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Risk Management Group

EU-MIDT/RMG/004-2006

Risk Management Procedure for the Digital Tachograph System

EU Procedure

PREPARED BY: Thierry GRANTURCO
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PREPARED BY	Thierry GRANTURCO	GRANTURCO & Partners - MIDT	03/05/2006
CHECKED BY	Annie LALE	Squaris – MIDT	05/05/2006
APPROVED BY	Marie-Christine BONNAMOUR Leo HUBERTS (EC-DG TREN)	Cybèle-MIDT	08/05/2006 08/05/2006
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Risk Management Procedure for the Digital Tachograph System

EU Procedure

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TABLE OF CONTENT

PREAMBLE

The objective of this document is to define a risk management procedure for the digital tachograph system. However, defining such a procedure is not an easy exercise since it will have to comply with and complement existing procedures that have already been implemented at both EU and national levels, and which may have already been given by various stakeholders legal status, such as the type approval procedure, the ERCA, the procedures to issue cards, to approve workshops, etc…

Therefore first objective of the risk management procedure is to define the scope within which its rules may apply and by doing so, to remind and inform the various stakeholders of their different obligations when it comes to the maintenance of the digital tachograph system.

Member States authorities are legally bound to do certain things in this respect, and their obligations are laid down in EU law as well as in their own national laws.

In Chapter 2, each paragraph deals with a specific part of the digital tachograph system implementation, and contains a summary of the main obligations facing the various stakeholders. Not only do they have to comply with these obligations, but they also have legal responsibilities and in that sense, they would already be taking part in the risk management procedure by having considerably reduced the amplitude of the potential risks to be faced by the digital tachograph system.

The procedure itself is intended to be very flexible and gives scope to national authorities to tailor the procedure to suit the framework and structure of their administrative organisations, and to also allow some room for the European Commission to adapt it to the risks that need to be assessed.

This document should be read together with document EU/MIDT/RMG/002-2006 rev 1 which should be used as a guide for those who operate outside the procedure, but who, nevertheless, may need some methodological support to assess risks.

Finally, the maintenance of the digital tachograph system requires a risk management procedure to be implemented as a matter of urgency. However, over the time, we would expect this procedure to be modified, certainly once the EU Risk Management Groups has dealt with the initial, urgent issues. Thereafter the procedure can be adapted to better fit the needs of the Risk Management Groups.

1. INTRODUCTION

1. The digital tachograph system has been introduced by Regulation (EC) n° 3821/85[1] amended by:

- Commission Regulation (EEC) n° 3314/90 of 16 November 1990[2],
- Council Regulation (EEC) n° 3572/90 of 4 December 1990[3],
- Commission Regulation (EEC) n° 3688/92 of 21 December 1992[4],
- Commission Regulation 2479/95 of 25 October 1995[5],
- Commission Regulation (EC) n° 1056/97 of 11 June 1997[6],
- *Council Regulation (EC) n° 2135/98 of 24 September 1998[7],*
- *Commission Regulation (EC) n° 1360/2002 of 13 June 2002[8],*
- Regulation (EC) n° 1882/2003 of the European Parliament and of the Council of 29 September 2003[9],
- Commission Regulation (EC) n° 432/2004 of 5 March 2004[10],
- *Regulation (EC) n° 561/2006 of the European Parliament and of the Council of 15 March 2006[11]*.

1.1. - Objectives of the EU legislator

2. The EU legislator has decided, through Regulations (EC) n° 2135/98[12] and 1360/2002[13], to introduce a new recording equipment (digital tachograph) in order:

- to improve enforcement,
- to avoid some drivers employed by road haulage companies, led by economic pressures and competition in road transport, to flout certain rules, particularly those concerning the driving and rest times[14];
- to avoid these infringements and frauds to present a road safety hazard and a breach to fair competition for the individual driver who does respect the rules,
- to consequently reinforce road safety.

[1] Council Regulation (EEC) n° 3821/85 of 20 December 1985 on recording equipment in road transport, OJEC n° L 370, 31.12.1985, p. 8
[2] OJEC n° L 318, 17.11.1990, p. 20
[3] OJEC n° L 353, 17.12.1990, p. 12
[4] OJEC n° L 374, 22.12.1992, p. 12
[5] OJEC n° L 256, 26.10.1995, p. 8
[6] OJEC n° L 154, 12.06.1997, p. 21
[7] OJEC n° L 274, 09.10.1998, p. 1
[8] OJEC n° L 207, 05.08.2002, p. 1
[9] OJEC n° L 284, 31.10.2003, p. 1
[10] OJEC n° L 71, 10.03.2004, p. 3
[11] OJEC n° L 102, 11.04.2006, p. 1
[12] OJEU, n° L 274/1998
[13] OJEU, n° L 207/2002
[14] Regulation (EEC) n° 3820/85, OJEU n° L 370/1985

3. To achieve this objective and to put an end to the most common abuses of the present system (analogue tachograph), the EU legislator has considered as necessary to introduce new advanced equipment:

   - ensuring that the data recorded are retrievable, intelligible when printed out and reliable,
   - providing an indisputable record of the work done by both drivers over the last few days (by the means of driver cards) and by vehicles over a period of several months (by the means of recording equipments),
   - considering therefore the total security of the system and its components as essential if recording equipment is to function efficiently.

1.2. – Main characteristics of the digital tachograph system vs/ Member States' and European Commission's responsibilities

4. Digital tachographs are supposed to function with tachograph cards issued anywhere and at any time, to:

   - drivers,
   - control officers,
   - transport companies,
   - approved workshops.

5. This interoperability between digital tachographs and tachograph cards is ensured by type approval authorities, with the support of the European Commission (DG JRC).

6. Digital tachographs are calibrated by workshops approved by national authorities for the data recorded to be accurate.

7. Card issuing authorities have to ensure, before issuing a driver card, that the applicant does not already hold one.

8. Digital tachographs' and tachograph cards' data are checked by enforcement authorities to verify the compliance of drivers' and transport companies' activities with Drivers' Hours' rules[15].

9. National authorities have also to produce and maintain a security policy covering the following processes, where applicable:

   - issuing of tachograph cards, including keys and certificates,
   - issuing of vehicle unit keys and certificates,

[15] Regulation (EEC) n° 3820/85, OJEU n° L 370

- issuing of motion sensor keys,
- management of the Member State keys.

10. All these aspects of digital tachographs' and tachograph cards' introduction in the field:

- type approval,
- issuing of tachograph cards,
- approval of workshops,
- enforcement of drivers' and transport companies' activities,
- security,

constitute the digital tachograph system.

1.3. Need for a risk management procedure

11. This system needs to be maintained and to be adapted whenever the objectives of the legislator are at stake. In that regards, a risk management procedure needs to be implemented at both national and international levels so as to allow the various stakeholders:

- national authorities in charge of type approval,
- national authorities in charge of issuing tachograph cards,
- national authorities in charge of workshops approval,
- national authorities in charge of enforcing Drivers' Hours' rules,
- national authorities in charge of producing and maintaining a security policy,
- the European Root Certification Authority,
- the EU legislator through the European Commission and the UNECE/AETR[16],
- digital tachograph manufacturers,
- tachograph cards manufacturers,
- vehicle manufacturers,
- approved workshops,
- transport companies,
- professional drivers,

to anticipate risks and to define counter-measures when applicable.

1.4. Reference documents

12. The procedure described thereinafter is based:

[16] European Agreement concerning the work of crews of vehicles engaged in International road transport (AETR), see http://www.unece.org/trans/main/sc1/aetr.html

- on the various legal texts governing directly or indirectly the use of the digital tachograph system (see point 1, page 3),
- on the European Root Policy[17], also issued under the reference EU/MIDT/PLE/010-2006,
- on the Certification Practices Statement[18] also issued under the reference EU/MIDT/PLE/009-2006,
- on the recommendations issued during the IDT project, issued again in the framework of the MIDT project, under the following references:

  - EU/MIDT/RMG/003-2006 - Risk Management Procedure for the Digital Tachograph System, Guidance document.
  - EU/MIDT/PLE/012-2006 - Digital Tachograph System, Guidelines on type approval, final report.
  - EU/MIDT/IPC/003-2006 - Digital Tachograph System, Guidelines on Activation/Calibration final report.
  - EU/MIDT/IPC/004-2006 - Digital Tachograph System, Guidelines to approve workshops.
  - EU/MIDT/PLE/011-2006 - Digital Tachograph System, Guidelines on security at workshop, final report.
  - EU/MIDT/CINC/028-2005 - Digital Tachograph System, Card Issuing, *Best Practice Guidelines*, version 1.0.
  - EU/MIDT/PLE/007-2006 - Digital Tachograph System, Guidelines on Data protection, final report.
  - EU/MIDT/IPC/030-2005 - Digital Tachograph System, Guidelines on Data management, final report.
  - EU/MIDT/ENC/003-2005 - Digital Tachograph System, Guidelines on Roadside checks, final report.
  - EU/MIDT/PLE/005-2006 - Digital Tachograph System, Guidelines on Company checks, final report.
  - EU/MIDT/PLE/008-2006 - Digital Tachograph System, Guidelines on Decommissioning, final report.
  - TACHOnet XML Messaging Reference Guide, version 1.41, European Commission – DG TREN.
  - TACHOnet XML Network and Security Reference Guide, version 1.10, European Commission – DG TREN.
  - TACHOnet Test Plan, version 1.40, European Commission – DG TREN.

