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Table of Contents

9 ESTONIA - COUNTRY REPORT ON SANCTIONS IN THE ROAD

TRANSPORT SECTOR	12
9.1 Social rules on road transport.....	12
9.1.1 Rules on Driving Times and Rest Periods.....	12
9.1.2 Tachograph.....	19
9.2 Road package.....	22
9.2.1 Regulation (EC) No 1071/2009, Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009.....	22
9.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009.....	30
See above.....	30
9.3 Standards of vehicles and load and necessary licences.....	30
9.3.1 Directive 2008/68/EC.....	30
9.3.2 Directive 96/53/EC.....	31
9.3.3 Directive 2009/40/EC.....	33
9.3.4 Directive 2006/126/EC.....	35
9.4 Notion of criminal sanction and of administrative sanction in the Estonian legal system.....	36
9.5 Scope of application of Estonian criminal law.....	39
9.6 Summary tables.....	41
9.7 Sanctions which could be considered substantially criminal in the Estonian legal system.....	78
9.8 Effectiveness of the sanctions system.....	80

10 FINLAND - COUNTRY REPORT ON SANCTIONS IN THE ROAD

TRANSPORT SECTOR	95
10.1 Social rules on road transport.....	95
10.1.1 Rules on Driving Times and Rest Periods.....	95
10.1.2 Tachograph.....	97
10.2 Road package.....	97
10.2.1 Regulation (EC) No 1071/2009.....	97
10.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009.....	98
10.3 Standards of vehicles and load and necessary licences.....	98

10.3.1	Directive 2008/68/EC	98
10.3.2	Directive 1996/53/EC	99
10.3.3	Directive 2009/40/EC	100
10.3.4	Directive 2006/126/EC	100
10.4	Notion of criminal sanction and of administrative sanction in the Finnish legal system 101	
10.5	Scope of application of Finnish criminal law	103
10.6	Summary tables	103
10.7	Sanctions which could be considered substantially criminal in the Finnish legal system	118
10.8	Effectiveness of the sanctions system	119
11	FRANCE - COUNTRY REPORT ON SANCTIONS IN THE ROAD	
	TRANSPORT SECTOR	120
11.1	Preliminary Comments	120
11.2	Social rules on road transport	126
11.2.1	Rules on Driving Times and Rest Periods	126
11.2.2	Tachograph	137
11.3	Road package	139
11.3.1	Regulation (EC) No 1071/2009	140
11.3.2	Regulations (EC) No 1072/2009 and No 1073/2009	143
11.4	Standards of vehicles and load and necessary licences	144
11.4.1	Directive 2008/68/EC	144
11.4.2	Directive 96/53/EC	146
11.4.3	Directive 2009/40/EC	149
11.4.4	Directive 2006/126/EC	150
11.5	Notion of criminal sanction and of administrative sanction in the French legal system 152	
11.6	Scope of application of French Criminal Law	156
11.7	Summary tables	157
11.8	Sanctions which could be considered substantially criminal in the French legal system	237
11.9	Effectiveness of the sanctions system	239

12 GERMANY - COUNTRY REPORT ON SANCTIONS IN THE ROAD	
TRANSPORT SECTOR	242
12.1 Social rules on road transport	242
12.1.1 Rules on Driving Times and Rest Periods	242
12.1.2 Tachograph	245
12.2 Road package	246
12.2.1 Regulation (EC) No 1071/2009	246
12.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009....	280
12.3 Standards of vehicles and load and necessary licences	281
12.3.1 Directive 2008/68/EC	281
12.3.2 Directive 1996/53/EC	282
12.3.3 Directive 2009/40/EC	282
12.3.4 Directive 2006/126/EC	283
12.4 Notion of criminal sanction and of administrative sanction in the German legal system	283
12.5 Scope of application of German criminal and administrative law	285
12.6 Summary tables	286
12.7 Sanctions which could be considered substantially criminal in the German legal system	339
12.8 Effectiveness of the sanctions system	340
13 GREECE - COUNTRY REPORT ON SANCTIONS IN THE FIELD OF	
COMMERCIAL ROAD TRANSPORT	343
13.1 Social rules on road transport	343
13.1.1 Regulation (EC) No 561/2006	343
13.1.2 Tachograph	348
13.2 Road Package	349
13.2.1 Regulation (EC) No 1071/2009	349
13.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009....	350
13.3 Standards of vehicles and load and necessary licences	352
13.3.1 Directive 2008/68/EC	352
13.3.2 Directive 96/53/EC	354
13.3.3 Directive 2009/40/EC	355

13.3.4	Directive 2006/126/EC.....	355
13.4	Notion of criminal sanction and of administrative sanction in the Greek legal system	356
13.5	Scope of application of Greek criminal law	357
13.6	Summary Tables	359
13.7	Sanctions which could be considered substantially criminal in the Greek legal system	429
13.8	Effectiveness of the sanctions system	431
14	HUNGARY - COUNTRY REPORT ON SANCTIONS IN THE ROAD	
	TRANSPORT SECTOR.....	433
14.1	Social rules on road transport.....	433
14.1.1	Rules on Driving Times and Rest Periods.....	433
14.1.2	Tachograph	437
14.2	Road package.....	441
14.2.1	Regulation (EC) No 1071/2009.....	442
14.2.2	Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009....	445
14.3	Standards of vehicles and load and necessary licenses	445
14.3.1	Directive 2008/68/EC	445
14.3.2	Directive 1996/53/EC.....	450
14.3.3	Directive 2009/40/EC	453
14.3.4	Directive 2006/126/EC.....	455
14.4	Notion of criminal sanction and of administrative sanction in the Hungarian legal system	456
14.5	Scope of application of Hungarian criminal law	459
14.6	Summary tables	460
14.7	Sanctions which could be considered substantially criminal in the Hungarian legal system	524
14.8	Effectiveness of the sanctions system	525
15	IRELAND - COUNTRY REPORT ON SANCTIONS IN THE ROAD	
	TRANSPORT SECTOR.....	530
15.1	Social rules on road transport.....	530
15.1.1	Rules on Driving Times and Rest Periods.....	530

15.1.2	Tachograph.....	535
15.2	Road package.....	538
15.2.1	Regulation (EC) No 1071/2009.....	538
15.2.2	Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009....	539
15.3	Standards of vehicles and load and necessary licences	541
15.3.1	Directive 2008/68/EC.....	541
15.3.2	Directive 96/53/EC.....	543
15.3.3	Directive 2009/40/EC.....	545
15.3.4	Directive 2006/126/EC.....	548
15.4	Notion of criminal sanction and of administrative sanction in the Irish legal system	550
15.5	Scope of application of Irish criminal law.....	552
15.6	Summary tables	555
15.7	Sanctions which could be considered substantially criminal in the Irish legal system	582
15.8	Effectiveness of the sanctions system	583
16	ITALY - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR	596
16.1	Social rules on road transport.....	596
16.1.1	Rules on Driving Times and Rest Periods.....	596
16.1.2	Tachograph.....	603
16.2	Road package.....	607
16.2.1	Regulation (EC) No 1071/2009.....	607
16.2.2	Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009....	610
16.3	Standards of vehicles and load and necessary licences	612
16.3.1	Directive 2008/68/EC.....	612
16.3.2	Directive 1996/53/EC.....	614
16.3.3	Directive 2009/40/EC.....	617
16.3.4	Directive 2006/126/EC.....	618
16.4	Notion of criminal sanction and of administrative sanction in the Italian legal system	619
16.5	Scope of application of Italian criminal law.....	623

16.6	Summary table.....	625
16.7	Sanctions which could be considered substantially criminal in the Italian legal system	681
16.8	Effectiveness of the sanctions system	689

9 ESTONIA - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR

9.1 *Social rules on road transport*

9.1.1 Rules on Driving Times and Rest Periods

9.1.1.1 Regulation (EC) No 561/2006

The Regulation (EC) No 561/2006 has been implemented by the Traffic Act¹ (*Liiklusseadus*, hereinafter “Traffic Act”). The sanction system related to the infringements of rules on driving times, breaks and rest periods envisaged in the Regulation (EC) No 561/2006 is envisaged in sections 130, 139 and 244-255 of the Traffic Act.

As to the subject to whom the penalties are applicable, the Traffic Act specifies that the sanctions apply in addition to the driver, in some instances also to the owners, operators or the possessors of the vehicle.

- Administrative sanctions – section 139 of the Traffic Act specifies that the supervision over compliance with the requirements for working, driving and resting times of drivers of power-driven vehicles specified in section 130 of this Act shall be performed by (i) the labour inspector at the premises of an undertaking and (ii) on the road by police officers, special constables or other persons authorised by legal acts. Follow-up inspection of a violation of the requirements for working, driving and resting times of drivers of power-driven vehicles ascertained on the road may be performed at the location of the undertaking using the power-driven vehicle. The labour inspector has the right to make a precept in case of a violation of the requirements for working, driving and resting times of drivers of power-driven vehicles. Upon failure to comply in due

¹ Traffic Act. *Liiklusseadus*: Adopted by the Estonian Parliament on 17 June 2010 (RT I 2010, 44, 261 ... RT I, 02.03.2012, 5).

time with a precept, a penalty payment may be imposed by the labour inspector pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act. The upper limit for a penalty payment specified for failure to comply with a precept is 640 Euros for a natural person and 3,200 Euros for a legal person.

- Sanctions in misdemeanour proceedings are envisioned in sections 244-255 of the Traffic Act and will be analysed in more detail in the paragraphs below.

Driving times

(i) Sections 245-247 of the Traffic Act

Under section 245 of the Traffic Act, the use of a longer weekly driving time than established for drivers of power-driven vehicles is punishable by a fine of up to 400 Euros.

Section 246 of the Traffic Act establishes differentiated sanctions for violation of the daily driving time requirements established for drivers of power-driven vehicles. Under subsection 246, (1) the use of up to two hours longer daily driving time than established for drivers of power-driven vehicles is punishable by a fine of up to 400 Euros. Under subsection 246, (2) the use of over two hours longer daily driving time than established for drivers of power-driven vehicles is punishable by a fine of up to 800 Euros.

Under section 247 of the Traffic Act, the use of a longer driving time than established for two consecutive weeks for drivers of power-driven vehicles is punishable by a fine of up to 400 Euros.

Breaks

(ii) Section 248 of the Traffic Act

Under subsection 248 (1) of the Traffic Act, failure to use the established break time after 4.5 hours of driving time by drivers of power-driven vehicles is punishable by a fine of up to 400 Euros.

Under subsection 248 (2) of the Traffic Act, the use of a shorter break than the established break time after 4.5 hours of driving time by drivers of power-driven vehicles is punishable by a fine of up to 400 Euros.

Rest periods

(iii) Articles 249-250 of the Traffic Act

Section 249 of the Traffic Act establishes differentiated sanctions for violation of the daily resting time requirements established for drivers of power-driven vehicles. Under subsection 249, (1) the use of up to two hours shorter daily resting time than established for drivers of power-driven vehicles is punishable by a fine of up to 400 Euros. Under subsection 249, (2) the use of over two hours shorter daily resting time than established for drivers of power-driven vehicles is punishable by a fine of up to 800 Euros.

Under section 250 of the Traffic Act, the use of a shorter weekly rest time than established for drivers of power-driven vehicles is punishable by a fine of up to 400 Euros.

Recidivism

Under Regulation No. 151, adopted by the Government of Estonia on 21 October 2010 establishing the requirements for organisation of supervision over compliance with the requirements for working, driving and resting times of drivers of power-driven vehicles, repetitive punishments for violations under Traffic Act subsection 246 (2) and subsection 249 (2) entitle competent authorities to verify whether the persons named in Article 10 (4) of Regulation 561/2006 follow the requirements for working, driving and resting times of drivers of power-driven vehicles and whether the agreements enter into enable to follow the requirements for working, driving and resting times of drivers of power-driven vehicles.

Under clause 91 (2) 8) of the Traffic Act, a driver shall be removed from driving a vehicle if the driver of a power-driven vehicle with a tachograph has not complied with the rest requirements specified in section 130 of the Traffic Act. The removal from driving a vehicle is a decision taken by traffic supervision officials which involves prohibition of driving until such time that the grounds for prohibition cease to exist.

Under clause 106 (1) 5) of the Traffic Act, if a person has been repeatedly punished in misdemeanour proceedings based on violations of the Traffic Act, the person will then not be able to apply for a driver's licence until such punishments have expired (punishments in misdemeanour procedure expire in 1 year from entry into force of the decision under which a sanction has been imposed). For the purposes of clarity, this legal basis does not entitle to revoke the existing driving permit in case of repeated infringements.

Transport undertaking's liability

(i) Section 244 of the Traffic Act

Section 244 of the Traffic Act establishes sanctions for violation of requirements for working and resting times of drivers of motor vehicles or trams by owner, possessor or person responsible for operation of motor vehicle or tram. Under subsection 244 (1) of the Traffic Act, a violation by the owner or possessor of a power-driven vehicle or tram or by a person responsible for the operation of a power-driven vehicle or tram of the requirements for working and resting time established for drivers of power-driven vehicles or trams is punishable by a fine of up to 800 Euros. Under subsection 244 (2) of the Traffic Act, if the same is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Foreign drivers

Under subsection 1 (3) of the Traffic Act, the provisions of the Traffic Act extend to foreign road users and vehicles registered abroad which are in the territory of Estonia unless an international agreement prescribes otherwise.

The sanctions foreseen by the Estonian Traffic Act are only applicable to offences committed in the territory of Estonia. According to the Penal Code, the penal law of Estonia (including misdemeanours) applies to acts committed within the territory of Estonia.

There are provisions in place that allow recognising and enforcing of punishments in Estonia for infringements that have been committed abroad and where such punishments have been imposed by a foreign authority.

Unlike infringements that are qualified as most serious infringements described in Annex IV of Regulation No. 1071/2009, there is no possibility to consider when evaluating the good repute the infringements under 561/2006 that were committed outside the territory of Estonia.

9.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)

Directive 2006/22/EC has been transposed by the following legal acts:

- The Traffic Act;
- The Regulation No. 151, adopted by the Government of Estonia on 21 October 2010, establishing the requirements for organisation of supervision over compliance with the requirements for working, driving and rest time of drivers of power-driven vehicles² (hereinafter, “Government Regulation No. 151/2010”).

Annex II of the Government Regulation No. 151/2010, complying with article 9, paragraph 3, of Directive 2006/22/EC, contains some guidelines on the most common kinds of infringements to Regulation 561/2006 and the related seriousness. It replicates the content of Annex III of the Directive without having any legal effect on the way infringements are sanctioned in misdemeanour

² Requirements for organisation of supervision over compliance with the requirements for working, driving and rest time of drivers of power-driven vehicles. *Mootorsõidukijuhi töö-, sõidu- ja puhkeaja järelevalve korralduslikud nõuded*. Regulation no 151 of the Government of Estonia, adopted on 21 October 2010 (RT I, 25.10.2010, 3)

proceedings. They may theoretically have an effect and be taken into consideration in case of imposing administrative sanctions (issuing of precepts). Under subsection 6 (1) of the Government Regulation No. 151/2010, the results of any supervisory proceedings will be taken into account when planning future supervisory activities. Under subsection 6 (3) of the Government Regulation No. 151/2010, the infringements and related levels of seriousness as defined in Annex II Government Regulation No. 151/2010 must be taken into consideration when conducting the assessment of infringements. Basically, the more serious the infringement, the more often the undertaking can expect to be audited by supervisory authorities.

9.1.1.3 Directive 2002/15/EC

The Directive 2002/15/EC has been implemented by the Traffic Act.

Under subsections 130 (5)-(8) of the Traffic Act, the driver's average weekly working time, including overtime, may not exceed 48 hours. Weekly working time may be extended to 60 hours, if the average working time of four consecutive months does not exceed 48 hours per week. In case of extending the weekly working time to 60 hours, the four month calculation period may be replaced by a six month average working time calculation period, if the following requirements have been fulfilled:

- such six month average working time calculation period has been specified in the collective agreement;
- the work performed is expected to be of temporary or periodic nature and follow a recurrent pattern over the years;
- the technological and organisational characteristics of the work process shall be known and understandable to the participants prior to the commencement of the six month average working time calculation period.

If the driver works during the hours from 00.00 to 06.00, the daily working time shall not exceed ten hours for every 24-hour period of time.

Under subsection 130 (10) of the Traffic Act during working time, the driver shall not work for more than six consecutive hours without a break. If the total working

time is from six to nine hours, it shall be suspended for a minimum break of 30 minutes, and if total working time is over nine hours, for a minimum break of 45 minutes.

Section 244 of the Traffic Act establishes sanctions for violation of the requirements for working and resting times of drivers of motor vehicles or trams by owner, possessor or person responsible for operation of motor vehicle or tram.

Under subsection 244 (1) of the Traffic Act, a violation by the owner or possessor of a power-driven vehicle or tram or by a person responsible for the operation of a power-driven vehicle or tram of the requirements for working and resting times established for drivers of power-driven vehicles or trams is punishable by a fine of up to 800 Euros. Under subsection 244 (2) of the Traffic Act, if the same is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Under subsection 251 (1) of the Traffic Act in regular carriage of passengers where the length of the line is less than 50 kilometres, failure by a driver of a power-driven vehicle to present an established work schedule to an official performing traffic supervision is punishable by a fine of up to 400 Euros.

Under subsection 251 (2) of the Traffic Act in regular carriage of passengers where the length of the line is less than 50 kilometres, failure by a driver of a power-driven vehicle to observe an established work schedule is punishable by a fine of up to 400 Euros.

Under subsection 252 (1) of the Traffic Act in regular carriage of passengers where the length of the line is less than 50 kilometres, failure by the possessor of the vehicle to present to the driver a required work schedule or preparation for a driver a work schedule that violates working and resting times requirements is punishable by a fine of up to 400 Euros. Under subsection 252 (2) if the same is committed by a legal person, a fine of up to 3,200 Euros may be imposed.

Under section 253 of the Traffic Act, the use of a longer weekly working time than established for drivers of power-driven vehicles is punishable by a fine of up to 400 Euros.

Under subsection 255 (1) of the Traffic Act, the issuing of an illegal work order to a driver of a power-driven vehicle that induces to violate working and resting times requirements established by legislation, is punishable by a fine of up to 800 Euros. Under subsection 255 (2), if the same is committed by a legal person, a fine of up to 3,200 Euros may be imposed.

Sanctions analysed under 9.1.1.1 above regarding resting times and breaks are also applicable for the breaches of the provisions of Directive 2002/15/EC as transposed to the Traffic Act.

9.1.2 Tachograph

9.1.2.1 Regulation (EEC) No 3821/85

Sanctions for infringements against Regulation (EEC) No 3821/85 are contained in sections 210, 211-217 and 243 of the Traffic Act. Pursuant to subsection 131 (1) of the Traffic Act, the calculation of the driving and resting times of the drivers of power-driven vehicles takes place according to the recording sheets of the mechanical tachograph pursuant to Annex I of Council Regulation (EEC) No 3821/85 on recording equipment in road transport or the information saved in the memory of tachograph with digital data recording (hereinafter “digital tachograph”) pursuant to Annex IB.

(i) Sections 211-217 and 243 of the Traffic Act

1. Tachograph

Under section 211 of the Traffic Act driving a power-driven vehicle which lacks the required tachograph or the tachograph of which is not in working order or not sealed in a manner conforming to the requirements is punishable by a fine of up to 400 Euros.

Under section 212 of the Traffic Act, failure to enter the working time of other works manually on the recording sheets or printouts or manually on the

digital tachograph by the driver of power-driven vehicle is punishable by a fine of up to 400 Euros.

Under section 214 of the Traffic Act, the failure to use a tachograph installed on a power-driven vehicle in the prescribed cases or deliberately damaging a tachograph or a seal affixed thereto is punishable by a fine of up to 400 Euros.

Under section 215 of the Traffic Act, driving a power-driven vehicle supplied with equipment enabling to interfere with the operation of tachograph is punishable by a fine of up to 1,200 Euros. The interfering equipment will be confiscated by the court or the Police and Border Guard Board.

Section 216 of the Traffic Act establishes sanctions for installation of equipment enabling to interfere with the operation of tachograph or not removing thereof. Under subsection 216 (1), installation of equipment enabling to interfere with the operation of tachograph or not removing the equipment upon the examination of a tachograph in workshop is punishable by a fine of up to 1,200 Euros. Under subsection 216 (2), if the same is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Section 217 of the Traffic Act establishes sanctions for violation of the requirements for the use of a recording sheet of the manual or digital tachograph or driver card. Under subsection 217 (1), violation of the requirements established for the use of recording sheets of the manual or digital tachograph installed on the power-driven vehicle or for the use of a driver card or the possibility of reading thereof is punishable by a fine of up to 400 Euros. Under subsection 217 (2), if the same is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Under subsection 243 (1) of the Traffic Act, the untimely copying of the data of digital tachograph or driver card is punishable by a fine of up to 400 Euros.

Under subsection 243 (2) of the Traffic Act, the intentional damaging of the data of digital tachograph or driver card is punishable by a fine of up to 800 Euros.

2. Speed control equipment

Under section 210 of the Traffic Act, driving a power-driven vehicle without a mandatory speed limitation device, with an inoperable speed limitation device or using a device which may impede the operation of the speed limitation device is punishable by a fine of up to 800 Euros.

3. Liability of the transport undertaking

Section 210 of the Traffic Act establishes sanctions for giving permission to drive power-driven vehicle in violation of rules of use of speed limitation device. Under subsection 210 (1), permission by the owner, the possessor or the person responsible for roadworthiness or operation to drive a power-driven vehicle without a mandatory speed limitation device, with an inoperable speed limitation device or using a device which may impede the normal operation of the speed limitation device is punishable by a fine of up to 800 Euros. Under subsection 210 (2), if the same act is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Section 213 of the Traffic Act establishes sanctions for permitting power-driven vehicle violating the requirements for the use of tachograph to be driven. Under subsection 213 (1) the grant, by an owner or possessor of a vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such vehicle, of permission for the power-driven vehicle to be driven if the vehicle lacks the required tachograph or with a tachograph not in working order or not sealed according to the requirements is punishable by a fine of up to 800 Euros. Under subsection 213 (2), if the same is committed by a legal person, a fine of up to 3,200 Euros may be imposed.

Competent Authority

The competent authority is the Police and Border Guard Board who, pursuant to subsection 263 (2) of the Traffic Act, conducts the misdemeanour proceedings of the relevant sections described above. The Labour Inspectorate is

also the body which may conduct misdemeanour proceedings concerning the misdemeanours provided for in section 243 of the Traffic Act.

Foreign drivers

Under subsection 1 (3) of the Traffic Act, the provisions of the Traffic Act extend to foreign road users and vehicles registered abroad which are in the territory of Estonia unless an international agreement prescribes otherwise.

9.2 Road package

9.2.1 Regulation (EC) No 1071/2009, Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009

The implementation of Regulations No 1071/2009, 1072/2009 and 1073/2009 have been envisaged in the following legal acts:

- Traffic Act;
- Road Transport Act³ (*Autoveoseadus*, hereinafter “Road Transport Act”);
- Public Transport Act⁴ (*Ühistranspordiseadus*, hereinafter “Public Transport Act”).

Under the Road Transport Act, an applicant for or holder of a Community authorisation is deemed to be of good repute in the sense of Regulation 1071/2009 if it has not been punished for a crime in the first degree or more than once for an intentionally committed crime in the second degree or a misdemeanour provided for in sections 120 of the Waste Act, sections 202, 204, 208, 210, 213, 216, 220,

³ Road Transport Act. *Autoveoseadus*. Adopted by the Estonian Parliament on 7 June 2000 (RT I 2000, 54, 346 ... RT I, 02.03.2012, 5)

⁴ Public Transport Act. *Ühistranspordiseadus*. Adopted by the Estonian Parliament on 26 January 2000 (RT I 2000, 10, 58... RT I, 30.12.2011, 4)

225, 244, 252, 255 or 256 of the Traffic Act, sections 153, 154, 155 and 158 of the Taxation Act, section 40 of the Roads Act, sections 73–79 of the Customs Act, section 6 of the Fiscal Marking of Liquid Fuel Act, section 300 of the Aliens Act or section 31 of the Road Transportation Act, information concerning which has not been expunged from the punishment register pursuant to section 24 of the Punishment Register Act. The corresponding information concerning the punishment received from foreign states for serious violations described in article 6 paragraph 1 clause (b) of Regulation 1071/2009 shall be taken into account in the criminal record of an applicant for or holder of a Community authorisation. The most serious infringements are punishable under the Traffic Act. The Road Transport Act and Public Transport Act foresee that committing some specific infringements will enable to deem the loss of good repute. In practice, the suspension/revocation of licences will be analysed on a case by case basis and the authorities have unofficially indicated that 5 valid serious infringements will bring along the revocation of relevant licences, although in very serious cases already one or two infringements may bring along the revocation of licences.

Under section 19 of the Road Transport Act, the competent authority may suspend or revoke (as an administrative sanction/measure) a Community authorisation, certified copy of Community authorisation or driving attestation if the holder of the authorisation no longer meets the requirements that were applicable at the time of applying for the authorisation. *Inter alia* authorisations may be suspended or revoked if (i) the undertaking or its transport manager has been punished for a violation which has been described as serious violations in article 6 paragraph 1 clause (b) of Regulation 1071/2009; (ii) has submitted false information on purpose or counterfeit documents; (iii) the applicant or holder has no good standing, etc.

There are no specific sanctions for failure to pro-actively communicate information to the competent authority by the undertaking. Although submitting false information or counterfeit documents may be subject to criminal sanctions under the Penal Code.

Under subsection 280 (1) of the Penal Code, the submission of false information to an administrative agency, if committed in order to obtain an

official document or any other benefit or gain, is punishable by a pecuniary punishment or up to one year of imprisonment. Under subsection 280 (2), if the same is committed by a legal person, a pecuniary punishment may be imposed.

Under subsection 344 (1) of the Penal Code, counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from obligations is punishable by a pecuniary punishment or up to one year of imprisonment. Under subsection 344 (2), if the same is committed by a legal person then a pecuniary punishment may be imposed.

Under subsection 345 (1), the use of a counterfeit document, seal or blank document form with the intention to obtain rights or release from obligations is punishable by a pecuniary punishment or up to 3 years' imprisonment. Under subsection 345 (2), if the same is committed by a legal person then a pecuniary punishment may be imposed.

Under subsection 31 (1) of the Road Transport Act organising the carrying of goods without a valid activity licence is punishable by a fine of 1,200 Euros. Under subsection 31 (2), if the same is committed by a legal person, a fine of up to 3,200 Euros may be imposed.

Under section 31 of the Road Transport Act, failure to produce a certified copy of Community authorisation, driving attestation or transport permit is punishable by a fine of up to 400 Euros.

Under subsection 31 (1) of the Road Transport Act, failure to comply with the requirements for use that are prescribed in the certified copy of Community authorisation, driving attestation or transport permit is punishable by a fine of up to 200 Euros. Under subsection § 316 (2) of the Road Transport Act, if the same is committed by a legal person, a fine of up to 3,200 Euros may be imposed

Under subsection § 31 (1) of the Road Transport Act, failure to comply with the requirements for organisation of cabotage with motor vehicle temporarily in Estonia as established under Regulation 1071/2009 or a foreign treaty is punishable by a fine of up to 800 Euros. Under subsection § 31 (2) of the Road Transport Act, if the same is committed by a legal person, a fine of up to 3,200 Euros may be imposed.

Competent authorities under the Road Transport Act

The competent authorities are the Police and Border Guard Board and the Estonian Tax and Customs Board who, pursuant to subsection 31 (2) of the Road Transport Act, conduct the misdemeanour proceedings of the violations described in the Road Transportation Act.

The Public Transport Act has relevance where the passenger transport services are provided by transportation undertakings by buses. The underlying logic of the administrative sanctions' system is similar to that of the Road Transport Act with valid punishments for serious violations entitling the competent authority to revoke or suspend existing authorisations.

Under subsection 54 (1) of the Public Transport Act, carrying of passengers without a valid documentation is punishable by a fine of 1,200 Euros. Under subsection 54 (2), if the same is committed by a legal person, a fine of up to 3,200 Euros may be imposed.

Under section 54 of the Public Transport Act, carriage of passengers by a driver without the documents prescribed by Public Transport Act is punishable by a fine of up to 600 Euros.

Competent Authorities under the Public Transport Act

The competent authorities are the Police and Border Guard Board, local governments, county governments, the Ministry of Economic Affairs and Communications and the Road Administration who pursuant to subsection 54 (2) of the Public Transport Act have authority to conduct the misdemeanour proceedings of the violations described in section 54 of the Public Transport Act.

The Traffic Act contains a specific catalogue of sanctions for infringements that are qualified as most serious infringements described in Annex IV of Regulation No 1071/2009:

Under subsection 201 (1) of the Traffic Act, driving a power-driven vehicle by a person who does not have the right to drive power-driven vehicles of the corresponding category is punishable by a fine of up to 400 Euros or by detention. Under subsection 201 (2), if the same is committed by a person who has been removed from driving power-driven vehicle or whose right to drive

power-driven vehicles has been suspended, revoked or withdrawn is punishable by a fine of up to 1,200 Euros or by detention.

Under subsection 202 (1) of the Traffic Act, permitting a power-driven vehicle to be driven by a person who does not have the right to drive power-driven vehicles of the corresponding category by an owner, possessor or a person responsible for the compliance with the roadworthiness testing requirements or operation of the power-driven vehicle is punishable by a fine of up to 400 Euros. Under subsection 202 (2) for the same act, if the power-driven vehicle is permitted to be driven by a person whose right to drive power-driven vehicles has been suspended, revoked or withdrawn is punishable by a fine of up to 1,200 Euros. Under subsection 202 (3), if the acts specified in subsection (1) or (2) are committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Under section 203 of the Traffic Act, driving power-driven vehicle or off-road vehicle which has not been registered or re-registered pursuant to the established procedure is punishable by a fine of up to 400 Euros.

Under subsection 204 (1) of the Traffic Act, the grant by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven if the vehicle has not been registered or re-registered pursuant to the established procedure, is punishable by a fine of up to 800 Euros. Under subsection 204 (2), if the same is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Under section 207 of the Traffic Act, driving power-driven vehicle that has not passed roadworthiness testing is punishable by a fine of up to 200 Euros.

Under subsection 208 (1) of the Traffic Act the grant, by an owner or possessor or by a person responsible for the compliance with the roadworthiness testing requirements or operation of a vehicle that has not passed roadworthiness testing, of permission for the power-driven vehicle to be driven is punishable by a fine of up to 400 Euros. Under subsection 208 (2), if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Under section § 209 of the Traffic Act, driving a power-driven vehicle which due to technical failure is not permitted to be driven under its own power is punishable by a fine of up to 400 Euros.

Under subsection 210 (1) of the Traffic Act, the grant, by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven if it is not permitted to be driven under its own power is punishable by a fine of up to 400 Euros. Under subsection 210 (2) of the Traffic Act if the same is committed by a legal person then fine of up to 3,200 Euros may be imposed.

Under section 210, the driving of a vehicle, road train or tractor train whose maximum mass is over 12,000 kilograms whereby the permitted maximum mass thereof is exceeded by 20 percent or more is punishable by a fine of up to 800 Euros.

Under subsection § 210 (1) of the Traffic Act, granting permission by the owner, possessor or the person responsible for roadworthiness or operation to drive a vehicle, road train or tractor train whose maximum mass is over 12,000 kilograms whereby the permitted maximum mass thereof is exceeded by 20 percent or more is punishable by a fine of up to 800 Euros. Under subsection § 210 (2) of the Traffic Act, if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Under clause 210, the driving of a vehicle, road train or tractor train whose maximum mass is up to 12,000 kilograms whereby the permitted maximum mass thereof is exceeded by 25 percent or more is punishable by a fine of up to 800 Euros.

Under subsection 210 (1) of the Traffic Act, granting permission by the owner, possessor or the person responsible for roadworthiness or operation to drive a vehicle, road train or tractor train whose maximum mass is up to 12,000 kilograms whereby the permitted maximum mass thereof is exceeded by 25 percent or more is punishable by a fine of up to 800 Euros. Under subsection 210 (2) of the Traffic Act, if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Under section 210 of the Traffic Act, driving a power-driven vehicle without a mandatory speed limitation device, with an inoperable speed limitation device or using a device which may impede the operation of the speed limitation device is punishable by a fine of up to 800 Euros.

Section 210 of the Traffic Act establishes sanctions for giving permission to drive power-driven vehicle in violation of rules of use of speed limitation device. Under subsection 210 (1), permission by the owner, the possessor or the person responsible for roadworthiness or operation to drive a power-driven vehicle without a mandatory speed limitation device, with an inoperable speed limitation device or using a device which may impede the operation of the speed limitation device is punishable by a fine of up to 800 Euros. Under subsection 210 (2), if the same act is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Under section 211 of the Traffic Act, driving a power-driven vehicle which lacks the required tachograph or the tachograph of which is not in working order or not sealed in a manner conforming to the requirements is punishable by a fine of up to 400 Euros.

Under section 212 of the Traffic Act, failure to enter the working time of other works manually on the recording sheets or printouts or manually on the digital tachograph by the driver of power-driven vehicle is punishable by a fine of up to 400 Euros.

Section 213 of the Traffic Act establishes sanctions for permitting power-driven vehicle violating the requirements for the use of tachograph to be driven. Under subsection 213 (1), the grant, by an owner or possessor of a vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such vehicle, of permission for the power-driven vehicle to be driven if the vehicle lacks the required tachograph or with a tachograph not in working order or not sealed according to the requirements is punishable by a fine of up to 800 Euros. Under subsection 213 (2), if the same is committed by a legal person, a fine of up to 3,200 Euros may be imposed.

Under section 215 of the Traffic Act, driving a power-driven vehicle supplied with equipment enabling to interfere with the operation of tachograph is

punishable by a fine of up to 1,200 Euros. The interfering equipment will be confiscated by the court or the Police and Border Guard Board.

Section 216 of the Traffic Act establishes sanctions for installation of equipment enabling to interfere with the operation of tachograph or not removing thereof. Under subsection 216 (1), installation of equipment enabling to interfere with the operation of tachograph or not removing the equipment upon the examination of a tachograph in workshop is punishable by a fine of up to 1,200 Euros. Under subsection 216 (2), if the same is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Under section 219 of the Traffic Act, driving a power-driven vehicle where the level of pollutants in its exhaust emissions or the emitted noise exceeds the permitted limit is punishable by a fine of up to 200 Euros.

Under subsection 220 (1) of the Traffic Act, the grant, by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven where the level of pollutants in its exhaust emissions or the emitted noise exceeds the permitted limit is punishable by a fine of up to 400 Euros. Under subsection 220 (2) of the Traffic Act, if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Section 244 of the Traffic Act establishes sanctions for violation of requirements for working and rest time of drivers of motor vehicles or trams by owner, possessor or person responsible for operation of motor vehicle or tram.

Under subsection 244 (1) of the Traffic Act, a violation by the owner or possessor of a power-driven vehicle or tram or by a person responsible for the operation of a power-driven vehicle or tram of the requirements for working and rest time established for drivers of power-driven vehicles or trams is punishable by a fine of up to 800 Euros. Under subsection 244 (2) of the Traffic Act, if the same is committed by a legal person, then a fine of up to 3,200 Euros may be imposed.

Under subsection 256 (1) of the Traffic Act, violation of the requirements for carriage of hazardous substances, objects or wastes by vehicle, if such violation causes a major risk to human life, health or environment is punishable

by a fine of up to 800 Euros. Under subsection 256 (2) of the Traffic Act, if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

9.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009

See above.

9.3 Standards of vehicles and load and necessary licences

9.3.1 Directive 2008/68/EC

The Directive 2008/68/EC has been transposed in Estonia with the following legal acts:

- Road Transport Act;
- Rules for Road Transport of Dangerous Cargo⁵ (*Ohtlike veoste autoveo eeskiri*, hereinafter “Rules for Dangerous Cargo”)

The said legal acts do not establish separate sanctions for violations related to the transportation of dangerous cargo. Such sanctions are contained in the Traffic Act.

Section 256 of the Traffic Act establishes sanctions for violation of requirements related to a major risk in the road transport of hazardous substances and objects. Under subsection 256 (1), violation of the requirements for carriage of hazardous substances, objects or wastes by vehicle, if such violation causes a major risk to human life, health

⁵ Rules for Road Transport of Dangerous Cargo. *Ohtlike veoste autoveo eeskiri*. Regulation No 118 issued by the Minister of Transport and Communications on 14 December 2001 (RTL 2002, 6, 53 ... RT I, 10.06.2011, 1)

or environment is punishable by a fine of up to 800 Euros. Under subsection 256 (2), if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Under section 257 of the Traffic Act, violation of the requirements for carriage of hazardous substances, objects or wastes by vehicle, if such violation causes a medium risk to human life, health or environment is punishable by a fine of up to 400 Euros.

Under section 258 of the Traffic Act, violation of the requirements for carriage of hazardous substances, objects or wastes by vehicle, if such violation causes a minor risk to human life, health or environment is punishable by a fine of up to 200 Euros.

Foreign drivers

Under subsection 1 (3) of the Traffic Act, the provisions of the Traffic Act extend to foreign road users and vehicles registered abroad which are in the territory of Estonia unless an international agreement prescribes otherwise.

9.3.2 Directive 96/53/EC

The Directive 96/53/EC, laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, has been transposed in Estonia with the following legal acts:

- Traffic Act;
- Roads Act⁶ (*Teeseadus*, hereinafter “Roads Act”);
- Technical requirements and requirements for the equipment of a motor vehicle and its trailer⁷ (*Mootorsõiduki ja selle haagise tehnonõuded ning nõuded varustusele*, hereinafter “Technical Requirements Regulation”).

⁶ Roads Act. *Teeseadus*. Adopted by the Estonian Parliament on 17 February 1999 (RT I 1999, 26, 377 ... RT I, 29.12.2011, 1)

The Technical Requirements Regulation does not establish any sanctions. The sanctions are contained in the Roads Act.

Under subsection 40 (1) of the Roads Act the use of a vehicle the measurements, mass or axle load of which do not conform to the rules or use of a vehicle which damages the stability of the road structure in any other manner for traffic on a road, or use of a vehicle on a closed road or a road structure which is not prescribed for traffic, is punishable by a fine of up to 800 Euros. Under subsection 40 (2), if the same is committed by a legal person then a fine of up to 2,000 Euros may be imposed.

Under subsection 40 (1) of the Roads Act, the granting of permission for traffic on a road by the owner or possessor of a motor vehicle or by an official responsible for the operation of a motor vehicle the measurements, mass or axle load of which do not conform to the rules, or grant of permission for traffic on a closed road or a road structure which is not prescribed for traffic is punishable by a fine of up to 1,200 Euros. Under subsection 40 (2), if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Competent Authorities under the Roads Act

The following authorities may conduct proceedings in matters of misdemeanours provided for in the Roads Act:

- the Road Administration upon commission of a misdemeanour on a national road;
- a rural municipality or city government upon commission of a misdemeanour on a local road;
- the police authorities.

⁷ Technical requirements and requirements for the equipment of a motor vehicle and its trailer. *Mootorsõiduki ja selle haagise tehnonõuded ning nõuded varustusele*. Regulation No 42 of the Minister of Economic Affairs and Communications adopted on 13 June 2011 (RT I, 16.06.2011, 8).

9.3.3 Directive 2009/40/EC

The Directive 2009/40/EC has not been transposed by Estonia because it is the recast directive.

The relevant rules on roadworthiness tests for motor vehicles and their trailers have been provided in the Technical Requirements Regulation. The relevant sanctions are contained in the Traffic Act.

Under section 203 of the Traffic Act, driving power-driven vehicle or off-road vehicle which has not been registered or re-registered pursuant to the established procedure is punishable by a fine of up to 400 Euros.

Under subsection 204 (1) of the Traffic Act, the grant by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven if the vehicle has not been registered or re-registered pursuant to the established procedure, is punishable by a fine of up to 800 Euros. Under subsection 204 (2) if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Under section 207 of the Traffic Act, driving power-driven vehicle that has not passed roadworthiness testing is punishable by a fine of up to 200 Euros.

Under subsection 208 (1) of the Traffic Act, the grant, by an owner or possessor or by a person responsible for the compliance with the roadworthiness testing requirements or operation of a vehicle that has not passed roadworthiness testing, of permission for the power-driven vehicle to be driven is punishable by a fine of up to 400 Euros. Under subsection 208 (2), if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Under section § 209 of the Traffic Act driving a power-driven vehicle which due to technical failure is not permitted to be driven under its own power is punishable by a fine of up to 400 Euros.

Under subsection 210 (1) of the Traffic Act, the grant, by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven if it is not permitted to be driven under its own power is

punishable by a fine of up to 400 Euros. Under subsection 210 (2) of the Traffic Act, if the same is committed by a legal person then fine of up to 3,200 Euros may be imposed.

Under section 219 of the Traffic Act, driving a power-driven vehicle where the level of pollutants in its exhaust emissions or the emitted noise exceeds the permitted limit is punishable by a fine of up to 200 Euros.

Under subsection 220 (1) of the Traffic Act, the grant, by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven where the level of pollutants in its exhaust emissions or the emitted noise exceeds the permitted limit is punishable by a fine of up to 400 Euros. Under subsection 220 (2) of the Traffic Act, if the same is committed by a legal person then a fine of up to 3,200 Euros may be imposed.

Submitting counterfeit documents may be subject to criminal sanctions under the Penal Code.

Under subsection 344 (1) of the Penal Code, counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from obligations is punishable by a pecuniary punishment or up to one year of imprisonment. Under subsection 344 (2), if the same is committed by a legal person then a pecuniary punishment may be imposed.

Under subsection 345 (1), the use of a counterfeit document, seal or blank document form with the intention to obtain rights or release from obligations is punishable by a pecuniary punishment or up to 3 years' imprisonment. Under subsection 345 (2), if the same is committed by a legal person then a pecuniary punishment may be imposed.

Foreign drivers

Under subsection 1 (3) of the Traffic Act, the provisions of the Traffic Act extend to foreign road users and vehicles registered abroad which are in the territory of Estonia unless an international agreement prescribes otherwise.

9.3.4 Directive 2006/126/EC

Directive 2006/126/EC has been transposed in Estonia by the provisions contained in the Traffic Act.

Under subsection 201 (1) of the Traffic Act, driving a power-driven vehicle by a person who does not have the right to drive power-driven vehicles of the corresponding category is punishable by a fine of up to 400 Euros or by detention. Under subsection 201 (2), if the same is committed by a person who has been removed from driving power-driven vehicle or whose right to drive power-driven vehicles has been suspended, revoked or withdrawn is punishable by a fine of up to 1,200 Euros or by detention.

Under subsection 202 (1) of the Traffic Act, permitting a power-driven vehicle to be driven by a person who does not have the right to drive power-driven vehicles of the corresponding category by an owner, possessor or a person responsible for the compliance with the roadworthiness testing requirements or operation of the power-driven vehicle is punishable by a fine of up to 400 Euros. Under subsection 202 (2) for the same act, if the power-driven vehicle is permitted to be driven by a person whose right to drive power-driven vehicles has been suspended, revoked or withdrawn is punishable by a fine of up to 1,200 Euros. Under subsection 202 (3), if the acts specified in subsection (1) or (2) are committed by a legal person then a fine of up to 3,200 Euros may be imposed. Submitting counterfeit documents may be subject to criminal sanctions under the Penal Code.

Under subsection 344 (1) of the Penal Code, counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from obligations is punishable by a pecuniary punishment or up to one year of imprisonment. Under subsection 344 (2), if the same is committed by a legal person then a pecuniary punishment may be imposed.

Under subsection 345 (1), the use of a counterfeit document, seal or blank document form with the intention to obtain rights or release from obligations is punishable by a pecuniary punishment or up to 3 years' imprisonment. Under subsection 345 (2), if the same is committed by a legal person then a pecuniary punishment may be imposed.

Under subsection 1 (3) of the Traffic Act, the provisions of the Traffic Act extend to foreign road users and vehicles registered abroad which are in the territory of Estonia unless an international agreement prescribes otherwise.

9.4 Notion of criminal sanction and of administrative sanction in the Estonian legal system

Pursuant to Estonian law an offence is a punishable act provided for in the Penal Code or another act. Offences are criminal offences and misdemeanours. In addition to sanctions regarding offences, administrative coercive measures may also be imposed on persons.

Administrative coercive measures

According to Estonian law an administrative authority may impose on a person precept with an obligation to perform a required act or refrain from a prohibited act. A coercive measure is applied if a precept of an administrative authority is not complied with during the term indicated in a warning. A coercive measure may be applied repeatedly until the objective sought by a precept is achieved. Coercive measures are not applied upon the execution of court decisions and upon conducting supervisory control. The application of a coercive measure is not deemed to be a punishment.

According to law there are two types of coercive measures: penalty payment and substitutive enforcement. Penalty payment is an amount determined in a warning, payable by the addressee if the addressee fails to perform the obligation imposed by a precept within the term indicated in the warning. The upper limit of penalty payment for each imposition thereof is provided by law. If an addressee fails to perform an obligation imposed on the addressee by a precept within the term prescribed in a warning, and the obligation is not inseparably bound to the addressee, a competent administrative authority may perform the obligation at the expense of the addressee or organise the performance of the obligation by a third party (substitutive enforcement).

Misdemeanours

A misdemeanour is an offence which is provided for in the Penal Code or another legal act and the principal punishment prescribed for which is a fine or detention. Regarding fines a court or an extra-judicial body may impose on natural persons a fine from 12 up to 1,200 Euros. On a legal person who commits a misdemeanour a court or an extra-judicial body may impose a fine of 32 up to 32,000 Euros. With regard to detention a court may impose detention for a term of up to thirty days. In addition to fine and detention a court or an extra-judicial body may impose other sanctions, as a principal punishment, as prescribed in various legal acts – for example deprivation of driving privileges for up to two years for a misdemeanour relating to violation of the safe traffic or of rules of operation of a motor vehicle, aircraft, water craft, tram or rolling stock.

In addition to principal punishments law also foresees a possibility to impose supplementary punishments for misdemeanour imposed on natural and legal persons.

If a person commits an act which comprises the necessary elements of both a misdemeanour and a criminal offence, the person shall be punished only for the criminal offence. If a punishment is not imposed for the criminal offence, the same act may be punished for the misdemeanour.

Criminal offences

A criminal offence is an offence which is stipulated in the Penal Code. The principal punishments for a criminal offence committed by a natural person are pecuniary punishment or imprisonment. In case of offences committed by legal persons pecuniary punishment or compulsory dissolution are the principal punishments.

Criminal offences are categorised as criminal offences in the first and in the second degree. A criminal offence in the first degree is an offence for which the maximum punishment prescribed in the Penal Code is imprisonment for a term of more than five years, life imprisonment or compulsory dissolution. A criminal offence in the second degree is an offence for which the punishment prescribed in the Penal Code is imprisonment for a term of up to five years or a pecuniary punishment.

Regarding pecuniary punishments the court may impose a pecuniary punishment of 30 to 500 daily rates. The daily rate applied shall be based on the person's actual average daily income, but not less than the minimum daily rate. The minimum daily rate

is 3.20 Euros. In case of legal persons, the court may impose a pecuniary punishment of 3,200 to 16,000,000 Euros. A pecuniary punishment may be imposed on a legal person also as a supplementary punishment together with compulsory dissolution.

In addition to principal punishments the Penal Code also foresees a possibility to impose supplementary punishments for criminal offences imposed on natural and legal persons.

Concurrence between several sanctions

If a person commits an act which comprises the necessary elements of several offences, one punishment shall be imposed on the person on the basis of the provision of law which prescribes the most onerous punishment.

If a person commits several acts which have the necessary elements of several criminal offences and he or she has not been previously punished for any of such offences, a punishment shall be imposed separately for each offence and aggregate punishment shall be imposed. In the case of principal punishments of the same type, the aggregate punishment shall be imposed by increasing the most onerous of the individual punishments imposed or by considering a lesser punishment to be imposed by imposition of the most onerous one.

An aggregate punishment shall not exceed the sum of the individual punishments imposed nor the maximum rate of the most onerous punishment provided for in the corresponding section of the Penal Code. Supplementary punishments of different types shall be executed independently.

If a person commits several acts which have the necessary elements of several misdemeanours, a punishment shall be imposed separately for each misdemeanour.

Concurrence between several sanctions

According to the Estonian Penal Code if a person commits an act which comprises the necessary elements of both a misdemeanour and a criminal offence, the person shall be punished only for the criminal offence. If a punishment is not imposed for the criminal offence, the same act may be punished for the misdemeanour.

9.5 Scope of application of Estonian criminal law

The rules on the scope of application of Estonian criminal law are laid down in sections 5 -11 of the Penal Code.

Section 5 stipulates rules regarding temporal applicability of Estonian penal law. According to this section a punishment shall be imposed pursuant to the law in force at the time of commission of the act. An act which precludes the punishability of an act, mitigates a punishment or otherwise alleviates the situation of a person shall have retroactive effect. An act which declares an act as punishable, aggravates a punishment or otherwise exacerbates the situation of a person shall not have retroactive effect. Offences against humanity and war crimes shall be punishable regardless of the time of the offence was committed.

Section 6 stipulates rules regarding territorial applicability of Estonian penal law. According to this section the penal law of Estonia applies to acts committed within the territory of Estonia. The penal law of Estonia also applies to acts committed on board of or against ships or aircraft registered in Estonia, regardless of the location of the ship or aircraft at the time of commission of the offence or the penal law of the country where the offence is committed.

Section 7 stipulates rules regarding applicability of penal law by reason of person concerned. According to this section the penal law of Estonia applies to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and is punishable at the place of commission of the act, or if no penal power is applicable at the place of commission of the act and if: 1) the act is committed against a citizen of Estonia or a legal person registered in Estonia; 2) the offender is a citizen of Estonia at the time of commission of the act or becomes a citizen of Estonia after the commission of the act, or if the offender is an alien who has been detained in Estonia and is not extradited.

The penal law of Estonia also applies: 1) to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and the offender is a member of the Estonian Defence Forces performing his or her duties; 2) to giving gratuities or bribe to officials of foreign states, influence peddling by officials of foreign states and any criminal offence related to such criminal

offences which were committed by an Estonian citizen or an alien who has been detained in Estonia and is not extradited, or a legal person registered in Estonia.

Section 8 stipulates rules regarding applicability of penal law to acts against internationally protected legal rights. According to this section regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to an act committed outside the territory of Estonia if the punishability of the act arises from an international agreement binding on Estonia.

Section 9 stipulates rules regarding applicability of penal law to acts against legal rights of Estonia. According to this section regardless of the law of the place of commission of an act, the penal law of Estonia applies to acts committed outside the territory of Estonia if according to the penal law of Estonia the act is a criminal offence in the first degree and if such act: 1) causes damage to the life or health of the population of Estonia; 2) interferes with the exercise of state authority or the defence capability of Estonia; or 3) causes damage to the environment.

In addition, regardless of the type of the offence, the penal law of Estonia applies to acts damaging the environment committed within the economic zone or on the high seas in accordance with the requirements and rights of international maritime law established with respect to foreign vessels.

Sections 10 stipulate rules regarding determining time of commission of the act. According to this section an act is deemed to be committed at the time when the person acted or was legally required to act. The time of occurrence of the consequences shall not be taken into consideration.

Section 11 stipulate rules regarding determining place of commission of act. According to this section An act is deemed to be committed at the place where: 1) the person acted; 2) the person was legally required to act; 3) the consequence which constitutes a necessary element of the offence occurred; or 4) according to the assumption of the person, the consequence which constitutes a necessary element of the offence should have occurred.

Complicity is deemed to be committed at the place where: 1) the principal offender committed the criminal offence; 2) the accomplice acted; 3) the accomplice was legally required to act; or 4) according to the assumption of the accomplice, the consequence which constitutes a necessary element of the offence should have occurred.

If an accomplice to a criminal offence committed in a foreign state commits an act in the territory of Estonia and pursuant to the penal law of Estonia such act is punishable and the act of the principal offender is punishable at the place of commission of the act or no penal power is applicable at the place of commission of the act, the penal law of Estonia applies to the accomplice.

9.6 Summary tables

The competent authorities have been indicated in the Study above.

(i) The Traffic Act

The Police and Border Guard Board conducts extra-judicial proceedings in the misdemeanour cases provided for in sections 201-261 of the Traffic Act.

Tax and Customs Board conducts extra-judicial proceedings in the misdemeanour cases provided for in sections 256 to 258 of the Traffic Act

A rural municipality or city government is also the body which conducts extra-judicial proceedings concerning the misdemeanours provided for in sections 241 and 261 of the Traffic Act.

The Labour Inspectorate is also the body which conducts extra-judicial proceedings concerning the misdemeanours provided for in sections 243 to 255 of the Traffic Act.

(ii) Roads Act

The following authorities may conduct proceedings in matters of misdemeanours provided for in the Roads Act:

- the Road Administration upon commission of a misdemeanour on a national road;
- a rural municipality or city government upon commission of a misdemeanour on a local road;
- the police authorities.

(iii) Public Transport Act

The following authorities may conduct proceedings in matters of misdemeanours provided for in section 54 of the Public Transport Act:

- the Police and Border Guard Board;
- a rural municipality or city government;
- the Ministry of Economic Affairs and Communications;
- the Road Administration.

(iv) Road Transport Act

The following authorities may conduct proceedings in matters of misdemeanours provided for in the Road Transportation Act:

- the Police and Border Guard Board;
- the Tax and Customs Board.

The table below provides an overview of the sanctions in misdemeanour and criminal proceedings foreseen in the Estonian legal system for the infringements of EU commercial road transport legislation.

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
Regulation 561/06/EC	Driving Times Traffic Act	Section 244	Violation of requirements for working and rest time of drivers of motor vehicles or trams by owner, possessor or person responsible for operation of motor vehicle or tram	-Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200 €	
	Driving Time	Section 245	Exceeding the weekly driving time	- Drivers	Up to 400 €	
	Traffic Act Rest Periods	Subsection 246 (1)	Exceeding the daily driving time by up to two hours	- Drivers	Up to 400 €	
	Traffic Act	Subsection 246 (2)	Exceeding the daily driving time by more than two hours	- Drivers	Up to 800 €	

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
		Section 247	Exceeding the two consecutive weeks' driving time	Drivers	Up to 400 €	
		Section 244	Violation of requirements for working and rest time of drivers of motor vehicles or trams by owner, possessor or person responsible for operation of motor vehicle or tram	Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200 €	
	<u>Rest Periods</u>	Subsection 249 (1)	Use of up to two hours shorter daily rest time	-Drivers	Up to 400 €	
	<u>Traffic Act</u> <u>Breaks</u>	Subsection 249 (1)	Use of over two hours shorter daily rest time	-Drivers	Up to 800 €	

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
	Traffic Act	Section 250	Use of a shorter weekly rest time than established	-Drivers	Up to 400 €	
		Section 244	Violation of requirements for working and rest time of drivers of motor vehicles or trams by owner, possessor or person responsible for operation of motor vehicle or tram	Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200 €	
		Subsection 248 (1)	Failure to use the established break time after 4.5 hours of driving time	Drivers	Up to 400 €	

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
		Subsection 248 (2)	Use of a shorter break than the established break time after 4.5 hours of driving time	-Drivers	Up to 400 €	
	<u>Transport undertaking's liability</u> <u>Traffic Act</u>	Section 244	Violation of requirements for working and rest time of drivers of motor vehicles or trams by owner, possessor or person responsible for operation of motor vehicle or tram	Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200 €	
	<u>Requirements of Regulation 561/06/EC & Regulation 3821/85</u>	Section 139 of the Traffic Act	Non-compliance with the requirements for working, driving and rest time of drivers of power-	Undertaking		

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
	Traffic Act Government Regulation No 151/2010		driven vehicles			
Directive 2006/22/EC (amended by Directive 2009/4/EC)	Requirements of Regulation 561/06/EC & Regulation 3821/85 Traffic Act Government Regulation No 151/2010 Work time and work schedules Traffic Act	Section 6 of the Government Regulation No 151/2010				
		Subsection 251 (1)	In regular carriage of passengers where the length of the line is less than 50 kilometres, failure by a driver of a power-driven vehicle to present an established work schedule .	Drivers	Up to 400 €	

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
Directive 2002/15/EC	<p>Work time and work schedules</p> <p>Traffic Act</p> <p>Influencing a driver to violate working and rest time requirements</p> <p>Traffic Act</p>	Subsection 251 (2)	In regular carriage of passengers where the length of the line is less than 50 kilometres, failure by a driver of a power-driven vehicle to observe an established work schedule	Drivers	Up to 400 €	
		Section 252	Failure by the possessor of the vehicle to present to the driver a required work schedule or preparation for a driver a work schedule that violates working and rest time requirements	Undertaking	<p>Natural persons - up to 400 €</p> <p>Legal persons – up to 3,200 €</p>	

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
		Section 253	Use of a longer weekly working time than established	Drivers	Up to 400 €	
		Section 255	Issuing of an illegal work order to a driver of a power-driven vehicle that induces to violate working and rest time requirements established by legislation	Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200 €	
	<u>Transport undertaking's liability</u> <u>Traffic Act</u>	Section 244	Violation of requirements for working and rest time of drivers of motor vehicles or trams by owner, possessor or person	Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200 €	

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
			responsible for operation of motor vehicle or tram			
	Transport undertaking's liability Traffic Act	Section 244	Violation of requirements for working and rest time of drivers of motor vehicles or trams by owner, possessor or person responsible for operation of motor vehicle or tram	Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200 €	
	Traffic Act	Section 210 ⁵	Driving a power-driven vehicle without a mandatory speed limitation device, with an inoperable speed limitation device or using	Driver	Up to 400 €	

Table EE 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Subject	Misdemeanour sanction(s)	Criminal sanction(s)
			a device which may impede the operation of the speed limitation device			

Table EE 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation 3821/1985/EEC	Traffic Act Law n. 727 of 13 November 1978 (applying when the Article 179 does not)	Section 210 ⁶	Giving permission to drive power-driven vehicle in violation of rules of use of speed limitation device.	Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200	
		Section 211	Driving a power-driven vehicle which lacks the required tachograph or the tachograph of which is not in working order or not sealed in a manner conforming to the requirements	Driver	Up to 400 €	
		Section 212	Failure to enter the working time of other works manually on the recording sheets or	Driver	Up to 400 €	

Table EE 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			printouts or manually on the digital tachograph by the driver			
		Section 213	Giving permission, for the power-driven vehicle to be driven if the vehicle lacks the required tachograph or with a tachograph not in working order or not sealed according to the requirements	Undertaking	<p>Natural persons - up to 800 €</p> <p>Legal persons – up to 3,200</p>	
		Section 214	Failure to use a tachograph installed on a power-driven vehicle in the prescribed cases or deliberately damaging a tachograph or a seal	Driver or any natural person who has deliberately damaged the	Up to 400 €	

Table EE 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			affixed thereto	tachograph or a seal thereto		
		Section 215	Driving a power-driven vehicle supplied with equipment enabling to interfere with the operation of tachograph	Driver	Up to 1,200 € The interfering equipment will be confiscated	
		Section 216	Installation of equipment enabling to interfere with the operation of tachograph or not removing the equipment upon the examination of a tachograph in workshop	Anyone, who commits the offence	Natural persons - up to 1,200 € Legal persons – up to 3,200 €	
		Section 217	Violation of the requirements established (i) for the use of recording	Anyone, who commits the offence	Natural persons - up to 400 €	

Table EE 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			sheets of the manual or digital tachograph installed on the power-driven vehicle or (ii) for the use of a driver card or the possibility of reading thereof		Legal persons – up to 3,200 €	
		Subsection 243 (1)	Untimely copying of the data of digital tachograph or driver card	Anyone, who commits the offence	Up to 400 €	
		Subsection 243 (2)	Intentional damaging of the data of digital tachograph or driver card	Anyone, who commits the offence	Up to 400 €	

Table EE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation No. 1071/2009/EC, 1072/2009/EC, 1073/2009/EC.	<u>Penal Code</u>	Subsection 280 (1)	Submission of false information to an administrative agency, if committed in order to obtain an official document	Natural person		Pecuniary punishment or up to one year of imprisonment
		Subsection 280 (2)	Submission of false information to an administrative agency, if committed in order to obtain an official document	Legal person		Pecuniary punishment
		Subsection 344 (1)	Counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights	Natural person		Pecuniary punishment or up to one year of imprisonment

Table EE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			or release from obligations			
		Subsection 344 (2)	Counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from obligations	Legal person		Pecuniary punishment
		Subsection 345 (1)	Use of a counterfeit document, seal or blank document form with the intention to obtain rights or release from obligations	Natural person		Pecuniary punishment or up to 3 years' imprisonment

Table EE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Subsection 345 (2)	Use of a counterfeit document, seal or blank document form with the intention to obtain rights or release from obligations	Legal person		Pecuniary punishment
	<u>Road Transport Act</u>	Subsections 31 ¹ (1) and (2)	Carrying of goods without a valid activity licence	Transport undertaking	Natural persons - up to 1,200 € Legal persons – up to 3,200 €	
		Section 31 ³	Failure to produce a certified copy of Community authorisation, driving attestation or transport permit	Driver	Up to 400 €	

Table EE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Subsection 31 ⁶ (1)	Failure to comply with the requirements for use that are prescribed in the certified copy of Community authorisation, driving attestation or transport permit	Natural person	Up to 200 €	
		Subsection 31 ⁶ (2)	Failure to comply with the requirements for use that are prescribed in the certified copy of Community authorisation, driving attestation or transport permit	Legal person	Up to 3,200 €	

Table EE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Subsections § 31 ⁷ (1) and (2)	Failure to comply with the requirements for organisation of cabotage with motor vehicle temporarily in Estonia as established under Regulation 1071/2009 or a foreign treaty	Undertaking	Natural persons - up to 800 € Legal persons – up to 3,200 €	
	<u>Public Transport Act (has relevance where passenger transport services are provided by transportation undertakings by buses)</u>	Subsections 54 ⁵ (1) and (2)	Carrying of passengers without a valid documentation	Undertaking	Natural persons - up to 1,200 € Legal persons – up to 3,200 €	
		Section 54 ⁶	Carriage of passengers by a driver without the documents prescribed by	Driver	Up to 600 €	

Table EE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			Public Transport Act			
	Traffic Act	Sections 201-204, 207-213; 215-220; 244; 256	Infringements described by Annex IV of Regulation 1071/2009. Please refer to the text of the Study for details.	Drivers and undertakings	Please refer to the relevant chapter in the Study for details.	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Directive 2008/68/EC	Traffic Act	Subsections 256 (1) and (2)	Violation of the requirements for carriage of hazardous substances, objects or wastes by vehicle, if such violation causes a major risk to human life, health or environment	Any person who commits such an offence	<p>Natural persons - up to 800 €</p> <p>Legal persons – up to 3,200 €</p>	
		Section 257	Violation of the requirements for carriage of hazardous substances, objects or wastes by vehicle, if such violation causes a medium risk to human life, health or environment	Any natural person who commits such an offence	Up to 600 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Section 258	Violation of the requirements for carriage of hazardous substances, objects or wastes by vehicle, if such violation causes a minor risk to human life, health or environment	Any natural person who commits such an offence	Up to 200 €	
Directive 96/53/EC	<u>Roads Act</u>	Subsection 40 ¹ (1)	Use of a vehicle the measurements, mass or axle load of which do not conform to the rules	Any natural person who commits such an offence	Up to 800 €	
		Subsection 40 ¹ (2)	Use of a vehicle the measurements, mass or axle load of which do not conform to the rules	Any legal person who commits such an offence	Up to 2,000 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Subsections 40 ² (1) and (2)	The granting of permission for traffic on a road by the owner or possessor of a motor vehicle or by an official responsible for the operation of a motor vehicle the measurements, mass or axle load of which do not conform to the rules	Undertaking	Natural persons - up to 1,200 € Legal persons – up to 3,200 €	
Directive 2009/40/EC	Traffic Act	Section 203	Driving power-driven vehicle or off-road vehicle which has not been registered or re-registered pursuant to the	Drivers	Up to 400 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			established procedure			
		Subsections 204 (1) and (2)	The grant by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven if the vehicle has not been registered or re-registered pursuant to the established procedure	Undertaking	<p>Natural persons - up to 800 €</p> <p>Legal persons – up to 3,200 €</p>	
		Section 207	Driving power-driven	Drivers	Up to 200 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			vehicle that has not passed roadworthiness testing			
		Subsections 208 (1) and (2)	The grant, by an owner or possessor or by a person responsible for the compliance with the roadworthiness testing requirements or operation of a vehicle that has not passed roadworthiness testing, of permission for the power-driven vehicle to be driven	Undertaking	<p>Natural persons - up to 400 €</p> <p>Legal persons – up to 3,200 €</p>	
		Section § 209	Driving a power-driven vehicle which due to	Driver	Up to 400 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			technical failure is not permitted to be driven under its own power			
		Subsections 210 (1) and (2)	The grant, by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven if it is not permitted to be driven under its own power	Undertaking	<p>Natural persons - up to 400 €</p> <p>Legal persons – up to 3,200 €</p>	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Section 219	Driving a power-driven vehicle where the level of pollutants in its exhaust emissions or the emitted noise exceeds the permitted limit	Drivers	Up to 200 €	
		Subsections 220 (1) and (2)	The grant, by an owner or possessor of a power-driven vehicle or by a person responsible for the compliance with the roadworthiness testing requirements or operation of such a vehicle, of permission for the vehicle to be driven where the level of	Undertaking	Natural persons - up to 400 € Legal persons – up to 3,200 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			pollutants in its exhaust emissions or the emitted noise exceeds the permitted limit			
	Penal Code	Subsection 344 (1)	Counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from obligations	Natural person		Pecuniary punishment or up to one year of imprisonment
		Subsection 344 (2)	Counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from	Legal person		Pecuniary punishment

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			obligations			
		Subsection 345 (1)	Use of a counterfeit document, seal or blank document form with the intention to obtain rights or release from obligations	Natural person		Pecuniary punishment or up to 3 years' imprisonment
		Subsection 345 (2)	Use of a counterfeit document, seal or blank document form with the intention to obtain rights or release from obligations	Legal person		Pecuniary punishment

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Directive 2006/126/EC	Traffic Act	Subsection 201 (1)	Driving a power-driven vehicle by a person who does not have the right to drive power-driven vehicles of the corresponding category	Drivers	Up to 400 €	
		Subsection 201 (2)	driving a power-driven vehicle by a person who does not have the right to drive power-driven vehicles of the corresponding category by a person who has been removed from driving power-driven	Drivers	Up to 1,200 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			vehicle or whose right to drive power-driven vehicles has been suspended, revoked or withdrawn			
		Subsections 202 (1) and (3)	Permitting a power-driven vehicle to be driven by a person who does not have the right to drive power-driven vehicles of the corresponding category by an owner, possessor or a person responsible	Undertaking	Natural persons - up to 400 € Legal persons – up to 3,200 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			for the compliance with the roadworthiness testing requirements or operation of the power-driven vehicle			
		Subsections 202 (2) and (3)	Permitting a power-driven vehicle to be driven by a person who does not have the right to drive power-driven vehicles of the corresponding category by an owner, possessor or a person responsible	Undertaking	Natural persons - up to 1,200 € Legal persons – up to 3,200 €	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			for the compliance with the roadworthiness testing requirements or operation of the power-driven vehicle if the power-driven vehicle is permitted to be driven by a person whose right to drive power-driven vehicles has been suspended, revoked or withdrawn			
		Part 2 of Article 128	Driving a vehicle without a driving licence where a driving licence was revoked	Driver	From €434 up to €724 or administrative arrest	

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Penal Code	Subsection 344 (1)	Counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from obligations	Natural person		Pecuniary punishment or up to one year of imprisonment
		Subsection 344 (2)	Counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from obligations	Legal person		Pecuniary punishment
		Subsection 345 (1)	Use of a counterfeit document, seal or blank document form with the	Natural person		Pecuniary punishment or up to 3 years'

Table EE 4

Standards of Vehicle, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Section of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			intention to obtain rights or release from obligations			imprisonment
		Subsection 345 (2)	Use of a counterfeit document, seal or blank document form with the intention to obtain rights or release from obligations	Legal person		Pecuniary punishment

The table below gathers the sanctions which are considered formally criminal in the Estonian legal system.

