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Proposal for a

**COUNCIL DECISION**

**on the position to be taken 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 of the United Nations Economic Commission for Europe**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Group of Experts on AETR of the United Nations Economic Commission for Europe (UNECE) in connection with the envisaged amendment to the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) regarding the connection to TACHOnet of non-EU AETR Contracting Parties.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The AETR**

The European agreement concerning the work of crews of vehicles engaged in international road transport ('the Agreement') aims to harmonise the legislative framework of Contracting Parties to the Agreement as regards driving and rest times for professional drivers, as well as the corresponding technical requirements for the construction and installation of the tachograph. The Agreement entered into force on 5 January 1976.

All Member States are parties to the Agreement<sup>1</sup>.

#### **2.2. The Group of Experts on AETR**

The Group of Experts on AETR is a technical group that has been set up by the Inland Transport Committee of the UNECE with the objective to develop amendment proposals to the Agreement. Proposals for amendments to the Agreement are adopted by unanimity of the experts of the Group and further submitted to the SC.1 (UNECE Working Party on Road Transport) for adoption by simple majority of the Contracting Parties present and voting.

#### **2.3. The envisaged act of the Group of Experts on AETR**

On 15 October 2018, during its 19th session, the Group of Experts on AETR is to decide on the submission to the SC.1 of a proposal for an amendment of the AETR regarding the connection to TACHOnet of non-EU AETR Contracting Parties ('the envisaged act').

The purpose of the envisaged act is to define the technical requirements for the connection of non-EU AETR Contracting Parties to TACHOnet by means of the eDelivery platform developed by the European Commission.

The envisaged act will become binding on the parties in accordance with Article 13 paragraph 1 of the Agreement, which provides: 'All the new provisions of the present Agreement, including its Annex and Appendices 1B and 2, relating to the introduction of a digital control device, shall become mandatory for countries which are Contracting Parties to this Agreement at latest four years after the date of entry into force of the relevant amendments resulting from the procedure specified in Article 21'.

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<sup>1</sup> Austria (ratified on 11/6/1975), Belgium (ratified on 30/12/1977), Bulgaria (ratified on 12/5/1995), Croatia (ratified on 3/8/1992), Cyprus (ratified on 5/9/2003), Czech Republic (ratified on 22/6/1993), Denmark (ratified on 30/12/1977), Estonia (ratified on 3/5/1993), Finland (ratified on 16/2/1999), France (ratified on 9/1/1978), Germany (ratified on 9/7/1975), Greece (ratified on 11/1/1974), Hungary (ratified on 22/10/1999), Ireland (ratified on 28/8/1979), Italy (ratified on 28/12/1978), Latvia (ratified on 14/1/1994), Lithuania (ratified on 3/6/1998), Luxembourg (ratified on 30/12/1977), Malta (ratified on 24/9/2004), Netherlands (ratified on 30/12/1977), Poland (ratified on 14/7/1992), Portugal (ratified on 20/9/1973), Romania (ratified on 8/12/1994), Slovakia (ratified on 28/5/1993), Slovenia (ratified on 6/8/1993), Spain (ratified on 3/1/1993), Sweden (ratified on 24/8/1973), United Kingdom (ratified on 4/1/1978).

### 3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

TACHOnet is the European System for the electronic exchange of information between Member States on tachograph cards. It is an essential tool to ensure enforcement of the rules on driving and rest times in road transport which are set out in Regulation (EU) No 561/2006<sup>2</sup>. The main objective of TACHOnet is to verify that two or more cards are not issued by different Member States to the same driver.

Member States are obliged to connect to TACHOnet in accordance with Article 31§2 of Regulation (EU) No 165/2014<sup>3</sup> and with the technical requirements set out in Regulation (EU) 2016/68<sup>4</sup>.

Driving and rest time rules are also applicable to non-EU AETR (European agreement concerning the work of crews engaged in international road transport) Contracting Parties. To ensure enforcement of driving and rest time rules in these countries, it is therefore essential that they are also connected to TACHOnet. Non-EU AETR Contracting Parties are however not allowed to connect directly to TACHOnet. Direct connections are set up via the TESTA (Trans European Services for Telematics between Administrations) network, whose access is reserved to authorities and institutions from the EU, EU Member States, EEA countries, Switzerland and countries acceding to the EU. Non-EU countries which are not acceding to the EU or which are not part of the EEA must be connected to TACHOnet through a country already connected to TESTA, i.e. indirect connection. Such indirect connections are based on bilateral agreements concluded between non-EU AETR Contracting Parties and the country providing the connection.

Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Georgia, Liechtenstein, Moldova, Serbia and Ukraine are the 9 non-EU AETR Contracting Parties which are currently connected indirectly to TACHOnet through the hubs provided by France, Croatia, Poland, Romania and Switzerland.

