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CONSULTATION PAPER

REVISION OF THE COMMUNITY LEGISLATION ON THE RECORDING EQUIPMENT IN ROAD TRANSPORT (TACHOGRAPHS)

ANSWERS FROM LUXEMBOURG

Ministry of Sustainable Development and Infrastructure

Contact person:
Guy STAUS
Conseiller de direction de 1e classe
19-21, boulevard Royal
L-2938 Luxembourg
Tél. (+352) 247-84437
Fax (+352) 228201
e-mail guy.staus@tr.etat.lu

INTRODUCTION

The Community road transport legislation provides for harmonised rules on maximum driving hours and minimum breaks and rest periods in order to ensure road safety, fair competition between undertakings and good working conditions for drivers. These rules apply for all drivers engaged in the transport of goods with vehicles of 3,5 tons laden mass and more and for drivers engaged in the transport of passengers with vehicles for 9 persons and more. Compliance with these rules is controlled through a recording equipment that has to be installed in vehicles falling under the scope of this legislation.

Since May 2006, the digital tachograph has become the mandatory recording equipment for new vehicles. While the necessary adaptation of this device to technical progress is regularly carried out by the Commission, it is now considered appropriate to review the legislative framework which dates back to 1985 in order to

- enhance the clarity, readability and enforceability of the rules concerning the recording equipment and

- provide for a new generation of more secure, user friendly and interoperable recording equipment.

The purpose of this document is to outline these plans and to seek the opinion of the interested parties. The consultation focuses on the recording equipment only, and does not consider the rules on driving times and rest periods which were adopted by the European Parliament and Council in 2006.

Based on the feedback received in this initial consultation, DG TREN will decide whether and how to proceed. The contributions received will be published by the Commission, unless requested otherwise by their author. The contributions should include the name, details, functions and main objectives of the organisations which send them.

Comments should reach the Commission's services no later than the **1 March 2010** at the following address:

European Commission
Directorate-General for Energy and Transport
Unit E1 "Land Transport Policy"
B-1049 Brussels
Belgium

and/or to the electronic address:

tren-e1-consultation-transports@ec.europa.eu

1. BACKGROUND: THE COMMUNITY ACQUIS ON RECORDING EQUIPMENT

Since its introduction, Council Regulation (EEC) No 3821/85 on recording equipment in road transport[1] has been amended by 16 legal acts, mainly in order to adapt the annexes to technical progress. The most important amendment has been the introduction of the digital tachograph through Council Regulation (EC) No 2135/98[2] and Commission Regulation (EC) No 1360/2002[3]. In 2009, the responsible Committee gave a favourable opinion on the tenth adaptation to technical progress of the annex; it will improve user-friendliness and increase the reliability of the system. The consolidated version of Council Regulation (EEC) No 3821/85 contains 269 pages.

The most important legal acts referring directly to Council Regulation (EEC) No 3821/85 are the following.

Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport[4] defines maximum driving times and minimum rest periods. It contains several references to the recording equipment, in particular imposing the driver to record also other working activities than driving and periods of availability.

Directive 2006/22/EC on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85[5] sets minimum targets for the control by Member States of the application of the social legislation by drivers and undertakings. From 1 January 2010, 3% of days worked by drivers of vehicles falling within the scope of Regulations (EC) No 561/2006 and (EEC) No 3821/85 have to be checked; not less than 30 % have to be checked at the roadside, and not less than 50 % have to be checked at the premises of undertakings. The directive also requires Member States to equip and train their control officers for the control of the digital tachograph.

The recording equipment is the central element to control the application of the legislation on driving times and rest periods in order to ensure road safety, fair competition and good working conditions for drivers. The digital tachograph is installed in more than 1.5 million

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[1] Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, OJ L 370, 31.12.1985, p. 8

[2] Council Regulation (EC) No 2135/98 of 24 September 1998 amending Regulation (EEC) No 3821/85 on recording equipment in road transport and Directive 88/599/EEC concerning the application of Regulations (EEC) No 3820/84 and (EEC) No 3821/85, OJ L 274, 9.10.1998, p. 1

[3] Commission Regulation (EC) No 1360/2002 of 13 June 2002 adapting for the seventh time to technical progress Council Regulation (EEC) No 3821/85 on recording equipment in road transport, OJ L 207, 5.8.2002, p.1

[4] 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, 11.04.2006, p.1

[5] Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, OJ L 102, 11.04.2006, p. 35

vehicles and used approximately by more than 3 million drivers, 35.000 enforcers and 900.000 undertakings in the European Union. From June 2010, the digital tachograph will become also mandatory for new vehicles used in the international transport by the non-EU Contracting Parties of the AETR[6] which adds 22 countries outside the EU in Europe and in the Commonwealth of Independent States.

