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European Union

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**TRANS 335**

## **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: 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), and in the Working Party on Road Transport, of the United Nations Economic Commission for Europe

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**COUNCIL DECISION (EU) 2016/...**

**of ...**

**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), and in the Working Party  
on Road Transport, 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 in Case 22/70<sup>1</sup>, AETR, the Court of Justice recognized that the area of the work of crews of vehicles engaged in international road transport is an exclusive external competence of the Union. This competence has been exercised since then in numerous Union legal acts, namely in Regulation (EC) No 561/2006 of the European Parliament and of the Council<sup>2</sup> and Regulation (EU) No 165/2014 of the European Parliament and of the Council<sup>3</sup>. Since the subject matter of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR)<sup>4</sup> falls within the scope of Regulation (EC) No 561/2006, the power to negotiate and conclude the AETR lies with the Union.
- (2) A Group of Experts has been established by the United Nations Economic Commission for Europe (UNECE) in the framework of the AETR ('Group of Experts'). It is a body which is empowered to develop and submit proposals for amending the AETR, including Article 22bis thereof.

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<sup>1</sup> Judgment of the Court of Justice of 31 March 1971, *Commission v Council*, 22/70, ECLI:EU:C:1971:32.

<sup>2</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, 11.4.2006, p. 1).

<sup>3</sup> Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment 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.).

<sup>4</sup> OJ L 95, 8.4.1978, p. 1.

- (3) The next meeting of the Group of Experts will take place on 24 October 2016 and the meeting of the UNECE Working Party on Road Transport ('Working Party') 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 of the AETR ('Contracting Parties') which, if accepted by the Group of Experts, may lead to an amendment of the AETR, after a procedure for such amendment is launched and concluded. This will produce legal effects as referred to in Article 218(9) TFEU.
- (4) In order to achieve a pan-European harmonisation in the field of recording equipment in road transport (tachographs), it is necessary for a unique decision-making process to be put in place. Such a process ought to take into account the interests of the Union and those of third countries which are Contracting Parties.
- (5) Article 22bis of the AETR provides that changes to Council Regulation (EEC) No 3821/85<sup>1</sup> concerning the digital tachograph are automatically taken over by all Contracting Parties, without any formal consultation or vote. The lack of participation of non-EU Contracting Parties in the process of development and adoption of technical specifications on the digital tachograph has been a cause of discontent among some of those Contracting Parties. The Commission's communication 'Digital Tachograph: Roadmap for future activities' 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 to propose in the Group of Experts the deletion of Article 22bis of the AETR, and the application of the procedure set out in paragraphs 1 to 3 of Article 22 of the AETR for the amendment of the technical specifications of the digital tachograph.

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<sup>1</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).

- (6) Considering that any amendments of 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 Contracting Parties necessary to object to those amendments should be increased from one third to at least one half.
- (7) There are several arguments 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 international road transport, as confirmed 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 a Contracting Party.
- (8) 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 of Article 14 should be proposed providing for the accession of regional integration organisations to AETR. Accession by the Union to the AETR should not constitute a precedent as regards any future accession of the Union to other international organisations.
- (9) Once the AETR allows the accession of regional integration organisations, the Council, on a proposal from the Commission, could adopt a decision concerning the accession of the Union to AETR. If the Union becomes a Contracting Party of the AETR, the positions to be adopted on the Union's behalf in the various AETR bodies would have to be established by the Council in accordance with Article 218(9) TFEU. Accordingly, the Commission would make a proposal to the Council setting out the Union position to be presented and defended and, where appropriate, the draft text to be voted in the framework of the AETR.

- (10) Article 10 of the AETR provides that a tachograph whose construction, installation, use and testing are carried out in accordance with Regulation (EEC) No 3821/85 is considered to comply with the requirements of the AETR. That principle applies to any modification of the tachograph specifications, irrespective of whether 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 Regulation (EEC) No 3821/85, as well as to Commission Implementing Regulation (EU) 2016/799<sup>1</sup> laying down the technical specifications for the new smart tachograph. For those reasons Article 10 of the AETR should be amended in order to include references to Regulation (EU) No 165/2014 and Implementing Regulation (EU) 2016/799, both of which should be applicable as from 15 June 2019.
- (11) In addition, a new appendix should be inserted in the Annex to the AETR containing the provisions of Implementing Regulation (EU) No 2016/799 and any other subsequent adaptations to technical progress.
- (12) The approval certificate for digital tachographs set out in Appendix 2 to the Annex to the AETR should be amended so that it can also be used for the approval of smart tachographs and components thereof.
- (13) It is therefore appropriate to establish the position to be adopted on the Union's behalf in the Group of Experts and in the Working Party,

HAS ADOPTED THIS DECISION:

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<sup>1</sup> Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ L 139, 26.5.2016, p. 1).

*Article 1*

1. The position to be adopted on the Union's behalf 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 position set out in the Addendum\* to this Decision and shall be expressed by the Member States, which are Contracting Parties 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 the position referred to in paragraph 1 may be agreed without requiring that position to be amended.

*Article 2*

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

Done at ...

*For the Council*

*The President*

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\* See ST 11888/16 ADD1.