



**COUNCIL OF
THE EUROPEAN UNION**

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“I/A” ITEM NOTE

from: General Secretariat of the Council
to: Coreper/Council

N° Cion prop.: 15015/12 TRANS 336

Subject: 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

1. The Commission submitted the above-mentioned proposal for a Council Decision on 12 October 2012 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.
2. In order to reflect the discussions at Working Party level, the Irish Presidency prepared a compromise text which all delegations could accept. The new text appears in **bold** and ~~strikethrough~~.
3. In the light of the above, Coreper is invited to approve this text and to endorse the recommended EU position, so that it can be presented at the AETR Group of Experts meeting which will take place in Geneva on 25 February.

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 90, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

After having informed the European Parliament,

Whereas:

- (1) As stated by the Court of Justice¹ the area of the work of crews of vehicles engaged in road transport is an exclusive external competence of the European Union. This competence has been exercised internally notably by the adoption of Council Regulation (EEC) No 543/69 of 25 March 1969 on the harmonization of certain social legislation relating to road transport², Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport³, Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport⁴ and more recently by Regulation (EC) No 561/2006 of the European Parliament and of the Council⁵. 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. The rules in the area of the work of crews of vehicles engaged in road transport with third countries, including the rules on the recording equipment used to ensure their compliance, are a matter falling both under the EU Regulations and under the AETR agreement. It is imperative that these rules are harmonized;
- (2) The particular circumstances in which the AETR negotiations took place warrant, by way of exception, a procedure whereby the Member States of the Union individually deposited the instruments of ratification or accession in a concerted action but nonetheless acted in the interest and on behalf of the Union;
- (3) **In the framework of the AETR Agreement, the Group of Experts on the European agreement concerning the work of crews of vehicles engaged in international road transport ("Group of Experts") has been established by the United Nations Economic Commission for Europe, as a body which should aim at developing proposals for amending AETR Agreement, and in particular its Article 22bis.**

¹ Judgment of the Court of Justice of 31 March 1971, AETR, Case 22/70.

² OJ L 77, 29.3.1969, p.49.

³ OJ L 370, 31.12.1985, p. 1.

⁴ OJ L 370, 31.12.1985, p. 8.

⁵ OJ L 102, 11.4.2006, p. 1.

- (3a) The next meeting of the ~~Expert~~ **Group of Experts** will take place on ~~3 December 2012~~ **25 February 2013**. On that occasion the ~~expert~~ **Group of Experts** will possibly examine proposals **made by Contracting Parties** which, **if they are 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, T**the EU Member States as Contracting Parties of AETR are under an obligation to cooperate in order to engage the mechanism for the revision of the AETR Agreement ~~established in particular in its Article 21~~, in accordance with 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)⁶ and in line with the duty of sincere cooperation pursuant to Article 4 (3) TEU; **subject to a possible separate Council decision in accordance with Article 218 (6) as appropriate. The proposed amendments to the AETR Agreement will become effective only after the revision of the AETR agreement is concluded.**
- (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, which takes into account the prerogatives of the European Union and the interests of third countries which are Contracting Parties to the AETR Agreement;

⁶ OJ L 334, 24.12.1977, p. 11.

- (6) Article 22bis of the AETR Agreement currently 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 before the adoption of the changes by the European Union. As outlined in the Commission's communication "Digital Tachograph : Roadmap for future activities"⁷, the current mechanism jeopardises the correct and harmonised implementation of the measures introduced in the proposed revision of Council Regulation (EEC) No 3821/85 and the digital tachograph by non-EU Contracting Parties. It is therefore in the interest of the European Union to improve the decision-making process as regards digital tachographs and AETR and **propose in the Group of Experts to amend accordingly Article 22bis, by creating, in the framework of United Nations Economic Commission for Europe (UNECE), an Administrative Committee that would define the technical specifications of the tachograph for the entire AETR area.**
- (7) The specificities of the AETR Agreement and of the envisaged decision making process in its newly created committee under Article 22bis in addition to the fact the European Union has exclusive competence in the area of the work of crews of vehicles engaged in road transport ~~justifies~~ **would justify** the accession of the European Union to AETR, which would also be in line with the AETR Court ruling in the case 22/70 and would also guarantee the effective representation of the EU's interests in the UNECE proceedings. After its accession, **which would require a Commission proposal to be submitted in accordance with Article 218 (6)**, the Union's position adopted by the Council, in accordance with Article 218 (9) TFEU will be expressed by the Commission on behalf of the EU who will exercise in the Administrative Committee the votes of all Member States. **Such an accession should not constitute a precedent as regards any future accession of the EU to other international organisations.**

⁷ COM(2011) 454 final

- (8) Currently Article 14 of AETR does not open the accession to AETR to 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 the future** accession of the European Union to AETR **an amendment to Article 14 should be proposed to the Group of Experts, to provide for the accession** of regional integration organizations ~~are able to accede~~ to AETR, **following the succesful revision of the AETR.**
- (9) In order to effectively implement Requirement 268a of Annex IB of Regulation 3821/85 and, to ensure a more effective scrutiny and control of driver cards in the AETR area, and to facilitate the task of control officers, national electronic registers should be established and provision made for the interconnection of those registers. The provisions for the interconnection should be established respecting the internal security requirements of the Contracting Parties and ensuring an adequate level of protection of personal data exchanged, in line with the highest international standards. **Amendments to that effect should be proposed to the Group of Experts.**

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) shall be in accordance with the Annexes to this Decision and shall be expressed by the Member States which are members of AETR, acting jointly in the interest of the Union.

