Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

7 May 2020*

(Reference for a preliminary ruling – Road transport – Working days and rest days – Digital tachographs – Regulation (EU) No 165/2014 – Working days not recorded on a driver card and no record sheets kept – National legislation requiring the driver to present an attestation from his employer in such circumstances – Validity of the form annexed to Decision 2009/959/EU)

In Case C-96/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court, Austria), made by decision of 4 February 2019, received at the Court on 8 February 2019, in the proceedings

**VO**

v

**Bezirkshauptmannschaft Tulln**

THE COURT (Eighth Chamber),

composed of L.S. Rossi (Rapporteur), President of the Chamber, J. Malenovský and N. Wahl, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Austrian Government, by J. Schmoll and G. Hesse, acting as Agents,

– the Belgian Government, by C. Van Lul and J.-C. Halleux, acting as Agents,

– the European Commission, by G. Braun and J. Hottiaux, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: German.

gives the following

## Judgment

1 This request for a preliminary ruling relates in part to the interpretation of Article 34(3) and Article 36(2) of 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 2014 L 60, p. 1), and in part to the validity of Commission Decision 2009/959/EU of 14 December 2009 amending Decision 2007/230/EC on a form concerning social legislation relating to road transport activities (OJ 2009 L 330, p. 80).

2 The request has been made in proceedings between VO, a heavy goods vehicle driver, and the Bezirkshauptmannschaft Tulln (administrative authority of the district of Tulln, Austria), concerning a fine imposed on VO at a roadside check.

## Legal background

### *European Union law*

### *Regulation (EC) No 561/2006*

3 Article 1 of 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 2006 L 102, p. 1) provides:

‘This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This Regulation also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry.’

4 Article 4 of Regulation No 561/2006 states as follows:

‘For the purposes of this Regulation the following definitions shall apply:

…

(e) “other work” means all activities which are defined as working time in Article 3(a) of 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 2002 L 80, p. 35)] except ‘driving’, including any work for the same or another employer, within or outside of the transport sector;

…’

5 Article 6(5) of that regulation provides:

'A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of availability, as defined in Article 15(3)(c) of [Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8)], since his last daily or weekly rest period. This record shall be entered either manually on a record sheet, a printout or by use of manual input facilities on recording equipment.'

### *Regulation No 165/2014*

6 Article 2(2) of Regulation No 165/2014 provides:

'In addition to the definitions referred to in paragraph 1, for the purposes of this Regulation the following definitions shall apply:

(a) "tachograph" or "recording equipment" means the equipment intended for installation in road vehicles to display, record, print, store and output automatically or semi-automatically details of the movement, including the speed, of such vehicles, in accordance with Article 4(3), and details of certain periods of activity of their drivers;

…

(d) "tachograph card" means a smart card, intended for use with the tachograph, which allows identification by the tachograph of the role of the cardholder and allows data transfer and storage;

(e) "record sheet" means a sheet designed to accept and retain recorded data, to be placed in an analogue tachograph, and on which the marking devices of the analogue tachograph continuously inscribe the information to be recorded;

(f) "driver card" means a tachograph card, issued by the authorities of a Member State to a particular driver, which identifies the driver and allows for the storage of driver activity data;

(g) "analogue tachograph" means a tachograph using a record sheet in accordance with this Regulation;

(h) "digital tachograph" means a tachograph using a tachograph card in accordance with this Regulation;

…'

7 Article 5 of that regulation, headed 'Functions of the digital tachograph', is worded as follows:

'Digital tachographs shall ensure the following functions:

– speed and distance measurement;

– monitoring driver activities and driving status;

– monitoring the insertion and withdrawal of tachograph cards;

– recording of drivers' manual entries;

…'

8 Article 6 of the regulation, headed 'Display and warning', states as follows:

'1. Information contained in digital tachographs and tachograph cards relating to vehicle activities and to drivers and co-drivers shall be displayed in a clear, unambiguous and ergonomic way.

