



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 December 2011

18148/11

**Interinstitutional File:
2011/0196 (COD)**

**TRANS 352
CODEC 2317**

REPORT

From: General Secretariat
To: Council

No. prev. doc.: 17971/11 TRANS 344 CODEC 2280
No. Cion prop.: 13195/11 TRANS 222 CODEC 1274

Subject: Proposal 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 ("Tachograph") (LA)
- Partial general approach

I. INTRODUCTION

The Commission submitted the above-mentioned proposal on 19 July 2011, amending Council Regulation 3821/85 of 20 December 1985 on recording equipment in road transport. This proposal also amends Regulation 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. The Communication from the Commission "Digital tachograph: Roadmap for future activities" accompanies the above-mentioned proposal and was transmitted in parallel to the European Parliament and to the Council.

The European Data Protection Supervisor issued an opinion on the Commission's proposal on 5 October 2011. The opinion of the Economic and Social Committee is not yet available and the Committee of the Regions decided not to draw up an opinion or report. The European Parliament's Committee on Transport and Tourism appointed Ms Silvia-Adriana Ticău (RO, S&D) as rapporteur and is expected to vote on a draft report in March 2012.

II. WORK WITHIN THE COUNCIL

The Working Party on Land Transport examined the Commission's proposal (and its impact assessment) intensively throughout September, October and November 2011. The Council held a policy debate on the proposed draft Regulation on 6 October 2011 on the basis of two general questions submitted by the Polish Presidency. In general, delegations welcomed positively the objectives of the Commission's proposal, namely to increase the security of the 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, delegations also raised the need to have further elements on the costs of the proposed measures, underlined the importance of flexibility for Member States to apply the most cost-efficient measures and of the protection of personal data. In the light of the above discussions, the Presidency worked intensively to accommodate Member States concerns and to improve the clarity of the text while providing for more flexibility.

The Presidency's compromise text is included in the Annex to this note and does not cover Article 27 of the Regulation. This Article is directly linked to the Commission's proposal for a Directive amending Directive 2006/126/EC as regards driving licences which include the functionalities of a driver card. Given the recent presentation of this proposal to the Council (15 November 2011), the Presidency is not yet in a position to present a compromise proposal including Article 27.

Therefore, and to benefit from convergence in the Council on the other provisions, the Polish Presidency aims at a partial general approach.

III. MAJOR OUTSTANDING ISSUES

Coreper examined the above proposal at its meeting on 7 December and managed to solve most of the remaining outstanding issues. However, the German delegation and the Commission still have some concerns on the Presidency's compromise proposal.

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

In Article 43 of the tachograph Regulation, the Commission proposes to amend Article 13, paragraph 1, of Regulation 561/2006. This paragraph specifies the types of vehicles for which Member States may grant exemptions from the Regulation, subject to certain conditions, namely that these vehicles shall be used only within a 50 km radius from the base of the undertaking. In its original proposal, the Commission proposes to replace the radius of 50 km by 100 km.

DE considers that the radius of 100 km proposed by the Commission does not correspond to the reality of small and medium size enterprises that usually offer their services outside that radius and proposes 150 km. Moreover, in point (d) of Article 13, paragraph 1, DE proposes the deletion of the ceiling of 7,5 tonnes for the maximum permissible mass of vehicles or combination of vehicles that might be exempted under this provision.

In the framework of the same Regulation 561/2006, Article 13, DE would like to insert a new paragraph (2a) giving more flexibility to Member States authorities to grant exemptions, restricted to the national territory, in exceptional cases.

A very large majority of the Member States supports the Commission's proposal that modifies the radius from 50 km to 100 km but are against new exemptions in the framework of Regulation 561/2006. The Presidency proposes to maintain the Commission's initial proposal of 100 km.

Date of entry into force of the smart tachograph (Articles 4, 5 and 6)

According to the initial proposal from the Commission, the smart tachograph would enter into force 48 months after the entry into force of the Regulation. Considering that the Regulation would enter into force in 2012, the commercialisation of the new equipment could take place at the beginning of 2017.

According to the current Presidency's compromise proposal, the smart tachograph will enter into force for vehicles registered for the first time 40 months after the entry into force of technical specifications as referred to in Article 6a of the Regulation. In the Communication from the Commission "Digital Tachograph: Roadmap for future activities", the Commission foresees to adopt the necessary technical specifications at the latest by 31 December 2014. This would mean that the smart tachograph would be commercialised 40 months after that date, during the first half of 2018.

This proposal seems to be acceptable to a large majority of Member States. However, DE would like to have a longer period (48 months). Other delegations would like to have a shorter period of time (30 months), but in a spirit of compromise, taking into account that this issue will most probably be reopened during the negotiations with the European Parliament, can accept the above Presidency's proposal.

Delegated acts/implementing acts (Articles 3a, 6a, 7, 44 and 45)

The majority of delegations expressed a reservation on the use of delegated acts as proposed by the Commission. In order to address this issue, the Presidency's text simplifies a number of provisions of this legal act, repeals the current Regulation 3821/85 and the specifications in its Annexes that will be defined through implementing acts. Moreover, transitional provisions are included in order to ensure the legal continuity of the Annexes. A very large majority of Member States endorses this approach, while the Commission has a reservation on the replacement of delegated acts by implementing acts.

IV. OTHER ISSUES

DK and UK still have a Parliamentary scrutiny reservation on this proposal.

V. CONCLUSION

The Council is therefore invited to approve the compromise proposals presented by the Presidency appearing in the Annex to this report and adopt a partial general approach at its meeting on 12 December 2011.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on tachographs in road transport and repealing Council Regulation (EEC) No 3821/85 and
amending Regulation (EC) No 561/2006 of the European Parliament and
the Council***

(Text with EEA relevance)

- * The recitals will be examined at a later stage, once an agreement has been reached on the text of the articles.

