

IRU POSITION ON THE EC PROPOSAL TO AMEND EU REGULATIONS 3821/85/EC & 561/2006/EC

I. INTRODUCTION

1. WHO WE ARE

The IRU, through its national associations on every continent, represents the entire road transport industry world-wide. It speaks for the operators of coaches, taxis and trucks, from large transport fleets to driver-owners. In all international bodies that make decisions affecting road transport, the IRU acts as the industry's advocate. By working for the highest professional standards, the IRU strives to help improve the safety record and environmental performance of road transport while ensuring free mobility of people and goods.

2. THE DIGITAL TACHOGRAPH: CURRENT AND FUTURE REQUIREMENTS

The digital tachograph is a technical device of paramount importance for the improvement of road safety, respect of working conditions and fair competition between transport operators. As such the IRU fully supported the introduction of the device with the expectation that it would reinforce regulatory compliance by being more easily read by control bodies and more resistant to fraudulent manipulation. These core aims and attributes of the digital tachograph remain as important today as ever.

However, while the device has so far functioned primarily as a policing tool, it is essential that steps are taken so that it also becomes a support tool for both drivers and transport planners. The digital tachograph has not met the expectations of the road transport industry in this regard, for whom the principal selling point was the expectation of a digital labour saving device that would simplify their work. Unfortunately, it has frequently had an opposite effect, generating new administrative tasks and adding complexity to others.

The European Commission proposal to amend the tachograph regulation focuses both on security and usability issues. Amendments to improve the security of the device should be taken where there is a clearly identifiable need, where the means to do so are clearly laid out, where costs are known in advance and where there is a reasonable expectation of success. Unfortunately several of the most important European Commission proposals do not adequately fit these criteria and therefore require some amendment. On the other hand there are many positive proposals to improve the usability of the device. These should be supported or otherwise strengthened.

In short the opportunity should be taken via this review to make the device both a better aid to industry efficiency as well as to control bodies for monitoring compliance. At the same time, and above all in the current economic environment, the review must pay close attention to the need to keep cost increases for both industry and authorities within proportionate and reasonable limits.

II. MAIN ELEMENTS INCLUDED IN THE PROPOSAL

(a) GNSS INTEGRATION (ARTICLE 4, 2(J))

The EC requests the integration of GNSS satellite positioning technology in all devices fitted to vehicles put into service 48 months after the entry into force of the new Regulation. In theory this would provide control officers with a means to verify the data produced by the principal motion sensor of the tachograph. GNSS should not be presented as a silver bullet for dealing with tachograph fraud, since it too will prove vulnerable to manipulation. More effective means for dealing with tachograph fraud than simply increasing technology are needed, notably more effective sanctions, better use of intelligence-led controls and operator risk rating systems. This would provide more effective and fair solutions, since it would place the cost of tachograph fraud on those committing such acts and not on the majority of law abiding operators.

However, an increasing number of vehicles are using satellite navigation systems voluntarily in order to harness increasingly important ITS technologies. Incorporating a GNSS satellite positioning capability as a standard feature into the device could be viewed positively as it could stimulate the market for ITS applications and facilitate transport operators wishing to integrate these new technologies into their fleets' in a cost efficient way and without duplicating existing on-board technologies.

Nevertheless, firstly it is absolutely essential that GNSS satellite signal are 100% free to use. Secondly, all data protection rules relating to information, generated concerning the driver and the company must be rigorously observed. Thirdly, it is fundamental that GNSS integration into the tachograph is not used to artificially build a business case for Galileo, when other technologies may offer less expensive or more appropriate alternatives. An integrated GNSS capability within the tachograph must be developed in collaboration with all stakeholders, both public and private. The IRU does not consider that the adoption of its specifications by European Commission Delegated Acts would fully guarantee this outcome.

The IRU proposes that if a GNSS capability is integrated into the digital tachograph, its satellite signalling capability must be free to use. Data protection rules must be strictly observed and control over its technological development must be shared by the EC, Member States and industry stakeholders, through a strengthened version of the Committee referred to in article 40. The legal proposal must also state that authenticated signals shall not be required if this were to incur additional costs.

