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Amendment of the Council Regulation (EEC) No. 3821/85 on recording equipment in road transport and Regulation (EC) No.561/2006 on the harmonisation of certain social legislation relating to road transport
EP Report Silvia-Adriana Țicău (A7-0195/2012) from 6.6.2012

The report mentioned above (rapporteur MEP Țicău) Amendment of the Council Regulation (EEC) No. 3821/85 on recording equipment in road transport and Regulation (EC) No.561/2006 on the harmonisation of certain social legislation relating to road transport has been scheduled to be debated and this week in the plenum of the European Parliament. The **Austrian Federal Chamber of Labour (AK)** as the legal representation for about 3.2 million employees and consumers in Austria considers it necessary to speedily drive forward the **harmonisation of certain social legislation relating to road transport** at EU level and to create common bases to enable the efficient and strict control of these provisions.

The proposal of the EU Commission from 19.7.2011 already states as an overall aim of road transport social legislation “the improvement of road safety and drivers’ working conditions and to ensure fair competition between transport undertakings”. On the one hand, the amendments of Regulation (EEC) No. 3821/85 are to counteract the vast number of infringements against social legislation as well as the “vulnerability of the tachograph system”; the aim on the other hand 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 achieve a “reduction the costs of using the recording equipment, partly by reducing the administrative burden related to its use”.

The AK is basically in favour of supporting all of these objectives. On 31.5.2012, the Transport Committee of the European Parliament decided some amendments, which are closer to the above mentioned goals of harmonising certain social legislation relating to road

transport than those included in the proposal of the EU Commission. However, there are also individual accepted **amendments, which from the point of view of the AK will have a significant negative impact on the social conditions for HGV and bus drivers**; in some cases they are even equivalent to a step backward for traffic safety compared to the current legal position.

We have used the **Annex** to summarise the **most important points on both reports** from the point of view of workers' interests. **We would kindly ask you to review the individual proposals.** From the point of view of the AK, the majority of the Amendment Applications contained in the report is necessary; however, we feel that **some proposals of the rapporteur are not acceptable in the interest of employees. In order to achieve an improvement of the social conditions for professional drivers and of road safety, as well as to prevent any distortion of competition on the European road transport market, we would like to ask you to support resp. to reject the proposals contained in the Annexes.**

In case of any queries or questions please do not hesitate to contact Mr Richard Ruziczka (Tel ++43/1/501 65/2423) and Mr Frank Ey (++32/2/230 62 54) at our Brussels Office. Asking for your support/rejection, we remain

Yours faithfully,

Herbert Tumpel
President

Günther Chaloupek
on behalf of the Director

ANNEX

A N N E X

EP Report Silvia-Adriana Țicău (A7-0195/2012) from 06.06.2012:

Amendment of the Council Regulation (EEC) No. 3821/85 on recording equipment in road transport and Regulation (EC) No.561/2006 on the harmonisation of certain social legislation relating to road transport

(PE 480.582v02-00)

The Austrian Federal Chamber of Labour (AK) fully supports the reasons of the rapporteur in respect of the necessity to amend the EC Regulation on recording equipment: social provisions in road transport are still too frequently infringed and the current regulations on recording equipment are not efficient enough. The rapporteur broadly supports the main objectives of the Proposal of the EU Commission from 19.7.2011; however, she requests far-reaching regulations and measures, such as

- the introduction of typification of software to control recording equipment,
- the determination of certain uniform requirements for manufacturing, installing, using and controlling recording equipment as well as for functions, data recording, access rights and data protection,
- the improvement of reliability of workshops or
- clarifications relating to the responsibility of companies.

Initially and because of their special significance, the AK concentrates **on provisions, which in their current version appear to be totally unacceptable from an employee's point of view**; many of these proposals are clearly worse for employees than those amendments, which the MEP Mrs. Țicău introduced in her report in the Transport Committee of the European Parliament in February; some provisions fall short of the proposals of the EU Commission.

