** to which the offences under the scope are related (this may also cover **the offences detection** in order to provide **sufficient evidence**). Such system will allow **automatic/problem less mutual recognition** of the sanctions by the executing Member State and **sanctions** will apply on the entire EU territory,
- **if applying direct cross-border execution of driving disqualifications** (i.e. disqualifications are executed by the Member State in which road traffic offence took place, that is the approach on which **the CBE Directive** is based):
  - creating **EU rules for application of the demerit/penalty points** and/or **disqualifications** imposed on non-residents (e.g. rules on **remedy measures/retrieving the lost rights**, or rules on **the rescission of driving licences** by the executing Member State<sup>36</sup>) and applying **sanctions** on the entire EU territory,
  - creating **EU procedures for mutual recognition of administrative or judicial decisions on driving disqualifications**<sup>37</sup> in the case where the offenders refuse to respect the disqualifications and applying **the decisions** on the entire EU territory.

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<sup>34</sup> cf. Article 5 of Convention on Mutual Assistance in Criminal Matters between the Member States of the EU

<sup>35</sup> The same rules on evidence exchange/mutual recognition of the evidence may apply to financial penalties and driving disqualifications

<sup>36</sup> EU-wide application of electronic driving licences could improve enforcement of driving disqualifications in general and have a positive impact not only on road safety but also on prevention and fight against serious crime

<sup>37</sup> The same mutual recognition procedures may apply to financial penalties and driving disqualifications

Possible drivers of the problem:

- *enforcement of driving disqualifications for road traffic offences committed by non-resident drivers, respectively by vehicles registered in a Member State other than the Member State in which the offence took place, regulated at national level.*

#### **Problem 4 Different levels of fundamental rights protection**

**The issuing Member State's violation of fundamental rights and legal principles<sup>38</sup> of the executing Member State** can lead to the non-recognition/non-execution of administrative or judicial decisions. This is likely due to **substantial differences in appeal procedures** or **unfair and non-transparent penalty payment schemes** (the payment schemes in some Member States are not adapted to non-residents and might be perceived as discriminatory).

The Commission has received a considerable amount of citizens' complaints concerning the respect for fundamental rights, especially in the case of appeal against allegedly committed road traffic offences abroad. Non-resident offenders normally receive penalty notice (information letter) in the language of the registration document of the vehicle, or in one of the official languages of the Member State of registration<sup>39</sup>. However, the correspondence related to follow-up procedures in the case of non-payment of a financial penalty, or where a driving disqualification applies, is carried out in one of the official languages of the Member State in which the road traffic offence has been committed, only at the stage of appeal before a court having jurisdiction in criminal matters<sup>40</sup>. Thereby, non-resident offenders often cannot recognise whether they are investigated before or under prosecution, or do not understand additional information on sanctions imposed for the same offence e.g. driving disqualifications (sometimes these offenders are not informed at all about various stages of the proceedings). Moreover, some Member States (de facto) apply different deadlines for the submission of penalty notice to non-residents and residents that raises the issue of possible direct/indirect discrimination on the grounds of nationality (Article 18 TFEU).

It has to be noted that the application of different legal liability regimes which are linked to fundamental/constitutional rights and legal principles have not only negative impact on the investigation to enforce financial penalties (see Problem 1c), but also on mutual recognition of administrative/judicial decisions. Member States applying vehicle owner/holder liability are normally not able to provide additional evidence on the offender's identity required by Member States applying driver liability (e.g. the front picture of the vehicle with driver does not exist since it is not necessary) that leads to non-recognition/non-execution of the decisions. However, the situation is quite different if the evidence exists, but it is provided neither to the relevant authorities nor to the offender.

