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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and the Council on the harmonisation of certain social legislation relating to road transport

- Statement of the Council's reasons

Adopted by the Council on 15 November 2013

I. INTRODUCTION

On 19 July 2011, the Commission presented to the Council its proposal for a Regulation amending Regulation 3821/85 on recording equipment in road transport and amending Regulation 561/2006.¹

On 3 July 2012, the European Parliament voted its opinion at first reading².

On 29 October 2012, the Council reached a political agreement on the draft proposal.

In carrying out its work, the Council took account of the opinions of the European Economic and Social Committee and of the European Data Protection Supervisor. The Committee of the Regions decided not to draw up an opinion or report.

Following the vote in the European Parliament, negotiations took place between the European Parliament, the Council and the Commission with a view to reaching an agreement on the proposal. On 14 May 2013, an agreement was reached, which was subsequently endorsed by the Committee of Permanent Representatives on 24 May 2013 and by the European Parliament Committee on Transport and Tourism (TRAN) on 18 June 2013.

Taking into account the above agreement and after legal and linguistic revision, the Council adopted its position at first reading on 15 November 2013, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union (TFEU).

¹ Doc. 13195/11

² P7_TA-PROV(2012)0271

II. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

1. General

The proposal on tachographs in road transport, presented to the Council in July 2011, together with the "Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/126/EC of the European Parliament and of the Council as regards driving licences which include the functionalities of a driver card", constitute a legislative package aimed at better enforcing the social rules in road transport and at reducing frauds and administrative burden, by developing the technical aspects and increasing the efficiency of tachographs. The Communication from the Commission "Digital tachograph: Roadmap for future activities" accompanied the above-mentioned proposal.

In general, the Council welcomed positively the objectives of the Commission's proposal, namely to increase the security of the tachograph system (reducing fraud and the manipulation of the tachograph), to reduce the administrative costs and to improve the efficiency of the control of the system. However, the Council suggested that further work was necessary on the expected impact of some of the measures proposed by the Commission, underlining the importance of flexibility for Member States to apply the most cost-efficient measures, the need to reinforce the protection of personal data in the Regulation and to clarify the provisions on the technical and functional requirements of the tachograph. Therefore, the Council's position involves major adaptations to the Commission proposal.

2. The Council's position on the Parliament's amendments concerning key issues

i) Structure of the legal act (delegated acts/implementing acts)

In order to reflect technical developments, the Commission proposed that the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adaptation of Annexes I, IB and II to technical progress and the supplementing of Annex IB with the technical specifications necessary for the automatic recording of the location data, for enabling remote communication and for ensuring an interface with Intelligent Transport Systems (Articles 4, 5, 6 and 38 of the Commission proposal).

The Parliament agreed with the approach proposed by the Commission but suggested including some of the content of the above Annexes in the main body of the Regulation in order to limit the power of the Commission to make changes on the main provisions of the tachograph Regulation. This applies in particular to the provisions of the text on definitions, requirements and data to be recorded, functions of the digital tachograph, and display and warning, on which the Parliament adopted a number of amendments.

The Council acknowledges that it is necessary to set the basic legal framework in the Regulation. It is therefore proposed to include the main technical requirements from the above Annexes in the text of the Regulation, on the basis of which the Commission should establish relevant detailed provisions through implementing acts at a later stage to ensure uniform application throughout the EU Member States. Against this background, the Council's position includes provisions on the definitions, on technical requirements and data to be recorded, on the functions of the digital tachograph and on display and warning.

Consequently, the Council could support the spirit of the Parliament's amendments 20, 22-37, 39-43, 45 and 48. However, amendments 125, 113, 114 and 115 were not taken on board.

ii) **New technology and data protection provisions**

(a) Reinforcement of data protection

In its original text, the Commission proposed to insert a direct reference to data protection legislation (Article 34).

The Council agrees with the Parliament that it is appropriate to reinforce the data protection provisions proposed by the Commission, building upon the opinion of the European Data Protection's Supervisor, and accepts therefore to a large extent the spirit of EP amendments 12, 44 and 101-102. However, the Council could not take into consideration amendments 48 and 49.