2. The following information shall be displayed:

…

(c) driver activity:

– if the current activity is driving, the driver's current continuous driving time and the current cumulative break time,

– if the current activity is availability/other work/rest or break, the current duration of that activity (since it was selected) and the current cumulative break time;

…'

9 Article 29(2) of the regulation provides:

'If a driver card is damaged or if it malfunctions, the driver shall return it to the competent authority of the Member State of his normal residence. Theft of the driver card shall be formally declared to the competent authorities of the State where the theft occurred.'

10 Article 34 of Regulation No 165/2014 provides:

'1. Drivers shall use the record sheets or driver cards every day on which they are driving, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised. No record sheet or driver card may be used to cover a period longer than that for which it is intended.

…

3. When, as a result of being away from the vehicle, a driver is unable to use the tachograph fitted to the vehicle, the periods of time referred to in points (ii), (iii) and (iv) of paragraph 5(b) shall:

…

(b) if the vehicle is fitted with a digital tachograph, be entered onto the driver card using the manual entry facility provided for in the tachograph.

Member States shall not impose on drivers a requirement to present forms attesting to their activities while away from the vehicle.

…

5. Drivers shall:

…

(b) operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly:
(i) under the sign : driving time,



(ii) under the sign : 'other work', which means any activity other than driving, as defined in point (a) of Article 3 of Directive 2002/15/EC, and also any work for the same or another employer within or outside of the transport sector;



(iii) under the sign : 'availability', as defined in point (b) of Article 3 of Directive 2002/15/EC,



(iv) under the sign : breaks or rest.



…'

11 Article 35(2) of Regulation No 165/2014 provides:

'Where a driver card is damaged, malfunctions, or is lost or stolen, the driver shall:

(a) at the start of his journey, print out the details of the vehicle he is driving, and enter on that printout:

…
(ii) the periods referred to in points (ii), (iii) and (iv) of Article 34(5)(b);

(b) at the end of the journey, print out the information relating to periods of time recorded by the tachograph, record any periods of other work, availability and rest taken since the printout made at the start of the journey, where not recorded by the tachograph, and mark on that document details enabling the driver to be identified (name, driver card or driving licence number), including the driver's signature.'

12 Article 36 of that regulation provides:

'…

2. Where the driver drives a vehicle fitted with a digital tachograph, he shall be able to produce, whenever an authorised control officer so requests:

(i) his driver card,

(ii) any manual records and printouts made during the current day and the previous 28 days as required under this Regulation and Regulation (EC) No 561/2006,

…

3. An authorised control officer may check compliance with Regulation (EC) No 561/2006 by analysis of the record sheets, of the displayed, printed or downloaded data which have been recorded by the tachograph or by the driver card or, failing that, of any other supporting document that justifies non-compliance with a provision, such as Articles 29(2) and 37(2) of this Regulation.'

13 Under Article 37(2) of Regulation No 165/2014:

'While the tachograph is unserviceable or malfunctioning, the driver shall mark data enabling him to be identified (name, driver card or driving licence number), including a signature, as well as the information for the various periods of time which are no longer recorded or printed out correctly by the tachograph:

(a) on the record sheet or sheets, or

(b) on a temporary sheet to be attached to the record sheet or to be kept together with the driver card.'

***Directive 2006/22/EC***

14 Article 11 of Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ 2006 L 102, p. 35), which is headed 'Best practice', provides in paragraph 3:

'An electronic and printable form shall be drawn up by the Commission in accordance with the procedure referred to in Article 12(2), to be used when a driver has been on sick leave or on annual leave, or when the driver has driven another vehicle exempted from the scope of [Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1)], during the period mentioned in the first indent of the first subparagraph of Article 15(7) of Regulation (EEC) No 3821/85.'

