



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	General Secretariat of the Council
to:	Delegations
No. prev. doc.:	11433/12 TRANS 211 CODEC 1680
No. Cion prop.:	13195/11 TRANS 222 CODEC 1274
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and the Council - Examination of the recitals

Following the adoption of the general approach on the articles of the above mentioned Regulation on 26 June 2012 and with a view to the meeting of the Working Party on Land Transport on 6 July 2012, delegations will find in the Annex to this note Presidency's compromise proposals to make the recitals consistent with the text of the articles.

Modifications with respect to the Commission's proposal are in **bold**, while deletions are ~~striketrough~~.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on tachographs in road transport and repealing Council Regulation (EEC) No 3821/85 and
amending Regulation (EC) No 561/2006 of the European parliament and the Council**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² ~~OJ C , , p. .~~ **The Committee of the Regions decided not to draw up an opinion or report.**

1. Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport³ lays down provisions concerning the construction, installation, use and testing of ~~recording equipment~~ **tachographs**. It has been substantially amended on several occasions, and in order to ensure greater clarity, its main provisions should therefore be simplified and re-structured.
2. Experience has shown that in order to ensure the ~~effective application of Regulation (EEC) No 3821/85~~ **effectiveness and efficiency of the tachograph system**, certain technical elements and control procedures should be improved.
3. Certain vehicles are subject to an exemption from the provisions of 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 3820/85⁴. In order to ensure coherence, it should also be possible to exempt such vehicles from the scope of **this Regulation** ~~(EEC) No 3821/85~~.
4. In order to ensure coherence between the different exemptions set out in Article 13 of Regulation (EC) No 561/2006, and to reduce the administrative burden on transport undertakings whilst respecting the objectives of that Regulation, the maximum permissible distances set out in its Articles 13(d), (f) and (p) should be revised.
- 4a. **It is understood that the Commission will have to extend the period of validity of the adaptor for M1 and N1 vehicles until 2015 and will give further consideration to a long term solution for M1 and N1 vehicles before 2015.**

³ OJ L 370, 31.12.1985, p. 8

⁴ OJ L 102, 11.04.2006, p.1

5. ~~The recording of location data facilitates the cross checking of driving times and rest periods in order to detect anomalies and fraud.~~ The use of ~~recording equipment~~ **tachographs** connected to a global navigation satellite system is an appropriate and cost-efficient means of allowing the automatic recording of ~~such data~~ **the position of the starting and ending place of the daily working period** in order to support control officers during controls, and should therefore be introduced.
- 5.a **Taking into account that in the case C-394/92 the European Court of Justice has provided a definition of the "daily working period", the control authorities should read the provisions of the present Regulation in the light of that definition. The "daily working period" commences at the time when the driver activates the tachograph following a weekly or daily rest period, or, if the daily rest is divided into separate periods, following the rest period of at least nine hours' duration. It ends at the beginning of a daily rest period or, if the daily rest is divided into separate periods, at the beginning of a rest period extending over a minimum of nine consecutive hours.**
6. Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC⁵ requires Member States to carry out a minimum number of checks at the roadside. Remote communication between the ~~recording equipment~~ **tachograph** and control authorities for roadside control purposes facilitates targeted roadside checks, making it possible to reduce the administrative burden created by random checks on transport undertakings, and should accordingly be introduced.
7. Intelligent transport systems (ITS) can help to meet the challenges faced by the European transport policy, such as increasing road transport volumes and congestion or rising energy consumption. Standardised interfaces should therefore be provided in ~~recording equipment~~ **tachographs** in order to ensure interoperability with ITS applications.

⁵ OJ L 102, 11.04.2006, p. 35

8. The security of the ~~recording equipment~~ **tachograph** and its system is essential to ensure that trustworthy data is produced. Manufacturers should therefore design, test and continuously review ~~recording equipment~~ **the tachograph** throughout its life cycle in order to detect, prevent and mitigate security vulnerabilities.
9. Field tests of ~~recording equipment~~ **a tachograph** that has not yet been type approved allow equipment to be tested in real life situations before it is widely introduced, thereby allowing faster improvements. Field tests should therefore be permitted, on condition that participation in such tests and compliance with Regulation (EC) No 561/2006 is effectively monitored and controlled.
- 9a. **Considering the importance of maintaining the highest possible security level, security certificates should be issued by a certification body recognised by the Management Committee within the framework of the "Mutual Recognition Agreement of Information Technology Security Evaluation Certificates" of the European Senior Official Group on Information Security (SOG-IS).**
In the context of international relations with third countries, the Commission should not recognise any certification body for the purposes of this regulation without such a body providing equivalent conditions of security evaluation as foreseen under the Mutual Recognition Agreement referred to above. In this respect, the advice of the Management Committee should be relied upon.
10. Fitters and workshops play an important part in the security of ~~recording equipment~~ **tachographs**. It is therefore appropriate to lay down certain minimum requirements for their approval and audit ~~and~~. **Moreover, Member States should take appropriate measures to ensure that conflicts of interest between workshops and transport undertakings are prevented. Nothing in this Regulation would prevent Member States from ensuring their approval, control and certification, as set out herein, through the procedures laid down in Regulation 765/2008.**

