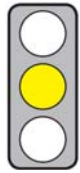


MAIN ISSUES

Objective of the Regulation: Rules on driving times and rest periods are to be implemented more effectively and administrative burdens for road transport companies and control authorities are to be reduced.

Parties affected: Road transport companies, drivers, control authorities.



Pros: (1) The more effective control of driving times and rest periods heightens transport safety.
(2) The remote retrieval of tachography data can help save costs.

Cons: (1) Dispensing with having to provide proof of rest periods increases the risk of abuse.
(2) Prohibiting transport companies from installing tachographs in their own vehicles is inappropriate.
(3) The Regulation must stipulate which data may be transmitted through remote communication.

CONTENT

Title

Proposal COM(2011) 451 of 19 July 2011 for a **Regulation** of the European Parliament and of the Council amending 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.

Brief Summary

Note: Pages cited refer to the Regulation Proposal COM(2011) 451. Articles quoted refer to the Regulation (EEC) No. 3821 in the version of the proposed amendments, unless specified otherwise.

► Background and objectives

- Driving times and rest periods in road transport are subject to rules [Regulation (EC) No. 561/2006] in order to:
 - improve road transport safety;
 - improve drivers' working conditions; and
 - ensure fair competition between road transport companies.
- "Tachographs" are devices which are to be installed in road vehicles to control driving times and rest periods [Regulation (EEC) No. 3821/85]; they record data on the driving and working hours of drivers.
 - The analogue tachographs introduced in 1985 record data on paper ("record sheets").
 - The digital tachographs introduced in 2006 record data on chip cards ("tachograph cards").
- According to the Commission, 25% of the vehicles checked in the EU are found to be driving with manipulated tachographs, record sheets or driver cards (p. 2).
- By amending the Regulations No. 3821/85 and No. 561/2006 the Commission wishes to:
 - better enforce the rules on driving time and rest periods; and
 - reduce the administrative burdens for road transport companies and control authorities.

► Scope of application

- Affected are road vehicles (Art. 2 (1) Regulation No. 561/2006)
 - for the carriage of goods with a maximum volume (incl. payload) of over 3.5 tons, or
 - for the carriage of more than 9 persons (incl. driver).
- Member States may allow for exceptions (Art. 3, Art. 13 and 14 Regulation No. 561/2006) for, amongst other things, vehicles which:
 - only cover distances within a 100 km-radius from the company site;
 - have a permissible maximum volume (incl. payload) of up to 7.5 tons; and
 - can be used by craftsmen or to carry goods with a gas or electric drive system.

► Smart tachographs

- By 2017, technical improvements should further develop digital tachographs into "smart tachographs".
- "Smart tachographs" record at the start and end of a working day the location of a vehicle by means of a connection to a global navigation satellite system (GNSS), in order to better check compliance with the rules regarding driving times and rest periods (Art. 4; Recital 5).
- Control authorities can retrieve tachograph data while vehicles are in motion ("remote communication") (Art. 5) in order to avoid "unnecessary roadside checks" (p. 5).