Table EE 5		
Infringements of commercial road transport legislation		
Type of infringement(s) and Article of reference in national legislation	Criminal sanction	Is it dissuasive?
Corresponding EU legislation		
<p>There are no infringements of road commercial transport sanctioned with criminal sanctions with the exception of the general offence of submitting fake or counterfeiting a document sanctioned pursuant to the criminal code. However, the very serious and most serious infringements of EU law are qualified as criminal offences.</p>		

9.7 Sanctions which could be considered substantially criminal in the Estonian legal system

According to Estonian legal experts there are no sanctions for administrative infringements that should be qualified as criminal based on the following findings:

- The fines for the misdemeanor offences regarding commercial road transport are not very high (up to 3,200 EUR), if compared with the fines which may be applied to other misdemeanor offences (which may go as high as 32,000 EUR for legal persons).
- There is a remarkable difference between the fines in misdemeanor proceedings and the pecuniary punishments in criminal proceedings. For example, a criminal offender (natural person) may be punished with a pecuniary punishment between 30 and 500 daily rates (which is calculated as the average daily income of the particular offender, whereas the minimum daily rate is 3.2 Euros. There is no maximum daily rate applicable should the offender be a high income person). The maximum fine in misdemeanor proceedings for natural persons is 1,200 Euros. In case of legal persons the pecuniary punishment for criminal offences may range between 3,200 Euros and 16,000,000 Euros.
- The withdrawal of a licence (from a legal entity) is possible as a result of administrative proceedings (note that administrative proceedings are separate from misdemeanor and criminal proceedings and the measures applicable in administrative proceedings are not regarded as sanctions for offences in the sense of the penal law). The application of withdrawal of a licence results in negative consequences to legal entities. Such measures, in our view, could not be treated as of criminal nature. In criminal proceedings compulsory dissolution of a legal entity may be imposed as a primary punishment (with a possibility to impose a pecuniary punishment as a supplemental punishment).
- In the light of all above we conclude that Estonian law does not foresee administrative sanctions that should be qualified as criminal in connection with the infringements object of this Study.

Table EE 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

Type of infringement and Article of reference in national legislation

Administrative sanction that could be qualified as criminal sanction

Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?

Is it dissuasive?

Corresponding EU legislation

There are no sanctions imposed by the Estonian legislation implementing the EU directives and regulations on commercial road transport which are formally administrative but substantively criminal.

9.8 Effectiveness of the sanctions system

The sanctions system in the field of commercial road transport in the Republic of Estonia has the following features.

The infringements in the field of commercial road transport are categorised under their gravity as very serious, serious and minor infringements and such categorization helps to rate the risk of further possible infringements of a transport undertaking.

- The applicable sanctions to drivers are less than the sanctions provided for the transport undertakings which are usually economically stronger subjects.
- The specific sanctions for the infringements described in Annex IV of Regulation No 1071/2009 are established by the Estonian laws. If the most serious infringements described in Annex IV of Regulation No. 1071/2009 are identified, the activity licence may be suspended or revoked or the competent authority may refuse to issue the relevant authorization.
- The sanctions in the field of commercial road transport are quite differentiated. The competent authorities can take into consideration aggravating and alleviating factors when imposing sanctions.
- Criminal sanctions are generally applied only as a last resort.
- However, the sanctions system in the field of commercial road transport also has some disadvantages because the sanctions are not differentiated among undertakings which have a big annual turnover and transport undertakings with a smaller one. Therefore, the sanctions are not very proportional as regards this issue.

It could also be argued that sanctions are not dissuasive as financial penalties are not high and they are not combined with other sanctions such as seizure of the vehicle or withdrawal of licences and authorizations that are deemed to have a deterrent effect.

The Estonian Government provided us with figures that allow to assess the effectiveness of the Estonian sanctions system.

These figures are included in the tables below and provide an overview of the offences detected in Estonia in 2011.

The figures show that:

- The number of infringements of social rules is substantial.
- The number of infringements of the rules on weight and dimensions is also substantial.
- Among the most serious infringements, the most frequent infringement detected is carrying goods exceeding the maximum permissible laden mass by 20% or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25% or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.

Based on the above findings and considering the fact that Estonian sanctions are not particularly dissuasive, it is posited in agreement that the Estonian sanctions system is not effective at least as far as infringements of social rules and infringements of the rules on weight and dimensions are concerned.

Table EE 7

<u>Regulation (EC) No 561/2006</u>	<u>Estonian figures for 2011</u>
<p>Art. 6.1</p> <p>Exceed daily driving time of 9 h if possibilities to extend to 10 h not allowed</p> <p>Exceed extended daily driving time of 10 h if extension allowed</p>	<p>Art. 6.1</p> <p>In all 165 infringements</p>
<p>Art. 6.2 Exceed weekly driving time</p>	<p>In all 3 infringements</p>
<p>Art. 6.3 Exceed accumulated driving time during 2 consecutive week</p>	<p>In all 10 infringements</p>
<p>Art. 7 Exceed uninterrupted driving time</p>	<p>In all 579 infringements</p>
<p>Art. 8.2</p> <p>Insufficient daily rest period of less than 11 h if reduced daily rest period not allowed;</p> <p>Insufficient reduced daily rest period of less than 9 h if reduce allowed;</p> <p>Insufficient split daily rest period of less than 3 h+9 h</p>	<p>Art. 8.2 and 8.5</p> <p>In all 539 infringements</p>
<p>Art. 8.5 Insufficient daily rest period of less than 9 h for multi-manning</p>	
<p>Art. 8.6</p> <p>Insufficient reduced weekly resting period of less than 24 h</p> <p>Insufficient weekly resting period of less than 45 h if reduced weekly resting period not allowed</p>	<p>Art. 8.6</p> <p>In all 72 infringements</p>

Table EE 8

<u>Regulation (EEC) No. 3821/85</u>	<u>Estonian figures for 2011</u>
Art. 3.1 No type approved recording equipment installed and used	
Art. 13 Recording equipment not correctly functioning (for example: recording equipment not properly inspected, calibrated and sealed) Recording equipment improperly used (not using a valid driver card, voluntary abuse, ...)	Art. 3.1 and 13 In all 196 infringements
Art. 14.2 Undertaking not keeping record sheets, printouts and downloaded data	No data possible to provide
Art. 14.5 Recorded and stored data not available for at least 365 days	No data possible to provide
Art. 15.3 Time recorded on the sheet does not agree with official time of country of registration of the vehicle Incorrect use of switch mechanism	No data possible to provide
Art. 15.5a Symbol of country not entered in recording equipment	No data possible to provide
Art. 15.7 Refuse to be checked	No data possible to provide

Table EE 8

<u>Regulation (EEC) No. 3821/85</u>	<u>Estonian figures for 2011</u>
<p>Art. 14.1</p> <p>Not carrying a sufficient number of record sheets X</p> <p>Model of record sheet not approved X</p> <p>Not carrying enough paper for printouts</p>	
<p>Art. 14.4</p> <p>Driver holding more than one valid driver card</p> <p>Use of driver card which is not the driver's own valid card</p> <p>Use of defective or expired driver card</p>	
<p>Art. 15.1</p> <p>Use dirty or damaged sheets or driver cards and data legible</p> <p>Use dirty or damaged sheets or driver cards and data not legible</p> <p>Failure to apply for replacement of damaged, malfunctioning, lost or stolen driver card within 7 calendar days</p>	<p>Art. 14.1, 14.4, 15.1, 15.2, 15.5 and 15.7</p> <p>In all 1382 infringements</p>
<p>Art. 15.2</p> <p>Incorrect use of record sheets/driver cards</p> <p>Unauthorised withdrawal of sheets or driver card which has an impact on the record of relevant data</p> <p>Unauthorised withdrawal of sheets or driver card without any impact on data recorded</p> <p>Record sheet or driver card used to cover a period longer than that for which it is intended but no data is lost</p> <p>Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost</p>	

Table EE 8

<u>Regulation (EEC) No. 3821/85</u>	<u>Estonian figures for 2011</u>
<p>Not using manual input when required to do so X</p> <p>Not using correct sheet or driver card not in the correct slot (multi-manning)</p>	
<p>Art. 15.5</p> <p>Surname missing on record sheet</p> <p>First name missing on record sheet</p> <p>Date of begin or end of use of the sheet missing</p> <p>Place of begin or end of use of the sheet missing</p> <p>Registration number missing on record sheet</p> <p>Odometer reading (start) missing on record sheet</p> <p>Odometer reading (end) missing on record sheet</p> <p>Time of change of vehicle missing on record sheet</p>	
<p>Art. 15.7</p> <p>Unable to produce records of current day</p> <p>Unable to produce records of previous 28 days</p> <p>Unable to produce records of the driver card if the driver holds one</p> <p>Unable to produce manual records and printouts made during the current day and the previous 28 days</p> <p>Unable to produce driver card X</p> <p>Unable to produce printouts made during the current day and the previous 28 days</p>	
<p>Art. 15.8</p> <p>Falsify, suppress, destroy data recorded on record sheets, stored in the recording equipment or on the driver card or</p>	<p>Art. 15.8</p>

Table EE 8

<u>Regulation (EEC) No. 3821/85</u>	<u>Estonian figures for 2011</u>
<p>print-outs from the recording equipment</p> <p>Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified</p> <p>Manipulation device that could be used to falsify data and/or printouts information present on vehicle (switch/wire ...)</p>	<p>In all 30 infringements</p>
<p>Art. 16.1</p> <p>Not repaired by an approved fitter or workshop</p> <p>Not repaired en route</p>	<p>No data possible to provide</p>
<p>Art. 16.2</p> <p>Driver not marking all information for the periods of time which are no longer recorded while recording equipment is unserviceable or malfunctioning</p> <p>Driver card number and/or name and/or driving licence number missing on temporary sheet</p> <p>Signature missing on temporary sheet</p>	<p>No data possible to provide</p>
<p>Art. 16.3 Lost or theft of driver card not formally declared to the competent authorities of the Member State where the theft occurred</p>	<p>No data possible to provide</p>

Table EE 9

<u>Directive 2002/15/EC</u>	<u>Estonian figures for 2011</u>
<p>Art. 4</p> <p>Exceeding the maximum average weekly working time fixed in 48 hours or in 60 hours only if, over four months, an average of 48 hours a week is not exceeded</p> <p>Failure to ask the mobile worker to provide in writing for an account of time worked for another employer</p> <p>Failure of the mobile worker to provide in writing for an account of time worked for another employer</p>	<p>Art. 4</p> <p>In all 0 infringements</p>
<p>Art. 5</p> <p>Working six consecutive hours without a break</p> <p>Working time not interrupted by a break of at least 30 minutes, if working hours total between six and nine hours</p> <p>Working time not interrupted by a break of at least 45 minutes, if working hours total more than nine hours</p>	<p>No data possible to provide</p>
<p>Art. 7 Exceeding the maximum limit of daily working time of ten hours in each 24 period if night work is performed</p>	<p>No data possible to provide</p>
<p>Art. 9</p> <p>Failure to inform mobile workers of the relevant national requirements, the internal rules of the undertaking and agreements between the two sides of industry, in particular collective agreements and any company agreements, concerning the working time of mobile workers</p> <p>Failure of the employer to record the working time of persons performing mobile road transport</p> <p>Failure to keep the records of the working time of persons performing mobile road transport for at least two years after the end of the period covered</p>	<p>No data possible to provide</p>

Table EE 10

<u>Regulation (EC) No 1071/2009</u>	<u>Estonian figures for 2011</u>
<p>Art. 3</p> <p>Submission of fake documents aimed at proving the establishment in a Member State</p> <p>Submission of fake documents aimed at proving appropriate financial standing</p> <p>Failure to communicate loss of appropriate financial standing</p> <p>Failure to communicate the loss of good repute requirement</p> <p>Failure to communicate loss of the requisite of professional competence</p> <p>Submission of fake documents aimed at proving the requisite of professional competence</p> <p>Submission of fake documents aimed at proving appropriate financial standing</p>	<p>0</p> <p>0</p> <p>6</p> <p>3</p> <p>0</p> <p>0</p> <p>0</p>
<p>Art. 4 Failure to communicate death or inability of the transport manager</p>	<p>0</p>

Table EE 11	
<u>Regulation (EC) No. 1072/2009</u>	<u>Estonian figures for 2011</u>
Art. 3 Carrying out international carriage without possession of a Community licence	3
Art. 5 Driving without a driving attestation when necessary	6
Art. 7 Supplying incorrect information in relation to an application for a Community licence or for a driver attestation	0

Table EE 12	
<u>Regulation (EC) No. 1073/2009</u>	<u>Estonian figures for 2011</u>
Art. 3 Carrying out international carriage of passengers by coach and bus without complying with the requirements regarding the standards for drivers and vehicles	0
Carrying out international carriage of passengers by coach and bus without the necessary authorization or with an expired authorization	12
Carrying out international carriage of passengers by coach and bus without the Community licence, or with an expired Community licence	
Art. 6 Carrying out services which are not included in the authorization	0
Carrying out international carriage of passengers by coach and bus with an expired authorization	0

Table EE 12

<u>Regulation (EC) No. 1073/2009</u>	<u>Estonian figures for 2011</u>
In case of additional vehicles:	
Carrying out international carriage of passengers by coach and bus without:	
the copy of the necessary authorization or with an expired authorization	0
a copy of the contract between the operator of the regular service and the undertaking providing the additional vehicles or an equivalent document	0
a certified true copy of the Community licence issued to the operator providing the additional vehicles for the service	0

Table EE 13

<u>Directive 2009/40/EC</u>	<u>Estonian figures for 2011</u>
Art. 1	
Driving without a valid roadworthiness certificate or with an expired certificate a vehicle for which roadworthiness tests are mandatory	9
Driving with a fake roadworthiness certificate	0

Table EE 14	
<u>Directive 2006/126/EC</u>	<u>Estonian figures for 2011</u>
<p>Art. 1</p> <p>Transport of people or of goods carried out by a driver who has:</p> <p>a fake driving licence,</p> <p>not a driving licence,</p> <p>a revoked driving licence</p>	<p>0</p> <p>1</p> <p>3</p>
<p>Art. 4 Transport of people or of goods carried out by a driver driving a vehicle falling in a category not covered by driving licence</p>	<p>No specific data</p>
<p>Art. 5 Transport of people or of goods carried out by a driver driving a vehicle in conditions non authorised in the driving licence</p>	<p>No specific data</p>

Table EE 15	
<u>Directive 2008/68/EC</u>	<u>Estonian figures for 2011</u>
<p>Art. 3</p> <p>Transport of dangerous goods whose transport is not admitted pursuant to the Annex A and B of the ADR</p> <p>Transport of dangerous goods not complying to the conditions laid down in Annex A of the ADR for the goods in question, in particular as regards their packaging and labeling, conditions of carriage, loading, unloading and handling</p> <p>Transport of dangerous goods not complying to the conditions laid down in Annex B, of ADR in particular as regards the construction, equipment and operation of the vehicle carrying the goods in question</p>	<p>Art. 3, 4, 5 and 6</p> <p>In all 59 infringements</p>

Art. 4 Transport of dangerous goods between Member States and third countries not carried out in compliance with the relevant requirements	
Art. 5 Transport of dangerous goods in non compliance with the provisions of the relevant authorization	
Art. 6 Transport of dangerous goods not complying with the relevant authorization where necessary, or in non compliance with the provisions of such authorization	

Table EE 16	
<u>Council Directive 96/53/EC</u>	<u>Estonian figures for 2011</u>
<p>Art. 4</p> <p>Vehicles or vehicle combinations for the national transport of goods which are not in conformity with the characteristics set out in points 1.1, 1.2, 1.4, 1.5, 1.6, 1.7, 1.8, 4.2 and 4.4 of Annex I (e.g. maximum length, maximum width)</p> <p>Vehicles for national passenger transport, which are not in conformity with the characteristics set out in points 1.1, 1.2, 1.4a, 1.5 and 1.5a of Annex I g. (e.g. <i>maximum</i> length, <i>maximum</i> width)</p> <p>Vehicles or vehicle combinations which exceed the maximum dimensions not provided with permits issued by the competent authorities</p>	<p>In all 478 infringements</p>

Table EE 17

<u>Most serious infringements of EU rules foreseen in Annex IV of Regulation (EC) No. Regulation (Ec) No. 1071/2009 that might imply loss of good repute and therefore lead to the withdrawal of the licence of the transport undertaking</u>	<u>The Estonian data for the period 4.12.2011-4.04.2012 (4 months).</u>
exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more	0
exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more without taking a break or without an uninterrupted rest period of at least 4,5 hours	3
not having a tachograph and/or speed limiter, or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card	12
driving without a valid roadworthiness certificate if such a document is required under Community law and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle	5
transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle	0
carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence	9

<p>driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents</p>	<p>12</p>
<p>carrying goods exceeding the maximum permissible laden mass by 20% or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25% or more for vehicles the permissible laden weight of which does not exceed 12 tonnes</p>	<p>40</p>

10 FINLAND - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR

10.1 Social rules on road transport

10.1.1 Rules on Driving Times and Rest Periods

10.1.1.1 Regulation (EC) No 561/2006

The regulations No 561/2006 and 3821/85 are applicable in the Finnish legal system as such and have also been taken into account in the Highway Act (267/1981) and Working Hours Act (605/1996).

The definitions and sanctions of infringements of the regulations (EC) No 561/2006 and (EEC) No 3821/85 are included to the Chapter 8, Section 105a and Chapter 6a, Section 92m of the Highway Act.

The sanctions based on the Chapter 8, Section 105a of the Highway Act are criminal and apply to the driver. As it comes to violating the Sections 5, 10, 14 or 15 of the Regulation (EC) No 561/2006 or the employer's and company's obligations concerning the tachograph (Chapter 6a, Sections 92g, 92h and 92j of the Highway Act) wilfully or in gross negligence the sanctions apply also to the employer, the employer's representative and the company's representative. As it comes to violating the repair shop's obligations concerning the tachograph (Chapter 6a, Section 92i of the Highway Act) wilfully or in gross negligence the sanctions apply also to the repair shop's representative. The driver is not punished for a violation caused by the employer, the employer's representative or the repair shop's representative. The sanctions also apply to the drafter of the transport time table or his representative, if he has demanded the timetable to be followed knowing that it breaks the regulation (EC) No 561/2006 or (EEC) No 3821/85.

The Chapter 6a, Section 92m of the Highway Act states that the police and the customs and border guard detachment authorities may search for the relevant documents, prevent the driver from continuing the travel and temporary revoke the

relevant documents, if they have reason to believe that the Regulation (EC) No 561/2006 or (EEC) No 3821/85 has been violated. This administrative sanction may be applied simultaneously with the criminal sanctions defined above.

Foreign drivers

There are no specific provisions concerning infringements committed by foreign drivers.

General rules apply. As the all sanctions for infringements of commercial road transport are all criminal sanctions and as Finnish criminal law applies to all offences committed in Finland. This means that if a foreigner commits an offence in Finland, he/she is punished as stated in pursuant to Finnish rules.

10.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)

The Directive 2006/22/EC (amended by the Directive 2009/5/EC) has not been implemented to the Finnish legislation. As the Annex III of the referred Directive draws unbinding guidelines/rules of interpretation, the Finnish legislator did not find it recommendable to make the Annex equal to law. The Annex has, however, been taken into account in the Finnish legislation by referring to Article 6 of the Regulation 1071/2009/EC in Chapter 4, Sections 20 and 21 of the Finnish Public Transport Act (869/2009) and in Chapter 4, Section 9 and 9a of the Finnish Act on Commercial Transport of Goods in Highways (693/2006), which regulate the requirements of good reputation of a person in charge for the transport. The referred Article 6 refers to the Annex in question.

10.1.1.3 Directive 2002/15/EC

The Directive 2002/15/EC has been transposed to the Finnish legal system by the Working Hours Act.

The definitions and sanctions of infringements of the Directive 2002/15/EC are included to the Chapter 8, Section 105a of the Highway Act, to the Chapter 8, Section 42 of the Working Hours Act and to the Chapter 47, Section 2 of the Criminal Code.

The sanctions based on the Chapter 8, Section 105a of the Highway Act are criminal and apply to the driver.

The sanctions based on the Chapter 8, Section 42 of the Working Hours Act and to the Chapter 47, Section 2 of the Criminal Code are criminal and apply to the employer or the employer's representative.

Foreign drivers

There are no specific provisions concerning infringements committed by foreign drivers.

General rules apply. As the all sanctions for infringements of commercial road transport are all criminal sanctions and as Finnish criminal law applies to all offences committed in Finland. This means that if a foreigner commits an offence in Finland, he/she is punished as stated in pursuant to Finnish rules.

10.1.2 Tachograph

10.1.2.1 Regulation (EEC) No 3821/85

See above.

10.2 Road package

10.2.1 Regulation (EC) No 1071/2009

The Regulations (EC) No 1071/2009, No 1072/2009 and No 1073/2009 are applicable in the Finnish legal system as such and have also been taken into account in

the Public Transport Act (869/2009) and in the Act of Commercial Transport on Goods in Highways (693/2006).

The definitions and sanctions of infringements of the regulations are included to the Chapter 8, Sections 55 and 56 of the Public Transport Act and to the Chapter 8, Sections 30 and 32 of the Act on Commercial Transport of Goods in Highways. The sanctions are criminal and administrative and apply to a person violating the regulations.

The Finnish sanction system does not foresee a specific sanction system for those infringements that are qualified as most serious infringements described in Annex IV of the regulation No. 1071/2009.

Finnish law does not specify how the good repute is lost in case such infringements are detected (discretionary decision of the authority/obligatory decision of the authority).

10.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009

See above.

10.3 Standards of vehicles and load and necessary licences

10.3.1 Directive 2008/68/EC

The Directive 2008/68/EC has been transposed to the Finnish legal system by the:

- Act on the Transport of Dangerous Goods (719/1994);
- Government Decree on the Transport of Dangerous Goods by Road (194/2002);
- Government Decree on the Transport of Dangerous Goods by Rail (1995/2002);
- Government Decree on the Safety Adviser for the Transport of Dangerous Goods by Road and Rail (274/2002);

- Decree given by the Ministry of Transport And Communications on the Transport of Dangerous Goods by Road (369/2011);
- Decree given by the Ministry of Transport And Communications on the Transport of Dangerous Goods by Rail (370/2011); and
- Government Decree on the Driving Authorization of the Drivers of Dangerous Goods (401/2011).

The definitions and sanctions of infringements of the directive are included to the:

Chapter 6, Section 19 and Chapter 4, Section 15 of the Act on the Transport of Dangerous Goods; and Chapter 44, Section 13 and Chapter 48, Sections 1-4 of the Criminal Code.

The sanctions based on the Chapter 6, Section 19 of the Act on the Transport of Dangerous Goods and Chapter 44, Section 13 and Chapter 48, Sections 1-4 of the Criminal Code are criminal and apply to a person violating the acts and decrees transposing the Directive 2008/68/EC into the Finnish legal system.

The Chapter 4, Section 15 of the Act on the Transport of Dangerous Goods states that the Finnish Transport Safety Agency (Trafi), the customs authorities, the police, the border guard detachment authorities, harbour authorities, Finnish Safety and Chemicals Agency (Tukes), Radiation and Nuclear Safety Authority (STUK) and the industrial safety authorities shall, within their sphere of operations, have the right to prohibit the transport of dangerous goods if it does not comply with the requirements of the Act on the Transport of Dangerous Goods or the provisions issued thereunder as well as the right to order the dangerous goods to be unloaded in the first appropriate place and occasion unless the transport can be organised to comply with the provisions.

This administrative sanction may be applied simultaneously with the criminal sanctions defined above. The sanction may be enforced by a conditional fine or the threat of ordering a measure to be performed at the defaulter's expense as provided for in the Act on Conditionally Imposed Fines (1113/1990).

10.3.2 Directive 1996/53/EC

The Directive 96/53/EC has been transposed to the Finnish legal system by the Decree on the Use of Vehicles on the Road (1257/1992).

The definitions and sanctions of infringements of the directive are included to the Chapter 23, Sections 1 and 2 of the Criminal Code. The sanctions are criminal and apply to a person using a vehicle, which causes a traffic hazard.

10.3.3 Directive 2009/40/EC

The Directive 2009/40/EC has been transposed to the Finnish legal system by the Government Decree on the Control of Roadworthiness of Vehicles Used in Traffic (1245/2002).

The definitions and sanctions of infringements of the Directive are included to the Chapter 23, Sections 1 and 2 of the Criminal Code and Chapter 6, Section 56 of the Vehicles Act (1090/2002).

The sanctions based on the Chapter 23, Sections 1 and 2 of the Criminal Code are criminal and apply to a person using a vehicle, which causes a traffic hazard.

The Chapter 6, Section 56 of the Vehicles Act states that a vehicle constituting immediate danger to road safety or a significant environmental nuisance, shall not only be rejected but also immobilized in a periodic inspection. This administrative sanction may be applied simultaneously with the criminal sanctions mentioned above.

10.3.4 Directive 2006/126/EC

The Directive 2006/126/EC has been transposed to the Finnish legal system by the Driver Licence Act (386/2011) and the Driving Test Act (535/1998).

The definitions and sanctions of infringements of the directive are included to the Chapter 7 (the whole Chapter) and Chapter 9, Sections 93 and 94 of the Driver Licence Act, to the Chapter 23, Section 10 of the Criminal Code and to the Section 15 of the Driving Test Act.

The sanctions based on the Chapter 9, Sections 93 and 94 of the Driver Licence Act, the Chapter 23, Section 10 of the Criminal Code and the Section 15 of the Driving Test Act are criminal and apply to a person violating the Driver Licence Act or the Driving Test Act.

The Chapter 7 of the Driver Licence Act includes provisions of a driving ban, which can be ruled by the court or the police as an additional criminal sanction or by the police as the only sanction for a person neglecting to follow the police's requirements concerning the possession of the driving licence (requirement to provide the police with medical certificate etc.).

10.4 Notion of criminal sanction and of administrative sanction in the Finnish legal system

The Finnish criminal system recognizes the following sanctions: fines, imprisonment, suspended imprisonment, community service, monitoring sentence, driving ban, a juvenile punishment and business prohibition.

In the Finnish legal system, fines are passed as day fines (unless summary penal fee is especially ordered as a sanction, which is not the case as it comes to the offences mentioned in the table below), the minimum number of which is one and the maximum number is 120. The maximum number of day fines for violating the Highway Act, Vehicles Act, Public Transport Act, Act on the Transport of Dangerous Goods and Chapter 23, Section 10 of the Criminal Code is 20 (see the table below).

A fine is imposed as unit fines (uf). For instance, 20 uf at 10 euro = 200 euro. The more blameworthy the act, the more unit fines are imposed. The statutory maximum number of unit fines is 120 or, if the fine concerns several offences, 240. There is no general, statutory minimum number of unit fines, but for certain offences a minimum number has been determined.

The amount of one unit fine depends on the income of the convict. The amount of a unit fine is based on a person's net income. The net income is the amount left to the person of his or her monthly income after the subtraction of taxes, compulsory insurance premiums and the unemployment insurance premium. Thereafter, 255 € is subtracted from the net income. The amount arrived at is divided by 60. In addition, each underage child lowers the amount of the unit fine by 3 €. The minimum amount of a unit fine is 6 €.

Example:

A person earns 1,500 € per month. After taxes and other levies he is left with 1,000 €.

Subtract 255 € = 745 €.

The amount of the unit fine is 745 € divided by 60 = 12 €.

If he has two children, subtract 2 x 3 € = 6 €.

The amount of the unit fine is 6 €.

If he has been sentenced to 20 day fines for the offence, the total amount of the fine is 20 uf at 6 € = 120 €.

The Finnish legal system does not have a fixed fine parameter which could be applied to each infringement that can then be multiplied by the income. The number of day fines sentence as a sanction for violating the Finnish Highway Act, Finnish Vehicles Act, Finnish Public Transport Act, Finnish Act on the Transport of Dangerous Goods and Chapter 23, Section 10 of the Finnish Criminal Code varies between 1 and 20. The exact number of the fines cannot be predicted as the sanctions are sentenced on a case by case basis and the strictness of the sanction also depends on the offenders criminal history. If the offender has not committed any crimes before, the punishment is often milder compared to an offender with a wide criminal record.

A corporation, foundation or other legal entity in whose operations an offence has been committed may be sentenced to a sanction, which is always a corporate fine if such a sanction has been provided in this law for the offence. This is not the case as it comes to the offences mentioned concerning commercial road transport objet of this Country Report.

The administrative sanctions recognized in the Finnish legal system are very variable and cannot therefore be introduced extensive in this context.

Concurrence between several e sanctions

See above The statutory maximum number of unit fines is 120 or, if the fine concerns several offences, 240.

Concurrence between administrative and criminal sanctions

Administrative sanctions may be applied simultaneously with possible criminal sanctions.

10.5 Scope of application of Finnish criminal law

The Chapter 1, Section 1 of the Criminal Code states that Finnish law applies to an offence committed in Finland. The Chapter 1, Section 6 of the Criminal Code states that Finnish law applies to an offence committed outside of Finland by a Finnish citizen. These rules apply on the offences defined in the table above and concerning infringement of rules on commercial road transport.

10.6 Summary tables

In the Finnish legal system the police imposes and the prosecutor confirms fines for crimes, sanctioned with fines or max. 6 months of imprisonment. The court imposes fines and imprisonment sanctions for other crimes as well as the above mentioned crimes in situations, where the suspect denies the fines imposed by the police.

Table FI 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Time, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for Infringement	Section of Reference	Type of Infringement(s)	Author	Administrative Sanctions	Criminal Sanction
Regulations 561/06/EC and 3821/85/EC	<u>Highway Act (267/1981)</u>	Chapter 8, Section 105a	Violating the regulations	Driver		Fines
			Violating the Articles 5, 10, 14 or 15 of the Regulation or the employer's and company's obligations concerning the tachograph	Employer, employer's representative and company's representative		Fines
			Violating the repair shop's obligations concerning the tachograph	Repair shop's		

			Demanding the timetable to be followed knowing that it breaks the regulation	representative		Fines
	Highway Act (267/1981)	Chapter 6a, Section 92m		The drafter of the timetable or his representative		Fines
				Driver	Searching for the relevant documents, preventing the driver from continuing the travel and temporary revoking the relevant documents	
Directive 2002/15/EC	Highway Act (267/1981)	Chapter 8, Section 105a	Violating the directive	Driver		Fines
	Working Hours Act (605/1996)	Chapter 8, Section 42	Deliberately or out of carelessness violating other rules than those concerning duty to pay,	Employer and employer's		Fines

	<p style="text-align: center;"><u>Criminal Code</u> <u>(39/1889)</u></p>	<p style="text-align: center;">Chapter 47, Section 2</p>	<p>agreement, the form of a legal act, the working hour register or display</p> <p>Failings to make the required entries in the driver's log or to keep the log in the vehicle while driving</p> <p>Failing to keep working hours or annual leave accounts, keeping them erroneously, altering, concealing or destroying them or rendering them impossible to read, or proceeding in a manner punishable under the working hours or annual leave legislation despite an exhortation, order or</p>	<p>representative</p> <p style="text-align: center;">Driver</p> <p>Employer and employer's representative</p>		<p style="text-align: center;">Fines</p> <p style="text-align: center;">Fines or max. 6 months imprisonment</p>
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			prohibition issued by the work safety the detriment of the employee intentionally or through gross negligence to			
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Table FI 2

Road Package

EU Legislation	Relevant National Legislation for Infringement	Section of Reference	Type of Infringement(s)	Author	Administrative Sanctions	Criminal Sanction
Regulations (EC) Nos 1071/2009, 1072/2009/ and 1073/2009	<u>Public Transport Act (869/2009)</u>	Chapter 8, Section 56	Transacting professional passenger traffic with a bus without the required licence	The author of the business in question		Fines or max. 6 months imprisonment
	<u>Act on Commercial</u>	Chapter 8, Section	Assigning the above mentioned licence to another person or failing to carry or present it	The author of the offence	Temporary	Fines

	<u>Transport of Goods in Highways (693/2006)</u>	55			preventing the transportation and revoking the registration document and plate	
	<u>Act on Commercial Transport of Goods in Highways (693/2006)</u>	Chapter 8, Section 32	Transacting professional transport of goods without the required licence			
		Chapter 8, Section 32	Assigning the above mentioned licence to another person, failing to carry or present it, failing to register the vehicle , failing to give information to authorities	The author of the business in question		Fines or max. 6 months imprisonment
				The author of the offence		Fine

Table FI 3

Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for Infringement	Section of Reference	Type of Infringement(s)	Author	Administrative Sanctions	Criminal Sanction
Directive 2008/68/EC	<u>Act on the Transport of Dangerous Goods (719/1994)</u>	Chapter 4, Section 15	Failing to follow the act or the provisions issued thereunder	The transporter of the goods	Prohibiting the transport of dangerous goods and ordering the dangerous goods to be unloaded in the first appropriate place and occasion	May be enforced by conditional fines or the threat of ordering a measure to be performed at the defaulter's expense
	<u>Act on the Transport of Dangerous Goods</u>	Chapter 6, Section 19	Violating the act in a manner not criminalized in the Criminal Code	The author of the offence		

	<p>(719/1994)</p> <p>Criminal Code (39/1889)</p>	<p>Chapter 44, Section 13</p>	<p>(39/1889), see below</p> <p>Intentionally or through gross negligence sending, giving as freight, shipping, transporting, driving, loading, placing on boarding, unloading, handling, keeping as baggage or temporarily storing a dangerous substance so that the action is conducive to endangering the life or health of another or it endangers the property of another</p>	<p>The author of the offence</p>		<p>Fines or max. 2 years of imprisonment</p>
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<p><u>Criminal Code (39/1889)</u></p> <p><u>Criminal Code (39/1889)</u></p> <p><u>Criminal Code (39/1889)</u></p>	Chapter 48, Section 1	<p>Impairment of the environment</p> <p>Aggravated Impairment of the environment</p>	The author of the offence	<p>Fines or max. 2 years of imprisonment</p> <p>Min. 4 months - max. 6 years of imprisonment</p>
	Chapter 48, Section 2	Environmental infraction	The author of the offence	Fines or max. 6 months of imprisonment
	Chapter 48, Section 3	Negligent impairment of the environment	The author of the offence	Fines or max. 1 year of imprisonment

	<u>Criminal Code</u> <u>(39/1889)</u>	Chapter 48, Section 4		The author of the offence		
Directive 96/53/EC	<u>Criminal Code</u> <u>(39/1889)</u>	Chapter 23, Sections 1 and 2	See above (Directive 2009/40/EC)	See above (Directive 2009/40/EC)		See above (Directive 2009/40/EC)
Directive 2009/40/EC	<u>Criminal Code</u> <u>(39/1889)</u>	Chapter 23, Section 1	Acting intentionally or negligently in a manner conducive to cause hazard to others in the traffic	The road user		Fines or max. 6 months imprisonment
	<u>Criminal Code</u> <u>(39/1889)</u>	Chapter 23, Section 2	Acting intentionally or negligently in a manner conducive to cause serious danger to the health or safety of	The road user		30 day-fines or max 2 years of imprisonment

Directive 2006/126/EC	<u>Vehicles Act (1090/2002)</u>	Chapter 6, Section 56	another Constituting immediate danger to road safety or a significant environmental nuisance	A vehicle (the owner of the vehicle)	Immobilisation of the vehicle	
	<u>Driver Licence Act (386/2011)</u>	Chapter 7	Neglecting to follow the police's requirements concerning the possession of the driving licence (requirement to provide the police with medical certificate etc.)	Driver	Driving ban	Driving ban
	<u>Driver Licence Act (386/2011)</u>	Chapter 9, Section	Violating the terms of the driver licence or driver licence permission, failing to carry the relevant documents, failing to	The author of	Fines	

	<u>Driver Licence Act (386/2011)</u>	92	surrender the driver licence when ordered or letting a non-authorized person to drive a vehicle	the offence		
		Chapter 9, Section 92	Transacting driving school business without a permission	The author of the business in question		Fines
	<u>Driving Test Act</u>	Section 15	Transacting driving test business without an agreement made with the Finnish Transport Safety Agency (Trafí)	The author of the business in		Fines or max. 6 months

	<p>(535/1998)</p>		<p>Operation of a vehicle without a licence</p>	<p>question</p>		<p>imprisonment</p>
	<p>Criminal Code (39/1889)</p>	<p>Chapter 23, Section 10</p>		<p>The author of the offence</p>		<p>Fines or max. 6 months imprisonment</p>

The table below gathers the sanctions which are considered formally criminal in the Finnish legal system. The system is considered dissuasive

Table FI 4
Infringements of commercial road transport legislation
Criminal sanction
Please note that pursuant to Finnish law all the infringements of the rules on commercial road transport are sanctioned with criminal sanctions.

10.7 Sanctions which could be considered substantially criminal in the Finnish legal system

Table FI 5			
Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR			
Type of infringement and Article of reference in national legislation	Administrative sanction that could be qualified as criminal sanction	Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?	Is it dissuasive?
Corresponding EU legislation			
N.A. all sanctions are formally criminal.			

10.8 Effectiveness of the sanctions system

The Ministry of Transport And Communications reports the Finnish sanction system for the commercial road transport statutes equitable and effective enough. The police imposes fine sanctions for violating the commercial road transport statutes approximately from 4,000 to 5,000 times a year.

We note that in Finland all sanctions for infringements of the rules on commercial road transport are criminal. The amount of the financial penalties is not foreseeable as it depends on the revenue of the offenders and they are imposed by the Courts. This might ensure the proportionality of the sanctions concretely applied.

We also note that that the police and the customs and border guard detachment authorities may also prevent the driver from continuing the travel and temporary revoke the relevant documents, if they have reason to believe that the Regulation (EC) No 561/2006 or (EEC) No 3821/85 has been violated. Such measures are deemed to have a deterrent effect, as the threat of preventing the continuation of the trip can be more dissuasive than a financial penalty.

That said, we note that the number of infringements detected in Finland is substantial.

We also note that infringements are defined in a vague way in the Finnish system, and a simple reference is made to EU legislation as far as infringement of social rules are concerned.

Overall we note a lack of transparency of the system that might affect its effectiveness.

11 FRANCE - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR

11.1 Preliminary Comments

It is necessary to make a preliminary explication of the French criminal system in order to better understand the French sanctioning system in the field of commercial road transport.

Criminal Sanctions

According to Article 111-1 of the *Code Penal*⁸ (hereinafter, “Penal Code”) criminal offences are categorised according to their seriousness as felonies, misdemeanours or petty offences. Criminal sanctions arising from the infringements of transport regulations belong to the categories of petty offences i) and misdemeanours ii).

I) Petty offences

Pursuant to Article 131-12 of the Penal Code, the penalties incurred by natural persons for the commission of petty offences and assessed by the police court or the neighbourhood court are a) fines or b) the penalties entailing a forfeiture or restriction or rights c) penalty relief.

According to Article 131-13 of the Penal Code petty offences are offences which by law are punished with a fine not in excess of EUR 3,000. The amount of a fine is as follows:

⁸ Law of 16 December 1992 No. NOR: JUSX9200040L, *Loi n° 92-1336 du 16 décembre 1992 relative à l'entrée en vigueur du nouveau code pénal et à la modification de certaines dispositions de droit pénal et de procédure pénale rendue nécessaire par cette entrée en vigueur*, in the *French Official Journal* (hereinafter, the “OJ”), of 23 December 1992 No. 298.

- a maximum of EUR 38 for petty offences of the first class;
- a maximum of EUR150 for petty offences of the second class;
- a maximum of EUR450 for petty offences of the third class;
- a maximum of EUR 750 for petty offences of the fourth class;
- a maximum of EUR 1,500 for petty offences of the fifth class;

According to Article 132-11, if a regulation so provides, where a natural person who has already received a final sentence for a petty offence of the fifth class commits the same petty offence within a period of one year, the maximum fine is raised to € 3,000.

In cases where the law provides that re-offending by the commission of a petty offence of the fifth class constitutes a misdemeanour, recidivism is established if the acts are committed within a period of three years.

According to Article 131-14, petty offences of the fifth class may be sanctioned with one or more of the following penalties entailing a restriction of rights (instead of a fine). The Article foresees for example the suspension of a driving licence for a maximum duration of one year, or the immobilisation of one or more vehicles belonging to the convicted person, for a maximum period of six months⁹.

According to Article 131-15, in case of petty offences of the fifth class sometimes the judge may sentence the offender to penalty reliefs instead of fines. The

⁹ Article 131-14 “In relation to any petty offence of the fifth class one or more of the following penalties entailing forfeiture or restriction of rights may be imposed:

1° suspension of a driving licence for a maximum duration of one year.(..);

2° immobilisation of one or more vehicles belonging to the convicted person, for a maximum period of six months;

3° confiscation of one or more weapons belonging to the convicted person or freely available to him;

4° withdrawal of a hunting licence, together with a prohibition to apply for the issue of a new licence for a maximum period of one year;

5° prohibition to draw cheques, except those allowing the withdrawal of funds by the drawer from the drawee or certified cheques, and the prohibition to use payment cards, for a maximum period of five years;

6° confiscation of the thing which was used or was intended for the commission of the offence, or of the thing which is the product of the offence.”

offender will be in this case obliged to compensate the damage under the conditions established by the judge¹⁰.

Pursuant to Article 131-12, sometimes those penalties can be accompanied with the imposition of one or more of the additional penalties set out under Article 131-16:

- suspension of a driving licence for a maximum period of three years. This suspension may be restricted to the driving of a vehicle outside professional activities unless the regulation expressly excludes this limitation;
- prohibition to hold or carry a weapon for which a permit is needed, for a maximum period of three years;
- confiscation of one or more weapons belonging to the convicted person or freely available to him;
- withdrawal of a hunting licence, together with a prohibition to apply for a new licence, for a maximum period of three years;
- confiscation of the thing which was used or intended to be used for the commission of the offence, or of the thing which is the product of the offence;
- prohibition from driving certain types of motor vehicle, including those for which no driving licence is required, for a maximum period of three years;
- obligation to complete, at the offender's expense, a road safety awareness course;
- obligation to complete a citizenship course, at the offender's expense, if appropriate;
- obligation to complete, as provided for in Article 131-35-1 of the Penal Code, a criminal awareness course;
- confiscation of the animal which was used or intended to be used for the commission of the offence, or of the thing;
- prohibition from keeping certain types of animals up to 3 years.

According to Article 131-17 a regulation that sanctions a petty offence of the fifth class may also provide for the additional penalty of prohibition to draw bank

¹⁰ Article 131-8-1 of the Penal Code.

cheques, for a maximum period of three years and for the imposition of community service for a period varying between 20 hours and 120 hours.

II) Misdemeanours

According to Article 381 of the Code of Criminal Procedure¹¹, misdemeanours are the offences assessed by correctional court judges. Sanctions incurred are notably¹²:

- from 2 months up to 10 years of ordinary imprisonment¹³;
- a fine from EUR3,750 up to EUR 15,000;
- day fines¹⁴;
- citizenship courses¹⁵;
- community work (the court orders the convicted person to perform, for a period of 40 to 210 hours, unpaid community service in the interest of a public law body or of an association accredited to set up community service)¹⁶;
- the penalties entailing a forfeiture or restriction of rights¹⁷;
- additional sanctions¹⁸;
- penalty relief¹⁹;

According to Article 131-9, imprisonment may not be imposed cumulatively with any of the penalties entailing forfeiture or restriction of rights set out under Article

¹¹ Law of 31 December 1957 No. 57-1426, *Loi n° 57-1426 du 31 décembre 1957 portant institution d'un code de procédure pénale*, in OJ of 8 January 1958 page 258.

¹² Article 131-3 of the Penal Code.

¹³ Article 131-3 of the Penal Code.

¹⁴ Article 131-5 of the Penal Code. This requires the convicted person to pay the Treasury a sum, the total amount of which is a daily contribution determined by the judge, multiplied by a certain number of days.

¹⁵ Article 131-5-1 of the Penal Code.

¹⁶ Article 131-8 of the Penal Code

¹⁷ Article 131-6 of the Penal Code.

¹⁸ Article 131-10 of the Penal Code.

¹⁹ Article 131-8-1 of the Penal Code.

131-6, nor with community service and a day-fine may not be imposed cumulatively with a fine.

Misdemeanours on road transport are listed in different codes:

- from Article L. 3452-6 to Article L. 3452-10 of the Code des Transports (hereinafter, “Transport Code”);²⁰
- from Article L. 221 to Article L. 413 of the Code de la Route (hereinafter, “Highway Code”);²¹
- from Article 221 to Article 223 of the Penal Code.

According to Article 132-10 of the Penal Code, where a natural person, who has already received a final sentence for a misdemeanour, commits within a period of five years the same misdemeanour, the *maximum* term of imprisonment and fine is doubled.

Liability

According to the principle of the individual nature of penalties set out in Article 121-1 of the Penal Code, the driver is generally deemed liable because no one is criminally liable except for his own conduct.

Pursuant to Article 121-4, the perpetrator of an offence is the person who commits the criminally prohibited act or attempts to commit a felony or a misdemeanour. Therefore, there is generally no felony or misdemeanour in the absence of an intent to commit it.

However, pursuant to Article 121-3 of the Penal Code, natural persons who have not directly contributed to causing the damage, but who have created or contributed to create the situation which allowed the damage to occur, are criminally liable where it is shown that they have broken a duty of care in a manifestly and deliberate manner, or have committed a specified type of misconduct which exposed another person to a particularly serious risk of which they must have been aware.

²⁰ Ordinance of 28 October 2010, No. 2010-1307, *Ordonnance n° 2010-1307 du 28 octobre 2010 relative à la partie législative du code des transports*, in OJ of 3 November 2010, No. 0255.

²¹ Ordinance of 22 September 2000, No. 2000-930, codified by the Law of 12 June 2003 No. 2003-495, *Ordonnance no 2000-930 du 22 septembre 2000 relative à la partie Législative du code de la route*, in OJ of 24 September 2000, No. 222.

According to Article L. 3315-6 of the Transport Code, the transport manager should be held liable of its own negligence if he has not taken any measure in order to guarantee the respect of the Regulation.

In this respect, for example, Articles from R. 121-1 to R. 121-5 foresee that for some specific infringements the driver, the transport undertaking and the principals can be held jointly or separately liable because of their own fault.

According to Articles R. 121-2 to 121-3, the transport manager in his quality of employer can be held liable if he gives to his employees some instructions incompatible with some specific regulations listed on the text of the article concerning for example the vehicle's weight.

According to Articles R. 121-4 to 121-5, even the principal can be held liable if he gives to his employees some instructions incompatible with some specific regulations concerning the maintenance and use of the vehicle, the driving times and rest periods, and the limitation of weight of vehicles²².

Please note that according to Article 121-2 of the Penal Code, legal persons, with the exception of the State, are criminally liable for the offences committed on their account by their organs or representatives. Therefore, the transport undertaking could be held liable for the offences committed by their managers. Please note that the criminal liability of legal persons does not exclude the liability of any natural persons who are perpetrators or accomplices to the same act.

According to Articles 131-41 and 131-38 of the Penal Code, either in case of petty offences or misdemeanours, the maximum amount of a fine applicable to legal persons is five times of the one applicable to natural persons by the law sanctioning the offence.

Reduced Sanctions

Article R. 48-1 of the Code of Criminal Procedure foresees the possibility to pay fines on the spot for petty offences from I to IV class in order to avoid the possibility of criminal law pursuits. This cannot apply in case of more infringements if they are not

²² Institut Du Droit International Des Transports, *Analyse de la coresponsabilité des donneurs d'ordre aux transporteurs routiers de marchandises dans quatre pays de l'UE Allemagne - Espagne - France - Pays-Bas*. available at: http://www.developpement-durable.gouv.fr/IMG/pdf/coresponsabilite29102007_cle5b71d3.pdf.

appreciated at the same time and in case of infringement to the regulation on driving and rest time periods. The amount of the fine will increase if the fine is paid after 45 days starting from the finding of the infringement. On the contrary, it will decrease if the fine is paid in three days following the finding of the infringement²³.

According to Article 41-2 of the Code of Criminal procedure, the district prosecutor may propose conditional suspension of the prosecution to an adult person who admits having committed any misdemeanour or misdemeanours for which the main penalty is a fine or prison sentence not exceeding five years, as well as, where appropriate, any connected petty offence or offences²⁴.

11.2 Social rules on road transport

11.2.1 Rules on Driving Times and Rest Periods

11.2.1.1 Regulation (EC) No 561/2006

Article 3313-1 of the Transport Code refers directly to the rules of the Regulation (EC) No. 561/2006 in order to foresee rules on driving times, breaks and rest periods of all the international and national road transport vehicles of more than 3,5 tons.

The sanction system related to the infringements of those rules has been implemented by Article 3 of the Decree of 17 October 1986 No. 86/1130²⁵ (hereinafter, “Decree 86/1130”).

²³ Official Website of French Administration, *Paiement de l'amende forfaitaire*, available at: <http://vosdroits.service-public.fr/F18509.xhtml>.

²⁴ FBAA, *France*, available at : <http://www.fbaa.be/fr/default.asp?Id1=183&Id2=0&Id3=2&Id4=15&Title=France>.

²⁵ Decree of 17 October 1986 No. 86/1130, as amended by the Decree of 18 March 2008 No. 2008/269 and by the Decree of 23 July 2010 No. 2010/855, *Décret n° 86-1130 du 17 octobre 1986*

The Decree 86/1130 foresees different thresholds of penalties for the infringements of rules on driving times, breaks and rest periods. Those thresholds recalls the distinction between serious and very serious infringement set up in the Annex III of the Directive 2006/22/EC (in this paragraph, “the Directive”). On the one hand, if the driver has committed one of the serious infringements listed in the Annex III of the Directive, he will be considered as guilty of a petty offence of the IV class and punished with a fine up to 750 EUR.

On the other hand, if the driver has committed one of the very serious infringements listed in the Annex III of the Directive, he will be considered guilty of a petty offence of the V class and be punished with a fine up to EUR 1,500.

As to the subject to whom the penalties are applicable, Article 4 of the Regulation (EC) No. 561/2006 provides for the definition of driver and specifies that the sanctions apply to the driver and to the other people who have been driving the vehicle in case of double team. It does not apply to co-drivers.

Driving times

As to driving time rules, Article 3 foresees that if the driver has exceeded the daily driving time limits:

- up to 2 hours, is punished with a pecuniary sanction up to EUR 750 (Article 3, II, 2° lett. a);
- of a period exceeding 2 hours, he can be fined with a pecuniary sanction up to EUR 1,500 (Article 3, III, 1°).

If the driver has exceeded the weekly driving time:

- up to 14 hours, is punished with a pecuniary sanction up to EUR 750 (Article 3, II, 2° lett. b);

relatif aux obligations et aux sanctions applicables dans le champ de la réglementation sociale communautaire concernant les transports routiers et de l'accord EURpéen relatif au travail des équipages des véhicules effectuant des transports internationaux par route (AETR) du 1er juillet 1970, in OJ of 22 October 1986.

➤ of a period exceeding 14 hours, he can be fined with a pecuniary sanction up to EUR 1,500 (Article 3, III, 1°).

If the driver has exceeded the biweekly driving time:

➤ up to 22,30 hours, is punished with a pecuniary sanction up to EUR 750 (Article 3, II, 2° lett. c);

➤ of a period exceeding 22,30 hours, he can be fined with a pecuniary sanction from up to EUR 1,500 (Article 3, III, 1°).

Breaks

As to rules on breaks, Article 3, Paragraph II, 3° of the Decree 86/1130 foresees that if the driver has exceeded the *uninterrupted* driving time limits:

➤ up to 1,30 hours, he is punished with a pecuniary sanction from up to 750 EUR (Article 3, II, 2° lett. d);

➤ of a period exceeding 1,30 hours, he can be fined with a pecuniary sanction up to 1,500 EUR (Article 3, III, 1°).

Rest periods

As to rests periods, Article 3, Paragraph II, 3° of the Decree 86/1130 foresees that if the driver has not respected the rules on daily rest period:

➤ up to 2,30 hours, is punished with a pecuniary sanction up to 750 EUR (Article 3, II, 3° lett. a);

➤ of a period exceeding 2,30 hours, he can be fined with a pecuniary sanction up to 1,500 EUR (Article 3, III, 2°).

According to Article 3, II, 3° *lett.* a, b, c, the threshold is decreased to 2 hours in case of reduced, double team or split daily rest period.

If the driver has not respected the rules on the weekly rest period time:

➤ up to 9 hours, is punished with a pecuniary sanction up to 750 EUR (Article 3, II, 3° lett. d);

➤ of a period exceeding 9 hours, he can be fined with a pecuniary sanction up to 1,500 EUR (Article 3, III, 2°).

According to Article 3, II, 3^o *lett. e*, the threshold is decreased to 4 hours in case of reduced weekly rest period.

Recidivisms

According to Article 3, Paragraph IV, recidivism of petty offences of V class are regulated by Article 132-11 of the Penal Code for drivers and Article 132-15 for legal persons. They provide that if a regulation so provides, where a natural person who has already received a final sentence for a petty offence of the fifth class commits the same petty offence within a period of one year, the maximum fine is raised to EUR 3,000.

Transport manager/undertaking and principals liability

According to the principle of the individual nature of penalties set out in Article 121-1 of the Penal Code, the driver is generally deemed liable because no one is criminally liable except for his own conduct.

But, the Highway Code in its Articles from 121-1 to 121-5 foresees that for some specific infringements the driver, the transport manager i) and the principals ii) can be held jointly or separately liable.

1)Transport manager /undertaking liability.

According to Paragraph 3 of Article 10 of the Regulation (EC) No. 561/2006, the transport manager shall be held liable for infringements committed by the driver. In the French implementation of the Regulation, the transport manager may be held liable either because of its own fault (i) or because of its own negligence (ii).

(i) Article R. 121-2 of the Highway Code

Article R. 121-2 of the Highway Code foresees that the transport manager shall be held liable when he has given to the driver instructions in contrast with the rules contained in the Regulation (EC) No 561/2006, concerning driving times and weekly and daily rest periods.

The transport manager may be sanctioned with a fine of the fifth class up to EUR 1,500 for each employee and for each infringement.

(ii) Article L. 3315-6 of the Transport Code

According to Article L. 3315-6 of the Transport Code, the transport manager should be held liable even if he has not taken any measure in order to guarantee the respect of the Regulation.

In order to not to be held liable, the undertaking should prove that he fulfils at least three requirements: he has informed the employee about the content of the Regulation and encouraged him to comply with a), he has organised the activity accordingly b) and he has ensured the respect of the Regulation c).

Please note that pursuant to Article 121-2 of the Penal Code, legal persons, with the exception of the State, are criminally liable for the offences committed on their account by their organs or representatives. Therefore, the transport undertaking could be held liable for the offences committed by its manager. Please note that, pursuant to this Article, the criminal liability of legal persons does not exclude that of any natural persons who have committed the offence.

According to Articles 131-41 and 131-38 of the Penal Code either in case of petty offences or misdemeanours, the maximum amount of a fine applicable to legal persons is five times the fine applicable to natural persons by the law sanctioning the offence.

II) Principal's liability.

(i) Article R. 121-5 of the Highway Code

Article R-121-5 of the of the Highway Code foresees that even the transport principal (consignors, forwarding agent, charterer, representative, receiver), shall be held liable when he has given to the driver instructions in contrast with the rules contained in the Regulation (EC) No. 561/2006 concerning daily driving time limits. Unlike the employer, a principal cannot be inquired if the driver has not complied with the uninterrupted driving time or the daily rest periods set out in the legislation.

The transport principal may be sanctioned with a fine of fifth class up to 1,500 € for each driver and for each infringement²⁶.

²⁶ Institut Du Droit International Des Transports, *Analyse de la coresponsabilité des donneurs d'ordre aux transporteurs routiers de marchandises dans quatre pays de l'UE Allemagne -*

11.2.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)

Directive 2006/22/EC has been transposed by a Ministerial Decree of 9 May 2007²⁷ (hereinafter, the “Ministerial Decree on Control”).

The Ministerial Decree on Control addresses all the checks required on drivers, transport companies and vehicles which fall under the scope of Regulation (EEC) No. 3821/85.

The Ministerial Decree on Control contains several provisions regarding the check system, the number and the modalities of these controls, depending on the fact that they are carried out on the road (roadside checks) or at the transport operator premises²⁸.

Article 1 of the Ministerial Decree on Control, recalls the points that shall, in general, be covered by roadside checks, as listed in Annex I A of the Directive 2006/22/EC:

- daily and weekly driving times, breaks and daily and weekly rest periods;
- speed;
- the correct functioning of the recording equipment (determination of possible misuse of the equipment and/or the driver card and/or record sheets)

Espagne - France - Pays-Bas. available at : http://www.developpement-durable.gouv.fr/IMG/pdf/coresponsabilite29102007_cle5b71d3.pdf.

²⁷ Ministerial Decree of 9 May 2007, No. EQUX0710364A, as amended by the Ministerial Decree of 31 December 2009, *Transposant la directive 2006/22/CE du Parlement Européen et du Conseil du 15 mars 2006 établissant les conditions minimales à respecter pour la mise en oeuvre des règlements du Conseil (CEE) n° 3820/85 et (CEE) n° 3821/85 concernant la législation sociale relative aux activités de transport routier et abrogeant la directive 88/599/CEE du Conseil*, in OJ of 10 May 2007, No. 108.

²⁸ Article 5, Paragraph 1 of the Ministerial Decree on control envisages also the Authority which is competent for the coordination activities foreseen in Article 7 and 8 of the Directive 2006/22 is Ministry of Transport (*Direction des transports maritimes, routiers et fluviaux*).

or, where appropriate, presence of the documents referred to in Article 14 (5) of Regulation (EEC) No. 3820/85.

Article 2, Paragraph 2 of the Ministerial Decree, recalls the points that shall, in general, be covered at the premises of undertakings, as listed in Annex I B of the Directive 2006/22/EC:

- weekly rest periods and driving times between these rest periods;
- observance of the two-weekly limitation of driving times;
- record sheets, vehicle unit and driver card data and printouts.

Article 2, Paragraph 4 of the Ministerial Decree foresees that controllers have to assess whether according to Article R. 121-5 of the of the Highway Code even the transport principal (consignors, forwarding agent, charterer, representative, receiver) shall be held liable for the infringements detected.

More specifically, Article 2, Paragraph 4 of the Ministerial Decree, foresees that all the papers that can be interesting for checks, have to be recorded on an electronic and printable form and maintained by the transport operator for at least one year.

Article 3 foresees also rules on the number of checks to be carried out. It states that road checks and premises checks have to be organised in a way that the days checked are at least 2% of the working days. As from 1st January 2010 such percentage should amount to 3%.

Article 9 of the Ministerial Decree on Control foresees that infringements should be punished according to what is provided for in the Regulations (EC) No 561/2006 and (EEC) No 3821/85 and in the Highway Code, even if they have been committed in another Member State.

11.2.1.3 Directive 2002/15/EC

The Directive 2002/15/EC has been implemented by Legislative Decree of 26 January 1983 No. 83/40, (hereinafter, the “Legislative Decree 83/40”)²⁹ as modified by

²⁹ Legislative Decree of 26 January 1983, No. 83-40, *Décret n°83-40 du 26 janvier 1983 relatif aux modalités d'application des dispositions du code du travail concernant la durée du travail dans les entreprises de transport routier de marchandises*, in OJ of 27 January 1983.

Decree No. 2007/13³⁰ concerning working time of mobile staff in freight transport by road. The Legislative Decree 83/40 called “*Decret Fitchermann*” defines the methods for determining the amplitude of the working time period for the company’s drivers by the light of the general dispositions of the *Code du Travail*³¹(hereinafter, the “Labour Code”).

Article 5 of the Legislative Decree 83/40 recalls the definition of *active working time* foreseen in the Art L. 3121-1 of the Labour Code as “*the time in which the worker is at the employer’s disposal and has to comply with his orders without being free of doing his personal occupations*”. This article recalls exactly the definition from the Directive adding to this definition the time spent by a second driver in a running vehicle while he does not drive. This time is equally counted as working time³².

Article 5 of the Legislative Decree 83/40 set up different average weekly working time periods according to the type of worker concerned³³:

- 35 hours³⁴ for message and parcel delivery drivers and security company drivers;
- 43 hours for long distance drivers;
- 39 hours for short distance drivers³⁵.

³⁰ Decree of 4 January 2007 No. 2007/13, *Décret n° 2007-13 du 4 janvier 2007 relatif à la durée du travail dans les entreprises de transport routier de marchandises*, in OJ of 5 January 2007, No.4.

³¹ Ordinance of 12 March 2007, No. 2007-329. *Ordonnance n° 2007-329 du 12 mars 2007 relative au code du travail (partie législative)*.

³² TNO Report, *Road Transport Working Time Directive Self-employed and Night Time provisions*, available at: http://ec.europa.eu/transport/road/studies/doc/2006_12_road_working_time_annexes.pdf, page 29/30.