Possible drivers of the problem:

- *insufficient/no evidence provided to presumed offender with the information letter, presumed offender not heard, inadequate information on the appeal procedure and all*

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<sup>38</sup> Article 20 of Council Framework Decision 2005/214/JHA; fundamental rights concerns may impact administrative/criminal proceedings, particularly in the case where the offender does not react to a fine, which may lead to the necessity of organising an “in absentia” proceedings

<sup>39</sup> Article 5 of the CBE Directive. However, non-residents/foreigners often do not know what recourse is available in the case where the information letter is not sent in the correct language (or what are the consequences, if Member States authorities fail to comply with Article 5 of the Directive).

<sup>40</sup> Directive 2010/64/EU on interpretation and translation in criminal proceedings (Recital 16)

*applicable sanctions provided to the presumed offender in the information letter (it appears that there is no Member State using the template of the letter in Annex II of the CBE Directive – Member States simply translated national penalty notices which is not sufficient for non-residents who are not familiar with the procedures under administrative/criminal proceedings of other Member States, moreover, non-residents can hardly receive information letter or lodge an appeal electronically), non-translated follow-up information (especially, when two or more sanctions are combined e.g. the financial penalties with driving disqualifications),*

- *different deadlines for the submission of penalty notices (information letters) to non-resident offenders (these deadlines should be aligned with the deadlines for the data retention on previous owner/holder),*
- *differences between Member States' legal liability regimes (driver liability vs vehicle owner/holder liability),*
- *inadequate information how to settle road traffic penalties i.e. the information on how to settle a penalty provided only in the language of the Member State in which the offence took place, application of lower penalties if paid off within shorter deadlines (non-residents normally get the information letter later than residents and they may have to pay higher penalties), cumbersome payment procedures that make the payment for foreigners practically impossible.*

## **Problem 5 Further issues**

The reporting of Member States to the Commission under Article 6 of the CBE Directive plays a crucial role in the assessment of the effectiveness and efficiency of the Directive to improve road safety, as envisaged in Article 11 of the Directive.

### Problem 5a – Insufficient reporting requirements

The reporting rules under Article 6 of the CBE Directive seem **unclear and incomplete**, especially when compared to the assessment requirements under Article 11 of the Directive.

The information required under the reporting should be kept to minimum to avoid increased administrative burden. However, the following information which Member States are not obliged to provide now is considered as necessary for evaluating the efficiency and effectiveness of the Directive and its impact on the number of road fatalities and serious injuries:

- the number of (registered) offences under the scope of the Directive, which are detected automatically or without the identification of the offender on the spot and committed by vehicles registered in another Member State/non-residents,
- the number of successful outgoing searches/requests, and
- the total number of (registered) offences committed by residents and non-residents.

For the sake of consistency, the period of time to be covered by the reporting should be harmonised and the reporting of the Commission back to the Member States better specified.

Possible drivers of the problem:

- *legal and administrative obstacles in Member States to collecting the information on the number of (registered) offences committed by non-residents.*

### Problem 5b – Possible future data requirements

The possible revision of the CBE Directive may also cover a revision of mutual recognition procedures. This would require **additional monitoring data for future evaluation**. For instance, this could include the information on the number of requests to recognise administrative/judicial decisions and the number of enforced sanctions following these requests). This information is missing now.

Possible drivers of the problem:

- *legal and administrative obstacles in Member States to collecting the information on the number of recognised/executed administrative/judicial decisions and enforced sanctions.*

### Problem 5c – Scope

The evaluation of the CBE Directive application concluded that:

- the scope of the Directive is adequate, since it covers the most important road-safety-related traffic offences, and
- a need to include additional road-safety-related traffic offences in the scope of the CBE Directive, such as not keeping sufficient distance from the vehicle in front, dangerous overtaking, dangerous parking, may be useful to consider due to the increased use of automatic checking equipment.