- “Smart tachographs” are equipped with harmonised interfaces, which allow the data recorded to be used for intelligent transport systems (ITS) applications (Art. 6).
 - ITS are systems which support road transport through information and communication technologies (e.g. via satellites). Amongst other things, they serve to increase road safety and traffic flow.
 - Examples of ITS are electronic emergency calls (eCall) which, in case of an accident, automatically send wireless data to an emergency centre, and systems which serve to locate the position of freight (eFreight) and to provide real-time data on the quality of the road system (s. [CEP Policy Brief](#) on ITS).
- **Driver cards**
- In order to stop drivers from using several driver cards, driver card data (namely driver’s name, place and date of birth, license number, country of issue, status of the driver card) must be:
 - stored in national electronic registers and
 - exchanged between Member States. (Art. 26)
 - As of 19 January 2018, the driver’s card will be incorporated into the driver’s license as, according to the Commission, this would help deter abuse. To this end, the Commission will propose an amendment to the Driving License Directive (2006/126/EC) by the end of 2011. (Art. 27)
- **Installations only by approved “fitters” or workshops**
- Tachographs may only be installed, checked or repaired by “fitters” or workshops authorised and approved by Member States (Art. 19 (1)).
 - Approved “fitters” or workshops are subject to regular unannounced audits (Art. 19 (3)). In the case of breach, the approvals may be withdrawn (Art. 19 (6)).
 - In order to prevent any conflicts of interest, transport undertakings operating an approved workshop must not install or calibrate tachographs in their own vehicles (Art. 19 (4)).
- **Rules for users and sanctions**
- Drivers must use the record sheets or driver cards for every day on which they are driving, starting from the moment they take over the vehicle (Art. 30 (1)).
 - Periods of time for which no activity is recorded shall be regarded as rest or break. Drivers are not obliged to record daily or weekly rest periods when away from the vehicle. (Art. 30 (3))
 - It is forbidden to (Art. 28 (2))
 - falsify, conceal or destroy data recorded on the record sheet or on the driver card;
 - manipulate the tachograph, record sheet or driver card.
 - Transport undertakings are liable for their drivers’ infringements (Art. 29 (3)).
 - Member States must:
 - stipulate penalties applicable to the infringement of tachography rules (Art. 37 (1)); and
 - punish “very serious infringements” (cp. Directive 2006/22/EC, Annex III in conjunction with 2009/5/EC) by means of sanctions of the “highest categories” applicable to infringements (Art. 37 (3)).
- **Data protection**
- Member States must ensure the protection of personal data in line with EU data protection law (Directive 95/46/EC and 2002/58/EC) (Art. 34 (1) and (2)).
 - “Smart tachographs” must be designed in such a way as to ensure privacy. They may only process data that are “strictly necessary” for the purpose of processing. (Art. 34 (3))
 - The data exchanged during communication (Art. 5 (3))
 - are limited to data “necessary” for the purpose of roadside checks, and
 - must not include any data on the identity of the driver, driver activities and speed.
 - The data must be deleted at the latest two hours after the roadside check (Art. 5 (5)).
- **Cooperation with third countries**
- Since 10 June 2010, newly registered vehicles in non-EU Contracting Parties to the “European agreement concerning the work of crews of vehicles engaged in international road transport” (AETR) must use the digital tachograph.
 - Experts from Member States and third countries are invited to exchange technical information in a so-called Tachography Forum (Art. 41).

Changes to the Status Quo

- To date, vehicles could be exempted from the rules of the Regulation only if covering distances within a 50 km-radius from the company site. Now this distance is to be increased to 100 km.
- To date, vehicles had to be stopped for random roadside checks. Now, the control authorities can retrieve tachography data via remote communication.
- To date, drivers had to record the starting and end position of their daily working time manually. Now, the position is located automatically via satellite navigation systems.

- ▶ To date, drivers had to carry their driving licenses and driver cards with them. Now, the driver card is to be integrated into the driving license.
- ▶ New are harmonised interfaces for the integration of digital tachographs into ITS.
- ▶ New are regular and unannounced checks of approved “fitters” and workshops.

Statement on Subsidiarity by the Commission

Internal EU road transport is becoming increasingly transnational. The use of tachographs and the associated social security provisions [Regulation (EC) No. 561/2006] are meanwhile regulated at EU level. In order to control compliance with social security provisions, the tachographs of Member States must be interoperable. To this end, returning responsibility for the rules for tachographs to national level would be counterproductive.

Policy Context

Since 1985, the analogue tachograph has been in use. In older vehicles it is still in use. Since 1 May 2006, all newly registered vehicles must use digital tachographs.

A review of the Tachography Regulation was announced in the Commission’s White Paper on transport [s. [CEP Policy Brief](#) on the Transport White Paper COM(2011) 144].

The Regulation is in line with the recommendations made by the “High Level Group of Independent Stakeholders on Administrative Burdens” in the EU (“Stoiber Group”).

In the accompanying Communication [COM(2011) 454], the Commission announces a timeframe for the adoption and implementation of the proposed amendments: adoption of the regulation proposal (2012), amendment of Annex I B of the Regulation (EEC) No. 3821/85 on technical specifications of the digital tachograph (by end of 2014), development of “smart tachographs” (by the end of 2016) and the use of “smart tachographs” (as of 2017).

The Commission is planning the EU’s entry into the AETR Agreement as a contracting party in its own right, in order to better represent the interests of the EU and, at the same time, to enable a harmonisation of EU rules parallel to developments in the AETR Agreement.