³³ According to the Legislative Decree 83/40, those average working time periods cannot exceed a maximum of:48 hours per week in a single week period of time; an average of 44 hours per week in a period of 12 weeks; an average of 46 hours per week in a period of 12 weeks.

³⁴ According to Art. L. 3121-22 of the Labour Code the legal working time period is of 35 hours a week.

³⁵ The worker belongs to one of those categories according the number of rests monthly taken out of the domicile: he is deemed to be a long distance driver if he has taken more than six.

The employer can make the personnel work for more than the average weekly working time, but he should respect the maximum weekly working time laid down in Article 5, 6° of the Legislative Decree 83/40³⁶:

- 48 hours for message and parcel delivery drivers and security company drivers;
- 52 hours for other rolling personnel;
- 56 hours for long and short distance rolling personnel.

According to Art. 11 of the Legislative Decree 83/40 in case of infringement of those provisions a pecuniary fine of petty offence of V class could be imposed for each worker and each period.

Moreover, the employer can make the personnel work for more than 35 hours only if each additional hour will be paid more than an ordinary one according to the specific collective agreement³⁷ and if he will benefit of a compensatory rest period as set out in Article 5, 5° of the Legislative Decree 83/40. According to Article 11 of the Legislative Decree 83/40, in case of infringement of those provisions, a pecuniary fine of petty offence of V class could be imposed for each worker and each period.

Pursuant to Article 7 Paragraph 2, the daily working time cannot in principle exceed 12 hours. However, under the conditions set up in Article 9, the daily working time can be prolonged for the execution of urgent works. According to Article 11 of the Legislative Decree 83/40, in case of infringement of those provisions, a pecuniary fine of petty offence of IV class could be imposed for each worker and each period.

Concerning the night work, pursuant to Article L. 213-11 of the Labour Code, any work being done for a transport operators between 22 p.m. and 5 a.m. should be considered as night work. However, with the collective agreement of 14 November

³⁶ According to the Legislative Decree 83/40, those average working time periods cannot exceed a maximum of: 48 hours per week in a single week period of time; an average of 44 hours per week in a period of 12 weeks; an average of 46 hours per week in a period of 12 weeks.

³⁷ Collective Agreement of 23 April 2002.

2011³⁸, this period has been extended in road transport to any work being done between 21 p.m. and 6 a.m.

Article 7 of Legislative Decree 83/40 provides that, in case the driver has carried out the night work, the daily working time cannot exceed 10 hours for each period of 24 hours. Moreover, in accordance with collective agreements, compensation for night work should be 20% more than the ordinary one and if it has been carried out for more than 50 hours in a month, the worker should receive an additional rest period corresponding to 5 % of the working time period. According to Article 11 of the Legislative Decree 83/40, in case of infringement of those provisions, a pecuniary fine of petty offence of IV class could be imposed for each worker and each period.

The employees benefit of a break of at least 30 minutes in case the daily total working time exceeds 6 hours and a break of at least 45 minutes in case the daily total working time exceeds 9 hours. The breaks should be divided in portions of at least 15 minutes. According to Article 11 of the Legislative Decree 83/40 in case of infringement of those provisions a pecuniary fine of petty offence of IV class could be imposed for each worker and each period.

Article 10, Paragraph 6, of the Legislative Decree 83/40 foresees that the working time of drivers has to be recorded. Furthermore, the employers have to precise in the salary slip each month the driving time period, the availability time period, the time spent in other activities different from driving and which hours have been paid at an ordinary tariff or not.

According to Art. 11 of the Legislative Decree 83/40 in case of infringement of those provisions a pecuniary fine of petty offence of IV class could be imposed for each worker and each period.

Transport manager/undertaking's liability

Article R-121-2 of the Highway Code foresees that the transport manager shall be held liable when he has given to the driver instructions in contrast with the rules concerning the daily working time period set out in Article 7 of the Legislative Decree

³⁸ Collective agreement of 14 November 2011, *Convention collective nationale des transports routiers et activités auxiliaires du transport du 21 décembre 1950 - Travail de nuit Accord du 14 novembre 2001*.

83/40 and the weekly working time period set up in Article L. 212-7 of the Labour Code.

The transport undertaking may be sanctioned with a fine of fifth class up to 1.500 € for each employee and for each infringements.

Please note that pursuant to Article 121-2 of the Penal Code, legal persons, with the exception of the State, are criminally liable for the offences committed on their account by their organs or representatives. Therefore, the transport undertaking could be held liable for the offences committed by its manager. Please note that, pursuant to this Article, the criminal liability of legal persons does not exclude that of any natural persons who are perpetrators or accomplices to the same act.

According to Articles 131-41 and 131-38 of the Penal Code either in case of petty offences or misdemeanours, the maximum amount of a fine applicable to legal persons is five times that applicable to natural persons by the law sanctioning the offence.

Transport principal's liability

Article R. 121-5 of the of the Highway Code foresees that even the transport principal (consignors, forwarding agent, charterer, representative, receiver), shall be held liable when he has given to the driver instructions in contrast the with the rules concerning the daily working time period set out in Art 7. par 2. of the Legislative Decree 83/40.

The transport principal may be sanctioned with a fine of fifth class up to 1.500 € for each driver and for each infringements.

Recidivisms

According to Article 3, Paragraph IV recidivism of petty offences of V class are regulated by Article 132-11 of the Penal Code for drivers and Article 132-15 for legal persons. They provide that if a regulation so provides, where a natural person who has already received a final sentence for a petty offence of the fifth class commits the same petty offence within a period of one year, the maximum fine is raised to EUR 3,000.

11.2.2 Tachograph

11.2.2.1 Regulation (EEC) No 3821/85

Sanctions for infringements against Regulation (EEC) No 3821/85 are contained partly in Article 3 of the Decree 86/1130 and partly in Articles L. 3315-4 and L. 3315-5 of the Transport Code.

(ii) Article 3 of the Decree 86/1130

The Decree 86/1130 foresees three different kind of sanctions for the infringements against Regulation (EEC) No 3821/85 according to the seriousness of the infringement concerned. This distinction recalls the classification between minor, serious and very serious infringement laid down in the Annex III of the Directive No. 2009/5.

➤ If the driver has committed one of the minors infringements listed in the Annex III of the Directive he will be considered guilty of a petty offence of the III class and punished with a fine up to 450 EUR. As laid down in Article 3, I, 1°, for example, not carrying enough paper for printouts and using dirty or damaged record sheets not adequately protected are two minor infringements punished with a fine up to 450 EUR.

➤ If the driver has committed one of the serious infringements listed in the Annex III of the Directive he will be considered guilty of a petty offence of the IV class and punished with a fine up to 750 EUR. As outlined in Article 3, II, 4°, for example, not carrying a sufficient number of record sheets or using the record sheet or the driver card to cover a period longer than intended, are two serious infringements punished with a fine up to 750 EUR.

➤ If the driver has committed one of the very serious infringements listed in the Annex III of the Directive he will be considered guilty of a petty offence of the V class and punished with a fine up to 1,500 EUR. As set out in Article 3, III, 3°, for example using more record sheets in a day without a legitimate reason or not keeping record sheets, printouts and downloaded data

for at least one year are deemed to be very serious infringements and therefore are punished with a fine up to 1,500 EUR.

As set out in Articles 131-12 and 131-13 of the Penal Code, this amount can be increased to EUR 3,000 in the case of a persistent offender and sometimes those penalties can be accompanied by the imposition of one or more of the additional penalties.

According to Article 131-41 of the Penal Code the maximum amount of a fine applicable to legal persons is five times that applicable to natural persons by the law sanctioning the offence.

(iii) Articles L. 3315-4 and L. 3315-5 of the Transport Code

Articles L. 3315-4 and L. 3315-5 of the Transport Code foresees which ones among the very serious infringements listed in the Annex, are the most serious infringements against Regulation (EEC) No 3821/85 and therefore, because of their seriousness should be classified as misdemeanours.

According to Article 381 of the Code of Criminal Procedure, misdemeanours are the offences the law assessed by correctional court judges. Sanctions incurred are ordinary imprisonment or a fine from EUR 3,750 up to EUR 15,000.

Articles L. 3315-4 of the Transport Code foresees a sanction of one year of prison and 30,000 EUR of fines for a list of misdemeanours consisting of:

- falsifying, suppressing and destroying data recorded and give those false information;
- manipulating of the device or of the recording equipment;
- having no device installed.

If the manipulation of the device has affected its functioning or if the device has not been installed there will be an immobilisation of the vehicle until it is regularised. This immobilisation is legitimate by Article 131-6, 10 of the Penal Code because the device is deemed to be a tool used in order to make the infringement.

Articles L. 3315-5 of the Transport Code foresees a sanction of six months of prison and 3,750 EUR of fines for all misdemeanours consisting of :

- refusing to be checked and to give sheets or data;
- driving with a defective or expired driving card or which is not the driver's own valid card.

Moreover, Article 131-38 of the Penal Code, foresees that as for petty offences, in case of misdemeanours, the maximum amount of a fine applicable to legal persons is five times that applicable to natural persons by the law sanctioning the offence.

11.3 Road package

The French legislation has implemented the Road Package consisting of Regulations (EC) No 1071/2009, 1072/2009 and 1073/2009, through the adoption of the Decree No. 2011/2045 of 28 December 2011 (hereinafter, the “Decree 2011/2045”)³⁹. The Decree 2011/2045, into force from last 31 December, has partially modified the existing legislation regulating the road transport of goods and persons (Decree of 16 August 1985, No. 85/891 and Decree of 30 August 1999, No. 99/752⁴⁰).

A Ministerial Order⁴¹ (hereinafter, “the Ministerial Order”) has been adopted by the French Ministry of Transport in order to clarify the rules of the Decree 2011/2045

³⁹ Decree of 28 December 2011 No. 2011/2045, *Décret portant diverses dispositions relatives à l'accès à la profession de transporteur routier et à l'accès au marché du transport routier* in OJ of 30 décembre 2011 No. 302.

⁴⁰ Decree of 16 August 1985 No. 85/891, as amended by the Decree of 29 February 1988 No. 88/199, by the Decree of 3 July 1992 No. 92/608, by the Decree of 11 December 2007 No. 2007/1743, by the Decree of 20 May 2010 No. 2010/524 and by the Ordinance of 28 October 2010 No. 2010/1307, *Décret relatif aux transports urbains de personnes et aux transports routiers non urbains de personnes*, in OJ of 23 August 1985; Decree of 30 August 1999 No. 99/752, as amended by the Decree of 9 May 2007 No. 2007/751, *Décret relatif aux transports routiers de marchandises*.

⁴¹ Ministerial Order of 28 December 2011, No. TRAT1131810A, *Arrêté du 28 décembre 2011 relatif aux sanctions administratives applicables aux entreprises de transport routier et à l'honorabilité professionnelle dans le secteur du transport routier*.

concerning the administrative sanctions that can be imposed to some companies or their managers in case of serious infringements to the rules set up by the Road Package.

According to the Ministerial Decree the competent authority is the Prefect of the Region.

11.3.1 Regulation (EC) No 1071/2009

According to the Article 3 of the Regulation (EC) No 1071/2009 companies should prove that they fulfill four requirements in order to access to the profession: namely, the establishment in a Member State, an appropriate financial standing, a good repute and the professional competence. In this respect, Article 13 of the Regulation foresees that where the Prefect establishes that one or more of those requirements is no longer satisfied or that some fake documents have been submitted as proofs of the fulfillment of the conditions, the company has a six months delay starting from the formal notice of the Prefect in order to rectify the situation. Moreover, Article 9, Paragraph 5, of the Decree 99/752 foresees that in case of death or physical incapacity of the person running the transport activity, the company has a nine months delay in order to rectify the situation.

According to the same Paragraph, when the company has not rectified his situation in this delay, their professional authorisation can be suspended for a period of time up to six months. If after the suspension period the company is still not fulfilling the requirements, the Prefect can make the decision to withdraw the authorisation permanently. Moreover, Paragraph 4 of the same Article, draws a list including cases where the withdrawal of the authorisation is imposed. For instance, the authorisation is withdrawn when the company has closed down, or, the establishment has disappeared or the company hasn't had for more than one year any certified copies of the licence.

According to Article 6 of the Regulation (EC) No 1071/2009, the competent Authority of the Member State can decide the loss of good repute for the transport manager or the transport undertaking when he has been convicted of a serious criminal offense or incurred a penalty for one of the most serious infringements of Community rules in one or more Member States as set out in Annex IV.

In the French legislation this Article has been implemented in Article 7, Paragraph 2 of the Decree 99/752, which draws a list including the situations that could lead to the loss of good repute⁴² notably, if the transport manager/operator has been subject to:

- a) prohibition to carry out a commercial, industrial activity;
- b) multiple condemnations for certain serious misdemeanours foreseen:

- in the Penal Code (as for example acts of violence that would or might endanger the lives of persons or affect their personal integrity unintentionally causing work disability⁴³;

- in the *Code du Commerce*⁴⁴ (as for example bankruptcy Article L. 654-4)⁴⁵;

- in the Labour Code (as for example illegal subcontracting or illegal supply of workers)⁴⁶;

- in the Highway Code (for example, the transport of passengers or goods without holding a valid driving licence corresponding to the category of the vehicle or the obtaining of the driving licence through fake declarations)⁴⁷;

- in the Transport Code (for instance the transport of dangerous goods that are prohibited for transportation, or in a prohibited or non approved means of containment or without identifying them)⁴⁸;

⁴² Article 6, Paragraph 2, Decree of 16 August 1985, No. 85/891; Article 7, Paragraph 2, Decree of 30 August 1999, No. 99/752.

⁴³ Articles 221-6-1, 222-19-1, 222-20-1, from 222-34 to 222-42, 223-1, from 225-4-1 to 225-4-7, from 314-1 to 314-4, 314-7, from 321-6 to 321-12 and 521-1 of the Penal Code.

⁴⁴ Ordinance of 18 September 2000 No. 2000-912, *Ordonnance n° 2000-912 du 18 septembre 2000 relative à la partie Législative du code de commerce*, in OJ of 21 September 2000 No. 219.

⁴⁵ Articles from L. 654-4 to L. 654-15 of the Code de Commerce.

⁴⁶ Articles from L. 5224-1 to L. 5224-4, L. 8114-1, from L. 8224-1 to L. 8224-6, L. 8234-1 and L. 8234-2, L. 8243-1 and L. 8243-2, from L. 8256-1 to L. 8256-8 of the Labor Code.

⁴⁷ Articles L. 221-2, L. 223-5, from L. 224-16 to L. 224-18, L. 231-1, L. 233-1, L. 233-2, L. 234-1, L. 234-8, L. 235-1, L. 235-3, from L. 317-1 to L. 317-4, L. 325-3-1, L. 412-1 and L. 413-1 of the Highway Code.

⁴⁸ Articles from L. 1252-5 to L. 1252-7, from L. 3242-2 to L. 3242-5, from L. 3315-4 to L. 3315-6, L. 3452-6, L. 3452-7, L. 3452-9 and L. 3452-10 of the Transport Code.

- in Article L. 541-46 , I, 5 of the Code de l'environnement.⁴⁹
- c) multiple fines for the infringements of the provisions listed in:
 - Art. R. 323-1 of the Highway Code. This Article forbid driving without a valid road worthiness certificate or with a very serious deficiency.
 - Articles R. 312-2 and 312-4 of the Highway Code. This Article forbid carrying goods exceeding the maximum permissible laden mass by 20 % or more for vehicles the permissible laden weight of which exceeds 12 tons, and by 25 % or more for vehicles the permissible laden weight of which does not exceed 12 tones.
 - Articles 22 and 23 of the Decree of 11 September 2007 No. 2007/1340⁵⁰. Pursuant to Article 22 it is forbidden for the employer not to have made the driver for which he is responsible, comply with the obligations of initial qualification and of lifelong training. Pursuant to Article 23 it is forbidden for the driver not to provide immediately or in the following five days to agents documents proving that he has complied with the obligations of initial qualification and of lifelong training.
 - Article 3, Paragraph III of the Decree 86/1130⁵¹ which foresees sanctions for the infringements of rules on driving time, breaks and rest periods that should be classified as petty offences of V class.

⁴⁹ Ordinance of 18 September 2000 No. 2000/914, *Ordonnance no 2000-914 du 18 septembre 2000 relative à la partie Législative du code de l'environnement* in OJ of 21 September 2000 No. 219.

⁵⁰ Decree of 11 September 2007 No. 2007/1340, as modified by the Decree of 24 August 2010 No. 2010/931, *Décret n°2007-1340 du 11 septembre 2007 relatif à la qualification initiale et à la formation continue des conducteurs de certains véhicules affectés aux transports routiers de marchandises ou de voyageurs*, in OJ of 13 September 2007 No 212.

⁵¹ Decree of 17 October 1986 No. 86/1130, as amended by the Decree of 18 March 2008 No. 2008/269 and by the Decree of 23 July 2010 No. 2010/855, *Décret n° 86-1130 du 17 octobre 1986 relatif aux obligations et aux sanctions applicables dans le champ de la réglementation sociale communautaire concernant les transports routiers et de l'accord EURpéen relatif au travail des équipages des véhicules effectuant des transports internationaux par route (AETR) du 1er juillet 1970*, in OJ of 22 October 1986.

The duration of the loss of good repute should be proportionate and cannot exceed a period of two years where the person is liable for contraventions and of three, five or ten years if he is liable for offenses⁵².

Pursuant to Article 2 of the Ministerial Order, the Prefect can order the immobilisation up to three months of one or more vehicles of the company when he certifies that at least one of the offences⁵³ listed in Article 7, Paragraph 2 of the Decree 99/752 has been committed with other crimes⁵⁴.

In this respect, Article 2 specifies that this measure shall apply to all the companies of road public transport of people and goods and that this measure can be taken together with the withdrawal of the licence.

11.3.2 Regulations (EC) No 1072/2009 and No 1073/2009

Some relevant provisions implementing Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009 are contained in Article 1 of the Ministerial Order. Such Article states *inter alia* that according to Article 12 of the Regulation (EC) No 1072/2009 and to Article 22 of the Regulation (EC) No 1073/2009, the Prefect of the region can, after an action of warning, set up a temporary or permanent withdrawal of the Community licence and of the certified copies, when a company is liable of repeating⁵⁵ the infringements listed in the Annex IV of the Regulation (EC) No 1071/2009.

Article 4 of the Ministerial Order foresees that according to Article 13 of the Regulation (EC) No 1072/2009 and to Art. 23 of the Regulation (EC) No 1073/2009 the Prefect can forbid a company which is not established in France from making *cabotage*.

⁵² Penal Code, Article 133-12.

⁵³ Article 6, Paragraph 2, Decree of 16 August 1985, No. 85/891; Article 7, Paragraph 2, Decree of 30 August 1999, No. 99/752.

⁵⁴ Article 44-1, Decree of 16 August 1985, No. 85/891; Article 18, Decree of 30 August 1999, No. 99/752.

⁵⁵ Article 44-1, Decree of 16 August 1985, No. 85/891; Article 18, Decree of 30 August 1999, No. 99/752.

In this respect, Article 18-1 of the Decree No. 99/752 and Article 44-1 of the Decree No. 85/891 clarify that this interdiction cannot exceed the period of one year.

For the specific sanctions for infringements of the rules of Regulation (EC) No 1072 and No 1073/2009 please refer to the summary tables below.

11.4 Standards of vehicles and load and necessary licences

11.4.1 Directive 2008/68/EC

The Ministerial Decree TDM of 29 May 2009⁵⁶ (hereinafter, the “Ministerial Decree TDM”) has implemented Directive 2008/68/EC on the inland transport of dangerous goods.

Article 1 of the Ministerial Decree TDM states that it applies to the transport of dangerous goods by road, rail or inland - waterway.

The transport of dangerous goods, according to Article 3 of the same piece of legislation, should be authorized by the French competent Authority under certain conditions which are set out in the Annexes. Especially, Annex I of the Ministerial Decree TDM deals with the transport of dangerous goods by road and complement the provisions set out in the Annexes A and B of the EURpean Agreement Concerning the international carriage of Dangerous Goods by Road⁵⁷ with some others detailed rules concerning the application of such provisions in France.

⁵⁶ Ministerial Decree TDM of 29 May 2009, NOR: DEVP0911622A , *Arrêté du 29 mai 2009 relatif aux transports de marchandises dangereuses par voies terrestres (dit « arrêté TMD »)* , in OJ of 27 June 2009, No. 0147.

⁵⁷ EURpean Agreement Concerning the international carriage of Dangerous Goods by Road, *Accord EURpéen relatif au transport international des marchandises Dangereuses par Route (ADR)*, available at: http://www.unece.org/trans/danger/publi/adr/adr_e.html.

When these conditions are infringed, the French law provides for pecuniary sanctions, the immobilisation of the vehicle and, in some cases, the arrest of the subject having infringed the law.

The Legislative Decree No. 77/1331 of 30 November 1977⁵⁸ (hereinafter, the “Legislative Decree 77/1331”) provides for all the sanctions that should be applied in case of infringement of the rules on transport of dangerous goods.

According to Art. 1 of the Legislative Decree 77/1331, all the violations to the rules on transport of dangerous goods by road concerning labelling; packaging; packaging or mixed loading prohibition; weight limits; safety equipment, signalling, parking and monitoring of vehicles, vehicles papers should be classified as petty offences of V class.

According to Art. 1 *bis* of the Legislative Decree 77/1331, all the infringement classified by the Annex I of the Ministerial Decree TDM as belonging to risk category I or II should be punished with the vehicle immobilisation (and the obligation to regularize the situation before continuing the trip).

According to Article 5.4, all infringements causing a high risk of death or serious corporal or environmental damages belong to *Risk Category I*. Appropriate measures should be immediately taken. Moreover, the Article draws a list of infringements belonging to this category, as for example any leak of dangerous substances or the non respect of the prohibition of smoking.

All infringements that cause corporal or environmental damages belong to *Risk Category II*. Appropriate corrective measures should be taken in order to regularize the situation even if there isn’t any immediate danger. Moreover, the Article draws a list of infringements belonging to this category as for example a vehicle not properly parked or monitored, or substances carried in a container not in good conditions.

Other sanctions concerning the transport of dangerous goods are listed in the Transport Code. Article L. 1252-5 of the Transport Code draws a list of criminal

⁵⁸ Legislative Decree No. 77/1331 of 30 November 1977, as amended by Decree of 18 July 1980 No. 80/567, by the Decree of 11 September 1985 No. 85/956, by the Decree of 29 December 1989 No. 89-989, by the Decree of 29 March 1993 No. 93-726, *Décret n°77-1331 du 30 novembre 1977 relatif à certaines infractions à la réglementation sur le transport des matières dangereuses*, in OJ of 6 December 1977.

offences which are punished with a year of imprisonment and a fine of 30,000 EUR, notably in case of:

- unauthorised transport of certain dangerous substances;
- circulation of dangerous substances in containers laid out for carrying this type of substances and not satisfying the requirements of the tests;
- carrying dangerous substances in a place where they cannot be carried;
- carrying dangerous substances without any kind of indication on the vehicle papers or on the packaging or on the containers where such indication are required;
- carrying dangerous substances without any kind of exterior signalisation.

Article L. 1252-7 of the Transport Code foresees the same sanctions for principals or employers that have committed one of the above infringements. They are also deemed liable when they did not act in order to make the driver respect the rules. Article L. 1252-6 of the Transport Code foresees the same type of sanction for a transport manager who has not appointed a security advisor.

11.4.2 Directive 96/53/EC

The Directive 96/53/EC, laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, has been directly implemented in the provisions of the Highway Code.

In particular, the provisions concerning the weight set for in the Annex I of the Directive have been implemented into the provisions of the Highway Code from Article R. 312-1 to R. 312-6. Article R. 312-4 foresees sanction for infringements of the weight limits for vehicles, combinations of vehicles and moped set out in Annex I. Articles R. 312-5 and R. 312-6 envisage sanctions for violations of the maximum authorised axle weight for vehicles with one or more axles.

The provisions concerning the dimension limitation (length and width) have been implemented into the provisions of the Highway Code from Art. R. 312-10 to R. 312-13. Article R. 312-10 and R. 312-11 foresee the sanction related to the infringements of the maximum authorised width and length set out in Annex I for vehicles. Article R. 312-12, on the contrary, provides for specific sanctions related to the infringement of maximum authorised dimensions for road trains.

The Highway Code does not provide for any kind of limitation related to height except for Article R 312-16 dealing with moped.

The Highway Code envisages for all infringements a similar sanction that consists in:

- a fine of up to 750 EUR for petty offences of IV class if the excessive weight or dimensions are less than 20% of the limitation provided for in the Annex I;
- if the exceeding weight or dimensions are more than 20% of the limitations there can be a multiplication of the fine proportional to the exceeding part or a fine of up to 1500 EUR for petty offence of V class.

In addition, the relevant provisions of the Highway Code foresee that if the weight of the vehicle exceeds more than 5% of the thresholds foreseen by the law an immobilisation of the vehicle can be applied according to the rules set in Article 325-1 of the Highway Code.

The Code does not provide for any kind of overload tolerance. When the infringement is punished with V class petty offences a sanction of V class for petty offences, the fine may reach the amount of 3000 EUR in the event of recidivism as provided for in Art. 132-11 of the Penal Code.

The Articles R. 312-20 and R. 312-21 of the Highway Code envisage specific limitations concerning the dimensions of the charge even if they are not foreseen by the Directive. A fine of up to 750 EUR for petty offence of IV class is applied if the excessive weight or dimensions are less than 20% of the limitation provided for in the Code. If the exceeding weight or dimensions are more than 20% of the limitations, a multiplication of the fine proportional to the exceeding part or a fine of up to 1500 EUR for petty offence of V class may be applied.

Transport manager/undertaking's liability

Article R-121-2 of the Highway Code foresees that the transport manager shall be held liable when he has given to the driver instructions against the rules on weight limitations.

The transport manager may be sanctioned with a fine of fifth class of up to 1.500 € for each employee and for each infringements.

Please note that pursuant to Article 121-2 of the Penal Code, legal persons, with the exception of the State, are criminally liable for the offences committed on their account by their organs or representatives. Therefore, the transport undertaking could be held liable for the offences committed by its manager. Please note that, pursuant to this Article, the criminal liability of legal persons does not exclude the liability of any natural persons who are perpetrators or accomplices to the same act.

According to Articles 131-41 and 131-38 of the Penal Code, either in case of petty offences or misdemeanours, the maximum amount of a fine applicable to legal persons is five times the one applicable to natural persons by the law sanctioning the offence

Transport principal's liability

(i) Article R-121-5 of the Highway Code

Article R. 121-5 of the of the Highway Code foresees that even the transport principal (consignors, forwarding agent, charterer, representative, receiver) shall be held liable when he has given the driver instructions against the rules on weight limitations.

The transport principal may be sanctioned with a fine of fifth class of up to 1,500 € for each driver and for each infringements.

(ii) Article R-121-4 of the Highway Code

Article R-121-4 of the of the Highway Code foresees that even the transport principal (consignors, forwarding agent, charterer, representative, receiver) shall be held liable when he has provoked an infringement of weight limitations through a false declaration of the weight of the vehicle.

The transport principal may be sanctioned with a fine of fifth class of up to 1,500 € for each driver and for each infringement⁵⁹.

11.4.3 Directive 2009/40/EC

The Directive 2009/40/EC has been implemented by different Ministerial Decrees concerning vehicles exceeding or not 3,5 tons.

The relevant rules on roadworthiness tests for vehicles not exceeding 3,5 have been introduced by the Ministerial Decree of 18 June 1881⁶⁰ and implemented in Article R. 323-1 of the Highway Code. According to this Article the owner of the vehicle should be held liable of a petty offence of IV class if the vehicle or its mutations have not been submitted to a roadworthiness test. Moreover, the immobilisation of the vehicle (Art. 325-1 of the Highway Code) and a confiscation of the registration document may be ordered. The confiscation of the vehicle may be foreseen when the owner refuses to take the test or if the modifications prescribed by the expert are not fulfilled.

The relevant rules on roadworthiness tests for vehicles exceeding 3,5 tons have been introduced by the Ministerial Decree⁶¹ of 27 July 2004, and implemented in Article R. 323-25 of the Highway Code. According to this Article the owner of the vehicle should be considered liable of a petty offence of IV class if the vehicle or its

⁵⁹ Institut Du Droit International Des Transports, *Analyse de la coresponsabilité des donneurs d'ordre aux transporteurs routiers de marchandises dans quatre pays de l'UE Allemagne - Espagne - France - Pays-Bas*, available at : http://www.developpement-durable.gouv.fr/IMG/pdf/coresponsabilite29102007_cle5b71d3.pdf.

⁶⁰ Ministerial Decree of 18 June 1991, NOR: EQU9100958A, as amended by the Ministerial Decrees of 13 October 2006, of 7 May 2007, of 14 October 2009, of 23 February 2010, of 16 July 2010, of 9 June 2011, of 18 February 2011, *Arrêté du 18 juin 1991 relatif à la mise en place et à l'organisation du contrôle technique des véhicules dont le poids n'excède pas 3,5 tonnes* in OJ 18 July 1991 No. 166.

⁶¹ Ministerial Decree 27 July 2004 NOR: EQU0401066A, as amended by the Ministerial Decrees of 23 February 2010, of 14 October 2009, of 16 July 2010, of 9 June 2011, of 18 February 2011, and by the Decree of 9 February 2009 No. 2009/136, *Arrêté du 27 juillet 2004 relatif au contrôle technique des véhicules lourds*, in OJ of 5 September 2004 No. 207.

mutations have not been submitted to a roadworthiness test. Moreover, the immobilisation of the vehicle (Art 325-1 of the Highway Code) and a confiscation of the car registration document may be ordered. The confiscation of the vehicle may also be foreseen when the owner refuses to take the test or if the modifications prescribed by the expert are not fulfilled.

11.4.4 Directive 2006/126/EC

Directive 2006/126/EC has been implemented by the Legislative Decree No. 2011-1475 of 9 November 2011⁶² that has modified some provisions of the Highway Code. It introduces a new model of driving licence from January 2013 and harmonizes, in particular, the rules concerning the validity of driving licences, their renewal and categories of vehicles whose conduct is allowed.

However, this Decree will not modify the existing sanctions provided for infringements concerning the driving licence foreseen of the Highway Code.

All the infringements which could be relevant for the Study will not be analysed in the present paragraph but they are contained in the tables below provided in 6 of this Chapter. The table will provide the state of play of the sanction system set out in the Highway Code, together with the relevant changes which will enter into force starting from 2013.

That said, we would highlight in this paragraph that some general principles of the Highway Code that are relevant for infringement of the French rules transposing EU rules on driving licences.

The Highway Code foresees on the one hand i) sanctions for misdemeanours in case of more serious infringements and on the other hand ii) sanctions for petty offences in case of less serious infringements.

First, for what concerns misdemeanours, Article L. 221-2 foresees the sanction of a fine up to 15,000 EUR and 1 year of prison for misdemeanours consisting of

⁶² Legislative Decree of 9 November 2011 No. 2011-1475 *portant diverses mesures réglementaires de transposition de la directive 2006/126/CE relative au permis de conduire* in OJ of 10 November 2011 No. 0261.

driving without a driving licence. According to Article 132-10 of the Penal Code, in case of recidivism within a period of 5 years, the amount of the punishment will be doubled. Some additional sanctions may be imposed such as the confiscation of the vehicle, the community work (as provided for in the Article 131-8 of the Penal Code), day-fine penalty as provided for in article 131-5 of the Penal Code), the prohibition from driving this type of vehicle for more than 5 years, road safety awareness work, and immobilisation of the vehicle.

Other misdemeanours are foreseen in Articles L. 233-1 and L. 233-2 in case a driver refuses to stop or to submit himself or the vehicle to any kind of verifications. They are punished with a fine of up to 3,750 EUR and 3 months of prison. Some additional penalties may be imposed, such as the suspension of the driving licence for up to 3 years, the community work, day-fine penalty, and the removal of half of the points of the driving licence.

However, if the driver's behaviour causes permanent disability or death, the sanction will increase to a fine of up to 75,000 EUR and 5 months of prison. Some additional penalties may be imposed, as the suspension of the driving licence for up to 5 years, the cancellation of the driving licence, the confiscation of the vehicle, the prohibition to keep weapons, and the removal of half of the points of the licence.

Articles L. 223-5, L. 224-16, L. 224-17, L. 224-18 foresee a sanction of 2 years of prison and a fine of up to 4500 EUR for other misdemeanours consisting of: driving with a licence obtained through a fraudulent misrepresentation; violating a decision of confiscation, retention or cancellation of a driving licence or of prohibition from holding a driving licence for a period of time; refusing to provide the driving licence to the authority after a decision of suspension, confiscation or cancellation of the driving licence or implying the total loss of points.

For what concerns petty offences, Article R. 221-2 foresees the sanction for petty offences of fourth class consisting of driving with a driving licence not corresponding to the category of the vehicle, with a driving licence not valid (not renewed or expired) or not complying with the conditions of use. The driver will be punished with a fine up to 750 EUR and some additional penalties such as the immobilisation of the vehicle; the prohibition from driving this type of vehicle for up to

3 years, the suspension of the driving licence up to three years; road safety awareness work, or three points removed from the driving licence.

11.5 Notion of criminal sanction and of administrative sanction in the French legal system

Criminal sanctions have been described in the first paragraph of this Chapter.

Therefore this paragraph will focus on administrative sanctions and on the difference between criminal and administrative sanctions in the French legal system.

Administrative Sanctions

In the French system, there is no legal framework or code dealing with administrative sanctions, because they may vary according to the domain considered⁶³.

For example more condemnations for serious infringements may lead to: a) the suspension or withdrawal of the company authorisation; b) the immobilisation of the vehicle⁶⁴; c) the suspension or withdrawal of the driving licence; d) the removal from the carrier registry; e) the loss of good repute, f) the *cabotage* interdiction and g) the removal of points of the driving licence.

a) Suspension or withdrawal of authorisation to pursue the occupation of road transport operator.

According to Article 9-5 of the Legislative Decree of 30 August 1999 No. 99-752 when a company is not fulfilling the requirements for the access to the profession of transport operator and has not regularised its situation within the six months or has provided misleading declarations, the Prefect may decide to suspend its authorisation to pursue the occupation of road transport operator (hereinafter, “Authorisation”) temporarily or to withdraw it.

⁶³ Maison du droit Vietnamo-Française, *L’articulation entre sanctions administratives et pénales*, available at : http://www.maisondudroit.org/files/upload/2-Notes_Sanctions_administratives1.pdf.

⁶⁴ These measures have been embodied in the Decree of 16 August 1985 No. 85-891 *relatif aux transports urbains de personnes et aux transports routiers non-urbains de personnes* and in the Decree of 30 August 1999 No. 99-752 *relatif aux transports routiers de marchandises*.

According to Paragraph 5 of the same Article, if the authorisation is withdrawn definitely, the driving licence will be suspended and the company will be unsubscribed from the carrier registry.

Pursuant to Article 9-5, Paragraph 3 of the Legislative Decree of 30 August 1999 No. 99-752, the suspension of the driving licence is foreseen if the transport manager is not fulfilling the requirements or has provided fake declarations six months after the suspension of the authorisation to pursue the occupation of road transport operator.

Article 18 Paragraph 3 of the same Decree foresees the suspension and eventually revocation after 5 years of the certified copies of the driving licence or of other dispatch documentation in the event of repeated serious infringements Annex IV.

b) Immobilisation of the vehicle

The immobilisation of the vehicle is provided by Art. L. 325-1 Art. L. 325-11 of the Highway Code for vehicle in poor conditions (Article R. 311-3 Highway Code), missing documents (Art. L. 3242-1 Transport Code), vehicle equipment defects (Article L. 317-1 Highway Code), of a vehicle incurring in a confiscation (Article R. 325-1-1 Highway Code), wrong registration certificate and plate (Article R. 317-8, 332-3, 322-5 Highway Code).

According to Article R. 523-2 of the Highway Code, the release of a vehicle which has been submitted to a measure of immobilisation will be sanctioned with a fine up to 750 EUR (IV class).

According to Article L 325-3-1 of the Highway Code, if the driver makes obstacles to the immobilisation of the vehicle, he is to be punished with 3 months of prison and a fine of up to 3,750 EUR. Moreover his driving licence may be suspended for up to 3 years and he may be sentenced to community works⁶⁵ and daily fines⁶⁶.

c) Suspension or withdrawal of driving licence

Article L. 224-1 of the Highway Code foresees that the law enforcement authorities may decide to suspend the driving licence for driving under the influence of alcohol for a period up to 72 hours until the Prefect's decision.

d) Removal from the carrier registry

⁶⁵ Article 131-8 of the Penal Code.

⁶⁶ Articles 131-5 and 131-25 of the Penal Code.

A decision to withdraw the authorisation always implies the removal of the company from the carrier registry.

e) Loss of good repute (Article 7 of the Legislative Decree of 30 August 1999 No. 99-752).

f) Cabotage Prohibition (Article 18-1 of the Legislative Decree of 30 August 1999 No. 99-752).

g) Removal of the points from the driving licence (see ex. Article L 317-3 of the Highway Code).

Concurrence of offences

There is a concurrence of offences where an offence is committed by a person before having been finally convicted for another offence.

Pursuant to Article 132-3 of the Penal Code, where in the course of the same proceeding, the accused person is found guilty of several concurrent offences, each of the penalties applicable may be imposed. Nevertheless, where several penalties of a similar nature are incurred, only one such penalty may be imposed within the limit of the highest legal maximum.

Pursuant to Article 132-3 of the Penal Code, on the contrary, where, in the course of separate proceedings, the person prosecuted is convicted of several concurrent offences, the penalties imposed operate cumulatively, up to the limit of the highest legal maximum.

Accumulation of administrative and criminal sanction

As administrative and criminal sanction do not have the same objective, the principle of *non bis in dem*, according to which anyone cannot be condemned twice for the same facts, does not prevent the application of criminal and administrative sanctions to the same infringement. Therefore, the same facts may be both punished with an administrative and a criminal sanction.

However, the accumulation has been regulated by the Constitutional Council⁶⁷ on the basis of the principle of proportionality of punishments set out in Article 8 of the

⁶⁷ Constitutional Council, 30 December 1997 No. 97-395 DC.

Declaration of the rights of the Man and of the Citizen. According to this case law, the total amount of punishments that may be pronounced cannot exceed the maximum amount of one of the incurred punishments.

Moreover, according to Article L. 224-9 of the Highway Code, in the highway transport sector, the length of the period of suspension of the driving licence shall be assessed by the criminal judge. Article 111-5 of the Penal Code foresees that the appreciation of facts of a criminal judge is autonomous and will affect the interpretation of the administration⁶⁸.

Differences between administrative and criminal sanction

In the French system, there are no legal framework or code dealing with administrative sanctions because they may vary according to the domain considered.

A notion of administrative sanction has not been unanimously adopted by the French Courts⁶⁹. Nevertheless, the case law has agreed on a bundle of criteria used in order to differentiate an administrative from a criminal sanction⁷⁰.

➤ The sanctions are pronounced by different bodies, that is the public administration for the administrative ones (either by a judge of an administrative court or by an independent administrative authority) and the criminal judge for criminal sanctions.

➤ They have a different objective: criminal sanctions have the objective of punishing the infringements to the fundamental values of the society. The most serious infringements such as theft, rape or homicide must always be the object of a criminal sanction.

⁶⁸ Maison du droit Vietnamo-Française, *L'articulation entre sanctions administratives et pénales*, available at : http://www.maisondudroit.org/files/upload/2-Notes_Sanctions_administratives1.pdf.

⁶⁹ La Documentation Française, *Les pouvoirs de l'Administration dans le domaine des sanctions. Les études du conseil d'Etat*, pp 35-36, 1955. For example the *Conseil d'Etat* has defined administrative sanction as «*une décision unilatérale prise par une autorité administrative agissant dans le cadre de prérogatives de puissance publique et qui inflige une peine sanctionnant une infraction aux lois et règlements*».

⁷⁰ Maison du droit Vietnamo-Française, *L'articulation entre sanctions administratives et pénales*, available at : http://www.maisondudroit.org/files/upload/2-Notes_Sanctions_administratives1.pdf.

➤ According to the case law of the Constitutional Council⁷¹ (Conseil Constitutionnel) if the infringement affects a person's freedom, the sanction will be criminal because according to Article 66 of the Constitution, the judge is deemed to be the guardian of individual freedom. On the contrary, the administrative sanction does not imply a restriction of the individual freedom⁷².

11.6 Scope of application of French Criminal Law

French criminal law applies in three different situations to offenses committed abroad.

First, Article 113-6 of the Criminal Code foresees the case where the French Courts can have active personality jurisdiction. According to this Article, French Criminal law is applicable to any felony committed by a French national outside the territory of France if the conduct is punishable under the legislation of the country in which it was committed.

Secondly, Article 113-6 of the Criminal Code foresees the case where the French Courts may have a passive personality jurisdiction. According to this Article, French Criminal law is applicable to any felony, as well as to any misdemeanour punished by imprisonment, committed by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place.

Thirdly, pursuant to Article 689 of the Code of Criminal Procedure, France has universal jurisdiction on offences committed outside the territory of the Republic when an international Convention gives jurisdiction to French Courts to deal with the offence.

⁷¹ Conseil Constitutionnel, ruling of 28 July 1989, No. 89-260 DC.

⁷² Maison du droit Vietnamo-Française, *L'articulation entre sanctions administratives et pénales*, available at :http://www.maisondudroit.org/files/upload/2-Notes_Sanctions_administratives1.pdf.

11.7 Summary tables

In the French legal system the role of the competent authorities are the following:

- Specific categories of public officials may access vehicles and carry out checks on the compliance with the driving time, rest periods and tachograph regulations (official empowered to make arrests, factory inspectors, inspectors of social legislation, transport and road inspectors, customs officers, agents having the qualities for assess infringements to road traffic law)⁷³. They may ordered the immobilisation of the vehicle or seize the records of the tachograph if the infringement is a misdemeanours or if an accident has caused physical damages. If they observe an infringement, they should provide a statement of the facts and communicate it to the Prosecutor.
- The Prosecutor will summon the offender in front of the police court for petty offences or in front of the criminal court for misdemeanours.
- The police or criminal court will pronounce the amount of the fine. The criminal sanction will be sent to the State Prosecutor who can appeal against this decision in 10 days. The decision will come back to the Police Court.
- The Prefect of the Region is in charge of taking all administrative measures.

It is worth pointing out that in each region a special Commission (*Commission Régionale des Sanctions Administrative*) has been created in order to advise the Prefect in the assessment of companies infringing the transport regulations. It is composed of the representatives of the State, of the employees, of the users, and of the profession.

The table below provides an overview of the administrative and criminal sanctions foreseen in the French legal system for the infringements of EU commercial road transport legislation.

⁷³

FBAA,

France,

available

at : <http://www.fbaa.be/fr/default.asp?Id1=183&Id2=0&Id3=2&Id4=15&Title=France>

In the table we specify whether criminal sanctions are cumulative or alternative to administrative sanctions.

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation 561/06/EC	<u>Decree. of 17 October 1986 No. 86/1130.</u>	Article 3 par. II, 1°.	Not respecting minimum ages for conductors	Driver		Fine up to 750 EUR (IV class)
	<u>Decree. of 17 October 1986 No. 86/1130.</u>	Article 3 par. II, 2°, lett. a	Exceeding the daily driving time up to 2 hours	Drivers Principal (Article R.121-5 Highway Code) -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class)
		Article 3 par. III, 1°,	Exceeding the daily driving time of more than	-Drivers -Principal		Fine up to 1500 EUR (V class)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			2 hours	(Article R.121-5 Highway Code) -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Possibility of recidivism (Article 3 par. III, 2) (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 3 par. II, 2°, lett. b	Exceeding the weekly driving time up to 14 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 3 par. III, 1°	Exceeding the weekly driving time of more than 14 hours	--Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		<p>Fine up to 1500 EUR (V class)</p> <p>Possibility of recidivism (Article 3 par. III, 2) (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)</p>

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 3 par. II, 2°, lett. c	Exceeding the biweekly driving time up to 22 hours and a half.	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 3 par. III, 1°	Exceeding the biweekly driving time of more than 22 hours and a half	-Drivers -Transport manager (Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		<p>Fine up to 1500 EUR (V class)</p> <p>Possibility of recidivism (Article 3 par. III, 2) (fine up to 3000 EUR for natural persons /for transport operators the maximum fine is ten times what provided for natural persons)</p>

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Decree. of 17 October 1986 No. 86/1130.</u>	Article 3 par. II, 2°, lett. c	Exceeding the interrupted driving time up to 1 hour and a half	-Drivers -Transport manager (Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 3 par. III, 1°	Exceeding the interrupted driving time of more than 1 hour and a half	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 EUR (V class) Possibility of recidivism (Article 3 par. III, 2 (fine up to 3000 EUR for natural persons /for transport operators the maximum fine is ten times what provided for natural persons)
	<u>Decree. of 17 October 1986 No. 86/1130.</u>	Article 3 par. II, 3°, lett. a	Not respecting the rules on daily rest period up to	-Drivers -Transport		Fine up to 750 EUR (IV class)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			2 hours and a half	manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		
		Article 3 par. III, 2°	Not respecting the rules on daily rest of a period exceeding 2 hours and a half	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 EUR (V class) Possibility of recidivism (Article 3 par. III, 2 (fine up to 3000 EUR for natural persons /for transport operators the maximum fine is ten times what provided for natural

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						persons)
		Article 3 par. II, 3°, lett. a	Not respecting the rules on reduced daily rest up to 2 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		750 EUR (IV class)
		Article 3 par. III, 2°	Not respecting the rules on reduced daily rest of a period exceeding 2 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-		Fine up to 1500 EUR (V class) Possibility of recidivism (Article 3 par. III, 2) (fine up to 3000 EUR for

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				2 Penal Code)		natural persons /for transport operators the maximum fine is ten times what provided for natural persons)
		Article 3 par. II, 3°, lett. b	Not respecting the rules on split daily rest up to 2 hours	- Drivers -Transport Operator (Article R.121-2)		750 EUR (IV class)
		Article 3 par. III, 2°	Not respecting the rules on split daily rest of a period exceeding 2 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Underta		Fine up to 1500 EUR (V class) Possibility of recidivism(Article 3 par. III, 2)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				king (Art. 121-2 Penal Code)		(fine up to 3000 EUR for natural persons)/for transport operators the maximum fine is ten times what provided for natural persons)
		Article 3 par. II, 3°, lett. c	Not respecting the rules on team daily rest up to 2 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		750 EUR (IV class)
		Article 3 par. III, 2°	Not respecting the rules on team daily rest of a period exceeding 2 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 EUR (V class)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				e R. 121-2 Highway Code/Undertaking (Art. 121-2 Penal Code)		Possibility of recidivism (Article 3 par. III, 2) (fine up to 3000 EUR for natural persons /for transport operators the maximum fine is ten times what provided for natural persons)
		Article 3 par. II, 3°, lett. d	Not respecting the rules on the weekly rest up to 9 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code/Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class)
		Article 3 par. III, 2°	Not respecting the rules on the weekly rest of a period exceeding 9 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code/Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 EUR (V class) Possibility of recidivism (Article 3 par. III, 2) (fine up to

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				king (Art. 121-2 Penal Code)		3000 EUR for natural persons /for transport operators the maximum fine is ten times what provided for natural persons)
	<u>Recidivism Decree. of 17 October 1986 No. 86/1130.</u>	Article 3 par. II, 3°, lett. e	Not respecting the rules on reduced weekly rest up to 4 hours	-Drivers -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class)
		Article 3 par. III, 2	Not respecting the rules on reduced weekly rest of a period exceeding 4 hours	Drivers		Fine up to 1500 EUR (V class) Possibility of recidivism (Article 3 par. III, 2) (fine up to 3000 EUR for natural persons)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Transport manager /undertaking's liability Highway Code</u>	Article 3 par. III, 2	Recidivism of petty offences of 5 th class in a year time are regulated by Article 132 11 of the Penal Code for drivers and Article 132 15 for legal persons	-Drivers -Principal (Article R.121-5 Highway Code) -Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)		-for legal persons the maximum fine is ten times what provided for natural persons -for drivers fine up to 3000 EUR
	<u>Transport manager /undertaking Transport Code</u>	Article R.121-2	-The transport manager is liable because of its own fault because he has violated Regulation (EC) No. 561/2006 concerning	-Transport manager(Article R. 121-2 Highway Code)/Underta		Fine up to 1500 EUR (V class) for each employee and each infringement.

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			driving time Weekly and daily Rests Periods	king (Art. 121-2 Penal Code) Please note that according to Article 121-2 of the Penal Code, legal persons, are criminally liable for the offences committed on their account by their organs or representative		Possibility of recidivism (fine up to 3000 EUR for transport manager/for transport operators the maximum fine is ten times what provided for natural persons)

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				s		
	<u>Transport principals liability Highway Code</u>	Article L3315-6	-The transport manager is liable because of its negligence because he has not taken any measure in order to guarantee the respect of the Regulation. -	Transport manager/undertaking (Art. 121-2 Penal Code) Please note that according to Article 121-2 of the Penal Code, legal persons, are criminally liable for the offences		The transport manager will be liable for the same sanctions foreseen for the driver.

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				committed on their account by their organs or representatives		
		Article R.121-5	Violation of Regulation No. 561/2006 Concerning daily driving time limits	Principal (Article R.121-5 Highway Code)		<p>Fine up to 1500 EUR (V class) for each driver and each infringement.</p> <p>Possibility of recidivism(Article 3 par. III, 2) fine up to 3000 EUR for transport manager/for</p>

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						transport operators the maximum fine is ten times what provided for natural persons)
Directive 2002/15/EC	<u>Decree. No. 83/40 of 26 January 1983</u>	Article 5, paragraph 3	Exceed of the average weekly working time	Transport manager/Under taking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class) for each worker and each period
		Article 5, paragraph 6	Exceed the maximum weekly working time	Transport manger /Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 EUR (V class) for each worker and each period Possibility of

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						<p>recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)</p>
		Article 5, paragraph 5	Lack of compensatory rest period for each additional hour	Transport manger /Undertaking (Art. 121-2 Penal Code)		<p>Fine up to 1500 EUR (V class) for each worker and each period</p> <p>Possibility of recidivism (fine up to 3000 EUR for natural persons/for</p>

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						transport operators the maximum fine is ten times what provided for natural persons)
		Article 5,	Lack of salary compensation for each additional hours	Transport manger /Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class) for each worker and each period
		Article 7	-In case of night work, the day work has been more than 10 hours in the 24 h - Lack of compensatory rest (5%) period for each additional hour - Lack of salary (20%)	-Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-		Fine up to 750 EUR (IV class) for each worker and each period

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			compensation for each additional hours	2 Penal Code) -Principal (Article R.121-5 Highway Code)		
		Article 10, paragraph 2	Failure to Record of the drivers' working time	Transport manger /Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (IV class) for each worker and each period
		Article 10, paragraph 6	Failure to inform the employee of the amount his ordinary working time/tariff	Transport manger /Undertaking (Art. 121-2 Penal Code)		Fine up to750 EUR (IV class) for each worker and each period

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<p><u>Transport undertaking's liability</u> <u>Highway Code</u></p>	<p>Article R.121-2</p>	<p>Violation of daily working time period established fixed in Article 7 and of weekly working time period established in art L.121-7 of the Labour Code</p>	<p>Transport manager(Article R. 121-2 Highway Code)/Undertaking (Art. 121-2 Penal Code)</p> <p>Please note that according to Article 121-2 of the Penal Code, legal persons, are criminally liable for the offences</p>		<p>Fine up to 1500 EUR (V class) for each employee and each infringement.</p> <p>Possibility of recidivism Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)</p>

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<p><u>Transport principals liability Highway Code</u></p>	<p>Article R.121-5</p>	<p>Violation of daily working time period established fixed in Article 7</p>	<p>committed on their account by their organs or representatives</p> <p>Principal (Article R.121-5 Highway Code)</p>		<p>Fine up to 1500 EUR (V class) for each driver and each infringement.</p> <p>Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is</p>

Table FR 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						ten times what provided for natural persons)

Table FR 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation 3821/1985/EEC	<u>Decree. of 17 October 1986 No. 86/1130.</u>	Article 3, I, 1°	Not carrying enough paper for printouts	Driver		Fine up to 450 EUR (III class)
		Article 3, I, 1°	Use dirty or damaged record sheets not adequately protected	Driver		Fine up to 450 EUR (III class)
		Article 3, II, 4°, lett a	Not carrying a sufficient number of record sheets	Driver		Fine up to 750 EUR (IV class)
		Article 3, II, 4°, lett b	Model of record sheet not approved	Driver		Fine up to 750 EUR (IV class)
		Article 3, II, 4°, lett c	Unauthorised withdrawal of sheets or driver card which has no impact on the record of relevant data	Driver		Fine up to 750 EUR (IV class)
		Article 3, II, 4°, lett d	Record sheet or driver card used to cover a period	Driver		Fine up to 750 EUR (IV class)

Table FR 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			longer than that for which it is intended but no data is lost			
		Article 3, II, 4°, lett e	Symbol of country not entered in recording equipment	Driver		Fine up to 750 EUR (IV class)
		Article 3, II, 4°, lett f	Time recorded on the sheet does not agree with official time of the country of registration of the vehicle	Driver		Fine up to 750 EUR (IV class)
		Article 3, II, 4°, lett g	Missing on record sheet: -date of begin or end of use -place of begin or end of use -registration number -odometer reading start or end -time of change of vehicle.	Driver		Fine up to 750 EUR (IV class)

Table FR 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 3, II, 4°, lett h	Signature missing on temporary sheet	Driver		Fine up to 750 EUR (IV class)
		Article 3, III, 3°, lett a	Use of more record sheets in a day without a legitimate reason	Driver		
		Article 3, III, 3°, lett c	Not keeping record sheets, printouts and downloaded data for at least one year	Transport manager/ Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 EUR (V class) Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)

Table FR 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 3, III, 3°, lett d	Failure to apply for replacement of damaged, malfunctioning, lost or stolen driver card within 7 calendar days	Driver		Fine up to 1500 EUR (V class) Possibility of recidivism (fine up to 3000 EUR for driver)
		Article 3, III, 3°, lett e	Incorrect use of switch mechanism	Driver		Fine up to 1500 EUR (V class) Possibility of recidivism (fine up to 3000 EUR for driver)
		Article 3, III, 3°, lett f	Unable to produce records of the current day or of the previous 28 days	Driver		Fine up to 1500 EUR (V class) Possibility of recidivism (fine up to 3000 EUR for driver)

Table FR 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Recidivism</u>	Article 3, III, 3°, lett f	Unable to produce driver card	Driver		Fine up to 1500 EUR (V class) Possibility of recidivism (fine up to 3000 EUR for driver)
		Article 3, III, 3°, lett h	Not repaired by an approved fitter or workshop	Driver		Fine up to 1500 EUR (V class) Possibility of recidivism (fine up to 3000 EUR for driver)
			Driver Card number or name or driving licence number missing on temporary sheets	Driver		Fine up to 1500 EUR (V class) Possibility of recidivism (fine up to 3000 EUR for driver)
			Article 3 par. III, 2	Recidivism of petty offences of 5 th class in a year time are regulated by	-Drivers -Transport undertaking	

Table FR 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			Article 132 11 of the Penal Code for drivers and Article 132 15 for legal persons			for natural persons -for drivers fine up to 3000 EUR
	Transport Code	Article L. 3315-4	-Falsify, suppress, destroy data recorded on record sheets -Give false information - No device installed -Manipulation of the device or of the recording equipment.	Driver/ Transport manager (art. L-3315-6 Transport Code) /Undertaking (Art. 121-2 Penal Code)	Compulsory immobilisation of the vehicle until the situation is regularised	Fine up to 30.000 EUR 1 year prison (Misdemeanour)
		Article L.3315-5	Driving with a defective or expired driving card or which is not the driver's own valid card. Refuse to be checked and to	Driver/ Transport manager (art. L-3315-6 Transport		Fine up to 3750 EUR 6 months prison (Misdemeanour)

Table FR 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			provide sheets or data.	Code)/ Undertaking (Art. 121-2 Penal Code)		
	<u>Transport manager Liability</u>	Article L3315-6	-The transport manager is liable because of its negligence because he has not taken any measure in order to guarantee the respect of the Regulation. -	Transport manager/undertaking (Art. 121-2 Penal Code) Please note that according to Article 121-2 of the Penal Code, legal persons, are criminally		The transport manager will be liable for the same sanctions foreseen for the driver.

Table FR 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				liable for the offences committed on their account by their organs or representatives		

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
<p>Regulation (EC) No. 1071/2009</p>	<p><u>Legislative Decree of 16 August 1985 n.85-891 as modified by the Decree of 28 December 2011, n. 2011-2045</u></p>	<p>Article 6, paragraph 2</p>	<p>Object of several interdictions from the exercise of their industrial or commercial profession / several serious crimes / several fines for contraventions listed in the Article.</p>	<p>Transport manager / Undertaking (Art. 121-2 Penal Code)</p>	<p>Loss of good repute Up to 2 years if liability for petty offence Up to 3/5/10 years if liability for crimes</p>	
		<p>Article 11, Paragraph 1</p>	<p>After 6/9 months conditions not fulfilled or fake documents provided</p>	<p>Transport manager / Undertaking (Art. 121-2 Penal Code)</p>	<p>Suspension of authorisations to operate as transporter of passengers by road up to 6 months</p>	
		<p>Article 11, paragraph 2</p>	<p>6 months after suspension still conditions not fulfilled or fake documents provided</p>	<p>Transport manager / Undertaking</p>	<p>-Withdrawal of the authorisation to operate as</p>	

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				(Art. 121-2 Penal Code)	transporter of passengers by road -Removal from the carrier registry -Suspension of the driving licence (cumulative)	
		Article 11, Paragraph 4	Refusal to give the documents for at least 15 days in order to be suspended.	Transport manager / Undertaking (Art. 121-2 Penal Code)	Withdrawal of the authorisation to operate as transporter of passengers by road Removal from the carrier registry (cumulative)	

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Legislative Decree of 30 August 1999 n.99-752 as modified by the Decree	Article 10	Non communication in 28 days of changes of nouns and legal form, address of the establishment, the names of the transport managers designated; the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the Community licence and of the certified copies.	Transport manager / Undertaking (Art. 121-2 Penal Code)		<p>Fine up to 1500 EUR (Petty Offence V class)</p> <p>Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)</p>
		Article 7	Object of several interdictions from the exercise of their industrial or commercial profession /	Transport manager / Undertaking (Art. 121-2	-Loss of good repute -Up to 2 years if liability for petty	

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	of 28 December 2011, n.2011-2045		several serious crimes / several fines for contraventions listed in the Article.	Penal Code)	offence -Up to 3/5/10 years if liability for crimes	
		Article 9, Paragraph 3	Non communication in 28 days of changes of nouns and legal form, address of the establishment, the names of the transport managers designated; the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the Community licence and of the certified copies	Transport manager / Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 EUR (Petty Offence V class) Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 9, Paragraph 4	Non communication the company has closed down, or, the establishment has disappeared or the company is not having since more than one year some certified copies of the licence.	Transport manager / Undertaking (Art. 121-2 Penal Code)	<p>Withdrawal of authorisations to operate as transporter of passengers by road</p> <p>Removal from the carrier registry (cumulative)</p>	
		Article 9-5, Paragraph 2	After 6/9 months still conditions not fulfilled or fake documents provided	Transport manager / Undertaking (Art. 121-2 Penal Code)	<p>Suspension of authorisations to operate as transporter of passengers by road up to 6 months</p>	

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 9-5, Paragraph 3	6 months after suspension still conditions not fulfilled or fake documents provided	Transport manager / Undertaking (Art. 121-2 Penal Code)	Withdrawal of the authorisation Removal from the carrier registry Suspension of the driving licence (cumulative)	
		Article 9-5, Paragraph 4	Refusal to give the authorisations for at least 15 days in order to be suspended.	Transport manager / Undertaking (Art. 121-2 Penal Code)	Withdrawal of the authorisation to operate as transporter of passengers by road	

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
<p>Regulation (EC) No. 1072/2009</p>	<p><u>Legislative Decree of 30 August 1999 n.99-752 as modified by the Decree of 28 December 2011, n. 2011-2045</u></p>	<p>Article 12/Article 12-1</p>	<p>Driving without possession of a Community Licence/Consignment note /driving attestation/CMR consignment note in case of cabotage</p>	<p>Transport manager / Undertaking (Art. 121-2 Penal Code)</p>		<p>Fine up to 1500 EUR (Petty Offence V class) Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)</p>

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 15	Not complying with subcontracting terms	Transport manager / Undertaking (Art. 121-2 Penal Code)		Fine up to 750 EUR (Petty Offence IV class)
		Article 18 Paragraph 3	Repetition serious infringements Annex IV	Transport manager / Undertaking (Art. 121-2 Penal Code)	Suspension and eventually revocation after 5 years of the certified copies of the driving licence or of other dispatch documentation	
		Article 18, Paragraph 4	Repetition crimes listed in Article 7, paragraph 2	Transport manager / Undertaking (Art. 121-2 Penal Code)	Immobilisation of the vehicle or three months.	

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 18-1,	Infringement of the rules on cabotage	Transport manager / Undertaking (Art. 121-2 Penal Code)	Interdiction of cabotage transports up to 1 year.	
Regulation No. 1073/2009/EC	<u>Legislative Decree of 16 August 1985 n.85-891 as modified by the Decree of 28 December 2011, n. 2011-2045</u>	Article 44-1, Paragraph 3	Repetition serious infringements Annex IV	Transport manager / Undertaking (Art. 121-2 Penal Code)	Suspension and eventually withdrawal after 5 years of the certified copies of the driving licence	
		Article 44-1, Paragraph 4	Repetition crimes listed in Article 6, paragraph 2	. Transport manager / Undertaking (Art. 121-2 Penal Code)	Immobilisation of the vehicle for three months.	

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 44-2,	Infringement of the rules on cabotage	Transport manager or transport operator .	Interdiction of cabotage transports up to 1 year.	
		Article 46-1, Paragraph 1,b	Driving without or with non regularly fulfilled dispatch documentation (authorisations or the licence)	Transport manager / Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 (V class.) Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 46-1, Paragraph 1,c	Driving without or with non regularly fulfilled police check documentation (ticket and a copy of the convention with the authority)	Transport manager / Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 (V class.) Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)
		Article 46-1, Paragraph 1, e	Police check documentation not back up for at least 2 years	Transport manager / Undertaking (Art. 121-2 Penal Code)		Fine up to 1500 (V class.) Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						the maximum fine is ten times what provided for natural persons)
		Article 46-1, Paragraph 2	Lack of a proper vehicle identification Plate	Transport manager / Undertaking (Art. 121-2 Penal Code)		Fine up to 750 (IV class).
	<u>Transport Code (Misdemeanours)</u>	Article L 3452-9	Provide False information about registration and licences	Transport manager / Undertaking (Art. 121-2 Penal Code)		2 years prison Fine up to 30000 (Misdemeanours) (cumulative)

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article L. 3452-8	For a resident company doing Cabotage not complying with article L. 3421-7	Transport manager / Undertaking (Art. 121-2 Penal Code)		2 years prison Fine up to 30000 (Misdemeanors) (cumulative)
		Article L. 3452-7	For a non resident company doing Cabotage not complying with articles L. 3421-1 and L. 3421-3 to L. 3421-5.	Transport manager / Undertaking (Art. 121-2 Penal Code)		Fine up to 15000 EUR (Misdemeanors)
		Article L 3452-6	-Illegal Activity; or -Utilization of expired, not renew or lost licence; or -refusal to execute an administrative sanction; or	Transport manager / Undertaking (Art. 121-2 Penal Code)		Fine up to 15000 EUR 1 year of prison (Misdemeanors) (cumulative)

Table FR 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			-release of a vehicle during a period of immobilisation; -cabotage of a company without authorisation.			