2. CHARACTERISTICS OF THE NEXT GENERATION OF TACHOGRAPHS

2.1. Functioning of the recording equipment

The current legislation Council Regulation (EEC) No 3821/85 and its annexes contain very detailed technical prescriptions on the recording equipment and in particular on the digital tachograph. While this may be convenient for control officers and drivers who change regularly from vehicle to vehicle, it leaves manufacturers not much room for innovation and improvement of the equipment.

Question 1 - Is it important that equipment of different manufacturers functions in exactly the same way? Or should legislation focus on essential requirements and give manufacturers more freedom to develop solutions and improve the equipment?

Response 1 - Legislation should focus on essential requirements. However, as far as the recording, the security, the downloading and the management of the data collected are concerned, total functional interoperability of the systems proposed by different manufacturers must be guaranteed. Indeed, full interoperability with regard to these main functionalities is an essential requirement at itself and the only way to reach the operational purposes of the recording equipment.

In order to increase the acceptance of the recording equipment by the transport industry in general and to promote competition between the equipment manufacturers, nothing opposes against the implementation of added values to be supplied by the devices as long as the above mentioned main functionalities are not altered, disturbed or wiped out.

2.2. Integration of ITS applications

The Commission foresees in its Action plan on Intelligent Transport Systems (ITS) (COM(2008)886) the development of open in-vehicle platform architecture, designed to be flexible and extendable in time, to afford the integration of different categories of ITS applications expected to come: enforced safety and security applications (like the DT or the e-call), fleet management systems, traffic management systems, navigation and information systems, etc. This effort should facilitate the integration of the different systems, and prevent the senseless multiplication of independent equipments on board.

The experience accumulated with the introduction of the digital tachograph, (first enforced ITS equipment in trucks and busses), could be central for the development of this open in-vehicle platform for commercial vehicles.

[6] European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport

This concept of platform is intrinsically connected to the growing ICT implication in transport, and will therefore be supported by an advanced communication module (radio, GSM, UMTS, GNSS, etc.) allowing for possible 'tracking and tracing' applications.

Question 2 - Should the legislation on the tachograph already foresee the integration of the digital tachograph into an open in-vehicle platform? If so, what other regulatory applications should be integrated in this platform (e.g. e-toll, recorder for accident investigation, e-call, speed control) and why? Would it be interesting for fleet management or other applications related to safety or security of transport, or to law enforcement, to have a real-time "tracking and tracing" function?

Response 2 – There is a close link to question 1. Given the considerable period of time necessary to draw up and to implement complicated legislation like the one related to the recording equipment, it seems to be favourable to foresee the integration of the digital tachograph into an open in-vehicle platform. This prevents the exclusion of other regulatory applications which might become important or essential in a more or less near future. As an example, reducing the today's diversity in e-toll systems by the help of an unique application would have to be considered as a considerable reduction of administrative burden for the transport industry.

Furthermore, as far as a real-time "tracking and tracing" function is concerned, the necessity of such functionality in particular for the so called "dangerous goods" transports (ADR) is already given today.

2.3. Remote download of recorded data and speed of downloading

The legislation in place already allows remote download of data recorded by the digital tachograph by the transport undertaking. Recently, the necessary equipment for remote download has been made available on the market. For undertakings that use this possibility of remote downloading, administrative burdens are reduced: drivers do not need to download their driver card after 28 days; the data from the tachograph does not have to be downloaded at the premises every three months, etc. The system also shows advantages for control activities: recent data is available in case of a check at premises and no data is lost in case of a breakdown of the equipment. The additional cost of the remote downloading equipment has to be balanced by the above-mentioned benefits.