13. Member States' authorities are especially invited to consult document referenced EU/MIDT/RMG/002/2006 rev 1 when implementing their risk management procedure at national level.

[17] Digital Tachograph System – European Root Policy, version 2.0, European Commission, DG JRC
[18] Digital tachograph System – Certification Practices Statement, version 1.0, European Commission, DG JRC

2. SCOPE OF THE RISK MANAGEMENT PROCEDURE

14. Risks can occur at any stage of digital tachograph's and tachograph cards' life cycles. The procedure has therefore to cover their whole life cycles.

2.1. – Type approval procedure of digital tachographs and tachograph cards

2.1.1. – The issuing of type approval certificates

15. The type approval procedure is defined by Regulation (EEC) n° 3821/85 as last amended and by Regulation (EC) n° 1360/2002.

16. Article 5, first paragraph of Regulation (EEC) n° 3821/85 states among others that:

> *A Member State shall grant EC component type-approval to any type of recording equipment, to any model record sheet or memory card which conforms to the requirements laid down in Annex 1 or 1B to this Regulation, provided the Member State is in a position to check that production models conform to the approved type.*

It is therefore ultimately the responsibility of Member States to type approve digital tachographs and tachograph cards.

17. But before issuing a type approval certificate, requirements 271 and 288 of Regulation (EC) n° 1360/2002 adds that:

> *(271) Member States type approval authorities will not grant a type approval certificate in accordance with Article 5 of this Regulation, as long as they do not hold:*
>
> - *a security certificate,*
> - *a functional certificate,*
> - *and an interoperability certificate,*
>
> *for the recording equipment or the tachograph card, subject of the request for type approval.*
>
> *(288) The type approval authority of the Member State may deliver the type approval certificate as soon as it holds the three required certificates.*

18. In that respect, Article 5, second paragraph of Regulation (EEC) n° 3821/85 states that:

> *[…] recording equipment may not be granted EC component type-approval until the whole system (the recording equipment itself, driver card and electrical gearbox connections) has demonstrated its capacity to resist attempts to tamper with or alter the data on driving times. The tests necessary to establish this shall be carried out by experts familiar with up to date tampering techniques.*

This Article has been implemented through requirement 274 and Appendix 10 of Regulation (EC) n° 1360/2002 which refer to the Information Technology Security Evaluation Criteria (ITSEC).[19]

Security targets of vehicle units, motion sensors and tachograph cards as well as security enforcing functions are defined against ITSEC criteria and security certificates can therefore only be issued by ITSEC authorities.

19. Requirement 277 of Regulation (EC) n° 1360/2002 states that:

> *The type approval authority delivers the functional certificate. This certificate shall indicate, in addition to the name of its beneficiary and the identification of the model, a detailed list of the tests performed and the results obtained.*

A minimum list of tests is laid down under Appendix 9 of Regulation (EC) n° 1360/2002.

20. Requirement 278 of Regulation (EC) n° 1360/2002 states that :

> *Interoperability tests are carried out by a single laboratory under the authority and responsibility of the European Commission.*

This responsibility has been allocated to DG – JRC and most especially to the TEMPEST Laboratory established in Ispra (Italy).

According to requirements 281 and 284 of Regulation (EC) n° 1360/2002:

> *(281) No interoperability tests shall be carried out by the laboratory, for a recording equipment or a tachograph card that have not been granted a security certificate and a functional certificate.*
>
> *(284) The interoperability certificate shall be delivered by the laboratory to the manufacturer only after all required tests have been successfully passed.*[20]

[19] See http://www.ssi.gouv.fr/site_documents/ITSEC/ITSEC-uk.pdf
[20] See http://dtc.jrc.it/InteropDocs/SPI03116.pdf

21. Therefore, although the ultimate responsibility to type approve digital tachographs and tachograph cards lays down on Member States type approval authorities, this responsibility is shared with those issuing the three required certificates listed in requirement 271 of Regulation (EC) n° 1360/2002.

22. Article 5, third paragraph of Regulation (EEC) n° 3821/85 adds that:

> *Any modifications or additions to an approved model must receive additional EEC type approval from the Member State which granted the original EEC type approval.*

This provision is completed by requirements 272 and 273 of Regulation (EC) n° 1360/2002 which state that:

> *(272) Any modification in software or hardware of the equipment or in nature of materials used for its manufacture shall, before being used, be notified to the authority which granted type-approval for the equipment. This authority shall confirm to the manufacturer the extension of the type approval, or may require an update or a confirmation of the relevant functional, security and/or interoperability certificates.*
>
> *(273) Procedures to upgrade in situ recording equipment software shall be approved by the authority which granted type approval for the recording equipment. Software upgrade must not alter nor delete any driver activity data stored in the recording equipment. Software may be upgraded only under the responsibility of the equipment manufacturer.*

23. Therefore, type approval authorities beyond the issuing of the three above mentioned certificates, are also responsible for the compliance of any up-date of the type approved equipments with the rules laid down in Regulation (EC) n° 1360/2002.

24. Once digital tachographs or tachograph cards have been granted

- a security certificate by an ITSEC authority,
- a functional certificate by a type approval authority,
- an interoperability certificate by the interoperability authority,

they can then be issued – or not - with type approval certificates and the information can circulate to other Member States authorities.

Article 7 of Regulation (EEC) n° 3821/85 states indeed that:

> *The competent authorities of the Member State to which the application for type approval has been submitted shall, in respect of each type of recording equipment or model record sheet or memory card which they approve or refuse to approve,*

either send within one month to the authorities of the other Member States a copy of the approval certificate accompanied by copies of the relevant specifications, or, if such is the case, notify those authorities that approval has been refused in cases of refusal they shall communicate the reasons for their decision.

25. This provision is completed by requirement 290 of Regulation (EC) n° 1360/2002 which states that:

The laboratory competent for interoperability tests shall run a public web site[21] on which will be updated the list of recording equipment or tachograph cards models:

- *for which a request for interoperability tests have been registered,*
- *having received an interoperability certificate (even provisional),*
- *having received a type approval certificate.*

26. The issuing of a type approval certificate implies that a Member State authority (after having received the information from an ITSEC authority and from the interoperability authority (EC – DG JRC)) considers that a recording equipment or tachograph cards are security compliant with Regulation (EC) n° 1360/2002 and interoperable with all the other products already type approved.

2.1.2. – The withdrawal of type approval certificates

27. Regulation (EEC) n° 3821/85 contains also some provisions dealing with cases where type approval may have to be withdrawn.

These provisions are as follows:

Article 8

1. If a Member State which has granted EEC type approval as provided for in Article 5 finds that certain recording equipment or record sheets or memory card bearing the EEC type approval mark which it has issued do not conform to the prototype which it has approved, it shall take the necessary measures to ensure that production models conform to the approved prototype. The measures taken may, if necessary, extend to withdrawal of EEC type approval.

2. A Member State which has granted EEC type approval shall withdraw such approval if the recording equipment or record sheet or memory card which has been approved is not in conformity with this Regulation or its Annexes or displays in use any general defect which makes it unsuitable for the purpose for which it is intended.

[21] See http://dtc.jrc.it/pages/Interoperability%20Status.htm

3. If a Member State which has granted EEC type approval is notified by another Member State of one of the cases referred to in paragraphs 1 and 2, it shall also, after consulting the latter Member State, take the steps laid down in those paragraphs, subject to paragraph 5.

4. A Member State which ascertains that one of the cases referred to in paragraph 2 has arisen may forbid until further notice the placing on the market and putting into service of the recording equipment or record sheets or memory card. The same applies in the cases mentioned in paragraph 1 with. respect to recording equipment or record sheets or memory card which have been exempted from EEC initial verification, if the manufacturer, after due warning, does not bring the equipment into line with the approved model or with the requirements of this Regulation.

In any event, the competent authorities of the Member States shall notify one another and the Commission, within one month, of any withdrawal of EEC type approval or of any other measures taken pursuant to paragraphs 1, 2 and 3 and shall specify the reasons for such action.

5. If a Member State which has granted an EEC type approval disputes the existence of any of the cases specified in paragraphs 1 or 2 notified to it, the Member States concerned shall endeavour to settle the dispute and the Commission shall be kept informed. If talks between the Member States have not resulted in agreement within four months of the date of the notification referred to in paragraph 3 above, the Commission, after consulting experts from all Member States and having considered all the relevant factors, e.g. economic and technical factors, shall within six months adopt a decision which shall be communicated to the Member States concerned and at the same time to the other Member States. The Commission shall lay down in each instance the time limit for implementation of its decision.