‘CHAPTER I

Principles, scope and requirements

Article 1

Subject matter and principle

This Regulation sets out requirements for the construction, installation, use and testing of tachographs used in road transport to control compliance with Regulation (EC) No 561/2006, Directive 2002/15/EC¹ and Directive 92/6/EEC².

Tachographs shall, as regards construction, installation, use and testing, comply with the requirements of this Regulation.

Article 2

Definitions

1. For the purposes of this Regulation the definitions set out in Article 4 of Regulation (EC) No 561/2006 shall apply.³

¹ OJ L 80, 23.3.2002, p. 35-39

² OJ L 57, 2.3.1992, p. 27

³ The following recital will be included: "It is understood that the Commission will have to extend the period of validity of the adaptor for M1 and N1 vehicles until 2015 and will give further consideration to a long term solution for M1 and N1 vehicles before 2015."

2. In addition to the definitions referred to in paragraph 1, for the purposes of this Regulation:
- (a) ‘tachograph or recording equipment’ means the equipment intended for installation in road vehicles to display, record, print, store and output automatically or semi-automatically details of the movement of such vehicles and of certain periods of activity of their drivers;
 - (b) ‘vehicle unit’ means the tachograph excluding the motion sensor and the cables connecting the motion sensor. The vehicle unit may be a single unit or several units distributed in the vehicle, provided that it complies with the security requirements of this Regulation;
 - (c) ‘motion sensor’ means part of the tachograph, providing a signal representative of vehicle speed and/or distance travelled;
 - (d) ‘tachograph card’ means a smart card intended for use with the tachograph which allows identification by the tachograph of the role of the cardholder and data transfer and storage;
 - (e) ‘record sheet’ means a sheet designed to accept and retain recorded data, to be placed in the tachograph and on which the marking devices of the latter inscribe a continuous record of the information to be recorded;
 - (f) ‘driver card’ means a tachograph card issued by the authorities of a Member State to a particular driver which identifies the driver and allows for storage of driver activity data;

- (fa) 'analogue tachograph' means a tachograph using a record sheet in accordance with this Regulation;
- (fb) 'digital tachograph' means a tachograph using a tachograph card in accordance with this Regulation;
- (g) 'control card' means a tachograph card issued by the authorities of a Member State to a national competent control authority which identifies the control body and optionally the control officer and allows access to the data stored in the data memory or in the driver cards for reading, printing and/or downloading;
- (h) 'company card' means a tachograph card issued by the authorities of a Member State to the road transport undertaking which needs to operate vehicles fitted with tachograph which identifies the road transport undertaking and allows for the displaying, downloading and printing of the data stored in the tachograph which has been locked by that road transport undertaking;
- (i) 'workshop card' means a tachograph card issued by the authorities of a Member State to designated staff of a tachograph manufacturer, a fitter, a vehicle manufacturer or a workshop, approved by that Member State which identifies the cardholder and allows for the testing, calibration and/or downloading of the recording equipment;

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⁴ Insert the following recital: "Taking into account that in the case C-394/92 the European Court of Justice has provided a definition of the "daily working period", the control authorities should read the provisions of the present Regulation in the light of that definition. The "daily working period" commences at the time when the driver activates the tachograph following a weekly or daily rest period, or, if the daily rest is divided into separate periods, following the rest period of at least nine hours' duration. It ends at the beginning of a daily rest period or, if the daily rest is divided into separate periods, at the beginning of a rest period extending over a minimum of nine consecutive hours."

Article 3

Scope

1. Tachographs shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road to which Regulation (EC) No 561/2006 applies.
2. Member States may exempt the vehicles mentioned in Articles 13(1) and 13(3) of Regulation (EC) No 561/2006 from the application of this Regulation.
3. Member States may, exempt from the application of this Regulation vehicles used for the transport operations which have been granted an exception referred to in Article 14(1) of Regulation (EC) No 561/2006.

Member States may exempt from application of this Regulation vehicles used for the transport operations referred to in Article 14(2) of Regulation (EC) No 561/2006; they shall immediately notify the Commission thereof.

4. In the case of national transport operations, Member States may require the installation and use of tachographs in accordance with this Regulation in any of the vehicles for which its installation and use are not required by paragraph 1.

Article 3a

Requirements

1. Recording equipment, tachograph cards and record sheets must fullfill stringent technical and other requirements so as to permit the proper implementation of the provisions of this Regulation.
2. The tachograph shall comply with the following essential requirements:
 - record data related to the driver and the vehicle;
 - be secure;
 - be interoperable;
 - allow for efficient control of compliance with the applicable legislation;
 - be user friendly.
3. The digital tachograph shall record the following data:
 - (a) distance travelled, and speed of the vehicle;
 - (b) time measurement;
 - (c) position of starting and ending of the driver's daily working period;
 - (d) identity of the driver;
 - (e) activity of the driver;
 - (f) calibration data, including the identity of the workshop;
 - (g) events and faults.
4. The analogue tachograph shall record at least the data referred to in paragraph 3 (a), (b) and (e).
5. The further detailed requirements necessary for the uniform implementation of this Article shall be adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 40(3).

CHAPTER II

Smart recording equipment

Article 4

Recording of the starting and ending place of the daily working period

1. Wherever possible, the position of the starting and ending place of the daily working period shall be recorded. For that purpose, vehicles registered for the first time 40 months after the entry into force of technical specifications as referred to in Article 6a shall be fitted with a tachograph connected to a satellite positioning service.
2. As regards the connection of the tachograph to a satellite positioning service, as referred to in paragraph 1, use shall be made only of such satellite positioning service connections that exploit a positioning service free of payment. No position data other than the one expressed, wherever possible, in geographical coordinates for determining the starting and ending points referred to in paragraph 1 shall be stored in the recording equipment.

