Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (Text with EEA relevance)

REGULATION (EU) No 165/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 4 February 2014

on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Regulation (EEC) No 3821/85[(3)] lays down provisions concerning the construction, installation, use and testing of tachographs. It has been substantially amended on several occasions. In order to ensure greater clarity, its main provisions should therefore be simplified and re-structured.

(2) Experience has shown that, in order to ensure the effectiveness and efficiency of the tachograph system, certain technical elements and control procedures should be improved.

(3) Certain vehicles are subject to an exemption from the provisions of Regulation (EC) No 561/2006 of the European Parliament and of the Council[(4)]. In order to ensure coherence, it should also be possible to exempt such vehicles from the scope of this Regulation.

(4) Tachographs should be installed in vehicles to which Regulation (EC) No 561/2006 applies. Certain vehicles should be excluded from the scope of that Regulation in

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order to introduce some flexibility, namely vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying materials, equipment or machinery for the driver's use in the course of his work, and which are used only within a 100 km radius from the base of the undertaking, on condition that driving such vehicles does not constitute the driver's main activity. In order to ensure coherence between the relevant exemptions set out in Regulation (EC) No 561/2006, and to reduce the administrative burden on transport undertakings whilst respecting the objectives of that Regulation, certain maximum permissible distances set out in those exemptions should be revised.

(5) The Commission will consider extending the period of validity of the adaptor for M1 and N1 vehicles until 2015 and give further consideration to a long-term solution for M1 and N1 vehicles before 2015.

(6) The Commission should consider the inclusion of weight sensors in heavy goods vehicles and should assess the potential for weight sensors to contribute to improved compliance with road transport legislation.

(7) The use of tachographs connected to a global navigation satellite system is an appropriate and cost-efficient means of recording automatically the position of a vehicle at certain points during the daily working period in order to support control officers during controls, and should therefore be provided for.

(8) In its judgment in Case C-394/92 *Michielsen and Geybels Transport Service*[(5)], the Court of Justice provided a definition of the term 'daily working period', and the control authorities should read the provisions of this Regulation in the light of that definition. The 'daily working period' commences at the time when the driver switches on the tachograph following a weekly or daily rest period, or, if the daily rest is divided into separate periods, following a rest period of at least nine hours' duration. It ends at the beginning of a daily rest period or, if the daily rest is divided into separate periods, at the beginning of a rest period extending over a minimum of nine consecutive hours.

(9) Directive 2006/22/EC of the European Parliament and of the Council[(6)] requires Member States to carry out a minimum number of checks at the roadside. Remote communication between the tachograph and control authorities for roadside control purposes facilitates targeted roadside checks, making it possible to reduce the administrative burden created by random checks on transport undertakings, and should therefore be provided for.

(10) Intelligent transport systems (ITS) can help to meet the challenges faced by the European transport policy, such as increasing road transport volumes and congestion, and rising energy consumption. Standardised interfaces should therefore be provided in tachographs in order to ensure their interoperability with ITS applications.

(11) Priority should be given to the development of applications which help drivers to interpret the data recorded in the tachograph in order to enable them to comply with social legislation.

(12) The security of the tachograph and its system is essential to ensure that trustworthy data is produced. Manufacturers should therefore design, test and continuously review the

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tachograph throughout its life cycle in order to prevent, detect and mitigate security vulnerabilities.

(13) Field tests of a tachograph that has not yet been type-approved allow equipment to be tested in real-life situations before it is widely introduced, thereby allowing faster improvements. Field tests should therefore be permitted, on condition that participation in such tests and compliance with Regulation (EC) No 561/2006 is effectively monitored and controlled.

(14) Given the importance of maintaining the highest possible security level, security certificates should be issued by a certification body recognised by the Management Committee within the framework of the 'Mutual Recognition Agreement of Information Technology Security Evaluation Certificates' of the Senior Officials Group on Information Systems Security (SOG-IS).
In the context of international relations with third countries, the Commission should not recognise any certification body for the purposes of this Regulation unless that body provides equivalent conditions of security evaluation as envisaged by the Mutual Recognition Agreement. In this respect, the advice of the Management Committee should be relied upon.

(15) Fitters and workshops play an important role in the security of tachographs. It is therefore appropriate to lay down certain minimum requirements for their reliability and for approving and auditing them. Moreover, Member States should take appropriate measures to ensure that conflicts of interest between fitters or workshops and transport undertakings are prevented. Nothing in this Regulation prevents Member States from ensuring their approval, control and certification through the procedures laid down in Regulation (EC) No 765/2008 of the European Parliament and of the Council[(7)], provided that the minimum criteria set out in this Regulation are fulfilled.

(16) In order to ensure more effective scrutiny and control of driver cards, and to facilitate the tasks of control officers, national electronic registers should be established, and provision should be made for the interconnection of those registers.

(17) When checking the uniqueness of driver cards, Member States should use the procedures included in Commission Recommendation 2010/19/EU[(8)].

