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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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2021/0013 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the Group of Experts on the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) and in the Working Party on Road Transport of the United Nations Economic Commission for Europe

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Group of Experts on the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) of the United Nations Economic Commission for Europe (UNECE) and in the UNECE Working Party on Road Transport (SC.1) in connection with the envisaged amendment to the AETR, for the inclusion of the technical specifications on the smart tachograph in the Agreement.

Following the discussions in the Group of Experts on the AETR and the entry into force of Regulation (EU) 2020/1054[1], which includes revised rules on the tachograph, it is necessary to establish the position to be taken on behalf of the Union in view of the next sessions of the Group of Experts on the AETR and of the UNECE Working Party on Road Transport (SC.1).

2. CONTEXT OF THE PROPOSAL

2.1. The AETR

The European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) aims to harmonise the legislative framework of Contracting Parties to the Agreement as regards driving and rest times for professional drivers, as well as the corresponding technical requirements for the construction and installation of the tachograph. The AETR entered into force on 5 January 1976. It was subsequently amended, most recently on 20 September 2010.

All Member States are parties to the Agreement.

2.2. The Group of Experts on the AETR and the Working Party on Road Transport

The Group of Experts on the AETR is a technical and informal group that has been set up by the Inland Transport Committee of the UNECE with the objective to develop amendment proposals to the Agreement.

The Working Party on Road Transport (SC.1) is a group set up by the Inland Transport Committee, which promotes the development and facilitation of international road transport by road, by harmonising and simplifying the rules and requirements related to road transport.

The formal adoption of proposals for amending the AETR is carried out in accordance with Article 21 of the Agreement, according to which any Contracting Party may propose amendments to the Agreement. The proposals must be submitted to the Secretary-General of the United Nations. Contracting Parties have thereafter a period of six months to object

[1] Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ L 249, 15.7.2020, p. 1)

against the proposal. The proposal is deemed to be adopted if no Contracting Party objects to those amendments.

In practice, all proposals for amending the AETR are first discussed and agreed upon in the SC.1, before the amendments are submitted to the Secretary-General of the United Nations by one of the Contracting Parties. When the proposal consists of amendments to Appendices 1, 2 or 3 to the Annex to the Agreement, or to the introductory articles of Appendix 1B to the Agreement, the proposal requires adoption by the SC.1 by simple majority of the Contracting Parties present and voting, as set out in Article 22, Article 22 *bis* and Article 22 *ter* of the Agreement.

2.3. Need for a Council Decision

The EU position established by Council Decision (EU) 2016/1877[2] included the following elements:

– Deletion of Article 22*bis* of the AETR which provides for the automatic application of the tachograph specifications to the AETR , and replacing it with the procedure set out in Article 22 of the Agreement. The procedure set out in Article 22 would be slighltly amended to avoid that amendments to the tachograph specifications can be opposed by only one third of the Contracting Parties;

– Amendment of Article 14 of the Agreement to allow for the accession of the EU to the Agreement;

– Amendment of Article 10 of the Agreement to include a reference to Regulation (EU) No 165/2014 of the European Parliament and of the Council[3] and to Annex 1C to Regulation (EU) 2016/799[4] setting out the technical specifications of the smart tachograph.

Additionally, on 19 November 2018, the Council adopted Decision (EU) 2018/1926[5] on the position to be taken, on behalf of the European Union, on the implementation of TACHOnet by the non-EU Contracting Parties to the AETR, based on the technology "e-Delivery".

It is necessary that a new EU position is established in view of the next meetings of the Group of Experts on the AETR and of the Working Party on Road Transport of February 2021 and October 2021, respectively. This new position needs to take account of the

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[2] Council Decision (EU) 2016/1877 of 17 October 2016 on the position to be adopted, on behalf of the European Union, in the Group of Experts on the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR), and in the Working Party on Road Transport, of the United Nations Economic Commission for Europe (OJ L 288, 22.10.2016, p. 49).

