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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) of the United Nations Economic Commission for  
Europe**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### **Evolution of EU and AETR rules**

The European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) was signed by 51 European and Asian frontier countries, with the objective of reducing barriers to international road traffic on goods and passengers through the harmonization of the rules on driving and rest times, including the technical specifications of the tachograph.

This multilateral agreement has been elaborated under the auspices of the Economic Commission for Europe of the United Nations (UNECE). It inspired similar rules within the European Union, namely Regulation (EC) 561/2006<sup>1</sup> on the driving time and rest periods and Regulation (EEC) 3821/85<sup>2</sup> on the recording equipment in road transport.

In 2006 the EU introduced the digital tachograph as its obligatory equipment for monitoring driving times and rest periods, replacing the analogue tachograph, which has been in use since 1985. The AETR Contracting Parties agreed subsequently to introduce the same digital tachograph in their vehicles used in international transport as from 2011. They agreed at this occasion to insert in AETR a new Article 22bis which provides that the specifications of the tachograph, although decided unilaterally by the EU without prior consultation of non-EU Contracting Parties when amending Annex IB of Regulation (EEC) 3821/85, are extended automatically to all AETR Contracting Parties.

#### **Complaints of non-EU AETR Contracting Parties**

In 2009 the Commission adopted Regulation (EU) 1266/2009<sup>3</sup>, which *inter alia* addressed the so-called "one minute issue"<sup>4</sup> (as from 1<sup>st</sup> October 2011) and introduced a second motion sensor (as from 1<sup>st</sup> October 2012). All tachographs fitted in vehicles after these dates were or will be required to comply with the new technical requirements. By virtue of Article 22bis, the non-EU Contracting Parties of the AETR are automatically subjected to these new obligations.

Faced with these developments in the EU, some non EU-AETR Contracting Parties became increasingly discontent with the automaticity of the mechanism of Article 22bis, which they consider unbalanced and inadequate to ensure a harmonised implementation of the digital tachograph. In 2011 they asked the UNECE competent body – the Working Party on Road Transport (SC.1) – to address formally this issue. In response to this request, in September 2011, SC.1 decided to create a Group of Experts on AETR in order to discuss the current situation in AETR and to make proposals for amending the agreement.

At the meeting of the Group of Experts of February 2016 non-EU Contracting Parties and the AETR secretariat raised legal obstacles to the implementation in the AETR area of the

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<sup>1</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, OJ L 102, 11.04.2006, p.1

<sup>2</sup> Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, OJ L 370, 31.12.1985, p. 8

<sup>3</sup> Commission Regulation (EU) No 1266/2009 of 16 December 2009 adapting for the tenth time to technical progress Council Regulation (EEC) No 3821/85 on recording equipment in road transport, OJ L 339, 22.12.2009, p.3

<sup>4</sup> The rounding to 60 seconds in the recording of driving time in case of frequent and short stops.

technical specifications of the "smart" tachograph adopted by the Commission in March 2016 (which shall equip trucks registered from March 2019). In the 12<sup>th</sup> session of the AETR Group of Experts held on 27 June in Geneva, Russia presented a formal proposal modifying the current procedure of implementation of the tachograph specifications in the AETR area. According to this proposal future amendments of the technical specifications of the digital tachograph would be voted in the Working Party on Road Transport of AETR and, as a second step, submitted to the Contracting Parties who could oppose the draft measure within a period of 6 months.

### **Need for a common position of EU in AETR**

The Council adopted, already in 2013, a decision on the position of the Union to be defended in the Group of Experts of AETR<sup>5</sup>. The position included in particular the above mentioned issue, on the application by the AETR Contracting Parties of the specifications for the digital tachograph, and an amendment to the agreement in view of allowing accession of the EU to AETR. Considering the recent discussions in the Group of Experts and the fact that Russia submitted a formal proposal amending AETR, it is necessary that the Council establishes a new EU position in view of the next meeting of the Group of Experts and of the Working Party on Road Transport which will take place on 24 and 25 October 2016.

## **2. PROPOSED AMENDMENTS TO AETR**

### **a. Repeal of Article 22bis and application of the procedure of Article 22**

The provision on the "automatic" application of the tachograph specifications to the AETR Contracting parties should be repealed, and the procedure set out in Article 22 of AETR should be applied for the future amendments of these specifications. The existing procedure should however be slightly amended in order to avoid that amendments to the tachograph specifications can be opposed by only one third of the Contracting Parties.

