

IRU RESPONSE TO THE PUBLIC CONSULTATION ON THE REVISION OF THE COMMUNITY LEGISLATION ON THE RECORDING EQUIPMENT IN ROAD TRANSPORT (TACHOGRAPHS)

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IRU RESPONSE

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EUROPEAN COMMISSION CONSULTATION PAPER ON THE REVISION OF THE COMMUNITY LEGISLATION ON THE RECORDING EQUIPMENT IN ROAD TRANSPORT (TACHOGRAPHS)

I. INTRODUCTION

1. Who we are

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

2. The Digital Tachograph: current and future requirements

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

However, while the device has so far functioned primarily as a policing tool, it is essential that steps are taken so that it also becomes a support tool for both drivers and transport planners. The digital tachograph has not met the expectations of the road transport industry in this regard, for whom the principal selling point was the expectation of a digital labour saving device that

would simplify their work. Unfortunately, it has frequently had an opposite effect, generating new administrative tasks and adding complexity to others.

The SMART tachograph project which led to Commission Decision 1266/2009/EC will have a positive impact on certain aspects of the device's usability and acceptance by the road transport industry. However, more must be done and the IRU considers that the review of Regulation 3821/85 should be used to drive the digital tachograph's development further in this direction. The IRU vision is that the future digital tachograph should be notable in the vehicle only for its facilitation of the driver's work and its ability to integrate itself and the tasks it creates, seamlessly within the wider technical and operational environment of road transport companies. In short the device should become as much an aid to industry efficiency as it is to control bodies for monitoring compliance.

To this end the IRU would insist that the next generation of digital tachograph recording equipment: facilitates the integration and voluntary uptake of the most modern telematics technologies onto a common platform; eases the administrative burden on companies by enhancing its performance in several areas and fully digitalises all the information required to prove compliance with driving and rest time rules. Moreover, such a device must be based on rules that while enabling innovation and constant improvement by tachograph manufacturers, retains a core functional consistency between different models thereby aiding compliance with the rules governing the device's operation and limiting retraining requirements for drivers. These and other considerations will be further elaborated in this response.

II. RESPONSES TO THE EC QUESTIONNAIRE (QUESTIONS EXTRACTED FROM EC CONSULTATION PAPER)

2. Characteristics of the next generation of tachographs

2.1 Functioning of the recording 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?*

The IRU is in favour of providing digital tachograph manufacturers with an appropriate degree of flexibility concerning the device's technical specifications. There should be sufficient scope for them to innovate and steadily improve the performance of the device. In this way it should be possible for the device to keep pace with technological advances and to correct faults without recourse to a legislative process for changing the specifications.

However, this flexibility should be carefully balanced with the need to maintain a basic similarity in the core functionality of different tachograph models. This is especially important to support drivers regularly using more than one vehicle with different recording equipment, and to minimise training requirements. This consistency is vital for a device, whose correct operation by drivers is closely regulated by law.

Basic consistency should extend to the core elements that make up the human machine interface including manual entry and data down load processes, the registration of driver activity changes, key elements of the visual display, error codes, and data outputs from the device. As a minimum these should be governed by regulated backbone protocols, going beyond basic requirements and designed to ensure a certain level of consistency between devices.

The revised specifications for the manual entry process - adopted as part of the Commission Decision 1266/2009/EC - may provide a possible model to be followed, although the strength of this approach will only truly be known once different devices meeting these requirements start entering the market.

Overall it seems prudent to start by identifying specific areas of the technical specifications where flexibility is actually needed and where it can be introduced – as suggested above - without jeopardising consistency and familiarity for drivers. The opposite approach, beginning with the premise that all but some specifications in annex 1B, might be replaced with more general requirements for manufactures to follow as they see fit, would be firmly resisted by the IRU.

Instead in each case where greater flexibility is sought, the level of detail in the technical specifications required to achieve the correct balance between innovation enabling flexibility and compliance aiding consistency, must be carefully weighed before any changes to the current specifications are adopted.