From the point of view of the AK, the amendments

- **6** (Recital 21a – new; Separation of provisions for driving time and rest periods for drivers in respect of the carriage of goods and passengers),
- **54** (Article 5(3); Exclusion to control data relating to driving time and rest periods in case of targeted roadside checks),
- **82** (Article 19(4); Approval to install and calibrate recording equipment by transport undertakings under certain conditions),
- **94** (Article 29(3); Drivers and transport undertakings shall be liable for infringements against this Regulation committed by drivers of the undertaking) and
- **95** (Art 30(3.2); “Periods of time for which no activity has been recorded shall be regarded as rest or break”).

are not suitable to create improvements for employees and even result in case of amendment **94** in significant deterioration for drivers resp. in respect of amendment

95 in the uncontrollability of driver activities. **Therefore**, these amendments **should not be adopted under any circumstances**.

Detailed reasons and arguments **for a rejection** have been set out on **page 3 and 4**.

In contrast, from the point of view of the AK, in particular the following amendment - for the purpose of adopting **clearer and simpler rules** and because of their overall clearly positive impact on road safety and the working conditions of employees - **are to be supported** and **should definitely be considered**:

- **38** (Article 3(3a) - new; Retrofitting by the end of 2019),
- **46** (Article 4(1); Automated recording of the start and end point of the transport),
- **55** (Article 5(4); Restriction of data transmission),
- **56** (Article 5(5); Deletion of data),
- **57** (Article 5(6); Information duty by transport undertaking),
- **60** (Article 1(1) - new; Data protection),
- **92** (Article 29(1) - new; Instruction of drivers by the transport undertaking),and
- **111** (Article 36a - new); Setting up a website to report abuse).

More detailed reasons and arguments **in favour of support** have been set out on **page 5**.

The reasons for the **amendments which are to be rejected**, because they have a **negative impact on employees**, are as follows:

6: Due to the fact that the carriage of passengers and goods is allegedly carried out under very different conditions, the proposal has been made to revise the regulations on recording equipment and driving time and rest periods in the respective sectors by the end of 2012. In the opinion of the AK, there is no factual justification for this recital. The AK rejects a separation of provisions into those applying to drivers transporting passengers and those applying to drivers transporting goods – the same strict rules in respect of driving time and rest periods must apply to drivers in both sectors. Special provisions for carrying passengers, as implemented in 2010 by the re-introduction of the 12-day rule applying to bus transport (in case of cross-border passenger transport concerning the occasional carriage of passengers, drivers are allowed to rest after driving for 12 days, whilst in respect of goods transport they have to rest after 6 days), are at the detriment of employees and can also not be supported from the perspective of road safety.

AK proposal: delete amendment

54: In future, 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 vehicles which raised suspicion during the remote inspection); on the other hand, however, there would also be facilitations for those complying with the rules.

However, according to the present amendment it has been expressly excluded that inconsistencies concerning the activities of drivers (i.e. in respect of driving time and rest periods) may be used in case of remote queries/controls. Hence, it shall not be permitted to check the recording of driving time and rest periods - the most important purpose of recording equipment - during prior checking of vehicles in motion. However, from the point of view of the AK it is already adequately guaranteed that for reasons of data protection no personal driver data, but only his driving time and rest periods are recorded or transmitted; a personal allocation of offences is only carried out once the vehicle has been stopped: in particular the new amendment **56** (“... if not offence was found to have taken place during the course of the subsequent roadside check, all data transmitted has to be deleted...”) or **60** (data recording or transmission only under certain conditions, such as agreement of the driver) shall prevent data protection infringements

AK proposal: delete amendment; add new amendment analogous to amendment 54, amended by a separate point “Infringements of driving time and rest periods”.

82: Concerning the installation and calibration of the recording equipment, the Member States shall take suitable measures to prevent the occurrence of conflicts of interest between workshops and transport undertakings. Whilst the Commission Proposal explicitly excludes transport undertakings, which simultaneously operate a workshop, from installing (and calibrating) recording equipment in their own vehicles, this clear provision has been diluted in the amendment: Only if a risk of “serious conflicts of interest” exists, “additional special measures” shall be taken “to ensure that the fitter or the workshop complies with the provision of this Regulation.” The AK supports a clear ban on transport undertakings being able to install and calibrate recording equipment in vehicles.

