

Minutes: Specialised Committee on Road Transport

23. November 2023, 14.30 CET, 13.30 BST (Brussels and online, EU host)

1. Opening statements

The EU Co-Chair welcomed participants to the meeting. The Parties welcomed the generally smooth operation of the road transport titles of the TCA.

2. Adoption of the Agenda

The agenda was formally adopted.

3. Update on legislation since the 2022 Specialised Committee and a forward look to the legislative programme for the next year.

The EU referred under this point to the three pieces of legislation proposed during the last year, a revision of the Weights & Dimensions Directive (Directive 96/53/EC), a revision of the driving and rest time rules for drivers engaged in occasional bus and coach services (Regulation 561/2006), and a more technical, minor revision of the Eurovignette Directive (Directive 1999/62/EC). All three pieces of legislation are now following the EU ordinary legislative procedure.

This year the Commission also adopted Implementing Regulation (EU) 2023/980, to provide transitional measures for the smart tachograph 2, following some delays in a new Galileo service to be used by this version of the tachograph (see also under point 5).

The EU also reported about the adoption of Implementing Regulation (EU) 2023/2381 to update the European Register of Road Undertakings (ERRU), following revisions of Regulation (EC) 1071/2009 in 2020. This implementing act allows for the creation of new functionalities in ERRU, the possibility to exchange additional data on undertakings, and the roadside access to certain of these new functionalities. In this respect, the EU recalled that, under Articles 13 and 14 of Section 1 of Part A of Annex 31 to the TCA, the Specialised Committee is empowered to establish the data contained in the national registers of road transport undertakings and the conditions of access to this data, as well as establish detailed rules on the modalities of the exchange of information relating to concerns about whether an undertaking meets the conditions governing admission to the occupation of road haulage operator in or the other Party, as well as relating to convictions and penalties for any serious infringements in this context. The connection of the UK to ERRU could be considered as a way to implement these provisions of the TCA. The EU co-chair expects continuing discussions on this topic over the next months with the UK, also in order to see whether a decision of the Specialised Committee will be necessary on this issue next year.

The UK reported on the three regulatory changes implemented in the UK since last November to implement developments included in the EU/UK Trade and Co-operation Agreement (TCA): Firstly, on 24 December 2022 “The Drivers’ Hours, Tachographs, International Road Haulage and Licensing of Operators (Amendment) Regulations 2022 (S.I. 2022/1260) came into force. The purpose of the regulations was to implement some of the international road transport provisions in the TCA. The regulations restricted some access rights for EU operators to reflect the market access provided under the TCA. Secondly, on 21 August 2023, “The Drivers’ Hours and Tachographs (Amendment) Regulations 2023 (S.I. 2023/739) came into force across the UK. The purpose of the regulations was to permit a ‘transitional’ smart tachograph 2 to be installed into in-scope vehicles instead of the ‘full’ smart tachograph 2 (from the implementation date of 21 August 2023). Thirdly, on 1st October 2023, “The Goods Vehicles (Licensing of Operators) (Exemptions and Modifications) (Amendment)

Regulations 2023” (S.I. 2023/805) came into force across Great Britain. The main purpose of this instrument was to allow posting requirements contained in the TCA to be enforced properly in Great Britain in relation to cabotage in the UK undertaken by EU operators.

In addition, the Road Vehicles (Authorised Weight) (Amendment) Regulations 2023 came into force on 6th July 2023. This instrument made provision to permit increases of the maximum authorised weights for certain alternatively fuelled vehicles and certain zero emission vehicles, and to align domestic regulations in respect of the extra weight allowances for international journeys with the TCA. The UK co-chair also explained the Retained EU Law (Revocation and Reform) Act 2023, which was put on the UK statute book at the end of June 2023, and its consequences for road transport. The UK’s forward plan for the reform of Retained EU Law (REUL) also includes the consideration of changes to retained Regulation 561/2006 in relation to driving within the UK. In relation to the UK transposition of Directive 2003/59 concerning Driver Certificates of Professional Competence (“DCPCs”), the UK Government published proposals for consultation in March 2023. The envisaged way forward, having considered the consultation, will be published soon.

Likewise, the UK is considering the future development of the 12-day rule for certain road passenger transports. The UK co-chair noted that there may be scope for the future development of that position in the context of TCA transports, including because the issue is also under consideration in the EU.

The UK is also considering the development of national derogations to its retained regulation 561/2006, including in relation to 3.5 to 4.25 tonne zero emission goods vehicles. This would in turn affect the extent of the application of the UK transposition of Directive 2002/15 about road transport working time. The potential extension of the 28-day driver tachograph record period to 56 days at the end of 2024 will also be reviewed regarding its application for national UK transports.

The replacement of retained regulation 1073/2009 and some other items of REUL related to road passenger transport is envisaged in conjunction with the implementation of the Regular and Special Regular Protocol to the Interbus Agreement. The UK stands ready to accede and ratify the Protocol when it comes into force, and subject to UK parliamentary procedures. The UK awaits developments in the other Contracting Parties to the Interbus Agreement and welcomes the upcoming planned Interbus Joint Committee meeting.

