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Working Party on Road Transport (SC.1)

Ad Hoc Working Group on the
Revision of the European Agreement
Concerning the Work of Crews of Vehicles
Engaged in International Road Transport (AETR)

**REPORT ON THE FOURTH SESSION OF THE AD HOC WORKING
GROUP ON THE REVISION OF THE EUROPEAN AGREEMENT
CONCERNING THE WORK OF CREWS OF VEHICLES ENGAGED
IN INTERNATIONAL ROAD TRANSPORT (AETR)**

(Geneva, 14-16 May 2007)

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Introduction

1. The Ad Hoc Working Group on the Revision of AETR held its fourth session in Geneva from 14 to 16 May 2007. This session was divided into two parts: on 14 May a workshop was held on the introduction of the digital tachograph, and 15 and 16 May were devoted to revision of AETR. Mr. Bob Oudshoorn (Netherlands) was elected as chair of the session.

First part

WORKSHOP ON THE INTRODUCTION OF THE DIGITAL TACHOGRAPH

2. Representatives of the following ECE member States participated in the workshop: Austria, Belarus, Germany, Greece, Hungary, Netherlands, Portugal, Romania, Russian Federation, Spain, Sweden, Turkey and Ukraine. The European Commission and the following non-governmental organizations were also represented: International Road Transport Union (IRU), Monitoring of the Implementation of the Digital Tachograph (MIDT) Project, and Confederation of Organizations in Road Transport Enforcement (CORTE). Siemens AG and Stoneridge Electronics took part at the invitation of the secretariat.

3. The representative of the European Commission, with the help of a PowerPoint presentation, gave a general overview of the introduction of the digital tachograph in the European Union and described various aspects of its implementation. The chair of the session expressed the wish that countries not members of the European Union would be able to benefit from the experience of the European countries and would receive technical assistance. The representatives of the Russian Federation and Ukraine expressed concern about the Russian translation of the user manuals and the documents issued by the manufacturers. On the latter point, the representative of the European Commission pointed out that the manufacturers were responsible for translation of the documentation into Russian. The secretariat said that it would do everything in its power to ensure that work was started on the Russian translation of appendix 1B (over 250 pages long), annexed to AETR, in 2007, but that it would first be necessary for the consolidated English and French versions (annex 1B to Council Regulation (EEC) No. 3821/85, amended by the European Union, adapted to the AETR context) to be produced.

4. The presentation was followed by another, by the Secretary General of CORTE, who gave technical details of the implementation of the digital tachograph. These two PowerPoint presentations, along with the recommendations and guidelines established by MIDT on the various technical aspects connected with implementation, are available on the ECE Internet site, at the following address: http://www.unece.org/trans/main/sc1/aetr_tacho_only.htm.

5. In general, the AETR countries not members of the European Union were invited to cooperate with the countries of the European Union so as to avoid duplication of efforts and keep down the cost of implementing the digital tachograph in their territory. They were also invited to call upon the MIDT Project for solutions to specific problems. As an example, it was pointed out that, in Portugal, type approval for the cards had taken 4 months with cooperation, while the

same procedure without cooperation would have taken 18 months. Austria, Estonia, Germany, the Netherlands and Sweden said that they were prepared to share their experience, and called for the establishment of a system to provide assistance.

6. Concerning the type approval for the digital tachograph system (control device and memory card), it was recalled that it was for the countries to grant the type approval, and that the related type approval certificate could only be issued upon presentation of the functional certificate, the security certificate and the interoperability certificate of the constituent parts. While the functional tests could be carried out by a national laboratory, the security tests, on the other hand, could only be conducted by an ITSEC laboratory (France, Germany, Netherlands and United Kingdom), and the interoperability tests could only be carried out by the laboratory designated by the European Commission, located in Ispra, Italy.

7. In response to a question posed by the secretariat on possible cooperation among the countries of the Commonwealth of Independent States, the representative of the Russian Federation said that there was no official agreement, but that the matter was under practical consideration. He also pointed out that, for national transport, heavy vehicles must be equipped with an electromagnetic tachograph, and that roadside checks and inspections at undertakings were carried out, with the record sheets having to be kept for a year. In his opinion, by 2010 a quarter of the vehicle fleet used in international transport would be equipped with digital tachographs.

8. During the workshop the subjects of system security, workshop certification, card issuance, data protection and risk management were addressed. Those topics had been set out in document ECE/TRANS/SC.1/2006/9, but the workshop had made it possible to describe in concrete terms certain aspects of their implementation and to make countries that were not in the European Union aware of the specific problems involved.