#### **Technical problem to be addressed and proposed solution**

The Directorate General for Informatics of the Commission (DIGIT) has recently considered that indirect connections do not comply with the minimum security standards that are required by the Commission. This is due to the fact that the stretch of the network set up between the Member State and the third party does not have to be secured. In addition the occurrence of any kind of attack to that part of the network is potentially not visible to the Commission. This increases the risk of breaches to the security system.

Indirect connections must therefore be removed and replaced by an alternative tool to allow connection to TACHOnet by non-EU AETR Contracting Parties.

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<sup>2</sup> Regulation (EU) 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> Commission Implementing Regulation (EU) 2016/68 of 21 January 2016 on common procedures and specifications necessary for the interconnection of electronic registers of driver cards (OJ L 15, 22.1.2016, p.51)

Such connection could be provided by *eDelivery*. *eDelivery* is an overarching platform which was funded by the CEF programme (Connecting Europe Facility). It grants connection through the Internet and makes use of standard security technologies such as PKI (public key infrastructure), for ensuring the authenticity, integrity and confidentiality of the information exchanged. It therefore ensures mutual trust when exchanging information electronically. The *eDelivery* service is provided by DIGIT.

*eDelivery* has already been used successfully for the provision of several EU-wide services, such as PEPPOL (Pan-European Public Procurement On-line) and e-Codex (electronic connection between legal professionals throughout the EU). The system could be adapted to TACHOnet.

Although no specific deadlines have been provided by DIGIT regarding the shutdown of indirect connections, it has been estimated that the adaptation of *eDelivery* to TACHOnet would take around one year. It is therefore necessary to amend the AETR within the shortest delay so that *eDelivery* is operational as soon as possible.

### **Obligations for national authorities for the use of TACHOnet**

The use of *eDelivery* for the connection to TACHOnet requires that connected parties assume certain obligations in order to guarantee a proper use of the system and of the information exchanged with their counterparts. Those obligations relate to:

#### a) Security

National authorities must protect private keys and corresponding digital certificates, by:

- Avoiding unauthorized use of the private keys;
- Refraining from transferring or revealing their private keys to third parties;
- Ensuring confidentiality, integrity and availability of the private keys generated, stored and used for TACHOnet;
- Refraining from using the private key following expiry of the validity period or revocation of the certificate;
- Destroying keys once that they have expired;
- Preventing misuse of the private keys by requesting the revocation of the associated public key certificate in case of compromise of the private key or of the private key activation data.

#### b) Data protection

Personal data protection needs to be ensured. Given that non-EU AETR Contracting Parties are not bound by the European legislation on data protection, it is necessary to guarantee compliance with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. This Convention is the international framework of reference in the field of personal data protection.

#### c) Technical aspects

Connected parties must carry out a specific set of tests before connection. They must also guarantee a minimum level of service so that TACHOnet is not disrupted due to breakdowns at national level.

## Legal instrument

The technical requirements for the connection of the non-EU AETR Contracting Parties to TACHONET should be set out in the appropriate international framework, i.e. the AETR agreement.

There are ongoing negotiations in the UNECE Group of Experts on AETR in view of a modification of the agreement, notably to ensure application of the EU legislation on the smart tachograph by the non-EU AETR Contracting Parties and to allow the EU to accede to the AETR<sup>5</sup>. The technical and legal requirements for the connection of the non-EU AETR Contracting Parties to TACHONET should be formally submitted by the EU to the AETR secretariat as a new appendix to the Agreement. This new appendix will be discussed at the next meeting of the Group of Experts on the AETR and in the Working Party on Road Transport together with the elements of the position of the EU already transmitted to the secretariat of the AETR in 2016.

## 4. LEGAL BASIS

### 4.1. Procedural legal basis

#### 4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement<sup>6</sup>.

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*<sup>7</sup>.

#### 4.1.2. Application to the present case

The Group of Experts on AETR is a body set up by the Inland Transport Committee of the UNECE.

The act which the Group of Experts on AETR is called upon to set forth to the SC.1 constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 13 of the AETR.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

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<sup>5</sup> Position of the EU adopted by Council Decision (EU) 2016/1877 of 17 October 2016, submitted to the AETR Secretariat by the Republic of Slovakia

<sup>6</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

<sup>7</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

## **4.2. Substantive legal basis**

### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to 'Transport'.

Therefore, the substantive legal basis of the proposed decision is Article 91 of the TFEU.

## **4.3. Conclusion**

The legal basis of the proposed decision should be Article 91, in conjunction with Article 218(9) TFEU.