2.2 Integration of ITS 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?*

The IRU is very much in favour of the development of an open architecture platform which would facilitate the integration of varied ITS telematics based applications in order to save costs. for installing multiple devices providing different services.

Such ITS applications must be standardised, harmonised and interoperable in order to improve the effectiveness and reliability of transport as a whole. Moreover, the application of ITS must be, to the widest extent possible, on a voluntary basis. Road Transport operators must be able to maintain freedom of choice when selecting the ITS equipment and applications. The IRU sees this as an opportunity for decision makers to facilitate industry's voluntary investment and uptake of new technology. It should not be treated as a means to introduce new mandatory requirements for additional equipment for use on board vehicles.

Finally, it must be emphasised that any data generated by the various applications comprising the 'in vehicle platform' should be fully under the control, and accessible only to the vehicle

owner. The exception would naturally be where the operator's consent to share information is de facto given, for example by the voluntary use of an application such as electronic fee collection, where transmission of specified data to another party is inherent in its use. However, overall, there should be strict adherence to data privacy norms in the interests of the vehicle owner. Thus strong data protection safeguards must be hardwired into the concept of the in-vehicle platform from the outset.

2.3 Remote download of recorded data and speed of downloading

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

The IRU believes that the remote download feature is an important tool for reducing the administrative burden of handling data generated by the digital tachograph. Moreover, as a technology, its adoption should be stimulated through increasingly cost efficient solutions provided by manufacturers. However, industry should be fully free to decide whether or not to invest in a supplementary feature of this kind. Since it is not essential for fulfilling the digital tachograph's primary functions and the Regulation's objectives, it should not be mandated. As an aid to operators, the value of a remote download feature may be considerable in a company with a large vehicle fleet, but totally unnecessary for a one vehicle company where a manual download is sufficient. Its widespread introduction will be facilitated if it matches the needs of users, so a regulatory approach would not be considered appropriate by the IRU.

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

Road transport operators, while conscious of the improvements that have been made in download speed since the first digital tachograph models were launched in 2006, would naturally like to see further increases in download speeds. In its review the European Commission should be attentive to any technical obstacles identified by tachograph manufacturers, and act on these proposals to eliminate barriers to faster data download speeds.

2.4 Improvement of controls

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?*

Strong and effective controls with appropriate sanctions for those who break the rules are of the highest importance to and will always be supported by the IRU. Moreover, the IRU is a strong advocate of practical measures to reduce interruptions to transport operations from road side controls, while at the same time maintaining or enhancing enforcement.

However, IRU will not support the suggestion that control authorities could have *remote* access to the data recorded on the digital tachograph for enforcement purposes. First, as highlighted

there are data privacy issues, but in addition to this the approach is untenable in view of the serious lack of harmonised enforcement of the Driving and Rest Time Rules Regulation No 561/2006/EC. Several years of discussions between enforcement authorities and industry (often, but not exclusively, conducted under the auspices of European Commission expert committees on road transport social legislation) shows that enforcement of this Regulation is compromised by a mosaic of national and even sub national legal interpretations, diverging enforcement practices and sanctioning policies.

Without the judgement and discretion of individual enforcement officers, taking into account specific circumstances and most importantly the drivers own evidence, the automation of controls would produce an intolerable situation and potentially the abuse of such systems as revenue raising opportunities. It would result in a massive multiplication of incorrect sanctions, disputed fines and increased administrative burdens for both industry and authorities, thereby cancelling out any and all supposed efficiency benefits.

Once again, the IRU is committed to effective enforcement to sanction those who seek not to comply with the rules but these must be through practical measures. The IRU does not believe that remote or mobile controls can be considered as such.

