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INLAND TRANSPORT COMMITTEE

Working Party on Road Transport

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Item 4 (a) of the provisional agenda

**EUROPEAN AGREEMENT CONCERNING THE WORK OF CREWS OF VEHICLES
ENGAGED IN INTERNATIONAL ROAD TRANSPORT (AETR)**

Implementation of the digital tachograph

Note by the secretariat

1. At the seventy-first session of the Inland Transport Committee (ITC) some delegates of Contracting Parties to the AETR that are not member States of the European Union (EU) expressed concern about the ability to meet the deadlines to fully implement the digital tachograph (June 2010); the lack of an intensive and structured program to assist them in implementing the digital tachograph; and the lack of influence of the non-EU Contracting Parties to the AETR in amending Appendix 1B of the Annex to the AETR, according to article 22bis of the AETR. They requested the ITC to mandate the Working Party on Road Transport (SC.1) to define a solution for shifting the deadline in case of failure in complying with it and to revise article 22bis of the AETR. The ITC noted these concerns and instructed SC.1 to deal with this matter within its given mandate (ECE/TRANS/206, paragraph 42).
2. The ITC requested the secretariat to ask the United Nations Office of Legal Affairs (OLA) for legal advice on the appropriate procedures, other than a formal amendment of the AETR, to postpone the implementation deadline in some countries, should this need arise, and to report this to the next SC.1 session (ECE/TRANS/206, paragraph 44).

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3. The ITC stressed the need for taking all necessary measures to make the implementation of the digital tachograph in the non-EU Contracting Parties to the AETR possible within the set deadline (ECE/TRANS/206, paragraph 46).

4. The secretariat is presenting hereafter the outcome of the activities undertaken since the previous session of the Working Party, with regard to the implementation of the digital tachograph in the non-EU Contracting Parties to the AETR.

5. The Memorandum of Understanding through which the UNECE secretariat recognizes the European Commission-Joint Research Centre (JRC) located in Ispra (Italy) as the Authority responsible for Root and Interoperability Certification for non-EU Contracting Parties to the AETR entered into force on 1 January 2009. The cooperation between the secretariat and JRC is very good.

6. The Working Party may wish to remind the non-EU Contracting Parties to the AETR that, while establishing direct contacts with JRC may save time, the UNECE secretariat has to be involved and/or kept informed at all the stages of the certification process.

7. The secretariat has asked OLA for legal advice on three issues that were raised by the participants in the previous session of SC.1 and in the seventy-first session of the ITC, namely:

- (a) Clarification as to which legal instrument prevails in road transport operations performed by a non-EU transport operator between a non-EU State and an EU member State, in the case that both States are parties to the AETR;
- (b) Question of whether other treaties contain provisions similar to article 22bis of the AETR and article 1 of Appendix 1B of the Annex to the AETR;
- (c) The appropriate procedures, other than a formal amendment of the AETR, to postpone the implementation deadline in some countries, should this need arise.

8. Answers have been given by OLA as follows:

- (a) With respect to the first question above, it is noted that, under international law, every treaty in force is binding upon the parties to it and must be performed by the parties in good faith. It is also noted that, under international law, where successive treaties relating to the same subject matter exist, as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations;
- (b) In relation to the second question, it is noted that treaties containing provisions by which all the parties agree to be automatically bound by future amendments potentially made by bodies of international organizations of which they are not all members seem rather unusual. Article 22 bis of the AETR and article 1 of Appendix 1B of the Annex to the AETR were, however, incorporated into the AETR through the amendment procedures stipulated in the AETR. Accordingly, upon the entry into force of these amendments, on 16 June 2006, all parties are bound by them;

- (c) Concerning procedures to postpone the implementation, they should follow the amendment provisions of the AETR itself. OLA experts have also pointed out that the provisions of articles 26¹ and 27² of the Vienna Convention on the Law of Treaties, 1969, also apply to this situation.

9. The secretariat organized two meetings of the “Ad hoc Group of Experts for the Implementation of the Digital Tachograph by non-EU Contracting Parties to the AETR” on 2 December 2008 and on 27 February 2009. JRC participated with experts in both meetings.

10. Despite the interest shown by delegates during the 103rd session of SC.1 the participation in the meetings of the ad-hoc group was rather limited in number (e.g. only four delegations from capitals at the first meeting). A third meeting was planned for 26 May 2009, but had to be cancelled because of lack of participants.