[…]

Article 11

All decisions pursuant to this Regulation refusing or withdrawing approval of a type of recording equipment or model record sheet or memory card shall specify in detail the reasons on which they are based. A decision shall be communicated to the party concerned, who shall at the same time be informed of the remedies available to him under the laws of the Member States and of the time-limits for the exercise of such remedies.

28. Considering the different steps to be met for a type approval certificate to be issued, the withdrawal of such a certificate may eventually be detected by:

- manufacturers,
- users,
- control officers,
- approved workshops,
- type approval authorities, including ITSEC and interoperability authorities,

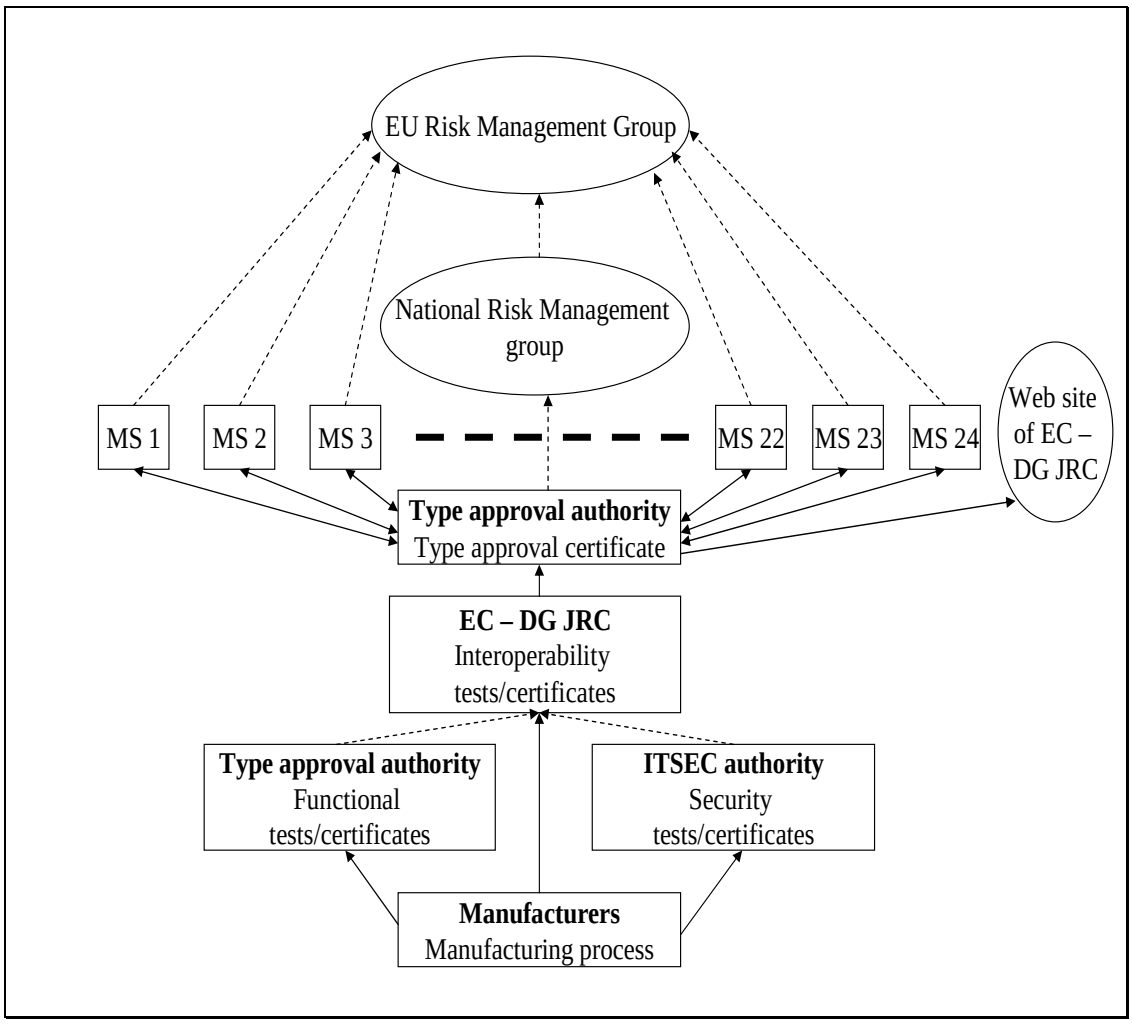
and deal with cases of:

- non conformity with functional requirements,
- non conformity with security requirements,
- non interoperability of the product concerned with some others.

2.1.3. - Type approval and risk management

29. The requirements, as far as type approval is concerned, may be limited to the following:

a) tachographs and cards manufacturers to comply with the construction and functional requirements, as laid down in chapters III and IV of Regulation (EC) n° 1360/2002,
b) type approval authorities to perform at least the minimum list of required tests as defined in Appendix 9 of Regulation (EC) n° 1360/2002,
c) ITSEC authorities to ensure the compliance of the products to be certified with the ITSEC criteria and with the requirements laid down in Appendix 10 of Regulation (EC) n° 1360/2002,
d) EC – DG JRC, as the single laboratory mentioned in requirement 278 of Regulation (EC) n° 1360/2002, to ensure interoperability between digital tachographs and cards,
e) type approval authorities to document other Member States' authorities as required by Article 7 of Regulation (EEC) n° 3821/85,
f) EC – DG JRC to keep its web site of all products type approved up-to-date,
g) Member States' authorities to allow users to test the compliance of their products with Regulation (EC) n° 1360/2002 against their own Risk Management Group, to be set up at each national level,
h) the European Commission can decide to place the settlement of the dispute described under Article 8.5 of Regulation (EEC) n° 3821/85 under the scope of the EU Risk Management Group to be set up.


EU Risk Management Group
National Risk Management group
MS 1
MS 2
MS 3
MS 22
MS 23
MS 24
Web site of EC – DG JRC
Type approval authority
Type approval certificate
EC – DG JRC
Interoperability tests/certificates
Type approval authority
Functional tests/certificates
ITSEC authority
Security tests/certificates
Manufacturers
Manufacturing process

2.2. – Security

2.2.1. – The ERCA policy

30. The European Commission (referred to hereinafter as the European Authority) is responsible for the European Root Certification Authority (ERCA) of the cryptographic key management infrastructure supporting the digital tachograph system.

31. An ERCA policy has been approved by the European Authority on 9th July 2004. The policy of the ERCA applies only to the cryptographic keys and keys certificates used in the mutual authentication, secure messaging and digital signature mechanisms of the digital tachograph system.

    It does not cover, therefore, the overall security of the digital tachograph system.

32. According to points 4.3.1 and 5.2.1 of the ERCA policy, Member States Authorities (MSA) have to submit security policies for approval since "*the objective of the approval process is to assure comparable levels of security in each Member State*".

33. Points 5.1.1 and 5.1.2 of the ERCA policy state that:

    > *(5.1.1) The MSA shall produce and maintain a MSA policy covering the following processes, where applicable:*
    >
    > *a) issuing of tachograph cards, including keys and certificates;*
    > *b) issuing of vehicle unit keys and certificates;*
    > *c) issuing of motion sensor keys;*
    > *d) management of the Member State keys.*
    >
    > *(5.1.2) The operation and management practices related to these processes shall be documented in practices statements approved by the MSA.*

34. Point 5.3.38 of the ERCA policy stating that:

    > *The MSA shall establish an information security management system (ISMS) based on risk assessment for all the operations involved.*

    As far as the scope of the ERCA policy is concerned, procedures are defined, approved by the European Authority, declined in the various security policies issued by MSAs and implemented at national level which should be followed instead of any separate risk management procedure.

    It is therefore recommendable for the risk management procedure to be implemented at EU level, supposed to cover the whole digital tachograph system, to avoid any duplication with the ERCA policy.

2.2.2. – Security and Risk management

35. The requirements, as far as security is concerned, may be limited to the following:

a) to not modify the ERCA,
b) instead, to issue, implement and regularly audit the MSA policy taking into consideration the requirements laid down in the ERCA policy,
c) to implement a risk management procedure at national level that may be easily married with the one set up in the frame of the MSA policy.

2.3. – Card issuing

36. Member States have to comply with:

- requirements laid down in Regulation (EEC) n° 3821/85 as last amended,
- requirements laid down in the ERCA policy,
- TACHOnet specifications.

