

PRESIDENT OF THE EXECUTIVE COMMITTEE  
OF THE COORDINATING CONFERENCE ON TRANSPORT  
OF THE CIS COUNTRIES

3 September 2007

Dear Mr. Executive Secretary,

We would like to inform you that the 27<sup>th</sup> session of the Coordinating Conference on Transportation, the supreme joint institution in the field of transportation of the CIS countries, was held on 4-6 June 2007 in Odessa that considered the question of the introduction of the amendments into the AETR Agreement and the question on the applicability of Regulation (EC) 561/2006 to road transport operators of countries which are non-EU Member States.

During this discussion it was stressed that on 11 April 2007 all the provisions of Regulation (EC) 561/2006 was entered into the force.

In accordance with paragraphs 2.2 (a) and 2.2 (b) of Article 2 of this 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 member countries of the Agreement on the European Economic Area.

In such a way, it provides that in the territory of some of the Contracting Parties (EU Member States) to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR), signed in Geneva, on July 1<sup>st</sup> 1970, rules other than the AETR will be applied.

Such a position contradicts paragraph 1 of Article 2 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, as the EU Member States, Switzerland and the member countries of the Agreement on the European Economic Area which are also signatories to the AETR.

A failure to comply with the AETR provisions could breach Article 27 of the Vienna Convention on the Law of International Treaties, 1969, in accordance with which a party to an international agreement shall not refer to the provisions of its internal legislation in order to justify the failure to comply with the Agreement.

On 12 May 2006 in Moscow the position of the CIS countries was made concerning the coordination of provisions of the AETR with the new EU rules on the driving and rest conditions. This position of the CIS countries was stated during the third and fourth meetings of the Ad hoc Working Group on the Revision of the AETR under the UNECE Inland Transport Committee which were held in 2006 and 2007 as well as during the Working Party on Road Transport of the UNECE Inland Transport Committee (SC.1) in October 2006. However, some questions are still unsettled.

According to the new rules of the EU, every second week the mandatory full-size weekly rest admittance is required (45 hours). This rule, taking into account the territorial remoteness of the

important part of the Russian regions and some of the CIS countries, is unacceptable. Its introduction will lead to a violation of the main principles of the AETR, that is to say:

- violation of the principles of equal competitiveness, as long as a large per cent of transportation in/from CIS countries is carried out during more than two weeks and, as a consequence, in the course of this transportation the maintenance of this rule will lead to an unjustified monthly stoppage of a vehicle during 24 hours;
- decline of security in road transport as drivers will be obliged to reduce to a minimum the duration of daily rest in order to accumulate extra hours for the assumption of the 45 hours weekly rest and to fully realize the limit of the time of driving.

According to the new rules of the EU, the possibility of irregular passenger transportation during 12 consecutive days is excluded. This rule sharply makes worse the work conditions of the operators of the passenger transportation who are servicing the travelling field which is confirmed by the attitude of the PTC (Passenger Transport Council - IRU) as mostly the travels duration is 9 to 12 days the new rules result in either forced stoppage or necessity of change of crews in the course of the voyage execution that will essentially decline of security of the accomplishment of transportation because of the insufficient number of qualified drivers and will lead to the increase of rate of this transportation.

According to the new rules of the EU, the range of responsibility for breaches committed by a driver is carried on the holders of vehicle, at the same time the responsibility for breaches committed during international transportation is remained no matter where they were detected (principle of extraterritoriality) and competent authority of countries party of the AETR is suggested to provide with credentials to impose penalty provisions on the holders of vehicles in the country where the breach was detected. The previously adopted position of the CIS countries proves the provision on necessity of distribution of responsibility among driver and holder of vehicle and the fact that this responsibility should be remained over the whole transportation. Still, it is essential to take into account the complexity of adoption of the common procedure for penalty provisions in the territory of all Contracting Parties.

On 16 June 2006 the fifth amendment to the AETR entered into the force relative to vehicles which are in international transportation that use electronic numerical tachograph. Since the entry into the force of this amendment the four years period of transition has started for the non-EU Member States of the AETR Agreement. The above-mentioned period assigned for the preparation of legislative basis and infrastructure which is required for application of numerical tachographs. Hence, by 16 June 2010 non-EU Member States of the AETR Agreement should be fully prepared for putting into operation of such tachographs.

In view of this statement Coordinating Conference on Transport of the CIS countries is requesting the following:

1. To receive a formal clarification from the European Commission on the applicability of paragraphs 2.2 (a) and 2.2 (b) of Article 2 of Regulation (EC) 561/2006.
2. To conduct an independent legal examination of the law enforcement of the above-mentioned Article as regards the road transport operators of countries which are Contracting Parties to the AETR and non-EU Member States.

3. To address to the European Commission a request to communicate to all EU Member States not to apply the provisions of the Regulation instead of the AETR Agreement to transport operations undertaken exclusively within the territory of European Union Member States, the about non-use of the European Economic Area and Switzerland by companies registered in other member countries of the AETR, until the date of issuance of the above-mentioned formal clarification.
4. To take into consideration the position of the CIS concerning problem questions in the field of harmonization of the AETR and Regulation (EC) 561/2006.
5. To take action on the identification of the root certification body (AETR-RCA) in the framework of the AETR Agreement that is responsible for assessing the readiness of the member countries of the AETR to apply the cryptographic keys.
6. To examine the potentialities of organization in the framework of the UNECE of a project (by analogy with the EU projects) of relief action to member countries of the AETR and non-EU Member States on the introduction of the digital tachograph.

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Mr. M. Belka  
THE EXECUTIVE SECRETARY  
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