Article 5

Remote early detection of possible manipulation or misuse

1. In order to facilitate targeted roadside checks by the competent control authorities, the tachograph installed in vehicles registered for the first time 40 months after the entry into force of technical specifications as referred to in Article 6a shall be able to communicate while the vehicle is in motion to those authorities. Such communication shall comply with relevant international standards such as the suite of standards related to Data Short Range Communication (DSRC) established by the European Committee for Standardization.
 - 1a. Member States may decide not to equip their control authorities with the remote early detection equipment needed to request the data communication referred to in this Article as this equipment is not part of the mandatory control equipment listed in the Directive 2006/22/EC.
2. The communication referred to in paragraph 1 shall be established with the tachograph only when so requested by the equipment of the control authorities. It shall be secured to ensure data integrity and authentication of the recording and control equipment. The access to the data communicated shall be restricted to enforcers authorized to control infringements against Regulation 561/2006 and Regulation 3821/85 and to workshops insofar as it is necessary to verify the correct functioning of the tachograph.
3. The data exchanged during communication shall be limited to the data necessary for the purpose of targeted roadside checks to vehicles with a potentially manipulated or misused tachograph. Such data shall relate to the following events or data recorded by the tachograph:

- The latest security breach attempt
 - The longest power supply interruption
 - Sensor fault
 - Motion data error
 - Vehicle motion conflict
 - Driving without a valid card
 - Card insertion while driving
 - Time adjustment data
 - Calibration data including the dates of the two latest calibrations
 - Vehicle Registration Number
 - Speed recorded by the tachograph.
4. The data exchanged shall be used for the sole purpose of controlling compliance with this Regulation. It shall not be transmitted to entities other than authorities controlling driving and rest periods or judicial bodies, in the framework of an ongoing judicial procedure.
5. The data may only be stored by the control authorities for the duration of a roadside check, and shall be deleted at the latest three hours after its communication unless the data indicates a possible manipulation or misuse of the tachograph. If in the course of the following roadside check the manipulation or misuse is not confirmed, the data transmitted shall be deleted.
6. The transport undertaking which operates the vehicle shall be responsible for informing the driver of the possibility of remote early detection of possible manipulation or misuse of the tachograph.

Article 6

Interface with Intelligent Transport Systems

Tachographs of vehicles registered for the first time 40 months after the entry into force of technical specifications as referred to in Article 6a may be equipped with interfaces allowing the data recorded or produced by tachograph to be used in operational mode, by an external device, provided that the following conditions are met:

- (a) the interface does not affect the authenticity and the integrity of the data of the tachograph;
- (b) the interface complies with the specifications of Article 6a;
- (c) the external device connected to the interface has access to personal data, including geopositioning data, only after the verifiable consent of the driver to which the data relates.

Article 6a

Specifications of smart tachograph

In order to ensure the uniform implementation of the provisions in this Chapter, the Commission shall adopt necessary specifications, excluding any specifications which would include provisions on the recording of additional data by the tachograph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 40(3).

CHAPTER III

Type approval

Article 7

Applications

1. Manufacturers or their agents shall submit an application for EU approval of a type of vehicle unit, motion sensor, model record sheet or tachograph card to the type approval authorities designated to that effect by each Member State.
2. Member States shall communicate to the Commission the name and contact details of the authorities designated according to paragraph 1. The Commission shall publish the list of designated type approval authorities on its website.
3. An application for type approval shall be accompanied by the appropriate specifications, including necessary information regarding the seals, and by the security, functional and interoperability certificates. The security certificate shall be issued by a recognised certification body designated by the Commission.⁵
4. No application in respect of any one type of vehicle unit, motion sensor, model record sheet or tachograph card may be submitted to more than one Member State.

⁵ Add the following recital: "Considering the importance of maintaining the highest possible security level, security certificates should be issued by a certification body recognised by the Management Committee within the framework of the "Mutual Recognition Agreement of Information Technology Security Evaluation Certificates" of the European Senior Official Group on Information Security (SOG-IS).
In the context of international relations with third countries, the Commission should not recognise any certification body for the purposes of this regulation without such a body providing equivalent conditions of security evaluation as foreseen under the Mutual Recognition Agreement referred to above. In this respect, the advice of the Management Committee should be relied upon."

5. In order to ensure the uniform application of the provisions of this Article, the Commission shall provide specification as regards the certificates as referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 40(3).

Article 8

Granting of type approval

A Member State shall grant EU component type approval to any type of vehicle unit, motion sensor, model record sheet or tachograph card which complies with the requirements set out in Article 3a, provided the Member State is in a position to check that production models conform to the approved type.

Any modifications or additions to an approved model must receive additional EU type approval from the Member State which granted the original EU type approval.

Article 9

Type approval mark

Member States shall issue to the applicant an EU type approval mark conforming to a pre-established model, for each type of vehicle unit, motion sensor, model record sheet or tachograph card which they approve pursuant to Article 8. Such models shall be adopted by the Commission in accordance with the examination procedure referred to in Article 40(3).

Article 10

Approval or refusal

The competent authorities of the Member State to which the application for type approval has been submitted shall, in respect of each type of vehicle unit, motion sensor, model record sheet or tachograph card which they approve, send within one month a copy of the type approval certificate accompanied by copies of the relevant specifications, including with regard to the seals, to the authorities of the other Member States. When the competent authorities do not approve the application for type approval, they shall notify the authorities of the other Member States that approval has been refused and shall communicate the reasons for their decision.