2.3.1. – Driver cards

37. Member States have to issue driver cards to drivers who:

- have their normal residence on their territory,

  The driver card as defined in Annex 1B shall be issued, at the request of the driver, by the competent authority of the Member State where the driver has his normal residence (Article 14.3, first paragraph of Regulation (EEC) n° 3821/85),

- are subject to the provisions of Regulation (EEC) n° 3820/85,

  Driver cards shall be issued only to applicants who are subject to the provisions of Regulation (EEC) 3820/85 (Article 14.4 (b) of Regulation (EEC) n° 3821/85)[22],

[22] Article 5 of Regulation (EEC) n° 3820/85 (OJEC L 370, 31.12.1985, p.1) states that:
1. The minimum ages for drivers engaged in the carriage of goods shall be as follows:
(a) for vehicles, including, where appropriate, trailers or semi-trailers, having a permissible maximum weight of not more than 7,5 tonnes, 18 years;
(b) for other vehicles, 21 years, or 18 years provided that the person concerned holds a certificate of professional competence recognized by one of the Member States confirming that he has completed a training course for drivers of vehicles intended for the carriage of goods by road, in conformity with Community rules on the minimum level of training for road transport drivers.
2. Any driver engaged in the carriage of passengers shall have reached the age of 21 years. Any driver engaged in the carriage of passengers on journeys beyond a 50 kilometre radius from the place where the vehicle is normally based must also fulfil one of the following conditions:
(a) he must have worked for at least one year in the carriage of goods as a driver of vehicles with a permissible maximum weight exceeding 3,5 tonnes;
(b) he must have worked for at least one year as a driver of vehicles used to provide passenger services on journeys within a 50 kilometre radius from the place where the vehicle is normally based, or other types of passenger services not subject to this Regulation, provided the competent authority considers that he has by so doing acquired the necessary experience;
(c) he must hold a certificate of professional competence recognized by one of the Member States confirming that he has completed a training course for drivers of vehicles intended for the carriage of passengers by road, in conformity with Community rules on the minimum level of training for road transport drivers.
3. The minimum age for drivers' mates and conductors shall be 18 years.
4. A driver engaged in the carriage of passengers shall not be subject to the conditions laid down in paragraph 2, second subparagraph, (a), (b) and (c) if he has carried on that occupation for at least one year prior to 1 October 1970.
5. In the case of internal transport operations carried out within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centres of which are situated within that

- who are therefore, at one stage or another of the application process, clearly identified by the Card Issuing Authority (CIA),

The competent authority of the Member State shall personalise the driver card in accordance with the provisions of Annex 1B (Article 14.4 (a) first paragraph of Regulation (EEC) n° 3821/85),

The MSA shall ensure that users of cards are identified at some stage of the card issuing process (ERCA policy, "Users Registration", point 5.3.35).

To avoid a driver holding cards from other Member States […] a check should not only be carried out by the own Member States' authority, but also by the competent authorities of other Member States. In order to guarantee a reliable system of checking the issuing of unique driver cards between Member States, it was felt necessary to have an appropriate telematics network [TACHONET] (TACHOnet XML Messaging Reference Guide, version 1.41, page 8).

38. According to Article 14.4 (f) of Regulation (EEC) n° 3821/85:

Member States have to take the necessary measures to prevent any possibility of driver cards being falsified.

This is implemented through requirements 180 and 181 of Regulation (EC) n° 1360/2002 which state that:

(180) Tachograph cards shall bear at least the following features for protection of the card body against counterfeiting and tampering:

- *a security design background with fine guilloche patterns and rainbow printing,*
- *in the area of the photograph, the security design background and the photograph shall overlap,*
- *at least one two-coloured microprint line.*

(181) After consulting the Commission, Member States may add colours or markings, such as national symbols and security features, without prejudice to the other provisions of this Annex.

39. Member States have, at least for driver cards, to keep records of the issuing cards:

radius, Member States may reduce the minimum age for drivers' mates to 16 years, on condition that this is for purposes of vocational training and subject to the limits imposed by their national law on employment matters.

The issuing authority shall keep records of issued, stolen, lost or defective driver cards for a period at least equivalent to their period of administrative validity (Article 14.4 (a), 4th paragraph of Regulation (EEC) n° 3821/85).

40. Once issued, cards are mutually recognised, which implies that they may be exchanged by drivers when leaving a Member state for another one:

Driver cards issued by Member States shall be mutually recognised.

Where the holder of a valid driver card issued by a Member State has established his normal place of residence in another Member State, he may ask for his card to be exchanged for an equivalent driver card; it shall be the responsibility of the Member State which carries out the exchange to verify if necessary whether the card produced is actually still valid (Article 14.4 (d) of Regulation (EEC) n° 3821/85).

41. They can also have to be replaced (if lost, stolen or defective) or renewed (administratively expired),

If the driver card is damaged, malfunctions or is lost or stolen, the authority shall supply a replacement card within five working days of receiving a detailed request to that effect (Article 14.4 (a), 5th paragraph of Regulation (EEC) n° 3821/85),

In the event of a request for the renewal of a card whose expiry date is approaching, the authority shall supply a new card before the expiry date provided that the request was sent to it within the time limits laid down in the second subparagraph of Article 15(1) (Article 14.4 (a), 6th paragraph of Regulation (EEC) n° 3821/85),

Where a driver wishes to renew his driver card, he shall apply to the competent authorities of the Member State in which he has his normal residence not later than fifteen working days before the expiry date of the card (Article 15.1, 2nd paragraph of Regulation (EEC) n° 3821/85).

42. They can finally be withdrawn or confiscated in some special circumstances:

The driver card shall be personal. It may not, during its official period of validity, be withdrawn or suspended for whatever reason unless the competent authority of a Member State finds that the card has been falsified, or the driver is using a card of which he is not the holder, or that the card held has been obtained on the basis of false declarations and/or forged documents. If such suspension or withdrawal measures are taken by a Member State other than the Member State of issue, the former shall return the card to the authorities of the Member State which issued it and shall indicate the reasons for returning it (Article 14.4 (c) of Regulation (EEC) n° 3821/85).

43. Member States have to liaise on a mandatory basis in some cases at least:

> *Member States carrying out an exchange shall return the old card to the authorities of the Member State of issue and indicate the reasons for so doing* (Article 14.4 (d), 3rd paragraph of Regulation (EEC) n° 3821/85),
>
> *Where the authorities of the Member State in which the driver has his normal residence are different from those which issued his card and where the latter are requested to renew, replace or exchange the driver card, they shall inform the authorities which issued the old card of the precise reasons for its renewal, replacement or exchange* (Article 16.3, 4th paragraph of Regulation (EEC) n° 3821/85).

44. But more generally speaking, to ensure the uniqueness of driver cards, Member States and the Commission set up a network aiming at facilitating the exchange of information between CIAs:

> *The TACHOnet project final objective is to create a telematics network aiming at facilitating the data exchange between national administrations in charge of the issuing of tachograph cards, as stated in Council Regulation (EEC) n° 3821/85 amended by Council Regulation (EC) n° 2135/98.*
>
> *The TACHOnet network will:*
>
> - *ensure a reliable and secure exchange of the necessary and sufficient data between the Member States issuing tachograph cards to help them fulfilling the requirements of the Council Regulation (EC) n° 2135/98.*
> - *Make sure that the exchange is done in the legal framework envisaged and that it does not allow other uses of the same data,*
> - *Impose only a set of limited constraints on the local systems managing the driver cards in the Member States.*
>
> *[…]*(TACHOnet XML Messaging Reference Guide, version 1.41, page 8).

2.3.2. – The other tachograph cards

2.3.2.1. – Workshop cards

45. The issuing of workshop cards is governed by Article 12 of Regulation (EEC) n° 3821/85 and by Chapter VI of Regulation (EC) n° 1360/2002.

Article 12.1 of Regulation (EEC) n° 3821/85 states that:

> *[…]*

The period of administrative validity of approved workshop and fitter cards shall not exceed one year.

If a card issued to an approved workshop or fitter is to be extended, is damaged, malfunctions, is lost or is stolen, the authority shall supply a replacement card within five working days of receiving a request to that effect.

Where a new card is issued to replace an old one, the new card shall bear the same "workshop" information number, but the index shall be increased by one. The authority issuing the card shall maintain a register of lost, stolen or defective cards.

Chapter VI.1 2nd paragraph of Regulation (EC) n° 1360/2002 adds that:

In the framework of Article 12.1 of this Regulation[23], workshop cards will be issued only to fitters and/or workshops approved for the activation and/or the calibration of recording equipment in conformity of this annex and, unless duly justified:

- *who are not eligible for a company card,*
- *and whose other professional activities do not present a potential compromise for the overall security of the system as defined in Appendix 10.*

46. Definition (qq) of this same Regulation states that:

"workshop card" means:

a tachograph card issued by the authorities of a Member State to a recording equipment manufacturer, a fitter, a vehicle manufacturer or workshop, approved by that Member State;[24]

[…]

2.3.2.2. – Company and control cards

47. The only legal provisions concerning the other types of tachograph cards are laid down in Regulation (EC) n° 1360/2002.

As for driver and workshop cards, their constructions and functional requirements are laid down in Chapter IV of this Regulation and Chapter VII gives some further explanations mainly about their numbering and their indexation.

[23] Regulation (EEC) n° 3821/85
[24] Underlined by the author.

