

COMMISSION IMPLEMENTING REGULATION (EU) 2022/695**of 2 May 2022****laying down rules for the application of Directive 2006/22/EC of the European Parliament and of the Council as regards the common formula for calculating the risk rating of transport undertakings**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities and repealing Council Directive 88/599/EEC ⁽¹⁾, and in particular Article 9(1), second subparagraph thereof,

Whereas:

- (1) Effective and cost-efficient enforcement of the Union road transport legislation is of paramount importance for improving road safety, drivers' working conditions and social protection and ensuring fair competition between road transport undertakings.
- (2) National risk rating systems introduced by Member States to better target controls at undertakings with high-risk rating are based on different national calculation methods. This hampers comparability and exchange of information on risk scores in the context of cross-border enforcement.
- (3) Article 9(1), second subparagraph of Directive 2006/22/EC requires the Commission to establish, by means of implementing acts, a common formula for calculating the risk rating of an undertaking.
- (4) In establishing this formula, the Commission should take into account all infringements susceptible to affect the risk rating of the undertakings, which includes infringements of Regulation (EC) No 561/2006 of the European Parliament and of the Council ⁽²⁾, of Regulation (EU) No 165/2014 of the European Parliament and of the Council ⁽³⁾, of national provisions transposing Directive 2002/15/EC of the European Parliament and of the Council ⁽⁴⁾, and the infringements specified in Article 6 of Regulation (EC) No 1071/2009 of the European Parliament and of the Council ⁽⁵⁾.
- (5) The common formula should take into account the number, gravity and frequency of occurrence of infringements, the results of controls where no infringement has been detected and whether a road transport undertaking has been using the smart tachograph, pursuant to Chapter II of Regulation (EU) No 165/2014, on all its vehicles.
- (6) The common formula for calculating the risk rating of an undertaking should contribute significantly to the harmonisation of enforcement practices throughout the Union, by ensuring that all drivers and transport undertakings are treated equally as regards checks and sanctions under the applicable Union rules.

⁽¹⁾ OJ L 91, 29.3.2019, p. 45.

⁽²⁾ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

⁽³⁾ 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 (OJ L 60, 28.2.2014, p. 1).

⁽⁴⁾ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

⁽⁵⁾ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

- (7) Where the measures provided for in this Regulation entail the processing of personal data, they should be carried out in accordance with Union law on the protection of personal data and privacy, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁶⁾, and, where applicable, Directive 2002/58/EC of the European Parliament and of the Council ⁽⁷⁾.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the committee established by Article 42(1) of Regulation (EU) No 165/2014,

HAS ADOPTED THIS REGULATION:

Article 1

The common formula for calculating the risk rating of a transport undertaking and the requirements for its application are laid down in the Annex.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 2 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁶⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

⁽⁷⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

ANNEX

COMMON FORMULA FOR CALCULATING THE RISK RATING OF TRANSPORT UNDERTAKINGS AND THE REQUIREMENTS FOR ITS APPLICATION

- (1) The overall risk rating of a transport undertaking shall be calculated using the following common formula:

$$R = \left(\frac{\sum_i \frac{n_{i_{MSI}} \times v_{MSI} + n_{i_{VSI}} \times v_{VSI} + n_{i_{SI}} \times v_{SI} + n_{i_{MI}} \times v_{MI}}{N_i}}{r} \right) \times g$$

Where:

R — the undertaking's overall risk rating

n — number of infringements of a given type per individual check (all types of controls).

i — individual check

v — weighted score according to type/seriousness of infringement (MI/SI/VSI/MSI)

MSI — most serious infringement

VSI — very serious infringement

SI — serious infringement

MI — minor infringement

N — number of vehicles controlled during an individual check

r — total number of checks on the undertaking

g — weighting for the use of the smart tachograph pursuant to Chapter II of Regulation (EU) No 165/2014

- (2) The following principles and elements shall be used when applying the common formula:

- (3) The period of time during which an infringement is counted in the formula shall be 2 years.

- (4) Transport operators shall be classified into the following risk bands based on their score:

— operators on which no checks were performed (grey band)

— 0-100 points: low-risk operators (green band)

— 101-200 points: medium-risk operators (amber band)

— 201 points or more: high risk operators (red band)

- (5) The weighted score of an individual check ('i') shall be calculated by applying the following weighting factors ('v') according to the type of infringement:

MI = 1

SI = 10

VSI = 30

MSI = 90

- (6) An undertakings' final risk rating shall take into account the total number of checks carried out ('r'), both at the roadside and at its premises, including those checks where no infringements were detected.

- (7) Checks where no infringements are detected shall be recorded with zero points.

- (8) The weighted score of an individual check shall take into account all the vehicles checked ('N').

- (9) The date of infringement that is taken into account in the common formula is deemed the date on which the infringement has become definitive, i.e. no longer subject to review. Infringements shall be counted only once in the formula.
 - (10) If a check at a transport undertaking's premises establishes that its whole fleet is equipped with the smart tachograph pursuant to Chapter II of Regulation (EU) No 165/2014, its final score shall be multiplied by a factor of 0,9 ('g').
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