(b) REMOTE COMMUNICATION FOR CONTROL PURPOSES (ARTICLE 5)

The EC proposes that 48 months after entry into force of the new regulation, tachographs fitted to vehicles put into service for the first time should communicate certain information over short distances to control authorities to help prioritise vehicles for roadside checks. The technology must not be used to determine regulatory compliance but only indicate the need or not for a road side check. In the EC proposal the detailed technical specifications would be developed, as a delegated act, which again leaves too many important details unspecified in the legal proposal itself. Also the figures in the impact assessment are highly conjectural with cost savings based again on inflated wage levels and the assumption that the whole EU vehicle fleet would be equipped with the technology, which is not the case.

However, the IRU is in favour of more intelligence-led controls to take the enforcement burden away from compliant operators. But real benefits will only be obtained if the technology is accurate and reliable. If not, they will have the opposite effect of delaying compliant vehicles.

IRU would support the proposal only with the inclusion of additional conditions and safeguards in the legal text to act as guarantees for the way the technology will be developed and used in the field. These must include the following:

- Legal compliance or non-compliance cannot be established via data transfer alone. The information shall only be used to determine if a vehicle should be stopped for inspection.
- Data transfer must not extend to information to determine driving and rest time rules compliance which is not applied uniformly across the EU. Data transferred should be strictly limited to 8 specific and very basic indicators which cannot be misinterpreted i.e: vehicle in motion with no driver card inserted (& when *out of scope driving is not selected*); vehicle in motion with no speed signal; insertion of a non-valid card; driving without an appropriate card; card insertion while driving; security breach attempt; card fault; and recording equipment fault.
- The use of malfunctioning equipment shall not constitute an offence unless the driver is proved to have done so with deliberate intent to break the rules.
- The 48-month deadline for implementation should be deleted.
- The EC delegated act should be prepared by the Committee referred to in article 40.
- Prior to implementation, the cost increase per digital tachograph for implementing such a system should be known and judged to be proportionate by the 'article 40 Committee'.
- Prior to implementation, the technology must be demonstrated to the 'article 40 Committee' to be accurate following rigorous field tests. This is essential to prevent controls becoming less efficient and the administrative burden on compliant companies and enforcers being increased.

(c) INTEGRATION OF DRIVER CARDS WITH DRIVER LICENCES (ARTICLE 27)

The IRU can support the concept of combining the functions of various driver ID cards, since this would lead to a very useful reduction in the number of documents that professional drivers need to hold, apply and pay for. However, **this should not be made compulsory at EU level because** in some countries this would lead to disproportionately high costs depending on the size of the driver population and the implementation method used, which could not guarantee cost neutrality for users.

If included as an option at EU level the new regulation would need to contain the following binding conditions:

- The integration of driver card functionalities with licences is optional and decisions should be concluded at national level, after a careful consideration of costs and benefits and following agreement with industry stakeholders or social partners.
- The costs of the new cards must be made, transparent and discussed with the industry in advance of any decision to implement the policy. Moreover, the costs of driver card integration should only be borne by professional drivers or their employers who actually require extra tachograph functionalities as part of their driving licence.
- The decision on driver card and driver licence integration should preferably be devolved down to the level of individual drivers, as in the case of Finland with driver licence and driver CPC integration.
- There must be full mutual recognition of all cards and the different forms these might take throughout the EU.

- The procedures for issuing multifunctional cards should remain secure and efficient. The card issuing deadlines contained in articles 21, 23 and 24 must still be observed.
- If an integrated driver's tachograph card/licence is confiscated or withdrawn, this should not automatically lead to the loss of driving licence entitlements. To prevent this, an internationally recognised substitute licence according all entitlements contained in the licence must be issued to the driver within five working days.

(d) SANCTIONS (ARTICLE 37)

The EC proposes that all those offences categorised as 'very serious' in the infringements table in Directive 2009/5/EC (it also covers Regulation 561/2006/EC) should be treated in line with an individual Member States' highest category of infringements for road transport legislation.

The IRU has always regarded the categorisation of infringements contained in Decision 2009/5/EC as totally insufficient and without adequate distinction between deliberate and accidental infringements. It should be recalled that it was developed in Comitology by MS experts who considered that it would only be used to help align national operator risk rating systems. It should be used for no other purpose. MS only agreed to its adoption as an annex to the Enforcement Directive 2006/22/EC on the grounds that it represents non-binding guidelines.