The UK also pointed to further possible UK legislative developments in areas outside the scope of Annex 31 of the TCA, but which are relevant to commercial road transport. Regulations have been put in place to allow for the continued operation in Great Britain of goods vehicle combinations up to a maximum length of 18.55m including longer semi-trailers. The Department for Transport has announced the development of regulations to allow for the future driving of zero emission vehicles between 3.5t and 4.25t using a category B licence. The responses to a call for evidence related to C1 and D1 driving licence entitlements have been published. There has been a call for evidence and consultation about possible periodic vehicle testing changes, where consultation proposals are in the scope of the 2014 EU Directives which formed the roadworthiness package.

On ERRU, the UK replied to the EU’s remarks by saying that it would like the UK regulators of road transport to be aware of the record of UK road transport undertakings when they are operating in EU territory. This can allow the consideration of the repute of undertakings. It would likewise like the UK road transport enforcement agencies to be aware of the convictions related to UK road transport undertakings operating in EU territory. This is for example relevant to the development of risk assessments for operational enforcement. Likewise, they would like to pass on the information relevant to EUMS-based undertakings further to convictions and penalties incurred in the UK, so that

they can be considered for regulatory action in their home EUMS. There should also be an exchange of information on disreputable individuals including transport managers.

The UK expressed its willingness to work urgently with the technical experts associated with the ERRU interconnection, with a view to making a full reconnection during the next twelve months. The UK also anticipates the Specialised Committee to establish the detailed rules on the modalities of the exchange of information to confirm a position similar to the one in place prior to 31 December 2020. This is further to the remit of the Committee as provided for in Article 14(5) of TCA Annex 31, Part A, Section 1. The modalities should be agreed fully before or at a meeting of the committee before the end of 2024.

4. Exchange of views on the operation of the road transport titles in the EU-UK Trade and Cooperation Agreement (TCA)

The UK reported on some figures illustrating the importance of the TCA road transport titles. In 2022, about 2 million powered heavy goods vehicles left the UK along with nearly 1.2 million unaccompanied trailers. Total volumes (powered vehicles plus unaccompanied trailers) in 2022 were 94% of the annual average volumes for the 2015 to 2019 period. Unaccompanied trailers constituted about 37% of the total volumes in 2022 as opposed to 30% on average during the 2015 to 2019 period. UK HGVs undertook a total of 234 million tonne kilometres of cabotage within the EU in 2022. This is 9% below the average amount of cabotage from 2015 to 2019 (257 million tonne kilometres). These figures do not include international movements by UK operators between places in different EU countries (i.e. international cross trade traffic). In 2020, the overall level of cabotage goods moved in the UK was 1.4 billion tonne kilometres. This was about 1.0% of all heavy goods vehicle activity in the UK. Three countries accounted for 53% of that cabotage – Poland, Romania, and the Republic of Ireland. The level of EU cabotage in the UK was therefore about six times the level of UK cabotage in the EU.

The UK also mentioned the challenges which UK haulage and passenger transport operators who carry freight or have routes internationally are facing in operating their respective services in compliance with the Schengen time limits. The UK would welcome engagement on further flexibilities for hauliers and coach operators within Schengen.

The EU replied that this issue is not covered by the TCA; and it is therefore not in the scope of this Committee. The EU co-chair noted their view that the United Kingdom indicated in 2020 its clear preference for taking control of its borders and laws – including primarily as regards the rules on mobility of persons. The EU said that this plays both ways, and the EU also applies its own rules on the conditions of entry of third country nationals to the EU, including for visa-free travel for short-term visits. The EU Co-Chair noted that there are no plans to change those rules. This is consistent with Article 492 TCA which indicates that each Party provides for visa-free travel for short-term visits in respect of their nationals in accordance with their domestic law. The EU noted that British hauliers may employ EU drivers if this helps them.

The UK further reports that it is operating acquis related to drivers' hours and tachographs for road passenger transport as well as the transport of goods by road based on REUL (Regulation (EC) 561/2006 and Regulation (EU) 165/2014), thereby going further than the AETR Treaty requirements. This position is consistent with Article 8 of the Interbus Agreement, as modified by Decision No. 1/2011 of the Joint Committee established under the Interbus Agreement and will be consistent with Article 7 of the Protocol to the Interbus Agreement once the UK accedes to the Protocol. The UK legislation was consistent with the EU drivers' hours Regulation as it applied at 31st December 2020. Since then, it has developed in line with the changes in the EU Mobility Package in the ways identified in the TCA. The UK legislative position requires the use of generations of tachographs related to the

age of the relevant goods and passenger vehicles consistent with the EU Regulation which, once it has been adapted by a decision of the specialised committee, is applicable via the TCA for goods vehicles. The UK legislative position goes further than the AETR Treaty requirements. The legislation applicable in the UK includes Article 8 paragraph 6a of Regulation (EC) 561/2006, colloquially known as the 12-day rule for certain occasional international passenger services. The legislation applies in the UK to both UK and EU-based operators. In accordance with retained regulation 561/2006, where transports involve the territory of parties other than the UK and EU, the AETR Treaty rules apply. This includes transports involving the territories of Switzerland or the non-EU members of the European Economic Area (such as Norway).