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
<p>Directive 2008/68/EC</p>	<p><u>Transport Code</u></p>	<p>Article L-1252-5</p>	<p>-Transport of dangerous goods not authorized; or</p> <p>-the vehicle or the container haven not succeeded technical tests; or</p> <p>-concealment of dangerous goods (es. Lack of signalisation); or</p> <p>-circulation or parking of a vehicle in a street where carrying dangerous goods is banned; or</p> <p>-security advisor not appointed in the company.</p>	<p>Driver</p> <p>Transport managers</p> <p>(Article L-1252-7/ L-1252-6)/</p> <p>Undertaking</p> <p>(Art. 121-2 Penal Code)</p> <p>Principal</p> <p>(Article L-1252-7)</p>		<p>30000 EUR fines and 1 year of prison</p> <p>(Misdemeanors)</p> <p>(cumulative)</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Transport Manager / Principal liability	Article L-1252-7	Principals or transport managers that have committed one of this infringements by their own or that are deemed to be liable because they have not act in order to make the driver respect the rules	Transport managers (Article L-1252-7)/ Undertaking (Art. 121-2 Penal Code) Principal (Article L-1252-7)		30000 EUR fines and 1 year of prison (Misdemeanors) (cumulative)
		Art. 1252-6	Transport manager that has not appointed a security councillor	Transport managers (Article L-1252-6)/ Undertaking (Art. 121-2 Penal Code)		
	Legislative Decree No.77-1331 of 30	Article 1	Non compliance with:	Transport managers//	Immobilisation of the vehicle in case	Fine up to 1500 EUR/ (V class)

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>November 1977</u>		<ul style="list-style-type: none"> - packaging and labelling requirements; or -loading, unloading and handling requirements; or -utilisation of the vehicle requirements; or -equipment of the vehicle requirements; or - car hazard information panels and labelling requirements; or -board documents requirements; or 	<ul style="list-style-type: none"> Undertaking (Art. 121-2 Penal Code) Principal Driver 	of Risk I or Risk II infringements (Article 1 bis Legislative Decree)	Possibility of recidivism (fine up to 3000 EUR for natural persons/for transport operators the maximum fine is ten times what provided for natural persons)

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			-vehicle circulation rules; or -vehicle parking rules; or -carrying passengers requirements; or -safety requirements; or -other requirements (ex. lack of accident declaration).			
Directive 96/53/EC	Highway Code	Article R. 433-8	Driving without the prescribed authorisation for combination of vehicles.	Driver	Possible immobilisation of the vehicle (cumulative)	Fine up to 450 EUR (III class)

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article R 312-4, Paragraph 6	Exceeding of the maximum authorized weight For vehicles and combination of vehicles	Driver Principal (Art R. 121-4) Transport manager (R.121-3 and 121-5) Undertaking (Art. 121-2 Penal Code)	Possible Immobilisation of the vehicle If overtaking of more than 5% (cumulative)	- Fine up to 750 EUR (IV class) if it exceeds of the maximum authorized weight up to one tonne -if it exceeds of the maximum authorized weight more than 1 tonne, multiplication of the fine for each tonne of overtaking (cumulative)
		Article R 312-4, Paragraph 7,8	Exceeding of the maximum authorized weight for moped	Driver Principal (Art	Possible Immobilisation of the vehicle	- Fine up to 750 EUR (IV class) if it exceeds of the maximum

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				R. 121-4) Transport manager (R.121-3 and 121-5) /Undertaking (Art. 121-2 Penal Code)	If overtaking of more than 5% (cumulative)	authorized weight of less than 20%; or - Fine up to 1500 EUR (V class) if it exceeds of the maximum authorized weight of more than 20% (alternative) -Possibility of Recidivism up to 3000 EUR (art. 132-11 Penal Code) for natural persons/for transport operators the maximum fine is ten times what provided for natural

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						persons.
		Article R 312-5	Exceeding of the maximum authorized axle weight for a vehicle with one axle	Driver	Possible immobilisation of the vehicle If overtaking of more than 5% (cumulative)	- Fine up to 750 EUR (IV class) if it exceeds of the maximum authorized weight up to 300kg - if it exceeds of the maximum authorized weight more than 300kg, multiplication of the fine for each 300kg of overtaking (cumulative)
		Article R 312-6	Exceeding of the maximum authorized axle weight for a vehicle with more than 2 axles	Driver Principal (Art R. 121-4)	Possible Immobilisation of the vehicle If overtaking of	- Fine up to 750 EUR (IV class) if it exceeds of the maximum authorized weight up

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					more than 5% (cumulative)	to 300kg - if it exceeds of the maximum authorized weight more than 300kg, multiplication of the fine for each 300kg of overtaking (cumulative)
		Article R 312-10, Paragraphe 7	Exceeding of the maximum authorized width	Driver	Possible immobilisation of the vehicle If overtaking of more than 5% (cumulative)	- Fine up to 750 EUR (IV class) if it exceeds of the maximum authorized weight of less than 20%;or - 1500 EUR (V class) if it exceeds of the maximum authorized weight of more than

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						<p>20%</p> <p>-Possibility of Recidivism up to 3000 EUR (art. 132-11 Penal Code) for natural persons/for transport operators the maximum fine is ten times what provided for natural persons.</p>
		Article R 312-11	Exceeding of the maximum authorized length	Driver	<p>Possible immobilisation of the vehicle</p> <p>In case of lack of authorisation for</p>	<p>- Fine up to 750 EUR (IV class) if it exceeds of the maximum authorized weight of less than 20%; or</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>exceptional loads (cumulative)</p>	<p>- Fine up 1500 EUR (V class) if it exceeds of the maximum authorized weight of more than 20% (alternative) -Possibility of Recidivism 3000 EUR (art. 132-11 Penal Code) for natural persons/for transport operators the maximum fine is ten times what provided for natural persons.</p>
		Article R 312-12,	Exceeding of the maximum authorized	Driver		<p>- Fine up to 750 EUR (IV class) if it exceeds</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			dimensions for road trains			<p>of the maximum authorized dimensions of less than 20%;or</p> <p>- Fine up to 1500 EUR (V class) if it exceeds of the maximum authorized dimensions of more than 20% (alternative)</p> <p>-Possibility of Recidivism up to 3000 EUR (art. 132-11 Penal Code) for natural persons/for transport operators the maximum fine is ten times what provided for natural</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						persons.
		Article R 312-16	Exceeding of the maximum authorized height	Driver		<p>-Fine up to 750 EUR (IV class) if it exceeds of the maximum authorized height of less than 20%; or</p> <p>- Fine up to 1500 EUR (V class) if it exceeds of the maximum authorized height of more than 20% (alternative)</p> <p>- Possibility of Recidivism 3000 EUR (art. 132-11 Penal Code) for natural persons/for transport</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						<p>operators the maximum fine is ten times what provided for natural persons.</p>
		<p>Article R 317-8 Paragraphe</p>	<p>-Circulation without a plate or with unreadable plate;or -Sale of plates not complying with the requirements.</p>	<p>Driver</p>	<p>Confiscation of the plate Possible Immobilisation of the vehicle (cumulative)</p>	<p>Fine up to 750 EUR (IV class)</p>
		<p>Article R 317-11</p>	<p>Not exhibition of a plate showing the dimensions of each vehicle of more than 3,5 tones</p>	<p>Driver</p>		<p>Fine up to 750 EUR (IV class)</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article R 322-1	Circulation without registration certificate	Driver		Fine up to 750 EUR (IV class)
		Article L 317-2	Circulation with fake plates	Driver	-Removal of half of the points (cumulative)	-5 years prison -fine up to 3750 EUR (cumulative) -Suspended driving licence up to 3 years -Confiscation of the vehicle
		Article L 317-3	-Circulation without a plate, - false statement of the owner	Driver	-Removal of half of the Points cumulative	-5 years prison -fine up to 3750 EUR (cumulative) -Suspended driving licence up to 3 years -Confiscation of the vehicle

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article L 317-4	Circulation with plates correspondent to another category of vehicle	Driver	-Removal of half of the points	-5 years prison -fine up to 3750 EUR (cumulative) -Suspended driving licence up to 3 years -Confiscation of the vehicle
		Article L 317-4-1	Circulation with plates belonging to another vehicle.	Driver	-Removal of half of the points (cumulative)	7 years prison -fine up to 30000 EUR (cumulative) -Suspended driving licence up to 3 years -Confiscation of the vehicle -Cancellation of the driving licence

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article R.121-3	Giving instructions in contrast with limitations of weight (Art R.312-2 R.312-3 R.312-4)	Transport manager (R.121-3)/Undertaking (Art. 121-2 Penal Code) Please note that according to Article 121-2 of the Penal Code, legal persons, are criminally liable for the		Fine up to 1500 EUR (V class) for each employee and each infringement. Possibility of recidivism (for legal persons the maximum fine is ten times what provided for natural persons)

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				<p>offences committed on their account by their organs or representatives</p>		
		Art R 121-4	Causing through fake declarations violation of the weight provisions. (art R.312-2 R.312-6 R.312-4)	Principal (Art R 121-4)		<p>Fine up to 1500 EUR (V class) for each driver and each infringement.</p> <p>Possibility of Recidivism 3000 EUR (art. 132-11 Penal Code) for natural persons/for transport operators the</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						maximum fine is ten times what provided for natural persons.
		Article R.121-5	Giving instructions in contrast with limitations of weight	Principal (Art R 121-4)		<p>Fine up to 1500 EUR (V class) for each driver and each infringement.</p> <p>Possibility of Recidivism 3000 EUR (art. 132-11 Penal Code) for natural persons/for transport operators the maximum fine is ten times what provided for natural persons.</p>
Directive 2009/40/EC	<u>Highway Code</u>	Article R 323-1 Highway Code	Vehicles not exceeding 3,5 tonnes not submitted	Owner of the vehicle	-Possible Immobilisation of	Up to 750 EUR (IV class)

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Ministerial Decree of 18 June 1991 for vehicles not exceeding 3,5 tones</u>		to the road worthiness test		the vehicle -Vehicle is empounded if refusal to take the test or if the modifications prescribed by the expert are not fulfilled	
	<u>Ministerial Decree of 27 July 2004 for vehicles exceeding 3,5 tones</u>	Article 13	Vehicles exceeding 3,5 tonnes not submitted to the road worthiness test after a letter of formal notice	Owner of the vehicle	Confiscation of the car registration document	
		Article 14	Doubts concerning the quality of the test or the	Owner of the vehicle	Obligation to submit the vehicle	

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			overall condition		to another test	
<p>Directive 2006/126/EC</p>	<p><u>Highway Code</u></p>	<p>Article L 221-2</p>	<p>Driving: - without a driving licence</p>	<p>Driver</p>	<p>-Possible immobilisation of the vehicle (Article L325-1) (cumulative)</p>	<p>Fine up to 15000 EUR € and imprisonment up to 1 year.</p> <p>-Community work (Article 131-8 Penal Code)</p> <p>-day-fine penalty (Article 131-5 Penal Code)</p> <p>-Prohibition from driving this type of vehicle of more than five years</p> <p>-Road safety awareness work (cumulative)</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						<p>-Compulsory confiscation of the vehicle if the driver is the owner</p> <p>(In case of recidivism in 5 years according to Art 132-10 of the Penal Code the basic sanction will be doubled.)</p>
		Article R 211-2	<p>- Driving mopeds without the licence, -being minor of 14 years old; -not having the driving licence of A type or it has been suspended.</p>	Driver	<p>Possible immobilisation of the moped (Article L325-1) (cumulative)</p>	<p>Fine petty offence II class up to 150 EUR</p>
		Article L233-1	Refusal to stop	Driver	-Removal of half of	-three months of

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Paragraph1			the points	imprisonment and a fine up to 3750 EUR Community work(Article 131-8 Penal Code) day- fine penalty (Article 131-5 Penal Code) (cumulative) -Suspension of the driving licence up to 3 years
		Article L233-1-1	Refusal to stop causing permanent disability or death	Driver	-Removal of half of the points	5 years prison and a fine up to 75000 EUR -Suspension of the driving licence up to 5 years;

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						<p>-cancellation of the driving licence; -confiscation of the vehicle; -prohibition to hold weapons for 5 years and revocation of weapons;</p>
		Article L233-2	Refusal to submit to any kind of check of the vehicle or of the driver	Driver	-Removal of half of the points (cumulative)	<p>-3 months prison -fine up to 3750 EUR Community work (Article 131-8 Penal Code) day-fine penalty (Article 131-5 Penal Code) (cumulative) Suspension of the</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						driving licence up to 3 years;
		Article L 221-2	-Driving Agricultural or forestry tractor without the prescribed: driving licence (less than 16 years old or with a licence for less than 3,5 tonnes vehicles) -municipal employee and affouagistes with a licence for less than 3,5 tonnes vehicles	Driver	-Immobilisation of the vehicle (Article L325-1) (cumulative)	
		Article R 221-1	-Drivers holding a licence driving vehicles without the prescribed driving licence - Driving with a driving licence not valid(not	Driver	-Immobilisation of the vehicle (Article L325-1); -3 points removed from the driving	-Up to 750 EUR (IV class) -Road safety awareness work -Prohibition from driving this type of

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			renewed or expired) -Driving with a driving licence not complying with conditions of use		licence	vehicles up to 3 years; -Suspension of the driving licence up to 3 years(outside professional activity);
		Article R 233-1	Refusal to provide the - driving licence, -vehicle registration certificate, -training certificate -in case of theft or loss of the driving licence, a receipt of the declaration of theft	Driver		-Up to 38 EUR (I class) or; -Fine up to 150 EUR (II class) in case of lack of documentary evidence of the possession of the A type licence in 5 days or; -Fine up to 750 EUR

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						(IV class) in case of lack of documentary evidence of the possession of any other licence type in 5 days. (alternative)
		Article L 224-18	Driving with a licence obtained through fraudulent misrepresentation (even in case of attempt)	Driver	-Half of the points removed from the driving licence	-2 years of prison Fine up to 4500 EUR -day- fine penalty (Article 131-5 Penal Code) -Community work (cumulative) -Suspension of the driving licence up to 3 years(outside professional activity)
		Article L 224-16	Infringement of a decision of confiscation,	Driver	-Immobilisation of the vehicle (Article	2 years of prison - Fine up to 4500 EUR

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			retention or annulment of the driving licence of prohibition of delivery of the driving licence		L325-1) -Half of the points removed from the driving licence	<ul style="list-style-type: none"> - Community work -Road safety awareness work -day- fine penalty (Article 131-5 Penal Code) -Compulsory confiscation of the vehicle -Suspension of the driving licence up to 3 years -Prohibition from driving this type of vehicles up to 5 years -Cancellation of the driving licence if a decision of suspension

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						has been infringed (cumulative)
		Article L 224-17	Refusal to provide the driving licence to the authority after a decision of suspension /confiscation /retention of the driving licence	Driver	-Half of the points removed from the driving licence (cumulative)	2 years of prison Fine up to 4500 EUR day- fine penalty (Article 131-5 Penal Code) Community work(Article 131-8 Penal Code) (cumulative) -Suspension of the driving licence for 3 years(outside professional activity) -cancellation of the driving licence
		Article L 223-5	Refusal to provide the	Driver		-2 years of prison and

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			driving licence to the authority after a decision implying the total loss of points			<p>Fine up to 4500 EUR</p> <p>Day-fine penalty (Article 131-5 Penal Code)</p> <p>Community work(Article 131-8 Penal Code)</p> <p>-Road safety awareness work (cumulative)</p> <p>Suspension of the driving licence for 3 years(outside professional activity)</p> <p>-Confiscation of the vehicle if he is the owner</p>

Table FR 4

Rules and Standards of Vehicles and Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						-Prohibition from driving this type of vehicles up to 5 years

Table FR5

Infringements of commercial road transport legislation

Type of infringement(s) and Article of reference in national legislation

Criminal sanction

Is it dissuasive?

Corresponding EU legislation

Please note that pursuant to French law most of the infringements on commercial road transport are sanctioned with criminal sanctions, but there are few exceptions (see table below).

11.8 Sanctions which could be considered substantially criminal in the French legal system

Most of the infringements of the rules on commercial road transport are sanctioned in France with criminal sanctions.

Only some infringements are sanctioned with administrative sanctions, and in general, they consist in the withdrawal of licences or in their suspension. Such sanctions are aimed at preventing that an operator not fulfilling the relevant requirements to exercise the profession of transport operator continues to operate in breach of the rules. In our view, such sanctions are substantially administrative sanctions, because they aim at ensuring that the operators comply in the future with the rules, but they have not a punitive function. In the light of all above, we believe that only the following infringements are sanctioned with an administrative sanction which is substantially a criminal one.

Table FR 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

<p>Type of infringement and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Administrative sanction that could be qualified as criminal sanction</p>	<p>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</p>	<p>Is it dissuasive?</p>
<p>Regulations 1072/2009 and 1073/2009 Infringement of the rules on cabotage Article 44.2 Legislative Decree of 16 August 1985 n.85-891 Article 18-1 of the Legislative Decree of 30 August 1999 No. 99-752)</p>	<p>Interdiction of cabotage transports up to 1 year.</p>	<p>It affect seriously the economic interest of the offender</p>	<p>Yes</p>

11.9 Effectiveness of the sanctions system

In 2002, a study⁷⁴ has been carried out by the University of Lyon about the effectiveness of Criminal law on public road transport of goods in the *Rhone Alpes* Region.

According to this study, most the infringements detected in 2002 violated the social legislation. Moreover, the study stressed that as the most part of sanctions in France had a criminal nature, proceedings were often closed without further action because of the technical nature of the issue.

A study carried by the French Ministry of Interior about the behaviour of French drivers in 2010⁷⁵ makes a statistical review of the infractions to the Road Code in 2010.

The table below provides some figures concerning infingements in France in the years 2009 and 2010⁷⁶:

⁷⁴ BON-GARCIN, I., EZUS Lyon, *L'effectivité de la loi penale dans les transports publics routiers de marchandises*, available at : <http://www.innovations-transports.fr/L-effectivite-de-la-loi-penale?lang=fr>.

⁷⁵ MINISTÈRE DE L'INTÉRIEUR, DE L'OUTRE MER, DES COLLECTIVITÉS TERRITORIALES ET DE L'IMMIGRATION, *Le comportement des usagers de la route*, available at : http://www.interieur.gouv.fr/sections/a_votre_service/statistiques/securite_routiere/bilans-comportement/bilan-2010/downloadFile/attachedFile_1/comportement_usagers_route_2010.PDF?nocache=1317807070.88.

⁷⁶ MINISTÈRE DE L'INTÉRIEUR, DE L'OUTRE MER, DES COLLECTIVITÉS TERRITORIALES ET DE L'IMMIGRATION, *Le comportement des usagers de la route*, available at : http://www.interieur.gouv.fr/sections/a_votre_service/statistiques/securite_routiere/bilans-comportement/bilan2010/downloadFile/attachedFile_1/comportement_usagers_route_2010.PDF?nocache=1317807070.88.

Table FR 7			
Infringements	2009	2010	Variation
Rules on driving times and rest periods	83,802	62,627	- 25.17%
Infringements of the rules on transport of dangerous goods	2,293	2,659	15.96%
Abusive transport	6,557	5,443	-16.99%

According to this review, first of all, the amount of infringements related to the driving times and rest periods⁷⁷ and to the working conditions⁷⁸ have decreased by about 25% in 2010 compared to the previous year.

Moreover, the number of misdemeanors related to the driving licences have decreased from 107,048 to 101,092 (-6%).

As to infringements related to the road worthiness test, misdemeanors have decreased of 22% in 2010. As to petty offences, their amount is relatively stable. For example, the number of refusals to submit a vehicle to the road worthiness test has increased from 2,363 to 2,404 (1.7%). The only exception to this trend concerns infringements of the rules concerning the initial road worthiness test. The number of infringements has increased from 7,943 (2009) to 17,947 (125.9%) in 2010.

Moreover, the number of infringements consisting of putting into circulation a vehicle with weight or size exceeding the limit set in the relevant regulations has decreased from 33,625 to 28,577 (or15%).

According to the statistical review, infringements related to the transport of dangerous goods have instead increased by 16% in 2010 from 2,293 to 2,659.

⁷⁷ From 83,802 to 62,627 (-25.3%).

⁷⁸ From 34,512 to 26,028 (-24.6%)

That said, the number of violations in the commercial road sector in France is substantial if compared with the amount of offences detected in other Member States.

For example, around 60,000 infringements of the rules on working and driving times and rest periods have been detected in 2010. More than 2,500 infringements of the rules on the transport of dangerous goods have been detected.

Such a high amount of infringements can be partially explained by the fact that controls in France are effective. However, it cannot be neglected that the significant amount of violation may perhaps have been due to the fact that criminal sanctions foreseen in the French system are not effective as far as infringements of social rules are concerned.

One of the reasons for this could be the fact that the amount of the criminal fines for infringements of social rules is relatively low, and different infringements are sanctioned with similar fines. This, in turn, could lead to a situation where operators might prefer to commit more serious infringements of the law, as the sanctions for such infringements are not higher than those foreseen for less serious infringement.

Some of the stakeholders have pointed out the fact that the amount of French fines is similar for all infringements of commercial road transport and could be considered as a factor affecting the consistency of the above system⁷⁹.

In the light of the above consideration and taking into account the fact that only few infringements are sanctioned with sanctions such as immobilization of the vehicle or withdrawal of administrative documents that are deemed to have a substantial dissuasive effect, it could be argued that the French sanction system is not effective.

⁷⁹ Opinion expressed by FEBETRA in a meeting held on 20 August 2012 in Brussels.

12 GERMANY - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR

12.1 Social rules on road transport

12.1.1 Rules on Driving Times and Rest Periods

12.1.1.1 Regulation (EC) No 561/2006

The relevant German laws containing sanctions in relation to infringements of Regulation (EC) No 561/2006 is the German Driving Staff Act (*Fahrpersonalgesetz* and in the following “FPersG”).

Pursuant to section 1 of the FPersG, it is applicable to the activity and employment of driving staff of motor vehicles as well as trams if they participate in the traffic on public roads. Drivers, co-drivers and conductors are members of the driving staff.

According to section 4 paragraph 1 in connection with section 9 paragraph 1 FPersG, if an infringement is committed by a company that has its registered office or branch office within the area of application of the FPersG (i.e. Germany), then the competent authorities for imposing the fines stipulated in the FPersG are the authorities (*Aufsichtsbehörden* or controlling authorities) designated by the relevant federal state governments in the area in which the branch office or head office is located.

However, if the infringement is committed by a company, which does not have its registered office or branch office within the area of application of the FPersG (i.e. Germany), and the person affected does not have its place of residence within the area of application of the FPersG (i.e. Germany), then, according to section 4 paragraph 2 in connection with section 9 paragraph 2 of the FPersG, the Federal Office for Goods Transport (*Bundesamt für Güterverkehr*) is the competent authority for imposing the fines stipulated in the FPersG.

According to section 8a paragraph 5 FPersG, German authorities can punish administrative offences by fine if they have not been committed within the area of application of the FPersG in cases of section 8 paragraph 1 and 2.

Please note that we have not dealt with the German Driving Personnel Regulations (*Fahrpersonalverordnung* and in the following “FPersV”), because the FPersV pursuant to section 1 FPersV applies, inter alia, to vehicles which are used for the transportation of goods whose admissible maximum weight including hanger and road semi-trailer is more than 2.8 tons and less than 3.5 tons. Regulation (EC) No. 561/2006, however, according to Art. 2 of the regulation, only applies to transportation of goods with vehicles the maximum weight of which including hanger or road semi-trailer exceeds 3.5 tons.

12.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)

Directive 2006/22/EC has been implemented in Germany by way of an implementing law dated 2 February 2007 (*Umsetzung der Richtlinie 2006/22/EG des Europäischen Parlaments und des Rates vom 15. März 2006 über die Mindestbedingungen für die Durchführung der Verordnungen (EWG) Nr. 3820/85 und (EWG) Nr. 3821/85 des Rates über Sozialvorschriften für Tätigkeiten im Kraftverkehr sowie zur Aufhebung der Richtlinie 88/599/EWG des Rates*).

The implementing law contains provisions regarding the type and extent of controls to be carried out in relation to drivers, companies and motor vehicles of those modes of transportation, which fall within the area of application of Regulations (EC) No. 561/2006, (EEC) No 3820/85 and No 3821/85. Notably, the implementing law contains detailed provisions regarding roadside checks, checks at the premises of undertakings, a risk rating system, concerted checks, intra-Community liaison, exchange of information, reporting and statistics as well as a provision on best practice.

Directive 2006/22/EC, pursuant to Article 9 paragraph 3, contains in Annex III a table of infringements pursuant to Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85, which are divided into categories according to their severity. Article 9 paragraph 3 of Directive 2006/22/EC contains detailed provisions regarding the introduction of a risk rating system. The German implementing law in Article 6

stipulates that undertakings, which have their registered office within the territory of the Federal Republic of Germany, are to be classified regarding the risk of infringements of Regulations (EC) No 561/2006, (EEC) No 3820/85 and No 3821/85. Undertakings with a high risk rating shall be checked more closely. However, the German implementing law does not explicitly refer to the list of infringements contained in Annex III to Directive 2006/22/EC, which are divided into categories according to their severity. It is therefore unclear whether the controlling authorities make a distinction regarding the severity of the infringements.

Seeing that the German implementing law contains provisions regarding the introduction of a risk rating system, it is, however, likely that the German authorities in practice rely on the different categories relating to the severity of the infringements as set out in Annex III to Directive 2006/22/EC. Yet this is not explicitly stated in the implementing law.

12.1.1.3 Directive 2002/15/EC

Directive 2002/15/EC has been implemented into German law with the introduction of section 21a into the Working Hours Act (*Arbeitszeitgesetz* and in the following “ArbZG”).

Competent authorities for implementing the ArbZG: according to section 17 paragraph 1 ArbZG, the authorities (*Aufsichtsbehörden* or controlling authorities) designated by the relevant federal state governments monitor the implementation of the ArbZG and any Regulations enacted in connection therewith.

The territorial scope of application of the ArbZG extends to all activities within the realm of the Federal Republic of Germany (*Territorialprinzip* or territoriality principle). Therefore, employees of foreign companies are also subject to the ArbZG if they work in Germany or are sent to Germany. An “employee” within the meaning of the ArbZG is any person obligated pursuant to a private law contract to execute work in the services of another bound by instructions and directed by another and in personal dependency. This includes apprentices and trainees.

Section 21a ArbZG applies solely to employees, who carry out road traffic activities within the meaning of the Regulation (EC) No 561/2006 or the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (“AETR”). Self-employed drivers are not subject to the ArbZG. Directive

2002/15/EC, however, applies to self-employed drivers and should have been implemented into national law by 22 March 2009. This has not happened to date.

12.1.2 Tachograph

12.1.2.1 Regulation (EEC) No 3821/85

The relevant German laws containing sanctions in relation to infringements of Council Regulation (EEC) No 3821/85 are the German Driving Staff Act (*Fahrpersonalgesetz* or “FPersG”) and the Driving Personnel Regulations (*Fahrpersonalverordnung* or “FPersV”).

According to Article 3 paragraph 1 of Regulation (EEC) No 3821/85, the recording equipment has to be installed in and utilized in vehicles, which are licensed for passenger transportation or transportation of goods in road traffic in a member state, except vehicles mentioned in Art. 3 of Regulation (EC) No 561/2006. We have therefore considered both FPersG and FPersV when examining the sanctioning of infringements of the regulation.

According to section 4 paragraph 1 in connection with section 9 paragraph 1 FPersG, if a an infringement is committed by a company that has its registered office or branch office within the area of application of the FPersG, the competent authorities for imposing the fines stipulated in the FPersG are the authorities (*Aufsichtsbehörden* or controlling authorities) designated by the relevant federal state governments.

However, if the infringement is committed by a company, which does not have its registered office or branch office within the area of application of the FPersG, and the person affected does not have its place of residence within the area of application of the FPersG, then, according to section 4 paragraph 2 in connection with section 9 paragraph 2 FPersG, the Federal Office for Goods Transport (*Bundesamt für Güterverkehr*) is the competent authority for imposing the fines stipulated in the FPersG.

12.2 Road package

12.2.1 Regulation (EC) No 1071/2009

The relevant German laws containing sanctions in relation to infringements of Regulation (EC) No 1071/2009 are the German Road Haulage Act (*Güterkraftverkehrsgesetz* and in the following “GüKG”), the Passenger Transportation Act (*Personenbeförderungsgesetz* and in the following “PBefG”), the Implementing Regulation regarding access to the profession in road haulage (*Güterkraftverkehr-Berufszugangsverordnung* and in the following “GBZugV”) as well as the German Penal Code (“StGB”).

The GüKG applies to commercial road haulage, which is defined in section 1 of the GüKG as the transportation of goods for commercial purposes or in return for payment with vehicles which have, including hangers, a higher permissible maximum weight than 3.5 tons.

According to section 7 paragraph 1 GüKG, the carrier (*Unternehmer*), in cases where a transportation is carried out within the Federal Republic of Germany and a) such transportation requires a licence in relation to commercial road transport and b) proof of the fulfilment of certain technical, security and environmental requirements for the vehicle used are compulsory, has to carry the required licence and the required proof in relation to the vehicle during the entire transportation. The documents must not be sealed in plastic or covered with a protective layer.

According to section 11 GüKG, the Federal Office for Goods Transport (*Bundesamt für Güterverkehr*) watches over the compliance with the obligations which domestic as well as foreign companies in commercial road transport have to obey pursuant to the GüKG and the statutory provisions resulting thereof.

According to section 3 GüKG, any commercial road haulage must be authorized by a li-cense. To be eligible for such a license, a national applicant must comply with the requirements set out in Regulation (EC) No 1071/2009.

Foreign undertakings without a registered branch within German territory are exempted from the obligation to be authorized pursuant to section 6 GüKG if they can present either a Community license, a license obtained on the grounds of the CEMT-

resolution of 14 June 1973 or the respective Swiss licence handed out on the basis of the relevant European-Swiss Agreement of 21 June 1999.

Administrative offences can also, on the basis of and according to the provisions of international treaties, be punished if they are committed at joint clearance facilities at boarders outside of the realm of the Federal Republic of Germany pursuant to section 19 paragraph 5 GüKG.

According to section 1 paragraph of the Passenger Transportation Act (*Personen-beförderungsgesetz* and in the following “PBefG”), the provisions of the PBefG apply to the transportation of passengers for valuable consideration or for business with trams, trolley busses and motor vehicles. Section 1 paragraph 2 PBefG contains some exceptions (such as ambulances under certain circumstances etc.).

On 29 February 2012, the Federal Office for goods transport (*Bundesamt für Güterverkehr*) published guidance for the interpretation of Annex IV to Reg. (EC) No 1071/2009. In the covering letter to the guidance paper it is stated that the good repute of a transport manager or a transport undertaking is usually in question when the same has been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of Community rules as set out in Annex IV to Reg. (EC) No 1071/2009 in one or more member states. If, due to the severity of the offence/infringement, the transport manager or the transport manager loses his/its good repute, then this can lead to a revocation of the community licence as a result of the loss of a subjective requirement for entry into the profession. Further, it can lead to the prohibition of conducting business in road traffic in future. In light of these severe consequences of an official action in this regard, which is based on the assumption of a most serious offence, but also in order to safeguard a preferably uniform interpretation and application of Annex IV to Reg. (EC) No 1071/2009 by the authorities, the Federal Office for goods transport (*Bundesamt für Güterverkehr*) sought to substantiate and to qualify the most serious offences in more detail and to determine which criminal offences or administrative offences can be classified as a most serious offence in relation to Annex IV to Reg. (EC) No 1071/2009. The guidance paper was agreed with the Federal States and the relevant associations.

In the introduction to the guidance paper contains, *inter alia*, the following noteworthy points:

- A willful action is only requirement for the classification of a punished infringement as a most serious infringement if the characteristics of the infringement as stated in Annex IV of Reg. (EC) No 1071/2009 require a specific liability. This is, for example, true for No. 6 of Annex IV of Reg. (EC) No 1071/2009. Otherwise the assumption for the loss of repute is not linked to a particular form of liability. Generally a negligent infringement is therefore assessed as a most serious infringement within the meaning of Annex IV of Reg. (EC) No 1071/2009.
- The classification of a criminal offence as most serious infringement within the meaning of Annex IV of Reg. (EC) No 1071/2009 usually requires the existence of special factual circumstances. For example, a conviction for forgery of evidentiary data does, on its own, not qualify as a most serious infringement pursuant to No. 6 alternative 1 of Annex IV of Reg. (EC) No 1071/2009, but only when the act occurred during or in connection with the use of a forged driver card. Aiding and abetting (sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are generally sufficient.
- Convictions for administrative fines can only be classified as most serious infringements within the meaning of Annex IV of Reg. (EC) No 1071/2009 when the administrative fine is higher than € 200.
- On a national level no sanction exists for Nr. 3 alternative 1 of Annex IV of Reg. (EC) No 1071/2009 (Driving without a valid roadworthiness certificate if such a document is required under Community law).

The table below provides an overview of the sanctions applicable to the infringements listed in Annex IV to Regulation (EC) No 1071/2009 – Most serious infringements for the purposes of Article 6 (2) (a).

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
Regulation (EC) No. 1071/2009	No. 1 a) of Annex 4 to the EU Reg.	German Driving Staff Act (FPersG)	Art. 6 Abs. 2 of Reg. (EC) No. 561/2006 in connection with sec. 8 a para. 1 No. 2 OR Art. 6 para. 3 of Reg. (EC) No. 561/2006 in connection with sec. 8a para. 1 No.2 <i>FPersG</i>	Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more (Art. 1 a) of Annex 4 to the EU Reg. if committed intentionally or negligently	Carrier <i>(Unternehmer)</i>	Fine of up to € 15,000	
	No. 1 a) of Annex 4 to the EU Reg.	German Driving Staff Act (FPersG)	Art. 6 para. 2 Reg. (EC) No. 561/2006 in connection with sec. 8a para. 2 No.1 <i>FPersG</i> OR Art. 6 para. 3 Reg. (EC) No. 561/2006 in connection with sec. 8a para. 2 No.1 <i>FPersG</i>	Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more (Art. 1 a) of Annex 4 to the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	No. 1 b) of Annex 4 to the EU Reg.	German Driving Staff Act (FPersG)	Art. 6 Abs. 1 of Reg. (EC) No. 561/2006 in connection with sec. 8 a para. 1 No. 2 <i>FPersG</i>	Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more without taking a break or without uninterrupted rest period of at least 4,5 hours if committed intentionally or negligently	Carrier (<i>Unternehmer</i>)	Fine of up to € 15,000	
	No. 1 b) of Annex 4 to the EU Reg.	German Driving Staff Act (FPersG)	Art. 6 para. 1 Reg. (EC) No. 561/2006 in connection with sec. 8a para. 2 No.1 <i>FPersG</i>	Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more without taking a break or without uninterrupted rest period of at least 4,5 hours if committed intentionally or negligently	Driver	Fine of up to € 5,000	
	No. 2 Alternative 1 of Annex 4	Driving Personnel Regulations	Art. 3 para. 1 first half of line 1 VO (EEC) No. 3821/85 in connection	Not having a tachograph if committed intentionally or negligently	Carrier company (<i>Unternehmer</i>)	Fine of up to € 15,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	to the EU Reg.	(FPersV) and German Driving Staff Act (FPersG)	with sec. 23 para. 1 No.1 <i>FPersV</i> and sec. 8 para. 1 No.1 b <i>FPersG</i>				
	No. 2 Alternative 2 of Annex 4 to the EU Reg.	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 31 para. 2, 57c para. 2, 31d para. 3 and 69a <i>StVZO</i> and sec. 24 <i>StVG</i> OR Sec. 57c para. 2, 31d para. 3 and 69a <i>StVZO</i> and sec. 24 <i>StVG</i>	Not having a speed limiter if committed intentionally or negligently Please note: Only relevant regarding the classification as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009 if the administrative fine is higher than € 200.	Owner (<i>Halter</i>)	Fine of up to € 2,000	
	No. 2 Alternative 3 of Annex 4	German Penal Code (StGB)	Sec. 268 para. 1 No.1 in connection with para. 3 <i>StGB</i> (Forgery of	Using a fraudulent device able to modify the records of the recording equipment.			Imprisonment for up to 5 years or fine; aiding

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	to the EU Reg.		technical records)	Please note: The offence must have been committed in connection with the use of recording equipment in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are sufficient.			and abetting and attempt are also punishable
	No. 2 Alternative 3 of Annex 4 to the EU Reg.	German Penal Code (StGB)	Sec. 269 para. 1 <i>StGB</i> (Forgery of evidentiary data)	Using a fraudulent device able to modify the records of the recording equipment Please note: The offence must have			Imprisonment for up to 5 years or fine; aiding and abetting and attempt are also punishable

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
				<p>been committed in connection with the use of recording equipment in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are sufficient.</p>			
	<p>No. 2 Alternative 3 of Annex 4 to the EU Reg.</p>	<p>Road Traffic Act (StVG)</p>	<p>Sec. 22b para. 1 No.1 and No.2 <i>StVG</i> (abuse of odometer and speed regulator)</p>	<p>Using a fraudulent device able to modify the records of the recording equipment</p> <p>Please note: The offence must have been committed in connection with the use of recording equipment in order to be able to be classified as a</p>			<p>Imprisonment of up to 1 year or fine; aiding and abetting are also punishable</p>

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
				most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) are sufficient.			
	No. 2 Alternative 4 of Annex 4 to the EU Reg.	Road Traffic Act (StVG)	Sec. 22b para. 1 No.1 and No.2 <i>StVG</i> (abuse of odometer and speed regulator)	Using a fraudulent device able to modify the records of the speed limiter Please note: Aiding and abetting (sections 26 and 27 of the German Penal Code) are sufficient.			Imprisonment of up to 1 year or fine; aiding and abetting are also punishable
	No. 2 Alternative 5 of Annex 4 to the EU	German Penal Code (StGB)	Sec. 268 para. 1 No.1 in connection with No.3 <i>StGB</i>	Falsifying record sheets Please note: The offence must have			Imprisonment for up to 5 years or fine; aiding and abetting and

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	Reg.		(Forgery of technical records)	been committed in connection with the use of recording equipment in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are sufficient.			attempt are also punishable
	No. 2 Alternative 5 of Annex 4 to the EU Reg.	German Penal Code (StGB)	Sec. 303 a para. 1 <i>StGB</i> (change of data)	Falsifying data downloaded from the tachograph and/or the driver card Please note: The offence must have been committed in connection with the use of recording equipment in order to be able to be classified as a most serious infringement within the			Imprisonment for up to 2 years or fine; aiding and abetting and attempt are also punishable

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
				meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are sufficient.			
	No. 3 Alternative 1 of Annex 4 to the EU Reg.	There is no carrying requirement or obligation of presentation	x	Driving without a valid roadworthiness certificate if such a document is required under Community law	x	x	x
	No. 3 Alternative 1 of Annex 4 to the EU Reg.	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 31 para. 2, 36, 36a, 38, 41, 69a <i>StVZO</i> and sec. 24 <i>StVG</i>	Driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it	Owner	Fine of up to € 2,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
				leads to a decision to immobilize the vehicle			
	No. 4 Alternative 1 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act (GGBefG)	Sec. 37 para. 1 No.6g, 19 para. 2 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i>	Transporting dangerous goods that are prohibited for transport if committed intentionally or negligently	Carrier	Fine of up to € 1,000	
	No. 4	Regulations	Sec. 37 para. 1 No.4c, 18	Transporting dangerous goods that	Sender	Fine of up to	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	Alternative 1 of Annex 4 to the EU Reg.	for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportati on Act (GGBeFG)	para. 1 No.3 <i>GGVSEB</i> and sec. sec. 10 para. 1 No.1b <i>GGBeFG</i>	are prohibited for transport if committed intentionally or negligently		€ 1,000	
	No. 4 Alternative 1 of Annex 4 to the EU	German Penal Code (StGB)	Sec. 328 para. 3 No.2 <i>StGB</i> (handling of radioactive and other dangerous material and	Transporting dangerous goods that are prohibited for transport Please note: Aiding and abetting	Carrier		Imprisonment for up to 5 years or fine; aiding and abetting and attempt are also

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	Reg.		goods without permission)	(sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are sufficient.			punishable
	No. 4 Alternative 2 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportati	Sec. 37 para. 1 No.5b, sec. 19 para. 1 No.2 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i>	Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Carrier	Not allowed to transport the consignment until the infringed provision is complied with and a fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
		on Act (GGBeFG)					
	No. 4 Alternative 2 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportati on Act (GGBeFG)	Sec. 37 para. 1 No.6a, sec. 19 para. 2 No.1 GGVSEB and sec. 10 para. 1 No.1b GGBeFG OR Sec. 37 para. 1 No.6c, sec. 19 para. 2 No.3 GGVSEB and sec. 10 para. 1 No.1b GGBeFG OR Sec. 37 para. 1 No.6d, sec. 19 para. 2 No.4 GGVSEB and sec. 10 para. 1 No.1b GGBeFG OR Sec. 37 para. 1 No.6l, sec.	Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Carrier	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
			<p>19 para. 2 No.12 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i></p> <p>OR</p> <p>Sec. 37 para. 1 No.6m, sec. 19 para. 2 No.13 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i></p> <p>OR</p> <p>Sec. 37 para. 1 No.21, sec. 29 para. 2 No.2 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i></p>				
	<p>No. 4 Alternative 2 of Annex 4 to the EU</p>	<p>Regulations for the Conveyance of</p>	<p>Sec. 37 para. 1 No.16d, sec. 24 No.4 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i></p>	<p>Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such an extent</p>	<p>Operator (<i>Betreiber</i>)</p>	<p>Fine of up to € 1,000</p>	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	Reg.	Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act (GGBefG)	OR Sec. 37 para. 1 No.16e, sec. 24 No.5 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i>	that it leads to a decision to immobilize the vehicle			
	No. 4 Alternative 2 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland	Sec. 37 para. 1 No.4e, sec. 18 para. 1 No.5 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i>	Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Sender	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
		Navigation (GGVSEB) and Dangerous Goods Transportati on Act (GGBeFG)					
	No. 4 Alternative 2 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous	Sec. 37 para. 1 No.10b, sec. 21 para. 1 No.2 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBeFG</i> OR Sec. 37 para. 1 No.10l, sec. 21 para. 1 No.5 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBeFG</i> OR	Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Loader	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
		Goods Transportati on Act (GGBeFG)	Sec. 37 para. 1 No.21a, sec. 29 para. 1 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBeFG</i>				
	No. 4 Alternative 2 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportati on Act	Sec. 37 para. 1 No.12c, sec. 23 para. 1 No.3 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBeFG</i> OR Sec. 37 para. 1 No.12d, sec. 23 para. 1 No.4 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBeFG</i> OR Sec. 37 para. 1 No.12h, sec. 23 para. 1 No.8 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBeFG</i>	Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Filler	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
		<u>(GGBefG)</u>	OR Sec. 37 para. 1 No.12l, sec. 23 para. 1 No.12 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i>				
	No. 4 Alternative 1 of Annex 4 to the EU Reg.	<u>Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportati</u>	Sec. 37 para. 1 No.20a, sec. 28 No.1 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i> OR Sec. 37 para. 1 No.20b, sec. 28 No.2 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i> OR Sec. 37 para. 1 No.21a, sec. 29 para. 1 <i>GGVSEB</i> and sec. 10 para. 1 No.1b	Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Driver	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
		on Act (GGBefG)	<i>GGBefG</i>				
	No. 4 Alternative 2 of Annex 4 to the EU Reg.	German Penal Code (StGB)	Sec. 328 para. 3 No.2 <i>StGB</i> (handling of radioactive and other dangerous material and goods without permission)	Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle Please note: Aiding and abetting (sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are sufficient.			Imprisonment for up to 5 years or fine; aiding and abetting and attempt are also punishable
	No. 4 Alternative 3 of Annex 4	Regulations for the Conveyance	Sec. 37 para. 1 No.6k, sec. 19 para. 2 No.11 <i>GGVSEB</i> and sec. 10 para. 1 No.1b	Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus	Carrier (<i>Beförderer</i>)	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	to the EU Reg.	of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportati on Act (GGBefG)	<i>GGBefG</i>	endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle			
	No. 4 Alternative 3 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail	Sec. 37 para. 1 No.10e, sec. 21 para. 1 No.5 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i> OR Sec. 37 para. 1 No.10f,	Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Loader (<i>Verlader</i>)	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
		and Inland Navigation (GGVSEB) and Dangerous Goods Transportati on Act (GGBefG)	sec. 21 para. 1 No.6 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i> OR Sec. 37 para. 1 No.10j, sec. 21 para. 2 No.3 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i>				
	No. 4 Alternative 3 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and	Sec. 37 para. 1 No.16, sec. 24 para. 1 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBefG</i>	Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Operator (<i>Betreiber</i>)	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
		Dangerous Goods Transportation Act (GGBeG)					
	No. 4 Alternative 3 of Annex 4 to the EU Reg.	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act	Sec. 37 para. 1 No.20i, sec. 28 No.9 <i>GGVSEB</i> and sec. 10 para. 1 No.1b <i>GGBeG</i>	Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle	Driver	Fine of up to € 1,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
		<u>(GGBefG)</u>					
	No. 4 Alternative 3 of Annex 4 to the EU Reg.	<u>German Penal Code</u> <u>(StGB)</u>	Sec. 328 para. 3 No.2 <i>StGB</i> (handling of radioactive and other dangerous material and goods without permission)	Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle Please note: Aiding and abetting (sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are sufficient.	Driver, Owner		Imprisonment for up to 5 years or fine; aiding and abetting and attempt are also punishable; if driver acts negligent, the maximum imprisonment is reduced to 3 years

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	No. 5 Alternative 1 of Annex 4 to the EU Reg.	Road Traffic Act (StVG)	Sec. 21 para. 1 and para. 2 <i>StVG</i>	Carrying passengers without holding a valid driving licence Please note: The offence must have been committed in connection with driving a autobus with passengers in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) are sufficient.	Driver, Owner		Imprisonment for up to 1 year or fine⁸⁰
	No. 5 Alternative 2 of Annex 4	Road Traffic Act (StVG)	Sec. 21 para. 1 and para. 2 <i>StVG</i>	Carrying goods without holding a valid driving licence	Driver, Owner		Imprisonment for up to 1 year

⁸⁰

If the criminal offence is committed repeatedly, the punishment will not be more severe, but regaining the driving licence will be more difficult and will take more time.

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	to the EU Reg.			Please note: The offence must have been committed in connection with transport of goods with a motor vehicle, the maximum permissible laden mass of which exceeds 3.5 tons, in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) are sufficient.			or fine⁸¹
	No. 5 Alternative 3 of Annex 4	EC Bus implementing Regulation	Sec. 8 para. 1a No.1 EGBusV and sec. 61 para. 1 No.5 a) in connection	Carrying passengers not holding a valid Community licence if committed intentionally or	Carrier (<i>Unternehmer</i>)	Fine of up to € 20,000	

⁸¹

If the criminal offence is committed repeatedly, the punishment will not be more severe, but regaining the driving licence will be more difficult and will take more time.

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	to the EU Reg.	(EGBusDV) and Passenger Transportati on Act (PBefG)	with No. 1 <i>PBefG</i>	negligently			
	No. 5 Alternative 4 of Annex 4 to the EU Reg.	Road Haulage Act (GüKG)	Sec. 19 para. 2 No.1 <i>GüKG</i> in connection with Art. 3 of Reg. (EC) No. 1072/2009	Carrying goods not holding a valid Community licence	Carrier <i>(Unternehmer)</i>	Fine of up to € 20,000	
	No. 6 Alternative 1 of Annex 4 to the EU Reg.	German Penal Code (StGB)	Sec. 269 para. 1 <i>StGB</i> (Forgery of evidentiary data)	Driving with a driver card that has been falsified Please note: The offence must have been committed in connection with the use of a forged driver card in order to be able to be classified as a			Imprisonment for up to 5 years or fine; aiding and abetting are also punishable

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
				<p>most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) are sufficient.</p>			
	<p>No. 6 Alternative 2 of Annex 4 to the EU Reg.</p>	<p>German Penal Code (StGB)</p>	<p>Sec. 269 para. 1 <i>StGB</i> (Forgery of evidentiary data)</p>	<p>Driving with a driver card of which the driver is not the holder</p> <p>Please note: The offence must have been committed in connection with the use of another's driver card in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) are sufficient.</p>			<p>Imprisonment for up to 5 years or fine; aiding and abetting are also punishable</p>

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	No. 6 Alternative 2 of Annex 4 to the EU Reg.	German Penal Code (StGB)	Sec. 281 para. 1 (1. alternative) in connection with para. 2 StGB (misuse of identity papers)	Driving with a driver card of which the driver is not the holder Please note: The offence must have been committed in connection with the use of another's driver card in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009. Aiding and abetting (sections 26 and 27 of the German Penal Code) and attempt (section 22 and 23 of the German Penal Code) are sufficient.			Imprisonment for up to 1 years or fine; aiding and abetting and attempt are also punishable
	No. 6 Alternative 2	Regulation Regarding	Art. 14 para. 4a subpara. 3 line 2 of Reg. (EEC) No.	Driving with a driver card of which the driver is not the holder	Driver	Fine up to € 5,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
	of Annex 4 to the EU Reg.	the implementation of the Driving Staff Act (FPersG) (FPersV)	3821/85 in connection with sec. 23 para. 2 No.4 <i>FPersV</i> and ce. 8para. 1 No.2b <i>FPersG</i>	Please note: The offence must have been committed in connection with the use of another's driver card in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009.			
	No. 6 Alternative 3 of Annex 4 to the EU Reg.	German Penal Code (StGB)	Sec. 269 para. 1 <i>StGB</i> (forgery of evidentiary data)	Driving with a driver card which has been obtained on the basis of false declarations and/or forged documents Please note: The offence must have been committed in connection with the use of another's driver card in order to be able to be classified as a most serious infringement within the meaning of Annex IV of Reg. (EC)			Imprisonment for up to 5 years or fine; aiding and abetting are also punishable

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
				Nr. 1071/2009.			
	No. 7 Alternative 1 of Annex 4 to the EU Reg.	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 31 para. 2, sec. 34 para. 3, sec. 31d para. 1, sec. 69a <i>StVZO</i> , sec. 24 <i>StVG</i> OR Sec. 34 para. 3, sec. 31d para. 1, sec. 69a <i>StVZO</i> , sec. 24 <i>StVG</i>	Carrying goods exceeding the maximum permissible laden mass by 20% or more for vehicles the permissible laden weight of which exceeds 12 tons, if committed intentionally or negligently Please note: Only relevant regarding the classification as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009 if the administrative fine is higher than € 200.	Owner	Fine of up to € 2,000	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
				<p>The maximum permissible laden mass of the motor vehicle or the combination of vehicles must be 12 tons</p>			
	<p>No. 7 Alternative 2 of Annex 4 to the EU Reg.</p>	<p>Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)</p>	<p>Sec. 31 para. 2, sec. 34 para. 3, sec. 31d para. 1, sec. 69a <i>StVZO</i>, sec. 24 <i>StVG</i> OR Sec. 34 para. 3, sec. 31d para. 1, sec. 69a <i>StVZO</i>, sec. 24 <i>StVG</i></p>	<p>Carrying goods exceeding the maximum permissible laden mass by 25% or more for vehicles the permissible laden weight of which does not exceed 12 tons, if committed intentionally or negligently</p> <p>Please note: Only relevant regarding the classification as a most serious infringement within the meaning of Annex IV of Reg. (EC) Nr. 1071/2009 if the administrative fine is higher than € 200.</p>	<p>Owner</p>	<p>Fine of up to € 2,000</p>	

Table DE 1

EU legislation	Relevant Article of the EU Legislation	Relevant national legislation	Relevant section in the national legislation	Type of infringement(s)	Addressee of the sanctions	Administrative sanction(s)	Criminal sanction (s)
				The maximum permissible laden mass of the motor vehicle or the vehicle combination should not be more than 12 tons.			

12.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009

The relevant national legislation implementing the sanctions in relation to Regulation (EC) No 1072/2009 is the Road Haulage Act (*Güterkraftverkehrsgesetz* and in the following “GüKG”).

According to section 7 paragraph 1 GüKG, the carrier (*Unternehmer*), in cases where a transportation is carried out within the Federal Republic of Germany and a) such transportation requires a licence in relation to commercial road transport and b) proof of the fulfilment of certain technical, security and environmental requirements for the vehicle used are compulsory, has to carry the required licence and the required proof in relation to the vehicle during the entire transportation. The documents must not be sealed in plastic or covered with a protective layer.

According to section 11 GüKG, the Federal Office for Goods Transport (*Bundesamt für Güterverkehr*) watches over the compliance with the obligations which domestic as well as foreign companies in commercial road transport have to obey pursuant to the GüKG and the statutory provisions resulting thereof.

According to section 3 GüKG, any commercial road haulage must be authorized by a licence. To be eligible for such a licence, a national applicant must comply with the requirements set out in Regulation (EC) No. 1071/2009.

Foreign undertakings without a registered branch within German territory are exempted from the obligation to be authorized pursuant to section 6 GüKG if they can present either a Community license, a license obtained on the grounds of the CEMT-resolution of 14 June 1973 or the respective Swiss licence handed out on the basis of the relevant European-Swiss Agreement of 21 June 1999.

Administrative offences can also, on the basis of and according to the provisions of international treaties, be punished if they are committed at joint clearance facilities at borders outside of the realm of the Federal Republic of Germany pursuant to section 19 paragraph 5 GüKG.

Relevant German legislation containing sanctions

The relevant national legislation implementing the sanctions in relation to Regulation (EC) No 1073/2009 is the Passenger Transportation Act (*Personenbeförderungsgesetz* and in the following “PBefG”).

According to section 1 paragraph of the Passenger Transportation Act (*Personen-beförderungsgesetz* and in the following “PBefG”), the provisions of the PBefG apply to the transportation of passengers for valuable consideration or for business with trams, trolley busses and motor vehicles. Section 1 paragraph 2 PBefG contains some exceptions (such as ambulances under certain circumstances etc.).

According to section 52 paragraph 1 PBefG, the provisions of this statute apply to the cross-border transport of persons with motor vehicles by carriers (*Unternehmer*) which have their registered office within or outside of the Federal Republic of Germany.

Section 53 paragraph 1 PBefG furthermore states that the provisions of the PBefG also apply to the transportation of passengers as part of transit traffic with motor vehicles, which touches on the realm of the area of application of the PBefG excluding the inner-German traffic.

12.3 Standards of vehicles and load and necessary licences

12.3.1 Directive 2008/68/EC

Relevant German legislation implementing the Directive

The relevant German laws implementing Directive 2008/68/EC are the Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (*Gefahrgut-verordnung Straße, Eisenbahn und Binnenschifffahrt* or “GGVSEB”) and the Dangerous Goods Transportation Act (*Gefahrgutbeförderungsgesetz* or “GGBefG”).

When transporting hazardous or dangerous goods, the carriers, shippers, fillers, senders, operators and drivers have to comply with numerous standards. In case of non-compliance, fines can be heavy. In case of repetition, or if the life or health of third persons, of animals not belonging to the offender or things of major value are put at risk,

violations can be qualified as criminal acts. Imprisonment of up to 1 year or a fine may be imposed. Notably, administrative sanctions and criminal sanctions can be applied cumulatively.

It should be pointed out that laws implementing Directive 2008/68/EC address almost every person who gets to deal with the dangerous or hazardous freight, including, for in-stance, the filler or the sender.

The standards that have to be met mostly stem from international treaties such as ADR (*Accord européen relatif au transport international des marchandises Dangereuses par Route*), RID (*Règlement concernant le transport international ferroviaire de marchandises Dangereuses Règlement concernant le transport international ferroviaire de marchandises Dangereuses*) and ADN (*Accord Européen relative au transport international des marchandises dangereuses par voies de navigation intérieures*).

12.3.2 Directive 1996/53/EC

The relevant German laws implementing Council Directive 96/53/EC are the Road Traffic Permit Act (*Straßenverkehrs-Zulassungs-Ordnung* or “StVZO”) and the Road Traffic Act (*Straßenverkehrsgesetz* or “StVG”).

Directive 96/53/EC contains information about the permissible dimensions and weights for certain road vehicles in international traffic, which German national law refers to.

Infringements can lead to a liability of the owner as well as the driver. The applicable Ger-man law distinguishes between vehicles with an overall weight of more than 12 tons and such with an overall weight of less than 7.5 tons. Generally, the more the allowable operating weight is exceeded (in percent), the higher the fine.

12.3.3 Directive 2009/40/EC

By the time the Directive was enacted, Germany already had a highly developed system concerning roadworthiness tests for motor vehicles. Thus, the Directive did not have to be implemented into German law. The German Penal Code (*Stafgesetzbuch* or

“StGB”), the Road Traffic Licensing Regulations (*Straßenverkehrszulassungsordnung* or “StVZO”) and the Technical Control Regulations (*Technische Kontrollverordnung* or “TechKontrollV”) are the relevant statutes concerning roadworthiness under German law.

12.3.4 Directive 2006/126/EC

Directive 2006/126/EC has been implemented by the Road Traffic Act (*Straßenverkehrsgesetz* or “STVG”). Some practices relating to the usage or production of fake documents are also liable to prosecution under the German Penal Code (*Strafgesetzbuch* or “StGB”).

12.4 Notion of criminal sanction and of administrative sanction in the German legal system

Administrative offences are punished with administrative fines or, for example, with suspension or withdrawal of the driver’s licence. Administrative fines apply – generally speaking – to less serious breaches of law.

Criminal law distinguishes between main penalties, ancillary penalties, incidental legal consequences and care orders. Main penalties are imprisonment and fines. An ancillary penalty is for example the suspension of the driver’s licence. Care orders can be the withdrawal of the driver’s licence or an occupational ban. Incidental legal consequences of a criminal offence can be, for example, the loss of the right to hold public office.

There is no record of previous convictions regarding administrative offences, like there is for criminal offences. Administrative offences are hence not recorded at the Federal Central Registry. Notably, administrative offences can be committed by legal persons, whereas criminal offences can only be committed by natural persons.

In Germany, suspension and withdrawal of the driver’s licence can be based both on criminal or administrative law.

Concurrence between several sanctions

If a number of independent criminal offences committed by the same offender are tried simultaneously, sections 53 and 54 StGB stipulate that the individual sanctions shall be added to a cumulative sentence. Pursuant to section 54 StGB, firstly, the sentence for each offence has to be determined. From these individual sentences the most serious sentence is then increased in order to make up the cumulative sentence.

Even if they are not tried simultaneously, section 55 StGB stipulates that the Judge in the subsequent trial has to impose a cumulative sentence in his judgment with the legally binding but not yet served sentences imposed in the prior trial.

In addition, criminal records will be taken into account at subsequent trials as aggravating circumstances pursuant to section 46 paragraph 2 StGB. The previous criminal offences have to relate to similar or related legally protected interest or an expression of a general hostility towards or complacency about the law. Generally, a criminal record in a foreign country can be taken into consideration, even if they are not recorded in the Federal Central Register for previous convictions.

Special reasons have to be given for the consideration of a criminal record as aggravating circumstances if the previous criminal offences date back a long time.

Sections 19 to 21 OWiG stipulate the legal effects and consequences if a number of administrative statutes have been violated. The OWiG does not allow for a cumulative sanction.

According to section 19 OWiG, if the same act violates a number of laws, which are sanctioned with administrative fines, or if such a law is violated a number of times by the same act, then only a single administrative fine is applied. If more than one law is violated, then the administrative fine is determined according to the law, which contains the highest administrative fine.

If a multitude of offences are committed in relation to a law, the administrative fines will be imposed individually pursuant to section 20 OWiG.

Relevant exception

In some cases, multiple violations of statutes of administrative nature can add up to a criminal offence. An example for this exception, which is not very common in German law, are the provisions contained in sections 10 and 11 of the Dangerous Goods Transportation Act (*Gefahrgutbeförderungsgesetz* and in the following “GGBefG”).

Concurrence between administrative and criminal sanctions

If an action simultaneously qualifies as criminal and administrative offence, section 21 OWiG stipulates that only the relevant criminal statute shall be applied. However, according to section 21 paragraph 2 OWiG, an administrative sanction can be applied, if no criminal sanction is imposed in relation to the offence.

12.5 Scope of application of German criminal and administrative law

In accordance with the principle of territoriality, section 3 of the German Penal Code (*Strafgesetzbuch* and in the following “StGB”) states that German penal law is applicable to crimes committed within German territory. This principle of territoriality is applicable to the entire German penal law. Criminal offences committed by foreign nationals within the German territory are covered by German penal law. In certain cases, however, as stipulated in sections 5 to 7 StGB, German penal law is applicable beyond the borders of the German territory.

According to section 9 StGB, a criminal offence is committed in the place in which the criminal offender commits the act/omission or where the outcome or consequence of the act/omission occurs. Incitement or aiding and abetting a criminal offence is committed at the place in which the criminal offence is committed, as well as the place in which the person inciting or aiding and abetting a criminal offence has acted/omitted to act, or at which the criminal offence should have been committed according to his/her perception. If the person aiding and abetting has acted/omitted to act within the German territory, whereas the criminal offence was committed outside of the German territory, German penal law is applicable even if this act/omission is not punishable in the state in which it was committed.

The law in Germany regarding administrative sanctions (*Ordnungswidrigkeiten*) is more restrictive than German penal law. According to section 5 of the Administrative Sanctions Act (*Gesetz über Ordnungswidrigkeiten* and in the following “OWiG”) generally only offences committed within the German territory (principle of

territoriality) or offences committed outside the German territory on German-flagged ships or aircrafts are covered by the OWiG. The nationality of the offender is not relevant. As an exception, according to section 7 OWiG, an offence is treated as having been committed within the German territory, if it results in an offence within the Federal Republic of Germany.

