

EXPLANATORY MEMORANDUM ON A UK/EU WITHDRAWAL AGREEMENT OR TRADE AND COOPERATION AGREEMENT GOVERNANCE DOCUMENT

COM(2023) 522 final

Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Specialised Committee on Road Transport established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, on the adaptation of technical specifications of the smart tachograph 2

ANNEX to the proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Specialised Committee on Road Transport established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, on the adaptation of technical specifications of the smart tachograph 2

Submitted by the UK Department for Transport, 05/10/2023

SUBJECT MATTER

1. Regulation (EU) 165/2014 as it has effect in the UK ("EUR 2014/165", the 'tachograph rules'), specifies the rules relating to the construction, installation, use, testing and control of tachographs used in road transport. Tachographs are devices used to record a drivers' compliance with Regulation (EC) 561/2006¹ as it has effect in the UK ("EUR 2006/561", the 'drivers' hours rules') and to therefore enable the effective enforcement of the rules.
2. The drivers' hours rules specify the maximum driving times and minimum break and rest periods, for drivers of most large vehicles (i.e. goods vehicles weighing over 3.5 tonnes and passenger vehicles with 10 or more seats) who are engaged in the carriage of goods or passengers by road.
3. The drivers' hours rules and tachograph rules form part of domestic law by virtue of the European Union (Withdrawal) Act 2018 ("EU(WA)")². The drivers' hours rules and tachograph rules protect road safety by limiting the time drivers spend at the wheel and thus help reduce fatigue-related accidents, ensure fair competition in the industry, and improve the working conditions of drivers.
4. Tachograph equipment is periodically updated across Europe to enable it to be more effective and secure against fraud. Regulation (EU) 165/2014³ as it had effect in the EU at the time introduced the second-generation digital tachograph, called a smart tachograph, which includes a connection to the global navigation satellite system ("GNSS") facility.

¹ <https://www.legislation.gov.uk/eur/2006/561/contents>

² <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0165-20200820>

5. Annex IC of Commission Implementing Regulation (EU) 2016/799⁴ introduced the standards for the smart tachograph 1 (adopted in June 2019 across the EU – including UK).

6. Commission Implementing Regulation (EU) 2021/1228⁵ (standards for smart tachograph 2) and Commission Implementing Regulation (EU) 2023/980⁶ (standard for ‘transitional’ smart tachograph 2) amended Annex IC of Commission Implementing Regulation (EU) 2016/799 further to introduce the standard for the smart tachograph 2 and to allow for a transitional smart tachograph 2. Although the UK had left the EU when these were made, under the terms of the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part entered into on 30 December 2020 (“TCA”)⁷, the UK committed to the same rollout timing of the smart tachograph 2 as the EU in relation to TCA journeys, which is on or after 21 August 2023 for vehicles registered for the first time on or after that date.

7. This was implemented in UK legislation by S.I. 2022/1260⁸, which amended EUR 2014/165 to add a definition of smart tachograph 2 by reference to the standard for the smart tachograph 2 in Commission Implementing Regulation (EU) 2021/1228, and by S.I. 2023/739⁹, which amended EUR 2014/165 further to amend the definition to allow for the ‘transitional’ smart tachograph 2.

8. As required by the TCA, the standards for the smart tachograph 2 are to be adapted by an adaptation decision of the Specialised Committee on Road Transport (the “Specialised Committee”) (set up under the TCA to deal with specialised and technical changes that would not be appropriate to be dealt with via a formal renegotiation of the TCA) to be appropriate for application to the UK. Although a draft of the Specialised Committee’s decision on the adaptations to the standards for the smart tachograph 2, as set out in Commission Implementing Regulation (EU) 2016/799 (as amended), has been informally agreed with the European Commission, the European Commission confirmed that the EU would not be able to formally adopt and bring it into force before the implementation date for S.I. 2023/799 of 21 August 2023. Therefore, the schedule to S.I. 2023/739 replicates the effect of the draft adaptation decision by way of equivalent modifications.

9. Document COM(23)522 is formally requesting the adoption by the European Council of the draft Specialised Committee adaptation decision, which is due to be discussed and agreed at the next meeting of the Specialised Committee, envisaged to take place on or about 21 November 2023.

SCRUTINY HISTORY

10. There is no previous scrutiny history of the adaptation of these standards by the committees.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0799&qid=1685636908492>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1228&qid=1685637071312>

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R0980&qid=1685637142755>

⁷ CP 426: <https://www.gov.uk/government/publications/ukeu-and-eaec-trade-and-cooperation-agreement-ts-no82021> A copy of this document can be inspected (on reasonable notice) free of charge by contacting the Treaty Enquiries Service: +44 (0)20 7008 1109.