Question 3 - Should remote download of the digital tachograph be encouraged? Is a regulatory approach deemed appropriate in order to facilitate widespread introduction?

Response 3 - The possibility for remote downloading should be provided by all tachograph manufacturers. However, it should be left to the self regulatory mechanisms of the market to decide if such facilities are used or not, even if for enforcement purposes this technology might be of major interest.

Downloading of data from the recording equipment (tachograph and driver card) should not take more than a few minutes.

Question 4 - What is your practical experience? Are there any obstacles for speedy download of data?

Response 4 – From today's perspective, the slowness of downloading data from the tachograph's vehicle unit is considered by many as a major inconvenience of the system. Therefore, every increase of download speed is highly welcomed.

2.4. Improvement of controls

The purpose of recording equipment is the control of compliance with legislation on driving times and rest periods. Through the introduction of the digital tachograph, roadside checks have become more efficient as more days per check are controlled, but they still take considerable time. If the recording equipment would be able to communicate wireless to the outside, a mobile control of moving vehicles would be possible, for example by a control vehicle passing by the controlled vehicle on a highway. This would prevent that trucks and busses that comply with the regulation would be stopped.

On the same line, it could be possible to perform 'basic' controls with tachographs communicating a restricted set of sensitive parameters (e.g. to check whether the driver card is inserted, or if the tachograph is in driving mode) to fix or mobile infrastructure, while the truck is driven. This could help to screen and filter the trucks before a control, increasing the efficiency of the control.

In addition, the digital tachograph records certain events which for example may indicate attempts to tamper the equipment. However, the respective warnings provided by the equipment are not always unambiguous.

Question 5 - How could the equipment be changed in order to make controls more efficient? Should the mobile control of moving vehicles be envisaged in order to reduce administrative burden for industry and enforcement bodies?

Response 5 – Basically the possibility of checking data of moving vehicles is welcomed for enforcement purposes. Currently, this possibility is already used by transport undertakings for fleet- and driver management purposes. Given the current relatively low download speed, it could be sufficient to transfer a limited set of data. Therefore, technical specifications could foresee to flag potential infringements.

2.5. Security level of the system

One of the main objectives for the introduction of the digital tachograph was to improve the security of the system and the reliability of the data that could be controlled. Three years after its introduction, it appears that the digital tachograph has been an improvement compared to the analogue tachograph. The Commission has continued to work on the security, in particular by introducing the requirement for the equipment to have a second source of motion and the requirement that the motion sensors either detect magnetic fields or is protected from them.

However, updating the technical requirements to progress remains a moving target, as IT developments are ongoing. For the same level of security using the same technological choice, requirements become more difficult to meet, possibly leading to interoperability problems.

Question 6 - Is the current security level proportional? Can and should there be other sources of motion? Could the authenticated time/speed/positioning data provided by the future European "GPS" system, Galileo, be used as a second and independent source of motion to ensure security of data?

Response 6 – From today's perspective, data stored in the vehicle unit of the tachograph or on the chip of the driver card have to be considered as being secure. Nevertheless, frauds related to the data acquisition on motion sensor level and frauds related to the data transfer from the (unique) motion sensor to the vehicle unit of the tachograph have been reported. From this latter perspectives, further improvements of the system appear thus to be possible.

Introducing a second source of motion information might partly help to reduce these problems. However, as long as motions sensors located outside the vehicle unit of the tachograph will be used, the problems are not fundamentally solved and there will always remain a risk that data provided by these sensors are tampered with, too.

Therefore, another option to be discussed is the one of plausibility checks.

Indeed, variations in vehicle speed as represented by a variation of the motion sensor signal will always go along with either a proportional acceleration or a proportional deceleration of the vehicle. In a proper functioning system, every speed variation of the vehicle happening within a given time delay will always correspond to a defined, measurable acceleration/deceleration rate.

Today, very small acceleration/deceleration sensors, suitable to be mounted into the vehicle unit and thus being impossible to manipulate, are state of the art in many electronic applications (e.g. smartphones). Although possibly not yet sufficiently accurate to provide the speed information of the vehicle on their own, they might however be used as an information source to provide the above mentioned plausibility check.