2.5 Security level of the system

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?*

The IRU believes that the current level of security is appropriate for a system whose value depends on the integrity of the data that it produces. Without adequate security against fraudulent manipulation the device's purpose as a tool for improving road safety, fair competition and working conditions cannot be met. The European Commission should not seek to radically raise the level of security – for example through an independent satellite based positioning signal - but it should seek to maintain it at its currently proportionate levels by countering current or foreseeable threats as it has done with Commission Decision 1266/2009/EC.

Moreover, a mandatory European GPS 'Galileo' signal should not necessarily be seen as a silver bullet to deal with manipulations since if the will exists to defraud the tachograph, the ability will almost certainly exist to manipulate or block a Galileo signal.

Furthermore, even if such a system was considered useful, as long as there is a range of similar technologies to choose from for obtaining a secondary satellite positioning signal, there is no justification for stating that it should be supported only by a 'future European GPS system' such as 'Galileo'.

3. Principles and scope

3.1 Scope of the regulation

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?*

If a vehicle is intended for use by drivers on transport activities which fall outside the scope of the Regulation, for example by virtue of an exemption, that vehicle should not be required to be fitted with a tachograph nor should that driver have to use an alternative system of recording his hours, even if he accidentally falls into scope. However, if it is known that a driver may occasionally come within scope of EU driving and rest time rules no matter how infrequently, the IRU believes that when such drivers are undertaking activities that place them within scope of the Regulation, they must comply fully with the Regulation, using a tachograph and no other alternative means of registering his activities.

3.2 Compatibility and interoperability

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?*

The new generation of recording equipment should be envisaged with backwards compatibility as foreseen in option 2. Interoperability must be maintained at a minimum for driver cards, pictograms, the CAN protocol, the mechanical interface, download protocols, download tools and interfaces (especially those utilising USB port technology). Analysis software should be developed that is capable of reading data from all generations of digital tachograph.

4. Type approval

4.1 Introduction of equipment based on new specifications

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?*

Retrofitment should to the greatest extent be made technically possible, but it should not become mandatory. Road transport operators should be able to realise a full return on their investment in equipment throughout the use of the latter, during its full life cycle. It should not become obligatory to replace it. If equipment fails it should be possible to replace it with an identical unit if that is wished, for example in accordance with the owners guarantee and regardless of the fact that the technology purchased might have been superseded. Moreover, mandatory retrofitment of new devices will most likely continue to be compromised by the fact that it may not be technically possible to fit the newest on board equipment into older vehicles.

Nevertheless, in exactly the same manner as with the first generation of digital tachograph equipped vehicles, it should be possible to oblige the use of technology constructed according to the latest technical specifications on vehicles put into service for the first time. Moreover, it should become mandatory for all new digital tachograph devices to be software updateable.

Concerning whether the tachograph should be subject to general vehicle type approval schemes, in line with the IRU's cautionary observations in answer to question 1, we are of the opinion that the device is still in an embryonic and constantly changing stage of development and as such requires specific rules for its construction. When and if the device becomes more static in terms of its development it may be possible to consider its type approval being included within the general type approval of the vehicle. However, for the foreseeable future and certainly in view of the transformations that are being considered in this document, the IRU believes the device should benefit from its own dedicated type approval process with detailed specifications to maintain the essential level of interoperability and consistency between devices.

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.)*

This question is more relevant as a consideration for tachograph and vehicle manufacturers. However, road transport operators have a clear interest in the provision of equipment designed and built on the basis of real life field tests which would improve the performance of the product they receive. We would hope therefore that pre-type approval field tests could be facilitated.

Naturally the IRU would expect that manufacturers seek the active involvement of transport operators and transport organisations in all aspects of product development.

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

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?

The IRU is of the view that product types such as downloading tools and control equipment that are not subject to type approval processes today, should become so for new products sold after a certain date in the future. Today a wide range download devices and processing software of greatly variable quality is available on the market. Since road transport operators depend very much on this equipment in order to comply with regulatory obligations, the IRU believes that these products should be subject to EU rules for type approval.