It is, therefore, wholly inappropriate to use it as proposed by the EC. Some of the very serious infringements defined in this table, such as deliberately falsifying or destroying data, manipulating the device, or refusing to be checked, should be treated in the most severe manner. However, to treat in the same way, other offences which should not have been given the same categorisation in this table, - such as 'incorrect use of the tachograph's switch mechanism' - is wildly disproportionate.

At an absolute minimum, it must first be made clear that the groups of infringements in the table related to Regulation 561/2006/EC (sections A to E) are not at all to be considered here since they do not relate to the operation of the tachograph but to compliance with driving and rest time rules. These are even less amenable to relatively crude categorisation.

Furthermore, if it is appropriate to oblige MS to align their most serious infringements with those of the EU, it should also be required to align their treatment of the least serious infringements to ensure penalties fit the crime at both ends of the scale.

A full review of the EC's post Lisbon Treaty powers in this area, as well as the revision of the current categorisation of offences in Directive 2009/5, should be carried out before further actions are taken in this area.

(e) AMENDMENT OF THE ANNEXES VIA DELEGATED ACTS AND COMMITTEE STRUCTURE (ARTICLE 38, 39 AND 40)

Other than the specific measures referred to in the EC's legal text, article 38 states that any amendments to the Regulation's technical annexes must also be adopted through EC delegated acts. Article 39 states that delegated acts shall only enter into force if no objection is raised by the EP or Council within two months of notification. This period may be extended by a further two months at their request. At any time, the EP and MS can unilaterally revoke the EC's delegated powers. Article 40 states that the Commission shall be assisted by a Committee subject to the new Comitology committee rules set down in EU regulation no 182/2011. The Committee shall give its opinion according to either the advisory or examination procedures.

The IRU wants to insist that **whenever an amendment of the annex is required via a delegated act, these modifications shall be developed by the 'article 40 Committee'**. The IRU would seek amendments to article 40 to ensure the tasks of the Committee - particularly

regarding the **preparation of delegated acts** - are made clear. We also would request that Social Partners like the IRU are admitted to all meetings of the Committee as observers, so that they can contribute to the development of the proposals in the same way they do currently via the EU social rules comitology committee. This will ensure the optimum level of cooperation between regulators and industry stakeholders in the development of delegated acts and thus the effectiveness of such measures.

(f) ADAPTING TACHOGRAPH'S SECURITY FEATURES (SECTION 2.1 OF THE ROADMAP)

The EC will carry out a general security assessment of the digital tachograph system as a whole. Then, to ensure the device's data encryption code key lengths - currently fixed - do not become obsolete (thus rendering the tachograph's data fully open to manipulation) it proposes to adopt via a delegated act, a mechanism for updating the device's encryption codes in line with real threat levels. In its roadmap, the EC also outlined a migration strategy designed to ensure that equipment in the field would remain interoperable following key length changes.

Allowing the key lengths to become obsolete and open to manipulation on a massive scale is not an option. A solution must be found to ensure the encryption code key lengths keep pace with real threats. However, the migration strategy outlined by the EC to ensure interoperability is insufficient to safeguard the return on investments already made by road transport operators. Those who have already purchased digital tachographs should be able to use them for the full duration of the equipment's natural life cycle, bearing in mind a potential vehicle lifespan of 15 to 20 years. It is thus likely that at least two security levels must exist on driver cards for much longer than the period proposed by the EC.

Not only would this protect the investments of EU operators but also ensure that enforcement officers retain control cards that allow them to access data on tachographs fitted to those vehicles which the EC itself expects will be sold to companies in third countries such as AETR States like Russia, Armenia and Turkey, but which may re-enter the EU and will need to be controlled.

A new article should be introduced to the Regulation to cover this important aspect of the review. There should be a reference to the requirement to adopt a solution concerning the key length issue as well as a guarantee that the accompanying migration strategy will ensure full interoperability for all equipment in use at any one time, and thus protection for the investments made by undertakings.

(g) HARMONISED ITS INTERFACE (ARTICLE 6)

The EC's legal proposal requires the incorporation of a harmonised ITS interface on all digital tachographs fitted to vehicles put into service for the first time 48 months after the entry into force of the new Regulation. This would allow tachograph data to be used for other intelligent transport applications, as defined by article 4 of Directive 2010/40/EU on Intelligent Transport Systems.

