Council of the
European Union

Brussels, 5 May 2023
(OR. en)

8096/23

Interinstitutional File:
2023/0075 (NLE)

TRANS 133

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION on the position to be adopted on behalf of the European Union within the Group of Experts of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR), within the Working Party on Road Transport of the United Nations Economic Commission for Europe and, if relevant, in relation to a communication by the United Nations Secretary-General pursuant to Article 21(1) of the AETR, as regards an amendment to introduce a 'force majeure' clause

COUNCIL DECISION (EU) 2023/…

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR)[1] entered into force on 5 January 1976. It was last amended on 20 September 2010.

(2) Pursuant to Article 21 of the AETR, proposals of amendments to the Agreement may be submitted by any Contracting Party to the Secretary-General of the United Nations. Before submission to the Secretary-General of the United Nations, the proposals are first discussed in the Working Party on Road Transport ('SC.1') of the United Nations Economic Commission for Europe (UNECE).

(3) A Group of Experts has been established by the UNECE in the framework of the AETR. That group is a body empowered to develop and submit proposals for amending the AETR to the Working Party on Road Transport of the UNECE.

(4) The Group of Experts on AETR, during its 32nd planned session of 12 June 2023, is to discuss a proposal by the Republic of Belarus and the Russian Federation to amend Article 4 of the AETR by introducing a 'force majeure' clause, as laid out in ECE/TRANS/SC.1/GE.21/2023/2/Rev.1.

[1] OJ L 95, 8.4.1978, p. 1.

(5) It is appropriate to establish the position to be adopted on the Union's behalf in the Group of Experts on the AETR, and possibly in the Working Party on Road Transport of the UNECE, as the amendment to the AETR which they will be called to consider and endorse would be binding under international law in accordance with Article 21(6) of the AETR and is capable of decisively influencing the content of Union legislation, namely Regulations (EC) No 561/2006[1] and (EU) No 165/2014[2] of the European Parliament and of the Council.

(6) In its judgment of 31 March 1971 in Case 22/70[3], the Court of Justice of the European Union recognised that the area of the work of crews of vehicles engaged in road transport is an exclusive external competence of the Union. This competence has been exercised since then in numerous legislative acts adopted by the Union co-legislators, including Regulations (EC) No 561/2006 and (EU) No 165/2014. Since the subject matter of the AETR falls within the scope of Regulation (EC) No 561/2006, the power to negotiate and conclude the AETR and its modifications lies exclusively with the Union pursuant to Article 3(2) of the Treaty on the Functioning of the European Union.

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1 Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

2 Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

3 ECLI:EU:C:1971:32.

(7) The proposed amendment aims at solving a practical problem of the Republic of Belarus and of the Russian Federation that is likely the result of the war of aggression by the Russian Federation against Ukraine, in which the Republic of Belarus has a complicit role, and which led to the application by the Union of restrictive measures against the Russian Federation and the Republic of Belarus. Those restrictive measures have resulted, among other consequences, in certain companies established in the Union, including companies that usually supply digital tachograph cards and chips to the card issuing authorities of the Russian Federation and of the Republic of Belarus, suspending their operations in and with those two countries. As a result, those two Contracting Parties claim to be in a position where it is difficult or impossible to deliver tachograph cards to the drivers in those countries, who can therefore not comply with the AETR when engaged in international road transport operations falling within its scope. The proposed amendment would allow a Contracting Party to unilaterally notify that it could no longer fulfil one of the main requirements of the AETR, namely the use of a harmonised recording equipment for vehicles engaged in international transport (the digital tachograph), for reasons of 'force majeure' which would not be subject to any type of validation or assessment.

(8) The envisaged amendment would allow, following a declaration of a 'force majeure' by a Contracting Party, not to require the use of digital tachographs and digital tachograph cards for vehicles registered in that Contracting Party when engaged in international road transport operations. It would thus render the enforcement of the drivers' compliance with driving and rest times as laid out elsewhere in the AETR drastically more difficult, creating a loophole that would likely compromise the entire purpose of the AETR.

(9) The position to be adopted on the Union's behalf within the Group of Experts on the AETR and within the Working Party on Road Transport of the UNECE should be not to support the proposed amendment, in order to prevent a significant weakening of the enforcement of the rules on driving and rest times laid down in the AETR, and to ensure the full effect of the restrictive measures adopted by the Union.

(10) It cannot be excluded that the Republic of Belarus or the Russian Federation formally submit to the Secretary-General of the United Nations, under Article 21(1) of the AETR, a proposal to amend the AETR irrespective of the discussions in UNECE's bodies. In this case, Member States should object to that proposal under Article 21(2), point (a), of the AETR.

(11) The Union's position is to be expressed by the Member States of the Union that are members of the Group of Experts of the AETR and of the Working Party on Road Transport of the UNECE, acting jointly in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted on the Union's behalf at the 32nd session of the Group of Experts on the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) and, as relevant, at the next session of the Working Party on Road Transport of the United Nations Economic Commission for Europe (UNECE), or at any subsequent sessions, shall be not to support the proposed amendment to the AETR as set out in ECE/TRANS/SC.1/GE.21/2023/2/Rev.1 to include a 'force majeure' clause, as well as not to support any similar amendment in substance.

2. The position referred to in paragraph 1 shall be expressed by the Member States of the Union that are members of the Group of Experts on the AETR and of the Working Party on Road Transport of the UNECE, acting jointly in the interest of the Union.

Article 2

Should the Secretary-General of the United Nations communicate to Member States, under Article 21(1) of the AETR, that any Contracting Party, irrespective of the discussions in UNECE's bodies, has formally proposed the amendment set out in ECE/TRANS/SC.1/GE.21/2023/2/Rev.1 as regards the inclusion of a 'force majeure' clause, or any similar amendment in substance, the position to be adopted by Member States on behalf of the Union shall be to object to the proposal under Article 21(2), point (a), of the AETR.

Article 3

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

Done at Brussels,

For the Council
The President