In the meantime, some stakeholders (especially Member States authorities) have asked to look at extending the scope to other road-safety-related traffic offences such as crossing white lane, not respecting forbidden access and driving in wrong way or emergency lane, as well to the offences not directly related to road safety or road traffic (e.g. non-payment of tolls and road user charges<sup>41</sup>, violation of urban vehicle access regulations (e.g. non-payment of access charges<sup>42</sup> or non-respect of traffic bans), overloaded vehicle<sup>43</sup>, non-payment of parking offences in general/violation of stationary traffic rules and non-payment of vehicle insurance<sup>44</sup>). It appears that uniform and effective cross-border enforcement of certain rules related to the use of a motor vehicle is missing in the EU.

However, adding other offences than road-safety-related to the revision scope could potentially have a serious impact on issues such as the legal basis, the information to be exchanged, the use of informatics systems/platforms, the co-operation/assistance between Member States authorities vis-à-vis different legal liability regimes and vis-à-vis various legal proceedings (administrative, criminal, civil), the co-operation between Member States authorities and (private) entities in sharing all relevant information, mutual recognition

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<sup>41</sup> Enforcement of toll and user charge related offences is partially covered by Directive (EU) 2019/520 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union (OJ L 91, 29.3.2019, p. 45)

<sup>42</sup> cf. Study on Urban Vehicle Access Regulations, ISSINOVA, PWC, April 2017

<sup>43</sup> [https://ec.europa.eu/transport/sites/transport/files/uvar\\_final\\_report\\_august\\_28.pdf](https://ec.europa.eu/transport/sites/transport/files/uvar_final_report_august_28.pdf)

<sup>44</sup> cf. Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic, as amended later (OJ L 235, 17.9.1996, p. 59)

<sup>44</sup> cf. Proposal for a Directive amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability, [COM\(2018\) 336 final](#)

procedures to enforce sanctions and personal data protection. Moreover, this would also require to launch additional evaluations in line with the Better Regulation Guidelines.

The issue of **urban vehicle access regulations (UVARs)** requires special attention. According to Article 28 of Directive (EU) 2019/520 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union ('EETS Directive'), the Commission is obliged to present a report to the European Parliament and to the Council on the implementation and effects of the Directive by 19 April 2023. The report has to be accompanied, if appropriate, by a proposal to the European Parliament and the Council for further revision of the Directive, regarding the extension of the provisions facilitating cross-border enforcement to low emission zones, restricted access zones or other urban vehicle access regulation schemes.

There is no EU law which specifies rules on urban vehicle access schemes. This area is considered as falling under subsidiarity of Member States. It appears that there are discriminatory schemes for non-resident road users, who are predominantly occasional users. One reason why such users might not pay the access charges is that e.g. short-term charges are not provided or these charges are disproportionately high comparing with long-term charges used by residents who are predominantly frequent users, or there is no adequate information available to non-residents on the payment of charges. Therefore, any initiative on cross-border enforcement of UVARs may require first of all to specify rules on harmonised operation of such access schemes to avoid direct or indirect discrimination on grounds of nationality (Article 18 of TFEU). This is the approach already applied to charging of commercial transport of goods<sup>45</sup> and charges levied on light private vehicles<sup>46</sup>.

Possible drivers of the problem:

- *fragmented approach in cross-border enforcement of sanctions for **motor vehicle and road traffic offences (cross-border motor vehicle and road traffic control)** where vehicle registration data are either not exchanged or exchanged in non-harmonised or non-coordinated way for purposes such as fair competition or treatment, traffic bans for vehicles, vehicle charging and taxation (free movement of road transport services, goods and persons/internal market) and motor vehicle insurance (free movement of financial services and persons/internal market). The fragmentation may point to inadequate cooperation between Member States or the lack of EU law establishing simple and digitised cross-border mutual assistance and recognition procedures. It also has to be noted that a 'universal' legal basis (TFEU) that would cover electronic exchange of vehicle registration data and the follow-up procedures in general (for all sorts of purposes) is missing.*

#### Problem 5d – Personal data protection

The application of new EU law concerning personal data protection, namely Regulation (EU) 2016/679 ('General Data Protection Regulation/GDPR') and Directive (EU) 2016/680 on the processing of personal data by Member States' authorities in criminal matters, and other possibly relevant EU Law (e.g. Directive 2002/58/EC on privacy protection in electronic

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<sup>45</sup> Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p. 42), as later amended

<sup>46</sup> cf. the Commission interpretative communication COM(2012) 199 final



communications) to the exchange of information under cross-border enforcement of road traffic rules<sup>47</sup> (see also Problem 1b of this Annex) is unclear.