11. The discussion in the ad-hoc meetings mainly focused on administrative aspects of the Agreement, including the establishment of a group/structure to monitor the implementation of the AETR in general and a mechanism to manage situations where non-EU countries are unable to observe the implementation deadline of the digital tachograph. The secretariat explained that such a monitoring structure in the form of an Administrative Committee for the AETR could only be established through an amendment to the Agreement, as it currently does not provide for such a structure.

12. The participants pointed out that SC.1 should remain the key decision-maker in the implementation of the digital tachograph by the non-EU countries that are Contracting Parties to the AETR and the secretariat should play a more important role in this process. It was obvious however, that the secretariat would not have the resources to manage all the aspects related to the implementation of the digital tachograph. In this regard donations to the Trust Fund were considered crucial, as this would provide, for instance, the possibility to hire a consultant. Subsequently, the ITC encouraged member countries to make voluntary contributions to the AETR Trust Fund.

13. In response to the need expressed by the delegates to have a clear and easily accessible road map for the implementation of the digital tachograph, the secretariat has drafted the Implementation Plan reproduced in the annex to the present document. Contracting Parties to the AETR concerned by this plan are expected to provide the secretariat with updated information during the 104th session of SC.1.

14. Experts from EU and European Economic Area (EEA) Member States participating in “Monitoring of the Implementation of Digital Tachograph” (MIDT) Project are concerned by the

¹ “Article 26 (“*Pacta sunt servanda*”): Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

² “Article 27 (Internal law and observance of treaties): A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty [...]”

situation in non-EU AETR countries and they fear that the very large majority of these countries will not be able to meet the 2010 deadlines. In their opinion, this would lead to a situation where transport operators and drivers will be in breach of the AETR rules as soon as they undertake international transportation and will therefore be fined and prosecuted, especially when entering EU/EEA territory.

15. To mitigate the potential negative consequences, the Confederation of Organisations in Road Transport Enforcement (CORTE) and the Chairpersons of the three MIDT Committees, dealing with all the aspects of the digital tachograph system, i.e. Enforcement, Card Issuing and Networking and Implementation Policy, have offered to take part in a special session dedicated to non-EU Contracting Parties to AETR to explain in-depth the various steps of implementing the digital tachograph system as well as the practical problems as a result of late implementation.

16. The special session will be organized under the auspices of UNECE in Geneva, back-to-back with the 104th session of the SC.1, on 22 October 2009 and it can be interpreted as a prompt response to the call of ITC upon the EU member States to share their experiences with regard to the implementation of the digital tachograph.

17. The Working Party may wish to approve the outcome of the activities undertaken since the previous session of the Working Party, with regard to the implementation of the digital tachograph in the non-EU Contracting Parties to the AETR and to provide the secretariat with guidance on actions to be further taken.

18. The Working Party may also wish to urge Contracting Parties to commit themselves to sending delegates to the meetings of the “Ad hoc expert group on the implementation of the digital tachograph by the non-EU Contracting Parties”, taking into account that ITC at its seventy-first session approved this group to meet as often as necessary to accomplish its objective.

Annex

Measures needed for the implementation of the digital tachograph³

	Measure	Ddl.	ECE	EC	JRC	AL	AM	AZ	BY	BA	HR	KZ	ME	MD	RU	RS	MK	TR	TM	UA	UZ
Pre-requisites																					
1	Signing the MoU																				
2	Include Amendment 5 to AETR (digital tachograph) in national legislation	a.s. a.p.																			
3	Assign responsibilities at national level	a.s. a.p.																			
4	Designate competent authority and/or Focal Point for digital	a.s. a.p.																			

³ Contracting Parties to AETR that are not directly concerned by this table: AD, AT, BE, BG, CY, CZ, DK, EE, FI, FR, DE, GR, HU, IE, IT, LV, LI, LT, LU, MT, MC, NL, NO, PL, PT, RO, SM, SK, SI, ES, SE, CH, GB.

	Measure	Ddl.	ECE	EC	JRC	AL	AM	AZ	BY	BA	HR	KZ	ME	MD	RU	RS	MK	TR	TM	UA	UZ
	tachograph ⁴																				
5	Communicate information to ECE	a.s. a.p.																			
6	ECE circulate information	a.s. a.p.																			
Type approval																					
7	Designate type approval authority and inform ECE																				
8	Inform ECE of approval certificates granted/ approval refused (incl. reasons)																				
9	ECE coordinate type approval disputes																				
10	ECE maintain database and circulate information																				

⁴ See Identification Form at http://dtc.jrc.it/docs/Draft_Autho_ID.pdf

	Measure	Ddl.	ECE	EC	JRC	AL	AM	AZ	BY	BA	HR	KZ	ME	MD	RU	RS	MK	TR	TM	UA	UZ
Security and security policy⁵																					
11	Check implications on/compatibility with data protection law, if any ⁶																				
12	Elaborate criteria to be complied with by people dealing with keys (personnel security)																				
13	Develop national security policy ⁷	a.s. a.p.																			
14	Send policy to JRC through ECE	a.s. a.p.																			
15	Approve policy	a.s. a.p.																			
16	Audit policy and																				

⁵ Work could be done with support from TAIEX experts, as well as in cooperation with country's smart cards supplier.