Article 11

Compliance of equipment with type approval

1. If a Member State which has granted EU type-approval as provided for in Article 8 finds that any vehicle units, motion sensors, record sheets or tachograph cards bearing the EU type-approval mark issued by it do not conform to the type which it has approved, it shall take the necessary measures to ensure that production models conform to the approved type. The measures taken may, if necessary, extend to withdrawal of EU type approval.
2. A Member State which has granted EU type approval shall withdraw such approval if the vehicle unit, motion sensor, record sheet or tachograph card which has been approved is not in conformity with this Regulation or displays any general defect during use which makes it unsuitable for the purpose for which it is intended.
3. If a Member State which has granted EU type approval is notified by another Member State of one of the cases referred to in paragraphs 1 and 2, it shall, after consulting the latter Member State, take the steps laid down in those paragraphs, subject to paragraph 5.

4. A Member State which ascertains that one of the cases referred to in paragraph 2 has arisen, may forbid until further notice the placing on the market and putting into service of the vehicle unit, motion sensor, record sheets or tachograph cards. The same applies in the cases mentioned in paragraph 1 with respect to vehicle units, motion sensors, record sheets or tachograph cards which have been exempted from EU initial verification, if the manufacturer, after due warning, does not bring the equipment into line with the approved model or with the requirements of this Regulation.

In any event, the competent authorities of the Member States shall notify one another and the Commission, within one month, of any withdrawal of EU type approval or of any other measures taken pursuant to paragraphs 1, 2 and 3 and shall specify the reasons for such action.

5. If a Member State which has granted an EU type approval disputes the existence of any of the cases specified in paragraphs 1 or 2 notified to it, the Member States concerned shall endeavour to settle the dispute and the Commission shall be kept informed.

If talks between the Member States have not resulted in agreement within four months of the date of the notification referred to in paragraph 3, the Commission, after consulting experts from all Member States and having considered all the relevant factors, such as economic and technical factors, shall within six months of the expiry of that four month period adopt a decision which shall be notified to the Member States concerned and communicated at the same time to the other Member States. The Commission shall in each case lay down the time limit for implementation of its decision.

Article 12

Approval of record sheets

1. An applicant for EU type approval of a model record sheet shall state on the application the type or types of analogue tachographs on which the sheet in question is designed to be used and shall provide suitable equipment of such type or types for the purpose of testing the sheet.
2. The competent authorities of each Member State shall indicate on the approval certificate for the model record sheet the type or types of analogue tachographs on which that model sheet may be used.

Article 13

Justification of refusal decisions

All decisions pursuant to this Regulation refusing or withdrawing approval of a type of vehicle unit, motion sensor, model record sheet or tachograph card shall specify in detail the reasons on which they are based. A decision shall be communicated to the party concerned, who shall at the same time be informed of the remedies available to him under the laws of the Member States and of the time limits for the exercise of such remedies.

Article 14

Recognition of type-approved tachographs

No Member State may refuse to register any vehicle fitted with tachograph, or prohibit the entry into service or use of such vehicle for any reason connected with the fact that the vehicle is fitted with such equipment, if the equipment bears the EU type approval mark referred to in Article 9 and the installation plaque referred to in Article 17(4).

Article 15

Security

1. Manufacturers shall design, test and review vehicle units, motion sensors and tachograph cards put into production so as to detect vulnerabilities arising at all phases of the product life-cycle, and prevent or mitigate their possible exploitation. The frequency of tests shall be established by the Member State who granted the approval certificate, within a limit which shall not exceed two years.
2. For this purpose, manufacturers shall submit necessary documentation the certification body as referred to in Article 7(3) for vulnerability analysis.
3. For the purpose of paragraph 1, the certification body as referred in Article 7(3) shall conduct tests on vehicle units, motion sensors and tachograph cards to confirm that known vulnerabilities cannot be exploited by individuals in possession of publicly available knowledge.

4. If in the course of tests as referred to in paragraphs 1 and 3, vulnerabilities in system elements (vehicle units, motion sensors and tachograph cards) are detected, these elements may not be put on the market. In such cases, the Member State which has granted the type-approval shall withdraw it, in accordance with Article 11 (2). In case of very serious vulnerabilities in system elements (vehicle units, motion sensors and tachograph cards) ascertained by the manufacturer or by the certification body, if the elements have already been put on the market, the manufacturer or the certification body shall inform the competent authorities of that Member State which shall take all the necessary measures to ensure that the problem is addressed, in particular by the manufacturer, and shall inform the Commission without delay of the vulnerabilities detected and of the measures envisaged or taken.

Article 16

Field tests

1. Member States may authorise field tests of tachographs which has not yet been type approved. Member States shall mutually recognise authorisations for field tests granted by one Member State.
2. Drivers and transport undertakings participating in a field test shall comply with the requirements of Regulation (EC) No 561/2006. In order to demonstrate such compliance, drivers shall follow the procedure set out in Article 31(2).
3. The Commission may adopt implementing acts to lay down the procedures to be followed for carrying out field tests and the forms to be used in order to monitor these field tests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 40(3).

CHAPTER IV

Installation and inspection

Article 17

Installation and repair

1. Tachographs may be installed or repaired only by fitters, workshops or vehicle manufacturers approved by the competent authorities of the Member States for that purpose in conformity with Article 19.
2. Approved fitters, workshops or vehicle manufacturers shall seal, according to the specifications included in the type approval certificate referred to in Article 10, the tachograph after having verified that it is functioning properly, and in particular that no manipulation device can tamper with or alter the data recorded.
3. The approved fitter, workshop or vehicle manufacturer shall place a special mark on the seals which it affixes and, in addition, for the digital tachographs, shall enter the electronic security data for carrying out the authentication checks. The competent authorities of each Member State shall send to the Commission the register of the marks and electronic security data used as set out in the requirements of Article 3a and necessary information related to the electronic security data used. The Commission shall give access to this information to Member States upon request.
4. For the purpose of certifying that the installation of the tachograph took place in accordance with the requirements of this Regulation, an installation plaque affixed as provided in the requirements of Article 3a shall be used.