AK proposal: delete amendment

94: Whilst the Commission proposal clearly states that the transport undertaking shall be liable for infringements against this Regulation committed by drivers of the undertaking, the first sentence of the amendment states that both the driver as well as the transport undertaking may be held responsible for infringements against this Regulation.

As Austrian administrative experience shows, such joint guarantees between undertaking and driver always result in the fact that the competent authorities impose sanctions against the driver and that the undertaking does not have to fear any penalties. However, it is a fact that with regard to driving time and rest periods or in case of manipulations and misuse of recording equipment, infringements are taking place first and foremost following pressure of the undertakings.

The AK points out that there is no other service sector where the responsibility for the compliance with statutory provisions is shared between employer and employee; therefore the responsibility lies first and foremost with the employer. Therefore, sanctions are initially always aimed against the employer and may subsequently be contended internally between employer and employee. For example, initially the employer is liable for polluting the environment because of the improper disposal of a chemical by an employee; only subsequently the employer is able – for example in cases of intent or gross negligence - to indemnify his employee.

From the point of view of the AK it is therefore essential that the undertakings also assume full responsibility for the provisions to be complied with in road transport. Hence, the AK is in favour that all responsibility is clearly assigned to transport undertakings.

AK proposal: delete amendment

95: This amendment supports the proposed text presented by the EU Commission in an original version of the draft proposal: In particular the sentence, according to which “for control purposes periods of time for which no activity has been recorded shall be regarded as rest or break”, has been repeatedly strictly rejected by the AK, as the obligation of a comprehensive recording of all driver activities is no longer guaranteed.

This Regulation would in particular contradict the provisions of Article 7 (break) and Article 4 (g) (daily rest period) of EC Regulation 561/2006 and apart from this no longer require carrying a holiday or sickness note. Article 7 only allows three types of break: either an “uninterrupted” break of 45 minutes or - if taken separately - one of at least 15 minutes and one of at least 30 minutes; other (shorter) pauses are not regarded as breaks. In turn, Article 4 only knows three types of daily rest period: either a period of at least 11 hours or - if taken separately - one of at least 3 hours uninterrupted and one of at least 9 hours uninterrupted; other (shorter) periods cannot be regarded as rest periods. It may be pointed out that this proposal falls far short of the current draft presented in the Council, where this sentence has already been deleted without being replaced by an alternative.

AK proposal: delete amendment; present new amendment analogous to amendment 95 without the first sentence

The reasons for individual important **amendments**, would have a **positive impact on employees**, are as follows:

38: All vehicles, which are not exempt from the scope of the Regulation, have to be fitted with a “smart tachograph” by 2020. Since the introduction of digital recording equipment in 2006, the AK has been requesting a firm date from which all already registered vehicles have to be fitted with such a device. The AK therefore welcomes that a date has been provided for fitting the equipment. (However: the term “smart tachograph” should be included in the definitions of Article 2.)

46: The AK supports the automated recording of the start and end point of the transport as well as the retrofitting of existing recording equipment, 24 months after the new provisions for recording equipment have come into force at the latest. This provision will also help to monitor the compliance with the new cabotage regulations, which apply since 4.12.2011, as the recordings provide statistical data on cabotage and empty runs.

55, 56 and 60: as already mentioned above (in amendment 54), the AK welcomes that technical adjustments of the recording equipment shall enable communication with authorities whilst the vehicle is in motion. In order to guarantee careful handling of such data when transmitted, the AK welcomes these provisions concerning the restriction of data transmission, the deletion of data if no offence has taken place as well as the exact conditions under which data may be transmitted.

57: The AK considers it appropriate that the transport undertaking, which is using the vehicle, is responsible for informing drivers about any remote communication.

92: The AK expressly welcomes the clarification concerning the obligation of undertakings in respect of instructing their employees with regard to using the recording equipment.

111: The AK also welcomes the setting up of a website and an EU-wide telephone hotline, which can be used free of charge and anonymously by each driver or any other participant concerned to notify any infringements against the provisions.