⁶ The digital tachograph records and stores data on tachograph cards. These data, their recording, their storage, the way they can be accessed, their transfer and their use fall under the scope of the data protection rules.

⁷ Based on ERCA Policy and the national security policy template- see at <http://dtc.jrc.it/docs/ts-NCA-POLICY%20Guideline%20v1.pdf>.

	Measure	Ddl.	ECE	EC	JRC	AL	AM	AZ	BY	BA	HR	KZ	ME	MD	RU	RS	MK	TR	TM	UA	UZ
	maintain it																				
17	Test key certification requests before live session at ERCA																				
Risk Management																					
18	Put in place and maintain a national risk management policy ⁸ , including nomination of responsible bodies/persons																				
19	Interface with the EU Risk Manager as far as the non EU-AETR Contracting Parties are concerned																				

⁸ Point 5.3.38 of the ERCA policy requests that the national authorities establish an information security management system (ISMS) based on risk assessment for all the operations involved.

	Measure	Ddl.	ECE	EC	JRC	AL	AM	AZ	BY	BA	HR	KZ	ME	MD	RU	RS	MK	TR	TM	UA	UZ
Cards⁹																					
20	Make a decision whether to develop and issue own cards ¹⁰ or use cards that are already type approved ¹¹																				
21	Establish a Card Issuing Authority (CIA) ¹²						Aug. 2009														
22	Elaborate and approve procedures for all card application types: first issue, replacement, exchange, renewal										May '09										
23	Create reliable database accessible by parties (control bodies, etc.)																				

⁹ Work could be done in close cooperation with the country's smart cards supplier.

¹⁰ In this case, full type approval is needed (functional, security, interoperability and type approval certificates) therefore the procedure might be longer.

¹¹ In this case, the procedure is simplified (adaptation and type approval of a card already type approved by another Contracting Party).

¹² CIA can either be centralized (in charge of database, application processing system, card personalization & issue) or de-centralized (in charge of administrative desks for application processing with centralized database. Cards can be personalized either from central office or at administrative desks).

	Measure	Ddl.	ECE	EC	JRC	AL	AM	AZ	BY	BA	HR	KZ	ME	MD	RU	RS	MK	TR	TM	UA	UZ
24	Send cards' additional features to ECE										May '09										
25	ECE check the cards' additional features																				
Workshops¹³																					
26	Issue or amend national laws on the approval of workshops ¹⁴																				
27	Set criteria for workshops ¹⁵																				
28	Designate workshop approval authority and inform ECE																				
29	Establishment of a (sufficient) network of authorized workshops																				

¹³ Work could be done in close cooperation with tachograph manufacturers.

¹⁴ Provisions should not attempt to intervene in the commercial setting up of workshops other than to ensure that legal requirements are adhered to.

¹⁵ Two sets of criteria are recommended: technical competence and facilities, and suitability of applicant (fitters and workshops).

	Measure	Ddl.	ECE	EC	JRC	AL	AM	AZ	BY	BA	HR	KZ	ME	MD	RU	RS	MK	TR	TM	UA	UZ
	Communicate list of authorized workshops to ECE																				
31	ECE maintains database and informs all the Contracting Parties																				
Training																					
32	Development of cards and devices for training																				
33	Training drivers, companies, fitters, mechanics, control officers					Autumn '09	Summer '09			Started											
Enforcement																					
34	Issue or amend laws to empower control officers for the enforcement																				

¹⁶ Laws should also include provisions to regulate data download, to define under which conditions electronic data can be used before Courts, etc.

	Measure	Ddl.	ECE	EC	JRC	AL	AM	AZ	BY	BA	HR	KZ	ME	MD	RU	RS	MK	TR	TM	UA	UZ
	activities ¹⁶																				
35	Equip control officers appropriately ¹⁷																				
Supporting measures																					
36	Creating an AETR e-file, including all relevant documents and links to EU-MS national security policies																				
37	Including links to JRC's AETR e-file on the UNECE website																				
38	Creating operational Helpdesk										MI DT										

¹⁷ National authorities could seek support from EU Member States and manufacturers.