(b) Recording of location data

While the Commission proposed to record only the starting and ending place of the working day (Article 4), the Parliament was in favour of recording automatically each transport segment of the driver's day.

The Council could not subscribe to this approach but acknowledges that, beyond the starting and ending place of the working day, it would also be useful to record automatically the location points every three hours of accumulated driving time in order to improve compliance by professional road transport drivers with the legislation in force. Therefore, some of the concerns of the Parliament as reflected in amendments 46 and 47 could partly be taken into account in the Council's position.

(c) Equipment of control officers with the remote early detection technology

The Parliament tabled several amendments to make remote equipment for the early detection of possible tachograph manipulation mandatory for control officers.

The Council's position reflects partly the Parliament's concerns and considers that a phased approach to equip control officers with the remote access technology as laid down in Article 9 is appropriate. Accordingly, 15 years following the introduction of the smart tachograph, Member States will have to equip their control authorities to an appropriate extent with remote equipment, also taking into account the national enforcement strategies of Member States. Until that date, it will be optional to equip the control authorities with the remote access technology. Therefore, the concerns expressed by the Parliament in amendments 52, 88 and 103 could partly be accommodated by the Council's position, while also taking into account the budgetary constraints of Member States.

(d) Interface with Intelligent Transport Systems

The Parliament tabled several amendments providing for a mandatory interface of tachographs with the Intelligent Transport Systems.

The Council considers it crucial to keep a sufficient degree of flexibility so that transport undertakings remain able to choose whether or not to connect the tachograph to external devices. In the Council's position, it is therefore provided that tachographs may be equipped with standardised interfaces allowing the data recorded or produced by tachograph to be used by an external device, subject to certain conditions. In addition, the Council's text clarifies that the access to personal data by an external device connected to the interface can only be given after the explicit consent of the driver to which the data relates.

Against this background, the Parliament's amendments 59+122, 60-61, 62+123 were only partly taken into consideration in the Council's position.

iii) Date of entry into force of the smart tachograph and retrofitting of vehicles

(a) Entry into force

According to the initial Commission's proposal, the smart tachograph would be fitted in newly registered vehicles 48 months after the entry into force of the Regulation.

The Parliament proposed that vehicles put into service 24 months after the entry into force of the technical specifications for the smart tachograph would be fitted with such a tachograph.

In the Council's position at first reading, the smart tachograph would be required - for vehicles registered for the first time - 40 months after the entry into force of the technical specifications for smart tachographs that the Commission intends to establish at the latest by 31 December 2014.

Therefore, amendments 46, 51 and 61 as far as they relate to the timeframe could not be taken into consideration.

(b) Retrofitting of vehicles with digital tachographs

The Commission did not include any provisions on the retrofitting of vehicles with the smart tachographs in its original proposal, while the Parliament supported the principle of retrofitting all vehicles with the new smart tachograph by 2020 in order to facilitate the activity of control officers and transport undertakings.

The Council considers that the retrofitting of vehicles as envisaged by the Parliament would have a disproportionate economic impact, in particular by increasing the burden on small and medium enterprises, and could therefore jeopardize the competitiveness of EU operators. However, the Council accepts to reflect partly in its position at first reading the concerns expressed by the EP in its amendment 38: the Council's text provides in Article 3(4) that vehicles involved in international transport shall be retrofitted with the smart tachograph at the latest 15 years after newly registered vehicles are required to have the new tachograph.

iv) Inclusion of weight sensors in the smart tachograph

While the Commission proposal did not include any provisions on weight sensors, the Parliament considered that weight sensors should be included in the smart tachographs in order to improve the compliance by professional road transport undertakings of the legislation in force regarding weights of vehicles. To this end, the Parliament tabled several amendments (13+147+148; 149; 63+150 and 71+151).

The Council does not share the Parliament's assessment that there is a direct link between the inclusion of weight sensors in the smart tachographs and an improved control of driving and resting times. The Council considers that the inclusion of weight sensors in the smart tachographs is not appropriate for different reasons. First of all, the inclusion of a new technical specification concerning weight sensors would generate additional costs, in particular for small and medium-size enterprises. Secondly, the development of this new technical specification could delay the placement on the market of the new tachograph.