12.6 Summary tables

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
SOCIAL RULES ON ROAD TRANSPORT						
Regulation 561/06/EC	<u>Rules on Driving Times, Breaks and Rest Periods</u>					
Art. 5 para. 1	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 1 No. 1 in connection with sec. 8a para. 4 FPersG	Infringement of Art. 5 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	
Art. 6 para. 1 line 1	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 1 No. 2 in connection with sec. 8a para 4 FPersG	Infringement of Art. 6 para. 1 line 1 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 6 para. 1 line 1	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 2 No. 1 in connection with sec. 8a para 4 FPersG	Infringement of Art. 6 para. 1 line 1 of the EU Reg. if committed intentionally or negligently		Fine of up to € 5,000	
Art. 6 para. 2	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 1 No. 2 in connection with sec. 8a para. 4 FPersG	Infringement of Art. 6 para. 2 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 15,000	
Art. 6 para. 2	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 2 No. 1 in connection with sec. 8a para 4 FPersG	Infringement of Art. 6 para. 2 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 5,000	

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 6 para. 3	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 1 No. 2 in connection with sec. 8a para. 4 FPersG	Infringement of Art. 6 para. 3 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 15,000	
Art. 6 para. 3	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 2 No. 1 in connection with sec. 8a para 4 FPersG	Infringement of Art. 6 para. 3 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 5,000	
Art. 7 line 1	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 1 No. 2 in connection with sec. 8a para. 4 FPersG	Infringement of Art. 7 line 1 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 15,000	

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 7 line 1	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 2 No. 1 in connection with sec. 8a para 4 <i>FPersG</i>	Infringement of Art. 7 line 1 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 8 para. 2 line 1	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 1 No. 2 in connection with sec. 8a para. 4 <i>FPersG</i>	Infringement of Art. 8 para. 2 line 1 of the EU Reg. if committed intentionally or negligently	Carrier (<i>Unternehmer</i>)	Fine of up to € 15,000	
Art. 8 para. 2 line 1	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 2 No. 1 in connection with sec. 8a para 4 <i>FPersG</i>	Infringement of Art. 8 para. 2 line 1 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 8 para. 5	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 1 No. 2 in connection with sec. 8a para. 4	Infringement of Art. 8 para. 5 of the EU Reg. if committed intentionally	Carrier (<i>Unternehmer</i>)	Fine of up to € 15,000	

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		<i>FPersG</i>	or negligently			
Art. 8 para. 5	<u>German Driving Staff Act</u> <i>(FPersG)</i>	Sec. 8a para. 2 No. 1 in connection with sec. 8a para 4 <i>FPersG</i>	Infringement of Art. 8 para. 5 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 8 para. 6	<u>German Driving Staff Act</u> <i>(FPersG)</i>	Sec. 8a para. 1 No. 2 in connection with sec. 8a para. 4 <i>FPersG</i>	Infringement of Art. 8 para. 6 of the EU Reg. if committed intentionally or negligently	Carrier <i>(Unternehmer)</i>	Fine of up to € 15,000	
Art. 8 para. 6	<u>German Driving Staff Act</u> <i>(FPersG)</i>	Sec. 8a para. 2 No. 1 in connection with sec. 8a para 4 <i>FPersG</i>	Infringement of Art. 8 para. 6 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 6 para. 1 line 1, Art. 6 para. 2, Art. 6 para. 3, Art. 7 line 1, Art. 8 para. 2 line 1, Art. 8 para. 5 and Art. 8 para. 6	<u>German Driving Staff Act (FPersG)</u>	Sec. 8a para. 3 in connection with sec. 8a para 4 <i>FPersG</i>	Agreeing to a transport time schedule contractually, without ensuring that this transport time schedule does not infringe Art. 6 para. 1 line 1, Art. 6 para. 2, Art. 6 para. 3, Art. 7 line 1, Art. 8 para. 2 line 1, 8 para. 5 and 8 para. 6 of the EU Reg.	Carrier (<i>Unternehmer</i>), loaders, freight forwarder, tour operator or drivers' agent	Fine of up to € 15,000	
Directive 2002/15/EC	<u>Rules on Working Time</u>					

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
<p>Art. 4</p>	<p><u>Working Hours Act (ArbZG)</u></p>	<p>Sec. 21a para. 4 ArbZG implements Art. 4a) of the EU Directive and sec. 21a para. 8 ArbZG implements Art. 4b) of the EU Directive</p>	<p>Infringement of sec. 21a para. 4 ArbZG (only!) in connection with sec. 22 para. 1 No. 1 ArbZG (fine) as well as sec. 23 para. 1 No. 1 and 2 and sec. 23 para. 2 ArbZG (criminal sanction)</p>	<p>Carrier (Unternehmer)</p>	<p>Fine of up to € 15,000 if committed intentionally or negligently</p>	<p>An employer can be punished with imprisonment for up to one year or a fine, if the employer commits the acts described in sec. 22 para. 1 No. 1 ArbZG intentionally, therewith endangering the health and working capacity of the employee (sec. 23 para. 1 No. 1) OR with persistent repetition (sec. 23 para. 1 No. 2).</p>

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 5	Working Hours Act (ArbZG)	Sec. 21a para. 5 ArbZG refers to the provisions for resting periods of the European Community for drivers and assistant drivers (i.e. Reg. (EC) 561/2006 and Reg. (EC) 3820/85) as well as the European Agreement concerning the Work of Crews	Infringements of provisions regarding resting periods contained in the provisions for resting periods of the European Community for drivers and assistant drivers (i.e. Reg. (EC) 561/2006 and Reg. (EEC) 3820/85) as well as the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (“AETR”)	Driver		An employer, who causes the endangerment in relation to sec. 23 para. 1 No. 1 negligently, can be punished with imprisonment for up to 6 months or with a fine of up to 180 daily rates

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		of Vehicles engaged in International Road Transport (“AETR”)				
Art. 7	Working Hours Act (Arbeitszeitgesetz)	Sec. 6 para. 2 ArbZG stipulates that work during nighttime must not continue for longer than 8 hours. Working time during the night can be extended to ten hours under	Infringement of sec. 6 para. 2 ArbZG according to sec. 22 para. 1 No. 1 ArbZG (fine) as well as sec. 23 para. 1 No. 1 and 2 and sec. 23 para. 2 ArbZG (criminal sanction)	Carrier (Unternehmer)	Depends on relevant provision applicable	Depends on relevant provision applicable

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		certain circumstances				
Art 9	<u>Working Hours Act (Arbeitszeitgesetz)</u>	Sec. 16 para. 1 ArbZG implements Art. 9 a) of the EU Directive and sec. 21a para. 7 ArbZG implements Art. 9 b) of the EU Directive	Infringement of sec. 16 para. 1 ArbZG acc. to sec. 22 para. 1 No. 8 ArbZG, if committed intentionally or negligently Infringement of sec. 21a para. 7 ArbZG acc. to	Employer Employer	Fine of up to € 15,000 if committed intentionally or negligently	An employer can be punished with imprisonment for up to one year or a fine, if the employer commits the acts described in sec. 22 para. 1 No. 1 ArbZG intentionally, therewith endangering the health and working capacity of the

Table DE 2

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			sec. 22 para. 1 No. 9 ArbZG, if committed intentionally or negligently			employee (sec. 23 para. 1 No. 1) OR with persistent repetition (sec. 23 para. 1 No. 2).

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
SOCIAL RULES ON ROAD TRANSPORT						
<u>Tachograph</u>						
Regulation (EEC) No. 3821/85						
Art. 3 para. 1 first half of line 1	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 1 No. 1 <i>FPersV</i> and sec. 8 para. 1 No. 1 letter b <i>FPersG</i>	Infringement of Art. 3 para. 1 first half of line 1 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	
Art. 3 para. 1 first half of line 1	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 1 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 3 para. 1 first half of line 1 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 13	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 1 No. 2 <i>FPersV</i> and sec. 8 para. 1 No. 1 letter b <i>FPersG</i>	Infringement of Art. 13 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	
Art. 13	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 2 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 13 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 14 para. 1 subpara. 1 line 1	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 1 No. 3 <i>FPersV</i> and sec. 8 para. 1 No. 1 letter b <i>FPersG</i>	Infringement of Art. 14 para. 1 subpara. 1 line 1 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 14 para. 1 subpara. 2	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 3 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 14 para. 1 subpara. 2 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 14 para. 1 subpara. 1 line 2	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 1 No. 4 <i>FPersV</i> and sec. 8 para. 1 No. 1 letter b <i>FPersG</i>	Infringement of Art. 14 para. 1 subpara. 1 line 2 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	
Art. 14 para. 1 subpara. 2	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 1 No. 5 <i>FPersV</i> and sec. 8 para. 1 No. 1 letter b <i>FPersG</i>	Infringement of Art. 14 para. 1 subpara. 2 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 14 para. 2 line 3	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 1 No. 6 <i>FPersV</i> and sec. 8 para. 1 No. 1 letter b <i>FPersG</i>	Infringement of Art. 14 para. 2 line 3 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	
Art. 14 para. 4 letter a subpara. 3 line 2 and line 3	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 4 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 14 para. 4 letter a subpara. 3 line 2 and line 3 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 14 para 5	<u>Driving Personnel Regulations (FPersV)</u>	Sec. 2a in connection with sec. 21 para. 1 Nr. 8 a <i>FPersV</i> in connection with and sec. 8 para. 1 No. 1	Infringement of sec. 2a of the <i>FPersV</i> if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 15,000	

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		letter a <i>FPersG</i>				
Art. 15 para. 1 subpara. 1 line 1 or para. 2 subpara. 1 line 2 or line 3	<u>Driving Personnel Regulations (<i>FPersV</i>) and German Driving Staff Act (<i>FPersG</i>)</u>	Sec. 23 para. 2 No. 5 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 15 para. 1 subpara. 1 line 1 or para. 2 subpara. 1 line 2 or line 3 line 1 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 15 para. 1 subpara. 5	<u>Driving Personnel Regulations (<i>FPersV</i>) and German Driving Staff Act (<i>FPersG</i>)</u>	Sec. 23 para. 2 No. 6 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 15 para. 1 subpara. 5 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 15 para. 2 subpara. 1 line 1	<u>Driving Personnel Regulations (<i>FPersV</i>) and German Driving Staff Act (<i>FPersG</i>)</u>	Sec. 23 para. 2 No. 7 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b	Infringement of Art. 15 para. 2 subpara. 1 line 1 of the EU Reg. if committed intentionally	Driver	Fine of up to € 5,000	

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		<i>FPersG</i>	or negligently			
Art. 15 para. 2 subpara. 2 or subpara. 3 or para. 5	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 8 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 15 para. 2 subpara. 2 or subpara. 3 or para. 5 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 15 para. 3	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 9 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 15 para. 3 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 15 para. 5	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 2 para. 1 <i>FPersV</i> in connection with sec. 21 para. 6 <i>FPersV</i> and sec. 8 para. 1 Nr. 2 letter a of <i>FPersG</i>	Infringement of Art. 15 para 5 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 15 para. 5a subpara. 1 line 1	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 10 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 15 para. 5a subpara. 1 line 1 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 15 para. 7 letter a and b	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 11 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 15 para. 7 letter a and b of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 15 para. 8	<p><u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u></p>	<p>Sec. 23 para 4 in connection with sec. 8 para. 1 Nr. 1 letter b, Nr. 2 letter b or Nr. 4 letter B <i>FPersG</i></p>	<p>Infringement of Art. 15 para. 8 of the EU Reg. if committed negligently</p>	<p>Carrier (Unternehmer), Driver, Owner of a repair shop, Fitter (Installateur)</p>	<p>Fine of up to € 15,000 for Carrier (Unternehmer); fine of up to € 5,000 for Driver, Owner of a repair shop, Fitter (Installateur)</p>	
Art. 16 para. 1 subpara. 1 also in connection with subpara. 2	<p><u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u></p>	<p>Sec. 23 para. 1 No. 7 <i>FPersV</i> and sec. 8 para. 1 No. 1 letter b <i>FPersG</i></p>	<p>Infringement of Art. 16 para. 1 subpara. 1 also in connection with subpara. 2 of the EU Reg. if committed intentionally or negligently</p>	<p>Carrier (Unternehmer),</p>	<p>Fine of up to € 15,000</p>	

Table DE 3

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 16 para. 2 subpara. 1	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 12 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 16 para. 2 subpara. 1 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 16 para. 2 subpara. 2	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 13 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 16 para. 2 subpara. 2 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	
Art. 16 para. 3 subpara. 3	<u>Driving Personnel Regulations (FPersV) and German Driving Staff Act (FPersG)</u>	Sec. 23 para. 2 No. 14 <i>FPersV</i> and sec. 8 para. 1 No. 2 letter b <i>FPersG</i>	Infringement of Art. 16 para. 3 subpara. 3 of the EU Reg. if committed intentionally or negligently	Driver	Fine of up to € 5,000	

Table DE 4						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
<u>Road Package</u>						
Regulation (EC) No. 1071/2009						
Art. 3	<u>Road Haulage Act</u> <i>(GüKG)</i>	Sec. 3 GüKG	Infringement of sec. 3 para. 1 GüKG acc. to sec. 19 para. 1 No.1b in connection with sec. 19 para. 5 GüKG if committed intentionally or negligently	Carrier <i>(Unternehmer)</i>	Fine of up to €20,000	
Art. 3	<u>German Penal Code</u> <i>(StGB)</i>	Sec. 267 StGB (forgery of documents)	Submission of fake documents aimed at providing the establishment in a Member State; Submission of fake	Person acting for the carrier <i>(Unternehmer)</i>		Imprisonment for up to 5 years (in certain very serious cases up to 10 years) or a fine;

Table DE 4

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			documents aimed at proving appropriate financial standing; submission of fake documents aimed at providing the requisite of professional competence			attempt is also punishable⁸²
Art. 3	<u>Implementing Regulation regarding access to the profession in road haulage (Güterkraftverkehrsberufszugangsverordnung or GBZugV) and Road Haulage Act (GüKG)</u>	Sec. 12 No. 3 and sec. 11 para. 1 line 3 GBZugV in connection with sec. 19 para. 1 No. 2 and sec. 19 para. 5 GüKG	Failure to provide proof of fulfillment of requirements pursuant of Art. 3 of the EU Reg. upon request by the relevant authorities, if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 5,000	

⁸² If documents are faked within German territory or if documents are faked outside but used within German territory, foreign drivers and undertakings are punishable under German penal law.

Table DE 4

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 3	<u>Passenger Transportation Act (Personenbeförderungsgesetz or PBefG)</u>	Sec. 61 para 1 Nr. 1 in connection with sec. 13 para 1a and sec. 61 para. 2 PBefG	Infringement of Art. 3 of the EU Reg. if committed intentionally or negligently	Carrier (Unternehmer)	Fine of up to € 20,000	
Art. 4	<u>Implementing Regulation regarding access to the profession in road haulage (Güterkraftverkehrsberufszugangsverordnung or GBZugV) and Road Haulage Act (GüKG)</u>	Sec. 12 No.1 and sec. 10 para. 1 No.6 GBZugV in connection with sec. 19 para. 1 No.2 and sec. 19 para. 5 GüKG	Failure to communicate death or inability of the transport manager	Carrier (Unternehmer)	Fine of up to € 5,000	
Regulation (EC) No 1072/2009						

Table DE 4

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art 3	<u>Road Haulage Act (GüKG)</u>	Sec. 19 para. 2 No. 1 in connection with sec. 19 para 5 GüKG	Infringement of Art. 3 of the EU Reg. if committed intentionally or negligently	Transport operator (<i>Verkehrsunternehmer</i>)	Fine of up to € 20,000	
Art. 5	<u>Road Haulage Act (GüKG)</u>	Sec. 19 para. 2 No. 2 in connection with sec. 19 para. 5 GüKG	Infringement of Art. 5 para. 6 line 1 of the EU Reg. by not providing driver or not providing driver in time with driving attestation if committed intentionally or negligently	Transport operator (<i>Verkehrsunternehmer</i>)	Fine of up to € 5,000	
Art. 5	<u>Road Haulage Act (GüKG)</u>	Sec. 19 para. 2 No. 3 in connection with sec. 19 para. 5 GüKG	Infringement of Art. 5 para. 6 line 3 of the EU Reg. by not showing the driving attestation or not showing it in time if committed intentionally or negligently	Driver	Fine of up to € 5,000	

Table DE 4

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 5	Road Haulage Act (GüKG)	Sec. 19 para. 4 No.1 in connection with sec. 19 para. 5 GüKG	Intentionally or negligently using a driver for cross-border road haulage, for whom a driving attestation pursuant to Art 5 para. 2 of the EU Reg has not been issued	Transport operator (<i>Verkehrsunternehmer</i>)	Fine of up to € 200,000	
Regulation (EC) No 1073/2009						
Art 3	Passenger Transportation Act (Personenbeförderungsgesetz or PBefG)	Sec. 61 para. 1 Nr. 1 <i>PBefG</i> in connection with sec. 52 or 53 <i>PBefG</i>	Infringement of Art. 3 of the EU Reg by carrying out international carriage of passengers by coach and bus without the necessary authorization or with an expired authorization if committed intentionally or negligently	Carrier (<i>Unternehmer</i>)	Fine of up to € 20,000	

Table DE 4

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
<p>Art. 3</p>	<p><u>Various laws such as, for example, the German professional driver qualification law (Berufskraftfahrer-Qualifikations-Gesetz or BKrFQG), the Road Traffic Permit Act (Straßenverkehrs-</u></p>	<p>Various provisions depending on the respective infringement</p>	<p>Infringement of Art. 3 of the EU Reg by carrying out international carriage of passengers by coach and bus without complying with the requirements regarding the standards for drivers and vehicles</p>	<p>Depends on the relevant provision</p>	<p>Fines of up to € 20,000</p> <p>A more detailed list of the various provisions, infringements and the respective fines can be provided if necessary</p>	

Table DE 4

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Zulassungs-Ordnung</u> <u>or StVZO)</u> <u>and the Regulation regarding exceptions from the road traffic provisions for vehicles and vehicle combinations with excess length</u> <u>(Verordnung über Ausnahme von straßenverkehrsrechtlich</u>					

Table DE 4

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>hen</u> <u>Vorschrifte</u> <u>n für</u> <u>Fahrzeuge</u> <u>und</u> <u>Fahrzeugk</u> <u>ombination</u> <u>en mit</u> <u>Überlänge</u> <u>or</u> <u>LKWÜberl</u> <u>StVAusnV)</u>					
Art. 4	<u>Passenger</u> <u>Transporta</u> <u>tion Act</u> <u>(Personenb</u> <u>eförderung</u> <u>sgesetz or</u> <u>PBefG)</u>	Sec. 61 para. 1 Nr. 1 <i>PBefG</i> in connection with sec. 52 or 53 <i>PBefG</i>	Infringement of Art. 4 of the EU Reg by carrying out international carriage of passengers by coach and bus without the Community licence or with an expired Community licence if committed intentionally or negligently	Carrier (<i>Unternehmer</i>)	Fine of up to € 20,000	

Table DE 4

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 6	Passenger Transportation Act (Personenbeförderungsgesetz or PBefG)	Sec. 61 para. 1 Nr. 1 <i>PBefG</i> in connection with sec. 52 or 53 <i>PBefG</i>	Infringement of Art. 6 of the EU Reg by carrying out services which are not included in the authorization or carrying out international carriage of passengers by coach and bus with an expired authorization if committed intentionally or negligently	Carrier (<i>Unternehmer</i>)	Fine of up to € 20,000	

Table DE 5						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
<u>Standards of Vehicles, Load and Necessary Licences</u>						
Directive 2008/68/EC	<u>Inland transport of dangerous goods</u>					
Art 3	<u>Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act (GGBefG)</u>	Sec. 28 Nr. 1, 37 para. 1 Nr. 20 a) GGVSEB in connection with sec. 10 para. 1 Nr. 1 b) and sec. 11 GGBefG	Intentional or negligent transport of goods with incomplete or damaged packaging	Driver	Fine up to 50.000 €	If committed repeatedly, or if the life or health of third persons, of animals not belonging to the offender or things of major value are put at risk, imprisonment of up to 1 year or fine (only if committed intentionally)⁸³

⁸³ Administrative sanctions and criminal sanctions can be applied cumulatively.

Table DE 5

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 3	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act (GGBeFG)	Sec. 28 Nr. 1, Nr. 2, Nr. 9 and sec. 29 para. 1 and sec. 37 para. 1 Nr. 20 a) and b), sec. 37 para. 1 Nr. 21 a GGVSEB in connection with sec. 10 para. 1 Nr. 1 b) and sec. 11 GGBeFG	Intentional or negligent transport of goods in violation of the ADR	Driver	Fine up to 50.000 €	If committed repeatedly, or if the life or health of third persons, of animals not belonging to the offender or things of major value are put at risk, imprisonment of up to 1 year or fine (only if committed intentionally) ⁸⁴

⁸⁴ Administrative sanctions and criminal sanctions can be applied cumulatively.

Table DE 5

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 3	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act (GGBefG)	Sec. 37 para. 1 Nr. 10 b), e), f), j), 1), sec. 37 para. 1 Nr. 21 a), sec. 21 para. 1 Nr. 2, 5, 6, sec. 21 para. 2 Nr. 3, 5, and sec. 29 para. GGVSEB in connection with sec. 10 para 1 Nr. 1 b) and sec. 11 GGBefG	Failing to supply a vehicle with necessary signal signs and plates; failing to adhere to the various provisions of ADR; supplying a vehicle with damaged or contaminated packaging	Shipper (Verlader)	Fine up to 50.000 €	If committed repeatedly, or if the life or health of third persons, of animals not belonging to the offender or things of major value are put at risk, imprisonment of up to 1 year or fine (only if committed intentionally) ⁸⁵

⁸⁵ Administrative sanctions and criminal sanctions can be applied cumulatively.

Table DE 5

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 3	<u>Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods (GGBeG)</u>	Sec. 37 para. 1 Nr. 5 b), 6 a), c), d), g), k), l), m), sec. 37 para. 1 Nr. 21 b), sec. 19 para. 1 Nr. 2, sec. 19 para. 2 Nr. 1, 3,4, 7, 11, 12, 13, sec. 29 para. 2 Nr. 2 GGVSEB in connection with sec. 10 para. 1 Nr. 1 b) and sec. 11 GGBeG	Failing to supply a vehicle with necessary signal signs under ADR; failing to adhere to the various other provisions of ADR; failing to adhere to various provisions of the <i>GGVSEB</i>	Carrier (<i>Beförderer</i>)	Fine up to 50.000 €	If committed repeatedly, or if the life or health of third persons, of animals not belonging to the offender or things of major value are put at risk, imprisonment of up to 1 year or fine (only if committed intentionally)⁸⁶

⁸⁶ Administrative sanctions and criminal sanctions can be applied cumulatively.

Table DE 5

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art. 3	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act (GGBefG)	Sec. 37 para. 1 Nr.4, 12 c), d), h), l), sec. 23 para. 1 Nr. 3, 4, 8, 12 GGVSEB in connection with sec. 10 para. 1 Nr. 1 b) and sec. 11 GGBefG	Failing to comply with various provisions of ADR; usage of unauthorized tanks; failing to make sure that no chemical reactive substance can be filled into neighboring tanks	Filler (<i>Befüller</i>)	Fine up to 50.000 €	If committed repeatedly, or if the life or health of third persons, of animals not belonging to the offender or things of major value are put at risk, imprisonment of up to 1 year or fine (only if committed intentionally)⁸⁷
Art. 3	Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act	Sec. 37 para. 1 Nr. 4 e), sec. 18 para. 1 Nr. 5 GGVSEB in connection with sec. 10 para. 1 Nr. 1 b) and sec.	Failure to check whether goods were classified in compliance with ADR and can therefore be transported; failure to ensure that only packaging is used that is	Sender (<i>Absender</i>)	Fine up to 50.000 €	If committed repeatedly, or if the life or health of third persons, of animals not belonging to the offender or things of major value are put

⁸⁷

Administrative sanctions and criminal sanctions can be applied cumulatively.

Table DE 5

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>(GGBefG)</u>	11 GGBefG	authorized and suitable for the relevant goods			at risk, imprisonment of up to 1 year or fine (only if committed intentionally) ⁸⁸
Art. 3	<u>Regulations for the Conveyance of Hazardous Goods by Road, Rail and Inland Navigation (GGVSEB) and Dangerous Goods Transportation Act (GGBefG)</u>	Sec. 37 para. 1 Nr. 16 a), d), e) and sec. 24 Nr. 1, 4, 5 GGVSEB in connection with sec. 10 para. 1 Nr. 1 b) and sec. 11 GGBefG	Failure to comply with various provisions of ADR	Operator (<i>Betreiber</i>)	Fine up to 50.000 €	If committed repeatedly, or if the life or health of third persons, of animals not belonging to the offender or things of major value are put at risk, imprisonment of up to 1 year or fine (only if committed intentionally)⁸⁹

⁸⁸ Administrative sanctions and criminal sanctions can be applied cumulatively.

⁸⁹ Administrative sanctions and criminal sanctions can be applied cumulatively.

Table DE 5						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Directive 96/53/EC	<u>Weights and Dimensions</u>					
Art 4	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 31 para. 2, sec. 34 para. 3, sec. 31 d para. 1, sec. 69 a <i>StVZO</i> in connection with sec. 24 <i>StVG</i>	Allow or command the operation of a vehicle or a vehicle with trailer with an overall weight of more than 12t, even though the allowable operating weight is exceeded by more than 20 %.	Owner (<i>Halter</i>) ⁹⁰	Fine up to 2000 €⁹¹	

⁹⁰ Even if the vehicle is registered in another country and meets the provisions concerning weight and/or height, length and width applicable in this country, driver and owner are still responsible under the Road Traffic Permit Act.

⁹¹ The amount of fine depends on how severe the infringement was. The more the allowable operating weight is exceeded (in percent), the higher the fine.

Table DE 5						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Art 4	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 34 para. 3, sec. 31 d para. 1, sec. 69 a StVZO in connection with sec. 24 StVG	Operate a vehicle or a vehicle with trailer with an overall weight of more than 12t, even though the allowable operating weight is exceeded by more than 20 %.	Driver (<i>Führer</i>) ⁹²	Fine up to 2000 €⁹³	
Art 4	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 31 para. 2, sec. 34 para. 3, sec. 31d para. 1, sec. 69a StVZO in connection with sec.	Allow or command the operation of a vehicle or a vehicle with trailer with an overall weight of less than 7,5t, even though the allowable	Owner (<i>Halter</i>) ⁹⁴	Fine up to 2000 €⁹⁵	

⁹² Even if the vehicle is registered in another country and meets the provisions concerning weight and/or height, length and width applicable in this country, driver and owner are still responsible under the Road Traffic Permit Act.

⁹³ The amount of fine depends on how severe the infringement was. The more the allowable operating weight is exceeded (in percent), the higher the fine.

⁹⁴ Even if the vehicle is registered in another country and meets the provisions concerning weight and/or height, length and width applicable in this country, driver and owner are still responsible under the Road Traffic Permit Act.

⁹⁵ The amount of fine depends on how severe the infringement was. The more the allowable operating weight is exceeded (in percent), the higher the fine.

Table DE 5						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		24 <i>StVG</i>	operating weight is exceeded by more than 25 %			
Art 4	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 34 para. 3, sec. 31d para. 1, sec. 69a <i>StVZO</i> in connection with sec. 24 <i>StVG</i>	Operate a vehicle or a vehicle with trailer with an overall weight of less than 7,5t, even though the allowable operating weight is exceeded by more than 25 %	Driver (<i>Führer</i>) ⁹⁶	Fine up to 2000 €⁹⁷	
Art 4	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 32, sec. 69a para. 3 Nr. 2 <i>StVZO</i> in connection with	Operate a vehicle or a vehicle with trailer that is not in conformity with the national	Driver (<i>Führer</i>) ⁹⁸	2000 €	

⁹⁶ Even if the vehicle is registered in another country and meets the provisions concerning weight and/or height, length and width applicable in this country, driver and owner are still responsible under the Road Traffic Permit Act.

⁹⁷ The amount of fine depends on how severe the infringement was. The more the allowable operating weight is exceeded (in percent), the higher the fine.

⁹⁸ Even if the vehicle is registered in another country and meets the provisions concerning weight and/or height, length and width applicable in this country, driver and owner are still responsible under the Road Traffic Permit Act.

Table DE 5						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		sec. 24 <i>StVG</i>	provisions concerning height, length and width			
Art 4	Road Traffic Permit Act (StVZO) and Road Traffic Act (StVG)	Sec. 31 para 2, sec. 32, sec. 69a para. 5 Nr. 3 <i>StVZO</i> in connection with sec. 24 <i>StVG</i>	Allow or command the operation of a vehicle or a vehicle with trailer that is not in conformity with the national provisions concerning height, length and width	Owner (Halter) ⁹⁹	2000 €	
Directive 2009/40/EC	<u>Roadworthiness</u>					
Art 1	Road Traffic Licensing Regulations (Straßenverkehrszulassungsordnung or StVZO)	Sec. 29 <i>StVZO</i> in connection with sec. 69 a No. 14 to No. 19 and sec. 24	Various types of infringements of sec. 29 acc. <i>StVZO</i> if committed intentionally or negligently	Vehicle owner	Fine of up to € 2,000	

⁹⁹ Even if the vehicle is registered in another country and meets the provisions concerning weight and/or height, length and width applicable in this country, driver and owner are still responsible under the Road Traffic Permit Act.

Table DE 5

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		StVZO				
Art. 1	<u>Technical Control Regulations (Technische Kontrollverordnung or TechKontrollV)</u>	Sec. 4 para. 1 and sec. 5 Tech KontrollV in connection with sec. 7 and sec. 6 TechKontrollV	If deficiencies are identified during control of the commercial vehicle acc. to sec. 5 para. 2 No. 3 TechKontrollV, which pose a safety risk to passengers or other road users	Driver	According to sec. 6 TechKontrollV a control report has to be issued.	
Art. 1	<u>German Penal Code (StGB)</u>	Sec. 267 I, III StGB	Driving with a fake roadworthiness certificate and presenting it when controlled	Driver	According to sec. 7 the following measures can be adopted: 1. A more detailed examination acc. to sec. 29 of the Road Traffic Licensing Regulations (StVZO)	

Table DE 5

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>can be ordered at a closely located test station; OR 2.A preliminary prohibition of the utilization of the commercial vehicle until the dangerous deficiencies have been dealt with can be ordered; OR 3.Entry into Germany of the commercial vehicle, which is permitted in a third country, is refused</p>	
<p>Art. 1</p>	<p><u>German Penal Code (StGB)</u></p>	<p>Sec. 267 I, III, 26, 27 <i>StGB</i></p>	<p>Supplying the driver with a fake roadworthiness certificate or faking a</p>	<p>Employer/Person acting for the carrier</p>	<p>Employer/Person acting for the carrier (<i>Unternehmer</i>)</p>	<p>Imprisonment for up to 5 years (in certain very serious cases up to 10 years) or a fine;</p>

Table DE 5						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			roadworthiness certificate in order to be used by the driver	(<i>Unternehmer</i>)		attempt is also punishable ¹⁰⁰
Directive 2006/126/EC	<u>Driving Licences</u>					
Art 1, Art. 4, Art. 5	<u>Road Traffic Act (Straßenverkehrsgesetz, or STVG)</u>	Sec. 21 para. 1 StVG	Driving a vehicle or ordering or allowing someone else to drive one's vehicle as vehicle owner without the required license or if the driver has been prohibited from driving acc. to sec. 44 of the Penal Code (<i>StGB</i>) or acc. to sec. 25 <i>STVG</i> . Driving a vehicle falling	Driver and vehicle owner		Imprisonment of up to 1 year or a fine if committed intentionally according to sec. 21 para. 1 No. 1 and 2 StVG. ; Imprisonment of up to six months or fine of up to 180 daily rates if committed negligently according

¹⁰⁰ If documents are faked within German territory or if documents are faked outside but used within German territory, foreign drivers and undertakings are punishable under German penal law.

Table DE 5

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			<p>in a category not covered by driving licence or driving a vehicle in conditions not authorised in the driving licence is treated as driving without a driving licence at all.</p>			<p>to sec. 21 para. 2 no. 1 StVG. ; been taken away or the driving of a car has been prohibited to the offender acc. to sec. 44 of the Penal Code (StGB) or acc. to sec. 25 of the Road Traffic Act (STVG) or because the offender had been barred from driving pursuant to sec. 69 a para. 1 line 3 of the Penal Code (StGB) or if the offender has been sentenced pursuant to sec. 21 para. 1 already within the past 3</p>

Table DE 5						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						years.
Art. 1	<u>German Penal Code (StGB)</u>	Sec. 267 I, III <i>StGB</i>	Transport of people or goods carried out by a driver who has a fake driving licence (intentionally)	Driver		Imprisonment for up to 10 years or a fine; attempt is also punishable
Art. 1	<u>German Penal Code (StGB)</u>	Sec. 267 I, III, 26, 27 <i>StGB</i>	Supplying the driver with a fake driving licence or faking a driving licence in order to be used by the driver to carry out transport of people or goods (intentionally)	Employer/Person acting for the carrier <i>(Unternehmer)</i>		Imprisonment for up to 10 years or a fine; attempt is also punishable

The table below gather the sanctions which are considered formally criminal in the German legal system.

Table DE 6

Infringements of commercial road transport legislation

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>Exceeding the maximum average weekly working time fixed in 48 hours or in 60 hours only if, over four months, an average of 48 hours a week is not exceeded</p> <p>Failure to ask to the mobile worker to provide in writing for an account of time worked for another employer</p> <p>Failure of the mobile worker to provide in writing for an account of time worked for another employer</p> <p>Working Hours Act (ArbZG), Sec. 21a para. 4 ArbZG implements Art. 4a) of the EU Directive and sec. 21a para. 8 ArbZG implements Art. 4b) of the EU Directive.</p> <p>Directive 2002/15/EC Art. 4</p>	<p>An employer can be punished with imprisonment for up to one year or a fine, if the employer commits the acts described in sec. 22 para. 1 No. 1 ArbZG intentionally, therewith endangering the health and working capacity of the employee (sec. 23 para. 1 No. 1) OR with persistent repetition (sec. 23 para. 1 No. 2).</p> <p>An employer, who causes the endangerment in relation to sec. 23 para. 1 No. 1 negligently, can be punished with imprisonment for up to 6 months or with a fine of up to 180 daily rates.</p>	<p>Yes</p>
<p>Exceeding the maximum limit of daily working time of 10 hours in each 24 hour period if night work is performed.</p> <p>Working Hours Act (Arbeitszeitgesetz), Sec. 6 para. 2</p>	<p>An employer can be punished with imprisonment for up to one year or a fine, if the employer commits the acts described in sec. 22 para. 1 No. 1 ArbZG intentionally, therewith endangering the health and working capacity of the employee (sec. 23 para. 1</p>	<p>Yes</p>

Table DE 6

Infringements of commercial road transport legislation

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>ArbZG stipulates that work during nighttime must not continue for longer than 8 hours. Working time during the night can be extended to ten hours under certain circumstances. If an infringement of sec. 6 para. 2 ArbZG is committed by an employer negligently or willfully, the employer can be punished with an administrative fine pursuant to sec. 22 para. 1 No. 1 ArbZG as well as with a criminal sanction pursuant to sec. 23 para. 1 No. 1 and 2 and sec. 23 para. 2 ArbZG.</p> <p>Directive 2002/15/EC Art. 7</p>	<p>No. 1) OR with persistent repetition (sec. 23 para. 1 No. 2).</p> <p>An employer, who causes the endangerment in relation to sec. 23 para. 1 No. 1 negligently, can be punished with imprisonment for up to 6 months or with a fine of up to 180 daily rates.</p>	
<p>German Penal Code (StGB), Sec. 267 StGB (forgery of documents):</p> <ul style="list-style-type: none"> -Submission of fake documents aimed at providing the establishment in a Member State -Submission of fake documents aimed at proving appropriate financial standing 	<p>Imprisonment for up to 5 years (in certain very serious cases up to 10 years) or a fine; at-tempt is also punishable</p>	<p>Yes</p>

Table DE 6

Infringements of commercial road transport legislation

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>-submission of fake documents aimed at providing the requisite of professional competence</p> <p>- submission of fake documents aimed at proving appropriate financial standing</p> <p>Regulation (EC) No. 1071/2009 Art. 3</p>		
<p>German Penal Code (StGB), Sec. 267 I, III StGB</p> <p>Driving with a fake roadworthiness certificate and presenting it when controlled</p> <p>Directive 2009/40/EC Art. 1</p>	<p>Imprisonment for up to 5 years (in certain very serious cases up to 10 years) or a fine; attempt is also punish-able</p>	<p>Yes</p>
<p>Art. 1 German Penal Code (StGB), Sec. 267 I, III, 26, 27 StGB</p> <p>Supplying the driver with a fake roadworthiness certificate or faking a roadworthiness certificate in order to be used by the driver Employer/Person acting for the carrier (Unternehmer)</p>	<p>Imprisonment for up to 5 years (in certain very serious cases up to 10 years) or a fine; attempt is also punish-able</p>	<p>Yes</p>

Table DE 6

Infringements of commercial road transport legislation

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>Directive 2009/40/EC Art. 1</p>		
<p>Directive 2006/126/EC Art 1, Art. 4, Art. 5</p> <p>Various infringements of the above provisions</p>	<p>Imprisonment of up to 1 year or a fine if committed intentionally according to sec. 21 para. 1 No. 1 and 2 StVG.</p> <p>Imprisonment of up to six months or fine of up to 180 daily rates if committed negligently according to sec. 21 para. 2 no. 1 StVG.</p> <p>Imprisonment for up to 10 years.</p>	<p>Yes</p>
<p>Directive 2008/68/EC, Art. 3</p> <p>Various infringement of the above provision</p>	<p>Imprisonment of up to 1 year or fine (only if committed intentional-ly)</p>	<p>No</p>

The table below identifies the most serious infringements of EU law as identified in Annex IV to Regulation (EC) No. 1071/2009 sanctioned with criminal sanctions:

Table DE 7

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>German Penal Code (<i>StGB</i>) Sec. 268 para. 1 No.1 in connection with para. 3 <i>StGB</i> Using a fraudulent device able to modify the records of the recording equipment Art. 2 Alternative 3 of Annex 4 to the EU Reg.</p>	<p>Imprisonment for up to 5 years or fine; aiding and abetting and attempt are also punishable</p>	<p>Yes</p>
<p>German Penal Code (<i>StGB</i>) Sec. 269 para. 1 <i>StGB</i> Using a fraudulent device able to modify the records of the recording equipment Art. 2 Alternative 3 of Annex 4 to the EU Reg.</p>	<p>Imprisonment for up to 5 years or fine; aiding and abetting and attempt are also punishable</p>	<p>Yes</p>
<p>Road Traffic Act (<i>StVG</i>) Sec. 22b para. 1 No.1 and No.2 <i>StVG</i> Using a fraudulent device able to modify the records of the recording equipment Art. 2 Alternative 3 of Annex 4 to the EU Reg.</p>	<p>Imprisonment of up to 1 year or fine; aiding and abetting are also punishable</p>	<p>Yes</p>
<p>Road Traffic Act (<i>StVG</i>) Sec. 22b para. 1 No.1 and No.2 <i>StVG</i> Using a fraudulent device able to modify the records of the speed limiter. Art. 2 Alternative 4 of Annex 4 to the EU Reg.</p>	<p>Imprisonment of up to 1 year or fine; aiding and abetting are also punishable</p>	<p>Yes</p>
<p>German Penal Code (<i>StGB</i>)</p>	<p>Imprisonment for up to 5 years or fine; aiding and</p>	<p>Yes</p>

Table DE 7

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>Sec. 268 para. 1 No.1 in connection with No.3 <i>StGB</i></p> <p>Falsifying record sheets</p> <p>Art. 2 Alternative 5 of Annex 4 to the EU Reg.</p>	<p>abetting and attempt are also punishable</p>	
<p>German Penal Code (<i>StGB</i>)</p> <p>Sec. 303 a para. 1 <i>StGB</i></p> <p>Falsifying data downloaded from the tachograph and/or the driver card</p> <p>Art. 2 Alternative 5 of Annex 4 to the EU Reg.</p>	<p>Imprisonment for up to 2 years or fine; aiding and abetting and attempt are also punishable</p>	<p>Yes</p>
<p>German Penal Code (<i>StGB</i>)</p> <p>Sec. 328 para. 3 No.2 <i>StGB</i></p> <p>Transporting dangerous goods that are prohibited for transport</p> <p>Art. 4 Alternative 1 of Annex 4 to the EU Reg.</p>	<p>Imprisonment for up to 5 years or fine; aiding and abetting and attempt are also punishable</p>	<p>Yes</p>
<p>German Penal Code (<i>StGB</i>)</p> <p>Sec. 328 para. 3 No.2 <i>StGB</i></p> <p>Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such an extent that it leads to a decision to immobilize the vehicle</p> <p>Art. 4 Alternative 3 of Annex 4 to the EU Reg.</p>	<p>Imprisonment for up to 5 years or fine; aiding and abetting and attempt are also punishable; if driver acts negligent, the maximum imprisonment is reduced to 3 years</p>	<p>Yes</p>

Table DE 7

Type of infringement(s) and Article of reference in national legislation Corresponding EU legislation	Criminal sanction	Is it dissuasive?
Road Traffic Act (<i>StVG</i>) Sec. 21 para. 1 and para. 2 <i>StVG</i> Carrying passengers without holding a valid driving licence Art. 5 Alternative 1 of Annex 4 to the EU Reg.	Imprisonment for up to 1 year or fine ¹⁰¹	Yes
Road Traffic Act (<i>StVG</i>) Sec. 21 para. 1 and para. 2 <i>StVG</i> Carrying goods without holding a valid driving licence Art. 5 Alternative 2 of Annex 4 to the EU Reg.	Imprisonment for up to 1 year or fine ¹⁰²	Yes
German Penal Code (<i>StGB</i>) Sec. 269 para. 1 <i>StGB</i> Driving with a driver card that has been falsified Art. 6 Alternative 1 of Annex 4 to the EU Reg.	Imprisonment for up to 5 years or fine; aiding and abetting are also punishable	Yes
German Penal Code (<i>StGB</i>) Sec. 269 para. 1 <i>StGB</i> Driving with a driver card of which the driver is not the holder Art. 6 Alternative 2 of Annex 4 to the EU Reg.	Imprisonment for up to 5 years or fine; aiding and abetting are also punishable	Yes

¹⁰¹ If the criminal offence is committed repeatedly, the punishment will not be more severe, but regaining the driving licence will be more difficult and will take more time.

¹⁰² If the criminal offence is committed repeatedly, the punishment will not be more severe, but regaining the driving licence will be more difficult and will take more time.

Table DE 7

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>German Penal Code (<i>StGB</i>) Sec. 281 para. 1 (1. alternative) in connection with para. 2 <i>StGB</i> Driving with a driver card of which the driver is not the holder Art. 6 Alternative 2 of Annex 4 to the EU Reg.</p>	<p>Imprisonment for up to 1 years or fine; aiding and abetting and attempt are also punishable</p>	<p>Yes</p>
<p>German Penal Code (<i>StGB</i>) Sec. 269 para. 1 <i>StGB</i> Driving with a driver card which has been obtained on the basis of false declarations and/or forged documents Art. 6 Alternative 3 of Annex 4 to the EU Reg.</p>	<p>Imprisonment for up to 5 years or fine; aiding and abetting are also punishable</p>	<p>Yes</p>

12.7 Sanctions which could be considered substantially criminal in the German legal system

The table below identifies infringements of EU rules on commercial road transport that are sanctioned with administrative sanctions in Germany that should substantially be qualified as criminal in the light of their seriousness and their capacity to affect substantially the interests of the offender.

Table DE 8			
Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR			
Type of infringement and Article of reference in national legislation	Administrative sanction that could be qualified as criminal sanction	Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?	Is it dissuasive?
Corresponding EU legislation			
It is posited in agreement that all infringements of EU commercial road transport legislation are sanctioned either with criminal sanctions or with administrative sanctions that could be qualified as criminal sanctions in Germany, as administrative fines are very high, and they could perhaps be qualified as substantially criminal sanctions. However, please note that the amounts stated throughout the report are typically the potential maximum administrative fines as stated in the relevant legislation.			

12.8 Effectiveness of the sanctions system

Based on the above description it is posited in agreement that the German sanction system is very severe and sanctions are dissuasive.

Sanctions are also tailored to the seriousness of infringements and the application of criminal sanctions depends very often on the nature of the infringement, whether intentional or negligent.

Such an approach is welcome as it allows to sanction in a different way operators and drivers that intend to infringe the law and those who have done a mistake. Therefore such system has a deterrent effect.

An overview of the roadside checks conducted by the Federal Office for Goods Transport (*Bundesamt für Güterverkehr*) in the year 2010 shows that in total 633,541 vehicles were checked, of which 292,294 were German (46.2 %) and 334,466 were of foreign origin (52.8 %). The origin of 6,143 vehicles remains unknown (1 %). In total 179,883 infringements were discovered, of which 99,553 were committed by German drivers/undertakings and 80,330 by drivers/undertakings of foreign origin. The types of infringements committed can be summarised in percentage as follows:

- Rights of driving personnel: 73.4 %.
- Road Traffic law: 16.7 %.
- Road Haulage legislation: 4.5 %.
- Hazardous goods law: 2.8 %.
- Law concerning waste: 2.1 %.
- Other: 0.3 %.
- Illegal employment: 0.2 %.

Notably, the statistics show that of all infringements discovered, 80.7 % of infringements committed by German drivers/undertakings were infringements of the rights of driving personnel and 10.3 % were infringements of Road Traffic Law. Of the infringements committed by foreign undertakings 64.3 % were infringements of the rights of driving personnel and 24.7 % were infringements of the Road traffic law.

The Federal Office for Goods Transport (*Bundesamt für Güterverkehr*) also published detailed statistics regarding hazardous goods for the year 2010. In total 30,138 vehicles were checked, of which 15,698 were of German origin and 14,440 were of foreign origin. In total 2,678 infringements were committed, of which 1,196 were committed by German drivers/undertakings and 1,482 were committed by drivers/undertakings of foreign origin. The types of infringements committed can be summarised in percentages as follows:

- Other infringements/shortcomings: 30.8 %.
- Identification and labeling: 20.2 %.
- Equipment: 18.9 %.
- Transport document: 13.5 %.
- Load securing: 7.7 %.
- Identification and test instructions for tanks: 4.6 %.
- Illegal use of means of transport: 2.4 %.
- Training of driver: 0.8 %.

Furthermore, the statistics show that in total 2,701 measures were taken, of which 1,205 were taken against German drivers/undertakings and 1,496 against drivers/undertakings of foreign origin. Of these measures a total of 734 were cautions/reprimands, of which 236 were issued to German drivers/undertakings and 498 were issued to foreign drivers/undertakings. The remaining 1,967 measures were inspection reports, of which 969 were issued in relation to German drivers/undertakings and 998 in relation to drivers/undertakings of foreign origin.

The Federal Office for Goods Transport (*Bundesamt für Güterverkehr*) also published detailed statistics in relation to the controls conducted in relation to the rights of driving personnel in the year 2010.

In relation to goods traffic, 306,204 drivers were checked, 136,476 of which were of German nationality and 169,728 were of foreign origin. In total 97,406 infringements of 561/2006, 3820/85, and AETR were discovered, of which 61,522 were committed by German nationals and 35,884 by drivers of foreign origin. In addition, a total of 32,232 infringements of 3821/85 and AETR were discovered, 17,809 were committed by German nationals and 14,423 by drivers of foreign origin.

In relation to passenger transportation, 4,485 drivers were checked, 2,861 of which were of German nationality and 1,624 were of foreign origin. In total 379 infringements of 561/2006, 3820/85, and AETR were discovered, of which 232 were committed by German nationals and 147 by drivers of foreign origin. In addition, a total of 319 infringements of 3821/85 and AETR were discovered, 177 were committed by German nationals and 142 by drivers of foreign origin.

The types of infringements committed can be summarised in percentages as follows:

- Infringement of the provisions regarding driving time: 29.4 %.
- Infringement of the provisions regarding rest periods: 28.9 %.
- Break too short or too late: 16.5 %.
- Failure to hand over record sheet/certificate of holidays: 8.6 %.
- Failure to use cronotacograph properly: 8.6 %;
- Failure to use record sheet/driver card properly: 6.0 %.
- Failure to carry or to present record sheet/driver card: 1.7 %.
- Other infringements: 0.3 %.

The above figures show that despite the severity of the German sanctions system the number of infringements committed in Germany is substantial, and still much higher than the one of infringements detected in other Member States such as France. Perhaps the high number of infringements detected in Germany could be due to the fact that most of the infringements are not sanctioned by sanctions such as immobilization of the vehicle or withdrawal of licences or other authorization that are deemed to have a much stronger deterrent effect than fines.

In conclusion, it could be argued that the system is to some extent not effective. However, this conclusion is not final and other factors might explain the fact that many infringements are detected on the German territory such as the efficiency of the control system.

13 GREECE - COUNTRY REPORT ON SANCTIONS IN THE FIELD OF COMMERCIAL ROAD TRANSPORT

13.1 Social rules on road transport

13.1.1 Regulation (EC) No 561/2006

The sanction system envisaged in Article 19 of Regulation (EC) No 561/2006 is provided for in Article 12 of Law 3534/2007¹⁰³. According to Article 12, paragraph 1 of Law 3534/2007, as recently amended by Article 117 of Law 4070/2012, penalties for the infringements of Regulation (EC) No 561/2006 are imposed on the driver, the transport undertaking as well as authorised workshops. The applicable penalties, pursuant to this provision, are as follows:

- As far as the driver is concerned, in the event of a breach, an administrative fine starting from € 50 and up to € 1,000 is imposed, while in the case of repeat offences which are considered to be "very serious" and take place within a period of one year, the driver's licence may be withdrawn for a period of between 10 days and up to one month.
- As regards the transport undertaking, an administrative fine of between € 200 and up to € 4,000 is imposed for breaches of Regulation (EC) No 561/2006. By Ministerial Decision issued on the basis of Article 12, paragraph 2 of Law 3534/2007, for certain or all of the infringements classed as "very serious", an additional administrative penalty may be imposed in the form of removal of the vehicle's registration document and number-plates for a period of between 10 days and up to three months.

¹⁰³ Law 3534/2007 in the Greek Government Gazette (hereinafter the "GG") of 23 February 2007, Vol. A', No. 40, as modified by Law 3897/2007 in GG of 10 December 2010, Vol. A', No. 208 and, more recently, by Law 4070/2012 in GG of 10 April 2012, Vol. A', No. 82.

- In relation to authorised workshops, in the event of a breach of Regulation (EC) No 561/2006, an administrative penalty starting from € 2,000 and up to € 4,000 is imposed. In the case of repeat infringements, its operation licence may be withdrawn for a period of between one month and three months.

As specified in Article 12, paragraph 2 of Law 3534/2007, a Ministerial Decision will be issued on the basis of which infringements of Regulation (EC) No 561/2006 will be classified according to their seriousness and administrative penalties will be set within the limits mentioned above, taking into account their severity. The Ministerial Decision foreseen has not been issued yet. In consequence, Ministerial Decision 450/51477/5520/2011¹⁰⁴ which was adopted on the basis of Article 12, as previously in force, is currently applicable. According to this Ministerial Decision, infringements of Regulation (EC) No 561/2006 are divided into three categories based on their severity as "very serious", "serious" and "minor".

Furthermore, Article 4 of Ministerial Decision 450/51477/5520/2011 provides that, as regards infringements committed which relate to linking the employment wage with the distance travelled or with the amount of goods transported, the transport undertaking is solely liable to the payment of an administrative penalty. However, with respect to all other breaches, the transport undertaking will be held jointly liable with the driver for payment of the relevant fine. In relation to self-employed drivers, only the penalties applicable to transport undertakings are imposed.

If during a roadside check a breach is discovered then, according to Article 5 of Ministerial Decision 450/51477/5520/2011, other than the imposition of an administrative penalty, the vehicle's registration document is also withdrawn, depending on the severity of the infringement, as further elaborated in the Annex.

The vehicle's registration document and number-plates are always withdrawn, and as an administrative measure, in order to guarantee payment of the penalties imposed. These are returned once the duration of the sanction has expired and upon payment of the relevant fine. Until such time, their exit from the country is prohibited (see Article 1, paragraph 8 of Law 3446/2006¹⁰⁵). This also applies to foreign vehicles.

¹⁰⁴ Ministerial Decision 450/51477/5520/2011 in GG of 10 November 2011, Vol. B', No. 2687.

¹⁰⁵ Law 3446/2006 in GG of 10 March 2006, Vol. A', No. 49.

In addition, Article 6 of Ministerial Decision 450/51477/5520/2011 specifies that, in case of repeat offences, the driver's licence is withdrawn for a period of time which is commensurate to the severity of the infringement. More detailed analysis in this respect is included in the Annex.

As regards the authorities that are competent to impose and collect the relevant administrative penalties, Article 12, paragraph 3 of Law 3534/2007 mentions that these are as referred to in Law 3446/2006 and its delegated legislation. According to Article 2 of Law 3446/2006, the authorities competent to impose and collect fines are the Mixed Teams for Vehicle Inspections (Mikta Klimakia Eleghou Ohimaton) based in each prefecture of Greece, the police, coast guard and customs authorities as well as the Financial Crime Prosecution Unit (SDOE).

According to Article 104, paragraph 6 of Law 2696/1999¹⁰⁶ (hereinafter the "Highway Code"), in case of multiple infringements, a single administrative penalty is imposed, consisting of the fine for the more serious breach, increased by one half for the total penalties provided for with respect to the other infringements.

It is noted that, pursuant to Article 1 of Ministerial Decision 450/51477/5520/2011, the terms contained in this Ministerial Decision have the meaning as that prescribed in Regulation (EC) No 561/2006. On the basis of Regulation (EC) No 561/2006 (Article 4), the driver of a vehicle includes not only the person actually driving it but, also, any person who is carried in it as part of his or her duties in order to be available for driving if necessary. Therefore, in view of this, the sanctions system in Greece for breaches of the applicable social rules, also applies with respect to such persons who are carried on a vehicle to be available for driving.

Moreover, in the legislation mentioned above, there is no specific provision expressly referring to foreign drivers. However, it is clearly stated in Ministerial Decision 450/51477/5520/2011 that all the terms have exactly the same meaning as those given in Regulation (EC) No 561/2006. Therefore, as foreign drivers are not excluded from the definition of driver described above, it can be argued that the provisions of this Ministerial Decision also apply to foreign drivers.

As regards the extraterritoriality principle introduced by Article 19, paragraph 2 of Regulation (EC) No 561/2006, by way of which a driver may be fined directly in one

¹⁰⁶ Law 2696/1999 in GG of 23 March 1999, Vol. A', No. 57.

Member State for an offence committed in the territory of another, it is noted that, from our research, we could not find any specific provisions in the Greek law implementing this obligation.

There are no criminal sanctions provided for in the applicable legislation described in this Section.

13.1.1.1 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)

Directive 2006/22/EC has been transposed into Greek law by Ministerial Decision 438/oik.28317/2481/2009¹⁰⁷. This Ministerial Decision establishes the checking system applicable in Greece and sets out the requirements for conducting roadside checks as well as inspections at the premises of transport undertakings.

As required by Article 9 of Directive No. 2006/22/EC, a risk rating system is also introduced by Ministerial Decision 438/oik.28317/2481/2009 (Article 10). In this regard, a list of infringements is included in Annex III which, on the whole, reflects the table contained in Annex III of Directive 2006/22/EC i.e. referring to the infringements of Regulation (EC) No 561/2006 as well as Regulation (EEC) No 3821/85 and classifying these as "very serious", "serious" and "minor". The only difference is that, with respect to items B8-B9 of the table, the maximum weekly driving time is set at 72 hours in Ministerial Decision 438/oik.28317/2481/2009 whereas, in Directive 2006/22/EC, it is 70 hours. It is worth noting that, pursuant to Article 10, paragraph 3 of this Ministerial Decision, in rating an undertaking, breaches that were discovered overseas and which have been notified to the competent authorities in Greece are taken into account for the purposes of calculating that undertaking's overall score.

Article 3, paragraph 1 of Ministerial Decision 438/oik.28317/2481/2009 provides that the authorities competent to conduct the relevant checks are as follows:

- For roadside checks the Mixed Teams for Vehicle Inspections (Mikta Klimakia Eleghou Ohimaton) based in each prefecture of Greece, the police, coast guard and customs authorities as well as the Financial Crime Prosecution Unit (SDOE).

¹⁰⁷ Ministerial Decision 438/oik.28317/2481/2009 in GG of 25 May 2009, Vol. B', No. 989.

- As regards road side checks and inspections at the premises of undertakings, the Department for Social Inspections and the Mixed Workshops for Inspections.

The competent authorities for coordinating checks are identified in Article 3, paragraph 3 of the above Ministerial Decision while, it is also mentioned in paragraph 2 of the same provision that, as regards the actual penalties that may be imposed for infringements of Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85, these are determined by separate decisions issued on the basis of Articles 12 and 14, paragraph 4 of Law 3534/2007 (see Ministerial Decision 450/51477/5520/2011).

In relation to road side checks, according to Article 6, paragraph 3 of Ministerial Decision 438/oik.28317/2481/2009, which reflects Article 4, paragraph 3 of Directive 2006/22/EC, enforcement officers must conduct the relevant checks without discrimination, particularly as to the country of the vehicle's registration, the driver's country of residence and the undertaking's place of establishment as well as the origin and destination of a journey. In addition, if during a roadside check of a vehicle's driver, there are suspicions that infringements have been committed which, due to a lack of necessary data, cannot be finally established during the check, the competent authorities in Greece can seek the assistance of the authorities in the country where the vehicle is registered in order to clarify the situation (Article 6, paragraph 5 of Ministerial Decision 438/oik.28317/2481/2009). Similar assistance must be provided to the competent authorities of another Member State if requested to provide clarification on issues arising with respect to checks conducted of vehicles registered in Greece.

13.1.1.2 Directive 2002/15/EC

Directive 2002/15/EC has been implemented in Greece by Presidential Decree 167/2006¹⁰⁸ and establishes the maximum weekly working time, rest periods and breaks applicable to those performing mobile road transport activities. As regards their maximum weekly working time, Article 4 of this Presidential Decree specifies that it cannot exceed 48 hours but may be increased to 60 hours if during the previous four

¹⁰⁸ Presidential Decree 167/2006 in GG of 22 August 2006, Vol. A', No. 179.

months the average limit of 48 hours has not been exceeded. Persons performing mobile road transport activities cannot work for more than six consecutive hours without a break. If working hours total between six and nine hours, working time should be interrupted by a break of at least 30 minutes and if working hours total more than nine hours, by a break of at least 45 minutes (Article 5 of Presidential Decree 167/2006). Article 6 refers to rest periods and reflects the corresponding provision of Directive 2002/15/EC. For night work, according to Article 7 of Presidential Decree 167/2006, the daily working time cannot exceed 10 hours for each 24 hour period.

According to Article 11 of Presidential Decree 167/2006, in the case of an infringement of its provisions, the administrative fines and the criminal sanctions provided for in Articles 16 and 17 of Law 2639/1998¹⁰⁹, respectively, should be imposed. However, by virtue of Article 33, paragraph 14 of Law 3996/2011, Articles 16 and 17 of Law 2649/1998 were abolished. Therefore, it follows that the general sanctions adopted by Presidential Decree 167/2006 for infringement of its provisions no longer apply.

Nonetheless, despite the above, the penalties for breaches of the rules pertaining to maximum weekly working time, rest periods and breaks are provided for in Ministerial Decision 450/51477/5520/2011. In view of this, it could be argued that the sanctions applicable for infringements of Directive 2002/15/EC, as implemented by Presidential Decree 167/2006, are covered by Ministerial Decision 450/51477/5520/2011.

13.1.2 Tachograph

¹⁰⁹ Law 2639/1998 in GG of 2 September 1998, Vol. A', No. 205, as amended recently by Law 3996/2011 in GG of 5 August 2011, Vol. A', No. 170.

13.1.2.1 Regulation (EEC) No 3821/85

The applicable sanctions under Greek law for infringements of Regulation No (EC) 561/2006, are also imposed in the case of breaches of Regulation (EEC) No 3821/85.

Although there are no criminal sanctions provided for in the relevant legislation relating to breaches of Regulation (EEC) No 3821/85, it is possible to argue that some infringements (e.g. falsifying or suppressing data recorded on record sheets) can also constitute forgery, which is punishable under Article 216 of the Greek Criminal Code (see Annex for specific penalties). In this case, the two sanctions (i.e. administrative and criminal) would be applied cumulatively.

Ministerial Decision 4924/225/2009¹¹⁰ defines the administrative sanctions imposed on approved workshops for breaches of Law 3534/2007 as well as Ministerial Decision 41647/2861/2008¹¹¹ (which sets out the conditions for their establishment), as further described in the Annex.

13.2 Road Package

13.2.1 Regulation (EC) No 1071/2009

In order to obtain authorisation to pursue the occupation of road haulage operator, each interested party is required to submit an application to the competent department of the Ministry of Infrastructure, Transport and Networks together with various supporting documents such as certificate of professional competence, proof of financial standing and copies of contracts evidencing the right to use premises for the parking, safe-keeping and

¹¹⁰ Ministerial Decision 4924/225/2009 in GG of 10 February 2009, Vol. B', No. 222.

¹¹¹ Ministerial Decision 41647/2861/2008 in GG of 5 August 2008, Vol. B', No. 1543.

maintenance of their vehicles, as provided for in Regulation (EC) No 1071/2009, as well as copies of their criminal record (Article 5 of Law 3887/2010¹¹²).

Ministerial Decision B1/47833/4534/2010¹¹³ concerns the establishment of companies active in the provision of transport services. For the purposes of obtaining the relevant authorisation required to operate as a road haulage company, an application is filed to the Ministry of Infrastructure, Transport and Networks with the same supporting documents as mentioned above, pursuant to Regulation (EC) No 1071/2009.

As clarified in a circular issued by the Ministry of Infrastructure, Transport and Networks on 10 February 2012,¹¹⁴ the certificate of professional competence, following the entry into force of Regulation (EC) No 1071/2009 on 4 December 2011, covers both national and international transport. For this reason, candidates are required to attend a training programme (30 hours plus 15 hours) and to pass the relevant exams. Details concerning the examination are contained in this circular.

As regards the conditions the competent authorities should take into account for the purposes of determining whether undertakings and transport managers continue to satisfy the requirement of good repute, the most serious infringements mentioned in Annex IV of Regulation (EC) No 1071/2009 do not appear to have been transposed into Greek law.

13.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009

From our research, there are no specific provisions in force concerning the application of Regulation (EC) No 1072/2009.

As regards the implementation of the rules enshrined in Regulation (EC) No 1073/2009 for the international carriage of passengers by coach and bus, these are

¹¹² Law 3887/2010 in GG of 30 September 2010, Vol. A', No. 174.

¹¹³ Ministerial Decision B1/47833/4534/2010 in GG of 14 October 2010, Vol. B', No. 1644.

¹¹⁴ Ministerial Circular B/oik.6707/509/12 of 10 February 2012 concerning the change in the examination procedure for the issuance of a certificate of professional competence in road transport.

contained in Ministerial Decision 456/oik.7383/534/12/2012¹¹⁵. This Ministerial Decision sets out the procedure for obtaining the requisite licences and approvals in order to provide occasional services as well as international regular services to countries both within and outside the EU (Articles 3 to 5). In addition, the requirements that have to be fulfilled by foreign transport undertakings whose destination is Greece are also specified in Article 5, Sections B and C of the above Ministerial Decision.

Article 6 of Ministerial Decision 456/oik.7383/534/12/2012 lists the administrative sanctions that may be imposed in the event of an infringement. Specifically:

- Licences issued for the service of regular bus lines are revoked if one of the conditions for their issuance is no longer satisfied, if the operation is transferred to a third party and, also, in the event that the right to such operation is waived.
- Licences are revoked in the case where the transport manager of an undertaking servicing an international regular bus line is under criminal prosecution for specific infringements (i.e. smuggling, human trafficking, use and trafficking of drugs, murder, attempted murder, robbery, forgery, fraud, theft, embezzlement). The operator is excluded until such time as he or she is discharged or, in the case of conviction, until the relevant period of time specified in the Greek Criminal Code lapses or the legal consequences of conviction are released.
- Licences may be revoked where the operator of an international regular bus service has committed, during the term of the licence, repeated breaches of the applicable tax and customs Acts as well as international regulations on the transfer of unaccompanied parcels.
- A recommendation may be issued and, in the event of a repeat offence, licences for the servicing of a regular bus line are revoked where there is a breach of Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85, pricing policy is breached, there is a failure to undertake scheduled journeys and certain other obligations referred to in the Ministerial Decision are not complied with.

¹¹⁵ Ministerial Decision 456/oik.7383/534/12/2012 in GG of 13 February 2012, Vol. B', No. 250.

In the event that the licence is revoked, for reasons other than those regarding the actions of the transport manager, the transport undertaking is prevented from exploiting the specific international regular bus line for a period of three years.

Although criminal sanctions are not provided for in the relevant legislation, it is possible to argue that certain infringements, such as the execution of transport services while holding a fake authorisation, are punishable under Article 216 of the Greek Criminal Code, regarding forgery (see Annex for the specific penalties that apply).

13.3 Standards of vehicles and load and necessary licences

13.3.1 Directive 2008/68/EC

Directive 2008/68/EC has been implemented into Greek law by Ministerial Decision 35043/2524/2010¹¹⁶ and applies to the transport of dangerous goods by road and rail within Greece or between the Member States of the EU. It is noted in Article 1, paragraph 3 of this Ministerial Decision that Annex III, Section III.1 of Directive 2008/68/EC does not apply in Greece as it does not have inland waterways.

Ministerial Decision 35043/2524/2010 does not provide for the sanctions applicable in the event of breach. These are analysed in Presidential Decree 256/1999, which implements Directive 95/50/EC concerning the carriage of dangerous goods by road and checks to be performed on vehicles carrying such goods in Greece, whether registered in Greece or abroad.

Annex II of Presidential Decree 256/1999 contains a non-exhaustive list of possible infringements, which can be used as a guideline as to what constitutes a contravention of the law. Infringements are divided into three categories depending on the risk levels involved. It is in the absolute discretion of the competent authority

¹¹⁶ Ministerial Decision 35043/2524/2010 in GG of 2 September 2010, Vol. B', No. 1385, as supplemented by Ministerial Decision 52280/4720/2011 in GG of 9 November 2011, Vol. B', No. 2640.

conducting a roadside check to assess the level of risk, taking into account the particular circumstances.

Infringements falling under the first risk category are those where non-compliance with the relevant provisions of the ADR creates a high risk of death, serious injury or significant damage to the environment. In this case, appropriate corrective measures should immediately be adopted e.g. by immobilising the vehicle. Breaches of this category include the carriage of dangerous goods which are not permitted to be transferred as well as the leakage of dangerous substances.

The second risk category covers situations where non-compliance with the provisions of the ADR creates a serious risk of injury or significant damage to the environment. These infringements should be remedied either on the spot where the inspection is conducted or at the end of the relevant journey, if this is possible. Breaches of this category include the absence of operational fire extinguishers.

Infringements covered by the third risk category are those where non-compliance with the relevant provisions causes a low risk of injury or damage to the environment. Immediate corrective action is not required at the site where the inspection is conducted but may be addressed later at the premises of the undertaking. By way of indication, such breaches include the failure to keep the certificate of training on the vehicle, although there are indications that it is held by the driver.

The authorities competent in order to perform checks and impose fines, pursuant to Article 2 of Presidential Decree 256/1999, are the police or the committees composed by members of the police, the State General Laboratory and the competent authorities in the respective prefectures.

Article 5 of Presidential Decree 256/1999 specifies that, subject to any other relevant provisions, in case where one or more of the infringements listed in Annex II are found to have taken place during the carriage of dangerous goods, those vehicles may be immobilised on the spot (or at another appropriate location determined by the competent authorities) and required to comply with applicable requirements before continuing their journey or other appropriate measures may be imposed.