5. A seal shall be removed only by the fitters, workshops or vehicle manufacturers approved by the competent authorities under paragraph 1 or by control officers properly trained, or in other comparable circumstances as referred to in the requirements of Article 3a.

Article 18

Inspections of the tachographs

Tachographs shall be subject to regular inspection by approved workshops. Regular inspection shall be carried out at least every two years.

Workshops shall draw up an inspection report in cases where irregularities in the functioning of the tachograph had to be remedied, whether as a result of a periodic inspection, or an inspection carried out at the specific request of the national competent authority. Workshops shall keep a list of all inspection reports drawn up.

Inspection reports shall be retained by the workshop for a minimum period of two years from the time the report was made or shall be sent by the workshop to the competent authority. In cases where the inspection reports are kept by the workshop, upon request from the competent authority, the workshop shall make available the reports of inspections and calibrations carried out during that period.

Article 19

*Approval of fitters and workshops*⁶

1. The Member States shall approve, regularly control and certify the fitters, workshops and vehicle manufacturers which may carry out installations, checks, inspections and repairs of the tachograph.
2. Member States shall ensure that fitters, workshops and vehicle manufacturers are competent and reliable. For that purpose, they shall establish and publish a set of clear national procedures and shall ensure that the following minimum criteria are met:
 - (a) the staff are properly trained;
 - (b) the equipment necessary to carry out the relevant tests and tasks is available;
 - (c) the fitters and workshops are of good repute.
3. Audits of approved fitters or workshops shall be carried out as follows:
 - (a) Approved fitters or workshops shall be subject to an audit at least every two years of the procedures applied by the workshop when handling the tachograph. The audit shall focus in particular on the security measures taken and the handling of workshop cards. Member States may carry out these audits without physical presence in the workshop.
 - (b) Unannounced technical audits of approved fitters or workshops shall also take place in order to control the calibrations, inspections and installations carried out. These controls shall cover at least 10% of the approved workshops per year.

⁶ Add at the end of Recital 10: "Nothing in this Regulation would prevent Member States from ensuring their approval, control and certification, as set out herein, through the procedures laid down in Regulation 765/2008."

4. Member States and their competent authorities shall take appropriate measures to prevent conflicts of interests between fitters or workshops and road transport undertakings. In particular, in case of serious risk of conflict of interest, additional specific measures shall be taken to ensure that the fitter or the workshop complies with this Regulation.
5. The competent authorities of the Member States shall forward, if possible electronically, to the Commission, on an annual basis, the lists of approved fitters and workshops and the cards issued to them. The Commission shall publish the lists of approved fitters and workshops on its website.
6. The competent authorities in Member States shall withdraw approval, either temporarily or permanently, from fitters and workshops failing to meet their obligations under this Regulation.

Article 20

Workshop cards

1. The period of validity of workshop cards shall not exceed one year. When renewing the workshop card, the competent authority shall ensure that the criteria listed in Article 19, paragraph 2, are met by the fitter, workshop or vehicle manufacturer.
2. The competent authority shall renew a workshop card within fifteen working days after receiving a renewal request. If a workshop card is damaged, malfunctions, is lost or stolen, the authority shall supply a replacement card within five working days of receiving a detailed request to that effect. The authority issuing the card shall maintain a register of lost, stolen or defective cards.
3. When a Member State withdraws the approval of a fitter or workshop as set out in Article 19, it shall also withdraw the workshop cards issued to it.
4. Member States shall take all necessary measures to prevent the workshop cards distributed to approved fitters and workshops from being falsified.

CHAPTER V

Driver cards

Article 21

*Issuing of driver cards*⁷

1. The driver card shall be issued, at the request of the driver by the competent authority of the Member State where the driver has his normal residence. It shall be issued within one month of the request and all the necessary documentation being received by the competent authority.
2. For the purposes of this article, ‘normal residence’ means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where they are living; however, the normal residence of a person whose occupational ties are in a different place from their personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of their personal ties, provided that such person returns there regularly. This last condition need not be complied with where the person is living in a Member State in order to carry out a fixed-term assignment.
3. Drivers shall give proof of their normal residence by any appropriate means, such as their identity card or any other valid document. Where the competent authorities of the Member State issuing the driver card have doubts as to the validity of a statement as to normal residence, or for the purpose of certain specific controls, they may request any additional information or evidence.

⁷ The PRES worked intensively to accommodate the concerns of certain Member States as regards third country drivers that cannot meet the conditions of paragraph 2 of this Article. However, a clear link with Article 27 emerged during the discussions. Third country drivers without an EU driving licence will not be able to use a digital tachograph as a result of the merge of the two cards foreseen in that Article. When discussing Article 27, further consideration will be given to this issue.

4. The competent authorities of the issuing Member State shall take appropriate measures to ensure that an applicant does not already hold a valid driver card and shall personalise the driver card in accordance with the requirements of Article 3a.
5. The driver card shall not be valid for more than five years.
6. A valid driver card shall not be withdrawn or suspended unless the competent authorities of a Member State find that the card has been falsified, or the driver is using a card of which he is not the holder, or the card held has been obtained on the basis of false declarations and/or forged documents. If such suspension or withdrawal measures are taken by a Member State other than the issuing Member State, the former shall return the card to the authorities of the Member State which issued it, as soon as possible, indicating the reasons for withdrawal or suspension. If the return of the card is expected to take longer than two weeks, the suspending or withdrawing Member State shall inform the issuing Member State within those two weeks of the reasons for suspension or withdrawal.
7. Member States shall take all necessary measures to prevent driver cards from being falsified.