Against this background, apart from a recital referring in general terms to a future assessment to be made by the Commission concerning the potential for weight sensors to contribute to an improved compliance of road transport legislation, the Council's position does not include a provision on weight sensors in the text of the Regulation. Consequently, the above Parliament's amendments could not be taken into consideration by the Council.

v) Certification and training of control officers

The Parliament tabled a series of amendments concerning training for control officers and the harmonisation of certification for their skills and competences.

The Council is strongly opposed to any certification system for enforcement officers and could not accept the Parliament's amendments 97, 98, 106, 107 and 108.

However, in relation to the training of control officers, the concerns raised by the Parliament in its amendments 104 and 105 are partly reflected in the Council's position at first reading. As laid down in Article 39(3) of the Council's position, the Commission will adopt measures, specifying the content of the initial and continuing training of control officers, and this content shall be included in the training delivered to control officers in the Member States.

vi) Exemptions in the framework of Regulation 561/2006 on the harmonisation of certain social legislation relating to road transport

In Article 43 of its proposal, the Commission proposed to amend Article 13(1) of Regulation 561/2006, which allows Member States to grant exemptions from the provisions of the Regulation, subject to certain conditions. The Commission proposed to allow Member States to grant exemptions from Regulation 561/2006 for vehicles used only within a 100 km radius from the base of the undertaking.

The Parliament presented a series of amendments in order to introduce new exemptions in the framework of Regulation 561/2006. In particular, the Parliament was not entirely satisfied with the possibility offered to Member States to grant an exemption for transport operations within a radius of 100 km as proposed by the Commission and intended to apply this exemption in all EU Member States. To this end, the EP tabled amendment 126+135 which aimed at amending Article 3 of Regulation 561/2006 in order to exclude non-professional drivers from the scope of the Regulation, and so from the obligation to operate with a tachograph if they work exclusively within a radius of 100 km from the base of their undertaking.

In a spirit of compromise, the Council accepted to reflect the Parliament's concern in its position at first reading. Therefore, in the Council's text, non-professional drivers who use their vehicles for carrying materials or equipment needed for their own work are exempted from the obligation to operate with a tachograph if they operate exclusively within a radius of 100 km from the base of their undertaking, and provided that their vehicle's weight does not exceed 7.5 tonnes. However, the remaining Parliament's amendments 6, 117-120, 127-128 and 134 aiming at introducing new exemptions in the framework of Regulation 561/2006 were not taken into consideration by the Council.

vii) Harmonisation of infringements and penalties

The Parliament presented several amendments to reinforce the harmonisation of infringements and penalties across the Member States. In particular, the Parliament suggested including new provisions in the text of the Regulation to refer to a binding categorisation of very serious infringements against the tachograph Regulation; the Parliament's objective is to ensure that failure to comply with tachograph rules will lead to the highest penalties in national legislation.

The Council cannot accept the approach proposed by the Parliament in its amendments 3, 109 and 111-112 and considers that Member States shall, in accordance with national constitutional arrangements, lay down rules on penalties applicable to infringements of this Regulation. Besides, the text of the Council's position provides that those penalties shall be effective, proportionate, dissuasive and non-discriminatory and in compliance with the categories of infringements as defined in Directive 2006/22/EC.¹ A new recital is also added to emphasise that the existing rules should be applied in a uniform manner by Member States' authorities. Therefore, the spirit of amendment 4 could be accepted by the Council.

¹ OJ L 102, 11.4.2006, p.35-43

viii) Reinforcing the trustworthiness of workshops

The Commission proposal (Chapter IV, in particular Article 19) included provisions aiming at strengthening the legal framework for the approval of workshops. The Commission considered that, with a system of regular and unannounced audits and with measures to prevent conflicts of interest, workshops would be more trustworthy and the risk of fraud and manipulation will be reduced.

The Parliament tabled an amendment (amendment 81) to increase to 20% the unannounced technical audits of approved workshops.