According to Article 10 of this Presidential Decree 256/1999, other than the measures referred to in Article 5 and other applicable provisions, the driver who the police finds to have breached Annex II, is fined in the amount of 50,000 GRD (approx.

€ 146.73). In addition, for certain offences, they are subject to the administrative measure of having their driver's licence withdrawn for a period of 10 days. As regards transport undertakings, Article 11 specifies that, where infringements are certified during the inspections conducted by the competent authorities, administrative penalties of between 100,000 and up to 1,000,000 GRD are imposed (i.e. between approx. € 293.47 and € 2,934.70).

It is noted that, with respect to roadside checks conducted of vehicles registered in another Member State of the EU, if there are reasons to believe that serious or repeated offences have been committed but these cannot be proven during the check due to an absence of necessary data, the competent authorities in Greece may request the assistance of the Member State in which the vehicle is registered in order to clarify the situation (Article 8 of Presidential Decree 256/1999). The competent authorities in Greece have corresponding obligations towards their counterparts in the other Member States of the EU.

13.3.2 Directive 96/53/EC

Directive 96/53/EC has been implemented by Presidential Decree 77/1998¹¹⁷. Although Presidential Decree 77/1998 does not define the penalties for breaches of the maximum permitted vehicle dimensions and weight, the relevant sanctions can be found in other legislative acts, such as the Highway Code and Article 4 of Law 3446/2006, which applies to trucks.

Other than the fines that may be imposed for breaches of the maximum permitted vehicle dimensions and weight, as analysed in the Annex below, suspension of the driver's licence as well as immobilisation of the vehicle are also some of the measures that may be taken against infringements of Directive 96/53/EC.

As regards the imposition of criminal sanctions, there is no provision for these in the relevant legislation.

¹¹⁷ Presidential Decree 77/1998 in GG of 7 April 1998, Vol. A', No. 71, as amended by Presidential Decree 223/2004 in GG of 4 November 2004, Vol. A', No. 209.

13.3.3 Directive 2009/40/EC

Directive 2009/40/EC has been implemented into Greek law by Ministerial Decision 37566/5116/10/2012¹¹⁸. In this Ministerial Decision, the requirements for conducting periodic roadworthiness tests of vehicles are specified. However, there is no specific provision relating to the sanctions imposed in case of breach of its terms. However, According to Article 86 of the Highway Code, the owner of a vehicle, who does not submit it regular or occasional tests, as required by the law, is subject to payment of an administrative fine of € 400. As regards trucks, the same infringement is punishable under the provisions of Law 3446/2006. The driver is also liable to the penalties mentioned above. Specific criminal sanctions are not provided for in the relevant legislation.

13.3.4 Directive 2006/126/EC

Directive 2006/126/EC has been transposed into Greek law by Ministerial Decision 43206/6028/2008¹¹⁹, which sets out the requirements for issuing a driver's licence. This Ministerial Decision does not make provision for the penalties payable in the event of infringement. However, in the Highway Code and Law 3446/2006, relevant sanctions are included, as indicated in the Annex. Other than potential fines, the withdrawal of the driver's licence may also be applied as a penalty.

According to the Article 98, paragraph 2 of the Highway Code, driving with a fake driver's licence constitutes a criminal offence, as provided for in Article 216 of the Greek Criminal Code.

¹¹⁸ Ministerial Decision 37566/5116/10/2012 in GG of 30 January 2012, Vol. B', No. 87.

¹¹⁹ Ministerial Decision 43206/6028/2008 in GG of 4 August 2008, Vol. B', No. 1541, as amended by Ministerial Decision 38350/4644/2009 in GG of 2 October 2009, Vol. B', No. 1541.

13.4 Notion of criminal sanction and of administrative sanction in the Greek legal system

According to Article 1 of the Greek Criminal Code: "[p]unishment shall not be imposed but only for acts for which the law had provided it expressly, before they were committed". It follows, therefore, that the Greek criminal law system follows the principle of legality (*nullum crimen, nulla poena sine lege*).

As regards the division of offences, the Greek Criminal Code provides in Article 18 that: "[a]ny act punishable by death [the death penalty has now been abolished] or by confinement in a penitentiary is a felony. Any act punishable by imprisonment or by monetary penalty or by confinement in a reformatory institution [for minors] is a misdemeanour. Any act punishable by jailing or by fine is a petty offence".

According to Greek criminal law doctrine, "imputability" is a judgement by which a physical person is blamed for his or her conduct and, therefore, he or she is disapproved and becomes personally liable for his or her conduct. As criminal liability is based on the disapproval of a person for the commission of an offence, it has a personal character and cannot be imputed on groups of persons. Therefore, the so-called "corporate responsibility or liability" has not been recognised under Greek criminal law.

Article 111 of the Greek Criminal Code deals with time limits or the period of lapse of time for offences and provides that: "1. [t]he punishability of an offence is barred by the lapse of time. 2. Felonies shall be statute barred (a) after 20 years if the law provides for these, the death penalty [now abolished] or confinement in a penitentiary for life; and (b) after 15 years in all other cases. 3. Misdemeanours shall be statute barred after 5 years. 4. Petty offences shall be subject to lapse of time after one year".

The criminal sanctions provided for in the Greek Criminal Code are classified into penalties and security measures. The penalties are divided into main penalties and supplementary penalties. Main penalties include: (a) custodial; (b) pecuniary; and (c) the community penalties (e.g. suspension of sentence with or without supervision, conversion of a custodial sentence into a daily monetary penalty and community service).

In the Greek legal order, administrative penalties are imposed where administrative offences are specifically defined in the applicable legislation. Administrative penalties can consist in the payment of a fine as well as other measures that can be taken by the State, such as disciplinary sanctions (suspension, restitution) or prohibitive measures (prohibition to carry out an activity).

According to the Decision 1570/2005 of the High Court of Greece (*Areios Pagos*), in order for a sanction to constitute a penalty in the sense of criminal law and not administrative law, the sanction should be framed generally so that, invariably, it applies to everyone without distinction. It should also protect an important legal right and the penalty should be in proportion to the gravity of the offence.

According to this decision, any criminal sanction is a way for society to express its disapproval towards the offender who has committed a wrongful act. In contrast, an administrative penalty is not imposed on the offender in order to indicate disapproval for its actions, but is solely intended as a means of coercing that person or entity to perform the required State act or omission.

Concurrence between several sanctions

As stated above, according to Article 104, paragraph 6 of Law 2696/1999 (hereinafter the "Highway Code"), in the case of multiple infringements, a single administrative penalty is imposed, consisting of the fine for the more serious breach, increased by one half for the total penalties provided for with respect to the other infringements.

Concurrence between administrative and criminal sanctions

Consequently, an administrative sanction can cumulate with a criminal penalty, as the principle *ne bis in idem* does not apply where administrative and criminal sanctions are concerned.

13.5 Scope of application of Greek criminal law

The rules on the scope of application of Greek criminal law are laid down in Articles 5-10 of the Greek Criminal Code.

Article 5 states that anyone who commits a crime within the State will be punished according to Greek law, even if the person that has committed the crime is a foreigner.

Articles 6 and 8 lay down rules on the application of Greek criminal law for actions committed abroad. According to Article 6, the Greek Criminal Code is also applicable to offences committed abroad by Greek citizens, provided that these actions are also punishable under the laws of the country where the offence is committed.

Article 8 states that a Greek citizen or foreigner is punished under Greek criminal law where they commit, in foreign territory, the following offences:

- treason against the State;
- offences relating to the military service obligation;
- crimes committed by public officers;
- action against a Greek public officer, regarding his or her duties;
- perjury concerning a case pending before the competent Greek authorities;
- piracy;
- crimes of falsification of the legal coins of the State;
- human trafficking, or trips aiming at sexual intercourse or other lewd conduct with minors;
- drug trafficking;
- illegal trade and circulation of obscene publications;
- any other offence for which special laws or international conventions establish the applicability of Greek criminal law.

According to Article 9 of the Greek Criminal Code, criminal prosecution for actions committed abroad is precluded if (a) the offender has been judged and found not guilty or has served his or her penalty; (b) according to foreign law, the action has been time-barred; (c) according to foreign law, an action is needed in order to prosecute the offender and this lawsuit has not been filed.

13.6 Summary Tables

Table EL 1						
SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation 561/06/EC	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Not respecting minimum ages for conductors	- Driver - Transport undertaking	€200 €500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days	
	Ministerial Decision	Annex and	Exceeding the daily	- Driver	€100	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	450/51477/5520/2011	Articles 3-5	driving time of 9 hours, if not possible to extend to 10 hours, driving 9 to 10 hours	- Transport undertaking	€400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
	Ministerial Decision	Annex and	Exceeding the daily	- Driver	€200	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	450/51477/5520/2011	Articles 3-5	driving time of 9 hours, if not possible to extend to 10 hours, driving 10 to 11 hours	- Transport undertaking	€500 plus removal of the vehicle's registration document and number-plates for a period of 15 days	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Exceeding the daily driving time of 9 hours,	- Driver	€300	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			if not possible to extend to 10 hours, driving more than 11 hours	- Transport undertaking	€600 plus removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision</u>	Annex and	Exceeding the daily	- Driver	€100	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	450/51477/5520/2011	Articles 3-5	driving time of 10 hours if, extension permitted, driving 10 to 11 hours	- Transport undertaking	€400 plus removal of the vehicle's registration document and number-plates for a period of 10 days	
	Ministerial Decision	Annex and	Exceeding the daily	- Driver	€200	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	450/51477/5520/2011	Articles 3-5	driving time of 10 hours, if extension is permitted, driving 11 to 12 hours	- Transport undertaking	€500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Exceeding the daily driving time of 10 hours,	- Driver	€300	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			if extension is permitted, driving more than 12 hours	- Transport undertaking	€600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Exceeding the weekly driving time, driving a total of 56 to 60 hours	- Driver - Transport undertaking	€100 €400 <i>plus</i> removal of the vehicle's registration document and number-plates for	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					a period of 10 days	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Exceeding the weekly driving time, driving a total of 60 to 70 hours	- Driver - Transport undertaking	€200 €500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Exceeding the weekly driving time, driving a	- Driver -	€300	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			total of more than 70 hours	- - Transport undertaking	€600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Exceeding the biweekly driving time, driving a total of 90 to 100 hours	- Driver - Transport undertaking	€100 €400 <i>plus</i> removal of the vehicle's	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>registration document and number-plates for a period of 10 days</p>	
	<p><u>Ministerial Decision 450/51477/5520/2011</u></p>	<p>Annex and Articles 3-5</p>	<p>Exceeding the biweekly driving time, driving a total of 100 to 112.5 hours</p>	<p>- Driver - Transport undertaking</p>	<p>€200 €500 plus removal of the vehicle's registration document and number-plates for a period of 15 days</p>	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Exceeding the biweekly driving time, driving more than a total of 112.5 hours	- Driver - Transport undertaking	€300 €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Daily rest period less than 11 hours, if a reduction is not permitted i.e. 10 to 11 hours	- Driver - Transport undertaking	€100 €400 <i>plus</i>	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					removal of the vehicle's registration document and number-plates for a period of 10 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Daily rest period less than 11 hours, if a reduction is not permitted i.e. 8.5 to 10 hours	- Driver - Transport undertaking	€200 €500 <i>plus</i> removal of the vehicle's registration document and number-plates for	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					a period of 15 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Daily rest period less than 11 hours, if a reduction is not permitted i.e. less than 8.5 hours	- Driver - Transport undertaking	€300 €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Daily rest period less than 9 hours, if a reduction is permitted i.e. 8 to 9 hours	- Driver	€100	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				- Transport undertaking	€400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Daily rest period less than 9 hours, if a reduction is permitted i.e. 7 to 8 hours	- Driver - Transport undertaking	€200 €500 <i>plus</i> removal of the vehicle's registration	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					document and number-plates for a period of 15 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Daily rest period less than 9 hours, if a reduction is permitted i.e. less than 7 hours	<ul style="list-style-type: none"> - Driver - Transport undertaking 	<p>€300</p> <p>€600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month</p>	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Insufficient allocation of daily rest period, less than 3 hours + 9 hours-i.e. 3 hours + 8 to 9 hours	- Driver - Transport undertaking	€100 €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Insufficient allocation of daily rest period, less than 3 hours + 9 hours i.e. 3 hours + 7 to 8 hours	- Driver - Transport undertaking	€200 €500 <i>plus</i>	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					removal of the vehicle's registration document and number-plates for a period of 15 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Insufficient allocation of daily rest period, less than 3 hours + 9 hours i.e. 3 hours + less than 7 hours daily rest	- Driver - Transport undertaking	€300 €600 <i>plus</i> removal of the vehicle's registration document and number-plates for	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					a period of 1 month	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Insufficient daily rest period, less than 9 hours for multi member crew i.e. 8 to 9 hours	- Driver - Transport undertaking	€100 €400 <i>plus</i> removal of the plates for a period of 10 days	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Insufficient daily rest period ,less than 9 hours for multi member crew i.e. 7 to 8 hours	- Driver - Transport undertaking	€200 €500 <i>plus</i> removal of the vehicle's	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>registration document and number-plates for a period of 15 days</p>	
	<p><u>Ministerial Decision 450/51477/5520/2011</u></p>	<p>Annex and Articles 3-5</p>	<p>Insufficient daily rest period, less than 9 hours for multi member crew i.e. less than 7 hours</p>	<p>- Driver - Transport undertaking</p>	<p>€300 €600 plus removal of the vehicle's registration document and number-plates for a period of 1 month</p>	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Reduced weekly rest period, less than 24 hours i.e.22 to 24 hours	- Driver - Transport undertaking	€100 €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Reduced weekly rest period, less than 24 hours i.e.20 to 22 hours	- Driver - Transport undertaking	€200 €500 <i>plus</i>	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					removal of the vehicle's registration document and number-plates for a period of 15 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Reduced weekly rest period, less than 24 hours i.e. less than 20 hours	- Driver - Transport undertaking	€300 €600 <i>plus</i> removal of the vehicle's registration document and number-plates for	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Insufficient weekly rest period, less than 45 hours i.e. 42 up 45 hours	- Driver - Transport undertaking	€100 €400 plus removal of the vehicle's registration document and number-plates for a period of 10 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Insufficient weekly rest period, less than 24 hours i.e. 36 up 42 hours	- Driver	€200	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				- Transport undertaking	€500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Insufficient weekly rest period, less than 24 hours i.e. less than 36 hours	- Driver - - - Transport undertaking	€300 €600 <i>plus</i> removal of the vehicle's registration	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Exceeding uninterrupted driving time by 4.5 to 5 hours	- Driver - - - Transport undertaking	€100 €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Exceeding uninterrupted driving time by 5 to 6 hours	- Driver - - - Transport undertaking	€200 €500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Exceeding uninterrupted driving time by more than 6 hours	- Driver - - - Transport undertaking	€300 €600 <i>plus</i>	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					removal of the vehicle's registration document and number-plates for a period of one month	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Linking between the employment wage and the distance travelled or with the amount of goods transported	- Transport undertaking	€600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	

Table EL 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Ministerial Decision 450/51477/5520/2011	Article 6	Recurrence of all the infringements provided for in the Annex of Ministerial Decision 450/51477/5520/2011, except for that related to the ways of payment	- Driver	Withdrawal of driver's licence: - very serious infringements, for a period of 50 days - serious infringements, for a period of 40 days - minor infringement, for a period of one month	

Table EL 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation 3821/1985/EEC	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Tacograph: - not installed or the one installed is not approved - malfunctioning	- Driver - Transport undertaking	- €1,000 - €4,000 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of six months	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Tacograph used improperly (not valid driver's card)	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a	

					period of one month	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Not carrying enough record sheets in the vehicle, record sheets in the vehicle not approved	- Driver - Transport undertaking	- €200 - €500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days		
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Transport undertaking not keeping records of the record sheets and the data retrieved from the driver's card for a period of one year	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month		
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Driver holds more than one valid drivers cards	- Driver - Transport undertaking	- €1,000 - €4,000 <i>plus</i>		

					removal of the vehicle's registration document and number-plates for a period of six months
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Use of a driver's card that does not belong to the driver	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Use of a driver's card that is either faulty or has expired	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	

	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Recorded and stored data not available for at least 365 days	- Transport undertaking	€600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Use of dirty sheets or driver's card and data legible	- Driver - Transport undertaking	- €100 - €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Use of dirty sheets of driver's card and data illegible	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a	

				period of one month	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Failure to apply for replacement of damaged, malfunctioning, lost or stolen driver's card within seven calendar days	- Driver - Transport undertaking	- €200 - €500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Incorrect use of the record sheets/ driver's card	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Unauthorized withdrawal of record sheets or driver's card, which has an impact on	- Driver - Transport undertaking	- €300 - €600 <i>plus</i>	

		the recorded data		removal of the vehicle's registration document and number-plates for a period of one month	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Unauthorized withdrawal of record sheets or driver's card, which does not have an impact on the recorded data	- Driver - Transport undertaking	- €100 - €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Use of record sheet or driver's card for a period longer than that provided for, without any loss of data	- Driver - Transport undertaking	- €100 - €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	

	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Use of record sheet or drivers card for a period longer than that provided for, resulting in loss of data	<ul style="list-style-type: none"> - Driver - Transport undertaking 	<ul style="list-style-type: none"> - €300 - €600 <i>plus</i> removal of the vehicle's registration document and number- plates for a period of one month 	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Not using manual input when required to so do	<ul style="list-style-type: none"> - Driver - Transport undertaking 	<ul style="list-style-type: none"> - €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month 	
	Ministerial Decision 450/51477/5520/2011	Annex and Articles 3-5	Not using correct sheet or driver's card not used in the correct slot	<ul style="list-style-type: none"> - Driver - Transport undertaking 	<ul style="list-style-type: none"> - €300 - €600 <i>plus</i> removal of the vehicle's registration 	

					document and number-plates for a period of one month
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Time recorded on the sheet does not agree with official time of the vehicle's country of registration	- Driver - Transport undertaking	- €200 - €500 <i>plus</i> removal of the removal of the vehicle's registration document and number-plates for a period of 15 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Incorrect use of switch mechanism	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the removal of the vehicle's registration document and number-plates for a period of one month	

	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	The last name is missing on the record sheet	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	The first name on the record sheet is missing	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Date of commencement or end of use of record sheet missing	- Driver - Transport undertaking	- €200 - €500 <i>plus</i> removal of the	

				vehicle's registration document and number-plates for a period of 15 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Place of commencement or end of use of record sheet missing	- Driver - Transport undertaking	- €100 - €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Registration number missing on record sheet	- Driver - Transport undertaking	- €100 - €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Odometer reading (start) missing on record sheet	- Driver	- €200	

			- Transport undertaking	- €500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Odometer reading (end) missing on record sheet	- Driver - Transport undertaking	- €100 - €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Time of vehicle change is missing on the record sheet	- Driver - Transport undertaking	- €100 - €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a	

				period of 10 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	\Country's symbol not entered in recording equipment	- Driver - Transport undertaking	- €100 - €400 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 10 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Refuse to be checked	- Driver - Transport undertaking	- €1,000 - €4,000 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of six months	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Inability to present the documents of current day	- Driver - Transport undertaking	- €300 - €600 <i>plus</i>	

					removal of the vehicle's registration document and number-plates for a period of one month
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Inability to present the documents of the last 28 days	- Driver - Transport undertaking	- €300 - €600 <i>plus</i>	removal of the vehicle's registration document and number-plates for a period of one month
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Inability to present documents of the driver's card, in the case where the driver is holder of such card	- Driver - Transport undertaking	- €300 - €600 <i>plus</i>	removal of the vehicle's registration document and number-plates for a period of one month

	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Inability to present manual records and print-outs of the last week and the previous 28 days	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Inability to present the driver's card	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Falsify, suppress, destroy data recorded on record sheets, stored in the recording equipment or the driver's card or print-outs from the	- Driver - Transport undertaking	- €1,000 - €4,000 <i>plus</i> removal of the vehicle's registration	Also punishable by Article 216 of Greek Criminal Code regarding forgery: - imprisonment of at

			recording equipment		document and number-plates for a period of six months	least three months - if the forgery is aimed at obtaining financial benefit of more than €73,000, imprisonment of up to 10 years
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Manipulation of recording equipment, record sheet or driver's card, which may result in data and/ or print-outs of information being falsified	- Driver - Transport undertaking	- €1,000 - €4,000 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of six months	Also punishable by Article 216 of Greek Criminal Code regarding forgery: - imprisonment of at least three months - if the forgery is aimed at obtaining financial benefits of more than €73,000, imprisonment of up to 10 years	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Manipulation device present on vehicle that	- Driver	- €1,000	Also punishable by Article 216 of Greek	

		could be used to falsify data and/or print-outs of information	- Transport undertaking	- €4,000 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of six months	Criminal Code regarding forgery: - imprisonment of at least three months - if the forgery is aimed at obtaining financial benefits of more than €73,000, imprisonment of up to 10 years
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Repair from an unauthorized workshop or technician	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Not repaired en route	- Driver - Transport	- €200 - €500	

			undertaking	removal of the vehicle's registration document and number-plates for a period of 15 days	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Driver has not noted all information for the periods of time when the recording equipment is unserviceable or malfunctioning	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Driver card number and/or name and/ or driver's licence number missing in temporary sheet	- Driver - Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	

	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	The signature is missing on the temporary sheet	- Driver - Transport undertaking	- €200 - €500 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of 15 days	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Annex and Articles 3-5	Lost or theft of driver's card not formally declared to the competent authorities of the Member State where the theft occurred	Driver Transport undertaking	- €300 - €600 <i>plus</i> removal of the vehicle's registration document and number-plates for a period of one month	
	<u>Ministerial Decision 450/51477/5520/2011</u>	Article 6	Recurrence of all the infringements provided for in the Annex of Ministerial Decision 450/51477/5520/2011, except for that relating	Driver	Withdrawal of driver's licence: - very serious infringements, for a period of 50 days	

		to the stored (and storage of data) in the control device that do not cover at least 365 days		<p>- serious infringements, for a period of 40 days</p> <p>- minor infringement, for a period of one month</p>	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	The equipment is incomplete or faulty	Approved workshops	<p>€4,000</p> <p>In the case of recidivism, withdrawal of the operator's licence for three months</p>	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Absence of certificate for the control of the equipment	Approved workshops	<p>€4,000</p> <p>In the case of recidivism, withdrawal of the operator's licence for three months</p>	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Employees do not have the required skills	Approved workshops	€2,000	

					In the case of recidivism, withdrawal of the operator's licence for one month	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Installation, activation and control of the tachograph does not comply with the applicable legislation	Approved workshops	€4,000 In the case of recidivism, withdrawal of the operator's licence for three months	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Absence of an easily accessible installation plaque for the tachograph	Approved workshops	€4,000 In the case of recidivism, withdrawal of the operator's licence for three months	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Absence of a certificate of non- downloading	Approved workshops	€2,000 In the case of recidivism, withdrawal of the	

				operator's licence for one month	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not providing written explanations for the refusal to undertake certain works	Approved workshops	€2,000 In the case of recidivism, withdrawal of the operator's licence for one month	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not storing in a specially formed area the electronic data required by law	Approved workshops	€3,000 In the case of recidivism, withdrawal of the operator's licence for two months	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not respecting the obligation to provide only to the person responsible for the workshop access to the specially formed area where information is stored	Approved workshops	€2,000 In the case of recidivism, withdrawal of the operator's licence for one month	

	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not respecting the limitation imposed on running the workshop and being active in the transportation of goods and passengers	Approved workshops	€3,000 In the case of recidivism, withdrawal of the operator's licence for two months	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not respecting the prohibition of the workshop and its employees having any other commercial, financial or other obligation towards third parties which is likely to conflict with their work	Approved workshops	€3,000 In the case of recidivism, withdrawal of the operator's licence for two months	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Assignment of the workshop's approval to another workshop or third party	Approved workshops	€4,000 In the case of recidivism, withdrawal of the operator's licence for three months	

	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not having or presenting to inspectors the data and certificates regarding compliance with health and safety legislation	Approved workshops	€3,000 In the case of recidivism, withdrawal of the operator's licence for two months	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Appropriate measures have not been taken for safeguarding the security of personnel at the workshop and their property found in the workshop	Approved workshops	€3000 In the case of recidivism, withdrawal of the operator's licence for two months	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not implementing a decision of the inspectors for the referral of vehicles to be tested by another workshop	Approved workshops	€3,000 In the case of recidivism, withdrawal of the operator's licence for two months	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not having any rescue plan in case of emergency	Approved workshops	€3,000 In the case of	

					recidivism, withdrawal of the operator's licence for two months
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not displaying visibly the details of the persons responsible in case of emergency	Approved workshops	€3000 In the case of recidivism, withdrawal of the operator's licence for two months	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Compliance with the regulations on quality of work is not regularly tested by the person responsible for the workshop	Approved workshops	€2,000 In the case of recidivism, withdrawal of the operator's licence for one month	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Undertaking certain works without the required knowledge and equipment	Approved workshops	€4,000 In the case of recidivism, withdrawal of the operator's licence for	

				three months	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not prominently displaying the licence to practice as a tachograph technician	Approved workshops	€3,000 In the case of recidivism, withdrawal of the operator's licence for two months	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not informing the relevant authorities concerning the change in the ownership of the workshop	Approved workshops	€4,000 In the case of recidivism, withdrawal of the operator's licence for three months	
<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not informing the relevant authorities concerning relocation	Approved workshops	€4,000 In the case of recidivism, withdrawal of the operator's licence for three months	

	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not informing the relevant authorities concerning the relocation of equipment	Approved workshops	€2,000 In the case of recidivism, withdrawal of the operator's licence for one month	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	Not respecting the relevant legislation concerning the electronic files of the information that should be stored electronically by the workshop	Approved workshops	€4,000 In the case of recidivism, withdrawal of the operator's licence for three months	
	<u>Ministerial Decision 4924/255/2009</u>	Articles 2-3	In a vehicle transporting dangerous goods, an appropriate tachograph was not installed	Approved workshops	€4,000 In the case of recidivism, withdrawal of the operator's licence for three months	

Table EL 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation No. 1073/2009/EC	<u>Ministerial Decision 456/oik.7383/534/12/2012</u>	Article 6	Conditions for the issuance of the licence cease to be valid, operations assigned to third parties and waiver of right to exploit service as well as breach of tax and customs legislation	Transport undertaking	Revocation of operator's licence Undertaking is excluded from exploiting the specific international regular bus line for three years	
	<u>Ministerial Decision 456/oik.7383/534/12/2012</u>	Article 6	Criminal prosecution against the transport manager for certain serious offences	Transport undertaking	Revoke of operator's licence	
	<u>Ministerial Decision 456/oik.7383/534/12/2012</u>	Article 6	Breach of Regulation 561/06/EC and Regulation 3821/85/EC , failure to comply with applicable pricing policy and breach	Transport undertaking	Recommendation is issued and in the case of a repeat offence, the licence is revoked	

			of obligation to undertake scheduled journeys		Undertaking is excluded from exploiting the specific international regular bus line for three years	
	Greek Criminal Code	Article 216	E.g. submission of fake documents or execution of transport services while holding fake authorisation	Physical person who is involved in falsification	-	Criminal penalties for forgery: - imprisonment of at least three months - if the forgery is aimed at obtaining financial benefits of more than €73,000, imprisonment of up to 10 years

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Law3446/2006	Article 4, paragraph 1.26	Absence of ADR certificate of the driver or the vehicle	Driver, lessee or owner (depending on whether the absence of a certificate concerns the vehicle or the driver)	€2,000 If radioactive materials are being transported, as an administrative measure, the registration document of the vehicle is withdrawn	If radioactive materials are being transported, those participating in their transportation are imprisoned for at least six months
Directive 96/53/EC	Highway Code	Article 53, paragraph 6	Exceeding the maximum vehicle weight or approved dimensions Not applicable to trucks	Person or entity that infringes the obligation	400€ plus withdrawal of driver's licence for 30 days	

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Law3446/2006	Article 4, paragraph 1.2 (applicable to trucks)	Exceeding the maximum truck weight by up to 5%	Owner or lessee	€30	
	Law3446/2006	Article 4 paragraph 1.2	Exceeding the maximum truck weight by up to 10%	Owner or lessee	€60	
	Law3446/2006	Article 4 paragraph 1.2	Exceeding the maximum truck weight by up to 20%	Owner or lessee	€500	
	Law3446/2006	Article 4 paragraph 1.2	Exceeding the maximum truck weight by more than 20%	Owner or lessee	3,000 plus removal of the vehicle's registration document and number-plates for a period of four months	
	Law3446/2006	Article 4 paragraph 1.4	Exceeding the maximum truck dimensions	Owner or lessee	€1,000 plus immobilisation of the	

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					vehicle	
Directive 2009/40/EC	<p><u>Highway Code</u></p> <p><u>As far as trucks are concerned, the same infringements are punishable under the provisions of Law 3446/2006</u></p>	Article 86, paragraph 4	Driving without a valid roadworthiness certificate or with an expired certificate, as regards vehicles for which roadworthiness tests are mandatory	Driver Owner	€400	
	<u>Law 3446/2006</u>	Article 4, paragraph 1.3	Driving without a valid roadworthiness certificate or with an expired certificate, as regards vehicles for which roadworthiness tests are mandatory	Owner or lessee	€300 plus removal of the vehicle's registration document and number-plates until the tests are completed	

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Greek Criminal Code (forgery of public certificate)	Article 217	Driving with a fake roadworthiness certificate	Physical person involved in falsification		Imprisonment of up to one year or monetary penalty
Directive 2006/126/EC	Highway Code and Law 3904/2010	Article 94, paragraph 5 Article 31	Driving without a valid driver's licence	Driver	-	max. €3,000 plus imprisonment of up to six months
	Highway Code	Article 98, paragraph 2	Driving with a fake driver's licence	Driver	-	See Article 216 of the Greek Criminal Code.
	Highway Code	Article 100, paragraph 1	Driving without presenting the driver's licence, the certificate of professional training	Driver	€20	
	Law 3446/2006	Article 4, paragraph 1.13	Driving a truck without a driver's licence	Owner or lessee and	€2,000 upon each plus	

Table EL 4

Standards of Vehicles, Load and Necessary Licences						
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				driver	withdrawal of the driver's licence for a period of two months	
	Law 3446/2006	Article 4, paragraph 1.13	Driving a truck with a driver's licence that has expired	Driver	€100 plus removal of licence until its renewal	
	Law 3446/2006	Article 4, paragraph 1.13	Driving a truck with a driver's licence that has been revoked	Driver	€2,000	
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Standards of Vehicles, Load and Necessary Licences						
Directive 2008/68/EC	Presidential Decree 256/1999	Article 11	Infringements classified according to whether they result in high risk of death, serious injury or significant damage to the	Driver	50,000 GRD (approx. €146.73) For certain breaches, as an administrative	

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			environment		<p>measure, the driver's licence may be revoked for 10 days</p> <p>100,000 to 1,000,000 GRD (i.e. approx. €293.47 to €2,934.70)</p>	
	Law3446/2006	Article 4, paragraph 1.26	Absence of ADR certificate of the driver or the vehicle	Driver, lessee or owner (depending	<p>€2,000</p> <p>If radioactive materials are being transported, as an</p>	If radioactive materials are being transported, those participating in

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				on whether the absence of a certificate concerns the vehicle or the driver)	administrative measure, the registration document of the vehicle is withdrawn	their transportation are imprisoned for at least six months
Directive 96/53/EC	Highway Code	Article 53, paragraph 6	Exceeding the maximum vehicle weight or approved dimensions Not applicable to trucks	Person or entity that infringes the obligation	400€ plus withdrawal of driver's licence for 30 days	
	Law3446/2006	Article 4, paragraph 1.2 (applicable to trucks)	Exceeding the maximum truck weight by up to 5%	Owner or lessee	€30	

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Law3446/2006	Article 4 paragraph 1.2	Exceeding the maximum truck weight by up to 10%	Owner or lessee	€60	
	Law3446/2006	Article 4 paragraph 1.2	Exceeding the maximum truck weight by up to 20%	Owner or lessee	€500	
	Law3446/2006	Article 4 paragraph 1.2	Exceeding the maximum truck weight by more than 20%	Owner or lessee	3,000 plus removal of the vehicle's registration document and number-plates for a period of four months	
	Law3446/2006	Article 4 paragraph 1.4	Exceeding the maximum truck dimensions	Owner or lessee	€1,000 plus immobilisation of the vehicle	
Directive 2009/40/EC	Highway Code As far as trucks are	Article 86, paragraph 4	Driving without a valid roadworthiness certificate or with an expired certificate, as regards	Driver Owner	€400	

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>concerned, the same infringements are punishable under the provisions of Law 3446/2006</u>		vehicles for which roadworthiness tests are mandatory			
	<u>Law 3446/2006</u>	Article 4, paragraph 1.3	Driving without a valid roadworthiness certificate or with an expired certificate, as regards vehicles for which roadworthiness tests are mandatory	Owner or lessee	€300 plus removal of the vehicle's registration document and number-plates until the tests are completed	
	<u>Greek Criminal Code (forgery of public certificate)</u>	Article 217	Driving with a fake roadworthiness certificate	Physical person involved in falsification		Imprisonment of up to one year or monetary penalty
Directive 2006/126/EC	<u>Highway Code</u>	Article 94, paragraph 5	Driving without a valid driver's licence	Driver	-	max. €3,000 plus

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	and Law 3904/2010	Article 31				imprisonment of up to six months
	Highway Code	Article 98, paragraph 2	Driving with a fake driver's licence	Driver	-	See Article 216 of the Greek Criminal Code.
	Highway Code	Article 100, paragraph 1	Driving without presenting the driver's licence, the certificate of professional training	Driver	€20	
	Law 3446/2006	Article 4, paragraph 1.13	Driving a truck without a driver's licence	Owner or lessee and driver	€2,000 upon each plus withdrawal of the driver's licence for a period of two months	
	Law 3446/2006	Article 4, paragraph 1.13	Driving a truck with a driver's licence that has expired	Driver	€100 plus removal of licence	

Table EL 4

Standards of Vehicles, Load and Necessary Licences

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					until its renewal	
	Law 3446/2006	Article 4, paragraph 1.13	Driving a truck with a driver's licence that has been revoked	Driver	€2,000	

The table below gathers the sanctions which are considered formally criminal in the Greek legal system.

Table EL 5		
Infringements of commercial road transport legislation		
Type of infringement(s) and Article of reference in national legislation	Criminal sanction	Is it dissuasive?
Corresponding EU legislation		
<u>Fraud</u> Annex and Articles 3-5 of Ministerial Decision 450/51477/5520/2011 Falsify, suppress, destroy data recorded on record sheets, stored in the recording equipment or the driver's card or print-outs from the recording equipment Regulation 3821/1985/EEC	Also punishable by Article 216 of Greek Criminal Code regarding forgery: - imprisonment of at least three months - if the forgery is aimed at obtaining financial benefit of more than €73,000, imprisonment of up to 10 years	Yes
Annex and Articles 3-5 of Ministerial Decision 450/51477/5520/2011 Manipulation of recording equipment, record sheet or driver's card, which may result in data and/ or print-outs of information being falsified Regulation 3821/1985/EEC	Also punishable by Article 216 of Greek Criminal Code regarding forgery: - imprisonment of at least three months - if the forgery is aimed at obtaining financial benefits of more than €73,000, imprisonment of up to 10 years	Yes
Annex and Articles 3-5 of Ministerial Decision	Also punishable by Article 216 of Greek Criminal	Yes

Table EL 5

Infringements of commercial road transport legislation

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>450/51477/5520/2011</p> <p>Manipulation device present on vehicle that could be used to falsify data and/or print-outs of information</p> <p>Regulation 3821/1985/EEC</p>	<p>Code regarding forgery:</p> <p>- imprisonment of at least three months</p> <p>- if the forgery is aimed at obtaining financial benefits of more than €73,000, imprisonment of up to 10 years</p>	
<p>Article 216 of the Greek Criminal Code</p> <p>E.g. submission of fake documents or execution of transport services while holding fake authorisation</p> <p>Road package</p>	<p>Criminal penalties for forgery:</p> <p>- imprisonment of at least three months</p> <p>- if the forgery is aimed at obtaining financial benefits of more than €73,000, imprisonment of up to 10 years</p>	<p>Yes</p>
<p>Article 11 of Presidential Decree 256/1999</p> <p>Infringements classified according to whether they result in high risk of death, serious injury or significant damage to the environment</p> <p>Article 4, paragraph 1.26 of Law3446/2006</p> <p>Absence of ADR certificate of the driver or the vehicle</p> <p>Directive 2008/68/EC</p>	<p>If radioactive materials are being transported, those participating in their transportation are imprisoned for at least six months</p>	<p>No</p>

Table EL 5

Infringements of commercial road transport legislation

Type of infringement(s) and Article of reference in national legislation Corresponding EU legislation	Criminal sanction	Is it dissuasive?
Driver's licence Article 217 of Greek Criminal Code (forgery of public certificate) Driving with a fake roadworthiness certificate Directive 2009/40/EC	Imprisonment of up to one year or monetary penalty	Yes
Article 94, paragraph 5 of the Highway Code and Article 31 of Law 3904/2010 Driving without a valid driver's licence Directive 2006/126/EC	max. €3,000 plus imprisonment of up to six months	Yes
Article 98, paragraph 2 of the Highway Code Driving with a fake driver's licence Directive 2006/126/EC	See Article 216 of the Greek Criminal Code. - imprisonment of at least three months	Yes

13.7 Sanctions which could be considered substantially criminal in the Greek legal system

According to Greek case-law, there are a number of sanctions characterised as administrative in the respective legislation which have been held to be criminal in nature (i.e. sanctions related to breaches of customs law - see Administrative Court of Komotini, Decision No. 151/2010, sanctions provided by environmental legislation - see Council of State, Decision No. 2514/2009), in Decision No. 1570/2005 of the Greek High Court (Areios Pagos) it was ruled that the withdrawal of a driver's licence as well as the withdrawal of the vehicle registration documents and number-plates for a period of 30 days, as a sanction provided by the Greek Highway Code, constitute, formally as well as substantively, an administrative sanction. The main argument raised by the High Court, referred to the administrative nature of the sanctions imposed, which does not constitute in any case a form of punishment within the meaning of criminal law (i.e. a punishment that is imposed by court decision against the offender as an expression of the considerable disapproval of the legal order for his actions). In contrast, according to the High Court, these sanctions constitute a measure imposed upon the driver of the vehicle that aims to remedy the negative effect on the smooth movement of vehicles that his behaviour provoked.

In addition, the Council of State with its Decision No. 3678/1997 ruled that the applicable, at that time, sanction of 115,000 GRD as well as the withdrawal of a driver's licence for a period of three months imposed upon a taxi driver as a sanction for breach of the respective legislation constitutes a substantive administrative sanction.

In light of the above and given that in the Greek legal system there are many administrative sanctions to which heavier fines are imposed than those imposed for breach of the road transport legislation (i.e. sanctions for breach of the livestock facilities requirements €5,000 - €75,000, sanctions for the construction of antenna facilities without the legal requirements €10,000-€300,000), we are of the opinion that the sanctions imposed by the Greek legislation implementing the EU directives and regulations on commercial road transport are formally and substantively administrative in nature.

Table EL 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

Type of infringement and Article of reference in national legislation	Administrative sanction that could be qualified as criminal sanction	Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?	Is it dissuasive?
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Corresponding EU legislation

There are no sanctions imposed by the Greek legislation implementing the EU directives and regulations on commercial road transport which are formally administrative but and substantively criminal.

13.8 Effectiveness of the sanctions system

As regards the effectiveness of the Greek sanctioning system for breaches of the legislative provisions applicable to road transport, as an initial point it should be noted that a system is in place which properly distinguishes between infringements based on their severity (very serious, serious and minor infringements). In addition, there is a clear distinction between the sanctions imposed upon transport undertakings and those imposed upon drivers.

However, the sanctions do not differentiate between undertakings as to the level of infringements, meaning that undertakings with a big turnover are punished in the same way as undertaking with a small one.

As far as the sanctions provided for in the Highway Code are concerned, according to Athanassios Kritikos,¹²⁰ these are deemed sufficient. According to Athanassios Kritikos, by just increasing the amount of a fine cannot, in itself, act as deterrent committing an offence, in breach of the relevant legislation. Instead, according to the author, it is more important to ensure the regular imposition of sanctions and their implementation.

According to Theoharis Angelidis,¹²¹ the sanctioning system applicable to road transport is vague and raises major issues concerning its consistency with the concept of legal certainty, according to which the citizen is entitled to predict the actions of the State's institutions. It is maintained that the sanctions imposed with respect to road transport infringements are defined broadly, in order to make it difficult for citizens to realise what the infringement is actually about.

In addition, by not taking into account the mental element of committing these offences, acts are punishable with the same penalties, whether committed intentionally or recklessly. Furthermore, according to Theoharis Angelidis, sanctions imposed are disproportionate to the objective gravity of the offence.

¹²⁰ Athanassios Kritikos, *Highway Code*, Romanos Editions, Athens 2009, page 23.

¹²¹ Theoharis Angelidis, "Roadside checks of professional vehicles and the system of administrative penalties - their practical implementation", *Transport Law Journal*, September 2010.

The Greek Ministry of Development, Competitiveness, Infrastructure, Transport and Networks (see Annex Gr. I) provided us with some figures concerning controls and offences detected in the Country in 2009 and 2010.

Based on the information available, the total number of drivers checked at the roadside is 2,178. The total number of vehicles stopped for roadside check is 1,658. The number of working days checked at the roadside is 17,477. The numbers of drivers checked and of working days checked at the premises of undertakings is respectively 1,355 and 57,375.

The number and type of offences detected at the roadside and which concern rules on driving time, rest periods, driving time records, recording equipment is 401.

The number of offences of the same rules detected at the premises is 130.

The number of offences detected is not high in absolute terms, but it is substantial if account is taken of the number of drivers checked at the roadside and at the premises, which is much lower than in other EU countries.

In conclusion, it is posited in agreement that the Greek system might be considered as non effective.

14 HUNGARY - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR

14.1 Social rules on road transport

14.1.1 Rules on Driving Times and Rest Periods

14.1.1.1 Regulation (EC) No 561/2006

The sanctions set out in Article 19 of the EC Regulation No 561/2006 have been implemented by Act No. 1 of 1988 on public road transport (“Road Transport Act”) and Government Decree No. 156 of 2009 on the amount of fines that can be imposed for the infringement of certain rules relating to the public transport of goods, public road passenger transport and public road transport, and authority duties relating to the imposition of fines (“GD No. 156/2009”).

Driving times, Breaks and Rest periods

Pursuant to Section 20 (1) c) of the Road Transport Act a driver who infringes the provisions concerning work breaks or daily or weekly rest periods or who exceeds the maximum daily, weekly or bi-weekly limits on driving times (Sections 18/F-18/L) has to pay a fine up to HUF 300,000 (approximately EUR 1,041).

Pursuant to Annex 3 of GD No. 156/2009, a driver commits an administrative offence if the driver does not comply with the following:

- maximum daily driving period of 9 or 10 hours;
- prescribed maximum weekly and bi-weekly driving times;
- minimum 4.5 hours cumulated breaks;
- minimum daily rest periods of 11 or 9 hours;
- minimum weekly rest periods of 24 or 45 hours.

A sanction for the above administrative offences result in a fine of between HUF 10,000 and HUF 800,000 (approximately EUR 35 to EUR 2,775).

Transport undertaking's liability

Pursuant to Sections 18/C-18/E of the Road Transport Act, the transport undertaking has to set a working time frame for the drivers and respect the rules on driving times, breaks and periods of daily or weekly rest in the course of organising the work. The undertaking has to comply with the provisions concerning health and safety regulations and road transport, as well as the labour laws.

In accordance with Section 20 (4) of the Road Transport Act, a fine of up to HUF 800,000 (approximately EUR 2,775) is imposed on any transport undertaking that does not respect the above provisions.

Pursuant to Annex 5 of GD No. 156/2009, a fine of between HUF 50,000 and HUF 400,000 (approximately EUR 173 to EUR 1,388) is imposed on the manager of the undertaking if provisions concerning the transportation of dangerous goods, such as the lack of a safety advisor regarding dangerous goods, the failure to provide an accident report, the failure to submit an annual report are not complied with.

GD No. 156/2009 contains in its Annex 3 a list of the infringements of EC Regulation 561/2006 and the scale which may be considered as less serious, serious and very serious (specifying Annex III. of the Regulation).

Pursuant to Section 13 (2) of GD No. 156/2009, if the inspection authority discovers several infringements during an inspection, the amount of the imposed fine may not exceed HUF 1,000,000 (approximately EUR 3,469) in respect of a scope of infringements (specified in details in Section 13 (2)) or HUF 600,000 (approximately EUR 2,082) in respect of another scope of infringements (specified in details in Section 13 (2)), but the fine may not exceed HUF 2,200,000 (approximately EUR 7,632) in respect of all infringements. If the fine is imposed on the driver, the fine may be of a maximum of HUF 400,000 (approximately EUR 1,388) in respect of a scope of infringements (specified in details in Section 13 (2)) or HUF 250,000 (approximately EUR 867) in respect of another scope of infringements (specified in details in Section 13 (2)), but such fines may not exceed altogether HUF 800,000 (approximately EUR 2,775).

Foreign drivers

Sanctions relating to public road transport apply to foreign drivers or undertakings to the same extent as they are applicable to Hungarian citizens. Of course, there are certain rules that may only apply to foreign drivers (e.g. the registration certificate of a vehicle is to be sent to the issuing foreign authority if it has been taken away due to the retention of a vehicle and the driver does not take it over within 3 days following the date on which the term of the retention expired). However, the entire sanctioning system is applicable to Hungarian and foreign citizens to the same extent.

14.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)

Directive 2006/22/EC has been implemented in Hungary by Government Decree No. 66 of 04.04.2007 on the control of driving and rest periods of the personnel of certain vehicles engaged in public road transport (“GD No. 66/2007”) (and Decree of the Ministry of Economy and Transport No. 43 of 04.04.2007 on the detailed rules of transport authority control executed based on certain social laws concerning public road transport).

Pursuant to Section 1 of GD No. 66/2007, the controlling authority (police, traffic authority, customs authority and labour authority) is required to execute (i) public road traffic control and (ii) site control of transport undertakings.

Pursuant to Section 4, a public traffic control mainly covers the identification and number of drivers and vehicles, compliance with the provisions concerning tachographs, the use of data recording sheets and driver’s cards, the time of driving and rest periods, and breaks. If the provisions regarding driving and rest periods or breaks are infringed, the drivers are prevented (retained) from driving on. The following sanctions apply in the event of non-compliance with the requirements (Section 8):

- in respect of a breach of the daily rest periods, the time of retaining shall be a minimum of 9 and a maximum of 11 hours;
- in respect of weekly rest periods, 24 hours rest period may be ordered;

- in respect of breaks, a break of a minimum of 15 minutes and a maximum of 45 minutes may be ordered.
 - For the duration of such periods, the documents of the vehicle and goods may be retained (Section 9).
 - Harmonised public road controls shall be organised by the National Public Transport Authority at least six (6) times per year (Section 11).
 - In the course of a site control of transport undertakings, the following areas must be covered (Section 12):
 - driving and rest periods registered as labour data;
 - certification documents of tachographs;
 - used data recording sheets;
 - documents regarding controls executed by the employer;
 - provisions of EC Regulation No. 561/2006 and EEC Regulation 3821/1985.
 - If the inspection authority reveals an infringement of the respective rules, it is required to impose a fine. The detailed rules of the fines are set out in GD No. 156/2009.
 - Pursuant to Section 14, the inspections have to cover and evaluate a representative sample of mobile employees, in particular drivers, vehicles of all categories and transport undertakings. The controls must cover at least 3 per cent of the work days of the drivers, 30 per cent of days of the total number of drivers' work days controlled in road inspections, 50 per cent of the total number of drivers' work days inspected at the site of transport undertakings. At least 10 per cent of the controlled vehicles must be checked for assets influencing the proper use of tachographs.
 - The inspecting authorities must store the data of inspections and send the national cumulated data to the European Committee every second year (Section 15 (9)).
 - Annex 1 to GD No. 66/2007 basically covers the same wording as Annex I to the Directive 2006/22.

14.1.1.3 Directive 2002/15/EC

EC Directive 2002/15 is implemented by the Road Transport Act. Section 18/C specifies that the employer may not organise the work of the employee in transport so as to exceed 60 hours per week. Section 18/C (6) states that the average weekly working time might not exceed 48 hours during 4 consecutive months.

Concerning breaks, Section 18/F provides that if the overall daily working time comprises 6 to 9 hours, the mobile worker must have, after 6 worked hours, a break of at least 30 minutes.

If the daily working time exceeds 9 hours, pursuant to Section 18/F, the worker must, at the latest after working for 6 hours, have a break of at least 45 minutes. The breaks might be subdivided into periods of at least 15 minutes. Section 18/F (4) provides for minimum rest periods of 11 consecutive hours per 24 hours, which may only be shortened in exceptional cases.

Section 18/G further stipulates that, concerning night work, the average working time might not exceed 10 hours per 24 hours.

Foreign drivers

See above.

14.1.2 Tachograph

14.1.2.1 Regulation (EEC) No 3821/85

The obligations set out in Regulation (EEC) No 3821/85 are set forth in Section 44/A of the Road Transport Act and in the order of the Ministry of Economy and Transport No. 124 of 29.12.2005 on tachographs used in road transport (“Decree No. 124/2005”). The sanctions for infringements of such obligations are defined in Section 20 (d) of the Road Transport Act and Annex 4 of GD No. 156/2009.

Liability of the driver

Pursuant to Section 20 (d) of the Road Transport Act, a fine of between HUF 10,000 and HUF 800,000 (approximately EUR 35 to EUR 2,775) will be imposed on a person who infringes the obligations set out in any national or Community law in respect of tachographs used in public road traffic and data record sheets.

Pursuant to Annex 4 of GD No. 156/2009, a fine of HUF 30,000 (approximately EUR 104) will be imposed on a driver, if:

- there is insufficient paper for printing;
- the driver uses dirty or damaged record sheets or driver's cards, but the data is legible;
- the record sheets or the driver's card have been removed without authorisation, not affecting the recorded data;
- the record sheets or the driver's card have been used beyond the intended term, without loss of data;
- the place of commencement or end of using the sheet is missing;
- the registered number is missing from the record sheet;
- the reading on the odometer is missing from the record sheet (after the last trip);
- the date of the vehicle exchange is missing from the record sheet; or
- the country code is not entered in the recording equipment.

A fine of HUF 100,000 (approximately EUR 347) is imposed on a driver, if:

- there is an insufficient number of record sheets (with respect to the personal nature of the record sheets, the service time, substitution of the damaged record sheets or record sheets confiscated by the inspector);
- the sample of the record sheet has not been approved;
- the driver failed to replace any damaged, malfunctioning, lost or stolen driver's card within seven calendar days;
- the record sheets / driver's cards have been used improperly;
- the time recorded on the sheet does not correspond to the official time of the country in which the vehicle has been registered;

- commencement date or end date of using the sheet is missing;
- the reading on the odometer is missing from the record sheet (before the first trip),
- the repair of the vehicle has not been performed during the trip (if the vehicle cannot return to the place of business within one week from the occurrence of the breakdown or the determination of the malfunction);
- the signature is missing from the temporary sheet.

A fine of HUF 200,000 (approximately EUR 694) shall be imposed on a driver,

if:

- the driver uses a false or expired driver's card;
- he/she has failed to enter the required data manually;
- his/her forename is missing from the record sheet;
- the driver's card number, or the driver's name or his driver's licence number is missing from the temporary sheet, if the identification is impossible due to missing data (the fine is HUF 50,000 if the identification is possible).

A fine of HUF 300,000 (approximately EUR 1,041) is imposed on a driver, if:

- the recording equipment is not operating properly (the recording equipment has not been properly supervised, calibrated or sealed);
- dirty or damaged record sheets or driver's cards is used, and the data is not legible;
- the switch-gear is used improperly, if it restricts in a significant way (the fine is HUF 50,000 (approximately EUR 173), if it does not restrict in a significant way);
- the surname is missing from the record sheet;
- the driver does not indicate all information which the recording equipment failed to record due to its breakdown or malfunction;
- the driver fails to report the lost or stolen driver's card to the competent authority of the member state.

A fine of HUF 400,000 (approximately EUR 1,388) is imposed on a driver, if :

- there is a failure to set up and use the recording equipment with approval type, (there is a failure to set up and use a recording equipment of an approval type);
- recording equipment is used improperly: use of invalid driver's card (reported to be lost or stolen);
- the enterprise fails to preserve the record sheets, printouts or downloaded data for at least one year;
- the driver has more than one valid driver's cards;
- the driver uses a driver's card different from the driver's own valid card;
- the recorded and stored data is not available for at least 365 days, and the conditions for supplying data do not warrant the safety and accuracy of the data (in the case of digital recording equipment);
- the record sheets or driver's card have been removed without authorisation, affecting the recording of the data concerned;
- there was a use of the record sheet or driver's card beyond the intended term, with loss of data;
- there was the use of an improper sheet or inserting the driver's card in an improper slot (several staff members);
- the driver refuses the inspection;
- the driver fails to present information recorded on the disk, driver's card related to the given day and/or the preceding 28 days;
- the driver fails to present the driver's card or information related to the driver's card (if he has a driver's card);
- the driver fails to present the handwritten notes and printouts prepared on the given day and in the preceding 28 days; or
- the repairs were not performed by an acknowledged mechanic or workshop.

A fine of HUF 600,000 (approximately EUR 2,082) is imposed on a driver, if :

- the data recorded on the record sheets, the recording equipment or the driver's card or printed data of the recording equipment is falsified, deleted or destroyed.

A fine of HUF 800,000 (approximately EUR 2,775) is imposed on a driver, if:

- manipulation in connection with the recording equipment, record sheet or driver's card may result in the falsification of data or printed information; or
- there is a manipulation device on the vehicle that can be used for falsifying data or printed information (switch/cable).

Transport undertakings' liability

Pursuant to Section 20 (d) of the Road Transport Act and Section 6 of Decree 124/2005, a fine of HUF 10,000 to HUF 800,000 (approximately EUR 35 to EUR 2,775) may be imposed on an employer that:

- does not bring to the attention of the drivers the legislation applicable to the usage of recording equipment, record sheets or paper casters used for the recording equipment (Section 2 (a));
- does not demonstrably instruct the driver on correct usage of the drivers card (Section 2 (b));
- does not collect the copied data from the record equipment (Section 5);
- does not provide for the correction of the damaged record equipment immediately (Section 6 (a));
- does not ensure that no new transport shall commence until the repair of the recording equipment (Section 6 (b)); and/or
- does not report to the issuer authority that the tachograph card is damaged, stolen or destructed (Section 8).

Foreign drivers

See above.

14.2 Road package

14.2.1 Regulation (EC) No 1071/2009

The obligations regarding the road package *i.e.* EC Regulations 1071/2009, 1072/2009 and 1073/2009 are implemented in Government Decree 261/2011 of 7 December 2007, while the relevant sanctions are stipulated by Section 20 (a) and (b) of the Road Transport Act and Annexes 1 and 2 of GD No. 156/2009.

Pursuant to Section 20 (a) of the Road Transport Act, a fine of between HUF 10,000 and HUF 800,000 (approximately EUR 35 to EUR 2,775) may be imposed on a person who infringes any national or Community laws in respect of any inland or international transportation services (goods and passengers) which requires certain licences and certain documents set out in the Road Transport Act and other national or Community laws.

Pursuant to Annex 1 of GD No. 156/2009, a fine of HUF 30,000 (approximately EUR 104) is imposed on a driver if:

- The driver fails to report the change of data related to the road transit permit, passenger transport permit, transit or passenger transport community permit, fails to report the cessation of the activity, fails to return the driver's expired permit, or fails to present on the road the document related to the substituting vehicle, or the permit extract (certified copy) for the original vehicle.

A fine of HUF 50,000 (approximately EUR 173) is imposed on a driver, if:

- there is no taxi permit, passenger transport permit, taxi certificate or identification sheet on the vehicle;
- there is no waybill or route-sheet, or no passenger list in the case of chartered passenger transport;
- the waybill or the passenger transport route-sheet is issued or kept incorrectly for each missing (mandatory) section, excluding data related to transit costs, fees, customs clearance and payment method.

- A fine of HUF 100,000 (approximately EUR 347) is imposed on a driver if:

- transit is conducted without a road transit permit extract, or passenger transport with bus conducted for a fee without a road passenger transport permit extract;
- there is no certificate of the driver's professional qualifications.

- A fine of HUF 200,000 (approximately EUR 694) will be imposed on a driver, if there is no driver's licence.

- A fine of HUF 300,000 (approximately EUR 1,041) will be imposed on a driver, if:

- transportation services are carried out without a certified copy of the community permit and in the absence of the permit extract (the fine is HUF 30,000 (approximately EUR 104) if the permit extract exists);
- the international road transit permit, CEMT permit and related certification, bus charter permit is missing or invalid (the fine is HUF 150,000 (approximately EUR 520) if the above permits are used improperly or the use deviates from the provisions of the permits);

- A fine of HUF 800,000 (approximately EUR 2,775) is imposed on a driver if road transport services are conducted without a public transit permit, common carriage permit, public passenger transport permit, or bus transport permit, taxi permit, car passenger transport permit, community permit in international traffic, respectively, cabotage or chartered passenger transport conducted without the required permit.

- Pursuant to Section 20 (b) of the Road Transport Act, a fine of between HUF 10,000 and HUF 800,000 (approximately EUR 35 up to EUR 2,775) might be imposed on a person who infringes any national or Community laws in respect

of any goods and passenger transport services executed on own account which requires certain documents set out in the Road Transport Act or other national or Community laws.

- Pursuant to Annex 2 of GD No. 156/2009, a fine of HUF 50,000 (approximately EUR 173) is imposed on a driver, if:

- there is no route-sheet;
- the route-sheet or the passenger transport route-sheet is issued or kept incorrectly for each missing (mandatory) section.

- A fine of HUF 200,000 (approximately EUR 694) shall be imposed on a driver, if there is no document related to the vehicle or the driver verifying compliance with the requirements of transit conducted on own account or passenger transport conducted by bus on own account.

- A fine of HUF 300,000 (approximately EUR 1,041) is imposed on a driver, if transit or bus passenger transport conducted on own account without the relevant permit.

According to Section 9 of Government Decree No. 261/2011 of 7 December 2007 (the “Decree”), an entity does not comply with the requirement of good repute if its licence for public road transport services has been withdrawn for any infringement defined in Annex IV of Regulation No. 1071/2009. The Decree directly refers to Annex IV and does not enumerate such infringements. Furthermore, the Decree or any other relevant laws under Hungarian law does not specify infringements regarding public road transport as minor, serious or most serious (apart from referring to Annex IV in the Decree). Based on Government Decree No. 156/2009, it can be concluded that, at least, certain infringements listed in Annex IV as the most serious infringements (infringements listed under pts. 2, 4 and 5 of Annex IV) are sanctioned in a more severe way by imposing higher amount of fines on them.

14.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009

See above.

14.3 Standards of vehicles and load and necessary licenses

14.3.1 Directive 2008/68/EC

EC Directive 2008/68 is implemented in Hungarian law by Section 20 (e) of the Road Transport Act and the specific fines are defined in Annex 5 of GD No. 156/2009. Pursuant to Section 20 (e) of the Road Transport Act, a fine may be imposed on any person who infringes the obligations set out by a national or Community law in respect of the transportation of the rules on dangerous goods i.e. the transporter, the public road vehicle and its personnel, the sender of goods, the person temporary storing the goods, the person packing the goods, the person loading up the goods, the addressee of the goods and the appointment and education of the safety advisor on the transport of dangerous goods. In accordance with Section 20 (4), the fine may be from HUF 10,000 up to HUF 800,000 (approximately EUR 35 up to EUR 2,775).

Infringements listed in Annex 5 of GD No. 156/2009 are categorised as first risk category, second risk category and third risk category infringements. The infringements in the first risk category are the most serious. Pursuant to Annex 5 of GD No. 156/2009 when transporting dangerous goods (agricultural chemicals and fuel) by tractor or slow vehicle, a fine of up to HUF 50,000 (approximately EUR 173) is imposed on a consignor, transporter if:

- pesticide is transported in bulk, fuel or liquid chemical fertilizer is transported in a tank bigger than 6500 litres, an improper tow or tank wagon is used, the tank wagon has no effective admission;

- the adjustment of the vehicle used for transportation of loose goods or the tank is improper;
- the marking of tank or means of transportation is in breach of the requirements;
- the distance of transportation is more than 50 km;
- the transportation documents or equipment are incomplete;
- the rules for loading are violated;
- the smoking prohibition is not observed;
- the driver has no effective examination certificate.

A fine of up to HUF 50,000 (approximately EUR 173) is imposed to the head of the undertaking if no accident report has been made.

A fine of up to HUF 100,000 (approximately EUR 347) is imposed on the driver in the event:

- of a leakage of dangerous material (I. category default);
- of a breach of the prohibition against using fire or naked flames (I. category default);
- of a breach of the smoking prohibition (I. category default);
- the vehicle has no ADR or other equipment prescribed in writing (II. category default).

A fine of up to HUF 100,000 (approximately EUR 347) is imposed in connection with III. category defaults and defaults in connection with the advisor in case of transportation of dangerous goods:

- on the consignor, the person loading up the goods, the transporter if the size of the labelling, characters, symbols are not in line with the requirements;
- on the consignor if information is missing from the transportation documents;
- on the head of the transportation company if it has not notified to the traffic authority about the assignment of advisor;

- on the head of the transportation company if no annual report has been filed;
- on the head of the transportation authority or the advisor if the assignment of the advisor lapsed or the advisor does not have the necessary qualifications for that sector.

A fine of up to HUF 200,000 (approximately EUR 694) is imposed in connection with III. category and other defaults on the consignor, transporter in case of:

- transportation of combined package if the exterior package is not closed properly;
- transportation of dangerous goods without the necessary licence;
- transportation of explosive for civil use without the necessary licence;
- transportation of radioactive material without the necessary licence.

A fine of up to HUF 200,000 (approximately EUR 694) is imposed in connection with II. category defaults:

- on the transporter if its written instruction is not in line with the ADR requirements;
- on the driver, operator of the vehicle if the vehicle does not fulfil the requirements in the approval, but it does not cause any direct danger.

A fine of up to HUF 300,000 (approximately EUR 1,041) is imposed in connection with II. category defaults:

- on the consignor, person loading up the goods, transporter if the transporter unit has more than one trailer or semitrailer;
- on the transporter or operator of the vehicle if the vehicle has no prescribed fire extinguisher in working order;
- on the consignor, the person packing the goods if the regulation on the time of controlling the packaging materials, IBCs or the time limit for the usage of them has been breached.

A fine of up to HUF 400,000 (approximately EUR 1,388) is imposed in connection with I. category defaults:

- on the person loading up the goods, on the transporter if the provisions on keeping the parts of a consignment in the vehicle together have been breached;
- on the person loading up the goods, on the transporter in the case of a breach of prohibition against using fire or naked flame.

A fine of up to HUF 400,000 (approximately EUR 1,388) is imposed in connection with II. category defaults:

- on the consignor, the person loading up the goods, the transporter if damaged consignment pieces, IBCs, packages, or empty, unclear packaging materials are transported;
- on the operator of the container, the person loading up the goods, the transporter if consignment pieces are transported in containers which are structurally not in a proper condition;
- on the consignor, the person loading up the goods, the transporter if the containers, tank containers are not properly closed;
- on the consignor, the person packing the goods, the person loading up the goods, the transporter in the case of improper labelling, marking, or in lack of these;

A fine of up to HUF 400,000 (approximately EUR 1,388) is imposed on the head of the undertaking if the undertaking has no advisor.

A fine of up to HUF 600,000 (approximately EUR 2,082) is imposed in connection with I. category defaults:

- on the consignor, the transporter if an unauthorised way of transport or an improper vehicle is used for transportation;

- on the consignor, the person packing the goods if the means of packing are not in line with the instructions;
- on the person loading up the goods if the requirements on keeping the consignment pieces together in the container are breached;
- on the person packing the goods if the prescription on the applicable degree for consignment pieces or containers at filing is violated;
- on the consignor, the transporter if the restriction on the maximum amount to be kept in one transporter unit is violated;
- on the person loading up the goods, the transporter if the driver has no effective training report.
- A fine of up to HUF 600,000 (approximately EUR 2,082) is imposed in connection with II. category defaults on the transporter if there is a lack of written instruction.