It is highly recommended to investigate whether such plausibility checks, generating flagged events, stored in the memory of the tachograph and thus, remaining enforceable even a long time after the fraud occurred, could not be at least as efficient as a second motion sensor.

3. PRINCIPLES AND SCOPE

3.1. Scope of the regulation

Under the current legislation, the vehicles that fall under the scope of Regulation (EC) No 561/2006 have to be equipped with recording equipment according to Council Regulation (EEC) No 3821/85. Regulation (EC) No 561/2006 provides for a certain number of exceptions; in addition, Member States can grant certain exceptions as defined in the Regulation. Parliament and Council have thoroughly discussed and carefully established these exceptions before adopting the Regulation (EC) No 561/2006.

However, claims of certain users have arisen that the recording equipment leads to too much administrative burden in cases where driving is not the driver's main activity and when the vehicle falls only from time to time within the scope of the Regulation on driving times and rest periods. These claims have of course to be considered against the objectives

of Regulation (EC) No 561/2006 and the capability to control the application of its provision.

Question 7 - In case a vehicle is only occasionally used in the scope of Regulation (EC) No 561/2006, for example when exceeding from time to time the radius set in some exceptions, should it be possible to use different means of recording activities?

Response 7 – The term "occasionally" has to be defined. Furthermore, the above mentioned possibility should be limited to transport activities, where the maximum weight of the vehicle or the combination of vehicles involved does not exceed 7.500 kg.

3.2. Compatibility and interoperability

There is no compatibility between the old "analogue" tachograph and the digital tachograph: the analogue system continues to function with paper charts, the digital system uses tachograph smart cards. This side by side of two independent systems may lead to less efficient controls.

On the other hand, Council Regulation (EEC) No 3821/85 foresees strict interoperability criteria for the introduction of new digital tachographs and tachograph cards on the market. That means that new digital equipment has always to be fully interoperable with all the digital tachograph equipment that is already in the field.

However, some adaptations to technical progress of the recording equipment may lead to interoperability problems, and therefore to the necessity to introduce a new generation of recording equipment. In this case, the question arises to what extent a new generation should be compatible with the current digital tachograph generation.

Three options can be envisaged:

Option 1: No new generation of recording equipment should be introduced; make full interoperability with the current system of digital tachographs a strict requirement for all future developments.

Option 2: Foresee a new generation of recording equipment, but make sure that at least driver cards (or other parts of the equipment) can be used with the current generation of digital tachographs and the new generation of recording equipment (backwards compatibility).

Option 3: Foresee a new generation of recording equipment without any requirement on the compatibility.

Question 8 - Which option do you prefer? In case you prefer option 2: What are the most important issues for compatibility between a new generation of tachographs and the current digital tachograph, and what other parts of the equipment, apart from driver cards, should be compatible in your view?

Response 8 – A new generation of the digital tachograph without any backwards compatibility requirement (option 3) is not desirable. In such a case, transport industry and enforcement bodies would have to manage in parallel not less than 3 different systems which appear not to be beneficial for an efficient enforcement.

On the other hand, introduction of a new generation of the digital tachograph must not be prevented by a full interoperability (option 1).

Option 2 seems indeed to be the best compromise. However, the current tachograph card system (all four types of cards) has to be compatible with the new system as well as the downloading concept. Furthermore, an eventual improvement of the security achieved by increasing the key length must not lead to an incompatibility of the data generated. The consequences of this latter requirement on the costs of the cards have to be analysed further.

4. TYPE APPROVAL

4.1. Introduction of equipment based on new specifications

Council Regulation (EEC) No 3821/85 foresees the possibility for the Commission to adapt the annex containing the specifications of the tachograph to technical progress but does not foresee how the changes are introduced in the field. Questions like whether a retrofit in vehicles using older equipment is necessary, or by what type of equipment defective equipment is replaced are not addressed directly in the legislation.

Question 9 - Should the legislation specify how new equipment has to be introduced in the field? Should a retrofit be possible, mandatory or take place in case of replacement of defective equipment? What are the essential steps for the introduction of new equipment? Should type approval for tachographs fall under the general type approval scheme for vehicles?

Response 9 – Retrofitting of new technology into "old" technology vehicles is always ticklish and should be avoided as far as possible.

In general, the type approval scheme for vehicle (components) should be applied.

