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Group of Experts on European Agreement Concerning Work of Crews of Vehicles Engaged in International Road Transport (AETR)

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Programme of Work

Third party rights and obligations under the AETR Agreement

Clarifications Concerning the Prevailing Legal Instrument Applicable to Road Transport Operations undertaken either partially or entirely within the European Union by non-EU European Agreement Concerning Work of Crews of Vehicles Engaged in International Road Transport (AETR) Transport Companies

Submitted by International Road Union (IRU)

I. Mandate

1. At the first session of the Expert Group on AETR on 2 March 2012, the IRU offered to provide template tables/questionnaires enabling AETR Contracting Parties and the European Union to provide answers concerning which legal instrument is applicable in different road transport scenarios (i.e. journeys undertaken either partially or entirely within the EU by non-EU and EU AETR transport companies) as well as to clarify the rights and obligations of third party operators when passing through AETR Contracting Parties' territory. The secretariat was requested to facilitate this by providing the templates in the three ECE languages for the next session and by uploading them on the Transport division website. The secretariat will monitor responses with a view of generating a consolidated table of applicable rules in different scenarios.

II. Introduction

Clarifications Concerning the Prevailing Legal Instrument Applicable to Road Transport Operations undertaken entirely within the European Union

2. Article 2 of the AETR Agreement states that its provisions 'shall apply to all international road transport' by vehicles registered on the territory of its Contracting Parties. International road transport is defined as that "which involves the crossing of at least one frontier". Today all 27 EU member States are individual Contracting Parties to the AETR Agreement, but the latter gives no special consideration or treatment to customs or political unions such as the EU.

3. Subsequently, some have contested article 2.3 of EU Regulation 561/2006/EC which states that this legislation and not the AETR, shall apply to drivers on all journeys carried out exclusively within the EU, irrespective of their country of registration.

4. The EU maintains that under the AETR, all transport journeys undertaken exclusively within the EU may be subjected to EU rules by virtue of reservations entered into the AETR Agreement, by Germany, Belgium, Denmark, Finland, France, Ireland, Luxembourg, Malta, the Netherlands and the United Kingdom which state that: "Transport operations between member States of the European Economic Community shall be regarded as national transport operations within the meaning of the AETR in so far as such operations do not pass in transit through the territory of a third State which is a contracting party to AETR".

5. However, the extent to which these reservations can be made applicable to all EU member States today, including those which did not table them and those who were not members of the European Union at the time of their tabling, has been questioned. This is due not least to the consideration that these reservations exist by virtue of their non-opposition by other Contracting Parties, who at the time had no foreknowledge of successive EU enlargements, and thus of the implications of their non-opposition to such reservations should they be treated in dynamic way allowing them to become applicable to all EU member States, past, present and future.

6. Since differences remain between the EU and AETR driving and rest time rule provisions, these remain more than simply academic or purely legalistic considerations. In the absence of a short-term definitive settlement of these points and in the interests of full legal certainty for transport operators, the IRU has requested the views of individual Contracting Parties as to their opinion on 'the prevailing instrument question' and what rules they will apply to road transport operators undertaking on specific types of transport operation as identified in the attached tables I–III of annex I of this document.

III. Requirements imposed by AETR Contracting Parties concerning the recording of third country drivers' driving and rest time periods according to article 3 of the AETR Agreement

7. The AETR has implications for drivers from third countries when they cross the territories of AETR Contracting Parties due to Article 3 of the Agreement which says:

‘1. Each Contracting Party shall apply in its territory, in respect of international road transport performed by any vehicle registered in the territory of a State which is not a

Contracting Party to this Agreement, provisions not less strict than those laid down in articles 5, 6, 7, 8, 9 and 10 of this Agreement.’

8. Article 10 requires the use of a control device as specified and constructed according to the AETR Agreement. However, Article 3.2 states that a Contracting Party may choose instead to accept manual records completed by the driver instead of a control device.

9. ‘2. It shall be open to any Contracting Party, in the 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.’

10. These provisions, leaving the decision concerning the control device entirely to the discretion of Contracting Parties, are far from satisfactory, resulting in no uniform policy, a lack of transparency and creating legal uncertainty. The advent of the digital tachograph, with its much greater demands concerning the calibration of the device and the use of driver cards, makes this situation far more unsustainable.