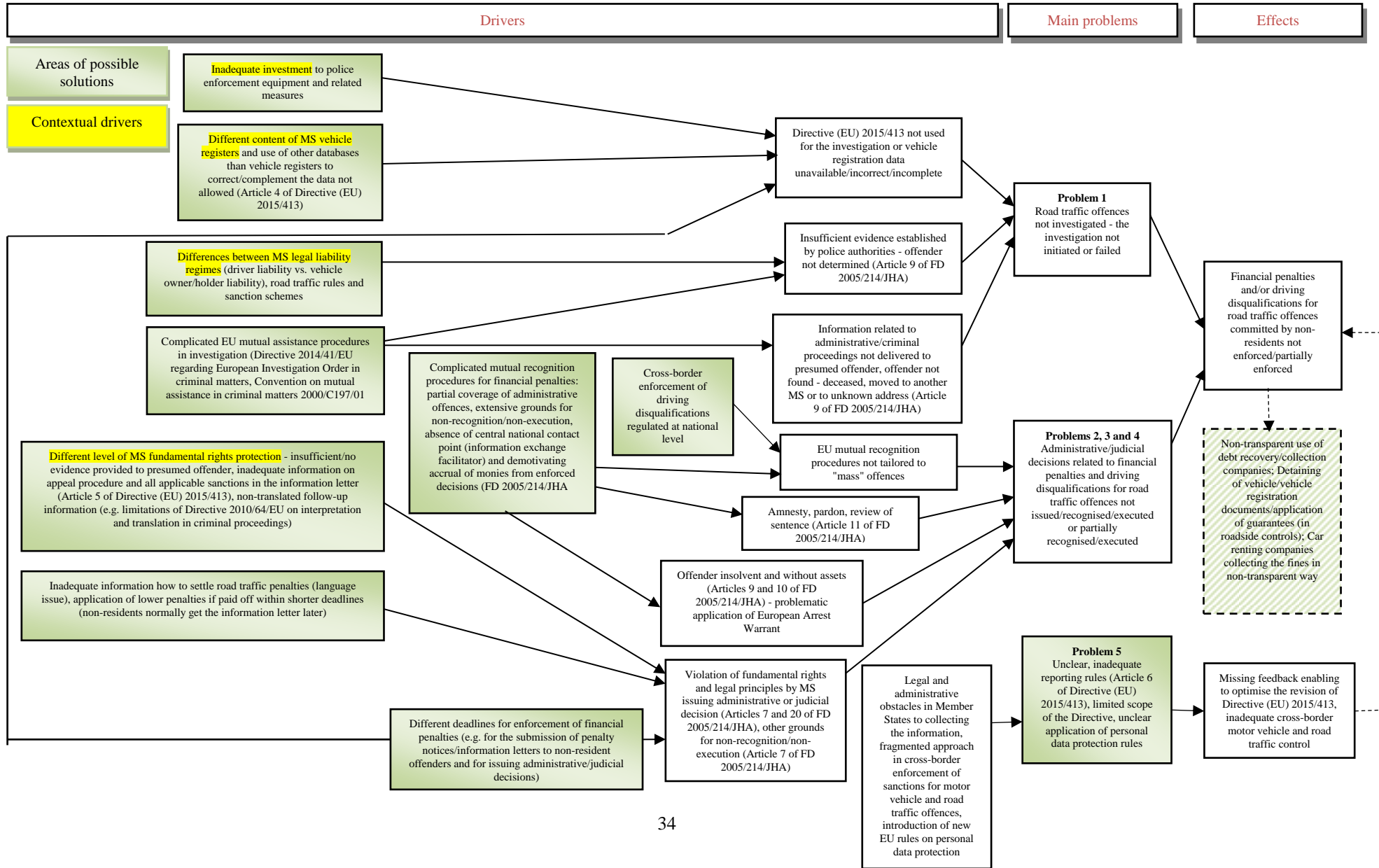
Possible drivers of the problem:

- *Directive 95/46/EC on personal data protection, to which the CBE Directive refers, was replaced by the GDPR.*

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<sup>47</sup> cf. EP pilot project on Fundamental Rights Review of EU Data Collection Instruments and Programmes (JUST/2015/RPPI/PR/RIGH/0218), which has already looked at the issue of concern and provided some concrete suggestions for amendments of the CBE Directive that the contractor has to consider

**Preliminary cause and effect (problem tree) diagram (this is not intervention logic diagram of the revision)**



## Annex II: The minimum set of questions

### Task 1b: Legal analysis of mutual assistance and recognition procedures in investigation of road traffic offences upon which financial penalties are inflicted and legal analysis of mutual recognition procedures to enforce decisions on the financial penalties:

- Which Member States currently apply vehicle owner/holder liability and which apply driver liability legal regime?
- Is it legally possible to apply owner/holder liability at EU level **only** to the offences committed by vehicles registered abroad or only to a limited number of road traffic offences, for which financial penalties are applied?
- Which EU legal acts, besides the CBE Directive, will have to be modified, in order to improve cross-border enforcement of financial penalties for road traffic offences detected without stopping the vehicle and identifying the driver on the spot? Particularly, is it necessary to modify the existing EU mutual assistance and recognition procedures in investigation of road traffic offences and the existing EU procedures for mutual recognition of administrative or judicial decisions in the case of non-payment of a financial penalty? If yes, how?

### Task 1c: Legal analysis of cross-border enforcement of driving disqualifications in the EU:

- Why Member States didn't implement the Convention on Driving Disqualifications of 1998?
- Which bilateral and multilateral arrangements/agreements on cross-border enforcement of driving disqualifications are currently in place in the EU? What are the elements and procedures covered by these arrangement/agreements? **How many driving disqualifications** inflicted for road traffic offences committed by non-resident drivers, respectively by vehicles registered in a Member State other than the Member State in which the offence took place, **were recognised/executed/enforced** at EU level in 2018/2019?
- Which offences should be subject to cross-border enforcement of driving disqualifications?
- Which types of driving disqualifications should be applied in cross-border enforcement?
- Which Member States apply demerit/penalty point schemes and virtual driving licences to non-residents? What other similar schemes Member States apply?
- What other elements than those described in Annex I (Chapter 11, Problem 3) of the ToR, would be necessary to ensure effective functioning of cross-border enforcement of driving disqualifications?
- Which cross-border execution of driving disqualifications is procedurally the most feasible/effective (direct or indirect) and under what conditions?
- Which EU legal framework for mutual assistance and recognition in investigation of road traffic offences upon which driving disqualifications are inflicted could be applied? If there is no such framework, what should be the main procedural elements of the mutual assistance?

- Would it be possible to apply (in direct cross-border execution of driving disqualifications) the same EU procedures for mutual recognition of administrative or judicial decisions to enforce the driving disqualification as are currently applied in the case of non-payment of a financial penalty? If not, what should be the main procedural elements of the mutual recognition?
- What is the most appropriate legal tool for cross-border enforcement of driving disqualifications (the CBE Directive or Driving Licence Directive or a special/separate legal act)? If appropriate, how the CBE Directive and Driving Licence Directive would have to be modified to ensure effective application of the driving disqualifications?