15 Article 13 of that directive, headed 'Implementing measures', provides:

'At the request of a Member State or on its own initiative the Commission shall, in accordance with the procedure referred to in Article 12(2), adopt implementing measures in particular with one of the following aims:

(a) to promote a common approach to the implementation of this Directive;

(b) to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of [Regulation No 561/2006] between enforcement authorities;

(c) to facilitate dialogue between the transport sector and enforcement authorities.'

***Decision 2007/230/EC***

16 Article 1 of Commission Decision 2007/230/EC of 12 April 2007 on a form concerning social legislation relating to road transport activities (OJ 2007 L 99, p. 14) provides:

'The form referred to in Article 11(3) of Directive 2006/22/EC shall be as set out in the Annex to this Decision.'

17 The attestation of activities form in the Annex to Decision 2007/230 incorporated, inter alia, three boxes, numbers 13, 14 and 15, to be ticked by the undertaking so as to indicate that the driver '13. was on sick leave', '14. was on annual leave' or '15. drove a vehicle exempted from the scope of Regulation (EC) No 561/2006 …'.

***Decision 2009/959***

18 Recitals 1, 3 and 4 of Decision 2009/959 state:

'(1) The primary source of information at the roadside checks is the recordings made in the tachograph. The lack of records should only be justified where tachograph records, including manual entries, were not possible for objective reasons. In such cases the attestation confirming such reasons should be established.

…

(3) In order to enhance the efficiency and effectiveness of the checking by Member States of compliance with the provisions of Regulation … No 561/2006 …, the [attestation] form [provided in the annex to Decision 2007/230] should be modified by the insertion of additional elements to those indicated in Article 11(3) of Directive 2006/22/EC.

(4) The form of attestation should be used only if the tachograph records, for objective technical reasons, are unable to demonstrate that the provisions of Regulation (EC) No 561/2006 have been respected.'

19 Article 1 of Decision 2009/959 provides:

'The Annex to Decision 2007/230/EC is replaced by the text in the Annex to this Decision.'

20 The attestation form provided in the annex to Decision 2009/959 retains the tick boxes which were numbered 13, 14 and 15 in the form annexed to Decision 2007/230, renumbering them boxes 14, 15 and 17 respectively, and adds three new tick boxes, for use by the undertaking, to indicate that the driver '16. was on leave or rest', '18. performed other work than driving' or '19. was available'.

### *Austrian law*

21 Paragraph 102a(4) of the Kraftfahrgesetz 1967 (Law on motor vehicles of 1967), in the version applicable to the facts of the main proceedings ('KFG 1967'), provides:

'Drivers of vehicles fitted with a digital tachograph within the meaning of Regulation [No 165/2014] must operate the tachograph in accordance with the instructions for use of the tachograph. They must ensure that the recording equipment is operational during driving times and that their driver card is used in the recording equipment. Drivers must produce to officers of the public security service or road traffic police on demand the printouts, driver card and record sheets kept on board for the current day and the previous 28 days, as provided for in Regulation [No 165/2014], if they have driven a vehicle in that period that was fitted with analogue recording equipment. The driver must be provided with confirmation thereof. If individual working days are missing from the driver card and no record sheets are kept on board for those days, confirmation by the employer for those days, which must fulfil the minimum requirements of the form drawn up by the Commission in accordance with Article 11(3) of Directive [2006/22], must be carried on board and produced during controls.'

## The main proceedings and the questions referred for a preliminary ruling

22 During a roadside check carried out in March 2018, VO, the driver of a heavy goods vehicle fitted with a digital tachograph was fined EUR 50 by the Austrian authorities pursuant to the KFG 1967, on the grounds that, as regards a number of days preceding that check, he had been unable to provide an attestation from his employer, drawn up in accordance with the form annexed to Decision 2009/959, confirming that he had not driven on those days (or in other words, that they were non-driving days). VO would have been able to use such an attestation as a substitute for the records of the relevant data which ought to have been contained in the digital tachograph fitted to the vehicle in question.