9. For example, for risk management, AETR countries not members of the European Union were strongly advised to establish a procedure, even if it was not mandatory.

10. Regarding the cost of issuance of the cards, in the European Union this varied from country to country depending on relevant policy decisions (Spain: 25 euros, Finland: 100 euros, Netherlands: 70 euros). As for the time required for ERCA, the body tasked by the European Commission with managing the digital tachograph's cryptographic system, to issue keys to the competent authorities of the countries of the European Union, this ranged from three to six months. The issuance of such cryptographic keys was required prior to issuance of the cards.

11. Regarding workshop certification, it was stressed that the AETR countries not members of the European Union would have to draw up an entire set of rules in their legislation covering all aspects (in particular, equipment, staff training and skills). Such regulations should also include a disciplinary procedure, along with regular supervision of the workshops. The AETR countries were invited to follow the lead of the countries of the European Union in that field.

12. As for data protection, Belarus, the Russian Federation and Ukraine pointed out that their legislation on data protection would have to be amended to meet the data protection requirements of the cards.

13. To facilitate the legislative work of the AETR countries not members of the European Union, the representative of CORTE said that his organization would take stock of the laws adopted by the European Union countries for the introduction of the digital tachograph, and that such legislation would be made available on the Internet.

Second part

REVISION OF AETR

I. ATTENDANCE

14. The representatives of the following ECE member States attended the second part of the session: Austria, Belarus, Bosnia and Herzegovina, France, Germany, Greece, Hungary, Netherlands, Portugal, Romania, Russian Federation, Spain, Sweden, Turkey and Ukraine. The European Commission was also represented, as was the non-governmental organization International Road Transport Union (IRU).

II. ADOPTION OF THE AGENDA (agenda item 1)

Document: ECE/TRANS/SC.1/AC.6/7

15. The agenda was adopted without modification.

III. STATUS OF ACCESSIONS TO AETR (agenda item 2)

16. The secretariat informed the Ad Hoc Working Group that there were 48 Contracting Parties to AETR following the accessions on 23 October 2006 of Montenegro and on 25 April 2007 of San Marino.

IV. RELEVANT DECISIONS OF THE WORKING PARTY ON ROAD TRANSPORT (SC.1) AND THE INLAND TRANSPORT COMMITTEE (ITC) (agenda item 3)

Documents: ECE/TRANS/SC.1/379 and ECE/TRANS/192

17. The Working Group was informed of the relevant decisions taken by the Working Party on Road Transport (SC.1) at its one-hundredth session (October 2006) and by the Inland Transport Committee (ITC) at its sixty-ninth session (6-8 February 2007).

V. CONSIDERATION OF PROPOSED AMENDMENTS TO AETR (agenda item 4)

A. Previous proposals

Documents: ECE/TRANS/SC.1/AC.6/2006/1/Rev.1, ECE/TRANS/SC.1/AC.6/2007/1, ECE/TRANS/SC.1/AC.6/6 and informal documents Nos. 1 and 2

18. The Ad Hoc Working Group considered point by point the proposed amendments contained in the table prepared by the secretariat with the European Commission

(ECE/TRANS/SC.1/AC.6/2006/1/Rev.1, considered with document ECE/TRANS/SC.1/AC.6/2007/1 and informal documents Nos. 1 and 2). Comments were made on the following points.

