COUNCIL DECISION (EU) 2016/1877

of 17 October 2016

on the position to be adopted, on behalf of the European Union, in the Group of Experts on the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR), and in the Working Party on Road Transport, of the United Nations Economic Commission for Europe

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In its judgment of 31 March 1971 in Case 22/70 ([1]), AETR, the Court of Justice recognized that the area of the work of crews of vehicles engaged in international road transport is an exclusive external competence of the Union. This competence has been exercised since then in numerous Union legal acts, namely in Regulation (EC) No 561/2006 of the European Parliament and of the Council ([2]) and Regulation (EU) No 165/2014 of the European Parliament and of the Council ([3]). Since the subject matter of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) ([4]) falls within the scope of Regulation (EC) No 561/2006, the power to negotiate and conclude the AETR lies with the Union.

(2) A Group of Experts has been established by the United Nations Economic Commission for Europe (UNECE) in the framework of the AETR ('Group of Experts'). It is a body which is empowered to develop and submit proposals for amending the AETR, including Article 22bis thereof.

(3) The next meeting of the Group of Experts will take place on 24 October 2016 and the meeting of the UNECE Working Party on Road Transport ('Working Party') will take place on 25 October 2016. On that occasion the Group of Experts and the Working Party plan to examine proposals made by the Contracting Parties of the AETR ('Contracting Parties') which, if accepted by the Group of Experts, may lead to an amendment of the AETR, after a procedure for such amendment is launched and concluded. This will produce legal effects as referred to in Article 218(9) TFEU.

(4) In order to achieve a pan-European harmonisation in the field of recording equipment in road transport (tachographs), it is necessary for a unique decision-making process to be put in place. Such a process ought to take into account the interests of the Union and those of third countries which are Contracting Parties.

(5) Article 22bis of the AETR provides that changes to Council Regulation (EEC) No 3821/85 ([5]) concerning the digital tachograph are automatically taken over by all Contracting Parties, without any formal consultation or vote. The lack of participation of non-EU Contracting Parties in the process of development and adoption of technical specifications on the digital tachograph has been a cause of discontent among some of those Contracting Parties. The Commission's communication 'Digital Tachograph: Roadmap for future activities' acknowledges that this mechanism jeopardises the correct and harmonised implementation of the digital

([1]) Judgment of the Court of Justice of 31 March 1971, *Commission* v *Council*, 22/70, ECLI:EU:C:1971:32.
([2]) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).
([3]) Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 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 of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).
([4]) OJ L 95, 8.4.1978, p. 1.
([5]) Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8).

tachograph by non-EU Contracting Parties. It is therefore in the interest of the Union to modify the decision-making process as regards digital tachographs and to propose in the Group of Experts the deletion of Article 22bis of the AETR, and the application of the procedure set out in paragraphs 1 to 3 of Article 22 of the AETR for the amendment of the technical specifications of the digital tachograph.

(6) Considering that any amendments of the digital tachograph specifications should not affect the principles and functioning of the AETR since they should only be subject to regular updates taking into account technological developments, the number of Contracting Parties necessary to object to those amendments should be increased from one third to at least one half.

(7) There are several arguments for the accession of the Union to AETR. Firstly, the Union has exclusive competence in the area of the work of crews of vehicles engaged in international road transport, as confirmed in Case 22/70. Secondly, such an accession would guarantee the effective representation of the Union's interests within the AETR. Finally, the specificities of the AETR and of the proposed decision-making process justify why the Union should be a Contracting Party.

(8) Article 14 of the AETR does not allow the accession of bodies other than States members of the UNECE and States admitted to UNECE in a consultative capacity. For that reason, in order to allow for an accession of the Union to AETR, an amendment of Article 14 should be proposed providing for the accession of regional integration organisations to AETR. Accession by the Union to the AETR should not constitute a precedent as regards any future accession of the Union to other international organisations.

(9) Once the AETR allows the accession of regional integration organisations, the Council, on a proposal from the Commission, could adopt a decision concerning the accession of the Union to AETR. If the Union becomes a Contracting Party of the AETR, the positions to be adopted on the Union's behalf in the various AETR bodies would have to be established by the Council in accordance with Article 218(9) TFEU. Accordingly, the Commission would make a proposal to the Council setting out the Union position to be presented and defended and, where appropriate, the draft text to be voted in the framework of the AETR.

(10) Article 10 of the AETR provides that a tachograph whose construction, installation, use and testing are carried out in accordance with Regulation (EEC) No 3821/85 is considered to comply with the requirements of the AETR. That principle applies to any modification of the tachograph specifications, irrespective of whether they are adopted on the basis of Regulation (EEC) No 3821/85 or another legal act. It therefore applies to Regulation (EU) No 165/2014 which repealed and replaced Regulation (EEC) No 3821/85, as well as to Commission Implementing Regulation (EU) 2016/799 [1] laying down the technical specifications for the new smart tachograph. For those reasons Article 10 of the AETR should be amended in order to include references to Regulation (EU) No 165/2014 and Implementing Regulation (EU) 2016/799, both of which should be applicable as from 15 June 2019.

(11) In addition, a new appendix should be inserted in the Annex to the AETR containing the provisions of Implementing Regulation (EU) 2016/799 and any other subsequent adaptations to technical progress.