23 VO brought an action against the decision imposing the fine before the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court, Austria), which wishes to establish, first, whether non-driving days fall within the meaning of 'activities' in the second subparagraph of Article 34(3) of Regulation No 165/2014, and whether it is therefore impermissible to impose a requirement on the driver to present an attestation concerning non-driving days, such as that imposed by Paragraph 102a(4) of the KFG 1967. If so, the referring court considers that VO ought not to be fined for having infringed that provision.

24 Secondly, if non-driving days are covered by the term 'activities' within the meaning of the second subparagraph of Article 34(3) of that regulation, the referring court is in doubt as to the validity of the form annexed to Decision 2009/959. It considers that, in adding boxes 16, 18 and 19 to the form, the Commission went beyond the powers granted to it by Article 11(3) of Directive

2006/22, in that it required drivers to present a form issued by their employer attesting to their activities while they were not in their vehicle, contrary to the second subparagraph of Article 34(3) of that directive.

25 In those circumstances, the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Should [Regulation No 165/2014], in particular the second subparagraph of Article 34(3) and Article 36(2) thereof, be interpreted as precluding national rules which require drivers of vehicles fitted with a digital tachograph within the meaning of Article 2(2)(h) of [that regulation] to keep on board and produce, during controls, confirmation by the employer, which must fulfil the minimum requirements of the form drawn up by the Commission in accordance with Article 11(3) of Directive [2006/22] for individual working days which are missing from the driver card …, but for which no record sheets need be kept on board?

(2) If the answer to Question 1 is in the negative: Is the form laid down by the Commission in [Decision 2009/959] wholly or partially invalid?'

## Consideration of the questions referred

### *The first question*

26 By its first question, the referring court essentially asks whether the second subparagraph of Article 34(3) of Regulation No 165/2014 is to be interpreted as meaning that the prohibition it contains encompasses national legislation under which the driver of a vehicle fitted with a digital tachograph is required to produce, in the absence of automatic and manual tachograph records, as secondary evidence of his activities, an attestation of activities drawn up by his employer in accordance with the form annexed to Decision 2009/959.

27 With a view to answering that question it should be noted, as a preliminary point, that, in accordance inter alia with Article 1 thereof, Regulation No 561/2006 aims to harmonise the conditions of competition with regard to the road sector and to improve working conditions and road safety, those objectives meaning in particular that, in principle, road transport vehicles must be equipped with an approved tachograph enabling compliance with driving times and drivers' rest periods to be monitored (judgment of 7 February 2019, *NK*, C-231/18, EU:C:2019:103, paragraph 18 and the case-law cited).

28 To that end, Regulation No 165/2014 contains a number of provisions concerning the use of tachographs on board vehicles to which Regulation No 561/2006 applies.

29 With regard, in particular, to vehicles fitted with a digital tachograph, such as that at issue in the main proceedings, which uses a driver card, or in other words, in accordance with Article 2(2)(d) and (f) of Regulation No 165/2014, a smart card, intended for use with the tachograph, which, amongst other things, identifies the driver and allows for the storage of data relating to driver activity, Article 34(1) of that regulation requires that the driver use the driver card every day on which he is driving, starting from the moment he takes over the vehicle, and provides that the card may not be withdrawn before the end of the daily working period.

30 Nonetheless, Under point (b) of the first subparagraph of Article 34(3) of Regulation 165/2014, when, as a result of being away from the vehicle, a driver is unable to use the automatic entry facility of the digital tachograph fitted to the vehicle, periods of time other than driving time, as referred to in Article 34(5)(b)(ii), (iii) and iv), namely those corresponding to any 'other work', 'availability' and 'breaks or rest', must be entered onto the driver card using the manual entry facility provided for in the tachograph.

31 Article 36(2) of Regulation No 165/2014 stipulates that the driver of a vehicle fitted with such a tachograph must, whenever an authorised control officer so requests, be able to produce, inter alia, any manual records and printouts made during the current day and the previous 28 days, as required under that regulation and Regulation No 561/2006.