The development of **an open architecture ITS platform** would facilitate the integration of varied ITS based applications and save costs for operators installing multiple applications and services. Such ITS applications must be **standardised, harmonised, interoperable and voluntary**. The proposal of the EC to require the introduction of a standardised ITS interface is supported but does not go far enough towards the development of an open architecture ITS platform.

Article 6 of the EC legal proposal should be amended so that the EC – assisted by the ‘article 40 Committee’ - is also required to establish a road map for an open architecture ITS platform allowing optional integration of all devices falling within the definition in the ITS Directive.

(h) APPROVAL OF FITTERS AND WORKSHOPS (ARTICLE 19)

Considering that workshops are security weak points in the digital tachograph system, the EC gives a list of general requirements, from training to good repute and audits, on which national workshop approval policy should be based. Critically, it would prohibit road transport companies which also operate workshops from calibrating or repairing their own digital tachographs on vehicles at these locations.

The last policy is disproportionate and not well targeted since there is no evidence that workshops owned by transport companies are any more associated with tachograph fraud than others. The IRU opposes this prohibition on the grounds that a transport company should not be prevented from having the capacity to service its own vehicles as long as it meets the security policies adopted in their country and has not been found guilty of tachograph fraud.

IRU would like to see the deletion of the EC’s proposed prohibition on transport undertakings servicing their vehicles at approved workshops which they also operate.

(i) RESPONSIBILITY OF THE UNDERTAKING (ARTICLE 29)

Mirroring the liability principle in Regulation 561/2006/EC, the EC’s proposal is to explicitly establish transport undertakings as holding primary liability for infringements of the Regulation committed by the undertaking’s drivers. Despite being established practice in some Member States, it is unacceptable that transport companies could be held in every case responsible for infringements committed by drivers. If it can be demonstrated that transport undertakings observed their own specific obligations under the Regulation, have ensured that their drivers receive suitable supervision, instructions, training, work planning and the physical means to remain compliant, as well as having introduced disciplinary measures to correct mistakes that could lead to infringements, then they should not be held responsible for infringements that are committed by drivers and beyond their control. **Thus IRU believes Article 29 of the EC proposal should be amended in such a way as to identify the driver as culpable for infringements which they have committed themselves, unless the offence has resulted from negligence or omission by the employer to properly inform, plan for, supervise or discipline drivers so as to ensure that they behave in a legally compliant manner as set out in article 10 of Regulation 561/2006/EC.**

(j) USE OF DRIVER CARDS AND RECORD SHEETS (ARTICLE 30)

In paragraph 3 the EC states that:

‘For control purposes, periods of time for which no activity has been recorded shall be regarded as rest or break. Drivers are not obliged to record daily and weekly rest periods when having been away from the vehicle.’

This is an extremely welcome statement from the EC that drivers are not required to make a positive declaration of daily or weekly rest and that an absence of any records to the contrary is sufficient evidence to show inactivity for control purposes.

Since any period of time for which no activity is recorded should be regarded as rest or break, not only records of daily or weekly rest periods but also periods of sickness, unemployment or annual leave need not be recorded by the driver. Subsequently neither the EU driver attestation document established under Commission Decision 2009/959/EC

nor any other national document covering these points should be requested in any MS, in order to demonstrate compliance with Regulation 561/2006/EC.

(k) TRAINING OF CONTROL OFFICERS (ARTICLE 35)

The EC proposes to reinforce the requirements on control authorities to ensure their officers are suitably trained to enforce the Regulation. The EC shall be empowered to adopt implementing acts on methodology for the initial and continuous training of traffic inspectors.

This is a very positive proposal from the EC supporting longstanding requests of the IRU aimed at improving the quality of enforcement uniformly across the EU. It fits very well with the work on harmonised enforcement being carried out in the TRACE project.

The IRU strongly supports this proposal but would propose to strengthen the article by making it a requirement that only trained officers should conduct controls. Paragraph 3 should be amended to explicitly require that the EC adopt decisions on training that ensure a uniform analysis of tachograph data in line with a common interpretation of Regulation 561/2006/EC as well.

(l) TACHOGRAPH FORUM (ARTICLE 41 AND SECTION 2.3 OF THE ROADMAP)

In its roadmap, the EC acknowledges that the current legal mechanism (article 22 bis of the AETR Agreement) for ensuring consistent digital tachograph technical specifications under EU and AETR rules 'may not be sustained' and that shared decision making must be improved. Ultimately, the EC proposes that technical adaptations to the digital tachograph's specifications are made jointly by all AETR Contracting Parties at UN level ensuring harmonised development of EU legislation in parallel. Similar provisions operate today in relation to the UN Agreement on the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts (the so-called 'Revised 1958 Agreement') which the EC notes as a potential model. In parallel, the EC also proposes to become a Contracting Party to the AETR Agreement in its own right, replacing the individual EU Member States who are today the Contracting Parties.