Proposal for a

## COUNCIL DECISION

**on the position to be taken 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 of the United Nations Economic Commission for Europe**

### 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) The European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) entered into force on 5 January 1976.
- (2) A Group of Experts has been established by the United Nations Economic Commission for Europe in the framework of the AETR. It is a body which is empowered to develop and submit proposals for amending the AETR to the Working Party on Road Transport.
- (3) During its 19th session to take place on 15 October 2018, the Group of Experts on AETR is to adopt a decision on the submission to the UNECE Working Party on Road Transport of a proposal for an amendment to the AETR.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Group of Experts on AETR, as the amendment to the AETR will be binding on the Union.
- (5) In its judgment of 31 March 1971, case 22/70, *AETR*, the Court of Justice of the European Union recognized that the area of the work of crews of vehicles engaged in road transport is an external competence of the Union. This competence has been exercised since then in numerous acts of law adopted by the Union legislator, including Regulation (EC) No 561/2006 of the European Parliament and of the Council<sup>8</sup> and Regulation (EU) No 165/2014 of the European Parliament and of the Council<sup>9</sup>. Since the subject matter of the AETR falls within the scope of Regulation (EC) No 561/2006, the power to negotiate and conclude the Agreement and its modifications lies exclusively with the Union.

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<sup>8</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>9</sup> Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs 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.)

- (6) The next meeting of the Group of Experts **on AETR** will take place on **15 October 2018 and the meeting of the Working Party on Road Transport will take place on 16 October 2018**. On that occasion the Group of Experts **and the Working Party** plan to examine proposals made by the Contracting Parties which, if 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. Once the proposals are accepted by the Group of Experts, as a second step, the Union 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, in accordance with Council Regulation (EEC) 2829/77<sup>10</sup> and in line with the duty of sincere cooperation pursuant to Article 4(3) TEU, subject to a Council decision in accordance with Article 218(6) as appropriate. The proposed amendments to the AETR will become effective only once the revision of the AETR is completed.
- (7) Regulation (EU) No 165/2014 requires Member States to interconnect their national electronic registers on driver cards through the TACHOnet messaging system or, when using a compatible system, to ensure that exchange of electronic data with all other Member States is possible through the TACHOnet messaging system. TACHOnet is a platform for the exchange of information on driver cards between Member States, in order to ensure that drivers do not hold more than one driver card.
- (8) In order to achieve a pan-European harmonization in the field of electronic exchange of information on driver cards, it is necessary that TACHOnet is used as the single platform by all contracting parties of the AETR.
- (9) The connection to the TACHOnet messaging system is currently carried out either directly through a Trans European Services for Telematics between Administrations ('TESTA') connection or indirectly through a Member State already connected to TESTA. Being TESTA a service which is restricted to Member States and institutions of the Union, non-EU AETR Contracting Parties are obliged to connect to TACHOnet indirectly.
- (10) The Commission has recently assessed the indirect connections to the TACHOnet messaging system and concluded that they do not provide the same level of security as TESTA. In particular, there is not sufficient guarantee about the authenticity, integrity and confidentiality of the information exchanged through indirect connections. Indirect connections to TACHOnet should therefore be replaced by a secure connection.
- (11) eDelivery is a network of connection nodes for digital communications developed by the Commission, where every participant at national level becomes a node using standard transport protocols and security policies. eDelivery is a flexible tool that may be customized to each specific service.
- (12) eDelivery makes use of widely implemented security technologies such as PKI (public key infrastructure), in order to ensure the authenticity, integrity and confidentiality of the information exchanged. Access to TACHOnet of non-EU AETR Contracting Parties should be granted by means of eDelivery.

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<sup>10</sup> 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) (OJ L 334, 24.12.1977, p. 11).



- (13) The AETR Contracting Parties should follow a specific procedure to receive the digital certificates and the respective electronic keys granting access to TACHOnet.
- (14) The connection to TACHOnet by means of eDelivery implies that the AETR Contracting Parties are required to ensure that the electronic keys and certificates granting access to the system are protected and cannot be used by non-authorised parties. They should also guarantee that keys covered by certificates having expired are not used anymore.
- (15) It is necessary to guarantee the protection of personal data available to the parties through TACHOnet in accordance with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 21 January 1981.
- (16) National authorities connected to TACHOnet have the obligation to carry out the relevant technical implementations in order to ensure that TACHOnet operates according to high levels of performance. It is the task of the Commission to set up the tests confirming that those levels of performance are achieved and to implement them in coordination with the national competent authorities.
- (17) As the European Union is not a Contracting Party to the AETR and its status does not allow it to communicate the proposed amendments, Member States, acting in the interest of the Union, should communicate the proposed amendments to the Group of Experts in the spirit of loyal cooperation in order to promote the achievement of the Union's objectives,
- (18) The Union's position is to be expressed by the Member States of the Union that are members of the Group of Experts of the AETR and of the Working Party on Road Transport, acting jointly,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf in the 15<sup>th</sup> session of the Group of Experts of the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) shall be in favour of the proposed amendments to the AETR as set out in the document attached to this Decision

#### *Article 2*

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the AETR, acting jointly.

Formal and minor changes to the position referred to in Article 1 may be agreed without requiring that position to be amended.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*