



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 10 July 2012**

**11937/1/12  
REV 1**

---

**Interinstitutional File:  
2011/0196 (COD)**

---

**TRANS 227  
CODEC 1784**

**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 the meeting of the Working Party on Land Transport on 6 July 2012, delegations will find in the Annex to this note revised Presidency's compromise proposals.

Modifications 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 Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

---

<sup>1</sup> OJ C , , p. .

<sup>2</sup> ~~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 transport<sup>3</sup> lays down provisions concerning the construction, installation, use and testing of 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 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 3820/85<sup>4</sup>. In order to ensure coherence, it should also be possible to exempt such vehicles from the scope of this Regulation.
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 **consider** ~~have to~~ **extending** 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.

---

<sup>3</sup> OJ L 370, 31.12.1985, p. 8

<sup>4</sup> OJ L 102, 11.04.2006, p.1

5. The use of tachographs connected to a global navigation satellite system is an appropriate and cost-efficient means of allowing the automatic recording of 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 **switches on**~~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/EEC<sup>5</sup> requires Member States to carry out a minimum number of checks at the roadside. Remote communication between the 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 tachographs in order to ensure interoperability with ITS applications.

---

<sup>5</sup> OJ L 102, 11.04.2006, p. 35

8. The security of the tachograph and its system is essential to ensure that trustworthy data is produced. Manufacturers should therefore design, test and continuously review the tachograph throughout its life cycle in order to detect, prevent and mitigate security vulnerabilities.
9. Field tests of 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 tachographs. It is therefore appropriate to lay down certain minimum requirements for their approval, **reliability** and audit. 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. [...]
13. [...]
14. Control officers face continuous challenges as a result of changes to the 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 the tachograph, as well as developing technologies for the recording of 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 data<sup>6</sup> 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 sector<sup>7</sup> 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, Member States should impose, in compliance with the categories of infringements as defined in Directive 2006/22/EC, effective, proportionate, dissuasive and non-discriminatory penalties, without prejudice to the principle of subsidiarity.
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 digital tachograph has been made mandatory as regards vehicles registered in ~~neighbouring~~ third countries **which are signatories of the AETR Agreement**. As these countries are directly affected by changes to the 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. [...]

---

<sup>6</sup> OJ L 281, 23.11.1995, p. 31–50

<sup>7</sup> OJ L 201, 31.7.2002, p. 37–47

19. In order to ensure uniform conditions for the implementation of this Regulation, 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 powers<sup>8</sup>.
- 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 date~~ **date** of application of **Articles other than 19, 30 and 43 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 ~~consider take the appropriate necessary steps to be taken~~ **consider take the appropriate necessary steps to be taken** in UNECE **to ensure the necessary coherence between this Regulation and 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. [...]
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. [...]

---

<sup>8</sup> OJ L 55, 28.2.2011, p. 13–18.