19. Article 1 (p): Replace the reference to “article 8, paragraph 4” with a reference to “article 8, paragraph 6”.
20. Article 2, paragraph 2: Indent (a) was deleted. During the discussion, the Russian Federation, with the support of Belarus and Ukraine, drew attention to the conflict of laws between paragraph 1 of the AETR article and article 2, paragraph 2, of European Union Regulation (EC) No. 561/06 (applicable from 11 April 2007). According to the delegations, the latter was at variance with the provisions of AETR. Following lengthy discussions which highlighted the diverging positions on the one hand of the European Union countries present and the European Commission, and on the other hand of the three delegations mentioned above, the latter drew up a declaration, which is annexed to the present report. The secretariat, when asked to specify the interpretation to be given, pointed out that it had neither the authority nor the mandate to take a position on a matter of the legal interpretation of a treaty, and that only an international court could have such power.
21. Article 3, paragraph 2: The text was replaced with the following: “*It shall be open to any Contracting Party, in case of a vehicle registered in a State which is not a Contracting Party to this Agreement, merely to require, in lieu of a control device conforming to the specifications in the Annex to this Agreement, daily record sheets, completed manually by the driver for the period of time from the moment of entry on the territory of the first Contracting Party.*”
22. Article 6, paragraph 1 and article 6, paragraph 5: There were differences between the Russian and English texts which had to be corrected (see informal session document No. 2). The Russian-speaking delegations were requested to verify that the Russian version corresponded exactly with the English and French texts.
23. Article 7, paragraph 3: Delete the square brackets.
24. Article 8: The Russian Federation proposed reintroducing the text of paragraph 5 contained in ECE/TRANS/SC.1/AC.6/2006/2, as follows: “*In the case of the carriage of passengers to which article 6 (1), fourth subparagraph, applies, the weekly rest period may be postponed until the week following that in respect of which the rest is due and added on to that second week’s weekly rest.*”
 - Concerning paragraph 6, the amendment proposal made by the European Commission, contained in ECE/TRANS/SC.1/AC.6/2007/1 and once again amended in informal document No. 1, gave rise to lengthy discussion, but no agreement could be reached on a definitive wording. The Russian Federation submitted a different wording, which was not discussed.
 - The new wording of paragraph 8 as proposed in document ECE/TRANS/SC.1/AC.6/2007/1 was adopted in its English version. As for the

French and Russian versions, which as currently worded were hard to follow, it was requested that they be reworded so that all three versions were more alike. The French version should read:

[“8. *Si un conducteur en fait le choix, les temps de repos journalier et les temps de repos hebdomadaire réduits, pris hors du point d’attache, peuvent être pris à bord du véhicule, à condition que **ledit véhicule soit équipé, pour chaque conducteur, d’un matériel de couchage convenable comme prévu par le constructeur lors de la conception du véhicule, et qu’il soit à l’arrêt.***”]

For the Russian version, a text would be submitted by the Russian Federation.

25. Article 8 bis: In the French version only, delete the word “two” from the second indent, as in the English and Russian versions.

26. Article 12:

- In paragraph 1 (b), add to the end of the first indent, after “and/or printouts”, “*when required*”.
- In paragraph 1 (c), replace the third indent with the following text:

“- compensation for weekly rest periods reduced in accordance with article 8, paragraph 6.”
- The proposal by the European Commission to replace article 12, paragraph 6, as set out below was discussed, but no consensus was reached:

“6 (a) A Contracting Party shall enable the competent authorities to impose a penalty on a driver for an infringement of this Agreement detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Contracting Party or of a non-Contracting Party.

6 (b) A Contracting Party shall enable the competent authorities to impose a penalty on an undertaking for an infringement of this Agreement detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Contracting Party or of a non-Contracting Party.

By way of exception, where an infringement is detected which has been committed by an undertaking which is established in another Contracting Party or in a non-Contracting Party, the procedure of imposing sanctions shall be the procedure as foreseen in the bilateral road transport agreement between the Parties concerned.

Contracting Parties will examine, starting from 2011, the possibility of removing the exception in paragraph 6 (b), on the basis of readiness of all Contracting Parties.”

27. Annex, article 12: In paragraphs 7 (a) and 7 (b), the Ad Hoc Working Group decided to replace the dates with a reference to the entry into force of the amendment. The new wording would read as follows, it being understood that the conditions of enforcement would be defined in a new article 13 bis on transitional provisions: “*As from the date set out in article 13 bis of this Agreement, the periods covered by points (i) and (iii) shall cover the current day and the preceding 28 calendar days.*” As for new article 13 bis (Transitional provisions), it would read as follows: “*The provisions that are the subject of the last parts of article 12, paragraphs 7 (a) and 7 (b), of the Annex to this Agreement shall become applicable six months after the entry into force of this amendment.*”

B. New proposals

Document: ECE/TRANS/SC.1/2006/7 and informal document No. 3

28. The Ad Hoc Working Group wished to consider the above documents prepared by the secretariat in order to speed up the decision process in SC.1. The secretariat recalled the context of the proposals contained therein, specifying that the model attestation of activities had been shaped on the basis of the one adopted by the European Commission on 12 April 2007 (Official Journal L 99 of 14 April 2007).

29. During consideration of the documents, several comments were made which led to the amendment of the text prepared by the secretariat. Thus, the Agreement would be amended with a new article 12 bis (Measures aimed at facilitating roadside checks), which would read as follows:

“1. To facilitate international inspections, model standardized forms will be introduced, for use when required, in the Annex to this Agreement, which will be supplemented accordingly by a new Appendix 3. These forms will be introduced or amended in accordance with the procedure defined in article 22 ter.