[3] Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p.1)

[4] Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ L 139, 26.5.2016, p. 1)

[5] Council Decision (EU) 2018/1926 of 19 November 2018 on the position to be taken, on behalf of the European Union, in the Group of Experts on the European Agreement concerning the work of crews of vehicles engaged in international road transport of the United Nations Economic Commission for Europe (OJ L 313, 10.12.2018, p. 13).

discussions in the Group of Experts on the AETR since October 2016 and of the entry into force on 20 August 2020 of Regulation (EU) 2020/1054 of the European Parliament and of the Council[6] which amends Regulation (EU) No 165/2014 on the tachograph.

Regulation (EU) 2020/1054 provides that the position of the vehicle is to be recorded automatically, notably every time the vehicle crosses the border of a Member State and when the vehicle performs loading or unloading activities. These new requirements make necessary the development of a new version of the smart tachograph ("smart tachograph version 2") which will have to be installed in newly registered vehicles no more than two years following the adoption of the technical specifications by the Commission, namely no later than August 2023. In addition, the smart tachograph version 2 will have to be fitted not only in newly registered vehicles, but also in all vehicles involved in international transport, no later than three years from the end of the year of entry into force of the technical specifications for the vehicles fitted with an analogue tachograph and a digital tachograph complying with specifications as referred to in Article 3(4) of Regulation (EU) No 165/2014, as amended by Regulation (EU) 2020/1054, and no later than four years after the entry into force of the technical specifications for the vehicles fitted with a smart tachograph as referred to in Article 3(4)a of Regulation (EU) No 165/2014, as amended by Regulation (EU) 2020/1054. These developments in EU law need to be reflected in the discussions in the AETR.

3. STATE OF PLAY – PROGRESS OF THE NEGOTIATIONS

3.1. Implementation of the smart tachograph by the AETR

Since 2016 it has not been possible to progress on the reform of the institutional framework of the Agreement, in particular the amendment of Article 14 to allow for the accession of the EU to the Agreement and the amendment of the rules of adoption of the tachograph specifications in Article 22. These aspects have been so far opposed by the non-EU Contracting Parties to the Agreement.

However, all Contracting Parties to the Agreement, including the Member States, concur on the need to include as soon as possible the technical specifications of the smart tachograph in the Agreement for two reasons. First, the non-EU Contracting Parties to the AETR should comply with the same high-level EU standards in terms of controlling the activity of drivers, through the implementation of the most advanced version of the tachograph. In this context, it should be noted that the vehicles registered in the EU since June 2019 are fitted with a smart tachograph and that version 2 of the smart tachograph will be implemented in newly registered trucks and buses above 3,5 tons no later than August 2023 in accordance with Regulation (EU) 2020/1054 as part of Mobility Package I. Secondly, until the specifications of the smart tachograph are included in the Agreement, non-EU Contracting Parties to the AETR could in principle prohibit the access to their territories of vehicles registered in the EU and equipped with a smart tachograph.

Since 2018 discussions in the Group of Experts on the AETR have therefore focused on the inclusion of the technical specifications of the smart tachograph in the Agreement. A common

[6] Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ L 249, 31.7.2020, p. 1).

understanding has thus been found on the specifications of the smart tachograph and the form under which they should be included in the Agreement.

As a result of this common understanding, on 8 April 2020, Croatia addressed to the UNECE Secretariat, on behalf of the EU, a formal submission for inclusion of the technical specifications of the smart tachograph in the Agreement. This formal submission is based on the technical specifications as adopted by the Commission in its Implementing Regulation (EU) 2016/799, subject to a limited number of adaptations to the AETR context:

– Replacement of the terms "Member States" and "recording equipment" by "Contracting Parties" and "control device", respectively;

– Possibility to limit, according to the national laws in force, the DSRC (dedicated short range communications) transmission power and the data broadcast through the ITS interface;

– Replacement of all references to EU legislation by international references having the same content, such as UNECE Regulations.

In addition, the EN standards referred to in the tachograph specifications should be replaced by ISO standards within a period of five years following the date of entry into force of the smart tachograph specifications in the AETR.