11. As a first towards reaching a suitable and uniform approach on this matter AETR Contracting Parties are kindly requested to provide information on what control equipment they require from third country transport operators crossing their territory.

12. It should be noted that previous attempts have been to respond to this question. In a response to concerns raised by the IRU, a UNECE Working Group concluded, in an apparent allusion to Article 3.2, that:

13. ‘16. The Working Party was of the opinion that Article 3 of the AETR is clearly indicating the possible solutions for such situations...’¹

14. The European Commission has also sought to underline the need for a pragmatic application of Article 3 towards third-country drivers repeating the clarification of the UNECE that:

‘the Agreement is first and above all regulating driving time and rest periods and it does not directly oblige them to implement the digital tachograph in order for their vehicles to be allowed to continue carrying on goods and passengers in the territories of Contracting Parties to the AETR. Article 3 of the Agreement regulates this issue and Contracting Parties shall implement the Agreement in good faith.’²

¹ www.unece.org/trans/doc/2010/sc1/ECE-TRANS-SC1-S-390e.pdf.

² The minutes of the EU Committee On Road Transport – Social Rules (Regulation (EC) No 561/2006 & Directive 2006/22/EC) held in Brussels on 27.04.2010.

Annex

I. Clarifications Concerning the Prevailing Legal Instrument Applicable to Road Transport Operations undertaken either partially or entirely within the EU by non-EU AETR Transport Companies

	<i>Transport Operation Type by non-EU AETR Transport Companies single loads view on: prevailing instrument Please reply with AETR or EU reg.561 & Explanation</i>						
<i>Contracting Party</i>	<i>Moscow (non EU – AETR Contracting Party (CP)) to Warsaw (EU CP without reservation)³</i>	<i>Moscow (non EU – CP) to Berlin (EU CP with reservation)</i>	<i>Warsaw (EU CP without reservation) to Prague (EU CP without reservation)</i>	<i>Prague (EU CP without reservation) to Berlin (EU CP with reservation)</i>	<i>Berlin (EU CP with reservation) to Paris (EU CP with reservation)</i>	<i>Warsaw to Krakow (cabotage within country without reservation)</i>	<i>Berlin to Munich (cabotage within country with a reservation)</i>
Albania							
Andorra							
Armenia							
Austria							
Azerbaijan							
Belarus							
Belgium							
Bosnia and Herzegovina							

³ Reservation entered into the AETR Agreement by Germany, Belgium, Denmark, Finland, France, Ireland, Luxembourg, Malta, the Netherlands and the United Kingdom stating that: “Transport operations between Member States of the European Economic Community shall be regarded as national transport operations within the meaning of the AETR in so far as such operations do not pass in transit through the territory of a third State which is a contracting party to AETR”.

	<p style="text-align: center;"><i>Transport Operation Type by non-EU AETR Transport Companies</i> <i>single loads</i> <i>view on: prevailing instrument</i> <i>Please reply with AETR or EU reg.561 &</i> <i>Explanation</i></p>						
<i>Contracting Party</i>	<i>Moscow (non EU – AETR Contracting Party (CP)) to Warsaw (EU CP without reservation)³</i>	<i>Moscow (non EU – CP) to Berlin (EU CP with reservation)</i>	<i>Warsaw (EU CP without reservation) to Prague (EU CP without reservation)</i>	<i>Prague (EU CP without reservation) to Berlin (EU CP with reservation)</i>	<i>Berlin (EU CP with reservation) to Paris (EU CP with reservation)</i>	<i>Warsaw to Krakow (cabotage within country without reservation)</i>	<i>Berlin to Munich (cabotage within country with a reservation)</i>
Bulgaria							
Czech Republic							
Croatia							
Cyprus							
Denmark							
Estonia							
Finland							
France							
Georgia							
Germany							
Greece							
Hungary							
Ireland							
Italy							
Kazakhstan							
Latvia							
Liechtenstein							
Lithuania							