A fine of up to HUF 800,000 (approximately EUR 2,775) is imposed in connection with I. category defaults:

- on the consignor, the person loading up the goods, the transporter in the case of transporting hazardous goods excluded from transport;
- on the consignor, the person packing the goods, the person loading up the goods, the transporter in the case of a leakage of hazardous goods;
- on the operator of the container, the person loading up the goods, the transporter in the case of loose cargo in a container which is structurally not in proper state;
- on the consignor, the person loading up the goods, the transporter in the case of transportation with a vehicle without proper approval licence;
- on the consignor, the person loading up the goods, the transporter in the case of transportation with a vehicle which violates the approval licence and means direct danger;
- on the consignor, the person packing the goods, the person loading up the goods, the transporter in case of usage of packing materials lacking the approval;

- on the consignor, the person packing the goods in the case of breaching the special provisions on mixed packing;
- on the person loading up the goods, the transporter in the case of breaching the provisions on the installation and fixing of the cargo;
- on the consignor, the person loading up the goods, the person packing the goods, the transporter in case of the transportation of hazardous goods without any sign or information indicating this;
- on the consignor, the person loading up the goods, the transporter if the vehicle has no labelling or marking;
- on the consignor, the transporter in lack of information (UN number, proper transportation label, packaging group) on the cargo which makes it impossible to determine whether there has been any other infringement of category I.

14.3.2 Directive 1996/53/EC

The limits for maximum dimensions and weights are set out in the decree of the Ministry of Transport, Telecommunication and Construction Affairs No. 6 of 12.04.1990 on the technical conditions of introducing and maintaining public road vehicles in traffic use (“Decree No. 6/1990”). The sanctions for infringing the obligations set out in Decree no. 6/1990 are defined by Section 20 h) of the Road Transport Act and the specific fines are defined in Annex 8 of GO No. 156/2009.

Pursuant to Section 20 (h) of the Road Transport Act, a fine may be imposed on any person who infringes the obligations provided by a national or Community law in respect of the maximum authorised dimensions and the maximum authorised weights of certain road vehicles circulating in public road transport. In accordance with Section 4, the fine may be between HUF 10,000 and HUF 800,000 (approximately EUR 35 to EUR 2,775).

Table HU 1		
Defaults	Amount of fine	Imposed on
<p>Infringement of the allowed maximum total weight or axle load, without the consent of the operator of the road or deviation from the permission of the operator of the road as follows</p> <p>a) above 500 kg until 5%</p> <p>b) 5% - 10%</p> <p>c) 10% - 20%</p> <p>d) 20% - 30%</p> <p>e) above 30%</p> <p>If maximum total weight provisions and axle load provisions are infringed at the same time, the fines are to be added up. If more axles are overloaded, the rate for the highest overload is applicable.</p>	<p>a) HUF 30,000 (approximately EUR 104)</p> <p>b) HUF 80,000 (approximately EUR 278)</p> <p>c) HUF 200,000 (approximately EUR 694)</p> <p>d) HUF 350,000 (approximately EUR 1,214)</p> <p>e) HUF 500,000 (approximately EUR 1,735)</p>	<p>consignor person loading up the goods driver</p>
<p>Oversized vehicle without the consent of the operator of the road, or deviation from the size allowed by the operator of the road</p> <p>a) 5% - 10%</p> <p>b) 10% - 20%</p> <p>c) 20% - 30%</p> <p>d) above 30%</p>	<p>a) HUF 30,000 (approximately EUR 104)</p> <p>b) HUF 80,000 (approximately EUR 278)</p> <p>c) HUF 200,000 (approximately EUR 694)</p> <p>d) HUF 350,000 (approximately EUR 1,214)</p>	<p>transporter driver</p>

Table HU 1		
Defaults	Amount of fine	Imposed on
In the case of deviation from the prescribed maximum length, height, width at the same time, the fine for the highest infringement is applicable.	¶	
Transportation with a track with axle-overweight without the consent of the operator of the road, or deviation from the conditions prescribed by the operator of the road.	HUF 100,000 (approximately EUR 347)	transporter driver
Transportation of loose goods without vehicle-weight warrant or declaration or with warrant or declaration with false weight data.	HUF 30,000 (approximately EUR 104)	consignor person loading up the goods transporter driver
Lack or invalidity of international periodic examination report.	HUF 30,000 (approximately EUR 104)	Transporter driver
Lack of identification sign of the operator of the vehicle.	HUF 10,000 (approximately EUR 35)	Transporter
Lack or invalidity of documents prescribed for omnibuses used for international non-scheduled passenger transport.	HUF 100,000 (approximately EUR 347)	Transporter driver
Traffic of vehicle exceeding the prescribed maximum total weight, axle load and size, deviation from the conditions (time of transport, speed limit, usage of caution signs, compulsory accompaniment) prescribed by the operator of the road.	HUF 100,000 (approximately EUR 347)	Driver

Table HU 1		
Defaults	Amount of fine	Imposed on
Agricultural self-propelled or towed machinery exceeding the allowed maximum size or driving without or with a deviation from the rates in the permission of the operator of the road. a) 5% - 10% b) 10% - 20% c) 20% - 30% d) above 30%	a) HUF 10,000 (approximately EUR 35) b) HUF 40,000 (approximately EUR 139) c) HUF 100,000 (approximately EUR 347) d) HUF 150,000 (approximately EUR 520)	Driver

14.3.3 Directive 2009/40/EC

EC Directive 2009/40 is implemented by the decree of the Ministry of Transport, Telecommunication and Construction Affairs No. 5/1990 of 12.04.1990 on the technical investigation of public road vehicles (“Decree No. 5/1990”), Section 22-24/B of the Road Transport Act and Section 221 of the act no. 2 of 2012 on misdemeanours, misdemeanours proceedings and misdemeanours registration system (the “Misdemeanours Act”).

Based on the general provisions of Section 46 of Decree No. 5/1990, the respective authority provides for the compliance with Decree No. 5/1990 by imposing fines, if necessary.

In accordance with Section 14 (4) of Decree No. 5/1990, the transport authority shall withdraw the transport documents and send them to the respective authority to pursue the relevant proceedings, if a well-established suspicion of a misdemeanour arises.

The transport authority shall order the inspection of a vehicle pursuant to Section 14 (7), if it is suspected in the course of a public road traffic control that:

- the vehicle does not comply with the legal requirements;
- the vehicle has been modified without permission and not checked by the transport authority; or
- the vehicle does not comply with the respective environmental laws.

- In accordance with Section 14 (10), the traffic authority shall invalidate the certificate of vehicle registration and remove the licence plate, if it states that:

- the vehicle entails a direct risk of traffic injury; or
- the vehicle is used for public road transportation services without the required authority licence.

- Pursuant to Section 14(12), the legal consequences contained in Section 14(7)-14(10) may not be applied to vehicles registered in a foreign country. If the technical state of a vehicle registered in a foreign country does not comply with the requirements set by international treaties or does not have the necessary licences required by international treaties, the traffic authority may ban a vehicle from circulating and initiate misdemeanour proceedings.

- Pursuant to Section 22 of the Public Road Transport, only vehicles having a typology certificate an authorisation may circulate in public road traffic. The traffic authority issues the typology certificate based on a typology investigation. A fine of between HUF 100,000 (approximately EUR 347) and HUF 1,000,000 (approximately EUR 3,469) may be imposed on a manufacturer that:

- falsifies the results of a typology investigation;
- hide data that may result in the withdrawal of a typology certificate;
- does not observe its obligation to provide information.

- Pursuant to Section 221 of the Misdemeanour Act, a fine of between HUF 5,000 (approximately EUR 17) and HUF 150,000 (approximately EUR 520) may be imposed on a person using a vehicle the technical validity of which has expired.

Foreign drivers

See above.

14.3.4 Directive 2006/126/EC

EC Directive 2006/126 is implemented by Government Decree No. 326 of 28.12.2011 on administrative duties of public transport, the issue and withdrawal of public transport documents (“GD No. 326/2011”). The relating sanctions are set out in both GD No. 326/2011 and the Misdemeanours Act.

A fine of between HUF 5,000 (approximately EUR 17) and HUF 150,000 (approximately EUR 520) shall be imposed on a person by the inspection authority pursuant to the Misdemeanours Act, if:

- he/she drives a motor vehicle in public road traffic without the necessary authority licence;
- he/she transfers the operation of a power-operated vehicle in public road traffic to a person, who does not have the necessary authority licence (Section 220);
- he/she drives in public road traffic without a valid driving licence (Section 221).

Pursuant to GD No. 326/2011, the controlling authority shall withdraw the driving licence, if:

- a driver is suspected to have committed certain crimes in public road traffic (Section 32 (a));

- the driver is subject to a driving ban (Section 32 (b));
- the driving licence is suspected to be false, have been falsified or misused (Section 32 (c)).

14.4 Notion of criminal sanction and of administrative sanction in the Hungarian legal system

Criminal sanctions and crimes which may relate to the subject matter of this Study are defined in Act No. 4 of 1978 on the Criminal Code.

(a) Suspension of driving privileges

The suspension of driving privileges is a sanction and may be applied to a person who is engaged in a crime against regulations relating to the controlled operation of a motor vehicle, or who uses a motor vehicle for any criminal activity. The suspension of driving privileges may also apply to specific types of motor vehicles (Section 58).

(b) Unlawful transfer of operating a vehicle

Any person who transfers the operation of a motor vehicle to a person who is under the influence of alcohol or whose ability to operate such vehicle is otherwise impaired is guilty of a misdemeanour punishable by imprisonment for up to one year and, in special cases, up to max. 8 years (Section 189).

(c) Forgery of public documents

Any person who (i) prepares a forged public document or falsifies the contents of a public document (including driving licence, etc.), (ii) uses a bogus or forged public document or a public document issued under the name of another person, (iii) collaborates in the inclusion of false data, facts or declarations in a public document

regarding the existence, changing or termination of a right or obligation, is guilty of a felony punishable by imprisonment for up to three years.

Any person who engages in preparations for the forging of public documents as defined in pts. (i) or (ii) is guilty of misdemeanour punishable by imprisonment for up to one year.

Any person who forges public documents defined in pt. (iii) above by negligence shall be punishable for a misdemeanour with a fine (Section 274).

(d) Misuse of a document

Any person who unlawfully acquires a public document or a document which is not his own or not exclusively his own, from another person without the latter's consent, or destroys, damages or conceals the same, is guilty of a misdemeanour punishable by imprisonment for up to two years.

Any person who perpetrates the act defined above in respect of a private document in order to gain an unlawful advantage or to cause an unlawful disadvantage is guilty of a misdemeanour punishable by imprisonment for up to one year (Section 277).

(e) Counterfeiting of individual identification marks

Any person who (i) removes, or counterfeits some other way, an individual identification mark (including motor number, licence plate number, etc.), (ii) acquires or uses an article whose individual identification mark is counterfeit or forged, or whose individual identification mark has been removed is guilty of a felony punishable by imprisonment for up to three years, or up to five years in special cases (Section 277/A).

Infringements of Hungarian public law can either violate administrative or criminal law, and consequently, the imposed sanctions will be either administrative or criminal.

Administrative law infringements can be categorised as follows:

- misdemeanours (in Hungarian: “*szabálysértés*”);

- other types of infringements.

Misdemeanours are specified in the Misdemeanours Act. A misdemeanour is an action or negligence that is dangerous to the society and sanctioned by the Misdemeanours Act.

Criminal offences are specified in the Criminal Code and categorised as follows:

- felony (“*büntett*”) is a criminal offence committed intentionally and punishable by imprisonment with two or more years;
- any other crime is a lesser offence (“*vétség*”).

Sanctions and punishments for misdemeanours and crimes may be distinguished as follows:

- Sanctions for misdemeanours are confinement, community service and fine. Measures for misdemeanours are: disqualification from driving, confiscation, banishment and warning.
- Punishments and sanctions for criminal offences are imprisonment, community service, fine, disqualification from exercising a profession, expulsion, prohibition from holding a public office and banishment. Measures for criminal offences are: reprimand, probation, involuntary treatment in a mental institution, confiscation, supervision by a probationary officer and measures taken *vis-à-vis* legal persons in connection with the crime.

Similarities between criminal and administrative sanctions:

- Only natural persons may be liable for both types of offence. (Certain measures may be imposed on legal persons in connection with a crime, but this does not establish the criminal liability of legal persons.)
- Sanctions are imposed only on grounds of and in the manner specified in law.

The main differences between criminal and administrative sanctions are the following:

- Different limitation periods: liability for a misdemeanour lapses after six months, whereas liability for a crime lapses after a) twenty years in the case of felony punishable by life imprisonment, b) upon the lapse of time equal to the highest sentence prescribed, but at least after three years in case of any other crime, c) criminal liability for certain crimes does not lapse (such as war crimes and crimes against humanity).
- Administrative sanctions can be imposed by administrative authorities (such as the police) or courts during an administrative procedure, whereas criminal sanctions are imposed only by courts in criminal proceedings with all the guarantees of such proceedings.
- Administrative sanctions cannot affect the offender's personal freedom, with the exception of confinement which is imposed by the court.
- Criminal sanctions result in a criminal record (with certain exceptions), whereas administrative sanctions do not result in any such record.

Concurrence between several administrative sanctions

See above. Specific rules are in force .

Concurrence between administrative and criminal sanctions

In Hungary, criminal sanctions can be applied in addition to administrative sanctions.

14.5 Scope of application of Hungarian criminal law

According to the Hungarian Criminal Code, Hungarian criminal law shall be applied to:

- Crimes committed in Hungary, as well as to any conduct of Hungarian citizens abroad, which are deemed criminal in accordance with Hungarian law.

- Criminal acts committed on board of Hungarian ships or Hungarian aircrafts located outside the borders of the Hungary.
- Any act committed by non-Hungarian citizens in a foreign country, if:
 - it is deemed a felony in accordance with Hungarian law and is also punishable in accordance with the laws of the country where committed;
 - it is a crime against the state (Chapter 10), excluding espionage against allied armed forces (Art. 148), regardless of whether or not it is punishable in accordance with the law of the country where committed;
 - it is a crime against humanity (Chapter 11) or any other crime that is to be prosecuted under the strength of an international treaty.
- Espionage (Section 148) against allied armed forces by a non-Hungarian citizen in a foreign country shall be punishable according to Hungarian criminal laws, provided that such offence is also punishable by the law of the country where committed.

14.6 Summary tables

Based on Section 1 and 2 of the decree of the Ministry of National Development No. 42 of 11.08.2011 on authority duties relating to the imposition of fines due to the infringement of certain public road regulations, the detailed rules of imposing fines and the order of the use of fines the sanctions in respect of commercial road transport infringements are imposed by:

- the county (metropolitan) transport inspectorate and the National Transport Authority;
- the respective police captaincy, border police and county (metropolitan) police chief captaincy;
- the Airport Police Directorate and National Police Chief Captaincy;
- the National Tax and Customs Authority;

- the county (metropolitan) labour protection and labour affairs authority, National Labour Protection and Labour Affairs Inspectorate; and
- the regional catastrophe protection authority and National Catastrophe Protection Directorate.

Table HU 2

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
<p>Regulation 561/2006; EC Directive 2002/15</p>	<p>Act no. 1 of 1988 on public road transport</p>	<p>Section 20 (1) c)</p>	<p>Infringing the provisions concerning work breaks or daily or weekly rest periods or exceeding the maximum daily, weekly or bi-weekly limits on driving time.</p>	<p>Driver</p>	<p>Fine in the amount of up to approximately EUR 1,041.</p>	<p>N/A</p>
		<p>Section 20 (4)</p>	<p>Not setting a working time frame for the drivers and respect the rules on driving time, breaks and periods of daily or weekly rest in the course of organising</p>	<p>Transport undertaking</p>	<p>Fine in the amount of up to approximately EUR 2,775.</p>	<p>N/A</p>

Table HU 2

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			the work.			
		Section 20 (4)	Not complying with the provisions concerning health and safety regulations and road transport, as well as the labour laws.	Transport undertaking	Fine in the amount of up to approximately EUR 2,775.	N/A
	<u>Annex 3 of Government Decree no. 156 of 2009 on the amount of fines that can be imposed for the infringement of</u>	pts. A1	Infringing the minimum age limit of conductors.	Driver, Transporter	Fine in the amount of approximately EUR 347.	N/A
		pts. B1-3	Exceeding the driving period of 9 hours, if an extension to 10 hours is	Driver, Transporter	Fine in the amount of approximately EUR 35 up to	N/A

Table HU 2

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	<u>certain rules relating to the public transport of goods, public road passenger transport and public road transport, and authority duties relating to the imposition of fines</u>		not allowed.		approximately EUR 1,041 per occasion.	
		pts. B4-6	Exceeding the driving period of 10 hours, if the extension is allowed.	Driver, Transporter	Fine in the amount of approximately EUR 35 up to approximately EUR 1,041 per occasion.	N/A
		pts. B7-9	Exceeding the cumulated weekly driving period.	Driver, Transporter	Fine in the amount of approximately EUR 35 up to approximately EUR 1,041 per occasion.	N/A
		pts. B10-12	Exceeding the cumulated	Driver,	Fine in the amount	N/A

Table HU 2

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			weekly driving period in two sequential weeks.	Transporter	of approximately EUR 35 up to approximately EUR 1,041 per occasion.	
		pts. D1-3	Improper daily rest period, which is less than 11 hours if the reduced daily rest period is not allowed.	Driver, Transporter	Fine in the amount of approximately EUR 35 up to approximately EUR 1,041 per occasion.	N/A
		pts. D4-6	Improper reduced daily rest period, which is less than 9 hours if the reduced daily rest period	Driver, Transporter	Fine in the amount of approximately EUR 35 up to approximately EUR	N/A

Table HU 2

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			is allowed.		1,041 per occasion.	
		pts. D7-9	Improper divided daily rest period, which is less than 3+9 hours.	Driver, Transporter	Fine in the amount of approximately EUR 35 up to approximately EUR 1,041 per occasion.	N/A
		pts. D10-12	Improper daily rest period, which is less than 9 hours in the case of a multiple member personnel.	Driver, Transporter	Fine in the amount of approximately EUR 35 up to approximately EUR 1,041 per occasion.	N/A
		pts. D13-15	Improper reduced weekly rest period,	Driver,	Fine in the amount of approximately	N/A

Table HU 2

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			which is less than 24 hours.	Transporter	EUR 35 up to approximately EUR 1,041 per occasion.	
		pts. D16-18	Improper weekly rest period, which is less than 45 hours if the reduced weekly rest period is allowed.	Driver, Transporter	Fine in the amount of approximately EUR 35 up to approximately EUR 1,041 per occasion.	N/A
		pt. E	If the provisions on the type of payment are infringed on the basis of the connection between the salary and the transportation length or	Transporter	Fine in the amount of approximately EUR 1,388.	N/A

Table HU 2

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			the amount of the transported goods.			

Table HU 3

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
EEC Regulation 3821/1985	Act no. 1 of 1988 on public road transport Decree of the Ministry of Economy and Transport no. 124 of 29.12.2005 on tachographs used in road transport	Section 20 (d)	Infringing the obligations set out in any national or Community law in respect of tachographs used in public road traffic and data record sheets.	Person	Fine in the amount of approximately EUR 35 up to approximately EUR 2,082.	N/A
		Section 2 (a)	Not bringing to the attention of the drivers the legislation applicable to the usage of recording equipment, record sheets or paper casters used for the recording equipment.	Transport undertaking	Fine in the amount of approximately EUR 35 up to approximately EUR 2,775.	N/A

Table HU 3

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		Section 2 (b)	Not demonstrably instructing the driver on correct usage of the drivers card.	Transport undertaking	Fine in the amount of approximately EUR 35 up to approximately EUR 2,775.	N/A
	<u>Annex 4 of Government Decree no. 156 of 2009 on the amount of fines that can be imposed for the infringement of certain rules relating to the public transport of goods, public road</u>	Section 5	Not collecting the copied data from the record equipment.	Transport undertaking	Fine in the amount of approximately EUR 35 up to approximately EUR 2,775.	N/A
		Section 6 (a)	Not providing for the correction of the damaged record	Transport undertaking	Fine in the amount of approximately EUR 35 up to approximately	N/A

Table HU 3

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	passenger transport and public road transport, and authority duties relating to the imposition of fines		equipment immediately.		EUR 2,775.	
		Section 6 (b)	Not ensuring that no new transport shall commence until the repair of the recording equipment.	Transport undertaking	Fine in the amount of approximately EUR 35 up to approximately EUR 2,775.	N/A
		Section 8	Not reporting to the issuer authority that the tachograph card is damaged, stolen or destroyed.	Transport undertaking	Fine in the amount of approximately EUR 35 up to approximately EUR 2,775.	N/A
		pt. F1	Failure to build in and use recording equipment	Transporter	Fine in the amount of approximately	N/A

Table HU 3

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			with type approval.		EUR 1,388.	

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
<p>EC Regulation 1071/2009</p> <p>EC Regulation No. 1072/2009</p> <p>EC Regulation 1073/2009</p>	<p>Act no. 1 of 1988 on public road transport</p>	<p>Section 20 (a)</p>	<p>Infringing any national or Community laws in respect of any inland or international transportation services (goods and passengers) which requires certain licences and certain documents set out in the Road Transport Act and other national or Community laws.</p>	<p>Person</p>	<p>Fine in the amount of approximately EUR 35 up to approximately EUR 2,775.</p>	<p>N/A</p>
	<p>Annex 1 of Government Decree no. 156 of 2009 on the amount of fines that can be imposed for</p>	<p>pt. 1</p>	<p>Road transport services are conducted without a public transit permit, common carriage permit,</p>	<p>Driver, Transporter</p>	<p>Fine in the amount of approximately</p>	<p>N/A</p>

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	<u>the infringement of certain rules relating to the public transport of goods, public road passenger transport and public road transport, and authority duties relating to the imposition of fines</u>		public passenger transport permit, or bus transport permit, taxi permit, car passenger transport permit, community permit in international traffic, respectively, cabotage or chartered passenger transport conducted without the required permit.		EUR 2,775.	
		pt. 2	Transportation services are carried out without a certified copy of the community permit and in	Driver, Transporter	Fine in the amount of approximately EUR 1,041.	N/A

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			the absence of the permit extract.			

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		pt. 3	Transit is conducted without a road transit permit extract, or passenger transport with bus conducted for a fee without a road passenger transport permit extract.	Driver, Transporter	Fine in the amount of approximately EUR 347.	N/A
		pt. 4	There is no taxi permit, passenger transport permit, taxi certificate or identification sheet on the vehicle.	Driver, Transporter	Fine in the amount of approximately EUR 173.	N/A
		pt. 5	The international road transit permit, CEMT permit and related	Driver, Transporter	Fine in the amount of approximately	N/A

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			certification, bus charter permit is missing or invalid (the fine is HUF 150,000 if the above permits are used improperly or the use deviates from the provisions of the permits).		EUR 1,041.	

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		pt. 6	There is no certificate of the driver's professional qualifications.	Driver, Transporter	Fine in the amount of approximately EUR 347.	N/A
		pt. 7	There is no driver's licence.	Driver, Transporter	Fine in the amount of approximately EUR 694.	N/A
		pt. 8	There is no waybill or route-sheet, or no passenger list in the case of chartered passenger transport.	Driver, Transporter	Fine in the amount of approximately EUR 173.	N/A
		pt. 9	The waybill or the	Driver,	Fine in the	N/A

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			passenger transport route-sheet is issued or kept incorrectly for each missing (mandatory) section, excluding data related to transit costs, fees, customs clearance and payment method.	Transporter	amount of approximately EUR 173.	

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		pt. 10	Failing to report the change of data related to the road transit permit, passenger transport permit, transit or passenger transport community permit, fails to report the cessation of the activity, fails to return the driver's expired permit, or fails to present on the road the document related to the substituting vehicle, or the permit extract (certified copy) for the	Transporter	Fine in the amount of approximately EUR 104.	N/A

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			original vehicle.			
	<u>Act no. 1 of 1988 on public road transport</u>	Section 20 (b)	Infringing any national or Community laws in respect of any goods and passenger transport services executed on own account which requires certain documents set out in the Road Transport Act or other national or Community laws.	Person	Fine in the amount of approximately EUR 35 up to approximately EUR 2,775.	N/A
	<u>Annex 2 of Government Decree no. 156 of 2009 on the amount of fines that can be imposed for</u>	pt. 1	Conducting transit or bus passenger transport on own account without the relevant permit.	Driver, Transporter	Fine in the amount of approximately EUR 1,041.	N/A

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	<u>the infringement of certain rules relating to the public transport of goods, public road passenger transport and public road transport, and authority duties relating to the imposition of fines</u>	pt. 2	There is no document related to the vehicle or the driver verifying compliance with the requirements of transit conducted on own account or passenger transport conducted by bus on own account.	Driver, Transporter	Fine in the amount of approximately EUR 694.	N/A
		pt. 3	There is no route-sheet.	Driver, Transporter	Fine in the amount of approximately EUR 173.	N/A
		pt. 4	The route-sheet or the passenger transport	Driver,	Fine in the amount of	N/A

Table HU 4

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			route-sheet is issued or kept incorrectly for each missing (mandatory) section.	Transporter	approximately EUR 173.	

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
<p>EC Directive 2008/68</p>	<p><u>Act no. 1 of 1988 on public road transport</u></p>	<p>Section 20 (e)</p>	<p>Infringing the obligations set out by a national or Community law in respect of the transportation of dangerous goods, the transporter, the public road vehicle and its personnel, the sender of goods, the person temporary storing the goods, the person packing the goods, the person loading up the goods, the addressee of</p>	<p>Person</p>	<p>Fine in the amount of approximately EUR 35 up to EUR 2,775.</p>	<p>N/A</p>

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			the goods and the appointment and education of the safety advisor on the transport of dangerous goods.			
	Annex 5 of Government Decree no. 156 of 2009	46-47	Pesticide is transported loose.	Consignor, Transporter	Fine in the amount of approximately EUR 173.	N/A
	on the amount of fines that can be imposed for	48	Fuel or liquid chemical fertilizer is transported in a tank bigger than 6500 litres.	Consignor, Transporter	Fine in the amount of approximately EUR 173.	N/A
		49-50	An improper tow or	Consignor,	Fine in the amount	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	the infringement of certain rules relating to the public transport of goods, public road passenger transport and public road transport, and		tank wagon is used.	Transporter	of approximately EUR 173.	
		51	The tank wagon has no effective admission.	Consignor, Transporter	Fine in the amount of approximately EUR 173.	N/A
		52	The adjustment of the vehicle used for transportation of loose goods or the tank is improper.	Consignor, Transporter	Fine in the amount of approximately EUR 173.	N/A
		53-54	The marking of tank or means of transportation is in breach of the	Consignor, Transporter	Fine in the amount of approximately EUR 173.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	authority duties relating to the imposition of fines		requirements.			
		56	The transportation documents or equipment are incomplete.	Consignor, Transporter	Fine in the amount of approximately EUR 173.	N/A
		59	The rules for loading are violated.	Consignor, Transporter	Fine in the amount of approximately EUR 173.	N/A
		60	The smoking prohibition is not observed.	Consignor, Person loading up the goods, Transporter, Driver	Fine in the amount of approximately EUR 173.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		61	The driver has no effective examination certificate.	Transporter, Driver	Fine in the amount of approximately EUR 173.	N/A
		44	No accident report has been made.	Head of undertaking	Fine in the amount of approximately EUR 173.	N/A
		2	A leakage of dangerous material (I. category default).	Consignor, Person loading up the goods, Person packing the goods, Transporter	Fine in the amount of approximately EUR 347.	N/A
		18	Breach of the prohibition against	Consignor, Person loading up the	Fine in the amount of approximately	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			using fire or naked flames (I. category default).	goods, Transporter	EUR 347.	
		19	Breach of the smoking prohibition (I. category default).	Consignor, Person loading up the goods	Fine in the amount of approximately EUR 347.	N/A
		24	The vehicle has no ADR or other equipment prescribed in writing (II. category default).	Transporter	Fine in the amount of approximately EUR 347.	N/A
			III. category defaults and defaults in			

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			connection with the advisor in the case of the transportation of dangerous goods.			
		34	the size of the labelling, characters, symbols are not in line with the requirements.	Consignor, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 347.	N/A
		35	if information is missing from the transportation documents.	Consignor	Fine in the amount of approximately EUR 347.	N/A
		42	If the transportation	Head of the	Fine in the amount	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			company has not notified the traffic authority about the assignment of advisor.	transport undertaking	of approximately EUR 347.	
		45	If no annual report has been filed.	Head of the transport undertaking	Fine in the amount of approximately EUR 347.	N/A
		43	If the assignment of the advisor lapsed or the advisor does not have the necessary qualifications for that sector.	Head of transport undertaking Advisor	Fine in the amount of approximately EUR 347.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			III. category and other defaults in case of			
		38	transportation of dangerous goods without the necessary licence.	Consignor, Transporter	Fine in the amount of approximately EUR 694.	N/A
		39	transportation of explosive for civil use without the necessary licence.	Consignor, Transporter	Fine in the amount of approximately EUR 694.	N/A
		40	transportation of radioactive material without the necessary	Consignor, Transporter	Fine in the amount of approximately EUR 694.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			licence.			
			In connection with II. category defaults.			N/A
		32	if its written instruction is not in line with the ADR requirements.	Transporter	Fine in the amount of approximately EUR 694.	N/A
		22	if the vehicle does not fulfil the requirements in the approval, but it causes no direct danger.	Driver, Operator of the vehicle	Fine in the amount of approximately EUR 694.	N/A
			II. category defaults.			

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		21	If the transporter unit has more than one trailer or semitrailer.	Consignor, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 1,041.	N/A
		23	If the vehicle has no prescribed fire extinguisher in working order.	Transporter Operator of the vehicle	Fine in the amount of approximately EUR 1,041.	N/A
		25	If the regulation on the time of controlling the packaging materials, IBCs or the time limit for the usage of them has been breached.	Consignor, Person packing the goods	Fine in the amount of approximately EUR 1,041.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			I. category defaults.			
		11	If the provisions on keeping the parts of a consignment in the vehicle together have been breached.	Person loading up the goods, Transporter	Fine in the amount of approximately EUR 1,388.	N/A
		18	In the case of a breach of prohibition against using fire or naked flame.	Person loading up the goods, Transporter	Fine in the amount of approximately EUR 1,388.	N/A
			II. category defaults.			
		26	If damaged	Consignor, Person	Fine in the amount	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement		Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
				consignment pieces, IBCs, packages, or empty, unclear packaging materials are transported.	loading up the goods, Transporter	of approximately EUR 1,388.	
			27	If consignment pieces are transported in containers which are structurally not in a proper condition.	Operator of the container, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 1,388.	N/A
			28	If the containers, tank containers are not properly closed.	Consignor, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 1,388.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		30	In the case of improper labelling, marking, or in lack of these.	Consignor, Person packing the goods, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 1,388.	N/A
		41	If the undertaking has no advisor.	Head of undertaking	Fine in the amount of approximately EUR 1,388.	N/A
			I. category defaults.			
		3	If an unauthorised way of transport or an improper vehicle is	Consignor, Transporter	Fine in the amount of approximately EUR 2,082.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			used for transportation.			
		8	If the means of packing are not in line with the instructions.	Consignor, Person packing the goods	Fine in the amount of approximately EUR 2,082.	N/A
		11	If the requirements on keeping the consignment pieces together in the container are breached.	Person loading up the goods	Fine in the amount of approximately EUR 2,082.	N/A
		12	If the prescription on the applicable degree for consignment pieces or containers at filing is	Person packing the goods	Fine in the amount of approximately EUR 2,082.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			violated.			
		13	If the restriction on the maximum amount to be kept in one transporter unit is violated.	Consignor, Transporter	Fine in the amount of approximately EUR 2,082.	N/A
		17	If the driver has no effective training report.	Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,082.	N/A
		31	II. category defaults: if there is a lack of written instruction.	Transporter	Fine in the amount of approximately EUR 2,082.	N/A
			I. category defaults.			

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		pt. 1	In the case of transporting hazardous goods excluded from transport.	Consignor, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,775.	N/A
		pt. 2	In the case of a leakage of hazardous goods.	Consignor, Person packing the goods, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,775.	N/A
		pt. 4	In the case of loose cargo in a container which is structurally not in proper state.	Operator of the container, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,775.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		pt. 5	In the case of transportation with a vehicle without proper approval licence.	Consignor, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,775.	N/A
		pt. 6	In the case of transportation with a vehicle which violates the approval licence and means direct danger.	Consignor, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,77 Fine in the amount of approximately EUR 2,7755.	N/A
		pt. 7	In the case of the usage of packing materials lacking the approval.	Consignor, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,775.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		pt. 9	In the case of breaching the special provisions on mixed packing.	Consignor, Person packing the goods	Fine in the amount of approximately EUR 2,775.	N/A
		pt. 10	In the case of breaching the provisions on the installation and fixing of the cargo.	Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,775.	N/A
		pt. 14	In case of the transportation of hazardous goods without any sign or information indicating	Consignor, Person loading up the goods, Person packing the goods,	Fine in the amount of approximately EUR 2,775.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			this.	Transporter		
		pt. 15	If the vehicle has no labelling or marking.	Consignor, Person loading up the goods, Transporter	Fine in the amount of approximately EUR 2,775.	N/A
		pt. 16	In lack of information (UN number, proper transportation label, packaging group) on the cargo which makes it impossible to determine whether there has been any other infringement of category I.	Consignor, Transporter	Fine in the amount of approximately EUR 2,775.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
EC Directive 96/53	Act no. 1 of 1988 on public road transport	Section 20 (h)	Infringing the obligations provided by a national or Community law in respect of the maximum authorized dimensions and the maximum authorized weights of certain road vehicles circulating in public road transport.	Person	Fine in the amount of approximately EUR 35 up to EUR 2,775.	N/A
	Act no. 1 of 1988 on public road	Section 20 (h)	Infringing the obligations provided by a national or	Person	Fine in the amount of approximately EUR 35 up to	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	<u>transport</u>		Community law in respect of the maximum authorized dimensions and the maximum authorized weights of certain road vehicles circulating in public road transport.		EUR 2,775.	

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	Annex 8 to Government Decree no. 156 of 2009 on the amount of fines that can be imposed for the infringement of certain rules relating to the public	pt. 1	Infringement of the allowed maximum total weight or axle load, without the consent of the operator of the road or deviation from the permission of the operator of the road as follows.	Consignor Person loading up the goods, Driver	Fine in the amount of approximately EUR 35 up to EUR 2,775.	N/A
			a) above 500 kg until 5% b) 5% - 10% c) 10% - 20% d) 20% - 30%		Fine in the amount of a) approximately EUR 104 b) approximately	

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	<u>transport of goods, public road passenger transport and public road transport, and authority duties relating to the imposition of fines</u>		<p>e) above 30%</p> <p>If maximum total weight provisions and axle load provisions are infringed at the same time, the fines are to be added up. If more axles are overloaded, the rate for the highest overload is applicable.</p>		<p>EUR 277</p> <p>c) approximately EUR 694</p> <p>d) approximately EUR 1,215</p> <p>e) approximately EUR 1,736</p>	
		pt. 2	Oversized vehicle without the consent of the operator of the road, or deviation from	<p>Transporter</p> <p>Driver</p>	<p>Fine in the amount of</p> <p>a) approximately EUR 104</p>	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement		Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
				<p>the size allowed by the operator.</p> <p>a) 5% - 10%</p> <p>b) 10% - 20%</p> <p>c) 20%- 30%</p> <p>d) above 30%</p> <p>In the case of deviation from the prescribed maximum length, height, width at the same time, the fine for the highest infringement is applicable.</p>		<p>b) approximately EUR 277</p> <p>c) approximately EUR 694</p> <p>d) approximately EUR 1,215</p>	

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		pt. 3	Transportation with a track with axle-overweight without the consent of the operator of the road, or deviation from the conditions prescribed by the operator of the road.	Transporter, Driver	Fine in the amount of approximately EUR 347.	N/A
		pt. 4	Transportation of loose goods without vehicle-weight warrant or declaration or with warrant or declaration	Transporter, Driver	Fine in the amount of approximately EUR 104.	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			with false weight data.			

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		pt. 5	Lack or invalidity of international periodic examination report.	Transporter, Driver	Fine in the amount of approximately EUR 104.	N/A
		pt. 6	Lack of identification sign of the operator of the vehicle.	Transporter	Fine in the amount of approximately EUR 35.	N/A
		pt. 7	Lack or invalidity of documents prescribed for omnibuses used for international non-scheduled passenger transport.	Transporter, Driver	Fine in the amount of approximately EUR 347.	N/A
		pt. 8	Traffic of vehicle	Driver	Fine in the amount	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			exceeding the prescribed maximum total weight, axle load and size, deviation from the conditions (time of transport, speed limit, usage of caution signs, compulsory accompaniment) prescribed by the operator of the road.		of approximately EUR 347.	
		pt. 9	Agricultural self-propelled or towed machinery exceeding	Driver	Fine in the amount of	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
			the allowed maximum size or driving without or with a deviation from the rates in the permission of the operator of the road. a) 5% - 10% b) 10% - 20% c) 20% - 30% d) above 30%		a) approximately EUR 35 b) approximately EUR 140 c) approximately EUR 347 d) approximately EUR 526	
EC Directive 2009/40	<u>Act no. 1 of 1988 on public road</u>	Section 22	Falsifying the results of a typology investigation.	Manufacturer	Fine of between approximately EUR 347 and approximately	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	transport				EUR 3,472.	

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		Section 22	Retaining data that may result the withdrawal of a typology certificate.	Manufacturer	Fine of between approximately EUR 347 and approximately EUR 3,472.	N/A
		Section 22	Not performing its obligation to provide information.	Manufacturer	Fine of between approximately EUR 347 and approximately EUR 3,472.	N/A
	<u>Act no. 2 of 2012 on misdemeanors,</u>	Section 221	Using a vehicle the technical validity of which has expired.	Person	Fine in the amount of between approximately EUR 17 and	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	<u>misdemeanours proceedings and misdemeanours registration system</u>				<p>approximately EUR 520.</p>	

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
<p>EC Directive 2006/126</p>	<p><u>Act no. 2 of 2012 on misdemeanors, misdemeanors proceedings and misdemeanors registration system</u></p>	<p>Section 220</p>	<p>Driving a motor vehicle in public road traffic without the necessary authority licence.</p>	<p>Person</p>	<p>Fine in the amount of between approximately EUR 17 and approximately EUR 520.</p>	<p>N/A</p>
		<p>Section 220</p>	<p>Transferring the operation of a power-operated vehicle in public road traffic to a person, who does not have the necessary authority licence.</p>	<p>Person</p>	<p>Fine in the amount of between approximately EUR 17 and approximately EUR 520.</p>	<p>Imprisonment up to one years. The sanction is cumulative.</p>

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		Section 221	Driving in public road traffic without a valid driving licence.	Person	Fine in the amount of between approximately EUR 17 and approximately EUR 520.	N/A
	Government Decree no. 326 of 28.12.2011 on administrative duties of public	Section 32 (a)	A driver is suspected to have committed certain crimes in public road traffic.	Person	Fine in the amount of between approximately EUR 17 and approximately EUR 520.	N/A
		Section 32 (b)	The driver is subject to	Person	Fine in the amount of between	N/A

Table HU 5

SOCIAL RULES ON ROAD TRANSPORT

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	transport, the issue and withdrawal of public transport documents		a driving ban.		approximately EUR 17 and approximately EUR 520.	
		Section 32 (c)	The driving licence is suspected to be false, have been falsified or misused.	Person	Fine in the amount of between approximately EUR 17 and approximately EUR 520.	Imprisonment up to two years. The sanction is cumulative.

Based on the oral information received from the National Transport Authority, there have been a very few cases that have been sanctioned by criminal sanctions under the newly introduced system. Therefore, it is not really possible to assess whether or not such sanctions have a deterrent effect. However, we have made an assessment of the dissuasiveness of the sanctions based on the abstract fine foreseen.

Table HU 6

Infringements of commercial road transport legislation

Type of infringement(s) and Article of reference in national legislation Corresponding EU legislation	Criminal sanction	Is it dissuasive?
<p>Annex 4 of Government Decree no. 156 of 2009 on the amount of fines that can be imposed for the infringement of certain rules relating to the public transport of goods, public road passenger transport and public road transport, and authority duties relating to the imposition of fines, pt. G9</p> <p>Using a false or expired driver's card</p> <p>EEC Regulation 3821/1985</p>	<p>Imprisonment up to two years.</p>	<p>Yes</p>
<p>Act no. 2 of 2012 on misdemeanours, misdemeanours</p>	<p>Imprisonment up to one year.</p>	<p>Yes</p>

Table HU 6

Infringements of commercial road transport legislation

Type of infringement(s) and Article of reference in national legislation Corresponding EU legislation	Criminal sanction	Is it dissuasive?
proceedings and misdemeanours registration system Section 220 Transferring the operation of a power-operated vehicle in public road traffic to a person, who does not have the necessary authority licence. EC Directive 2006/126		
Act no. 2 of 2012 on misdemeanours, misdemeanours proceedings and misdemeanours registration system Section 32 (c)	Imprisonment up to two years.	Yes

Table HU 6

Infringements of commercial road transport legislation

Type of infringement(s) and Article of reference in national legislation Corresponding EU legislation	Criminal sanction	Is it dissuasive?
The driving licence is suspected to be false, have been falsified or misused. EC Directive 2006/126		

14.7 Sanctions which could be considered substantially criminal in the Hungarian legal system

Table HU 7			
Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR			
Type of infringement and Article of reference in national legislation	Administrative sanction that could be qualified as criminal sanction	Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?	Is it dissuasive?
Corresponding EU legislation			
There are no sanctions imposed by the Hungarian legislation implementing the EU directives and regulations on commercial road transport which are formally administrative but substantively criminal.			

14.8 Effectiveness of the sanctions system

As to the effectiveness of the sanctions system concerning public road transport regulations in Hungary, we have received the following information on a no-name-basis from the head of the Public Road Transport Department of the Ministry of National Resource Management (“Ministry”) and the head of the Transport Office of the National Transport Authority.

Based on the data and information received from the relevant inspection authorities, the Ministry revealed deficiencies and inaccuracy in the relevant EU and/or Hungarian legislation and currently prepares submissions for the modification of EC Regulation No 561/2006, EC Regulation No. 1071/2009, EC Regulation No. 1072/2009 and EC Regulation No. 1073/2009 and/or the respective Hungarian laws.

Based on the information received from the National Transport Authority, latency in the infringement of the laws concerning public road transport referred to in this memorandum is relatively high. The three main areas of infringement entailing the highest risks are: (i) infringement of driving and rest periods, (ii) overloaded package, and (iii) low level of maintenance of vehicles. The inspection authorities inspect approximately 500,000-600,000 working days of drivers per year and reveal infringements on 6-7 per cent of such working days per year. The most frequent infringements are exceeding driving times and not respecting rest periods and breaks. Approximately 100-200 drivers per year are fined for misuse of driver’s card, i.e. drivers are using driver’s cards issued for another driver. Furthermore, approximately 300 cases concerning misuse of tachographs are detected per year.

We have also received by the Hungarian Government (see Annex HU.1) specific figures concerning the year 2010. Such information are summarized in the table below. An analysis of such information shows that the number of infringements detected in Hungary concerning the social rules and transport of dangerous goods is substantial.

Table HU 8

<i>Table 1</i>	561/2006/EC								3821/85/EEC													Summary
	<i>Table 2</i>	Art. 5.1	Art. 6.1	Art. 6.2	Art. 6.3	Art. 7	Art. 8.2	Art. 8.5	Art. 8.6	Art. 3.1	Art. 13	Art. 14.1	Art. 14.4	Art. 15.1	Art. 15.2	Art. 15.3	Art. 15.5	Art. 15.7	Art. 15.8	Art. 16.1	Art. 16.2	
AUT	0	7	1	1	8	12	1	4	0	0	0	0	0	1	0	0	3	0	0	0	0	38
BUL	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	1	0	0	0	3
CRO	0	2	0	0	1	2	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	6
CZE	0	2	0	1	2	3	3	3	0	0	1	0	0	0	1	2	0	1	0	0	0	19
ESP	0	1	0	1	3	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	6
EST	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
GER	0	3	1	2	4	5	1	3	0	2	1	0	1	0	0	1	0	0	0	0	0	24
HUN	0	49	1	12	133	167	20	58	11	122	70	7	13	173	69	119	315	73	5	6	0	1423
ITA	0	1	0	0	2	1	0	1	0	1	1	0	0	1	1	2	1	0	0	0	0	12
LTU	0	0	0	0	2	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	4
MDA	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	1	0	0	0	3

NED	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
POL	0	4	0	1	2	5	1	4	0	1	0	0	0	5	4	1	0	3	0	0	0	0	31
ROM	0	7	0	1	12	15	4	12	0	9	11	0	0	7	6	8	11	9	0	0	0	0	112
SLO	0	6	0	1	2	8	0	2	0	2	2	0	0	5	5	0	3	4	0	0	0	0	40
SRB	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
SVK	0	12	0	5	17	10	1	6	0	4	3	1	0	3	5	6	3	5	0	0	0	0	81
TUR	0	1	0	0	0	1	0	1	0	1	3	0	0	0	1	0	0	0	0	0	0	0	8
UKR	0	0	0	1	0	0	0	0	0	3	0	0	0	0	0	0	0	3	0	1	0	0	8
Summary	0	96	3	26	190	230	31	96	11	147	92	8	14	197	92	139	337	101	5	7	0	1822	

Table HU 9		
ADR Infringements		
	Number of vehicles checked	Number of defected vehicles

Inland carriage of goods by national undertaking	657	40
International carriage of goods by national undertaking	119	2
International carriage of goods by foreign undertaking	164	6
Summary	940	48

From a qualitative standpoint, it could be argued that sanctions in Hungary do not necessarily have a sufficient deterrent effect. Financial penalties are not so high, and they are not accompanied by measures such as the withdrawal of the driving license or the arrest of the vehicle.

In conclusion, it is posited in agreement that the Hungarian sanction system is not effective.

15 IRELAND - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR

15.1 *Social rules on road transport*

15.1.1 Rules on Driving Times and Rest Periods

15.1.1.1 Regulation (EC) No 561/2006

Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport has been implemented by the European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (Statutory Instrument No. 62 of 2008) (the “2008 IE Regulations”). The sanctions relating to the infringement of rules regarding driving time, breaks and rest periods envisaged in Regulation (EC) No 561/2006 are contained in Section 52 of the 2008 IE Regulations.

Rest periods

Article 35 of the 2008 IE Regulations introduces a power to order a driver to take a rest or break. Sub Articles (2) and (3) of Article 35 set out the actions which may be taken by an enforcement officer (defined as (a) a transport officer, or (b) an officer of Customs and Excise, or (c) a member of the Garda Síochána) as follows:

“(2) An enforcement officer may permit or require the driver concerned to move the vehicle to a place where it is not a traffic hazard.

(3) An enforcement officer who has given permission or imposed a requirement under paragraph (2) may board the vehicle concerned and accompany the driver to the place where the vehicle is not a traffic hazard.”

According to Article 52 of the 2008 IE Regulations a driver of a vehicle¹²² convicted of an offence under these Regulations is liable on summary conviction¹²³ to a fine not exceeding € 5,000 or to imprisonment for a term not exceeding 6 months, or both.

Foreign Drivers

Article 38 sets out rules regarding the treatment of drivers who are resident outside the state who act contrary to the provisions of Article 35 of the 2008 IE Regulations:

“(1) An enforcement officer who suspects on reasonable grounds that a person who does not ordinarily reside in the State:

(a) is holding a driver card that has been falsified or has been fraudulently obtained, or

(b) is making use, or has made use, of another person’s driver card, may confiscate the card.

(2) An enforcement officer shall, as soon as practicable after confiscating a driver card in accordance with paragraph (2), return the card to the authority of the Member State that issued the card, together with a statement in writing setting out the circumstances in which the card was confiscated”.

Regulation 40 of Statutory Instrument 62/2008 details that you can prosecute in Ireland for an offence that has been committed abroad.

Driving Periods

Section 114 of the Road Traffic Act 1961 (as amended) (the “1961 Act”) provides for limitations on the periods of continuous driving.

^{122.} If the offence is committed by a body corporate as opposed to the driver of the vehicle, Section 51 of the 2008 IE Regulations apply. Section 51. (1) If (a) an offence under these Regulations is committed by a body corporate, and (b) the offence is proved to have been committed by the body with the consent or connivance of, or to be attributable to any neglect on the part of, a person who is a director, manager, secretary or other officer of the body, or a person who was purporting to act in such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if the person was guilty of the first-mentioned offence.

^{123.} Please refer to section 1.4 below for a discussion on the categorisation of offences in the Irish legal system.

Section 114 (1) provides that each of the following periods or series of periods of driving shall be an excessive period for the purposes of section 114:

*“(a) any continuous period of driving exceeding five and one-half hours;
(b) any series of continuous periods of driving amounting in the aggregate to more than eleven hours in any period of twenty-four hours beginning two hours after midnight;
(c) any period or series of periods of driving so arranged that the driver has not at least ten consecutive hours for rest in every period of twenty-four hours beginning at the commencement of any period of driving.”*

Penalties for a breach of Section 114 are provided for under Section 102 of the 1961 Act:¹²⁴

- first Offence: fine of up to € 1,000;¹²⁵
- second Offence (under the same section): fine of up to € 2,000;¹²⁶
- third / Subsequent Offence (under same section within 12 consecutive months): fine of up to € 2,000 and / or a term of imprisonment of up to 3 months.¹²⁷

Pursuant to the 2008 IE Regulations, if a person is found guilty of an offence under Article 21 (Recording Equipment to be installed in certain kinds of vehicles), Article 36 (Power to order a vehicle not to be driven), Article 43 (Offence to make false records), and Article 48 (Offences regarding driver cards), they are liable on conviction: (a) if the offence is tried summarily, to a fine not exceeding € 5,000, or (b) if the offence is tried on indictment, to a fine not exceeding € 10,000.

15.1.1.2 Directive 2006/22/EC (as amended by Directive 2009/4/EC and Directive 2009/5/EC)

Directive 2006/22/EC has been transposed into Irish law by the European Communities (Road Transport Activities Checks) Regulations 2007 (Statutory Instrument No. 545 of 2007) (the “2007 IE Regulations”). The purpose of the 2007 IE Regulations is to give effect to Directive 2006/22 which sets down minimum

¹²⁴. See s.18(1), Road Traffic Act 2006.

¹²⁵. Section 102(a) as amended by Section 18(1) – Table – Pt.1 – Reference 20.

¹²⁶. Section 102(b) as amended by Section 18(1) – Table – Pt.1 – Reference 21.

¹²⁷. Section 102(c) as amended by Section 18(1) – Table – Pt.1 – Reference 22.

enforcement activities to be implemented by Member States concerning social legislation relating to road transport undertakings.

Article 3 (a) of the 2007 IE Regulations states that the Road Safety Authority¹²⁸:
“shall organise a system of appropriate and regular checks both at the roadside and at the premises of transport undertakings for the purposes of and in accordance with the Directive.”

Article 8(1) of the 2007 IE Regulations provides that a person guilty of an offence under the 2007 IE Regulations is liable on summary conviction:

- in the case of a first offence, to a fine not exceeding € 2,000, or
- in the case of a second or subsequent offence, to a fine not exceeding € 5,000.

15.1.1.3 Directive 2002/15/EC

Directive 2002/15/EC has been implemented into Irish law by the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2012 (Statutory Instrument No. 36/2012) (the “2012 IE Regulations”)¹²⁹. The purpose of the 2012 IE Regulations is to apply the maximum average working week of 48 hours to mobile road transport workers covered by the 2012 IE Regulations. The 2012 IE Regulations also prescribe that the working time of such mobile road transport workers must not exceed 60 hours in any single week and contain provisions concerning minimum breaks and the amount of night work that can be performed.

¹²⁸. The function of the Irish Road Safety Authority is to improve road safety in Ireland by developing and implementing information and education campaigns to increase awareness of road safety and promote safer driving and to improve vehicle standards and producing road safety strategy documents and monitoring their implementation

¹²⁹. Please note that Article 24 of the 2012 IE Regulations revoked the previous Irish regulations governing the organisation of working time of persons performing mobile road transport activities - the European Communities (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2005 (Statutory Instrument No. 2/2005).

Article 8 of the 2012 IE Regulations sets out the prescribed periods of time that a mobile worker¹³⁰ is allowed to work:

- “(1) No mobile worker shall work for more than six hours without a break.*
- (2) Where a mobile worker's working time exceeds six hours but does not exceed nine hours, the worker shall be entitled to a break lasting at least 30 minutes and interrupting that time.*
- (3) Where a mobile worker's working time exceeds nine hours, the worker shall be entitled to a break lasting at least 45 minutes and interrupting that period.*
- (4) Each break may be made up of separate periods of not less than 15 minutes each.*
- (5) An employer shall ensure that this Regulation is complied with in the case of each mobile worker employed by him.”*

Article 17 of the 2012 IE Regulations sets down the sanctions applicable in the event of an infringement of the 2012 IE Regulations and the persons that may be held liable for such infringements:

- “(1) A person who fails to comply with these Regulations commits an offence.*
- (2) A person who causes, or purports to authorise, another person who is employed by that person or is under that person's control to contravene these Regulations commits an offence.*
- (3) In proceedings for an offence under paragraph (2) evidence that—*
 - (a) another person contravened the Regulation to which the proceedings relate, and*
 - (b) that other person was at the relevant time employed by, or under the control of, the defendant, is, until the contrary is shown, evidence that the defendant caused or purported to authorise that other person to contravene that Regulation.*
- (4) A person guilty of an offence under these Regulations is liable—*
 - (a) on summary conviction, to a class A fine¹³¹, or*
 - (b) on conviction on indictment, to a fine not exceeding €250,000.*
- (5) Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable*

^{130.} “Mobile worker” (as defined in Directive 2002/15/EC) means any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account.

^{131.} “Class A fines” as per Section 3 of the Fines Act 2010 means a fine not exceeding € 5,000.

to any neglect on the part of, a person being a director, manager, secretary or other similar officer of that body corporate or a person who was purporting to act in that capacity, that person shall also be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Proceedings for an offence under these Regulations may be brought and prosecuted summarily by the Road Safety Authority or a member of the Garda Síochána.

(7) Nothing in paragraph (6) limits any other power conferred by law to prosecute an offence under these Regulations.”

15.1.2 Tachograph

15.1.2.1 Regulation (EEC) No 3821/85

Sanctions for infringements of Regulation (EEC) No 3821/85 are contained in the European Communities (Road Transport) (Recording Equipment) Regulations 1986 (Statutory Instrument No. 393/1986) (the “1986 IE Regulations”). The purpose of the 1986 IE Regulations is to provide for the implementation and enforcement of Council Regulation (EEC) No 3821/85 on recording equipment in road transport and in particular to:

- establish and specify the powers of the competent authority for the approval and control of fitters and workshops for the installation, repair and inspection of recording equipment (tachographs);
- provide for the powers of authorised officers¹³² for the enforcement of the 1986 IE Regulations;
- prescribe penalties for infringements of the 1986 IE Regulations;
- specify those operations which shall be exempt from the 1986 IE Regulations when engaged in national transport operations; and
- provide for other matters relating to installation, inspection and use of recording equipment and record sheets.

Article 16 of the 1986 IE Regulations provides that:

¹³². “Authorised officer” means a transport officer appointed by the Minister for Transport, Tourism and Sport under section 15 of the Road Transport Act, 1986 (No. 16 of 1986), any officer of Customs and Excise or any member of the *Garda Síochána*.

“A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.”

An authorised officer’s powers under the 1986 IE Regulations are outlined in Article 10:

“(1) An authorised officer may, for the purposes of these Regulations and the Council Regulation:

(a) at any time enter a premises or place if:

(i) he has reasonable grounds for believing that it is used for a purpose connected with carriage by road or that a vehicle used for that purpose is at the premises or in the place and inspect the vehicle and any document, record, book or recording equipment kept or used in the vehicle, premises or place, as the case may be, for the purposes of, or which relates to, carriage by road, or

(ii) he has reasonable grounds for believing that it is used for the installation, repair or inspection of recording equipment and inspect the premises and any document, record, book or equipment kept or used in the premises or place, as the case may be;

(b) at any time inspect a vehicle which is stationary or (if the officer is a member of the Garda Síochána in uniform or an officer of Customs and Excise in uniform) halt a vehicle which is being driven and inspect it and any document, record, book, goods or recording equipment being carried in or on the vehicle or kept by the crew or used for the purposes of, or which relates to, carriage by road;

(c) require any person at the premises or in the place or in the vehicle to produce to him any document, book or record kept or used for the purposes of, or which relates to, carriage by road which is in the power or control of that person;

(d) inspect, examine, and take copies of or extracts from or take away, if necessary, for the purposes of inspection or examination, any document, book or record kept or used for the purposes of, or which relates to, carriage by road and require the person by whom such document, book or record is kept or who produced the document, book or record to certify a copy thereof as a true copy.

(2) For the purpose of exercising his powers under paragraph (1) of this Regulation, an authorised officer may detain a vehicle during such time as is required for the exercise of those powers.

(3) A person who obstructs or interferes with an authorised officer when he is exercising a power conferred by the Council Regulation or these Regulations, or who fails to halt a vehicle when requested or required by an officer of Customs and Excise in uniform or a member of the Garda Síochána in uniform to do so or who fails to comply with a request or requirement of an authorised officer under these Regulations (other than a request of an authorised officer not in uniform to halt a vehicle) shall be guilty of an offence.”

Sanctions for offences under the 1986 IE Regulations are provided for in Article 16. Article 6 of the 1986 IE Regulations sets out the persons responsible for the installation of recording equipment. Article 6(1) provides:

“Subject to paragraph (2) of this Regulation, the owner of a vehicle referred to in Article 3 of the Council Regulation (other than a vehicle exempted from the application of the Council Regulation by Regulation 4 of these Regulations) shall install (or cause to be installed) and shall keep installed in the vehicle recording equipment complying with the requirements of the Council Regulation.

(2) Where a vehicle referred to in Article 3 of the Council Regulation (other than a vehicle exempted from the application of the Council Regulation by Regulation 4 of these Regulations) is used in the course of a business and is used by a person other than the owner of the vehicle the user of the vehicle shall install (or cause to be installed) and shall keep installed in the vehicle recording equipment complying with the requirements of the Council Regulation.

(3) Nothing in paragraph (2) of this Regulation shall be construed as imposing on a person who is employed as a driver or is engaged under a contract for services as a driver a duty to install (or cause to be installed) or keep installed recording equipment complying with the requirements of the Council Regulation.”

Article 8 of the 1986 IE Regulations sets out the persons responsible for inspections of the recording equipment:

“(1) Subject to paragraph (2) of this Regulation, the owner of a vehicle referred to in Article 3 of the Council Regulation (other than a vehicle exempted from the application of the Council Regulation by Regulation 4 of these Regulations) shall arrange to have periodic checks or inspections as specified in Part VI of Annex I to the Council Regulation carried out to the recording equipment installed therein.

(2) Where a vehicle to which paragraph (1) of this Regulation applies is used in the course of a business operated by any person other than the owner of the vehicle the

user of the said vehicle shall ensure that such checks and inspections are carried out to the recording equipment installed in the vehicle.

(3) Nothing in paragraph (2) of this Regulation shall be construed as imposing on a person who is employed as a driver or is engaged under a contract for services as a driver a duty to ensure that checks and inspections are carried out in accordance with the Council Regulation to recording equipment installed in the vehicle.”

15.2 Road package

15.2.1 Regulation (EC) No 1071/2009

Regulation (EC) No 1071/2009 has been implemented into Irish law by the European Union (Occupation of Road Transport Operator) Regulations 2011 (Statutory Instrument No. 697/2011) (the “2011 IE Regulations”). The purpose of the 2011 IE Regulations is to outline the rules which authorise an entity to pursue the occupation of road haulage operator or road passenger transport operator, for the purposes of Regulation (EC) No 1071/2009.

Articles 6, 7 and 8 of the 2011 IE Regulations specify the types of activities that are considered to contravene Regulation (EC) No 1071/2009.

Article 6 provides that in determining whether an operator has satisfied or continues to satisfy the requirement of good repute¹³³ the Minister for Transport, Tourism and Sport (the “Minister”) may consider whether or not the operator or a person who holds a specified position with the operator has, within, the previous 10 years, been convicted of an offence specified in the Schedule or been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating to the matters referred to in part (b) of the third subparagraph of Article 6(1) of the Regulation (EC) No 1071/2009.

¹³³. The concept of “good repute” is detailed in Article 6 (Conditions relating to the requirement of good repute) in Regulation (EC) No 1071/2009.

Article 7 provides that operator concerned shall notify the Minister in writing of the fact of any conviction against any person referred to in Regulation 6:

“(a) where the operator is making an application for an operator’s licence, at the time of making an application, or

(b) where the operator is the holder of an operator’s licence, within 3 months of the making of these Regulations, of the expiry of the time allowed for appealing such conviction or of the determination or withdrawal of the appeal of such conviction, whichever is the latest”.

Article 8 provides that where a person who holds a specified position with an operator is or has been convicted of an offence referred to in Regulation 6 he or she shall inform the operator in writing of the fact of the conviction.

Article 9 (1) of the 2011 IE Regulations provides that:

“A person¹³⁴ who contravenes or fails to comply with these Regulations commits an offence and is liable:

(a) on summary conviction, to a class A fine¹³⁵, or

(b) on conviction of indictment, to a fine not exceeding €250,000.”

With regard to those infringements that are qualified as the most serious infringements described in Annex IV of Regulation No 1071/2009 the Irish sanction system does not have a specific sanction system in place for these infringements. However they are dealt with individually infringements in the many statutory instruments set out in this note.

The loss of good repute is not specifically mentioned in statutory instrument 617.2010.

15.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009

Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009 have been implemented into Irish law by the Road Transport Act 2011 (“the Act”). The Act (inter

^{134.} “Person” refers to the operator or someone who holds a specified position with an operator.

^{135.} “Class A fines” as per Section 3 of the Fines Act 2010 means a fine not exceeding € 5,000.

alia) implements provisions relating to the occupation of road haulage operators¹³⁶ and the occupation of road passenger transport operators¹³⁷.

Section 9 of the Act sets out the requirement to hold an operator licence:

“(1) Save as is provided for by this Act or otherwise by law a person shall not engage in the occupation of;

(a) road haulage operator, without holding a road haulage operator’s licence, or

(b) road passenger transport operator, without holding a road passenger transport operator’s licence.

(2) The holder of a relevant operator’s licence shall not permit a vehicle to be used:

(a) in relation to the occupation of road haulage operator, or

(b) in relation to the occupation of road passenger transport operator,

save as is provided for by this Act or otherwise unless the vehicle is for the time being authorised on the operator’s licence and there is in the vehicle or on display, as appropriate, a copy of the operator’s licence showing the vehicle to be so authorised, a transport disc, and an appropriate certified copy of a Community licence.”

Section 9 (6) of the Act sets out the penalties to be imposed in the event of an infringement of section 9(1) or 9(2) the Act:

“A person who contravenes subsection (1) or (2) commits an offence and is liable;

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both.”

¹³⁶. “Road haulage operator” means any undertaking engaging in the occupation of road haulage operator.

¹³⁷. “Road passenger transport operator” means any undertaking engaging in the occupation of road passenger transport operator.

15.3 Standards of vehicles and load and necessary licences

15.3.1 Directive 2008/68/EC

Directive 2008/68/EC on the inland transport of dangerous goods has been implemented into Irish law by the following legislation:

- European Communities (Carriage of Dangerous Goods by Road Act 1998) (Amendment) Regulations 2010 (Statutory Instrument 616/2010);
- Carriage of Dangerous Goods by Road Regulations 2010 (Statutory Instrument 617/2010);
- Carriage of Dangerous Goods by Road Act 1998 (Appointment of Competent Authorities) Order 2010 (Statutory Instrument 618/2010);
- Carriage of Dangerous Goods by Road Act 1998 (Fees) Regulations 2010 (Statutory Instrument 619/2010);
- European Communities (Inland Transport of Dangerous Goods by Road)(ADR Miscellaneous Provisions) Regulations 2010 (Statutory Instrument 620/2010); and
- European Communities (Transport of Dangerous Goods by Rail) Regulations, 2010 (Statutory Instrument 651/2010).