11. In order to ensure a more effective scrutiny and control of driver cards, and to facilitate the tasks of control officers, national electronic registers should be established, and provision made for the interconnection of those registers.
- 11.a When checking the uniqueness of the driver card, Member States should use the procedures such as the ones included in the Commission Recommendation of 13 January 2010 on the secure exchange of electronic data between Member States to check the uniqueness of driver cards that they issue.**
- 11.b Consideration should be given to the special situation in which a Member State should be able to provide a driver who does not have his normal residence in a Member State or an AETR state with a temporary, non-renewable driver card. In such cases, the Member States concerned are to fully apply the relevant provisions of this Regulation.**
- 11.c Furthermore, the possibility for Member States to issue driver cards to drivers resident on its territory also when the Treaties do not apply to certain parts thereof should be recognised. In such cases, the Member States concerned are to fully apply the relevant provisions of this Regulation.**
- ~~12. As fraud and misuse in relation to driving licences is less likely to occur than with driver cards, the recording equipment system would be more reliable and effective if driver cards were in future incorporated into driving licences. This approach would also reduce the administrative burden for drivers who would no longer need to apply for, receive and hold two different documents. An amendment to Directive 2006/126/EC should accordingly be envisaged.~~
- ~~13. In order to reduce the administrative burden on drivers and transport undertakings, it should be clarified that there is no need for written proof of daily or weekly rest periods. For control purposes, periods for which no activity has been recorded for the driver should accordingly be considered as rest periods.~~

14. Control officers face continuous challenges as a result of changes to the ~~recording equipment~~ **tachograph** and new manipulation techniques. In order to ensure more effective control, and to enhance the harmonisation of control approaches throughout the Union, a common methodology should be adopted for the initial and continuing training of control officers.
15. The recording of data by ~~recording equipment~~ **the tachograph**, as well as developing technologies for the recording of ~~location~~ **position** data, remote communication and the interface with Intelligent Transport Systems will entail the processing of personal data. Union legislation concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data, in particular Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁶ and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector⁷ should be applied.
16. To ensure fair competition in the internal road transport market and to give a clear message to drivers and transport undertakings, ~~the Member States' highest category of sanctions should be imposed for 'very serious' infringements,~~ **in accordance with the categories of infringements as defined in Directive 2006/22/EC, effective, proportionate, dissuasive and non-discriminatory penalties, (as defined in Commission Directive 2009/5/EC of 30 January 2009 amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities⁸);** without prejudice to the principle of subsidiarity.

⁶ OJ L 281, 23.11.1995, p. 31–50

⁷ OJ L 201, 31.7.2002, p. 37–47

⁸ OJ L 29, 31.1.2009, p. 45–50

17. Through the adaptations of the European agreement concerning the work of crews of vehicles engaged in international road transport, signed in Geneva on 1 July 1970, including its six amendments, deposited with the Secretary-General of the United Nations (AETR), the use of the ~~recording equipment referred to in Annex IB~~ **digital tachograph** has been made mandatory as regards vehicles registered in neighbouring third countries. As these countries are directly affected by changes to the ~~recording equipment~~ **tachograph** introduced by the present Regulation, they should be able to participate in dialogue on technical matters. A Tachograph Forum should accordingly be set up.
- ~~18. In order to reflect technical developments, 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. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.~~
19. In order to ensure uniform conditions for the implementation of this Regulation ~~concerning field tests, the electronic exchange of information on driver cards between Member States and the training of control officers,~~ implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁹.

⁹ OJ L 55, 28.2.2011, p. 13–18.

19.a The Commission should adopt implementing acts for the purpose of this Regulation which correspond to the provisions in Annexes I, IB and II to Regulation 3821/85 so that they will be in place at the start of application of this Regulation. However if for some reason these implementing acts have not been adopted in time, transitional measures should safeguard the necessary continuity.

19.b In the context of the application of the AETR Agreement, references to Regulation 3821/85 are to be understood as references to the present Regulation. In the context of the application of Article 22bis of the AETR Agreement, references to Annex IB of Regulation 3821/85 are to be understood as references to the implementing act as referred to in Article 3a. The EU will take the necessary steps in UNECE to ensure that the repeal of Regulation 3821/85 and its replacement by this Regulation do not affect the current mechanism of Article 22bis of the AETR Agreement.

~~20. The advisory procedure should be used for the adoption of the procedures to be followed for carrying out field tests and the forms to be used for monitoring such tests, as well as the methodology for the initial and continuing training of control officers.~~

21. The examination procedure should be used for **the adoption of the procedures to be followed for carrying out field tests and the forms to be used for monitoring such tests, as well as the methodology for the initial and continuing training of control officers and the adoption of the specifications for the electronic exchange of information on driver cards between Member States.**

~~22. Regulation (EEC) No. 3821/85 should therefore be amended accordingly.~~