### **b. Modification of Article 14 to allow for EU accession to AETR**

The rules adopted by AETR are applicable in the EU internal legal order. The EU accession to AETR is necessary to guarantee the harmonised development of the EU legislation and of AETR.

This modification would require to amend Article 14 of AETR to allow the participation of regional integration organisations. The accession itself would have to be done in a second step by a Council decision upon Commission proposal.

### **c. Modification of Article 10 to refer to the new EU Regulation on the basis of which the specifications of the smart tachograph were adopted and insertion of a new technical annex on the specifications**

The inclusion, through an amendment to Article 10 AETR, of a reference to Regulation (EU) No 165/2014 and to the Annex IC to Regulation (EU) 2016/799 setting out the technical specifications on the new smart tachograph, will ensure that the latest technological developments introduced by the EU legislation in the field of the digital tachograph are also taken on by the AETR Contracting Parties. Amendment of Article 10 should go along with the introduction in the AETR of a new Appendix on the specifications of the smart tachograph.

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<sup>5</sup> Council Decision 5826/13 of 15 February 2013

### **3. New article 10bis - Interconnection of national registers on driver cards**

To make possible the exchange of information on driver cards, the Commission developed and successfully implemented TACHOnet, an IT application allowing the interconnection of national registers for driver cards, to verify across Europe the uniqueness of such cards, in view of preventing frauds. The legal basis for TACHOnet is Regulation (EU) No 165/2014. The Group of Experts of 28 February 2014 already agreed to include an Article 10bis obliging Contracting Parties to electronically exchange information on driver cards, as it is currently applied in the EU. However, Article 10bis has not yet been incorporated in the Agreement since no Contracting Party took the initiative to communicate the corresponding amendment to the Secretary-General of the United Nations. In accordance with the duty of sincere cooperation set out in Article 4(3) TUE, this communication should be carried out under the procedure described in Article 21(1) of the AETR.

### **4. LEGAL ELEMENTS OF THE PROPOSAL**

Article 218(9) TFEU establishes that *“The Council, on a proposal from the Commission (..), shall adopt a decision (...) 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.”*

Regarding the applicability of Article 218(9) TFEU, the procedure therein must be respected once the conditions provided therein are fulfilled. These conditions are: (a) the relevant area falls under Union competence, (b) the Union position is expressed in a body set up by an international agreement, when that body is called upon to adopt (c) acts having legal effects. It has been clarified by the jurisprudence that Union membership in the relevant body is not a pre-requisite for Article 218(9) TFEU to apply.

Currently, all EU Member states are contracting Parties to AETR. Regulation (EC) n° 561/2006 establishes that AETR should continue to apply to the carriage by road of goods and passengers by vehicles registered in any Member State or any country which is a contracting party to the AETR, for the whole of the journey where that journey is between the Union and a third country other than Switzerland and the countries which are contracting parties to the Agreement on the European Economic Area or through such a country.

The legal basis of the proposed Council Decision is Article 91 TFEU in conjunction with Article 218(9) TFEU.

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) of the United Nations Economic Commission for Europe**

(Text with EEA relevance)

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) In its judgment of 31 March 1971 *AETR*, case 22/70, the Court of Justice recognized that the area of the work of crews of vehicles engaged in road transport is an exclusive external competence of the Union. This competence has been exercised since then in numerous acts of law adopted by the Union legislator, namely in Regulations (EC) No 561/2006 of the European Parliament and of the Council<sup>6</sup> and (EU) No 165/2014 on tachographs in road transport<sup>7</sup>. Since the subject matter of the AETR falls within the scope of Regulation 561/2006, the power to negotiate and conclude the Agreement lies with the Union.
- (2) A Group of Experts has been established by the United Nations Economic Commission for Europe in the framework of the AETR. It is a body which is empowered to develop and submit proposals for amending the AETR, including its Article 22bis.
- (3) The next meeting of the Group of Experts on AETR will take place on 24 October 2016 and the meeting of the Working Party on road transport will take place on 25 October 2016. On that occasion the Group of Experts and the Working Party plan to examine proposals made by the Contracting Parties which, if accepted by the Group of Experts, may lead to an amendment of AETR, after a procedure for the revision of AETR is launched and concluded. This will produce legal effects as referred to in Article 218 (9) TFEU.
- (4) Once the proposals are accepted by the Group of Experts, as a second step, the EU Member States as Contracting Parties of AETR are under an obligation to cooperate in