(18) Consideration should be given to the special situation in which a Member State should be able to provide a driver who does not have his normal residence in a Member State or in a country which is a contracting party to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport of 1 July 1970 ('the AETR Agreement') with a temporary, non-renewable driver card. In such cases, the Member States concerned are to fully apply the relevant provisions of this Regulation.

(19) In addition, it should be possible for a Member State to issue driver cards to drivers resident on its territory even when the Treaties do not apply to certain parts thereof. In such cases, the Member States concerned are to fully apply the relevant provisions of this Regulation.

(20) Control officers face continuous challenges as a result of changes to the tachograph and new manipulation techniques. In order to ensure more effective control, and to enhance

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the harmonisation of control approaches throughout the Union, a common methodology should be adopted for the initial and continuing training of control officers.

(21) The recording of data by the tachograph, as well as developing technologies for the recording of position data, remote communication and the interface with ITS, will entail the processing of personal data. Therefore, the relevant Union rules, in particular those laid down in Directive 95/46/EC of the European Parliament and of the Council[(9)] and Directive 2002/58/EC of the European Parliament and of the Council[(10)], apply.

(22) In order to allow for fair competition in the development of applications related to the tachograph, intellectual property rights and patents related to the transmission of data in or out of the tachograph should be available to all on a royalty-free basis.

(23) Where applicable, the data exchanged during communication with the control authorities in the Member States should comply with relevant international standards, such as the suite of standards related to Dedicated Short-Range Communication established by the European Committee for Standardisation.

(24) To ensure fair competition in the internal road transport market and to send a clear signal to drivers and transport undertakings, Member States should impose, in compliance with the categories of infringements defined in Directive 2006/22/EC, effective, proportionate, dissuasive and non-discriminatory penalties, without prejudice to the principle of subsidiarity.

(25) Member States should ensure that the selection of vehicles for inspection is carried out without discrimination on grounds of the nationality of the driver, or of the country of registration or entry into service of the commercial vehicle.

(26) In the interests of the clear, effective, proportionate and uniform implementation of social rules in road transport, Member States' authorities should apply the rules in a uniform manner.

(27) Each Member State should inform the Commission of any discoveries it makes regarding the availability of fraudulent devices or installations to manipulate the tachograph, including those offered through the internet, and the Commission should inform all other Member States of those discoveries.

(28) The Commission should continue to maintain its internet-based helpdesk, which allows drivers, transport undertakings, control authorities and approved fitters, workshops and vehicle manufacturers to submit questions and concerns related to the digital tachograph, including regarding new types of manipulations or fraud.

(29) Through the adaptations of the AETR Agreement, the use of the digital tachograph has been made mandatory as regards vehicles registered in third countries which are signatories to the AETR Agreement. As those countries are directly affected by changes to the tachograph introduced by this Regulation, they should be able to participate in a dialogue on technical matters, including regarding the system for the exchange of information on driver cards and workshop cards. A Tachograph Forum should therefore be set up.

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(30) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission relating to requirements, display and warning functions and type-approval of tachographs, as well as to detailed provisions for smart tachographs; the procedures to be followed for carrying out field tests and the forms to be used in order to monitor those field tests; the standard form for the written statement giving reasons for seal removal; the common procedures and specifications necessary for the interconnection of electronic registers; and the methodology specifying the content of the initial and continuing training of control officers. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(11)].

(31) The implementing acts adopted for the purpose of this Regulation, which will replace the provisions in Annex I B to Regulation (EEC) No 3821/85 and other implementing measures, should be adopted by 2 March 2016. However, if for some reason those implementing acts have not been adopted in time, transitional measures should safeguard the necessary continuity.

(32) Implementing acts referred to in this Regulation should not be adopted by the Commission where the committee referred to in this Regulation delivers no opinion on the draft implementing act presented by the Commission.

(33) In the context of the application of the AETR Agreement, references to Regulation (EEC) No 3821/85 should be understood as references to this Regulation. The Union will consider the appropriate steps to be taken within the United Nations Economic Commission for Europe to ensure the necessary coherence between this Regulation and the AETR Agreement.

(34) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[(12)] and delivered an opinion on 5 October 2011[(13)].

(35) Regulation (EEC) No 3821/85 should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

PRINCIPLES, SCOPE AND REQUIREMENTS

Article 1

Subject-matter and principles

[F1]1 This Regulation sets out obligations and requirements in relation to the construction, installation, use, testing and control of tachographs used in road transport, in order to verify compliance with Regulation (EC) No 561/2006, Regulations (EC) No 1071/2009[(14)], (EC) No 1072/2009[(15)], (EC) No 1073/2009[(16)] of the European Parliament and of the Council and Directive 2002/15/EC of the European Parliament and of the Council[(17)] and Council Directives 92/6/EEC[(18)] and 92/106/EEC[(19)] and, as far as posting of workers in road transport is concerned,