	<p style="text-align: center;"><i>Transport Operation Type by non-EU AETR Transport Companies single loads view on: prevailing instrument Please reply with AETR or EU reg.561 & Explanation</i></p>						
<i>Contracting Party</i>	<i>Moscow (non EU – AETR Contracting Party (CP)) to Warsaw (EU CP without reservation)³</i>	<i>Moscow (non EU – CP) to Berlin (EU CP with reservation)</i>	<i>Warsaw (EU CP without reservation) to Prague (EU CP without reservation)</i>	<i>Prague (EU CP without reservation) to Berlin (EU CP with reservation)</i>	<i>Berlin (EU CP with reservation) to Paris (EU CP with reservation)</i>	<i>Warsaw to Krakow (cabotage within country without reservation)</i>	<i>Berlin to Munich (cabotage within country with a reservation)</i>
Luxembourg							
Malta							
Monaco							
Montenegro							
Netherlands							
Norway							
Poland							
Portugal							
Republic of Moldova							
Romania							
Russian Federation							
San Marino							
Serbia							
Slovakia							
Slovenia							
Spain							
Sweden							
Switzerland							

	<p style="text-align: center;"><i>Transport Operation Type by non-EU AETR Transport Companies</i> <i>single loads</i> <i>view on: prevailing instrument</i> <i>Please reply with AETR or EU reg.561 &</i> <i>Explanation</i></p>						
<i>Contracting Party</i>	<i>Moscow (non EU – AETR Contracting Party (CP)) to Warsaw (EU CP without reservation)³</i>	<i>Moscow (non EU – CP) to Berlin (EU CP with reservation)</i>	<i>Warsaw (EU CP without reservation) to Prague (EU CP without reservation)</i>	<i>Prague (EU CP without reservation) to Berlin (EU CP with reservation)</i>	<i>Berlin (EU CP with reservation) to Paris (EU CP with reservation)</i>	<i>Warsaw to Krakow (cabotage within country without reservation)</i>	<i>Berlin to Munich (cabotage within country with a reservation)</i>
The FYR of Macedonia							
Turkey							
Turkmenistan							
Ukraine							
United Kingdom							
Uzbekistan							

II. Clarifications Concerning the Prevailing Legal Instrument Applicable to Road Transport Operations undertaken either partially or entirely within the EU by EU AETR Transport Companies

	<p style="text-align: center;"><i>Transport Operation Type by EU AETR Transport Companies</i> <i>single loads</i> <i>view on: prevailing instrument</i> <i>Please reply with AETR or EU Reg.561 &</i> <i>Explanation</i></p>						
<i>Contracting Party</i>	Warsaw (EU CP without reservation) to Moscow (non EU – CP)	Berlin (EU CP <i>with reservation</i>) to Moscow (non EU – CP)	Warsaw (EU CP without reservation) to Prague (EU CP without reservation)	Prague (EU CP without reservation) to Berlin (EU CP with reservation)	Berlin (EU CP <i>with reservation</i>) to Paris (EU CP <i>with reservation</i>)	Double Manned vehicle 1st driver Brussels to Moscow via Berlin	Double Manned vehicle 2nd driver Brussels to Berlin
Albania							
Andorra							
Armenia							
Austria							
Azerbaijan							
Belarus							
Belgium							
Bosnia and Herzegovina							
Bulgaria							
Czech Republic							
Croatia							
Cyprus							
Denmark							
Estonia							

	<p style="text-align: center;"><i>Transport Operation Type by EU AETR Transport Companies single loads</i></p> <p style="text-align: center;"><i>view on: prevailing instrument</i></p> <p style="text-align: center;"><i>Please reply with AETR or EU Reg.561 & Explanation</i></p>						
<i>Contracting Party</i>	Warsaw (EU CP without reservation) to Moscow (non EU – CP)	Berlin (EU CP <i>with reservation</i>) to Moscow (non EU – CP)	Warsaw (EU CP without reservation) to Prague (EU CP without reservation)	Prague (EU CP without reservation) to Berlin (EU CP with reservation)	Berlin (EU CP <i>with reservation</i>) to Paris (EU CP <i>with reservation</i>)	Double Manned vehicle 1st driver Brussels to Moscow via Berlin	Double Manned vehicle 2nd driver Brussels to Berlin
Finland							
France							
Georgia							
Germany							
Greece							
Hungary							
Ireland							
Italy							
Kazakhstan							
Latvia							
Liechtenstein							
Lithuania							
Luxembourg							
Malta							
Monaco							
Montenegro							
Netherlands							
Norway							