None of the modifications above will impact the interoperability of the smart tachograph and its components.

3.2. Date of application of the specifications of the smart tachograph

While substantial progress has been achieved in the discussions on the substance of the specifications of the smart tachograph, discussions are still being held on the date when these specifications should become mandatory for the non-EU Contracting Parties to the AETR. The Russian Federation requests a transitional period of four years starting from the entry into force of the relevant amendment to the Agreement, i.e. the same period as for the application of the previous versions of the tachograph by the Contracting Parties to the AETR.

Such transitional period would considerably delay the implementation of the smart tachograph by the non-EU Contracting Parties to the AETR. If an agreement is found on the technical specifications of the smart tachograph and on their date of application at the meeting of SC.1 in October 2021, considering the expected time needed for the secretariat of the Group of Experts to prepare the file for adoption of the specifications and the six months adoption procedure set out in Article 22 of the Agreement, it is expected that the specifications would not be adopted and included in the Agreement before June 2022. If the specifications become mandatory four years after the date of entry into force of the amendment, the non-EU Contracting Parties to the AETR would start to install the smart tachograh into vehicles newly registered on their territory not before June 2026, i.e. around 7 years after the EU.

4. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The inclusion of the smart tachograph version 2 in the Agreement will contribute to a better enforcement of the rules on driving and rest times in the AETR area through additional positions of the vehicle being recorded in the tachograph. Considering that all vehicles

registered in the EU will have to be equipped with the smart tachograph version 2 in 2025[7], the inclusion of the specifications of the smart tachograph version 2 in the Agreement will also avoid a situation where vehicles equipped with two different versions of the smart tachograph will continue to circulate for a long period of time on the EU territory.

Considering that the vehicles newly registered in the EU will have to be fitted with the smart tachograph version 2 from around mid-2023 onwards, the EU could accept that the smart tachograph version 2 would be fitted in vehicles newly registered in non-EU Contracting Parties to the AETR no later than the end of 2025. An additional two-year transitional period could be granted to the non-EU Contracting Parties to the AETR to install the smart tachograph version 2 in all vehicles involved in transport operations on the EU territory, i.e. no later than the end of 2027.

At the meeting of the Group of Experts on the AETR in October 2020, the Commission presented the main functionalities of the smart tachograph version 2, and the amendments which are expected to be made to the specifications which were submitted to the UNECE secretariat on behalf of the Union on 8 April 2020 (specifications corresponding to the smart tachograph version 1). Based on the implementing act on the technical specifications of the smart tachograph version 2 to be adopted by the Commission in 2021, the EU will present at a later stage to the AETR - most probably at the meeting of the Group of Experts on the AETR of October 2021 - a revised technical appendix (Appendix 1C) with the technical specifications of the smart tachograph version 2 to be included in the Agreement.

In addition, some aspects of the position to be taken on behalf of the EU set out in Decision (EU) 2016/1877 need to be modified. As far as Article 22 of the Agreement is concerned, the EU position set out in Decision (EU) 2016/1877 provided for a proposal on behalf of the Union for amendments to that Article to, inter alia, provide that amendments are to be accepted if no more than one half of the competent administrations of the Contracting Parties notify the Secretary-General of their objection to the amendments, whereas the AETR currently establishes that one third of the Contracting Parties can oppose an amendment. The amendment suggested by the EU was strongly opposed by the non-EU Contracting Parties to the AETR. Therefore, no change is proposed to the current procedure of Article 22 anymore.

Moreover, and also in connection with the position to be taken on behalf of the EU set out in Decision (EU) 2016/1877, following discussions in the Group of Experts on the AETR, it does no longer appear necessary to delete Article 22 *bis* of the Agreement which will continue to apply to the previous versions of the tachograph.

The amendment of Article 14 of the Agreement to allow for the accession of the EU to the AETR to, which was the subject of Council Decision (EU) 2016/1877, is not affected and the EU will therefore continue to request such amendment.