Task 1d: Legal analysis of possible extension of the revision scope and proposal of appropriate legal basis:

- What would be the legal consequences of extending the scope of the revision to the offences not directly related to road safety or road traffic as described in Annex I (Chapter 11, Problem 5c) of the ToR?
- In light of possible extension of the revision scope as well as of the mutual assistance and recognition procedures, what would be the most appropriate legal basis (TEFU) for the revision?

Urban vehicle access regulations (UVARs):

- Is it necessary to adopt rules on harmonised operation of urban vehicle access schemes to avoid direct or indirect discrimination on grounds of nationality as mentioned in Annex I (Chapter 11, Problem 5c) of the ToR? How many of existing access schemes are possibly discriminatory?
- Which UVARs-related offences should be subject to cross-border enforcement?
- What vehicle registration data should be exchanged in order to enforce sanctions for UVARs-related offences committed by non-residents, respectively by vehicles registered in a Member State other than the Member State in which the offence took place?
- What software application or system should be used for the vehicle registration data exchange?
- What public and private entities would be involved in the vehicle registration data exchanged? How they should cooperate?
- Comparing with the data exchange under the CBE Directive and EETS Directive, what additional costs (e.g. administrative) would be incurred by cross-border data exchange for UVARs-related offences<sup>48</sup>?
- What legal liability regime (driver vs vehicle owner/holder) and sanctions are predominantly applied to UVARs-related offences in the EU?
- What would be the most appropriate **EU framework legislation** for mutual assistance and recognition procedures (likely under civil matters) in cross-border enforcement of sanctions for UVARs-related offences?

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<sup>48</sup> This question goes beyond a legal analysis. However, stakeholders can provide some qualitative or quantitative information.

- What particular elements/rules of existing EU law on personal data protection has to be applied to cross-border enforcement of UVARs?
- What is the most appropriate legal tool for cross-border enforcement of UVARs (the CBE Directive or EETS Directive or a special/separate legal act)?
- If appropriate, how the CBE Directive and EETS Directive would have to be modified to ensure effective application of sanctions for UVARs-related offences?

Task 1e: Legal analysis of personal data protection rules:

- What particular elements/rules of existing EU law on personal data protection as described in Annex I (Chapter 11, Problem 5d) of the ToR has to be applied to the revision?
- What is the legal impact of the existing EU law on personal data protection in cross-border enforcement of financial penalties and driving disqualifications inflicted for road traffic offences (e.g. on vehicle registration data **exchange accuracy**, their **retention and storage**)?

Remark:

**The Commission may add questions related to the protection of fundamental rights under Task 1b, Task 1c and Task 1e.**

### **Annex III: Indicative list of background documents**

#### **Documents:**

- Evaluation study on the application of Directive 2011/82/EU facilitating the cross-border exchange of information on road safety related traffic offences, Final report, Grimaldi Studio Legale, 2016,
- Commission Staff Working Document on the evaluation of cross-border exchange of information on road traffic offences (SWD (2016) 355 final),
- Report from the Commission to the European Parliament and the Council on the application of Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences (COM (2016) 744 final + Annex),
- Study for Elements of the impact Assessment on the Framework Decision 2005/214/JHA on the Application of the Principle of Mutual Recognition to Financial Penalties (MATRIX Insight, September 2011),
- Proposal for a Directive facilitating cross-border enforcement in the field of road safety, Commission staff working document, COM(2008) 151 final. See also Consultation Paper, Respecting the rules, Better Road Safety Enforcement in the European Union, 6 November 2006; Impact assessment on road safety enforcement and cross-border cooperation, Ecorys Nederland BV, Rotterdam, 16 March 2007,
- Analytical documents of the Commission on mutual recognition of driving disqualifications submitted to the High Level Group on Road Safety on 5 October 2017 and 8 February 2018,
- Ongoing study commissioned by DG JUST on the compliance assessment of Council Framework Decision 2005/214/JHA (JUST/2017/JCOO/FW/CRIM/0096 - 2017/08),
- Ongoing Feasibility Study on improving information exchange under the 'Prüm Decisions' commissioned by DG HOME (the final report is expected to be published in September 2019),
- Best Point Criteria for BEST Practice Demerit POINT Systems, Handbook: Getting the best out of a Demerit Point System (3 deliverables), SWOW (2012),
- Ongoing EP pilot project on Fundamental Rights Review of EU Data Collection Instruments and Programmes (JUST/2015/RPPI/PR/RIGH/0218),
- Handbook on the External Costs of Transport (IMPACT Study 2019),
- Minutes and discussion papers of relevant expert group meetings under DG MOVE competence.