	<p style="text-align: center;"><i>Transport Operation Type by EU AETR Transport Companies single loads</i></p> <p style="text-align: center;"><i>view on: prevailing instrument</i></p> <p style="text-align: center;"><i>Please reply with AETR or EU Reg.561 & Explanation</i></p>						
<i>Contracting Party</i>	Warsaw (EU CP without reservation) to Moscow (non EU – CP)	Berlin (EU CP <i>with reservation</i>) to Moscow (non EU – CP)	Warsaw (EU CP without reservation) to Prague (EU CP without reservation)	Prague (EU CP without reservation) to Berlin (EU CP with reservation)	Berlin (EU CP <i>with reservation</i>) to Paris (EU CP <i>with reservation</i>)	Double Manned vehicle 1st driver Brussels to Moscow via Berlin	Double Manned vehicle 2nd driver Brussels to Berlin
Poland							
Portugal							
Republic of Moldova							
Romania							
Russian Federation							
San Marino							
Serbia							
Slovakia							
Slovenia							
Spain							
Sweden							
Switzerland							
The FYR of Macedonia							
Turkey							
Turkmenistan							
Ukraine							
United Kingdom							
Uzbekistan							

III. Clarifications Concerning the Prevailing Legal Instrument Applicable to Road Transport groupage operations undertaken either partially or entirely within the EU by non EU AETR Transport Companies

	<p style="text-align: center;"><i>Transport Operation Type by non-EU AETR Transport Companies groupage view on: prevailing instrument please reply with AETR or EU Reg.561 & explanation</i></p>			
<i>Contracting Party</i>	<i>Stage 1 Moscow non EU – CP) to Warsaw (EU CP without reservation) (where 1st load is discharged)</i>	<i>Stage 2 Warsaw (EU CP without reservation) to Prague (EU CP without reservation) (Where 2nd load from Moscow is discharged)</i>	<i>Stage 3 Prague EU CP without reservation) to Berlin EU CP with reservation) (Where 3rd load from Moscow is discharged)</i>	<i>Stage 4 Berlin EU CP with reservation) to Paris EU CP with reservation) where 4th load from Moscow is discharged)</i>
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belarus				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Czech Republic				
Croatia				
Cyprus				

	<p style="text-align: center;"><i>Transport Operation Type by non-EU AETR Transport Companies groupage view on: prevailing instrument please reply with AETR or EU Reg.561 & explanation</i></p>			
<i>Contracting Party</i>	<i>Stage 1 Moscow non EU – CP) to Warsaw (EU CP without reservation) (where 1st load is discharged)</i>	<i>Stage 2 Warsaw (EU CP without reservation) to Prague (EU CP without reservation) (Where 2nd load from Moscow is discharged)</i>	<i>Stage 3 Prague EU CP without reservation) to Berlin EU CP with reservation) (Where 3rd load from Moscow is discharged)</i>	<i>Stage 4 Berlin EU CP with reservation) to Paris EU CP with reservation) where 4th load from Moscow is discharged)</i>
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Ireland				
Italy				
Kazakhstan				
Latvia				
Liechtenstein				
Lithuania				
Luxembourg				
Malta				

	<p style="text-align: center;"><i>Transport Operation Type by non-EU AETR Transport Companies groupage view on: prevailing instrument please reply with AETR or EU Reg.561 & explanation</i></p>			
<i>Contracting Party</i>	<i>Stage 1 Moscow non EU – CP) to Warsaw (EU CP without reservation) (where 1st load is discharged)</i>	<i>Stage 2 Warsaw (EU CP without reservation) to Prague (EU CP without reservation) (Where 2nd load from Moscow is discharged)</i>	<i>Stage 3 Prague EU CP without reservation) to Berlin EU CP with reservation) (Where 3rd load from Moscow is discharged)</i>	<i>Stage 4 Berlin EU CP with reservation) to Paris EU CP with reservation) where 4th load from Moscow is discharged)</i>
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Republic of Moldova				
Romania				
Russian Federation				
San Marino				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				

