



November 2011
AK Position Paper

AK position paper on the Proposal for a Regulation amending Regulation (EEC) 3821/85 on recording equipment in road transport and amending Regulation (EC) 561/2006

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Herbert Tumpel
President

Werner Muhm
Director

Executive Summary

On the one hand, the amendments in question are to counteract a wide range of infringements against the social legislation as well as the "vulnerability of the tachograph system"

On July 19th, 2011, the European Commission published a proposal on revising resp. amending EC Regulations 3821/85 on recording equipment in road transport and 561/2006 on the harmonisation of certain social legislation relating to road transport. The EU Commission states as "overall aims of road transport social legislation (the rules on driving time and rest periods) ... to improve road safety and drivers' working conditions and to ensure fair competition between transport companies". On the one hand, the amendments in question are to counteract a wide range of infringements against the social legislation as well as the "vulnerability of the tachograph system", the aim on the other is to improve "the trustworthiness of the recording equipment", "the efficiency of the checks on compliance with social legislation on road transport", as well as to "reduce the costs of using the recording equipment, partly by reducing the administrative burden related to its use".

From the point of view of the Austrian Federal Chamber of Labour (AK), all these aims are to be supported. That is why the content of many concrete improvement proposals, such as the integration of driving licence with driver card, the possibility to use the recording equipment to communicate with control officers whilst driving, or the liability of the undertakings for infringe-

ments against this Regulation committed by drivers have been assessed positively. However, some proposals are not suitable for enhancing the social conditions for drivers or improving road safety, and are therefore rejected by the AK.

Going beyond the Proposal in question, the AK requests a comprehensive revision of EC Regulation 561/2006 and raises, in particular in this sector, demands, some of which have been repeatedly put forward by representatives of workers' interest in Austria and which had not been taken in consideration when EC Regulation 561/2006 was adopted.

The AK position in detail

The AK comments as follows on the most important provisions of the revision proposal:

On the amendment of EC Regulation 3821/85 (new Articles 1 - 21):

On recital 4:

This consideration is strictly rejected by the AK and should be deleted without replacement: extending the maximum distances of exceptions pursuant to Art 13 of EC Regulation 561/2006, which can be determined nationally within the radius of the base of the undertaking, from 50 kilometres to 100 kilometres, is not appropriate from a transport and competition policy point of view and also has a negative effect on efficient control options.

On recital 5:

The AK does generally not object to the automatic recording of location data, provided it is limited to the starting and ending place of a journey and does not involve the consistent satellite-supported surveillance of drivers. Another fundamental requirement to gain approval for this proposal must be a review in accordance with the Data Protection Act, which ensures that this provision does not give cause for concern.

Apart from that it must be avoided that recordings only start when the vehicle begins to move; it has to remain an option to use the recording equipment to record "other work" before starting resp. after ending the journey.

On recital 13:

In particular the last sentence, according to which "periods for which no activity has been recorded for the driver should accordingly be considered as rest periods", is strictly rejected.

On Article 2 paragraph 2 (j):

The AK strictly rejects the definition of the "daily work period" as a period of not exceeding 9 hours. This does not even cover the admissible driving times.

On Article 4:

In general, there are no objections against the automatic recording of location data by connecting the equipment to a satellite navigation system, because this provides more precise details than an "F", "E", "D" or "A" as initial letter for the country, in which the journey was started.

As already commented on Proposal 5, the following conditions must be fulfilled to gain the final approval of this provision by the AK:

- Only starting and ending places of a journey are to be recorded automatically; it must not be permitted that drivers are consistently monitored via satellite.
- The provision must be thoroughly reviewed in accordance with the Data Protection Act.

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- Automatic recordings must not be limited to driving times; the option must remain that it is possible to record all other working and standby times, breaks and rests via the recording equipment.

On Article 5:

In future, the digital recording equipment shall enable communication with authorities whilst the vehicle is in motion. From the point of view of the AK, this provision appears to enable a significant improvement of checks, as in the case of a roadside check, only vehicles would have to be stopped, where inconsistencies in respect of the recordings of driving times and rest periods were established by means of remote communication. On the one hand, this would reduce actual physical checks (checks are limited to those which raised suspicion during the remote inspection); however, there would also be facilitations for those complying with the rules on the other.

On Article 18:

Pursuant to Article 18, recording equipment shall continue be subject to regular inspection by approved workshops every two years. The BAK suggests reducing this period to one year as the attraction to manipulate the recording equipment would lose much of its appeal. More frequent inspections might result in the fact that manipulations become too much of an effort and that therefore they would be reduced.

On Article 21:

Pursuant to Paragraph 1 - according to the Commission Proposal - the driver card shall be issued "within one month" of the request being received by the competent authority. From the point of view of the AK, this period is far too long. Similar to the periods set out in Article 23 and 24, here too a period of maximal 15 working days should be determined.

On Article 26:

This provision on the electronic exchange of data and information on driver cards and the establishment of national electronic registers, which are accessible throughout the Union, should be thoroughly reviewed in accordance with the Data Protection Act.