#### **Analytical tools:**

- CARE database<sup>49</sup>,
- SafetyCube – the European Road Safety Decision Support system<sup>50</sup>.

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<sup>49</sup> [http://ec.europa.eu/transport/road\\_safety/specialist/statistics/index\\_en.htm](http://ec.europa.eu/transport/road_safety/specialist/statistics/index_en.htm)  
<sup>50</sup> [www.roadsafety-dss.eu](http://www.roadsafety-dss.eu)

## Annex IV - Requirements regarding the presentation of the survey responses

**Contractors shall follow guidance below when reporting stakeholder responses from open public and targeted consultations** (in consultation summary documents, in deliverables of external support studies).

- Contractor to report stakeholder responses split by stakeholder group and to also analyse their responses in view of their incentives;
- Contractor to report responses of stakeholder groups together with those of their associations. E.g. *"5 out of 26 airlines and 3 airline associations supported the measures. Four pilot associations believed that..." (but not "5 out of 26 airlines supported the measures. The views of 7 associations were mixed, with 3 of them supporting the measures, while 4 did not")*;
- Contractor to make explicit whether the survey received any "coordinated answers"/any campaigns (e.g. in the OPC);
- Contractor to report on OPC responses, where responses were (very) similarly worded, including how many contributions were submitted for each. *(Please note that, in a non-representative survey such as the OPC, one campaign with 100 x 1 response provides the same evidence as 1 original response; focus on content of response)*;
- Contractor to always report the views of the main **European organisations** (e.g. sectoral social dialogue committees);
- Contractor to report views of **national authorities** by adding **countries in a footnote**. E.g. "In the course of the consultation 31 enforcement authorities considered that the impact of the enforcement measures...." ; FN: "<sup>1</sup> FR, DE, PT");
- Contractor to not forget to report and analyse the **minority view**. (Why did these respondents not support mainstream view?);
- Contractor to report the **counts** (absolute numbers), **rather than percentages**.
  - Avoid spurious accuracy and do not mislead readers. Keep in mind that the number of original responses per stakeholder group is usually small and that the sample of respondents is **not representative**.
  - **Present results primarily in absolute values** (count of responses).
  - Mention **percentages only where the number of responses in the stakeholder group > 100**.
  - In **graphs** where percentages are shown also **always mention the count**.  
E.g. *"17 out of 26 suppliers that participated in the survey considered that the measures are likely to...."* (**and not:** *"65% suppliers considered that the measures are likely to...."*) AND *"In the course of the consultation 107 out of 200 hauliers (54%) considered that the impact of the enforcement.*

## 1. Annex V - Summary of costs and benefits

<b>I. Overview of Benefits (total for all provisions) – Preferred Option</b>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<b>Direct benefits</b>		
e.g. Compliance cost reductions		
e.g. Reduced air pollution emissions		
<b>Indirect benefits</b>		

- 1) Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together);
- 2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section;
- 3) For reductions in regulatory costs, please describe details as to how the saving arises (e.g. reductions in compliance costs, administrative costs, regulatory charges, enforcement costs, etc.; see section 6 of the attached guidance).

<b>II. Overview of costs – Preferred option</b>							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
<b>Action (a)</b>	Direct costs						
	Indirect costs						
<b>Action (b)</b>	Direct costs						
	Indirect costs						

- 1) Estimates to be provided with respect to the baseline;
- 2) Costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified;
- 3) If relevant and available, please.