Currently, the Regulation does not provide for the possibility to carry out field tests of equipment before it is type approved.

Question 10 - Should it be possible to carry out field tests before type approval is requested, while maintaining the same security standards? How should field test be limited (geographically, number of equipments, duration of the field test, etc.)?

Response 10 – Field test according best practices in automotive industry for similar components are an absolutely essential part of industrial quality procedures and must be performed before introduction of the control equipment in serial production.

In order to perform those tests, members states should be enabled to issue of all type of cards equipped with serial production certificates to tachograph manufacturers.

4.2. Equipment in relation with the tachograph where no type approval is foreseen

The current legislation does not provide for detailed requirements in the following fields: seals, downloading equipment, control equipment, calibration tools.

While a legislative approach on this equipment would enhance harmonisation, it has to be evaluated against the administrative obligations that would be created for industry and authorities and the additional efforts needed to keep the respective legislation up to date with technical progress.

The following options could be envisaged:

Option 1: Do not change the current situation

Option 2: Optional standardisation of this equipment through technical bodies

Option 3: Community legislation

Question 11 - Which option do you prefer and if you prefer option 2 or 3, for which parts: seals, downloading equipment, control equipment, calibration tools, etc.?

Response 11 – It is recommended to apply option 3. It should apply for seals, downloading equipment, evaluation software and calibration tools.

4.3. Adaptation to technical progress

Council Regulation (EEC) No 3821/85 gives the Commission the competence to update the annexes containing the technical requirements of the tachograph to technical progress. This has to be done through a comitology procedure, involving Member States and Parliament. However, the procedure is time-consuming and administratively intensive.

The following options could be envisaged:

Option 1: Commission continues to update the technical specifications of the equipment through comitology

Option 2: The Regulation sets essential requirements for the equipment and a normative or technical body (e.g. CEN, CENELEC) is empowered to take care of the detailed technical specifications

Option 3: The Regulation sets the basic principles for the equipment and manufacturers decide on detailed technical specifications

Question 12 - Is the current way of updating the specifications on the tachograph satisfying? Who should be responsible for the updating of the technical requirements? What is your preferred option?

Response 12 – It is recommended to apply option 1.

5. INSTALLATION AND INSPECTION

Workshops are important part of the tachograph system, as they are responsible for the installation and repair of equipment and in particular also for the calibration of the tachograph. However, the current legislation contains only very basic provisions on workshops, for example that Member States have to approve workshops, but without saying on what criteria workshops have to be approved. This may lead to very different

handling in the different Member States. It has to be remembered that for the security of the tachograph, trustworthy workshops are critical.

Question 13 - Should the trustworthiness of workshops be improved? If so, how? How can conflicts of interest be avoided for workshops that are living from delivering services to individual clients but play at the same time an important role in the security of the recording equipment?

Response 13 – Trustworthiness of workshops is one of the key elements of all tachograph system. However, to some extend, conflicts of interests of any private workshop as a company are unavoidable.

Thus, it seems desirable that an independent body (third party) performs the final check of tachograph calibration and of other aspects linked to this matter and puts the seals.

In the frame of the relevant directive, the inspection of the tachograph installation during periodical technical inspection should be described in a more detailed way in order to monitor the correct calibration of the tachograph and its technical parameters during this mandatory and at least yearly event.

6. USE OF EQUIPMENT

6.1. Automatic and manual recording of information

The recording equipment automatically records the periods during which the vehicle is moving as "driving time" as well as odometer values and the speed of the vehicle.

Regulation (EC) No 561/2006 stipulates that driver has also to record periods of "other work" and "availability". Council Regulation (EEC) No 3821/85 stipulates that periods of daily rest and breaks have to be recorded manually when the driver was unable to use the equipment as a result of being away from the vehicle. However, there is currently no obligation to record manually weekly rest periods.

Concerning the location, the legislation requires drivers only to record the country in which he or she begins and ends his or her daily work period.

Question 14 - What kind of data should be entered manually by the driver? What kind of information should be recorded automatically by the recording equipment? Is it appropriate to record more precisely the location (via GPS or GNSS for example)?