	<p style="text-align: center;"><i>Transport Operation Type by non-EU AETR Transport Companies groupage view on: prevailing instrument please reply with AETR or EU Reg.561 & explanation</i></p>			
<i>Contracting Party</i>	<i>Stage 1 Moscow non EU – CP) to Warsaw (EU CP without reservation) (where 1st load is discharged)</i>	<i>Stage 2 Warsaw (EU CP without reservation) to Prague (EU CP without reservation) (Where 2nd load from Moscow is discharged)</i>	<i>Stage 3 Prague EU CP without reservation) to Berlin EU CP with reservation) (Where 3rd load from Moscow is discharged)</i>	<i>Stage 4 Berlin EU CP with reservation) to Paris EU CP with reservation) where 4th load from Moscow is discharged)</i>
The FYR of Macedonia				
Turkey				
Turkmenistan				
Ukraine				
United Kingdom				
Uzbekistan				

IV. Requirements imposed by AETR Contracting Parties concerning the recording of third country driver's driving and rest time periods according to article 3 of the AETR Agreement

	<i>Requirement imposed by AETR Contracting Parties for the recording of the driving and rest times by drivers from 3rd countries</i>					
<i>Contracting Party</i>	<i>Fully calibrated analogue tachograph, for vehicles which were first put into service before 16 June 2010</i>	<i>A fully calibrated digital tachograph and personalised driver card for vehicles which were first put into service after 16 June 2010</i>	<i>A manual record in the form of a driver's log book or other paper based record</i>	<i>A manual record in the form of a note made on an analogue tachograph</i>	<i>A manual record in the form of a print out from an uncalibrated digital tachograph</i>	<i>A manual record in the form of a print out from a calibrated digital tachograph</i>
Albania						
Andorra						
Armenia						
Austria						
Azerbaijan						
Belarus						
Belgium						
Bosnia and Herzegovina						
Bulgaria						
Czech Republic						
Croatia						
Cyprus						
Denmark						
Estonia						

	<i>Requirement imposed by AETR Contracting Parties for the recording of the driving and rest times by drivers from 3rd countries</i>					
<i>Contracting Party</i>	<i>Fully calibrated analogue tachograph, for vehicles which were first put into service before 16 June 2010</i>	<i>A fully calibrated digital tachograph and personalised driver card for vehicles which were first put into service after 16 June 2010</i>	<i>A manual record in the form of a driver's log book or other paper based record</i>	<i>A manual record in the form of a note made on an analogue tachograph</i>	<i>A manual record in the form of a print out from an uncalibrated digital tachograph</i>	<i>A manual record in the form of a print out from a calibrated digital tachograph</i>
Finland						
France						
Georgia						
Germany						
Greece						
Hungary						
Ireland						
Italy						
Kazakhstan						
Latvia						
Liechtenstein						
Lithuania						
Luxembourg						
Malta						
Monaco						
Montenegro						
Netherlands						
Norway						
Poland						

	<i>Requirement imposed by AETR Contracting Parties for the recording of the driving and rest times by drivers from 3rd countries</i>					
<i>Contracting Party</i>	<i>Fully calibrated analogue tachograph, for vehicles which were first put into service before 16 June 2010</i>	<i>A fully calibrated digital tachograph and personalised driver card for vehicles which were first put into service after 16 June 2010</i>	<i>A manual record in the form of a driver's log book or other paper based record</i>	<i>A manual record in the form of a note made on an analogue tachograph</i>	<i>A manual record in the form of a print out from an uncalibrated digital tachograph</i>	<i>A manual record in the form of a print out from a calibrated digital tachograph</i>
Portugal						
Republic of Moldova						
Romania						
Russian Federation						
San Marino						
Serbia						
Slovakia						
Slovenia						
Spain						
Sweden						
Switzerland						
The FYR of Macedonia						
Turkey						
Turkmenistan						
Ukraine						
United Kingdom						
Uzbekistan						