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IMPLEMENTATION OF THE AETR

Note by the secretariat

Members of SC.1 will find below proposals submitted by the Secretary-General of CORTE on the implementation of transitional measures concerning the introduction of the digital tachograph by Contracting Parties to the AETR (article 13). This text proposes solutions to resolve certain problems which could arise during the transitional period.

Implementation of transitional measures concerning the introduction of the digital tachograph by Contracting Parties to the AETR (article 13)

1. Introduction

The AETR has been amended to incorporate in its Annex 1 the provisions of Regulation (EC) n° 2135/98 introducing the digital tachograph system at EU level. These amendments entered into force on 16 June 2006 but non-EU AETR Contracting Parties have 4 years (16 June 2010) to implement them at the national level.

1.1 Among these amendments, two important provisions have been adopted which are recalled below:

“Article 13 - Transitional provisions

1. *All the new provisions of the present Agreement, including its Annex and Appendices 1B and 2, relating to the introduction of a digital control device, shall become mandatory for countries which are Contracting Parties to this Agreement at latest four years after the date of entry into force of the relevant amendments resulting from the procedure specified in article 21. In consequence, all vehicles covered by this Agreement, put into service for the first time after the expiry of this period, shall be equipped with a control device conforming to these new requirements. During this four-year period, Contracting Parties, which have not yet implemented these amendments in their countries, shall accept and control on their territory vehicles registered in another Contracting Party to this Agreement, which are already equipped with such a digital control device.*

2. (a) *The Contracting Parties shall take the necessary steps to be able to issue the driver cards referred to in the Annex to the present Agreement, as amended, at latest three months before the expiry of the four-year deadline referred to in paragraph 1. This minimum period of three months shall also be complied with in the event of the implementation by a Contracting Party of the provisions relating to the digital control device in conformity with Appendix 1B to this Annex before the expiry of the four-year deadline. Such Contracting Parties shall keep the secretariat of the Working Party on Road Transport of the Economic Commission for Europe informed of progress in the introduction of the digital control device in conformity with Appendix 1B to this Annex within its territory.*

(b) *Pending the issue by Contracting Parties of the cards referred to in (a), the provisions of article 14 of the Annex to this Agreement shall apply to drivers who may be required to drive vehicles fitted with a digital control device in accordance with Appendix 1B to this Annex.*

3. *Any instrument of ratification or accession deposited by a State after the entry into force of the amendments referred to in paragraph 1 shall be deemed to apply to the Agreement as amended, including the deadline for implementation specified in paragraph 1.*

If accession takes place less than two years before the expiry of the deadline referred to in paragraph 1, the State shall inform the depositary of the date on which the digital control device will be brought into effective use in its territory when it deposits its instrument of ratification or accession. Such State may make use of a transitional period not exceeding two years from the date of entry into force of the Agreement for the State. The depositary shall so inform all Contracting Parties.

The provisions of the preceding paragraph shall also apply in the event of the accession of a State after the expiry of the four-year deadline for implementation referred to in paragraph 1.

Article 14

1. Pursuant to article 13, paragraph 2 (b) of the Agreement, drivers who are driving a vehicle registered in a Contracting Party and to whom the competent authorities have not yet been able to issue the driver cards and who, during the transitional period referred to in paragraph 1 of this article, drive in international traffic with a vehicle fitted with a digital control device in accordance with Appendix 1B to the Annex, must be able to produce, whenever an inspecting officer so requests, the printouts and/or the record sheets for the current week and, in any event, the printout and/or record sheet for the last day on which he drove during the previous week.

2. Paragraph 1 does not apply to drivers of vehicles registered in a country where it is obligatory to use a driver card. However, drivers shall produce printouts whenever an inspecting officer so requests.

3. The printouts referred to in paragraph 1 shall be marked with the details that enable the drivers to be identified (name and number of the driving licence), including their signature.”

1.2. Two main concepts were therefore agreed:

- Firstly, irrespective of the date on which AETR Contracting Parties may decide to implement the amendments of the AETR (introduction of the digital tachograph system), they “*shall accept and control on their territory vehicles registered in another Contracting Party to this Agreement, which are already equipped with such a digital control device*” (Article 13.1).