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

<sup>7</sup> Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs 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.)

order to engage the mechanism for the revision of the AETR, in accordance with Council Regulation (EEC) 2829/77<sup>8</sup> and in line with the duty of sincere cooperation pursuant to Article 4(3) TEU, subject to a Council decision in accordance with Article 218(6) as appropriate. The proposed amendments to the AETR will become effective only once the revision of the AETR is completed.

- (5) In order to achieve a pan-European harmonization in the field of recording equipment in road transport (tachographs), it is necessary that a unique decision-making process is put in place. Such a process should take into account the interests of the Union and those of third countries which are Contracting Parties to the AETR.
- (6) Article 22bis of the AETR provides that changes to Council Regulation (EEC) No 3821/85 concerning the digital tachograph are automatically taken over by all AETR Contracting Parties, without any formal consultation or vote. The lack of participation of AETR Contracting Parties 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's communication "Digital Tachograph: Roadmap for future activities"<sup>9</sup>, acknowledges that this mechanism jeopardises the correct and harmonised implementation of the digital tachograph by non-EU Contracting Parties. It is therefore in the interest of the Union to modify the decision-making process as regards digital tachographs and propose in the Group of Experts the deletion of Article 22bis, and the application of the procedure set out in paragraphs 1 to 3 of Article 22 for the amendment of the technical specifications of the digital tachograph.
- (7) Considering that any amendments to the digital tachograph specifications should not affect the principles and functioning of the AETR since they should only be subject to regular updates taking into account technological developments, the number of the Contracting Parties which may notify their objection to those amendments should be increased from one third to at least one half.
- (8) Several arguments speak up 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 road transport, as confirmed by the Court of Justice in its judgment 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 the Contracting Party in place of the Member States.
- (9) Article 14 of the AETR does not allow 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 AETR, an amendment to Article 14 should be proposed providing for the accession of regional integration organisations to AETR.
- (10) Article 10 of the AETR prescribes that a tachograph whose construction, installation, use and testing are carried out in accordance with Council Regulation (EEC) No 3821/85 is considered to comply with the requirements of the AETR. This principle applies to any modification of the tachograph specifications, irrespective of whether

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<sup>8</sup> Council Regulation (EEC) 2829/77 of 12 December 1977 on the bringing into force of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR), OJ L 334, 24.12.1977, p. 11.

<sup>9</sup> COM(2011) 454 final

they are adopted on the basis of Regulation (EEC) No 3821/85 or another legal act. It therefore applies to Regulation (EU) No 165/2014 which repealed and replaced Council Regulation (EEC) No 3821/85, as well as to Commission Implementing Regulation (EU) No 2016/799 laying down the technical specifications for the new smart tachograph<sup>10</sup>. For those reasons Article 10 of the AETR should be amended in order to include the references to Regulation (EU) No 165/2014 and Commission Implementing Regulation (EU) No 2016/799, which shall be applicable as from 15 June 2019 instead of Council Regulation (EU) No 3821/85. In addition, a new annex should be incorporated in the AETR containing the provisions of Commission Implementing Regulation (EU) No 2016/799 and any other subsequent adaptations to the technical progress .

- (11) The approval certificate for digital tachographs annexed to the AETR should be modified so that it can also be used for the approval of smart tachographs and its components.
- (12) In view of the above, it is necessary to adopt this Decision defining the Union position 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,

HAS ADOPTED THIS DECISION:

#### *Article 1*

- (1) The position of the 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 shall be in accordance with the Annexes to this Decision and shall be expressed by the Member States which are members of the AETR, acting jointly in the interest of the Union.
- (2) The Member States shall communicate the proposed amendments to the Group of Experts.
- (3) Formal and minor changes to this position may be agreed without requiring that position to be amended.

#### *Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council  
The President*

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<sup>10</sup> OJ L 139, 26.5.2016, p. 1.