48. They are defined as follows:

> Definition (l) "*company cards" means:*
>
> *a tachograph card issued by the authorities of a Member State to the owner or holder of vehicles fitted with recording equipment;*
>
> *[…]*
>
> Definition (o) "*control card" means:*
>
> *a tachograph card issued by the authorities of a Member State to a national competent control authority;*
>
> *[…]*

49. Therefore, Regulation (EC) n° 1360/2002 strictly interpreted could imply that:

- workshop cards can only be issued by CIAs to recording equipment manufacturers, fitters, vehicle manufacturers or workshops, approved by that Member State, leading practically to the situation where workshop cards' holders have to be established in the country where they apply for a workshop card (see chapter 2.4),
- whilst company cards could eventually be issued to companies established outside the country of application and control cards to control officers of other Member States.

50. These possibilities are not contradicted by the requirements laid down in the ERCA policy.

2.3.3. Card issuing and risk management

51. The requirements, as far as card issuing is concerned, may be limited to the following:

a) CIAs to check drivers' identity, their normal residence in the country of application as well as their issuing rights against Regulation (EEC) n° 3820/85,
b) CIAs to ensure the uniqueness of driver cards by also exchanging data with other Member States' CIAs through TACHOnet,
c) CIAs to implement the legally required features for protection of the card body against counterfeiting and tampering and to consult the Commission whenever applicable,

d) the Commission can decide to handle each request from Member States to have additional features within the frame of the EU Risk Management procedure,
e) Member States authorities to recognise other Member States' type approved cards,
f) CIAS to keep records of all cards issued, replaced, renewed and exchanged,
g) CIAs to implement card issuing procedures making possible the issuing, replacement and renewal of cards within the time limits laid down in Regulation (EC) n° 2135/98 as last amended and (EEC) n° 3821/85 as last amended,
h) CIAs to issue in any cases tachograph cards in accordance with their MSA policy.

2.4. - Approval and audit of workshops

2.4.1. – Approval of workshops

52. Article 12.1 of Regulation (EEC) n° 3821/85 states that:

> *Recording equipment may be installed or repaired only by fitters or workshops approved by the competent authorities of Member States for that purpose after the latter, should they so desire, have heard the views of the manufacturers concerned.*

Chapter VI.1, 1st paragraph of Regulation (EC) n° 1360/2002 adds that:

> *The Member States will approve, regularly control and certify the bodies to carry out:*
>
> - *installations*
> - *checks,*
> - *inspections,*
> - *repairs.*

53. Once done, and in accordance with Article 12.3 of Regulation (EEC) n° 3821/85, Member States are supposed to:

> *[…]forward to the Commission the lists of approved fitters or workshops and the cards issued to them and shall forward to it copies of the marks and of the necessary information relating to the electronic security data used.*

54. The Regulations exist to provide a legal framework to ensure that appropriate equipment is available and maintained to support the associated EU Regulations on Drivers Hours' rules (Regulation (EEC) n° 3820/85). All digital tachographs need to be, at some point, activated, calibrated, inspected, and, ultimately, decommissioned from service and workshops are expected to provide this front-line support and expertise.

55. Competent Authorities should therefore set out their own approval criteria as appropriate for each Member State. The Competent Authorities should not attempt to intervene in the commercial setting up of workshops other than to ensure that legal requirements are adhered to.

Whatever commercial constraints are considered appropriate by Member States it is important to ensure that approved workshops are able to provide, at least, an inspection and calibration service to the requirements of the Regulations for all types of digital tachograph with which they are presented.

56. All workshops should be approved against two sets of criteria:

- Technical competence and facilities,
- Suitability of Applicant.

57. Assessment of technical competence can be best achieved by ensuring that workshops have available appropriate and/or approved equipment to allow them to carry out the required tachograph-related tasks and by ensuring that all technicians who carry out the work have successfully completed appropriate training.

The Competent Authority may also have an interest in the environment in which the work is to be conducted, for example to ensure that facilities are adequate to accommodate vehicles, and that where other considerations may apply, these will also be met (e.g. health and safety guidelines).

58. Whilst the Competent Authorities should have little interest in the commercial arrangements that are reached between a workshop and a manufacturer (providing these are legally acceptable), they do, however, have an obligation to ensure that the transport industry as a whole has access to workshops in order that their recording equipment can be installed, activated, calibrated, inspected, repaired and decommissioned properly. Therefore, the criteria used for approval should clearly set out the conditions that a workshop must meet in order to do so. Such conditions should include at least an undertaking to receive "all-comers". This means that all tachograph workshops will be able to provide a consistent level of service to vehicles fitted with different makes of digital tachographs so as to ensure that the requirements of the Regulations are met. The activities that workshops are expected to conduct on all-comers is specified as:

- Installation (requirement 239 of Regulation (EC) n° 1360/2002),
- Activation (requirement 243 of Regulation (EC) n° 1360/2002),
- Calibration (requirement 248 of Regulation (EC) n° 1360/2002),
- Periodic inspections (requirement 256 of Regulation (EC) n° 1360/2002),
- Downloading (requirement 260 of Regulation (EC) n° 1360/2002),
- Decommissioning/Undownloadability Certificates (requirement 261 of Regulation (EC) n° 1360/2002),

2.4.2. – Audit of workshops

59. If the workshop scheme is to work effectively and continue to keep its integrity and repute, it is vital that it is properly enforced. To achieve this, Competent Authorities have to develop a robust legal base from which to work and at the same time, be in a position to discipline in those areas that need it.

Monitoring of the competence and of the activities of workshops by (or on behalf of) the Competent Authority should always be treated as a continuing activity.

60. To maintain the security of the overall digital tachograph system, proper audit trails of all activities relating to digital tachographs should be kept and each workshop should keep a complete record of all its tachograph-related activities.

    Whilst it is possible that records could be kept in paper form, in practice, and with the existing need for the transfer of electronic data from workshop cards and the need to audit the use of those cards, electronic systems for maintaining records and for conducting audit would be the recommended and preferred method.

61. It is always for the Competent Authorities of each Member State to decide the appropriate level of discipline to be taken against workshops when they do not comply with the conditions of approval.

    The nature of disciplinary sanctions taken may be dependent on factors such as the civil code of the Member State and the legal capacity of the Competent Authority concerned. However, the principle to be adhered to is that the quality of work conducted by workshops (and therefore the integrity of the monitoring systems for ensuring compliance with Drivers' Hours Regulations) is always assured by effective control.

62. In principle the Competent Authorities should have in place disciplinary procedures which, ultimately, enable consideration to be given regarding the suspension or withdrawal of an approval to prevent further operation and/or the prosecution of a workshop.

2.4.3. – Approval of workshops and risk management

63. The requirements, as far as approval of workshops is concerned, may be limited to the following:

    a) Member States to define their own procedure to approve workshops,
    b) this procedure to state that installation, activation, calibration, periodic inspections, downloading and decommissioning can be conducted by approved workshops on all-comers,
    c) to approve workshops against their technical competence and facilities as well as against the suitability of the applicants,
    d) to regularly send to the Commission the list of approved workshops as well as the list of workshop cards issued and the seals numbers allocated to each of them,
    e) to regularly audit workshops once approved,
    f) to adopt disciplinary sanctions allowing Member States authorities to withdraw, whenever necessary, approvals granted to workshops.

2.5. – Enforcement

64. Based on the Treaty establishing the European Community and in particular Article 71, social legislation[25] has been founded and developed to safeguard minimum standards in road transport for:

- fair competition,
- working conditions,
- road safety.

65. As binding guideline to identify the targets, the introduction of Regulation (EEC) n° 3820/85 for both the well known recording device and the new digital tachograph, states:

> *"Community social legislation aims at the harmonisation of conditions of competition between methods of inland transport, especially with regard to the road sector and the improvement of working conditions and road safety;*
>
> *Whereas progress made in these fields must be safeguarded and extended;*
>
> *Whereas, however, it is necessary to make the provisions of the said Regulation more flexible without undermining their objectives;*
>
> *[…]".*

66. The philosophy behind the content of the existing social legislation must remain at least unchanged. Provisions that are necessary or desirable for the analogue tachograph are also appropriate for the digital one.

67. Harmonisation of the social legislation leads to uniform (or at least equivalent) procedures for all Member States. Boundary conditions for the whole field of transport business must be at least comparable in the European Union.

68. The challenge - good value by using the synergies made possible by free competition - needs firstly a uniform understanding of the EU Regulations which govern the use of digital tachographs. A uniform concept should ensure satisfactory tracking measures that have an impact on the compliance of the daily transport business with the social legislation mentioned above.

69. Effective enforcement is required to ensure that in general transport companies and drivers will comply with Drivers' Hours and speed limiter rules.

[25] This Chapter is based on Regulation (EC) n° 561/2006 and on Directive n° 2006/22/EC although they are not yet entered into force. Directive n° 2006/22/EC directly addresses Member States' responsibilities as far as enforcement is concerned.