The EU explained to the Group of Experts on the AETR in October 2020 its preliminary views concerning the smart tachograph and the main additional functionalities. The EU also presented its preliminary views on the dates of implementation of the smart tachograph version 2 in the Agreement. The EU confirmed that a formal EU position would be submitted to the UNECE Secretariat in view of the discussion to take place at the Group of Experts on the AETR of February 2021.

[7] Cfr Article 3(4) and (4)(a) of Regulation (EU) No 165/2014, as amended by Regulation (EU) 2020/1054.

A first draft proposal for the specifications of the smart tachograph version 2 could be presented at the meeting of the Group of Experts on the AETR in February 2021.

5. SUMMARY OF THE PROPOSED AMENDMENTS

5.1 Amendment of Article 10 to refer to the technical specifications of the smart tachograph

Given that the technical specifications of the smart tachograph version 2 will be included as a new Appendix 1C of the Annex to the Agreement, Article 10 should refer to these specifications which are to be considered as complying with the requirements of the Agreement from the date of the entry into force of the relevant amendment to the Agreement.

5.2 Amendment of Article 13 allowing for a transitional period for the implementation of the smart tachograph

Article 13 sets out a four-year transitional period before the technical specifications of the tachograph become mandatory to the Contracting Parties to the AETR. For the smart tachograph version 2, newly registered vehicles should be fitted with the smart tachograph no later than 31 December 2025. Vehicles used in international transport should be fitted with a smart tachograph no later than 31 December 2027.

5.3. Amendment of Article 14 to allow for the accession to the AETR of regional integration organisations

Article 14 limits the possibility of acceding the AETR to States that are members of the UNECE or States that are admitted to the UNECE in a consultative capacity. In order to allow for the accession of the EU, Article 14 must be modified so that regional integration organisations are also eligible for accession to the Agreement.

5.4 Amendment of Article 22 to apply the procedure set out in that Article for the modifications to the technical specifications on the smart tachograph

The procedure set out in Article 22 of the Agreement should also be applied to the smart tachograph version 2 that will be defined in the new Appendix 1C. Article 22 *bis* should remain unchanged in the Agreement and will continue to be applicable to the digital tachograph.

5.5 Inclusion of the technical specifications on the smart tachograph as Appendix 1C to the AETR

The full text of the technical specifications of the smart tachograph version 2 should be included in the Agreement as Appendix 1C of the Annex to the Agreement. The EU proposal for Appendix 1C will be available in 2021. It will be developed on the basis of the specifications that were submitted on behalf of the Union on 8 April 2020 (smart tachograph version 1) and of the EU specifications to be adopted by the Commission in 2021 based on Regulation (EU) 2020/1054.

5.6 Modification of the approval certificate in order to include approvals to the smart tachograh and its components

The approval certificate in chapter III in Appendix 2 must be amended in order to include Appendix 1C, hence the smart tachograph, in the scope of the certificate.

6. LEGAL BASIS

6.1 Procedural legal basis

6.1.1 Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the Agreement[8].

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[9].

6.1.2 Application to the present case

The Working Party on Road Transport (SC.1) is a body set up by the UNECE.

The act which the Working Party on Road Transport is called upon to agree on before the amendments are submitted to the Secretary-General of the United Nations for adoption in accordance with Article 21 of the Agreement, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 14 of the AETR.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

6.2 Substantive legal basis

6.2.1 Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the

[8] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

[9] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

6.2.2. Application to the present case

The main objective and content of the envisaged act relates to transport policy.

Therefore, the substantive legal basis of the proposed decision is Article 91.

6.3 Conclusion

The legal basis of the proposed decision should be Article 91, in conjunction with Article 218(9) TFEU.

7. PUBLICATION OF THE ENVISAGED ACT

It is appropriate to publish the amendments to the Agreement in the *Official Journal of the European Union* after their adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR)[10] entered into force on 5 January 1976. It was last amended on 20 September 2010.

(2) Pursuant to Article 21 of the AETR, proposals of amendments to the Agreement may be submitted by any Contracting Party to the Secretary-General of the United Nations. Before submission to the Secretary-General of the United Nations, the proposals are first discussed in the Working Party on Road Transport ('SC.1') of the United Nations Economic Commission for Europe (UNECE).