(12) The approval certificate for digital tachographs set out in Appendix 2 to the Annex to the AETR should be amended so that it can also be used for the approval of smart tachographs and components thereof.

(13) It is therefore appropriate to establish the position to be adopted on the Union's behalf in the Group of Experts and in the Working Party,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted on the Union's behalf in the Group of Experts on the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) and in the Working Party on Road Transport shall be in accordance with the position set out in the Addendum to this Decision and shall be expressed by the Member States, which are Contracting Parties of the AETR, acting jointly in the interest of the Union.

[1] Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ L 139, 26.5.2016, p. 1).

2. The Member States shall communicate the proposed amendments to the Group of Experts.

3. Formal and minor changes to the position referred to in paragraph 1 may be agreed without requiring that position to be amended.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 17 October 2016.

For the Council
The President
L. SÓLYMOS

ANNEX I

Amendment of Article 22 and deletion of Article 22bis

(1) Article 22 is amended as follows:

(a) Paragraphs 1 and 2 of Article 22 are replaced by the following:

'1. Appendices 1, 1B, 1C and 2 to the annex to this Agreement may be amended by the procedure specified in this article.

2. At the request of a Contracting Party, any amendments proposed to the appendices 1, 1B, 1C or 2 to the annex to this Agreement shall be considered by the Principal Working Party on Road Transport of the Economic Commission for Europe.'

(b) Paragraph 4 is replaced by the following:

'4. The amendment shall be accepted if, within a period of six months following the date of notification, no more than one half of the competent administrations of the Contracting Parties notify the Secretary-General of their objection to the amendment.'

(c) A new paragraph 6 is added:

'6. If a proposal for the amendment of Appendix 1B or 1C to this Agreement requires amendment of other provisions of the Agreement, the amendments to the Appendices 1B or 1C cannot enter into force before date of entry into force of the amendments to those other provisions pursuant to Article 21. If, in such a case, the amendments to Appendix 1B or 1C are presented simultaneously with the amendments relating to other provisions of the Agreement, the date of their entry into force shall be the date resulting from the application of the procedure outlined in Article 21.'

(2) Article 22bis is deleted.

ANNEX II

Amendment of Article 14

Article 14 is amended as follows:

(a) The following paragraph 1a is inserted after paragraph 1:

'1a. This Agreement shall also be open for signature by regional integration organisations. For the purpose of this Agreement, a "regional integration organisation" means any organisation which is constituted by sovereign States of a given region, which has competence in respect of certain matters governed by this Agreement and has been duly authorized to sign and to ratify, accept, approve or accede to this Agreement.

For the purposes of amending Appendices 1, 1B, 1C, 2 and 3, the representative of a regional integration organisation Contracting Party to the Agreement delivers the votes of its constituent Member States without their presence being necessary in the vote.'

(b) Paragraph 5 is replaced by the following:

'5. In respect of each State or regional integration organisation which ratifies, or accedes to, this Agreement after the deposit of the eighth instrument of ratification or accession as referred to in paragraph 4 of this Article, the Agreement shall enter into force one hundred and eighty days after the deposit by that State or regional integration organisation of its instrument of ratification or accession.'

ANNEX III

Amendment of Article 10

Paragraph 3 of Article 10 is replaced by the following:

'3. For vehicles registered for the first time until 14 June 2019, a control device conforming to Council Regulation (EEC) No 3821/85 of 20 December 1985 and Appendix 1B to this Agreement as regards construction, installation, use and testing shall be considered as conforming to the requirements of this Agreement.

For vehicles registered for the first time as from 15 June 2019, a control device conforming to Regulation (EU) No 165/2014 of 4 February 2014 and Appendix 1C to this Agreement as regards construction, installation, use and testing shall be considered as conforming to the requirements of this Agreement.'

ANNEX IV

Appendix 1C

Annex IC to Commission Implementing Regulation (EU) 2016/799 is inserted as Appendix 1C to the Annex to the AETR.

ANNEX V

Approval certificate for products in accordance with appendix 1B/1C

Chapter III of Appendix 2 'III. Approval certificate for products in accordance with Appendix IB' is replaced by the following:

'III. **Approval certificate for products in accordance with appendix 1B/1C** ([1])

Once the Contracting Party has effected an approval it issues the applicant with an approval certificate, drawn up in accordance with the model below. Contracting Parties use copies of this document in order to communicate to other Contracting Parties approvals granted or any withdrawals.

Approval certificate for products in accordance with appendix 1B/1C ([1])

Name of the competent administration

Communication concerning ([2]):

Approval

Withdrawal of an approval

Of a control device model

Of a control device component ([3])

Of a driver card

Of a workshop card

Of a company card

Of an inspector's card

Approval No .....

(1) Manufacturing or commercial mark

(2) Name of model

(3) Name of manufacturer

(4) Address of manufacturer

(5) Submitted for approval on

(6) Test laboratory or laboratories

(7) Date and No. of reports

(8) Date of approval

(9) Date of withdrawal of approval

(10) Model (s) of component(s) of control device with which the component is intended to be used

(11) Place

(12) Date

(13) Descriptive documents annexed

(14) Remarks (including the affixing of seals if required)

.....

(Signature)

(1) Specify Appendix 1B or 1C
(2) Tick the relevant boxes
(3) Specify the component concerned in the communication'