70. To ensure fair competition it is essential that enforcement be carried out in a harmonised manner. Directive n° 2006/22/EC prescribes harmonised procedures.

71. With the introduction of digital tachographs it is important to attain at least the same level of enforcement as with the analogue tachograph. However digital tachographs should also allow more efficient enforcement.

2.5.1. – Digital tachograph and enforcement

72. Considering the constant increase of:

- registration of passenger cars,
- registration of commercial vehicles,

as a consequence of this, the constant increase of:

- road traffic congestion,
- road traffic accidents,
- fatalities and injuries,
- the number of heavy vehicles involved in fatalities,

the EU legislator decided in 1969 to regulate professional drivers' activities for the very first time[26].

73. This Regulation aimed mainly at:

- limiting driving time allowed by day and by week,
- obliging professional drivers to record their activities through a recording equipment called "tachograph" or, alternatively, to use a kind of booklet.

74. The first generation of tachograph was then mechanical and can almost not be found anymore in vehicles registered in the EU.

75. In the meantime, the EU signed in 1970 under the auspices of the United Nations an agreement called AETR extending the use of the recording equipment to the European but non EU Members (former Eastern countries, former Soviet republics, Balkan countries, etc…).[27]

For EU drivers, the use of recording equipment became mandatory including outside the EU whilst for non EU AETR drivers, the use of recording equipment became mandatory for international journeys only.

[26] Regulation (EEC) n° 543/69, OJEC n° L 77, page 49

[27] See European Agreement concerning the work of crews of vehicles engaged in International road transport (AETR), see http://www.unece.org/trans/main/sc1/aetr.html

76. The UNO-AETR agreement foresees that each amendment to the recording equipment decided by the EU is supposed to be implemented at AETR level so that each generation of recording equipment, as presented hereinafter, is also the one supposed to be used at AETR level.

77. This Regulation changed considerably the drivers' behaviour. But the recording equipment was not yet mandatory in the sense that booklets could be used instead. Therefore, to avoid any distortion of competition between transport operators, the EU legislator decided to amend the 1969 Regulation in 1985 and to introduce a recording equipment on a mandatorily basis for every professional driver (except for very few exceptions)[28].

78. This new Regulation:

- was much more demanding with drivers (in terms of driving, working, availability and rest times),
- increased the number of data collected by the tachograph through the charts used to record data (speed, time, distances, names of drivers/co-drivers, locations, vehicle registration numbers, etc… have to be recorded and stored),
- introduced new obligations for transport operators (in case of breakdown or faulty operation of their tachograph),
- introduced more stringent requirements for the repair workshops to ensure a proper calibration of these recording equipments.

79. Over the time, the tachograph, first mechanical, became an electronic piece of equipment. But both generations, mechanical and electronic, are anyway working with paper discs. Nevertheless, it became rapidly clear that analogue tachographs were tampered (paper discs not used, destroyed, withdrawn during journeys, parameters mechanically or electromagnetically altered, etc…).

80. The EU legislator consequently decided in 1998 to introduce a new kind of recording equipment[29].

The Council stated that (Recitals 2, 3, 6 and 7 of Regulation (EC) n° 2135/98):

> *Whereas experience has shown that the economic pressures and competition in road transport have led some drivers employed by road haulage companies to flout certain rules, particularly those concerning the driving and rest times laid down in Council Regulation (EEC) n° 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport;*

[28] Regulation (EEC) n° 3821/85, OJEC n° L 370, page 8.
[29] Regulation (EC) n° 2135/98, OJEC n° L 274, page 1.

Whereas blatant infringements and fraud present a road safety hazard and are unacceptable for reasons of competition for the individual driver who does respect the rules;

[…]

Whereas to put an end to the most common abuses of the present system, it is therefore necessary to introduce new advanced equipment […];

Whereas the total security of the system and its components is essential if recording equipment is to function efficiently;

it was therefore necessary for the new tachograph to be tamperproof.

81. The new generation of tachograph introduced by the Council in 1998 is totally digital, works with smart cards and records encrypted data through a secure sensor.

82. The tachograph is still today the main control device used by enforcement officers to ensure the respect of road safety rules by professional drivers.

Therefore, enforcement was, is and will remain the key aspect of the implementation of the digital tachograph system in the field and should be one of the most important pillar – if not the most important one – of the national and European risk management procedures.

2.5.2. Member States' obligations

83. The minimum conditions for the implementation of Regulation (EEC) n° 3820/85 and (EEC) n° 3821/85, as far as enforcement is concerned, are basically as follows:

Article 2: Checking systems

1. Member States shall organise a system of appropriate and regular checks on correct and consistent implementation, […]both at the roadside and at premises of undertakings of all transport categories.

These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles of all transport categories falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

Member States shall ensure that a coherent national enforcement strategy is applied on their territory. For this purpose, Member States may designate a body for the coordination of actions taken under Articles 4 and 6, in which case the Commission and the other Member States shall be informed thereof.

2. In so far as this is not already the case, Member States shall, not later than 1 May 2007, provide authorised inspecting officers with appropriate legal powers to enable them correctly to discharge their inspection obligations as required by this Directive.

3. Each Member State shall organise checks in such a way that, as from 1 May 2006, 1% of days worked by drivers of vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 are checked. This percentage will increase to at least 2% from 1 January 2008 and to at least 3% from 1 January 2010.

From 1 January 2012 this minimum percentage may be increased to 4 % by the Commission, in accordance with the procedure referred to in Article 12(2), provided that the statistics collected pursuant to Article 3 show that, on average, more than 90% of all vehicles checked are equipped with a digital tachograph. In making its decision, the Commission shall also take into account the effectiveness of existing enforcement measures, in particular the availability of digital tachograph data at the premises of undertakings.

Not less than 15% of the total number of the working days checked shall be checked at the roadside and not less than 30 % at the premises of undertakings. From 1 January 2008 not less than 30% of the total number of the working days checked shall be checked at the roadside and not less than 50% shall be checked at the premises of undertakings.

4. The information submitted to the Commission in accordance with Article 16(2) of Regulation (EEC) No 3820/85 shall include the number of drivers checked at the roadside, the number of checks at the premises of undertakings, the number of working days checked and the number and type of infringements reported, together with a record of whether passengers or goods were transported.

Article 3: Statistics

Member States shall ensure that statistics collected from the checks organised in accordance with Article 2(1) and (3) are broken down into the following categories:

(a) for roadside checks:

(i) type of road, namely whether it is a motorway, a national or a secondary road, and country of registration of the vehicle inspected, in order to avoid discrimination;
(ii) type of tachograph: analogue or digital;

(b) for checks at the premises:

(i) type of transport activity, namely whether the activity is international or domestic, passenger or freight, own account or for hire or reward;
(ii) size of company fleet;
(iii) type of tachograph: analogue or digital.

These statistics shall be submitted biennially to the Commission and shall be published in a report.

The competent authorities in the Member States shall keep a record of the data collected for the previous year.

[…]

Article 4: Roadside checks

1. Roadside checks shall be organised in various places and at any time and shall cover a sufficiently extensive part of the road network to make it difficult to avoid checkpoints.

[…]

Article 6: Checks at the premises of undertakings

1. Checks at premises shall be planned in the light of past experience in relation to the various types of transport and undertakings. They shall also be carried out if serious infringements of Regulations (EEC) No 3820/85 or (EEC) No 3821/85 have been detected at the roadside.

[…]

Article 8: Exchange of information

1. Information made available bilaterally under Article 17(3) of Regulation (EEC) No 3820/85 or Article 19(3) of Regulation (EEC) No 3821/85 shall be exchanged between the designated bodies notified to the Commission in accordance with Article 7(2):
(a) at least once every six months after the entry into force of this Directive;
(b) upon specific request by a Member State in individual cases.

Article 9: Risk rating system

1. Member States shall introduce a risk rating system for undertakings based on the relative number and severity of any infringements of Regulations (EEC) No 3820/85 or (EEC) No 3821/85 that an individual undertaking has committed.

Article 11: Best practice

[…]

4. Member States shall ensure that enforcement officers are well trained for the execution of their tasks.

84. These requirements have to be considered as the minimum requirements to be implemented by Member States when checking compliance of drivers' activities against Regulation (EEC) n° 3820/85, (EEC) n° 3821/85 as last amended and against Directive n° 2002/15/EC[30].

2.5.3. – Enforcement and risk management

85. The requirements, as far as enforcement is concerned, may be limited to the following:

a) Member States to define an enforcement strategy compliant with the minimum standards defined by Directive n° 2006/22/EC,
b) Member State to nominate a coordination body to take into consideration the enforcement aspects at their respective national level,
c) Member States to increase the number of roadside and company checks to be performed per year,
d) Member States to collect statistics and data to be sent to the Commission and exchanged with the other Member States' competent authorities,
e) Member States to introduce a risk rating system for transport undertakings,
f) Member States to train and equip adequately their training officers.