Given the diversity of situations in the different Member States, the Council modified the Commission's text in order to give flexibility to Member States to decide internally how to operate, while ensuring a set of minimum criteria for the approval of workshops (staff properly trained, availability of the necessary equipment to carry out the relevant tests and tasks, good reputation). Moreover, in order to safeguard the trustworthiness of workshops, the Council reduces from one to two years the regular audits of the procedures applied by the workshops when handling the tachograph, maintains the Commission's proposal of 10% for the unannounced technical audits of workshops and the period of validity of the workshop card (one year) as proposed by the Commission. Against this background, the Parliament's amendment 81 could not be taken on board, while amendments 82 and 152 are covered, in principle, by the Council's position.

ix) Responsibility of the undertaking for infringements committed by the drivers

The Commission proposal contained a provision stating that a transport undertaking should be liable for infringements against the Regulation committed by its drivers, whilst Member States might consider any evidence that the transport undertaking could not reasonably be held responsible for the infringement committed.

The Council, building on paragraph 10 of Regulation 561/2006, proposes to include a sentence making this liability conditional on the undertaking's infringement of Article 33(3) (inadequate preparation of drivers by the undertaking) and of Article 10(1) and (2) of Regulation 561/2006. Besides, the Council's text provides that a transport undertaking shall be liable for infringements committed by its drivers or by those at its disposal.

In this context, the main Parliament's concerns as reflected in amendment 92 and 92+124+133 were in principle accepted by the Council.

x) Merger of the tachograph driver card with the driving licence

In the initial Commission's proposal, Article 27 provided that, with effect from 19 January 2018, tachograph driver cards should be incorporated into driving licences and issued, renewed, exchanged and replaced in accordance with the provisions of Directive 2006/126/EC.

This gradual process of replacing driver cards with driving licences would require a modification of the driving licence Directive, in order to organize from a legal point of view the co-existence of the two functions merged into a sole document, i.e. the driving licence having the functionalities of a tachograph driver card.

The European Parliament, in its amendment 89, replaced Article 27 with a provision mandating the Commission to prepare an impact assessment on the feasibility of merging all of the cards used by professional drivers, within 2 years after the date of entry into force of the Regulation.

The Council considers that the amendment of the driving licences Directive requires a comprehensive cost-benefit analysis to be prepared by the Commission before any decision could be taken on this complex issue. In this context, the Council decided to delete Article 27 in full.

Consequently, the Parliament's amendment 89 was not taken on board by the Council.

xi) Tachograph driver cards for third-country drivers

The Council agrees to introduce a new provision in the Regulation to address the issue of non-AETR, third-country drivers. Article 26, paragraph 4 of the Council's position, allows Member States to issue a temporary and non renewable driver card for a maximum period of 185 days.

According to the Commission's proposal, drivers card shall be issued by the Member State where the driver has his normal residence. The Council raises concerns regarding third-country drivers who do not have a normal residence in the European Union and who need to drive a lorry equipped with a digital tachograph. The new provision included in the Council's position aims at finding a solution for those third-country drivers that are legally entitled to work in the EU, but cannot obtain a driver card because they do not have their normal residence in the EU.

In addition, the text of the Council's position provides that the Commission will closely monitor the issuance of these temporary driver cards to drivers from third countries, in particular to make sure that there is no negative impact on the labour market and that the temporary cards are not being issued to named drivers ordinarily on more than one occasion.

3. Other amendments adopted by the European Parliament

Further amendments not included in the Council's position at first reading concern the:

- definition of "daily working period" (amendment 21), covered in the Council's recital 8.
- proposal for type approved software to be used by the competent authorities to interpret data downloaded from the tachograph (amendments 34, 45, 63+150, 68, 69, 70 and 103);

- provisions to ensure that drivers always manually register their activities; the objective of the Parliament is to avoid the possibility that the automatic setting of tachographs to rest/break when the vehicle engine is off is abused by employers who could force their employees to work during time which is registered as rest/break (amendment 91);
- provision on an individual employment contract of international drivers, that goes beyond the scope of the Regulation (amendment 132).

III. CONCLUSION

In establishing its position at first reading, the Council has taken full account of the proposal of the Commission and the European Parliament's opinion at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable amount of amendments have – in spirit, partially or fully – already been included in its position at first reading.