The Member States **exercising the Presidency of the Council of the EU** shall communicate these proposed amendments to the **Group of Experts on the European agreement concerning the work of crews of vehicles engaged in international road transport Secretary-General of the United Nations**, in accordance with the procedure described in Article 21 (1) of AETR.

(2) Formal and minor changes to this position may be agreed without requiring that position to be amended.

Article 2

This decision is addressed to the Member States.

This Decision shall enter into force on [....].

Done at Brussels,

For the Council

The President

ANNEX I

Possible wording of Article 22 bis (Procedure for the amendment of Appendix 1B)

Article 22 bis is replaced by the following Article:

1. An Administrative Committee shall be established which shall be responsible for deciding on amendments to Appendix 1B of the present Agreement. The Administrative Committee shall be composed of all the Contracting Parties to the Agreement.
2. The administrative Committee shall be based in Geneva. Its sessions shall normally be held in Geneva. The Committee may decide to hold sessions in other locations.
3. The Executive Secretary of the United Nations Economic Commission for Europe shall provide the Committee with appropriate secretarial services.
4. The Committee shall elect a chair and two vice-chairs every two years.
5. The Secretary-General of the United Nations shall convene the Administrative Committee under the auspices of the United Nations Economic Commission for Europe when needed and in any case once per year.
6. Any Contracting Party may propose amendments to Appendix 1B of the present Agreement. Any amendment proposal shall be submitted to the Secretariat of the Economic Commission for Europe, in writing, 3 months before the meeting of the Administrative Committee at which it is proposed for adoption. The text of any proposed amendment shall be communicated in the three ECE languages to all Contracting Parties at least one month before the meeting of the Administrative Committee at which it is proposed for adoption.

7. A quorum of not less than one half plus one of the Contracting Parties shall be required to be present for the Administrative Committee to be able to adopt decisions. For the determination of the quorum Regional Integration organizations, being Contracting Parties to this Agreement, vote with the number of votes of their Member States without their presence in the vote being necessary.
8. The Administrative Committee shall adopt decisions by majority vote of those Contracting Parties present and voting.
9. For the purpose of taking decisions, each Contracting Party shall have a vote. The representative of a Regional Integration organization Contracting Party to the Agreement delivers the votes of its constituent Member States without being their presence in the vote necessary, **as referred to in Article 14(1)a.**
10. If a proposal for the amendment of Appendix 1B to this Agreement leads to the amendment of other articles or annexes of the Agreement, the amendments to the Appendix cannot enter into force before entry into force of amendments relating to other parts of the Agreement. If, in such a case, the amendments to Appendix 1B are presented simultaneously with the amendments relating to other parts of the Agreement, the date of their entry into force shall be determined by the date established pursuant to application of procedures, which are described in general in Article 21, taking into account the date specified in the amendment to Appendix 1B, in the case envisaged by paragraph 7 of this aArticle.
11. **The amendment of Article 22bis shall enter into force once at least one Regional Integration organisation has become contracting party to the Agreement.**

ANNEX II

Possible wording of Article 14 (Accession to AETR of regional integration organizations)

Article 14 is modified as follows:

Paragraph 1a is inserted:

This Agreement shall also be open for signature by regional integration organizations. For the purpose of this Agreement, a "regional integration organization" means any organization which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Agreement and has been duly authorized to sign and to ratify, accept, approve or accede to this Agreement

For the purposes of amending Appendices 1, 1B, 2 and 3, the representative of a Regional Integration Organisation Contracting Party to the Agreement delivers the votes of its constituent Member States without their presence being necessary in the vote.

Paragraph 5 is modified as follows:

5. In respect of each State or regional integration organizations which ratifies, or accedes to, this Agreement after the deposit of the eighth instrument of ratification or accession as referred to in paragraph 4 of this Article, the Agreement shall enter into force one hundred and eighty days after the deposit by that State or regional integration organization of its instrument of ratification or accession.

ANNEX III

Possible wording of a new Article 10bis

1. In order to ensure that drivers do not already hold a valid driver card in the sense of Appendix 1B of the Annex to the Agreement, Contracting Parties shall maintain national electronic registers containing the following information on driver cards for a period at least equivalent to their period of validity:

- Surname and first name of the driver
- Birth date and, if available, place of birth of the driver
- Driving licence number and country of issue of driving licence (if applicable)
- Status of the driver card
- Driver card number

2. Contracting Parties shall take all necessary measures to ensure that the electronic registers are interconnected and accessible throughout their territories to card issuing authorities and control officers appointed to check the compliance with the rules on driving time and rest periods of professional drivers.

3. When issuing, replacing and, when necessary, renewing a driver card, Contracting Parties shall verify through electronic data exchange that the driver does not already hold another valid driver card. Contracting Parties shall ensure an adequate level of protection of the personal data exchanged, in line with the highest international standards. This shall include that the data exchanged be limited to the data necessary for the purpose of this verification and not used for any other purpose without the prior authorisation of the Contracting Party providing the personal data.