Moreover, in accordance with the IRU's replies to question 5 concerning the lack of uniform enforcement of driving and rest time rules between EU Member States we would also urge the type approval of the data analysis software used by control authorities to determine whether a driver has infringed the Regulation. Type approval for the latter should be awarded only on the basis of a product's conformity to a common understanding and interpretation - established at EU level - of the articles in Regulation 561/2006/EC, 3821/85/EC (or its successor legal text) and Directive 2006/22/EC.

4.3 Adaptation to technical progress

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?

Since the IRU maintains that it is not possible to do without a set of prescribed technical specifications for the construction of the digital tachograph which will need to be updated periodically, it is important that a process exists that enables this to be done quickly and efficiently with the maximum possibility for all concerned stakeholders, governmental and non-governmental, to express their opinion and contribute to the outcome of that process. The comitology procedure that resulted in Commission Decision 1266/2009/EC, while not perfect, has provided - at least at EU level - a good balance between these different requirements.

While this system should be maintained at EU level as the most appropriate means for updating the technical specifications of the device, a consideration should also be given to the development of the technical specifications as they effect non EU road transport companies operating under the United Nations, European Agreement Concerning the Work of Crews of Vehicles engaged in International Road Transport (UNECE AETR). Currently by virtue of article 22 bis of the AETR Agreement non-EU states are automatically bound by the technical specifications in annex 1B as soon as they are amended at EU level.

Non-EU Contracting Parties of the AETR including the governments of the Commonwealth of Independent States, the Western Balkans and Turkey should be able to influence the future development of the device together with EU partners. This could be achieved by ensuring that that as soon as modifications are considered at EU level, these should be reported to the relevant UNECE bodies for appropriate and timely consideration to enable a smooth decision making process at all levels.

5. Installation and inspection

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?*

Currently there are no EU rules that would prohibit a road transport operator from qualifying to become an approved workshop, but there are in many cases national guidelines covering this particular issue, used to assess an applicant approved workshop's eligibility to perform that role. In the opinion of the IRU the current situation is satisfactory. Overall, if an entity can satisfy the secure criteria that the competent national authority imposes this should be sufficient.

Separate to the security related aspects of workshops, it could be useful to introduce an annual training requirement for workshop technicians on digital tachograph developments and installation processes.

6. Use of equipment

6.1 Automatic and manual recording of information

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)?*

One of the principal attractions for transport operators of the digital tachograph was the possibility to shift from a mechanical and paper based system to a fully digitalised one. Unfortunately the current device has not fully lived up to these expectations and not all relevant activities can be recorded. This is most apparent with respect to the attestation forms for drivers and employers to declare relevant activities that cannot be recorded on the digital tachograph.

Ideally, records made by the tachograph or entered by the driver should be sufficient. If Member States insist on retaining the concept of employer attestations for certain activities such as sick leave, holiday or other work etc, it must be possible for these to be loaded onto the driver card.

In short drivers and operators should be able to use electronic means for creating all the records that a driver is required to carry in order to demonstrate compliance with EU Driving and Rest Time Rules or the AETR Agreement.

Concerning the automatic recording of location data via GPS or GNSS, the IRU considers that the sole purpose of this would be to introduce a means to check for manipulations of the device. This would be achieved by calculating the distances travelled between locations identified by satellite positioning and cross referencing this with the driving record produced by the digital tachograph's motion sensor. However, the IRU again maintains that satellite positioning should not be seen as a silver bullet to deal with manipulations, sufficient to make it mandatory. If the will exists to defraud the tachograph, the ability will almost certainly exist to manipulate or block a GPS 'Galileo' signal.

6.2 Uniqueness of the driver card

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

An acute vulnerability of the digital tachograph system is indeed the possibility that a driver may possess two cards issued by different authorities. It would seem entirely appropriate that card issuing authorities are obliged to exchange data between themselves on card issuing.