[30] Directive n° 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities.

3. THE PROCEDURE

86. The Commission is committed to the effective management of risk through a multi-disciplinary approach incorporating type approval, security, card issuing, approval of workshops, enforcement (for more information on this point see chapter 2 of this document).

Considering its role in both the EU political and in the digital tachograph systems, the Commission considers the implementation of a risk management procedure as one of its natural tasks as far as the digital tachograph system is concerned.

87. Although the maintenance of the digital tachograph system necessitates the implementation of a risk management procedure and although Member States have to comply with a lot of legal requirements laid down in the EU and national laws, there is no specific legal basis for such a procedure to be considered as mandatory.

Its implementation is nevertheless considered as crucial and Member States authorities, as well as other stakeholders, are firmly invited to follow it.

3.1. – Risk Management at national level

88. **Rationale**

The purpose of this policy is to enhance the Trust's mechanism of risk management and to provide a procedure and supportive framework to manage and co-ordinate risk not compatible with the objectives of the introduction of the digital tachograph system. The policy provides information and guidance to enable the EU Risk Management Group (EURMG) to:

- identify the immediacy, severity and likelihood of dangerousness,
- minimise and manage dangerousness,
- develop defensible practice,
- operate proactive rather than reactive risk management plans for the benefit of the various stakeholders,
- provide a framework for the sharing of confidential information across national risk management groups.

89**.** **Scope**

This policy applies to all the specific issues laid down under chapter 2 of this document and to any others that the EURMG could decide to tackle.

It is not and cannot be limited to the risk management procedure referred to in the ERCA policy (point 5.3.38).

90. **Principles**

The EURMG supports the need for a multi-disciplinary procedure for risk assessment and management.

91. Policy: Who should be involved in Risk Management Decision-Making at national level? Roles and responsibilities.

92. Member States are required to set up at their respective national level Risk management group and procedure. This part of the EU procedure is let up to Member States to define since its structure depends on the political and administrative organisation of each of them. It is expected anyway to be based on the Guidance document issued under the reference EU-MIDT-RMG-002-2006 rev 1 and should be set up in such a way as to cover the scope of the risk management procedure as laid down in Chapter 2 of this document.

93. When identifying the parties to be involved in risk management decision-making, it is important for Member States to first establish what entity/entities will be responsible for, and have the authority to organise the work, to establish its scope, and determine any boundaries to the management process. It is also important to establish who will gather the necessary information, document and develop the recommended risk reduction strategy.

94. It is furthermore useful to identify at an early stage which public authority and/or non-governmental organisations (NGOs) might be responsible for the adoption, implementation and assumption of any liability for the risk strategy. Even if some parties are likely to play a main role only later in the process, e.g. during implementation, efforts should be made to involve them at an early stage in the process. Finally, interested and affected parties (stakeholders) that need to be consulted throughout the entire risk management process should be identified so that they adopt the concept of shared responsibilities.

95. Involving concerned parties and groups in the decision-making process permits the consideration of a diverse range of views, incorporates public perceptions and invites broad-based input into the search for workable strategies. Being part of the decision making process may motivate various concerned parties to move away from extreme positions and to accept pragmatic and viable compromises. This increase the chances that risk management decisions will be broadly acceptable.

96. Collaboration provides opportunities to bridge gaps in understanding, perceptions and values. Such a participatory process will also more likely result in risk reduction strategies that are effective, defensible and geared towards national needs and priorities. However, no strategy – no matter how thoughtful or appropriate – can guarantee a universally acceptable decision. But making sure that all partners (stakeholders) are involved at each stage of the process and have opportunities to provide appropriate and

constructive input can increase the chances for successful, acceptable and durable decision-making.

97. Guidelines for stakeholder involvement include the following important principles:

- regulatory agencies or other organisations considering stakeholder involvement should be clear about the extent to which they are willing or able to respond to stakeholder involvement before they undertake such efforts. If a decision is not negotiable, stakeholders' time should not be wasted.
- The goals of stakeholder involvement should be clarified at the outset and stakeholders should be involved early in the decision-making process.
- The nature, extent and complexity of stakeholder involvement should be appropriate to the scope and impact of a decision and the potential of a decision to generate controversy.

98. As many different ministries play a role in the process of managing the digital tachograph system at the national level, any one of which may be an appropriate lead agency or supervisor for a particular problem. The title of Risk Manager(s) is sometimes applied to individuals or departments or agencies that will help supervise and manage this process. The relevant authorities involved may include:

- *Enforcement authorities*: involved in road traffic enforcement;
- *Workshops approval authorities*;
- *Card Issuing authorities*: involved in the issuing of tachograph cards;
- *Certification/Security authorities*: involved in the overall security of the system at national level;
- *Type approval authorities*: involved in the type approval of digital tachographs and tachograph cards.

99. Representatives of many of these authorities, along with national and/or international regulators and officials, should be involved in the risk management decision-making process. Technical experts as well as decision-makers may all be involved depending upon the nature of the issues and the stage of the decision-making process. Risk management responsibilities may well be shared between different ministries depending upon the complexity of the risk situation. It is unusual for only one ministry to be involved in such situations.

100. In addition to governmental participants, the risk management decision-making process should be carried out in continuous consultation with interested and affected parties, or 'stakeholders'. Stakeholders are likely to include all those who are affected by the problem, or who might be affected by a proposed risk reduction measure. They may include, for example, associations of transport companies, unions, national associations of workshops and manufacturers. Discussions involving such diverse groups with a wide range of skills and abilities should be conducted in such a manner to be meaningful to participants without specialist knowledge.

101. In some cases, stakeholders may also come from outside the country. While these 'external' stakeholders will certainly play a different role than national stakeholders in a risk management process, their involvement may be important at certain stages, for example, when identifying and discussing possible risk reduction options and when considering practical aspects of implementing risk reduction strategies.

102. **Organising the Decision-Making Process at national level**

The risk management decision-making process should ideally be orchestrated by a core working group who can draw on the expertise of, and promote communication among the various concerned ministries as well as other stakeholder groups. Such a group (or committee) should typically include, as a minimum, representatives of:

- type approval authorities,
- enforcement authorities,
- card issuing authorities,
- authorities approving and auditing workshops,
- authorities in charge of defining, implementing and auditing security policies at national and international level.

103. Representatives of other concerned and interested parties outside of government should also be involved, either directly or through some other mechanism. For instance, a technical group could be established comprised, *inter alia*, of experts from industry associations, public and transport interest groups, universities and national research institutes, to provide input on an ongoing basis to the work of the core working group.

104. The mechanisms for involving a broad range of stakeholders in the process also need to be considered. For obtaining specific input, a meeting could be held to solicit views of the various stakeholders and to identify their perceptions of the risks posed by the problem. Draft materials could be distributed and reviewed by participants as a means for obtaining practical input. Another approach might be to meet individually with each of the concerned parties so as to obtain their views through one on-one interaction. Alternatively, a combination of approaches could be used.

105. The appropriate role of external experts or consultants should also be considered. Such individuals can provide guidance, based on their experience, about what might happen if a particular decision is taken. However, their involvement should be such that the final decision is the result of a nationally-owned process and thus reflects the history, context and culture of the country.

106. Each country will have to find the organisational arrangement that best meets its needs and that will be most likely to lead to co-operation among concerned parties. The *process* through which risk management decision-making is carried out and the degree to which concerned parties feel appropriately involved often is a key determinant of success and should be carefully considered and clearly communicated from the outset.

While each problem may require a different approach for stakeholder involvement, formulating a decision-making process can help to increase transparency and ensure that the various concerned parties know what to expect and understand how they can effectively contribute to the process. Clearly, such a process should ensure that the credibility of the regulators and the government is upheld.

107. **Conducting a Situation Analysis/Needs Assessment**

An analysis of the situation is the first step and is really an examination of the national/international circumstances or conditions in which the issue occurs. This can provide insight into where challenges lie and where opportunities exist. It involves asking in broad terms: 'what do we have?', 'what do we lack?', and 'what is inadequate?'. Some basic questions could include:

- which Ministry/Department(s) is/are involved in managing the digital tachograph system?
- What specific legislation/regulations are in place in the country?
- Is enforcement of regulations undertaken as necessary?
- What relevant industry(ies) is involved? Are there university departments, research institute or industry(ies) that are undertaking relevant research/investigations?
- What level of understanding exists in government and industry about the hazards the problem poses?
- What level of awareness exists among the various stakeholders?
- What related technical infrastructure exists (e.g. information on quantities of defective cards or digital tachographs in use)?
- Are there any 'bottlenecks' in the management of the problem nationally and/or internationally?

108. *Identification of the problem* is the second important component when initiating the analysis. This means that the risks to – the problem – will be considered in the national or international context – the situation. When identifying the issue it is important at this stage to have *an appreciation of the magnitude of the problem*. Was it a 'one-off' event, or is the problem an on-going one? Are large numbers of stakeholders directly affected or has the problem arisen through misuse?