32 It follows that where, as in the main proceedings, the driver is not able to provide information requested at a roadside check, concerning a number of days preceding the check, the question arises as to what secondary evidence he can be required to produce to make up for the fact that the relevant data was not recorded on the digital tachograph fitted to his vehicle.

33 It is against that background that the referring court entertains doubts as to the scope of the prohibition, contained in the second subparagraph of Article 34(3) of Regulation No 165/2014, under which Member States are not to impose on drivers a requirement to present forms attesting to their activities while away from the vehicle. More specifically, the referring court is uncertain whether non-driving days are covered by the term 'activities' within the meaning of that provision, such that, contrary to what is provided in Paragraph 102a(4) of the KFG 1967, a driver may not be required to present an attestation drawn up by his employer in relation to such non-driving days, even if such an attestation were based on the form annexed to Decision 2009/959.

34 In that regard, it should be noted that the term 'activities' referred to in the second subparagraph of Article 34(3) of Regulation No 165/2014 is not defined in the regulation.

35 Moreover, none of the provisions of that regulation would suggest that the term 'activities' is to be interpreted restrictively, such that the periods referred to in Article 34(5)(b) of that regulation are excluded. It is apparent from Article 6(2)(c) of Regulation No 165/2014 that the 'driver activity' to be displayed, along with other information, by the tachograph, comprises either the driving time and current cumulative break time, 'if the current activity is driving', or the current duration of that activity and the current cumulative break time, 'if the current activity is availability/other work/rest or break'.

36 However, first of all, it would not be consistent with the general scheme of Regulation No 165/2014 to interpret the second subparagraph of Article 34(3) of that regulation as prohibiting national legislation under which a driver is required to produce an attestation of his activities, issued by his employer, where, as a result of the driver being away from the vehicle, there are no automatic and manual records which would normally be available from the digital tachograph fitted to that vehicle.

37 In particular, it is apparent from Article 36(3) of Regulation No 165/2014 that an authorised control officer is entitled to check compliance with Regulation No 561/2006 by analysing the displayed, printed or downloaded data which have been recorded by the tachograph or by the driver card 'or, failing that, … any other supporting document' that justifies non-compliance with a provision, such as Article 29(2) of Regulation No 165/2014, which relates to stolen, damaged or

malfunctioning driver cards, or Article 37(2) of the regulation, which concerns the matters to be noted by the driver in the event that the tachograph is unserviceable or that it malfunctions. The reference to those two provisions is clearly not intended to be exhaustive, and Article 36(3) of Regulation No 165/2014 consequently empowers the control authorities of the Member States to consider, as secondary evidence, any type of document that enables them to establish the driver's activity periods, where these are not shown by the vehicle's digital tachograph.

38 Secondly, the converse interpretation would undermine the objectives pursued, inter alia, by Regulations No 561/2006 and No 165/2014, in particular the objectives concerning road safety and the improvement of drivers' working conditions. Thus, such an interpretation would not only deprive the control authorities of the Member States of the ability to ensure compliance, in particular, with the requirements concerning drivers' driving time, break time and rest time, as laid down by Regulation No 561/2006, in a situation where it has not been possible to enter the relevant data into the digital tachograph, but could also lead, where the relevant circumstances arose, to an intentional failure to enter such data going unpunished.

39 Furthermore, the assessment made in paragraph 36 above is supported by the observations made, in the same vein, by the Belgian Government and the Commission, to the effect that the prohibition in the second subparagraph of Article 34(3) of Regulation No 165/2014 was only intended to address the practice of certain Member States which, in addition to tachograph records, systematically required drivers to present a national form as evidence of their activities; a practice that led to additional costs and administrative burdens for road transport undertakings.