6.3 Warnings

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?*

The complexity of the EU Driving and Rest Time Regulations clearly indicate the need for guidance and warnings to be given to support drivers especially in complex areas of the regulations such as ferry crossing rules or rest that falls into two weeks. However, as mentioned

above, the current disharmony of interpretation and enforcement is the single biggest restraint on the development of potentially very useful driver aids. In fact without a harmonised application of the rules, such guidance could potentially become serious liabilities.

If electronic guidance advises that a driver does not need to take rest but he is subsequently fined should the provider of such guidance assume liability? As has been suggested a simple disclaimer limiting the liability of the guidance provider might appear to solve the problem by asserting that ultimately it is the drivers job to know the rules. However, in that case what possible value can such guidance have when it is compromised from the outset by the admission that it could be misleading?

Moreover, this situation is totally unsatisfactory since we are still faced with the fundamental problem that the rules are not applied uniformly and that the guidance runs the risk of further complicating the rules by adding one more competing interpretation. The IRU finds it lamentable that the implementation of such a valuable aid as driver guidance via the tachograph - with all its potential to help driver compliance – would be counterproductive due to the failure to harmonise enforcement interpretations of Regulation 561/2006/EC. The IRU urges this work to be initiated by the EU without delay but until such as time as this happens guidance provided by the digital tachograph should not be introduced, as it would create more problems than benefits.

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?*

- Taken in conjunction with the request of the IRU for the Commission to propose that the next generation of digital tachographs includes the possibility for the electronic registering of all required data on the driver card (see response to question 14) the IRU would also propose the deletion of article 14.1 and the obligation to create paper records.
- A solution to the problem of the overwriting of driver card data could also be attempted. The storage capacity on the digital tachograph driver card is limited to a data block of 93 activity changes before the earliest data on the card begins to be overwritten without warning. This means that depending on the type of transport operation and the frequency of activity changes, a driver may not be able to predict when he or she might start to lose data that has been overwritten and lost before it could be downloaded.
- A warning for the overwriting of driver card data would be usefully added to the device. This could work by placing a digital indicator on the driver card memory at the point of the last download. This would enable a warning to be given of the number of activity changes remaining before data generated after this download event begins to be overwritten.
- Commission Decision 1266/2009/EC attempted to correct the break warning given after 4.5 hours continuous driving time in the event of insufficient rest, by bringing it into line with the revised break rules adopted with EU Regulation 561/2006/EC. However, this has

not completely solved the problem of inaccurate break warnings from the tachograph. This is because the current specifications include periods of availability and other 'unidentified periods' within the calculation of 'break'. This can have the effect of a warning not being triggered despite the driver not having taken 45 minutes of actual 'break'. This should be definitively remedied.

- A positive step taken by Commission Decision 1266/2009/EC was to suppress irrelevant driving time and driver card warnings when a driver is operating a vehicle out of scope of the Regulation, for example on short haul bus services of less than 50km. However, in such cases it could be very useful to enable the device to be programmed with warnings based on the local driving, break and rest time rules which might apply to such short haul operations. A driver could be able to switch between 'local' and 'EU' rule modes. This would provide a real benefit to local drivers, since unlike the situation faced by international drivers it is almost certain that they would face only one set of rules uniformly applied and enforced within that specific locality.

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

A massively reinforced effort should be made to harmonise the enforcement of Regulation 561/2006/EC. This is a pre-requisite to enable the implementation of the potentially very positive idea indicated in the Commission consultation paper of regulatory compliance guidance offered by the device.

In terms of improving current controls, efficiency is very much reduced by inadequate training and or lack of equipment in evidence by some enforcement bodies with the EU. Directive 2006/22/EC states the obligation for enforcement bodies to be properly equipped. The relevant articles in this Directive should be expanded further in order to state precisely what equipment is required at a minimum to ensure efficient controls.

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