Several general tasks are listed below that can help with identification of the problem, although these will vary depending upon the root cause of the event.

109. **Identifying the Issue and its Context – General Tasks**

Content-related tasks:

- identify the issue;
- begin to characterise the risk;
- put the issue into an appropriate context; and

- identify issues relevant to hazard and risk assessment.

Process-related tasks:

- allocate resources for issue identification and hazard and risk assessment;
- establish the hazard and risk assessment team if necessary;
- identify roles, responsibilities and accountabilities; and
- identify interested and affected parties.

110. The problem statement summarises the reason for considering action and defines (to the degree it is understood) the problems, which are being encountered. In addressing these issues, the problem statement should highlight areas that are not well understood and that should be clarified through the risk characterisation.

111. Member States are not only expected to set up a risk management group, they are also supposed to assess risks.

They are in that respect in the front line of the implementation of the digital tachograph system (see Chapter 2 of this document) and have therefore to take an active part in the assessment and management of risks.

112. After having gone through their procedure, including an assessment of the issue, national Risk Management groups can conclude:

- that the issue was not a risk,
- that the issue can be characterised as a risk and that its impact is limited to their territory,
- that the issue can be characterised as a risk and that its impact is EU wide.

113. **How to work with the EURMG?**

In all cases, they have to document the EURMG accordingly.

A record of all of the information used in the problem analysis should be established as an example for future evaluators to study. Specific details should include not only the basic data and information, but also assumptions, controversies, uncertainties, etc. What data gaps were uncovered and how they were considered within the risk management options under discussion, are two further critical questions. Information should be stored not only on the immediate problems and their effects but also on the underlying causes so that a longer-term perspective is established. Such an approach should also help increase the degree of confidence within which the options were considered.

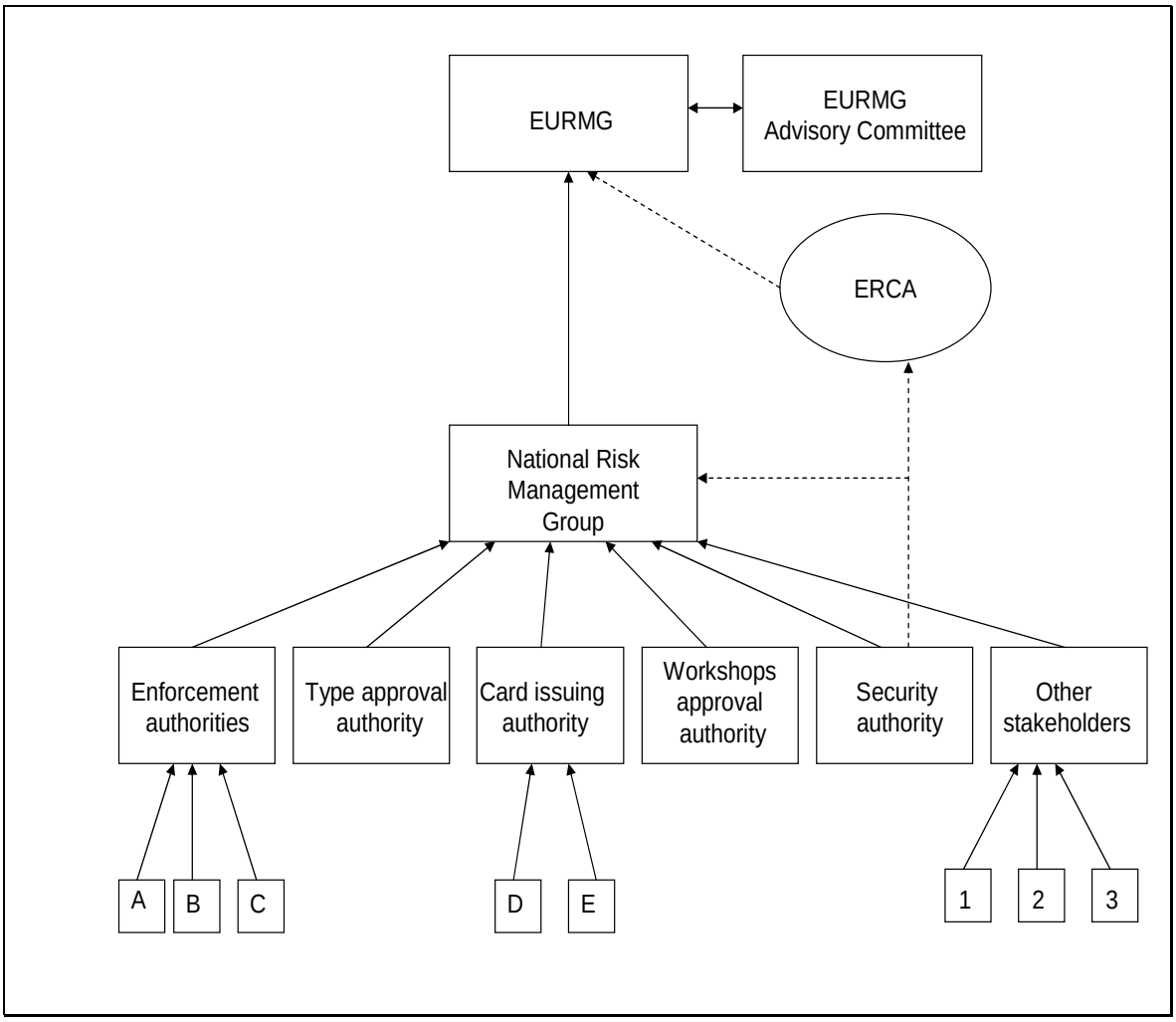
Receiving feedback on the problem analysis from affected stakeholders will also help strengthen the analysis. This sharing of knowledge helps create the shared responsibility

necessary to select and develop the risk reduction strategy. The collection of such information constitutes in itself an important element of the analytical process.

114. National RMGs are invited to inform and document the EURMG in English.

115. The EURMG has responsibility for the establishment and maintenance of a risk management database. This database will be available to national risk managers and to any other authorised persons entrusted and authorised by the EURMG.

Step 1: from the national Risk Management Groups to the EURMG



3.2. – Risk Management at European level

116. The EU risk management procedure begins with the initial referral to the EURMG. The referral is made by registered mail or by secure e-mail.[31]

117. The referral can be any national risk management group, international stakeholders like card, tachograph and vehicle manufacturers or their representations in Brussels as well as the UNO-AETR Secretariat

118. When deciding to launch the EURMG procedure, the following points should be communicated on a confidential manner by national risk management groups in justifying the referral:

- detailed description of the issue sent with documentation whenever applicable,
- date at which the issue has occurred,
- date at which the issue has been acknowledged by the national Risk Management group,
- identification of the stakeholders put at risk by the issue,
- identification of the digital tachograph system's characteristics put at risk by the issue,
- summary of the risk assessment conducted by the national risk management group,
- composition (full name, organisation and field of competence) of the experts having taken part to the assessment exercise,
- contact details of the risk manager and/or of the specific expert to contact,
- description of corrective action if any.

119. Upon receipt of a referral form, the EURMG will consider the referral and will request any further information they require and decide with the referrer how to progress. The EURMG will continue to keep the referrer informed of developments at all times during the process.

120. If no action is required by the national risk management group from the EURMG, this latter has to:

a) evaluate the assessment made by the national risk management group,
b) inform on a confidential manner the other national risk management groups accordingly if the information is considered as adequate and appropriate,
c) inform the referrer that further action is needed either at national level, or at European level to manage the risk identified if the assessment made and/or action undertaken are considered as unsatisfactory.

121. If action is required by the national risk management group from the EURMG, because its impact goes beyond its national territory, the EURMG has to:

[31] To be decided by the EURMG once up and running.

a) evaluate the assessment made by the national risk management group (it is nevertheless the responsibility of the 'initiating referrer' to present the information which led to the EURMG. It will be the responsibility of other stakeholders to bring information that is relevant, appropriate and proportionate to the management of risk),
c) inform the national risk management group in case the issue is considered as being limited to its territory and request it to take the necessary measures,
d) inform the other national risk management groups of its decision to send the request back to the referrer,
e) if the case is considered as relevant, select on an *ad hoc* basis the members of the advisory committee who will have to assess the measures to be taken at European level,
f) issue on a confidential manner and in English detailed recommendations to the national risk management groups covering the assessment of the risks and the actions to be taken, whenever actions can be taken in the frame of the existing legislative texts,
g) issue on a confidential manner and in English detailed recommendations to the EU legislator whenever the necessary actions to be taken cannot be implemented in the frame of the existing legislative and inform the national risk management groups accordingly,
h) keep the data base up-to-date at all stages of the process.

122. The methodology to be followed by the EURMG when assessing a risk and defining an action can be based on the Guidance document issued under the reference EU-MIDT-RMG-002-2006 rev 1.

Step 2: from the EURMG to the national Risk Management Groups