In other words, drivers using properly a digital tachograph in a country where it has not yet been introduced and where for example control officers are not yet issued with control cards, are not equipped and are not trained, cannot be considered as an infringement and vehicles cannot be prohibited only because of the use of such a control device. These drivers should be accepted and controlled.

- Secondly, AETR Contracting Parties accepted the principle to see drivers from non-EU AETR Contracting Parties where cards are not yet available, to drive vehicles equipped with digital tachographs and to produce printouts to control officers whenever they request them.

Article 14.1 states indeed that “*drivers who are driving a vehicle registered in a Contracting Party and to whom the competent authorities have not yet been able to issue the driver cards and who, during the transitional period referred to in paragraph 1 of this article, drive in international traffic with a vehicle fitted with a digital control device in accordance with Appendix 1B to the Annex, must be able to produce, whenever an inspecting officer so requests, the printouts and/or the record sheets for the current week and, in any event, the printout and/or record sheet for the last day on which he drove during the previous week.*

2. Practical implementation of these transitional measures

Notwithstanding the enforcement problems that these provisions may cause to control officers in the EU, their implementation is practically impossible without the adoption of some pragmatic solutions.

2.1. Printouts can be produced and considered as valid only if coming from fully calibrated digital tachographs

For a digital tachograph to be fully operational, it has to be:

- activated (requirement 243 of Appendix 1B), otherwise it does not record drivers' activities (requirement 241 of Appendix 1B),
- calibrated (requirement 248 of Appendix 1B) which guarantees that drivers' activities are recorded against the right parameters (speed, distance, etc...). Both activation (definition (a) and requirement 244 of Appendix 1B) and calibration (definition (f) of Appendix 1B) require the use of a workshop card.

Activation could be solved by vehicle manufacturers if they are established in a country where cards are available, since requirement 243 of Appendix 1B states that:

“Vehicle manufacturers or fitters shall activate the installed recording equipment before the vehicle leaves the premises where the installation took place”.

But calibration can only be completed when the VRN is known, so in the very large majority of cases it can only be entered into the digital tachograph mass memory in the country where the vehicle is registered... and where cards are therefore unavailable for the time being, if a non EU-AETR Contracting Party. The *ratio legis* of the AETR transitional measures implies that solutions should be found for drivers coming from countries where cards are not available. But if driver cards are not available, workshop cards will without doubt not be available either.

2.2. Proposal to implement transitional measures

Because of the impossibility of non-EU AETR Contracting Parties to issue workshop cards, digital tachographs cannot be calibrated in these countries. Consequently, drivers from AETR Contracting Parties will not be able to produce valid printouts for control officers and Articles 13 and 14 will therefore not be applicable. Therefore, to implement the objective of the AETR Contracting Parties (including the EC and EU countries which unanimously adopted the above-mentioned transitional measures) and to respect the *ratio legis* of Articles 13 and 14, it is proposed what follows:

- Request vehicle manufacturers, whenever they sell a vehicle fitted with a digital tachograph to a customer established in a country where cards are not available, to **activate** it where it has been installed, for this purpose:

⇒ Apply strictly requirement 243 of Appendix 1B.

- Non-EU AETR Contracting Party drivers coming from countries where cards are not available should be able to **calibrate** their digital tachographs during the first journey, within the scope of the AETR rules, in the country closest to their frontier where cards are available and workshops are approved to do so:
 - ⇒ Tolerate that part of the first AETR journey made with a digital tachograph in a country where cards are not available is done with a non-calibrated digital tachograph.
- Transport undertakings should be able to organize the journey of their drivers in such a way as to allow them to calibrate their digital tachographs at the closest approved workshops, for this purpose:
 - ⇒ Not tolerate that non-EU AETR Contracting Party drivers are found in France, Spain, UK, Benelux countries, etc... with non-calibrated VUs.
- Control officers of EU countries should check, when they control a non-EU AETR Contracting Party driver that this driver has not already been to a country where cards are available and workshops approved without having calibrated his digital tachograph, for this purpose:
 - ⇒ Strict enforcement of this pragmatic solution.