The UK noted concerns in respect of cases where UK hauliers had been hindered from travelling to and from Gibraltar on journeys to and from the UK. The UK stated that, under Article 462 of the TCA, EU hauliers have rights to transit the UK, and UK hauliers have rights to transit the EU. The UK considered that action against UK hauliers at the Gibraltar border is incompatible with Article 462.

The EU replied that the treatment of UK hauliers travelling to Gibraltar is not governed by the Trade and Cooperation Agreement (TCA) which does not cover nor has any effect in Gibraltar (Article 774(3) of the TCA). The EU therefore considered that this should be discussed in the ongoing negotiations on an EU-UK agreement on Gibraltar.

5. Decision on the adoption of adaptations to the specifications for the smart tachograph 2

The two co-chairs signed the Decision No. 1/2023 of the Specialised Committee on Road Transport established under the TCA on the adaptation of technical specifications of the smart tachograph 2. The Decision has come into force the day after signature and will apply from 21st February 2024.

In the ensuing discussion, the UK reported that, in relation to international transports within the combined UK and EU territories further to the road goods and passenger TCA titles, the UK regulations require a smart tachograph 2 (including a 'transitional' version) to be used for UK and EU based vehicles newly registered from 21st August 2023. However, an implementation approach is in place until 31 December 2023, which allows for transports in-scope of the TCA for a Smart Generation 1 tachograph to be acceptable instead of a Smart Generation 2 tachograph on a vehicle newly registered from 21 August 2023 onwards. The UK understands the Commission has advised Member States not to sanction such vehicles when they are fitted with a smart tachograph 1, and that this guidance applies until 31st December 2023. The UK seeks confirmation from the EU that there will be no sanctions applied to UK vehicles when sanctions would not be applied to EU vehicles in similar circumstances in relation to the requirement to install a smart tachograph 2, and that the use of the smart tachograph 1 on goods vehicles first registered from 21st August 2023 is acceptable in practice for TCA transports until 31st December 2023. The UK also asks for continued close communication about any further developments on this issue.

The EU replied by stating that there has been no postponement of the date of introduction of smart tachograph 2 in newly registered vehicles in the European Union, which remains 21 August 2023, as required by Regulation (EU) No 165/2014. Given the current difficult market situation for smart tachograph 2, the Commission has been exchanging regularly, within the Committee on Road Transport established by Article 42 of Regulation (EU) No 165/2014, with Member States and the sector on this situation. In this sense, there has been a common understanding that the initial problems with the smart tachograph 2 supply will be gradually overcome by the end of 2023 at the latest, according to the manufacturers' and sector's data. The Committee has therefore agreed on a harmonised approach allowing Member States and their enforcement authorities to take into account

these initial circumstances of temporary nature. The Commission, together with Member States and the sector, will continue monitoring developments on this issue.

The EU also recalled that it is not for the Commission, but for EU Member States to enforce the provisions on the tachograph. So far, there have not been any indications that Member States would not treat the UK operators differently than the EU operators. However, should issues arise on this, the Commission would discuss this with EU Member States.

6. Any Other Business

a. Touring hauliers

The UK recalls that, at the previous meeting of this Specialised Committee, it raised its concerns about the issues still facing some specialist events hauliers, namely those supporting cultural tours. These challenges remain despite the UK's introduction of the Dual Registration measure – a measure open to both UK and EU specialist hauliers, who operate on a hire-and-reward basis for cultural tours across our territories.

The UK notes the EU's position. However, the UK position remains unchanged as the cultural touring industries continue to face challenges operating under existing cabotage restrictions – with the Schengen limits; and welcomes further dialogue on the potential for a cultural exemption in general, and one specifically to support both UK and EU own account operators in particular.

The EU reiterates what it said at the last meeting, which is that they have looked into the situation of specialist event hauliers and come to the conclusion that there is nothing in the TCA that can solve this issue. The EU also repeats that it is not in favour of any amendment to the TCA.

Approved by the Joint Secretariat of the Specialised Committee on Road Transport

Annex 1: Participants of the Specialised Committee on Road Transport held on 23 November 2023

EU Delegation (16)

- EU Co-Chair of the Specialised Committee on Road Transport
- European Commission officials
- Delegation of the European Union to the UK Official
- Representatives of EU Member States

UK Delegation (19)

- UK Co-Chair of the Specialised Committee on Road Transport
- UK Government officials from DfT, Foreign, Commonwealth and Development Office (FCDO) and other government agencies
- Scottish and Welsh Government Officials
- Northern Ireland Executive officials