Article 22

Use of driver cards

1. The driver card is personal.
2. A driver may hold no more than one valid driver card, and is authorised to use only his own personalised driver card. A driver shall not use a driver card which is defective or which has expired.

Article 23

Renewal of driver cards

1. Where a driver wishes to renew his driver card, he shall apply to the competent authorities of the Member State of normal residence not later than 15 working days before the expiry date of the card.
2. Where the authorities of the Member State of normal residence are different from those which issued the card and where the former are requested to renew the driver card, they shall inform the authorities which issued the old card of the reasons for its renewal.
3. In the event of a request for the renewal of a card whose expiry date is approaching, the competent authority shall supply a new card before the expiry date provided that the request was sent within the time limits laid down in paragraph 1.

Article 24

Stolen, lost or defective driver cards

1. The issuing authority shall keep records of issued, stolen, lost or defective driver cards for a period at least equivalent to their period of validity.
2. If a driver card is damaged or if it malfunctions, the driver shall return it to the competent authority of the Member of normal residence. Theft of the driver card must be formally declared to the competent authorities of the State where the theft occurred.
3. Loss of the driver card shall be reported in a formal declaration to the competent authorities of the issuing Member State and to the competent authorities of the Member State of normal residence if this is different.
4. If the driver card is damaged, malfunctions or is lost or stolen, the driver shall within seven calendar days apply for its replacement to the competent authorities of the Member of normal residence. These authorities shall supply a replacement card within eight working days after receiving a detailed request to that effect.
5. In the circumstances set out in paragraph 4, the driver may continue to drive without a driver card for a maximum period of 15 calendar days or for a longer period if this is necessary for the vehicle to return to its premises, provided the driver can prove the impossibility of producing or using the card during this period.

Article 25

Mutual recognition and exchange of driver cards

1. Driver cards issued by Member States shall be mutually recognised.
2. Where the holder of a valid driver card issued by a Member State has established his normal residence in another Member State, he may ask for his card to be exchanged for an equivalent driver card. It shall be the responsibility of the Member State which carries out the exchange to verify whether the card produced is still valid.
3. Member States carrying out an exchange shall return the old card to the authorities of the issuing Member State and indicate the reasons for so doing.
4. Where a Member State replaces or exchanges a driver card, the replacement or exchange, and any subsequent replacement or exchange, shall be registered in that Member State.

Article 26

Electronic exchange of information on driver cards

1. In order to ensure that an applicant does not already hold a valid driver card as referred to in Article 21(4), Member States shall maintain national electronic registers containing the following information on driver cards for a period at least equivalent to their period of validity:
 - Surname and first name of the driver
 - Birth date and, if available, place of birth of the driver
 - Driving licence number and country of issue of the driving licence (if applicable)
 - Status of the driver card
 - Driver card number

2. The Commission and the Member States shall take all necessary measures to ensure that the electronic registers are interconnected and accessible throughout the Union, using the TACHOnet Messaging System or a compatible system, as long as the exchange of electronic data is possible with all other Member States through the TACHOnet Messaging System.
3. When issuing, replacing and, when necessary, renewing a driver card, Member States shall verify through electronic data exchange that the driver does not already hold another valid driver card. The data exchanged shall be limited to the data necessary for the purpose of this verification.⁸
4. Control officers may have access to the electronic register in order to control the status of a driver card.
5. The Commission shall adopt implementing acts to lay down the common procedures and specifications necessary for the interconnection referred to in paragraph 2, including the format for the data exchanged, the technical procedures for electronic consultation of the national electronic registers, access procedures and security mechanisms. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 40(3).

⁸ Insert the following recital: "When checking the uniqueness of the driver card, Member States should use the procedures such as the ones included in the Commission Recommendation of 13 January 2010 on the secure exchange of electronic data between Member States to check the uniqueness of driver cards that they issue."

[Article 27

Integration of driver cards with driving licences⁹

Driver cards shall be issued in accordance with the provisions of this Chapter until 18 January 2018. With effect from 19 January 2018, driver cards shall be incorporated into driving licences and issued, renewed, exchanged and replaced in accordance with the provisions of Directive 2006/126/EC.]

⁹ Article 27 on the integration of driver cards with driving licences was not discussed and is on hold until the Council examines the revision of Directive 2006/126/EC on driving licences.

CHAPTER VI

Use of equipment

Article 28

Correct use of tachographs

1. The transport undertaking and the drivers shall ensure the correct functioning and proper use of the digital tachograph and the driver card. Whenever an analogue tachograph is used the transport undertaking and the driver shall ensure its correct functioning and the proper use of the record sheet.
2. It shall be forbidden to falsify, conceal, suppress or destroy data recorded on the record sheet, stored in the tachograph or on the driver card, or print-outs from the tachograph. Any manipulation of the tachograph, record sheet or driver card which could result in data and/or printed information being falsified, suppressed or destroyed shall also be prohibited. No device which could be used to this effect shall be present on the vehicle.
3. Vehicles shall not be fitted with more than one tachograph except for the purposes of the field tests referred to in Article 16.
4. Member States shall forbid the production, distribution, advertising and/or selling of devices constructed and/or intended for the manipulation of tachographs.

Article 29

Responsibility of the undertaking

1. The transport undertaking shall issue a sufficient number of record sheets to drivers of vehicles fitted with an analogue tachograph taking into account the fact that these sheets are personal in character, the length of the period of service and the possible need to replace sheets which are damaged, or have been taken by an authorised inspecting officer. The transport undertaking shall issue to drivers only record sheets of an approved model suitable for use in the equipment installed in the vehicle.

Where the vehicle is fitted with a digital tachograph the transport undertaking and the driver shall ensure that, taking into account the length of the period of service, the printing on request referred to in the requirements of Article 3a can be carried out correctly in the event of an inspection.