Response 14 – In any way, it should be unequivocally specified which data has to be entered manually under which circumstances in order to avoid any additional paper based attestation (e.g. leave letters). For doing so the human – machine interface of the tachograph has to bee improved.

As far as the location is concerned, not only the country should be mentioned but the possibility to enter either manually or via GPS functionalities a more detailed geographical position information should be foreseen.

6.2. Uniqueness of the driver card

For the use of the digital tachograph, a driver needs to possess his own personalised driver card. The uniqueness of this driver card is extremely important to ensure compliance with the provisions on driving time and rest periods. The exchange of information between countries on driver cards that have been issued is therefore crucial. In order to minimise administrative burden, this exchange should be done electronically and in an automated way. Currently, there is no such obligation to exchange information in the legal body of the Regulation.

Question 15 - Should the Regulation explicitly foresee the use of electronic data exchange on cards that are issued between card issuing authorities?

Response 15 - It is of paramount importance for card issuing authorities to exchange data and to check the uniqueness of each card before issuing it. The same is true during road side checks. Nevertheless, no specific data exchange tool should be made mandatory, it should be left open to the Member States to use any compatible and efficient data exchange tool.

For your information: In order to make more difficult the successful misuse of multiple driver cards obtained by a fake lost/stolen card declaration and thus, make it less attractive to have more than one of this cards, a separate technical proposal elaborated by the experts of the card issuing authority of Luxembourg will be sent to the Joint Research Centre of the Commission in ISPRA in the near future.

6.3. Warnings

The digital tachograph warns the driver 15 minutes before and at the time of exceeding the continuous driving time. This signal might be a help for drivers to comply with the legislation. However, changes in the legislation might lead to situations where the signal becomes misleading because of the difficulty to update equipment already in use.

Question 16 - Should the Regulation explicitly foresee warnings for the driver in order to enhance compliance with the legislation on driving times and rest periods? Should it be up to manufacturers' choice to offer such warnings as an optional tool, including additional warnings for other aspects than the continuous driving time?

Response 16 – Warnings should be explicitly foreseen for compliance on driving times and rest periods. Additional warnings for other aspects could be left to the choice of the manufacturers.

7. OTHER QUESTIONS

Question 17 - Do you have any other comments or suggestions which you consider should be taken into account during the revision of the European legislation on recording equipment?

Response 17 – Several suggestions are to be made with regards to the electronic chip cards which are needed for the good functioning of the digital tachograph system:

a) It is a fact that a lot of drivers under the scope of Regulation (EC) No 561/2006 do not welcome the use of the driver card needed for the digital tachograph. Thus, carelessness with regard to the card is a consequence of this attitude and a lot of cards are lost or are malfunctioning after a certain time. On the other hand, it is a fact that all drivers must be able to present, beside the above mentioned driver card, a driving licence which is anyway a condition to obtain a driver card. In order to improve acceptance of the driver card and to reduce at the same time the administrative burden for the driver, it is suggested to give Member States the opportunity, on a voluntary base, to merge the two cards in one single card. Given the facts that the inscriptions on the recto on both cards are very similar and the verso of the driver card is currently not used, from a technical point of view, the suggestion appears to be feasible.

b) In order to make it less attractive to use the driver card of a different driver or to make use of a stolen driver card it is suggested to introduce equally to the workshop card, a PIN-code also for the driver card.

c) The maximum administrative validity of a driver card is five years. The date of the end of validity is printed on the card. Approaching this date, the driver is required to start the renewal procedure timely enough in order to ensure the availability of the renewed card at latest at the expiry date of the old card. The issuing authority then has 5 days to deliver the new card which's renewal index is incremented. Where a card has to be replaced in case of lost/stolen or malfunctioning, the replacement index is incremented and the administrative expiry date remains the same as the one of the card to be replaced. However, when the replacement date is close to the expiry date, the lifetime of the replacement card is short and the driver will have to renew it soon. This generates double costs and may be considered as an disproportionned administrative burden with the risk that the acceptance of the driver card is even decreased. It is therefore proposed to concede Member States in such a particular case a bigger flexibility, allowing them to proceed immediately to a renewal of the driver card, without replacing it and thus, avoid unnecessary costs to the driver.

Question 18 - Would you like to propose other measures to make the recording equipment more user-friendly and to improve the reliability of controls?