2. The forms in Appendix 3 shall not be binding in any way. However, if they are used, they must respect the content as defined, in particular in respect of the numbering and order of the headings. The Contracting Parties may supplement the forms with additional information to satisfy national or regional requirements, but this additional information must under no circumstances be required for transport originating in another Contracting Party or third country, **and must be kept quite separate.**

3. These forms shall be accepted if presented during a roadside check carried out in the territory of the Contracting Parties of this Agreement, including those that are members of the European Union, in the event that forms of an equivalent type are used under European legislation. Similarly, the forms defined by the European Union legislation pertaining to the driving and rest periods of professional drivers shall be recognized as valid throughout the territory of the Contracting Parties that are not members of the European Union for all transport effected under cover of the Agreement.”

30. Regarding the form itself, it was indicated that the draft would be supplemented with explanatory notes.

31. All the amendments made by the Ad Hoc Working Group would be incorporated into the table in document ECE/TRANS/SC.1/AC.6/2006/1/Rev.2. At the same time the secretariat would prepare a draft official text aimed at introducing the amendments into AETR.

VI. OTHER ISSUES (agenda item 5)

32. The Ad Hoc Working Group decided to cancel the additional meeting scheduled for 2 July because it would be impossible to have the report of the current session and the new proposals available by that date in the three languages.

VII. REPORT OF THE MEETING (agenda item 6)

33. The present report was drawn up by the secretariat, working with the chair of the Ad Hoc Working Group. It will be submitted for adoption by SC.1 at its next session (16-18 October 2007).

Annex

Declaration by the Russian Federation, Ukraine and Belarus

(See paragraph 20 of the present report)

1. The representative of the European Commission informed the members of the Ad Hoc Working Group of the entry into force on 11 April 2007 of Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonization of certain social legislation relating to road transport (hereinafter referred to as “the Regulation”).
2. In accordance with article 2, paragraphs 2 (a) and 2 (b), of the Regulation, it shall apply, irrespective of the country of registration of the vehicle, to carriage by road undertaken:
 - (a) Exclusively within the Community; or
 - (b) Between the Community, Switzerland and countries party to the Agreement on the European Economic Area.
3. This provision establishes that in the territory of some of the Contracting Parties (the European Union States) to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR), done at Geneva on 1 July 1970, rules other than those of AETR (i.e. Regulation (EC) No. 561/2006) will be applicable.
4. In the opinion of the delegations of the Russian Federation, Ukraine and Belarus, such a position is at variance with article 2, paragraph 1, of the AETR Agreement, according to which the AETR Agreement shall apply in the territory of each Contracting Party to all international road transport performed by any vehicle registered in the territory of the said Contracting Party or in the territory of another Contracting Party, including the member States of the European Union, Switzerland and the member countries of the Agreement on the European Economic Area, that are also signatories to AETR.
5. The representative of IRU, Mr. Damian Viccars, noted that a failure to comply with the AETR provisions in the territory of the countries listed in article 2, paragraphs 2 (a) and 2 (b), of the Regulation in question could be a breach of article 27 of the 1969 Vienna Convention on the Law of International Treaties, according to which a party to an international agreement may not refer to the provisions of its internal law to justify the non-application of an international agreement.
6. In this connection, the delegations of the Russian Federation, Ukraine and Belarus have addressed a request to the representative of the European Commission for the Commission to draft a formal clarification on the applicability of Regulation (EC) 561/2006 to road transport operators of countries which are Contracting Parties to AETR and which are not member States of the European Union, when international road transport is carried out within the territory stipulated in article 2, paragraphs 2 (a) and 2 (b), of the Regulation. They have requested that the Commission present this clarification to the members of the Working Party on Road Transport (SC.1) prior to the consideration of the proposed amendments to AETR at the next SC.1 meeting (October 2007).

7. The delegations of the Russian Federation, Ukraine and Belarus have also stated that the compromise settlement regarding the proposed amendments to articles 6-8 of AETR would only be possible if the above issue is resolved.

8. In addition, the delegations of the Russian Federation, Ukraine and Belarus have requested that the representative of the European Commission communicate their formal request to all European Union member States to refrain from applying the provisions of the Regulation instead of the AETR Agreement to transport operations undertaken exclusively within the territory of European Union member States, Switzerland and the European Economic Area by undertakings registered in other AETR Contracting Parties, until such time as the formal clarification mentioned above is issued.