40 Finally, it should be observed that the adoption of Regulation No 165/2014 did not in any way affect the content of Article 11(3) of Directive 2006/22. That provision invites the Commission to draw up an electronic and printable form, to be used when a driver has been on sick leave or on annual leave, or when the driver has driven another vehicle exempted from the scope, in particular, of Regulation No 561/2006, during the current day or the previous 28 days. As stated in recitals 3 and 4 of Decision 2009/959, that form, which is provided in the annex to the decision, is to be used where there are no tachograph records (including manual tachograph records) from which compliance with the provisions of Regulation No 561/2006 can be verified.

41 It follows from all the above considerations that the second subparagraph of Article 34(3) of Regulation No 165/2014 is to be interpreted as meaning that the prohibition it contains does not encompass national legislation under which the driver of a vehicle fitted with a digital tachograph is required to produce, as secondary evidence of his activities, in the absence of automatic and manual tachograph records, an attestation of activities drawn up by his employer in accordance with the form annexed to Decision 2009/959.

### *The second question*

42 By its second question, the referring court asks, in essence, whether, in amending, by Decision 2009/959, the form annexed to Decision 2007/230, so as to provide for situations entailing a wider range of non-driving periods than those referred to in Article 11(3) of Directive 2006/22, the Commission exceeded the powers conferred on it by that provision, such that the amended form is invalid in whole or in part.

43 First of all, it should be observed that the referring court does not express any doubt as to the validity of the form in so far as it includes boxes 14, 15 and 17, which correspond, pursuant to Article 11(3) of Directive 2006/22, to periods when the driver has been on sick leave or on annual leave, or has driven another vehicle exempted from the scope, in particular, of Regulation No 561/2006.

44 Secondly, it should be reiterated that the form annexed to Decision 2009/959 incorporates three additional items relating to periods during which the driver was on leave or resting, performing other work than driving, or available, which can be recorded, respectively, in boxes 16, 18 and 19 of the form.

45 While it is true that those items are not referred to in Article 11(3) of Directive 2006/22, it must be borne in mind that the legal basis of Decision 2009/959 does not consist of that provision alone, but of that provision together with Article 13 of that directive, which, in particular, authorises the Commission to adopt, on its own initiative, implementing measures for Directive 2006/22, with a view, amongst other things, to encouraging a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation No 561/2006 between enforcement authorities.

46 As recital 3 of Decision 2009/959 makes clear, the further matters referred to in boxes 16, 18 and 19 of the form annexed to that decision were added in order to enhance the efficiency and effectiveness of compliance checking by Member States, in accordance with Regulation No 561/2006.

47 It is apparent, in particular, from Article 6(5) of Regulation No 561/2006, that the driver must record, either automatically or manually, the daily or weekly rest period, any periods of 'availability' and the time spent on other work. The obligation to make such records extends to the situation where the driver is away from his vehicle, in accordance with the first subparagraph of Article 34(3)(b) of Regulation No 165/2014.

48 It follows that, where no such records are available, the driver may be required to provide evidence to demonstrate compliance with those regulations, by supplying the relevant information as regards one or the other of the periods referred to in paragraph 47 above, using the form annexed to Decision 2009/959, with a view to enabling the control authorities of the Member States to verify, in particular, that the objectives of improving the working conditions of drivers and protecting road safety, which are pursued by those directives, have been observed.

49 There is therefore nothing arising from the examination of the second question which might affect the validity of the Commission form annexed to Decision 2009/959.

## Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

1. **The second subparagraph of Article 34(3) of 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 is to be interpreted as meaning that the prohibition it contains does not encompass national legislation under which the driver of a vehicle fitted with a digital tachograph is required to produce, as secondary evidence of his activities, in the absence of automatic and manual tachograph records, an attestation of activities drawn up by his employer in accordance with the form annexed to Commission Decision 2009/959/EU of 14 December 2009 amending Decision 2007/230/EC on a form concerning social legislation relating to road transport activities.**

2. **There is nothing arising from the examination of the second question which might affect the validity of the Commission form annexed to Decision 2009/959.**

[Signatures]