The role of the interim Tachograph Forum, which is also open to stakeholder representatives such as manufacturers and Social Partners, should be strengthened. It should be indicated that its role is not simply to support dialogue but also to consult and reach agreement with third country experts on necessary changes to the technical specifications. The EC's ultimate intention of amending the AETR in such a way as to facilitate this type of decision making in Geneva should also be stated in the legal proposal. Article 41 should be amended to reflect these points.

(m) ISSUING AND RENEWAL OF DRIVER CARDS (ARTICLE 21, 23 & 24)

Article 21 of the EC proposal introduces a new 1 month deadline for authorities to issue new cards to drivers following application. Article 23 introduces new deadlines for card renewals stating that as long as an application is submitted 15 days before the old card's validity runs out, a replacement must be issued before its date of expiry. A new card-issuing deadline of five days is also introduced in article 24 in the case of cards that have been reported lost, stolen or defective.

These three proposals can be fully supported with some minor clarification and amendment. The IRU does not see any reason why the deadline for authorities to issue new cards should not be reduced to 15 days in article 21. Moreover, it may be prudent to request an amendment to article 23.1 as a minor clarification to ensure that where a driver fails to apply for a new card at least 15 days before its expiry – a situation which could result from unavoidable situations ranging from sickness to unemployment - this shall not prevent him being issued a new card. This would be an extreme interpretation of the current wording of the EC proposal but not one that can be entirely ruled out.

It should also become possible to follow the alternative procedures for recording driving and rest times in article 31 when Member States do not meet the new deadlines for first card issuing or card renewal. Today they are used only in the event of lost, stolen or defective cards.

(n) ELECTRONIC EXCHANGE OF INFORMATION ON DRIVER CARDS (ARTICLE 26)

The EC proposes the mandatory recording of driver card details on national electronic registers and the exchange of that information between Member States. This information will include the driver card holder's name, date and place of birth, driver licence number, country of issue and status of the driver card. Control officers will have access to this information at the roadside. Any 'Implementing Acts' necessary to achieve the above would be adopted via the Committee referred to in article 40 under the examination procedure.

The IRU does not oppose this measure to reduce tachograph fraud.

(o) DISTANCE-BASED EXEMPTION FROM REGULATION 561/2006/EC

Based on the recommendations of the Stoiber Report on the removal of administrative burdens on small and medium-sized enterprises, the EC recommends that the following vehicles should be exempted from Regulation 561/2006/EC and the requirement to fit a tachograph when they operate nationally, within a 100km radius (as opposed to the current 50km limit) of their base.

IRU opposes this exemption as it would introduce a state of unfair competition for those in competition with such drivers, particularly private sector enterprises competing with universal service providers.

(p) PLACEMENT OF THE DIGITAL TACHOGRAPH (NEW ARTICLE)

Concerns have been expressed during the stakeholder consultation that the placing of the digital tachograph's Human Machine Interface (HMI) within the vehicle is sometimes unsuitable, such that its operation could cause the driver to divert his attention from the road. This means that the driver is unable to keep abreast of important information displayed on the HMI and may as a result inadvertently violate certain provisions of the legislation.

The IRU believes a new article should be introduced into the legislation to require that the HMI is placed within the vehicle in such a way that it is reachable and readable from the driver's normal sitting position and does not divert the driver's attention from the road.

(q) MANDATING CEN TO DEVELOP STANDARDS FOR SEALS (SECTION 2.2 OF THE ROADMAP)

The EC states that a principal vulnerability of the digital tachograph to fraudulent manipulation lies in the inadequacy of the motion sensor seal: to resist manipulation, to reveal if it has been tampered with and to identify the workshop that fitted it. The EC outlines in the roadmap its intention to mandate CEN to develop a suitable industry standard to fulfil these requirements.

The IRU considers that this would be a suitable approach by the Commission to resolve these problems which could also be used as requested by the IRU to achieve an improvement in the quality of download equipment available on the market.