On Article 27:

The AK expressly welcomes the integration of driver card with driving licence in a single document, as this enables inappropriate use and manipulations.

On Article 29:

The AK also welcomes the revision of the responsibility of the undertaking. In particular the first sentence of paragraph 3, according to which transport undertakings are liable for infringements by their drivers, has been given a positive assessment, as drivers often act on instruction of their employer when infringing against a rule. However, in accordance with the second sentence, Member States are given the option of not to hold transport undertakings responsible in case of

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infringements against this Regulation. From the point of view of the AK, this second sentence in paragraph 3 should be deleted.

On Article 30 paragraph 3:

The AK does not agree with the revised version of this paragraph: the comprehensive recording of driver activities is no longer guaranteed when rest periods (breaks), daily and weekly rest periods no longer need to be recorded. Within the meaning of the comments mentioned above on recital 13, the AK in particular strictly rejects the sentence, according to which "periods of time for which no activity has been recorded shall be regarded as rest or break". The regulation would in particular contradict the provision of Article 7 (break) and Article 4 (g) (daily rest period) of EC Regulation 561/2006 and apart from this no longer require carrying the form about holiday or sickness pursuant to Commission Decision (2007/230/EC). From the point of view of the AK, the provisions of the current Article 15 paragraph 2, on which the new Article 30 paragraph 3 has been based, should remain unchanged.

The AK suggests in respect of paragraph 5 (b) to introduce a separate pictogram for breaks in form of two vertical thick black bars, as it is the norm with other electronic devices. That way, a distinction could be made between driving breaks and rest periods, whose distinction is also included in the Regulation on social legislation relating to road transport.

On Article 37 paragraph 3:

The AK welcomes this provision, according to which "the sanctions laid down by Member States for very serious infringements as defined in Directive 2009/5/EC shall be of the highest categories, applicable in the Member States for infringements of road transport legislation". However, it has to be clarified what is to be understood under sanction of the "highest category ... for infringements of road transport legislation". From the point of view of the AK it would be important to also include a clearer sanction provision "immobilisation of the vehicle" in case of infringement, as it is currently defined in Article 21 of EC Regulation 561/2006.

On the Amendment of EC Regulation 561/2006:

As already commented in this Position on recital 4, the AK strictly rejects the suggestion in Article 13 paragraph 1 (d, f and p) to extend the 50 kilometres radius from the base of the undertaking to 100 kilometres. The proposed amendments make checks more difficult and are not acceptable from a transport policy point of view, as in this case additional journeys could be undertaken outside the strong regime of driving time and rest periods.

Going beyond the proposal in question, the AK requests a revision of EC Regulation 561/2006 and raises, in particular in this sector, the following demands, some of which have been repeatedly put forward by representatives of workers' interests in Austria and which had not been taken into consideration when EC Regulation 561/2006 was adopted:

- Article 2 paragraph 1 (a) should introduce the obligation to carry recording equipment for commercially used vehicles not exceeding 3.5 tonnes;
- Article 3 (a) should be deleted; from the point of view of the AK, the exception for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres has to be omitted as drivers are normally not restricted to this from of transport. If apart from regular services, drivers are also used for occasional services for example, they will have a problem to prove their driving time and rest periods when checked;
- Article 4 (g) in conjunction with Article 8 paragraph 2 to 4 should reintroduce the compensation in case of reduced daily rest periods, as it applied before the adoption of EC Regulation 561/2006. Pursuant to Article 8 paragraph 1 of the previously applicable EC Regulation 3820/85, daily rest periods could only be reduced, "on condition that an equivalent period of rest be granted as compensation before the end of the following week";
- Article 4 (h) in conjunction with Article 8 paragraph 6 should reintroduce the weekly rest period of at least 36 hours at the place of residence of the driver. The deletion of this provision of EC Regulation 3820/85 represents a clear deterioration of the social provisions for drivers, whose weekly rest period since then can be reduced to 24 hours at their place of residence.
- The so-called "12 day rule" for coach tours according to which the weekly rest period of bus drivers assigned to cross-border services must only be granted after 12 and not after six days, was abolished on the grounds of road safety when EC Regulation 561/2006 was adopted. In spite of proving successful for a number of years, it was - at the instigation of the transport undertakings - reintroduced when EC Regulation 1073/2009 on access to the international market for coach and bus services was adopted. The current provision is so complicated that it can hardly be checked by supervisory bodies. Apart from that, it is also not comprehensible for reasons of road safety why drivers assigned to these services may only take their weekly rest period after 12 instead of six days. Hence, the AK again requests to abolish the 12 day rule for coach services (Article 8 paragraph 6a).
- Article 10 paragraph 1 has to establish a clear ban on single salaries. Hence, the half sentence "if that payment is of such a kind as to endanger road safety", which so far has been making the provision unenforceable, should be deleted.
- As already mentioned above, Article 21 has to include a clear and unambiguous sanction provision "immobilisation of the vehicle" in case of infringement.

Should you have any further questions
please do not hesitate to contact

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