Legislative Procedure

| | |
|--------------|--|
| 19 July 2011 | Adoption by the Commission |
| Open | Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force |

Options for Influencing the Political Process

| | |
|--|---|
| Leading Directorate General: | DG Mobility and Transport |
| Committees of the European Parliament: | Transport and Tourism (in charge), rapporteur: Silvia-Adriana Țicău (S&D Group, RO) |
| Committees of the German Bundestag: | not yet known |
| Decision mode in the Council: | Qualified majority (Adoption by the majority of Member States with 255 of 345 votes; Germany: 29 votes) |

Formalities

| | |
|---------------------------------|-------------------------------------|
| Legal competency: | Art. 91 TFEU |
| Form of legislative competence: | Shared competence (Art. 4 (2) TFEU) |
| Legislative procedure: | Ordinary legislative procedure |

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The more effective control of compliance with rules on driving times and rest periods helps prevent over-tired drivers from participating in road traffic and companies from imposing excessive driving times on their drivers in order to gain competitive advantages. This **increases road transport safety** and contributes to the protection of (innocent) third parties, as well as improving the working conditions of professional drivers.

The introduction of remote communication enhances the efficiency of roadside checks, as considerably more vehicles can be checked than is possible with random road checks.

Impact on Growth and Individual Freedom of Choice

Remote communication can help reduce the administrative costs of control authorities and companies as vehicles no longer need be stopped. It must, however, be ensured that the applied technology is precise and reliable. Otherwise, vehicles which comply with the rules would be stopped, which would increase administrative burdens even further.

Unannounced controls of approved “fitters” and workshops would lower the risk of manipulated tachographs being installed, for workshops are more likely to comply with the law if they can expect controls at any time and subsequent sanctions, such as the withdrawal of their approvals, should irregularities be discovered.

The automatic registration of rest periods and dispensing with the obligation to provide proof of rest periods facilitates the use of tachographs and thus reduces the administrative costs for companies. However, this also **increases the risk of abuse**, as drivers can carry out other work during their rest periods. This undermines the Commission’s aims – namely increased road transport safety, improved working conditions and fair competition – and hence represents a step backwards from the existing provisions.

Impact on Growth and Employment

The integration of harmonised ITS interfaces and the use of tachography data which are relevant to road transport can improve ITS. ITS services and applications can provide optimised transport planning and allow for improved traffic flow, which would help reduce congestion and the consequential costs. This has a positive effect on growth and employment.

Impact on Europe as a Business Location

The integration of AETR contracting states into the development of tachographs ensures that equal competitive conditions are established between companies and EU Member States and other contracting states. Thus it also becomes more difficult for the companies of neighbouring countries to manipulate tachographs in order to gain unfair competitive advantages.

Legal Assessment

Legislative Competency

Unproblematic. The EU may for the purpose of implementing a “common transport policy” adopt both “appropriate provisions” and special measures, e.g. to improve transport safety (Art. 91 TFEU).

Subsidiarity

Unproblematic. As a significant part of the transport of goods and personnel is becoming increasingly cross-border, EU-wide provisions for tachographs are necessary.

Proportionality

Prohibiting transport companies from having tachographs installed by their own “fitters” or workshops (Art. 19 (4)), **is inappropriate**. The planned regular controls and the random sample tests are more appropriate and softer means to detect and prevent infringements. To this end, the interference with the fundamental right to entrepreneurial freedom (Art. 16 Charter of Fundamental Rights) is not justified.

Compatibility with EU Law

The fact that control authorities can retrieve tachography data while vehicles are in motion (“**remote communication**”, Art. 5) **is problematic in terms of data protection** (Art. 8 Charter of Fundamental Rights, Directive 95/46/EC). The general obligation of Member States to ensure the protection of personal data (Art. 34 (2)), the prohibition on collecting certain sensitive data and the general requirement that only data “necessary” for a targeted roadside check may be conveyed (Art. 5 (3)) are too vague. **The Regulation must define positively which data may be transmitted**. Absolutely harmless is the location of positions through satellite navigation systems (Art. 4): as only the start and end of a working day is recorded, a detailed movement profile of drivers cannot be drawn up anyway. Thus the driver’s fundamental right to privacy (Art. 7 Charter of Fundamental Rights) and to the protection of personal data (Art. 8 Charter of Fundamental Rights) is not infringed.

These fundamental rights are also not infringed by the planned interoperability of tachographs with ITS applications (Art. 6), as only technical requirements but not their actual use are prescribed.

Compatibility with German Law

The same data protection concerns as with EU level are raised when it comes to the German data protection law.

Conclusion

An effective control of compliance with driving times and rest periods increases road transport safety. Remote communication can help reduce the administrative costs of control authorities and companies. Dispensing with the obligation to provide proof of resting periods increases the risk of abuse. Prohibiting transport companies from having tachographs installed by their own “fitters” and workshops in their own vehicles is inappropriate. The Regulation must stipulate which data can be transmitted through remote communication.