2. The transport undertaking shall keep record sheets and printouts, whenever printouts have been made to comply with Article 31, in chronological order and in a legible form for at least a year after their use and shall give copies to the drivers concerned who request them. The transport undertaking shall also give copies of downloaded data from the driver cards to the drivers concerned who request them and the printed paper versions of these copies. The record sheets, printouts and downloaded data shall be produced or handed over at the request of any authorised inspecting officer.
- 2a. The transport undertaking shall give the necessary instructions to its drivers as regards the correct functioning of the recording equipment, shall make regular checks to ensure that its drivers make a correct use of the recording equipment and shall not give to its drivers any direct or indirect incentives that could encourage the misuse of the recording equipment.

3. A transport undertaking shall be liable for infringements against this Regulation committed by drivers of the undertaking. However, Member States may make this liability conditional on the undertaking's infringement of paragraph 2a of this Article and Article 10(1) and (2) of Regulation 561/2006.

Article 30

Use of driver cards and record sheets

1. Drivers shall use the record sheets or driver cards every day on which they are driving, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised. No record sheet or driver card may be used to cover a period longer than that for which it is intended.
2. Drivers shall adequately protect the record sheets or driver cards, and shall not use dirty or damaged sheets or cards.
3. When as a result of being away from the vehicle, a driver is unable to use the recording equipment fitted to the vehicle, the periods of time referred to in paragraph 5(b) (ii), (iii) and (iv) shall:
 - (a) if the vehicle is fitted with the recording equipment referred to in Annex I, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet; or
 - (b) if the vehicle is fitted with the recording equipment referred to in Annex IB, be entered onto the driver card using the manual entry facility provided in the recording equipment.

Member States shall not impose on drivers the presentation of forms attesting their activities while being away from the vehicle.

4. Where there is more than one driver on board a vehicle fitted with the recording equipment referred to in Annex IB, each driver shall ensure that his driver card is inserted into the correct slot in the recording equipment.


Where there is more than one driver on board a vehicle fitted with the recording equipment referred to in Annex I, drivers shall amend the record sheets as necessary, so that the information referred to in Section II (a), (b) and (c) of Annex I is recorded on the record sheet of the driver who is actually driving.


5. Drivers shall:


- (a) ensure that the time recorded on the sheet corresponds to the official time in the country of registration of the vehicle;

- (b) operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly:

(i) under the sign : driving time,

(ii) under the sign : ‘other work’, which means any activity other than driving, as defined in Article 3(a) of Directive 2002/15/EC of the European Parliament and of the Council¹⁰, and also any work for the same or another employer within or outside of the transport sector,

(iii) under the sign : ‘availability’, as defined in Article 3(b) of Directive 2002/15/EC;

(iv) under the sign : breaks or rest.

¹⁰ OJ L 80, 23.3.2002, p. 35.

6. Each driver shall enter the following information on his record sheet:
- (a) on beginning to use the sheet — this surname and first name;
 - (b) the date and place where use of the sheet begins and the date and place where such use ends;
 - (c) the registration number of each vehicle to which the driver is assigned, both at the start of the first journey recorded on the sheet and then, in the event of a change of vehicle, during use of the sheet;
 - (d) the odometer reading:
 - (i) at the start of the first journey recorded on the sheet,
 - (ii) at the end of the last journey recorded on the sheet,
 - (iii) in the event of a change of vehicle during a working day, the reading on the first vehicle to which the driver was assigned and the reading on the next vehicle;
 - (e) the time of any change of vehicle.
7. The driver shall enter in the digital tachograph the symbols of the countries in which the daily working period was started and finished. However, a Member State may require drivers of vehicles engaged in transport operations inside its territory to add more detailed geographic specifications to the country symbol provided that the Member State notified them to the Commission before 1 April 1998.

It shall not be necessary for drivers to enter this information if the tachograph is automatically recording location data in accordance with Article 4.

Article 31

Damaged driver cards or record sheets

1. In case of damage to a sheet bearing recordings or a driver card, drivers shall keep the damaged sheet or driver card together with the spare sheet used to replace it.
2. Where a driver card is damaged, malfunctions, or is lost or stolen, the driver shall:
 - (a) at the start of his journey, print out the details of the vehicle they are driving, and enter on that printout:
 - (i) details that enable the driver to be identified (name, driver card or driving licence number), including his signature;
 - (ii) the periods referred to in Article 30 (5) (b) (ii), (iii) and (iv);
 - (b) at the end of the journey, print out the information relating to periods of time recorded by the tachograph, record any periods of other work, availability and rest undertaken since the printout that was made at the start of the journey, where not recorded by the tachograph, and mark on that document details that enable the driver to be identified (name, driver card or driver's licence number), including the driver's signature.

Article 32

Records to be carried by the driver

1. Where the driver drives a vehicle fitted with an analogue tachograph, the driver shall be able to produce, whenever an inspecting officer so requests:
 - (i) the record sheets for the current day and those used by the driver in the previous 28 days,
 - (ii) the driver card if one is held, and
 - (iii) any manual record and printout made during the current day and the previous 28 days as required under this Regulation and Regulation (EC) No 561/2006.

2. Where the driver drives a vehicle fitted with a digital tachograph, he shall be able to produce, whenever an inspecting officer so requests:
 - (i) his driver card,
 - (ii) any manual record and printout made during the current day and the previous 28 days as required under this Regulation and Regulation (EC) No 561/2006,
 - (iii) the record sheets corresponding to the same period as the one referred to in point (ii) during which he drove a vehicle fitted with an analogue tachograph.

3. An authorised inspecting officer may check compliance with Regulation (EC) No 561/2006 by analysis of the record sheets, of the displayed, printed or downloaded data which have been recorded by the tachograph or by the driver card or, failing this, by analysis of any other supporting document that justifies non-compliance with a provision, such as those laid down in Articles 24(2) and 33(2) of this Regulation.