(3) It is envisaged that the Group of Experts on the AETR, during its 25th planned session of February 2021, and the SC.1, during its 116th planned session of October 2021, will discuss the amendments to the AETR for the adoption of the smart tachograph.

(4) Article 22*bis* of the AETR provides that changes to Council Regulation (EEC) No 3821/85[11] concerning the digital tachograph are automatically taken over by all Contracting Parties to the AETR without any formal consultation or vote. The lack of participation of the Contracting Parties to the AETR in the process of development and adoption of technical specifications on the digital tachograph has been a major cause of discontent among some of those Contracting Parties. The Commission acknowledges in its communication 'Digital Tachograph: Roadmap for future activities'[12] that this mechanism jeopardises the correct and harmonised implementation of the digital tachograph by non-Union Contracting Parties. It is

[10] OJ L 95, 8.4.1978, p. 1.

[11] Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8).

[12] COM(2011) 454 final.

therefore in the interest of the Union that the decision-making process as regards digital tachographs is modified and to propose in the Group of Experts of the AETR the application of the procedure set out in Article 22(1), (2) and (3), for the inclusion of the technical specifications of the smart tachograph in the AETR. Article 22*bis* should remain in force for possible future amendments to the previous versions of the tachograph.

(5) Article 10 of the AETR provides that a tachograph whose construction, installation, use and testing are carried out in accordance with Regulation (EEC) No 3821/85 is considered to comply with the requirements of the AETR. Article 10 should be amended in order to include a reference to the technical specifications of the smart tachograph, which should be considered as complying with the requirements of the AETR as from the date of entry into force of Appendix 1C of the Annex to the AETR.

(6) The precise date for the implementation of the smart tachograph in the AETR should be set out in Article 13 of the AETR on transitional provisions.

(7) Article 14 of the AETR does not allow for the accession of bodies other than States members of the UNECE and States admitted to UNECE in a consultative capacity. For that reason, in order to allow for an accession of the Union to the AETR, Article 14 should be amended to provide for the accession of regional integration organisations to the AETR.

(8) There are several arguments for the accession of the Union to AETR. Firstly, the Union has exclusive competence in the area of the work of crews of vehicles engaged in international road transport, as confirmed in Case 22/70. Secondly, such an accession would guarantee the effective representation of the Union's interests within the AETR. Finally, the specificities of the AETR and of the proposed decision-making process justify why the Union should be a Contracting Party.

(9) The technical specifications of the smart tachograph to be included in the AETR as Appendix 1C of the Annex thereto should be developed on the basis of the specifications submitted to the Group of Experts on the AETR on behalf of the Union on 8 April 2020 and on the basis of the specifications to be adopted by the Commission in 2021 under Regulation (EU) 2020/1054 of the European Parliament and of the Council[13].

(10) The approval certificate for digital tachographs in Appendix 2, Chapter III, of the Annex to the AETR should be amended so that it can also be used for the approval of smart tachographs and its components.

(11) It is appropriate to establish the position to be taken on the Union's behalf in the Group of Experts on the AETR and in the Working Party on Road Transport in order to achieve a pan-European harmonization in the field of recording equipment in road transport (tachographs).

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[13] Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ L 249, 31.7.2020, p. 1).

(12) The Union's position is to be expressed by the Member States of the Union that are members of the Group of Experts on the AETR and of the UNECE Working Party on Road Transport, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 25th session of the Group of Experts on the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) and in the 116th session of the Working Party on Road Transport of the UNECE shall be in accordance with the proposed amendments to the AETR as set out in the Annex to this Decision.

Formal and minor changes to the position referred to in the first paragraph may be agreed without requiring that position to be amended.

Article 2

1. The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the Group of Experts on the AETR and of the Working Party on Road Transport of the UNECE, acting jointly.

2. The Member States shall communicate the proposed amendments to the Group of Experts on the AETR.

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President