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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union**

**concerning the**

**Council's position at the first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on tachographs in road transport, repealing Council Regulation (EC) No 3821/85 on recording equipment in road Transport and amending Regulation (EC) No 561/2006 of the European Parliament and the Council on the harmonisation of certain social legislation relating to road transport**

(Text with EEA relevance)

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**1. BACKGROUND**

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2011) 451 final – 2011/0196(COD):	19/07/2011
Date of the opinion of the European Committee of Regions:	No opinion
Date of the opinion of the European Economic and Social Committee:	07/12/2011
Date of the position of the European Parliament, first reading:	03/07/2012
Date of adoption of the Council's political agreement in view of a Council's position at first reading:	29/10/2012
Date of adoption of the Council's position at first reading:	15/11/2013 (?)

**2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION**

The Commission submitted to the Council and the European Parliament the above-mentioned proposal on 19 July 2011. The proposal amends Council Regulation 3821/85 of 20 December 1985 on recording equipment in road transport. This proposal also amends Regulation 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. The Communication from the Commission - "Digital tachograph: Roadmap for future activities" - accompanies the above-mentioned proposal and was transmitted in parallel to the European Parliament and to the Council.

The proposal introduces a number of technological improvements to the digital tachograph such as a satellite positioning function (GNSS), a remote communication function for enforcement filtering purposes and an ITS interface to make possible the use of data from the digital tachograph in on-board computers for other purposes than the control of driving times.

This new generation of tachographs ('smart tachographs') is foreseen to be introduced in 2018 - 2019.

The revision also improves other aspects such as laying down new rules to improve the trustworthiness of workshops, to exchange information between Member States on the cards issued to drivers (TACHOnet system), to personalise the cards by merging them with the driving licence, rules on the training of enforcers and on the harmonisation of sanctions. Finally, it applies the same radius of 100 km for all distance-based exemptions to the rules on driving times that Member States can introduce (in Art. 13 of Regulation 561/2006).

The European Data Protection Supervisor issued an opinion on the Commission's proposal on 5 October 2011. The opinion of the Economic and Social Committee was issued on 7 December 2011 and the Committee of the Regions decided not to draw up an opinion or report.

The European Parliament's Committee on Transport and Tourism appointed Ms Silvia-Adriana Ticău (RO, S&D) as rapporteur. The vote in Plenary took place on 3 July 2012. See **SP(2012) 449/2**.

The Council reached a political agreement on this file on 29 October 2012, under Cypriot Presidency.

### **3. COMMENTS ON THE POSITION OF THE COUNCIL**

#### **3.1. General comments on the position of the Council**

In general, the Commission welcomes positively the position of the Council at first reading, as this position is in line with the main objectives of the Commission's initial proposal, namely to increase the security of the tachograph system (reducing fraud and the manipulation of the tachograph), to reduce administrative costs and to improve the efficiency of the control of the system. The Council's amendments were introduced as a result of further analysis on the expected impact of some of the measures proposed by the Commission, and reflect the importance attached by Member States to the application of the most cost-efficient measures, to the need to reinforce the protection of personal data in the Regulation and to the clarification of the provisions on the technical and functional requirements of the tachograph. The Council's amendments were discussed at length and were endorsed by the Commission.

Without opposing the adoption of the final text resulting from negotiations between the co-legislators, the Commission will however make statements on three points on which it repeatedly voiced its disagreement during the negotiations. These statements are attached.

#### **3.2. Detailed Commission comments**

##### *3.2.1. Nature of the legal act (delegated acts/implementing acts)*

In order to adopt the technical specifications of the future smart tachograph, the Commission proposed that the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adaptation of Annexes I, IB and II to technical progress and the supplementing of Annex IB with the technical specifications necessary for the automatic recording of the location data, for enabling remote communication and for ensuring an interface with Intelligent Transport Systems (Articles 4, 5, 6 and 38 of the Commission proposal).

As a result of negotiations with the Parliament, the co-legislators decided to include the main technical requirements from the above Annexes in the text of the Regulation, on the basis of which the Commission should establish relevant detailed provisions through implementing

acts at a later stage to ensure uniform application throughout the EU Member States. Provisions on definitions, on technical requirements and data to be recorded, on the functions of the digital tachograph and on display and warning signals, were therefore added to the text of the Regulation, with which the Commission agrees. Throughout the negotiations, the Commission maintained the necessity of use of delegated acts.

The Commission will not oppose the adoption of the text as agreed by the co-legislators. Nevertheless, the Commission will recall in a statement (attached) that the question of delimitation between Articles 290 and 291 TFEU is currently under examination by the Court of justice in the "biocides" case."

### 3.2.2. *Technical amendments*

The Commission accepts the amendments agreed between the Council and Parliament on the following technical issues :

(a) Recording of location data (Article 8)

The Commission welcomes the recording of location points every three hours of accumulated driving time in order to improve compliance by professional road transport drivers with the legislation in force.

(b) Equipment of control officers with the remote early detection technology (Article 9)

After 15 years following the introduction of the smart tachograph, Member States will have to equip their control authorities to an appropriate extent with remote equipment, also taking into account the national enforcement strategies of Member States. Until that date, it will be optional to equip the control authorities with the remote access technology.

(c) Interface with Intelligent Transport Systems (Article 10)

The Council considered it crucial to keep a sufficient degree of flexibility so that transport undertakings remain able to choose whether or not to connect the tachograph to external devices. Therefore, the Council provided that tachographs may be equipped with standardised interfaces allowing the data recorded or produced by tachograph to be used by an external device, subject to certain conditions. In addition, the Council's text clarifies that the access to personal data by an external device connected to the interface can only be given after the explicit consent of the driver to which the data relates.