⁸ <https://www.legislation.gov.uk/ukSI/2022/1260/contents/made>

⁹ <https://www.legislation.gov.uk/ukSI/2023/739/contents/made>

11. The committees have previously scrutinised a proposed decision of the Specialised Committee, in relation to the use of the Internal Market Information System ('IMI').¹⁰

12. S.I. 2023/739 was subject to the normal legislative scrutiny procedures applicable to that particular type of statutory instrument in the UK. Further, a large number of the provisions in the Specialised Committee adaptation decision mirror those in Annex 31-B-4-3 to the TCA, which made adaptations to Regulation (EU) 2016/799 regarding the standards for a smart tachograph 1.

MINISTERIAL RESPONSIBILITY

13. The Secretary of State for Transport has lead responsibility.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

14. Drivers' hours and tachograph policy are reserved matters in Great Britain, but Scottish Government Ministers and Ministers of the Welsh Government nevertheless have an interest. In Northern Ireland matters arising from these proposals are the responsibility of the devolved institutions. Devolved Administrations were consulted informally as part of the Parliamentary process of making S.I. 2023/739 which included a replica of the draft adaptation decision by way of equivalent modifications in the schedule. Devolved administrations were happy with the approach taken and had no comments or suggested changes.

15. The Department engaged directly with Northern Ireland, where tachograph regulations are a devolved matter. As there was no Northern Ireland Assembly or Ministers in place at the time, approval was sought from the Permanent Secretary at the Department for Infrastructure for Westminster to legislate on their behalf to ensure Northern Ireland legislation is amended in line with Great Britain's legislation. Approval was confirmed on 12 June 2023.

16. A draft of this Explanatory Memorandum was shared with Devolved Administration officials for information.

LEGAL AND PROCEDURAL ISSUES

17. EU document COM(23)522 addresses the commitment in the TCA to implement the smart tachograph 2 into newly registered in-scope vehicles that will be used for journeys between the UK and EU from 21 August 2023.

Legal Base:

18. EU document COM(23)522 addresses an obligation under the TCA that the standards for the smart tachograph 2, as set out in Annex IC to Commission Implementing Regulation (EU) 2016/799 (as amended), should be adapted by Decision of the Specialised Committee, pursuant to subparagraph (h) of Article 2(2) of Section 4 of Part B of Annex 31 to the TCA, fourth indent.

¹⁰https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122215/EM_11661_22_EU_Postings_Declarations_EM_and_Consultation_Response_PublicationsignedPDF.pdf

19. Article 218(9) of the Treaty on the Functioning of the European Union (“TFEU”) provides for Council decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

20. The decision, which the Specialised Committee is required to adopt, constitutes an act having legal effects. The envisaged act does not supplement or amend the institutional framework of the TCA. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

21. The effect of the decision was adopted in the UK via the schedule to S.I. 2023/739, based on the draft Specialised Committee adaptation decision agreed with the European Commission.

Voting Procedure:

22. Qualified Majority Voting.

Timetable for adoption and implementation:

23. If agreed in Council the draft Specialised Committee adaptation decision is due to be adopted by a decision of the Specialised Committee at a meeting envisaged on or about 23 November 2023 and would come into force on 21 February 2024.

POLICY AND LEGAL IMPLICATIONS

24. There are no policy or legal implications as UK legislation has already been modified. The draft adaptation decision was agreed in principle with the European Commission before S.I. 2023/739¹¹ was made on 5 July 2023 and laid in Parliament on 6 July 2023.

CONSULTATION

25. The Department has not conducted a formal consultation on the implementation of the smart tachograph 2 (and transitional smart tachograph 2). However, the Department has liaised with external stakeholders (the main trade association/trade unions and devolved administrations) on the commitments in the TCA and how the Department would be implementing this in the UK.

FINANCIAL IMPLICATIONS

26. There will be no financial implications to this draft adaption being officially adopted by a decision of the Specialised Committee.

MINISTERIAL NAME AND SIGNATURE

¹¹ <https://www.legislation.gov.uk/uksi/2023/739/contents/made>

Richard Holden MP
Parliamentary Under Secretary of State
Department for Transport

A handwritten signature in blue ink, consisting of a large, stylized 'R' followed by a cursive 'H', and a long, sweeping horizontal line extending to the right.