Article 33

Procedures in case of malfunctioning equipment

1. In the event of breakdown or faulty operation of the tachograph, the transport undertaking shall have it repaired by an approved fitter or workshop, as soon as circumstances permit.

If the vehicle is unable to return to the premises within a period of one week calculated from the day of the breakdown or of the discovery of defective operation, the repair shall be carried out *en route*.

Measures taken by Member States pursuant to Article 37 may give the competent authorities power to prohibit the use of the vehicle in cases where breakdown or faulty operation has not been remedied as provided in the first and the second subparagraphs.

2. While the tachograph is unserviceable or malfunctioning, drivers shall mark data enabling identification of the driver (name, driver card or driving licence number), including a signature, as well as the information for the various periods of time which are no longer recorded or printed out correctly by the tachograph:
 - (a) on the record sheet or sheets, or
 - (b) on a temporary sheet to be attached to the record sheet or to be kept together with the driver card.

CHAPTER VII

Data protection, enforcement and sanctions

Article 34

Protection of personal data

1. Member States shall ensure that the processing of personal data in the context of this Regulation is carried out solely for the purpose of verifying compliance with this Regulation and Regulation 561/2006, in accordance with Directives 95/46/EC and 2002/58/EC and under the supervision of the public independent authority of the Member State referred to in Article 28 of Directive 95/46/EC.
2. Member States shall in particular ensure that personal data is protected in relation to:
 - the use of a global navigation satellite system (GNSS) for the recording of location data as referred to in Article 4,
 - the use of remote communication for control purposes as referred to in Article 5,
 - the use of tachograph with a harmonised interface as referred to in Article 6,
 - the electronic exchange of information on driver cards as referred to in Article 26,
 - the keeping of records by transport undertakings as referred to Article 29.
3. The digital tachograph shall be designed in such a way as to ensure privacy. Only data necessary for the purpose of the processing shall be processed.
4. The owners of vehicles, transport undertakings and/or any other entity concerned shall comply, where applicable, with the relevant provisions on the protection of personal data.

Article 35

Training of control officers

1. Member States shall ensure that control officers are appropriately trained for the analysis of the data recorded and the control of the tachograph in order to achieve an efficient and harmonised control and enforcement.
2. Member States shall inform the Commission about the training requirements for their control officers by 6 months after the date of application of this Regulation.
3. The Commission shall adopt measures, specifying the content of the initial and continuing training of control officers, including on techniques to target controls and to detect manipulation devices and fraud. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 40(3).

Article 36

Mutual assistance

Member States shall assist each other in applying this Regulation and in checking compliance therewith.

Within the framework of this mutual assistance, the competent authorities of the Member States shall in particular regularly send to each other all available information concerning infringements to this Regulation related to fitters and workshops, and any penalties imposed for such infringements.

Article 37

Penalties

1. Member States shall, in accordance with national constitutional arrangements, lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. 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.
2. [...]
3. [...]
4. The Member States shall notify the Commission of these measures and the rules on penalties by [date of application of this Regulation]. They shall inform the Commission about any subsequent change to these measures.

CHAPTER VIII

Final provisions

[...]

Article 40

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 41

Tachograph Forum

1. A Tachograph Forum shall be set up in order to support dialogue on technical matters concerning the tachograph among Member States' experts, members of the Committee of Article 40, and experts from third countries which are using the tachograph under the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR).
2. Member States should delegate as experts to the Tachograph Forum the experts participating in the Committee referred to in Article 40.
3. The Tachograph Forum shall be open to participation by experts from interested non-EU Contracting Parties to the AETR.
4. Stakeholders, representatives of vehicle manufacturers, tachograph manufacturers and social partners, shall be invited to the Tachograph Forum.
5. The Tachograph Forum shall adopt its rules of procedure.
6. The Tachograph Forum shall meet at least once a year.

Article 42

Communication of national measures

Member States shall communicate to the Commission the text of the laws, regulations and administrative provisions which they adopt in the field governed by this Regulation no later than 30 days after their date of adoption and for the first time 12 months after the entry into force of this Regulation.

Article 43

Regulation (EC) No 561/2006 is amended as follows:

The distance of ‘50 km’ referred to in points (d), (f) and (p) of Article 13(1) is replaced by ‘100 km’.

Article 44

Transitional measures

Insofar as the implementing acts referred to in this Regulation have not been adopted, so that they may be applied at the time of application of this Regulation, the provisions in Regulation 3821/85, including in the Annexes, shall continue to apply, on a transitional basis, until the date of application of the implementing acts referred to in this Regulation.¹¹

Article 45

Repeal

Regulation 3821/85 is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation. Any measure adopted on the basis of Regulation 3821/85 shall remain valid.¹²

¹¹ Insert the following recital: "The Commission should adopt implementing acts for the purpose of this Regulation which correspond to the provisions in Annexes I, IB and II to Regulation 3821/85 so that they will be in place at the start of application of this Regulation. However if for some reason these implementing acts have not been adopted in time, transitional measures should safeguard the necessary continuity."

¹² Insert the following recital: "In the context of the application of the AETR Agreement, references to Regulation 3821/85 are to be understood as references to the present Regulation. In the context of the application of Article 22bis of the AETR Agreement, references to Annex IB of Regulation 3821/85 are to be understood as references to the implementing act as referred to in Article 3a. The EU will take the necessary steps in UNECE to ensure that the repeal of Regulation 3821/85 and its replacement by this Regulation do not affect the current mechanism of Article 22bis of the AETR Agreement."

Article 46

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall, subject to the transitional measures in Article 44, apply with effect from two years after entry into force except for the provisions in Articles 19, 30 and 43 of this Regulation, which shall apply with effect from one year after entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