The Commission accepted the above amendments as a step in the right direction but warned the co-legislators that rendering the ITS interface optional was significantly reducing the intention of the initial proposal.

(d) Inclusion of weight sensors in the smart tachograph (Recital 6)

Like the Council, the Commission did not share the Parliament's assessment that there is a direct link between the inclusion of weight sensors in the smart tachographs and an improved control of driving and resting times. Therefore, the Commission is satisfied with the insertion in the text of a recital only, referring in general terms to a future assessment to be made by the Commission concerning the potential for weight sensors to contribute to an improved compliance of road transport legislation.

(e) Tachograph driver cards for non-resident drivers (Article 26 paragraph 4)

The Commission agrees with the new provision which allows Member States to issue, under restrictive conditions, temporary and non renewable driver cards for a

maximum period of 185 days. This new provision offers a practical solution to an operational problem as it covers the situation of those drivers from non-EU and non-ERTA (European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport) countries performing occasional transport operations in the EU, or of those drivers holding EU citizenship, but who lost their residence status in the EU and consequently face difficulties in obtaining a regular driver card.

(f) Retrofitting of vehicles with digital tachographs (Article 3 paragraph 4)

The Commission did not include any provisions on the retrofitting of vehicles with the smart tachographs in its original proposal, but can accept the principle of retrofitting as agreed to in this position given the practical implications should be manageable.

3.2.3. *Non-technical amendments related to the functioning of the tachograph system*

(a) Elimination of the requirement for drivers to present forms attesting to their activities while being away from the vehicle (Article 34 paragraph 3 in fine).

The Commission supports this provision as it further reduces administrative burden.

(b) Proper equipment and training of control officers (Articles 38 and 39)

The Commission accepts the outcome of negotiations between co-legislators on this point.

The Commission agreed to this position and following the adoption of the Regulation will adopt measures, specifying the content of the initial and continuing training of control officers. This content shall be included in the training delivered to control officers in the Member States.

(c) Reinforcing the trustworthiness of workshops (Article 24)

The Commission agrees to the reduction in the frequency of the regular audits of the procedures applied by the workshops when handling the tachograph from one to two years, as the Commission's initial proposal of 10% for the unannounced technical audits of workshops and one year period of validity of the workshop card was maintained.

3.2.4. *Non-technical amendments related to data protection provisions, infringements and date of entry into force*

(a) Reinforcement of data protection (Article 7)

The Commission agrees with the new provisions on protection of personal data..

(b) Harmonisation of infringements and penalties (Article 41)

The Commission accepts the outcome of negotiations between co-legislators on this point.

(c) Responsibility of transport undertakings (Article 33)

The Commission accepts the outcome of negotiations between co-legislators on this point.

(d) Entry into force (Article 48)

The Commission accepts the outcome of negotiations between co-legislators on this point. The smart tachograph would be required - for vehicles registered for the first time - 40 months after the entry into force of the technical specifications for smart

tachographs. The Commission intends to establish those specification at the latest within two years after the publication of the new Regulation.

3.2.5. *Amendments to Regulation 561/2006 on the harmonisation of certain social legislation relating to road transport*

The Commission welcomes the fact that its proposed amendments to Article 13(1) of Regulation 561/2006, which allows Member States to grant exemptions from the provisions of the Regulation within a radius of 100 km radius from the base of the undertaking, subject to certain conditions, were kept and agrees with the introduction of the so-called "craftsmen exemption" in Article 3 of Regulation 561/2006, which defines the scope of that Regulation.

#### **4. THE COMMISSION'S CONCLUSION**

The present proposal is particularly important to reach the objectives set out in its communication "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system" adopted on 28 March 2011.

Despite the weakening of several provisions, the Commission considers that the Council's position still reflects the main objectives of its proposal and therefore believes that the legislative process should be concluded with the vote by the European Parliament of its early second reading position, which following the results of the informal trilogue of 14 May 2013, should coincide with the Council position.

## **COMMISSION STATEMENTS**

### **1) Commission statement concerning Regulation (EC) 561/2006**

In order to ensure an effective and uniform implementation of the legislation on driving times and rest periods, the Commission will continue to monitor closely the implementation of that legislation and, where necessary, take the appropriate initiatives.

### **2) Commission statement concerning implementing acts**

The Commission considers that the future acts, which the Commission has been given the power to adopt by the legislative act in order to set out the detailed provisions and specifications for the tachograph, tachograph cards and record sheets, as well as the type approval requirements, aim at supplementing the technical specifications set out in the basic act and should therefore be delegated acts to be adopted on the basis of article 290 TFEU. The Commission will not stand against the adoption of the text as agreed by the co-legislators. Nevertheless, the Commission recalls that the question of delimitation between Articles 290 and 291 TFEU is currently under examination by the Court of justice in the "biocides" case."

### **3) Commission statement concerning the use of Article 5 (4) subparagraph 2 letter b) of Regulation 182/2011**

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5 § 4, subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5 § 4 recourse to subparagraph 2, point b), cannot be simply seen as a "discretionary power" of the legislator, but must be interpreted in a restrictive manner and thus must be justified.

While the Commission notes the agreement reached by the European Parliament and the Council on the recourse to this provision it regrets that such justification is not reflected in a recital.