Statutory Instrument 617 of 2010 (a) places duties on persons involved with the carriage of the dangerous goods, (b) contain requirements for vehicles, tanks, tank containers, receptacles and packages containing the dangerous goods during their carriage, (c) requires that the drivers, and others involved in the carriage of the dangerous goods by road, be adequately trained and, in the case of drivers, hold certificates of such training and (d) contain provisions on an EU harmonised approach to the road checks aspect of their enforcement.

Regulation 17 of Statutory Instrument 617 of 2010 sets out the duties of consignors¹³⁸:

¹³⁸. As defined in Statutory Instrument 620 of 2010 “consignor” means the person who consigns dangerous goods either on that person’s own behalf or for a third party. A person who, having a place of business in the State supplies, dangerous goods for carriage by road. (If the transport

“17. (1) A consignor shall not consign dangerous goods for carriage by road unless they are consigned in a manner that complies with the ADR¹³⁹. ”

Regulation 20 of Statutory Instrument 617 of 2010 provides that a consignor who is guilty of an offence under Articles 17 or 18 is liable on summary conviction to a fine not exceeding €1,900.

Regulation 21 of Statutory Instrument 617 of 2010 sets out the duties of carriers¹⁴⁰:

“21. (1) Without prejudice to the generality of Regulation 15(3), a carrier shall not undertake the carriage of dangerous goods by road unless, having regard to Chapter 1.4.1 and pursuant to Chapter 1.4.2.2, the carrier complies with the requirements of Schedule 2.”

Regulation 25 sets out that a carrier of dangerous goods by road who is guilty of an offence under Regulation 21, 23 or 24 is liable on summary conviction to a fine not exceeding € 1,900.

Similar infringements and penalties are in place for loaders¹⁴¹, packers¹⁴², fillers¹⁴³, tank-container operator and portable tank operators of dangerous goods¹⁴⁴, drivers and vehicle crew¹⁴⁵.

operation is carried out under a contract for carriage, “consignor” means the consignor according to the contract for carriage.)

^{139.} Refers to the 2009 European Agreement Concerning the International Carriage of Dangerous Goods by Road. The Annexes to it and the protocol of signature thereto done at Geneva on 30 September 1957, and the amending protocol thereto adopted at Geneva on 28 October 1993; (“the Annexes’ means Annexes A and B to the ADR referred to in Annex I to Directive 2008/68/EC1 of the European Parliament and of the Council of 24 September 2008, as amended by Commission Decision 2010/187/EU of 25 March 2010”).

^{140.} As defined in Article 2(3).

^{141.} Regulation 32 of Statutory Instrument No. 617/2010 — Carriage of Dangerous Goods by Road Regulations 2010.

^{142.} Regulation 34 of Statutory Instrument No. 617/2010 — Carriage of Dangerous Goods by Road Regulations 2010.

^{143.} Regulation 36 of Statutory Instrument No. 617/2010 — Carriage of Dangerous Goods by Road Regulations 2010.

^{144.} Regulation 39 of Statutory Instrument No. 617/2010 — Carriage of Dangerous Goods by Road Regulations 2010.

Regulation 11 of Statutory Instrument 651 of 2010 sets out general duties of persons engaged in the transport of dangerous goods by rail and establishes that a person who contravenes these Regulations is guilty of an offence and is liable on summary conviction to a fine not exceeding € 5,000 or to imprisonment for a term not exceeding three months, or both.

15.3.2 Directive 96/53/EC

Directive 96/53/EC has the purpose of laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic. The Directive has been implemented into Irish Law by the Road Traffic (Construction, Equipment and Use of Vehicles) (Amendment) Regulations, 1997 (Statutory Instrument No. 404 of 1997) (the “1997 IE Regulations”)¹⁴⁶. These Regulations provide for the implementation of increases in the maximum permitted width and length of certain vehicles as laid down in Directive 96/53/EC. The Schedule to the 1997 IE Regulations sets out specific requirements regarding maximum weight laden, maximum height, maximum weight transmitted to the surface of a road by axles, tandem axles and triaxles and maximum dimensions.

Regulation 3 of the 1997 IE Regulations apply to buses and certain vehicles / trailers in both international and domestic traffic and provide for an increase in allowable width from 2.50m to 2.55m. Certain conditioned vehicles and trailers¹⁴⁷ will be permitted to operate at a width of 2.60m.¹⁴⁸

^{145.} Regulation 44 of Statutory Instrument No. 617/2010 — Carriage of Dangerous Goods by Road Regulations 2010.

^{146.} Directive 96/53/EC has also been implemented into Irish Law by Statutory Instruments No. 224/2000 and 223/2000.

^{147.} “Conditioned trailer or semi-trailer” means a trailer or semi-trailer with a design gross weight in excess of 3,500 kilograms, whose fixed or movable superstructure is specially equipped for the carriage of goods at controlled temperatures and whose side walls, inclusive of insulation, are each at least 45 millimetres thick. “Conditioned vehicle” means a vehicle, with a design gross vehicle weight in excess of 3,500 kilograms, whose fixed or movable superstructure is specially equipped for the carriage of goods at controlled temperatures and whose side walls, inclusive of insulation, are each at least 45 millimetres thick.

Regulation 4 of the 1997 IE Regulations also provides for an increase in the permitted maximum length of truck and trailer combinations from 18.35m to 18.75m. Regulation 5 of the 1997 IE Regulations provides that a vehicle or a combination of a vehicle and a trailer or a semi-trailer, shall be capable of being driven within an area contained between concentric circles with radii of 12.50 meters and 5.30 meters such that no part of the vehicle or the combination of a vehicle and a trailer or semi-trailer projects outside such contained area.

Section 12 of the 1961 Act provides that the Minister is empowered to fix maximum laden and unladen weight for vehicles or trailers or combinations of vehicles, the manner of calculating that weight and also the maximum weight to be transmitted to the ground by any part of a vehicle. The use of a vehicle contravening weight regulations on a public road is prohibited, whether the contravention is based on the excess weight of the vehicle, the combination of vehicles, or a default indicated by a plate or certificate for the vehicle.

Sanctions may be imposed on the user, owner or consignor¹⁴⁹ for breaches of the above referenced requirements. The general penalty applied under section 23 of the Road Traffic Act 2002 (the “2002 Act”) is a fine of € 1,500. A breach of this section will also attract penalty points under section 2 of the 2002 Act as follows:

- (a) on payment of a fixed charge under section 103 of the 1961 Road Traffic Act, 1 penalty point;
- (b) on conviction by a court, 3 penalty points.

Section 11 of the Road Traffic Act 1968 allows the Minister to specify that certain vehicles must exhibit a plate on it showing their maximum permissible weight. It is an offence to use in a public place a vehicle without such a plate or certificate. The owner shall be guilty of an offence, unless he shows such user was unauthorised. The general penalty applied under section 23 of the 2002 Act is a maximum fine of € 1,500 and/or three months imprisonment.

^{148.} In the case of refrigerated vehicles the Regulations provide (in accordance with the Directive) that such vehicles first registered on or before 31 December, 1997 may operate at 2.60m until 31 December, 2006.

^{149.} A person who engages the services of another person for the carriage by road of merchandise in a vehicle or combination of vehicles.

15.3.3 Directive 2009/40/EC

Directive 2009/40/EC has been transposed into Irish law by the Statutory Instrument No. 567/2009, (Road Traffic (National Car Test) Regulations 2009) (the “2009 IE Regulations”). Section 3 of the 2009 IE Regulations provide that all cars which are four years and older must be tested every two years in respect of areas such as wheels and tyres, transmission, interior and fuel systems, brakes exhaust emission, lights, steering and suspension, chassis and underbody, electrical systems and glass and mirrors.¹⁵⁰

Article 3 (3) of the 2009 IE Regulations sets out the types of vehicle that the 2009 IE Regulations apply to:

“these Regulations apply to:

- (a) a small public service vehicle, other than a new small public service vehicle, from the date of the application for a SPSV licence¹⁵¹ in respect of the vehicle,*
- (b) a new small public service vehicle, on the anniversary of the issue of its SPSV licence.”*

Article 3 (5) sets out the types of vehicle that the Regulations do not apply to:

- “(a) first registered prior to 1 January 1980,*
 - (b) which is used solely on an off-shore island,*
 - (c) on the day on which a test certificate in respect of the vehicle had been refused,*
- or*
- (d) which is owned or operated by the Garda Síochána or the Defence Forces.”*

Section 18 of the 1961 Act requires a vehicle to have a certificate of roadworthiness:

“(1) A person shall not use in a public place a mechanically propelled vehicle to which this section applies unless at that time there is in force in respect of the vehicle a test certificate.

¹⁵⁰. The NCT does not apply to commercial vehicles (which must instead get a Department of the Environment Certificate of Roadworthiness every year as per Art 4 the (Statutory Instrument No. 771/2004). 771 of 2004 European Communities (Vehicle Testing) Regulations 2004.

¹⁵¹. “SPSV licence” means a small public service vehicle licence granted or renewed by the Commission for Taxi Regulation in respect of a vehicle.

(2) Where a person contravenes subsection (1) of this section, he and, if he is not the owner of the vehicle, such owner shall each be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty pounds or, at the discretion of the court, to imprisonment for any term not exceeding three months or to both such fine and such imprisonment”.

Penalties in respect of offences under Section 18 are on summary conviction and a fine of up to € 2,000 or imprisonment for a term of up to three months, as well as 5 penalty points on conviction. A first conviction may be imposed will not result in a disqualification (from driving) however if a defendant is convicted of a second or subsequent conviction under Section 18 within a three year period, a consequential disqualification period of not less than one year will apply.¹⁵²

Under Section 19 of the 1961 Act¹⁵³ a *Garda* (a Police Officer in Ireland), who has reasonable grounds for believing that a vehicle they have observed being used in a public place requires a test certificate, can, within one month of so observing, make a lawful demand of the user and/or owner of the vehicle to produce a National Car Test Certificate, or any other applicable certificate of roadworthiness, there and then, or within 10 days at a nominated Garda station. Sanctions for infringements under Section 19 of the 1961 Act are as follows¹⁵⁴:

- First Offence: fine of up to €1,000¹⁵⁵.
- Second Offence (under the same section): fine of up to € 2,000.¹⁵⁶
- Third/Subsequent Offence (under same section within 12 consecutive months): fine of up to € 2,000 and/or a term of imprisonment of up to 3 months¹⁵⁷.
- Disqualification: A conviction under Section 19 does not carry a mandatory disqualification, however, as the offence is one which relates to the use of a motor vehicle, it is open to the court to make an ancillary disqualification order under Section 27 of the 1961 Act on the particular facts of the case.

¹⁵². Section 26, RTA 1961, as substituted by Section 26, RTA 1994 and amended by Section 6 (1) (e), RTA 2006.

¹⁵³. As amended by Section 8 of the Road Traffic Act 1968.

¹⁵⁴. See s.18(1), Road Traffic Act 2006.

¹⁵⁵. Section 102(a) as amended by Section 18(1) – Table – Pt.1 – Reference 20.

¹⁵⁶. Section 102(b) as amended by Section 18(1) – Table – Pt.1 – Reference 21.

¹⁵⁷. Section 102(c) as amended by Section 18(1) – Table – Pt.1 – Reference 22.

The 2009 IE Regulations require small public service vehicles to undergo an annual roadworthiness test to be carried out by the National Car Testing Service. They also provide that the National Car Testing Service may issue a certificate of suitability for the use of a vehicle as a small public service vehicle.

Article 10 of the 2009 IE Regulations sets out the rules concerning the issuance of road worthiness certificates after the testing of vehicles:

“(1) Subject to paragraph (2), following a test, the issuing authority shall issue a test certificate for the vehicle tested, where the test report relating to the vehicle shows that all the items specified in Schedule 3¹⁵⁸ applicable at the time of testing and tested in respect of the vehicle are satisfactory.”

Rules on roadworthiness tests for motor vehicles and their trailers have been provided by Directive 96/96/EC which was transposed into Irish law by the (Road Traffic (National Car Test) Regulations, 1999 (Statutory Instrument No. 395/1999) (the “1999 IE Regulations”).

Section 2(3) of the 1999 IE Regulations provides:

“(1) Subject to sub-article (2) and to article 4, section 18 of the Principal Act and these Regulations shall apply to vehicles having at least four wheels, which are designed and constructed primarily for the carriage of passengers and which have a maximum of 8 seats excluding the driver's seat and a maximum design gross vehicle weight of 3,500 kilograms.

(2) Sub-article (1) shall not apply to a vehicle—

(a) which is an historic vehicle,

(b) which is solely used on an off-shore island,

(c) which is being driven to a test centre, for the purposes of having a test, or a re-test, carried out, for which an appointment had been made prior to the time of such driving,

(d) on the day on which a test certificate in respect of the said vehicle had been refused,

(e) which is a small public service vehicle in accordance with the Road Traffic (Public Service Vehicles) (Amendment) Regulations, 1995 (S.I. No. 136 of 1995)”.

Section 5 of the 1999 IE Regulations provides:

¹⁵⁸. Schedule 3 of Statutory Instrument No. 567/2009, ‘Road Traffic (National Car Test) Regulations 2009’ specifies all the items of a vehicle that are to be tested at any time.

“A person shall not use in a public place a vehicle to which these Regulations apply unless there is displayed on the front windscreen of the said vehicle a valid test disc”.

15.3.4 Directive 2006/126/EC

Directive 2006/126/EC concerns rules relating to driving licences. It is a recast Directive as Council Directive 91/439/EEC of 29 July 1991 on driving licences had been significantly amended on a number of occasions. Directive 2006/126/EC has been implemented into Irish law by the Road Traffic (Licensing of Drivers) (Amendment) (No. 2) Regulations 2011 (Statutory Instrument No. 483/2011).

Legislation regarding driving licences in Ireland was implemented by the Road Traffic (Licensing of Drivers) Regulations 2006 (Statutory Instrument No. 537/2006) (the “2006 IE Regulations”).

The 1961 Act is the primary piece of Irish legislation concerning the rules governing road traffic. It has been amended on a number of occasions. Section 38 of the 1961 Act¹⁵⁹ sets out provisions prohibiting driving without a driving licence¹⁶⁰. Section 38 of the Road Traffic Act, 1961 states that you cannot drive or allow another to drive your vehicle in a public place without the driver holding a valid driving licence.

The 1961 Act provides that the vehicle concerned must be a mechanically powered vehicle so if a driver’s vehicle is broken down or no longer capable of being mechanically propelled then it is exempt. The only defence to this offence is that the driver holds a valid learner permit for that class of vehicle. It is important to note that both the driver and owner may be liable on conviction.

Penalties

In respect of offences under Section 38:

- Drivers who held a valid licence (other than a learner permit) which expired less than 12 months before the date of the offence – fine of up to € 1,000¹⁶¹.

^{159.} As amended by Section 23 Road Traffic Act 2002 and Section 12 Road Traffic Act 2006.

^{160.} 38.—(1) “A person shall not drive a mechanically propelled vehicle in a public place unless he holds a driving licence for the time being having effect and licensing him to drive the vehicle.”

^{161.} Section 38(2) (a)(i), Road Traffic Act 1961 as substituted by s.12(a), Road Traffic Act 2006.

- Drivers who held a valid licence (other than a learner permit) which expired more than 12 months before the date of the offence – fine of up to € 2,000¹⁶².
- Disqualified drivers, drivers without licence or drivers who failed to produce required certificate of competency or fitness to obtain licence – fine of up to € 5,000 and/ or a term of imprisonment of up to 6 months¹⁶³.

Disqualification

A conviction under Section 38(5)(a) of driving a vehicle without a driving licence while disqualified carries a mandatory consequential disqualification period of one year¹⁶⁴. In other circumstances, a conviction under Section 38 does not carry a mandatory disqualification, however it is open to the court to make an ancillary disqualification order under section 27 of the 1961 Act on the particular facts of the case.

Penalty Points

Part I of the First Schedule of the the 2002 Act outlines the penalty point sanctions applicable for an infringement of Section 38 of the 2002 Act:

- two Penalty Points will be endorsed on the drivers licence on Payment of Fixed Charge;
- on conviction, 5 Penalty Points will be endorsed on the drivers licence;
- endorsements and disqualifications on licences are provided for in Part 6 of the Road Traffic (Licensing of Drivers) Regulations, 1999 (Statutory Instrument 352 of 1999) (the “1999 SI”). There are three types of disqualification order in Ireland:
 - ancillary (as described in section 27 of the Act¹⁶⁵);

¹⁶². Section 38(2) (a)(ii), Road Traffic Act 1961 as substituted by s.12(a), Road Traffic Act 2006.

¹⁶³. Section 38(5) (b)(ii), Road Traffic Act 1961 as substituted by s.12(b), Road Traffic Act 2006.

¹⁶⁴. See Section 26, Road Traffic Act 1961 and Schedule 2 1961 Act as substituted by Section 26 Road Traffic Act 1995 and amended by Section 6(2), Road Traffic Act 2006.

¹⁶⁵. 27.—(1) (a) “Where a person is convicted of an offence under this Act or otherwise in relation to a mechanically propelled vehicle or the driving of any such vehicle (other than an offence in relation to which section 26 of this Act applies) or of a crime or offence in the commission of which a mechanically propelled vehicle was used, the court may, without prejudice to the infliction of any other punishment authorised by law, make an order (in this Act referred to as an ancillary disqualification order) declaring the person convicted to be disqualified for holding a driving licence”.

- special (as described in Article 28 of the Act¹⁶⁶); and
- consequential (as described in Article 26 of the Act¹⁶⁷).

15.4 Notion of criminal sanction and of administrative sanction in the Irish legal system

The majority of the offences detailed in the summary table below would be deemed to be administrative sanctions. They are deemed as such because sanctions and penalties in relation to these offences may be dealt with at the first instance by the Garda (an Irish police officer) at the scene by the issuance of a fine rather than by compelling the alleged guilty party to appear at court. The nature of the offence (*i.e.* whether it is categorised as serious or not) and the type of sanction or penalty which may be imposed are determining factors as to whether or not an offender will be required to go to court. In certain circumstances there is no discretion on the Garda's part and an offender is obliged to attend at a court sitting. See section 1.4 below for further discussion on the categorisation of offences in the Irish legal system.

Administrative sanctions are dealt with (*inter alia*) through fixed charges, revocation or endorsement of respective licences, disqualification and immobilisation of the vehicle. In Ireland, depending on the nature of the offence, drivers found to be in breach of certain road traffic legislative requirements may be offered a fixed penalty in

^{166.} 28.—(1) “Where an officer of the Garda Síochána has reasonable grounds for believing that a person who is the holder of a driving licence is by reason of disease or physical or mental disability unfit to drive any mechanically propelled vehicle whatsoever or any class or classes of mechanically propelled vehicles covered by such licence, such officer may apply to a Justice of the District Court having jurisdiction in the place in which such person ordinarily resides for an order under this subsection, and if the Justice is satisfied that such person is by reason of disease or physical or mental disability unfit to drive any mechanically propelled vehicle whatsoever or any such class or classes of mechanically propelled vehicles as are within the terms of the application, he may make the appropriate order declaring such person to be disqualified for holding a driving licence until he produces to the appropriate licensing authority a certificate of fitness”.

^{167.} 26.—(1) “Where a person is convicted of an offence specified in the Second Schedule to this Act, the court shall make an order (in this Act referred to as a consequential disqualification order) declaring him to be disqualified for holding a driving licence.”

lieu of prosecution in court. Penalty point offences are recorded on a driver's driving licence if:

- it is convicted of a driving offence that attracts penalty points, or
- it is served with a fixed-fine notice for an alleged offence that attracts penalty points and the driver opts to pay the fine rather than having the matter referred to the courts.

A penalty point is essentially a formal reprimand by the Gardai endorsed on a driver's driving licence record that shows the driver is guilty of a specific driving offence. Any driver accumulating 12 penalty points within any given three-year period will be automatically disqualified from driving for six months. The driver is required to surrender his/her licence to the appropriate licensing authority within 14 days of receiving notification of the disqualification. It is an offence not to surrender a licence and it is also an offence to drive while disqualified. Penalty points remain on the licence for a period of three years.

While penalty points are endorsed on a driver's driving licence, the points do not physically appear on the licence. Instead, the penalty points are recorded on the driver's driving licence record. These records are held on the National Vehicle and Driver file operated by the Department of Transport. The Road Safety Authority in Ireland states that there are now 42 road traffic offences that attract penalty points.

Criminal sanctions in respect of commercial road transport rules in the Irish legal system

Criminal sanctions in the Irish legal system are distinguished between those offences under which one may be convicted on summary offence (where a trial by jury is not required) or an indictable offence. Summary offences encompass the most minor criminal offences in the Irish legal system. At trial, summary offences remain simple, speedy, informal and are notable for the absence of a jury. Indictable offences on the other hand are offences that are more serious in nature with the possible penalties that can be imposed upon conviction being far more severe (including imprisonment). When prosecuted by indictment, one is entitled to a trial by jury for most offences. Many offences can be prosecuted either by summary conviction or indictment.

In relation to the prosecution of offences in Ireland (where those offences are not discharged by way of the payment of fixed charges by the offender in accordance

with the time limits prescribed by legislation), the state prosecutor in Ireland - the Director of Public Prosecutions (“DPP”) - has a discretion as to which legal means they wish to use to pursue an alleged offender. Offences such as these, which may be tried summarily or on indictment, are referred to as ‘hybrid offences.’ In deciding which means to prosecute an offence the DPP will have cognisance of the nature and seriousness of the offence and the severity of any potential punishment.

Concurrence between several sanctions

In the event of an offender committing two or more punishable offences at the same time it is at the Judge's discretion whether any prison sentences should run concurrently or whether any fines should be capped.

Concurrence between administrative and criminal sanctions

Criminal and administrative sanctions apply to the same infringements.

15.5 Scope of application of Irish criminal law

Residents of other European Member States are subject to the rules and penalties set out in this report just in a similar fashion as applied to Irish drivers. For instance reference to a driving licence in the Road Traffic legislation in Ireland refers to both an “Irish licence” or a “foreign licence” as the case may be¹⁶⁸. This definition of a “driving licence” brings foreign driving licence holders within the scope of the application of sanctions for road traffic offences, including a disqualification from holding a driving licence.

A significant development in Irish road traffic/transport legislation and its applicability to foreign drivers occurred through the implementation of Section 53(2) of

¹⁶⁸ An example of this is section 53 of The Road Traffic Act 2010 which states: Section 1(1) of the Act of 2002 is amended by substituting for the definitions of “entry”, “licence” and “licence record” the following: “ ‘entry’ in relation to a person, means: (a) the entry in the licence record relating to the person, or (b) where; (ii) the person is the holder of a foreign driving licence.”

the Road Traffic Act 2010. This section amends section 1 of the 2002 Act by inserting the following after section 1 of the 2002 Act:

“(1A) The Minister may prescribe by regulations the form of record to be kept or created in respect of a person ... (c) who is the holder of a foreign driving licence and who:

(i) makes a payment under section 37 or 44 of the Road Traffic Act 2010 in respect of an alleged penalty point offence referred to in section 2(1)(a), or

(ii) is convicted of a penalty point offence, for the purposes of endorsing penalty points under section 2 on the entry relating to the holder.”

All of the sanctions listed in the summary table below are applicable to foreign drivers, drivers from another Member State and drivers with a non-EU licence.

In Ireland any contravention of Regulation 561/2006/EC, including contraventions by drivers resident outside the State, in respect of driving time, breaks and rest periods by either drivers, transport undertakings and any other person to whose orders the offender was subject, shall be liable to a criminal sanction. Article 38 of the 2008 IE Regulations sets out rules regarding the treatment of drivers who are resident outside the State who act contrary to the provisions of Regulation 35 of the 2008 IE Regulations:

“(1) An enforcement officer who suspects on reasonable grounds that a person who does not ordinarily reside in the State

(a) is holding a driver card that has been falsified or has been fraudulently obtained, or

(b) is making use, or has made use, of another person’s driver card, may confiscate the card.

(2) An enforcement officer shall, as soon as practicable after confiscating a driver card in accordance with paragraph (2), return the card to the authority of the Member State that issued the card, together with a statement in writing setting out the circumstances in which the card was confiscated.”

Directive 2006/126/EC concerns rules relating to driving licences. For the purposes of Section 38 of the 1961 Act a valid driving licence from another EU

Member State (or member of European Economic Area EEA)¹⁶⁹ or a recognised foreign licence¹⁷⁰ will also be accepted¹⁷¹¹⁷². This provision has been implemented by section 56 of the Road Traffic Act 2010 which states that drivers holding a foreign driving licence will be deemed to hold a “driving licence” within the meaning of the 1961 Act and will therefore be subject to the same sanctions and infringements as Irish drivers. In a similar vein to Section 53, Section 56 of the Road Traffic Act 2010 provides:

“Section 3(1) of the Principal Act¹⁷³ is amended by; (a) substituting for the definition of “driving licence” the following: “ ‘driving licence’ means: (a) an Irish driving licence, or (b) a foreign driving licence.”

Section 64 of the Road Traffic Act 2010 amends Section 30 of the 1961 Act and Section 3 of the Road Traffic Act 2006 to ensure that penalty points and disqualifications can be applied to the holders of non-national driver licences.

Furthermore Section 9 of the 2002 Act provides for the recognition of Foreign Disqualification Orders¹⁷⁴.

With respect to foreign drivers, Regulation 3(1) of the 2012 IE Regulations provides that the Regulations apply to:

“(a) mobile workers who are employed by or who do work for one or more undertakings established in a Member State, and

(b) self-employed drivers,

participating in road transport activities to which either the Council Regulation or the AETR¹⁷⁵ applies.”

¹⁶⁹ Statutory Instrument No. 464/ 2008: European Communities (Recognition of Driving Licences of Other Member States) Regulations 2008.

¹⁷⁰. Statutory Instrument No. 527/ 2007: Road Traffic (Recognition of Foreign Driving Licences) Order 2007.

¹⁷¹. See s.23A, Road Traffic Act 1961 (as inserted by s.8, Road Traffic Act 2006).

¹⁷². Katie Dawson. ‘Road Traffic Law Handbook’ - Bloomsbury Professional 2010.

¹⁷³. The Road Traffic Act 1961.

¹⁷⁴. As of the 28th January 2010 disqualification orders imposed in the mainland United Kingdom and Northern Ireland can be recognised and enforced by the Irish authorities.

¹⁷⁵. “AETR” is defined in Article 2 as the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport done at Geneva on 1 July 1970.

It is clear therefore that foreign drivers who work for one or more undertakings established in a Member State and commit offences in Ireland are subject to sanctions imposed by the 2012 IE Regulations.

In addition Regulation 40 of Statutory Instrument 62/2008 contains rules on the extraterritoriality of Irish criminal law in the transport sector. It details that you can prosecute in Ireland for an offence that has been committed abroad, unless a penalty has already been applied.

15.6 Summary tables

In the Irish legal system the competent authorities are the following:

- An *Garda Siochána* (Irish Police Officers) impose fines and charge offenders.
- the Judiciary executes fines imposed and sentence offenders.
- the Department of Transport, Sport and Tourism, the National Car Testing Service and The Road Transport Authority revoke authorisations / permits when applicable.

The table below provides an overview of the administrative and criminal sanctions foreseen in the Irish legal system for the infringements of EU commercial road transport Regulations and Directives:

Table IE 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation No. 561 / 06 / EC	<u>Driving Times</u> <u>Road Traffic Act 1961</u>	Section 114 (1) (a)	Continuous period of driving exceeding five and a half hours.	Driver		Up to 3 months imprisonment Fine From €1,000 up to €2,000
		Section 114 (1) (b)	Any series of continuous periods of driving amounting in aggregate to more than 11 hours in any period of twenty-four hours beginning two hours after midnight	Driver		Up to 3 months imprisonment Fine From €1,000 up to €2,000
		Section 114 (1) (c)	Any period or series of periods of driving so	Driver		Up to 3 months imprisonment Fine

Table IE 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			arranged that the driver has not at least ten consecutive hours for rest in every period of twenty four hours beginning at the commencement of any period of driving			from €1,000 up to €2,000
	Rest Periods Statutory Instrument No. 62 of 2008	Section 35 (2)	An enforcement officer has power to order a driver to take a rest or break. The officer may require the driver to move the	Driver		Up to 6 months imprisonment Fine up to but not exceeding €5,000

Table IE 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			vehicle to a place where it is not a traffic hazard.			
		Section 35 (3)	<p>An enforcement officer has power to order a driver to take a rest or break.</p> <p>An officer who has given permission or imposed a requirement under paragraph (2) may board the vehicle concerned and accompany the driver to the place where the vehicle is not a traffic</p>	Driver		<p>Up to 6 months imprisonment</p> <p>Fine up to but not exceeding €5,000</p>

Table IE 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			hazard.			
Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)	Statutory Instrument No. 545 of 2007	Section 3 (a)	Guilty of an offence at a roadside check or at the premises of transport undertakings	Transport undertaking		First offence fine up to not exceeding €2,000 Second or subsequent offence fine: €5,000
Directive 2002/15/EC	Statutory Instrument No. 2 of 2005	Section 8 (1)	No mobile worker shall work for more than 6 hours without a break	Mobile Worker		Up to 6 months imprisonment First offence fine up to but not exceeding

Table IE 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						€5,000
		Section 8 (2)	Where a mobile worker's working time exceeds six hours but does not exceed nine hours, the worker shall be entitled to a break lasting at least 30 minutes and interrupting that time.	Mobile Worker		Up to 6 months imprisonment First offence fine up to but not exceeding €5,000
		Section 8 (3)	Where a mobile worker's working time exceeds nine hours, the worker shall be entitled to a	Mobile Worker		Up to 6 months imprisonment First offence fine up to but not exceeding

Table IE 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			break lasting at least 45 minutes and interrupting that period.			€5,000
		Section 8 (4)	Each break may be made up of separate periods of not less than 15 minutes each.	Mobile Worker		Up to 6 months imprisonment First offence fine up to but not exceeding €5,000

Table IE 1

SOCIAL RULES ON ROAD TRANSPORT
Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Section 8 (5)	An employer shall ensure that this Regulation is complied with in the case of each mobile worker employed by him	Mobile Worker		Up to 6 months imprisonment First offence fine up to but not exceeding €5,000

Table IE 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
<p>Regulation 3821/1985/EEC</p>	<p><u>Statutory Instrument No. 393 of 1986</u></p>	<p>Section 16</p>		<p>Owner of vehicle</p>		<p>Imprisonment for up to but not exceeding 6 months. Fine up to but not exceeding £1,000.</p>
		<p>Article 179, Paragraph 7 and 8</p>	<p>Non regularization of the equipment after that the police agent who has inflicted the sanction cautions the driver to regularise it within 10 days.</p>	<p>Driver or Transport undertaking</p>	<p>Seizure of the vehicle</p>	

Table IE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation No. 1071/2009/EC	<u>Statutory Instrument 697 of 2011</u>	Section 6	In determining whether an operator has satisfied or continues to satisfy the requirement of good repute the Minister may consider whether or not the operator or a person who holds a specified position with the operator has, within, the previous 10 years, been convicted of an offence specified in	Operator		On conviction of indictment, to a fine not exceeding €250,000. On summary conviction a fine not exceeding €5,000

Table IE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			the Schedule or been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules			
		Section 7	The operator concerned shall notify the Minister in writing of the fact of any conviction against any person referred to in Regulation 6 in certain instances.	Operator		On conviction of indictment, to a fine not exceeding €250,000 On summary conviction a Fine not exceeding €5,000

Table IE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Section 8	Where a person who holds a specified position with an operator is or has been convicted of an offence referred to in Regulation 6 he or she shall inform the operator in writing of the fact of the conviction.	Driver		On conviction of indictment, to a fine not exceeding €250,000 On summary conviction a Fine not exceeding €5,000
Regulation No. 1072/2009/EC	<u>Road Transport Act 2011</u>	Section 9 (1) (a)	A person shall not engage in the occupation of road	Road Haulage operator		A fine not exceeding €500,000 or to imprisonment for a

Table IE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			haulage operator, without holding a road haulage operator's licence			term not exceeding 3 years or to both. On summary conviction a Fine not exceeding €5,000 to imprisonment for a term not exceeding 6 months.
		Section 9 (1) (b)	A person shall not engage in the occupation of road passenger transport operator, without	Road passenger transport operator		A fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both. On

Table IE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			holding a road passenger transport operator's licence			summary conviction a Fine not exceeding €5,000 to imprisonment for a term not exceeding 6 months.
Regulation No. 1072/2009/EC	<u>Road Transport Act 2011</u>	Section 9	Road haulage operators shall not operate a vehicle without a valid licence	Road haulage transport operator		A fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both. On summary conviction a Fine not exceeding €5,000 to imprisonment for a term not exceeding 6

Table IE 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						months.
Regulation No. 1073/2009/EC	<u>Road Transport Act 2011</u>	Section 9	Road haulage operators shall not operate a vehicle without a valid licence	Road haulage transport operator		A fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both. On summary conviction a Fine not exceeding €5,000 to imprisonment for a term not exceeding 6 months.

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Directive 2008/68/EC	Statutory Instrument 617 of 2010	Section 17 (1)	A consignor shall not consign dangerous goods for carriage by road unless they are consigned in a manner that complies with the ADR	Consignor		A fine not exceeding €1,900
		Section 21 (1)	A carrier shall not undertake the carriage of dangerous goods	Carrier		A fine not exceeding €1,900
		Section 32 (1)	A loader shall not undertake the carriage of dangerous goods	Loader		A fine not exceeding €1,900

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Section 34	A packer shall not undertake the carriage of dangerous goods	Packer		A fine not exceeding €1,900
		Section 36	A filler shall not undertake the carriage of dangerous goods	Filler		A fine not exceeding €1,900
		Section 39	A tank-container operator and portable tank operator shall	Tank-container operator and portable tank		A fine not exceeding €1,900

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			not undertake the carriage of dangerous goods	operators		
		Section 44	Drivers and vehicle crew shall not undertake the carriage of dangerous goods	Drivers and vehicle crew		A fine not exceeding €1,900
Directive 96/53/EC	<u>Road Traffic Act 1961</u>	Section 12	Exceeding of the maximum authorized weight	User, owner or consignor	A breach of this section will also attract penalty points under section 2 of the 2002 Act as	A fine of €1,500.

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					follows: (a) on payment of a fixed charge under section 103 of the 1961 Road Traffic Act, 1 penalty point, (b) on conviction by a court 3 penalty points	
		Section 11	Offence to use in a public place a vehicle without a plate or certificate showing their maximum permissible	Owner		A maximum fine of €1,500 and/or three months imprisonment

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	Road Traffic Act 1968		weight			
Directive 2009/40/EC	Road Traffic Act 1961	Section 18 (1)	A person shall not use in a public place a mechanically propelled vehicle to which this section applies unless at that time there is in force in respect of the vehicle a test certificate	Driver and Owner	5 penalty points on conviction.	Summary Conviction: If a defendant is convicted of a second or subsequent conviction under Section 18 within a three year period, a consequential disqualification period of not less than one year will apply A fine of up to €2,000 or

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						imprisonment for a term of up to three months
		Section 19	Garda, who has reasonable grounds for believing that a vehicle they have observed being used in a public place requires a test certificate, can, within one month of so observing, make a lawful demand of the user and / or owner of the vehicle to produce a National Car Test Certificate, or any other	Driver		<p>Summary Conviction: First Offence: fine of up to €1,000</p> <p>Second Offence (under the same section): fine of up to €2,000</p> <p>Third / Subsequent Offence (under same section within 12 consecutive months):</p>

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			applicable certificate of roadworthiness, there and then, or within 10 days at a nominated Garda station.			fine of up to €2,000 and / or a term of imprisonment of up to 3 months
	Road Traffic Act 2002		A driver shall not drive a vehicle without a certificate of roadworthiness	Driver	5 Penalty Points and a fixed charge prescribed by court	
	Road Traffic Act 2002		A driver shall not drive a dangerously defective vehicle	Driver	5 Penalty Points and a fixed charge prescribed by court	
	Road Traffic Act 2002		A driver shall not drive a vehicle before remedying	Driver	3 Penalty Points and a fixed charge	

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			a dangerous defect		prescribed by court	
Directive 2006/126/EC	Road Traffic Act 1961	Section 38 (1)	Prohibits driving in a public place without a validly held driving licence.	Driver	2 Penalty Points will be endorsed on the drivers licence on Payment of Fixed Charge whilst on conviction, 5 Penalty Points will be endorsed on the drivers licence	Drivers who held a valid licence (other than a learner permit) which expired less than 12 months before the date of the offence) are liable on summary conviction to a fine of up to €1,000 Drivers who held a valid licence (other than a learner permit) which expired more

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						<p>than 12 months before the date of the offence – fine of up to €2,000</p> <p>Disqualified Drivers/ Drivers without licence/ Drivers who failed to produce required certificate of competency/ fitness to obtain licence – fine of up to €5,000 and/ or a term of imprisonment of up to 6 months</p>

Table IE 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Section 38(5)(a)	Driving a vehicle without a driving licence while disqualified	Driver	Disqualification period of one year	

Most infringements of the rules on commercial road transport are sanctioned with criminal sanctions in Ireland. Sanctions for infringements of social rules and of transport of dangerous goods are not dissuasive.

Table IE 5

Infringements of commercial road transport legislation

Type of infringement(s) and Article of reference in national legislation Corresponding EU legislation	Criminal sanction	Is it dissuasive?
<p>Please note that pursuant to Irish law most of the infringements on commercial road transport are sanctioned with criminal sanctions, but there are few exceptions (see table above).</p>		

15.7 Sanctions which could be considered substantially criminal in the Irish legal system

Table IE 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

Type of infringement and Article of reference in national legislation	Administrative sanction that could be qualified as criminal sanction	Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?	Is it dissuasive?
Corresponding EU legislation			Yes or not
There are no sanctions imposed by the Irish legislation implementing the EU directives and regulations on commercial road transport which are formally administrative but are substantively criminal.			

15.8 Effectiveness of the sanctions system

Based on the information provided by Road Transport Operator Licensing Department of Transport, Tourism and Sport, in 2010 the number of licences that were withdrawn by Ireland was 2 (see Annex IE.1).

We received also some figures concerning infringements and controls carried out in respect of the transport of dangerous goods.

The figures show that a substantial percentage of transport units checked in Ireland does not comply with the rules on transport of dangerous goods.

Table IE 7					
Checks On The Transport Of Dangerous Goods By Road					
		Place of registration of vehicle			Total number
		Country of check	Other EU MS	Third country	
Number of transport units checked on the basis of the contents of the load		683	46	0	729
Number of transport units conforming to ADR		513	31	0	544
Number of transport units not conforming to ADR		170	15	0	185
Number of transport units immobilised		33	9	0	42
Number of infringements noted according to risk category*	Risk category I	30	4	0	34
	Risk category II	36	0	0	36
	Risk category III	10	11	0	115
Number of penalties imposed, according to penalty type	Caution	120	11	0	131
	Fine	36	1	0	37
	Other	14	3	0	17

The following figures were provided by the Road Safety Authority (Annex IE 1.1) and concern the year 2010.

They concern infringements of social rules. We notice that infringements of the rules on driving time and rest periods are a substantial number. We also notice that infringements such as tachograph frauds are a substantial number.

We notice that Irish sanctions are not tailored to the seriousness of the infringements in the area of tachograph. We also notice that sanctions for infringements of social rules are not differentiated and tailored to the seriousness of the infringements.

Finally, we notice that sanctions for infringements of social rules, although qualified as criminal are not dissuasive. It could be argued that one of the reasons for this is that they address only drivers and not undertakings.

Please also note that based on the information received the maximum penalty for summary conviction is € ,5000 and or 6 months imprisonment. It is a matter for the court to determine the sanction applied in each case. The average fine imposed on Operators is € 1,600 and the average fine imposed on drivers is € 470 (Annex IE 1.1).

Table IE 8

2010

<u>Regulation (EC) No 561/2006</u>	Infringements	Most serious infringements	Number of infringements concerning foreign drivers and undertakings
Art. 5.1 Not respecting minimum ages for conductors	0	0	0
Art. 6.1 Exceed daily driving time of 9 h if possibilities to extend to 10 h not allowed Exceed extended daily driving time of 10 h if extension allowed	2242	448	21
Art. 6.2 Exceed weekly driving time	51	10	0
Art. 6.3 Exceed accumulated driving time during 2 consecutive week	158	31	0

Art. 7 Exceed uninterrupted driving time	9225	1985	205
Art. 8.2 Insufficient daily rest period of less than 11 h if reduced daily rest period not allowed; Insufficient reduced daily rest period of less than 9 h if reduce allowed; Insufficient split daily rest period of less than 3 h+9 h	3507	701	82
Art. 8.5 Insufficient daily rest period of less than 9 h for multi-manning	0	0	0
Art. 8.6 Insufficient reduced weekly resting period of less than 24 h Insufficient weekly resting period of less than 45 h if reduced weekly resting period not allowed	817	163	15

2010			
<u><i>Regulation (EEC) No 3821/85</i></u>	Infringements	Most serious infringements	Number of infringements concerning foreign drivers and undertakings
Art. 3.1 No type approved recording equipment installed and used	0	0	0
Art. 13 Recording equipment not correctly functioning (for example: recording equipment not properly inspected, calibrated and sealed) Recording equipment improperly used (not using a valid driver card, voluntary abuse, ...)	431	431	29
Art. 14.1 Not carrying a sufficient number of record sheets X Model of record sheet not approved X Not carrying enough paper for printouts	47	0	18

Art. 14.2 Undertaking not keeping record sheets, printouts and downloaded data	0	0	0
Art. 14.4 Driver holding more than one valid driver car Use of driver card which is not the driver's own valid card Use of defective or expired driver card	15	15	0
Art. 14.5 Recorded and stored data not available for at least 365 days	0	0	0
Art. 15.1 Use dirty or damaged sheets or driver cards and data legible Use dirty or damaged sheets or driver cards and data not legible Failure to apply for replacement of damaged, malfunctioning, lost or stolen driver card within 7 calendar days	117	23	0
Art. 15.2 Incorrect use of record sheets/driver cards Unauthorised withdrawal of sheets or driver card which has an impact on the record of relevant data	451	90	0

<p>Unauthorised withdrawal of sheets or driver card without any impact on data recorded</p> <p>Record sheet or driver card used to cover a period longer than that for which it is intended but no data is lost</p> <p>Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost</p> <p>Not using manual input when required to do so X</p> <p>Not using correct sheet or driver card not in the correct slot (multi-manning)</p>			
<p>Art. 15.3</p> <p>Time recorded on the sheet does not agree with official time of country of registration of the vehicle</p> <p>Incorrect use of switch mechanism</p>	4007	800	0
<p>Art. 15.5</p> <p>Surname missing on record sheet</p> <p>First name missing on record sheet</p> <p>Date of begin or end of use of the sheet missing</p> <p>Place of begin or end of use of the sheet missing</p> <p>Registration number missing on record sheet</p>	5993	1190	0

Odometer reading (start) missing on record sheet			
Odometer reading (end) missing on record sheet			
Time of change of vehicle missing on record sheet			
Art. 15.5a Symbol of country not entered in recording equipment	0	0	0
Art. 15.7 Refuse to be checked	0	0	0
Art. 15.7 Unable to produce records of current day Unable to produce records of previous 28 days Unable to produce records of the driver card if the driver holds one Unable to produce manual records and printouts made during the current day and the previous 28 days Unable to produce driver card X Unable to produce printouts made during the current day and the previous 28 days	115	115	0
Art. 15.8 Falsify, suppress, destroy data recorded on record sheets, stored in the recording equipment or on the driver card or print-outs from the recording equipment	432	432	0

<p>Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified</p> <p>Manipulation device that could be used to falsify data and/or printouts information present on vehicle (switch/wire ...)</p>			
<p>Art. 16.1</p> <p>Not repaired by an approved fitter or workshop</p> <p>Not repaired en route</p>	0	0	0
<p>Art. 16.2</p> <p>Driver not marking all information for the periods of time which are no longer recorded while recording equipment is unserviceable or malfunctioning</p> <p>Driver card number and/or name and/or driving licence number missing on temporary sheet</p> <p>Signature missing on temporary sheet</p>	0	0	0
<p>Art. 16.3 Lost or theft of driver card not formally declared to the competent authorities of the Member State where the theft occurred</p>	0	0	0

Table IE 9

2010

<u>Directive 2002/15/EC</u>	Infringements	Most serious infringements	Number of infringements concerning foreign drivers and undertakings
<p>Art. 4</p> <p>Exceeding the maximum average weekly working time fixed in 48 hours or in 60 hours only if, over four months, an average of 48 hours a week is not exceeded</p> <p>Failure to ask to the mobile worker to provide in writing for an account of time worked for another employer</p> <p>Failure of the mobile worker to provide in writing for an account of time worked for another employer</p>	0	0	0
<p>Art. 5</p> <p>Working six consecutive hours</p>	0	0	0

Table IE 9

2010

<u><i>Directive 2002/15/EC</i></u>	Infringements	Most serious infringements	Number of infringements concerning foreign drivers and undertakings
without a break Working time not interrupted by a break of at least 30 minutes, if working hours total between six and nine hours Working time not interrupted by a break of at least 45 minutes, if working hours total more than nine hours			
Art. 7 Exceeding the maximum limit of daily working time of ten hours in each 24 period if night work is performed	0	0	0
Art. 9 Failure to inform mobile workers	0	0	0

Table IE 9

2010

<u><i>Directive 2002/15/EC</i></u>	Infringements	Most serious infringements	Number of infringements concerning foreign drivers and undertakings
<p>of the relevant national requirements, the internal rules of the undertaking and agreements between the two sides of industry, in particular collective agreements and any company agreements, concerning the working time of mobile workers</p> <p>Failure of the employer to record the working time of persons performing mobile road transport</p> <p>Failure to keep the records of the working time of persons performing mobile road transport for at least two years after the end of the period covered</p>			

Table IE 10

2010

<u>Most serious infringements of EU rules foreseen in Annex IV of Regulation (EC) No 1071/2009 that might imply loss of good repute and therefore lead to the withdrawal of the licence of the transport undertaking</u>	Most serious infringements	Number of infringements concerning foreign drivers and undertakings
driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents	15	0

16 ITALY - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR

16.1 Social rules on road transport

16.1.1 Rules on Driving Times and Rest Periods

16.1.1.1 Regulation (EC) No 561/2006

The Regulation (EC) No 561/2006 has been implemented by Legislative Decree No. 285 of 30 April 1992¹⁷⁶ (*Codice della Strada*, hereinafter “Highway Code”). The sanction system related to the infringements of rules on driving times, breaks and rest periods envisaged in the Regulation (EC) No 561/2006 is provided for in Article 174 of the Highway Code.

As to the subject to whom the penalties are applicable, Paragraph 10, of Article 174 of the Highway Code specifies that the sanctions apply to the driver, as well as to the crew members.

Article 174, Paragraph 10, provides that the Police Agent who has detected the infringements to driving times, breaks and rest periods can order the driver to stop for resting and he is also entitled to withdraw the driving documents, until the rest period has been observed.

As to the extraterritoriality issue, Article 174, Paragraph 13, of the Highway Code provides that, when the infringements on driving times, breaks and rest periods committed in another EU Member State are detected in Italy, the Police is entitled to

¹⁷⁶ Legislative Decree of 30 April 1992 No. 285, in the Italian Official Journal (hereinafter in this Chapter, the “OJ”) of 18 May 1992, No. 114, as modified by Law No. 120 of 29 July 2010, *Disposizioni in materia di sicurezza stradale*, in OJ of 29 July 2010 No. 175, and interpreted by Note No. 13944 of 5 August 2010 of the Ministry of Labour and Social policies and the Department of the Public Security of the same Ministry.

apply the sanctions envisaged in the Italian Highway Code, unless the same infringements has been already detected in another Member State.

This provision fills the legislative gap which previously hampered the application of the sanction system to foreign drivers or vehicles, that is to say the impossibility to contest the fine before the Italian Jurisdictional Authorities (*Prefetto* or *Giudice di Pace*), due to the fact that Articles 203 and 204 - *bis* of the Highway Code provide a criterion of territorial competence (*locus commissi delicti*).

Now, Article 174 establishes that the place of commission of the infringement has to be identified with the place in Italy in which the infringement has been detected. For instance, if the Traffic Police Agents have discovered in Rome that the driver has infringed in the last 28 days the rules on driving times when he was travelling abroad, they are entitled to apply the corresponding sanction foreseen in the Italian Highway Code for the same infringements, while the driver could come before the Italian Courts of Rome to contest the fine.

It is noteworthy that the Italian ministry of Labour, Health and Social policies plays an important role in the control of the activity on the road transport sector. In fact, he has the power to order inspections at the premises of the employers to check the working time, driving times and rest periods of the workers.

Driving times

(i) Article 174 of the Highway Code

Article 174, Paragraph 4 - 7, of the Highway Code introduces different thresholds of penalty for the infringements of rules on driving times.

If the driver exceeds the daily driving time limits:

- up to 10 %, he is punished with a pecuniary sanction from 38 € to 152 € (Paragraph 4);
- of more than 10%, he can be fined with a pecuniary sanction from 300 € up to 1,200 € (Paragraph 5);
- from 10 % to 20%, he can be fined with a pecuniary sanction from 300 € to 1,200 € (Paragraph 6);

- more than 20%, he can be fined with a pecuniary sanction from 400 € to 1,600 € (Paragraph 6).

According to Paragraph 7, if the driver has exceeded the weekly driving time:

- up to 10%, he can be fined with a pecuniary sanction from 38 € to 152 €;
- from 10 % to 20%, he can be fined with a pecuniary sanction from 250 € to 1,000 €;
- for more than 20%, he can be fined with a pecuniary sanction from 400 € to 1,600 €.

If the driver has exceeded the biweekly driving time:

- up to the 10%, he can be fined with a pecuniary sanction from 38 € to 152 €;
- from 10 % to 20%, he can be fined with a pecuniary sanction from 250 € to 1,000 €;
- for more than 20%, he can be fined with a pecuniary sanction from 400 € to 1,600 €.

All those fines may be increased by one third when the infringement has been committed between 22 p.m. and 7 a.m. of the following day.

Breaks

(i) Article 178 of the Highway Code

Article 178, Paragraph 8, of the Highway Code fines all the infringements on break time with a pecuniary sanction varying from 155 € to 620 €.

Under Article 195, Paragraph 2–bis, of the Highway Code, the fine may be increased by one third when the infringement has been committed between 22 p.m. and 7 a.m. of the following day.

Rest periods

(i) Article 174 of the Highway Code

Article 174, Paragraphs 4-6, of the Highway Code introduces three different thresholds of penalty for the infringements of the rules on the daily rest period.

If the driver has not respected the rest period time:

- up to 10%, he can be fined with a pecuniary sanction from 200 € to 800 € (Paragraph 4);
- from 10 % to 20%, he can be fined with a pecuniary sanction from 350 € to 1,400 € (Paragraph 5);
- more than 20%, he can be fined with a pecuniary sanction from 400 € to 1,600 € (Paragraph 6).

All those fines may be increased by one third when the infringement has been committed between 22 p.m. and 7 a.m. of the following day.

Article 174, Paragraph 7, of the Highway Code introduces two different thresholds of penalty for the infringements of the rules on weekly rest period.

If the driver has infringed the rules on the weekly rest period time:

- up to the 10%, he can be fined with a pecuniary sanction from 250 € to 1,000 €;
- from 10% to 20%, he can be fined with a pecuniary sanction from 350 € to 1,400 €;
- more than 20%, he can be fined with a pecuniary sanction from 400 € to 1,600 €.

All those fines may be increased of one third when the infringement has been committed between 22 p.m. and 7 a.m. of the following day.

Recidivisms

Article 174, Paragraph 11, states that the Road Agent who has detected an infringement related to driving times, breaks and rest periods, orders to the driver to not continue his travel without having respected the prescribed breaks or rests periods. At this purpose, the Road Agent temporary revokes the documents, which will only be returned to the driver when he has rested (at this purpose, the driver has to go to the Police Station to which the traffic agent belongs).

If the driver who has committed any infringements foreseen in Paragraphs 4, 5, 6, 7, 8, and 9, is caught in the act of circulating, he is subject to the pecuniary sanction of 1,769 € up to 7,078 €. The driving licence and the circulation card are withdrawn until the prescribed rest period has been observed.

Article 174, Paragraph 18, provides also that the repeated violations of the Regulation No. 561/2006 may affect the good repute requirement of the transport undertaking.

Transport undertaking's liability

(i) Article 174 of the Highway Code

Paragraph 13 of Article 174 of the Highway Code foresees that the transport undertaking is to be held jointly liable with the driver who has committed the infringements for the payment of the pecuniary sanctions.

However, Paragraph 14 of Article 174 of the Highway Code sets forth that the transport undertaking shall be held liable when:

- he does not observe the rules contained in the Regulation (EC) No. 561/2006, without specifying the types of infringement;
- he does not keep the required documents;
- these documents are expired, incomplete or altered.

The transport undertaking may be sanctioned with a fine varying from 307 € up to 1,228 € for each employee and for each infringement. This does not exclude the application of criminal sanctions where the action is a criminal offence.

In case of repeated infringements, Paragraph 15 provides that the transport undertaking may be subject to the suspension of the transport authorisation for a period comprised between 1 up to 3 months.

However, in case of recidivism, the transport operator may be subject to the decadency or repeal of the authorisation (Paragraph 16).

Foreign drivers

Article 135, Paragraph 6, of the Highway Code provides that drivers with a non – EU licence are subject to the same obligations and provisions contained therein, as well as to the sanction system provided for the Italian drivers.

Article 207 regulates the application of sanctions when the infringement is committed with vehicles registered abroad or vehicles registered in other EU Member States. It foresees that if a deposit is not given, the vehicle is seized. The infringer can also pay immediately a reduced amount.

16.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)

Directive 2006/22/EC has been transposed by Law Decree No. 144/2008¹⁷⁷ (hereinafter, the “Law Decree 144/2008”).

The Law Decree 144/2008 addresses all the checks required on drivers, transport companies and vehicles which fall under the scope of Regulation (EEC) No. 3821/85.

The Law Decree 144/2008 contains several provisions regarding the check system, the number and the modalities of these controls, depending on whether they are carried out on the road (roadside checks) or at the transport operator premises¹⁷⁸.

More specifically, Article 9 of the Law Decree 144/2008 foresees that all the absences of the worker from work due to sickness, annual leave or when the driver has driven another vehicle, has to be recorded on an electronic and printable form and maintained by the transport operator for at least one year. Article 9 applies only when those absences do not fall within the scope of the Regulation (EC) No. 561/2006.

The driver who does not maintain the documents or cannot present them, or they are incomplete or altered, is subject to a fine of 143 € up to 570 €. The same sanction may be applied to the transport operator.

The most interesting aspects of Law Decree 144/2008 is represented by its Annex III, which has been introduced by Legislative Decree 23 December 2010, No.

¹⁷⁷ Legislative Decree 4 August 2008, No. 144, *Attuazione della direttiva 2006/22/CE, sulle norme minime per l'applicazione dei regolamenti n. 3820/85/CEE e n. 3821/85/CEE relativi a disposizioni in materia sociale nel settore dei trasporti su strada e che abroga la direttiva 88/599/CEE*, in OJ of 17 September 2008, No. 218.

¹⁷⁸ Article 2, Paragraph 1 of the Legislative Decree 144 of 4 August 2008 envisages also the Authority which is competent for the coordination activities foreseen in Article 7 of the Directive 2006/22 is Ministry of Transport.

245¹⁷⁹(hereinafter, the “Legislative Decree 245/2010”). Annex III, complying with Article 9, Paragraph 3, of Directive 2006/22/EC, contains some guidelines on the most common kinds of infringements to Regulation (EC) No. 561/2006 and the related seriousness. It replicates the content of the corresponding Annex to the Directive.

16.1.1.3 Directive 2002/15/EC

The Directive 2002/15/EC has been implemented by Legislative Decree of 19 November 2007, No. 234 (hereinafter, the “Legislative Decree 234/2007”)¹⁸⁰.

Article 4, Paragraph 1, of the Legislative Decree 234/2007 envisages that the average weekly working time period cannot exceed 48 hours, and that in any case, the maximum amount has to be 60 hours if during the previous 4 months, the average limit of 48 hours has been respected.

Article 9 of Legislative Decree 234/2007 sets forth the existing sanctions for the infringement of the provisions concerning the maximum amount of working time allowed, rest period and breaks.

More specifically, Article 9, Paragraph 1, foresees that, in case of infringement of the provisions on the average (48 h) and maximum (60 h) weekly working time, a pecuniary fine could be imposed varying from 130 € up to 780 € for each worker and for each period when the exceeding is up to 10% of the time limit.

However, when the exceeding time is more than the 10 % of the time limit, the fine may vary from 260 € up to 1,560 € for each worker and for each period.

Article 5 of Legislative Decree 234/2007 provides that drivers cannot work more than 6 hours in a row without a break. The working time has to be interrupted by a break of at

¹⁷⁹ Legislative Decree of 23 December 2010, No. 245, *Attuazione delle direttive 2009/4/CE e 2009/5/CE, che modificano la direttiva 2006/22/CE, sulle norme minime per l'applicazione dei regolamenti (CEE) numeri 3820/85 e 3821/85, relativi a disposizioni in materia sociale nel settore dei trasporti su strada e che abrogano la direttiva 88/599/CEE* in OJ of 20 January 2011, No. 15. The Legislative Decree 245/2010 has been adopted to implement Directive 2009/4/EC and 2009/5/EC, modifying Directive 2006/22/EC.

¹⁸⁰ Legislative Decree of 19 November 2007, No. 234, *Attuazione della direttiva 2002/15/CE concernente l'organizzazione dell'orario di lavoro delle persone che effettuano operazioni mobili di autotrasporti*, in OJ of 17 December 2007, No. 292.

least thirty minutes for a working time varying from 6 up to 9 hour of work, or at least of 45 minutes if the working time exceeds 9 hours.

The same provision foresees that the breaks can be divided into period of 15 minutes each.

In case of infringements of the abovementioned Article 5, the fine may vary from 105 € up to € 630 under Article 9, Paragraph 2.

As to the rest periods, Article 6 of Legislative Decree 234/2007 recalls Regulation No. 561/06. In case of infringement, the fine may vary from 150 € up to 630 €.

Concerning the night work, Article 7 of Legislative Decree 234/2007 provides that, in case the driver has carried out night work, the daily working time cannot exceed 10 hours for each period of 24 hours. In case of infringement, the fine may vary from 300 € up to 900 € (Article 9).

Article 8, Paragraph 2, of the Legislative Decree 234/2007 foresees that the working time of drivers has to be recorded. Furthermore, the employers have to be held responsible for the record of the working time of their employees. In case of violation of this disposition, they are punished with a fine varying from 250 € up to 1,500 €.

However, the fines provided by Article 9 of the Legislative Decree 234/2007 does not exclude the application of the sanctions foreseen in Articles 174 and 178 of the Highway Code.

16.1.2 Tachograph

16.1.2.1 Regulation (EEC) No 3821/85

Sanctions for infringements against Regulation (EEC) No 3821/85 are contained in Article 179 of the Highway Code and in Article 19 of the Law 727/78¹⁸¹ (hereinafter, “Law 727/78”).

¹⁸¹ Law 13 November 1978 No. 727, *Attuazione del regolamento (CEE) n. 1463/70 del 20 luglio 1970, e successive modificazioni e integrazioni, relativo all'istituzione di uno speciale apparecchio*

(i) Article 179 of the Highway Code

1. Tachograph

Article 179, Paragraph 1, of the Highway Code provides that, in the cases foreseen by the Regulation (EEC) No 3821/85, vehicles have to circulate equipped of tachograph having the same characteristics and the same instructions foreseen in the Regulation.

Article 179, Paragraph 2, of the Highway Code foresees that, when the tachograph is not installed or used, or the device it is not responding to the standards imposed by the law, or malfunctioning, or it lacks of record sheets or of driver's card, or, when they exist, they are not used, the circulation of the vehicle may be sanctioned with a fine varying from 798 € to 3.194 €.

However this amount can be doubled when:

- the seals have been damaged;
- the tachograph has been altered.

Under Paragraph 9, the accessory administrative sanction of the suspension of the driving licence from 15 days up to 3 months is applied.

Under Paragraph 7 and 8, the police agent who has inflicted the sanction cautions the driver to regularise it within 10 days. If the driver or the transport undertaking does not arrange the regularisation of the equipment within the deadline, the accessory administrative sanction of the seizure of the vehicle applies.

2. Speed control equipment

Article 179, Paragraph 2 *bis*, of the Highway Code foresees that, when the speed control equipment is not installed, or the device is not responding to the standards imposed by the law, or malfunctioning, or it lacks of record sheets or of the memory card, the circulation of the vehicle may be sanctioned with a fine varying from 891 € to 3,565 €.

di misura destinato al controllo degli impieghi temporali nel settore dei trasporti su strada, in OJ 23 November 1978, No. 328.

This amount may be doubled when the speed control equipment has been altered.

Under Paragraph 9, the accessory administrative sanction of the suspension of the driving licence from 15 days up to 3 months is applied. However, whereas the infringement is the alteration of the speed control equipment, the revocation of driving licence is inflicted.

Under Paragraph 7 and 8, the police agent who has inflicted the sanction cautions the driver to regularise it within 10 days. If the driver or the transport undertaking does not arrange the regularisation of the equipment within the deadline, the accessory administrative sanction of the seizure of the vehicle applies.

3. Liability of the transport undertaking

Article 179, Paragraph 3, of the Highway Code foresees that, when the transport undertaking or the person having an authorisation to circulate allows the circulation of a vehicle:

- lacking of the speed control equipment or tachograph, and of record sheets;
- having a speed control equipment or tachograph that does not work;
- having a speed control equipment or tachograph not responding to the standards imposed by the law, or malfunctioning; or
- the record sheets or of the memory card are not used,

he may be sanctioned with a fine varying from 767 € up to 3,068 €.

An accessory and cumulative sanction, consisting in the suspension of the licence or of the authorisation applied by the Department of Road Transport of the Ministry of Transport, could be applied when the abovementioned infringement has been observed three times in the same year (Paragraph 4).

Paragraph 5 specifies also that, where the driver, the transport undertaking and the employer are the same person, the sanctions are only imposed once.

The infringements envisaged by Article 179, Paragraph 3, of the Highway Code have to be transmitted to the Department of the Road Transport.

(ii) Article 19 of Law 727/78

Article 179, Paragraph 10, recalls Article 19 of Law 727/78, which represents a residual provision which applies whenever Article 179 the Regulation No. 3821/1985/CEE does not. Indeed, Law 727/78 is the legislative piece transposing the previous regulation concerning the tachograph: some of its articles have been recently repealed while Article 19 still exists. It refers both to the driver and transport operator. Thus, this Article fines the following conducts:

- Use of record sheets non complying with standards;
- Non-fill in of record sheets;
- Use of dirty, damaged or non readable record sheets;
- Non correspondence between effective time indicated and the recording time;
- Impossibility to show record sheets of the running week or of the last day of the previous working week.

Article 19 fines the infringements with a pecuniary sanction encompassed between 48 € up to 94 €.

Competent Authority

Article 179, Paragraph 6 *–bis* of the Highway Code states that when the Traffic Police suspects the alteration, manumission or malfunctioning of the tachograph or of the speed control equipment, he is entitled to order an immediate verification of the disposals' functioning.

Foreign drivers

Article 135, Paragraph 6, of the Highway Code provides that drivers holding a non – EU licence are subject to the same obligations and provisions contained therein, as well as to the sanction system provided for the Italian drivers.

Article 207 disciplines the application of sanctions when the infringement is committed with vehicles registered abroad or vehicles registered in other EU Member

States. It foresees that if a deposit is not given, the vehicle is seized. The infringer can also immediately pay a reduced amount.

16.2 Road package

16.2.1 Regulation (EC) No 1071/2009

The implementation of Regulation (EC) No 1071/2009 has been envisaged in Article 3 Law No. 96 of 4 June 2010¹⁸² (hereinafter, “Law 96/2010”), which has delegated to the Italian Government the power of introducing a new legislative framework for the sanctions connected to the infringement of the provisions contained in the EU Regulation whereas any criminal and or administrative sanction has been already envisaged.

Based on this provision, the Italian Ministry of Infrastructures and Transport has adopted the Ministerial Decree No. 291 of 25 November 2011¹⁸³ (hereinafter, the “Ministerial Decree 291/2011”).

As to the sanction system, the Article 12, Paragraph 6, of the Ministerial Decree 291/2011 foresees that, as far as the Italian Government does not exercise this power of delegation as set out by Law 96/2010 envisaged at Article 10 of the Ministerial Decree 291/2011, the previous piece of legislation on the matter applies. Therefore, Article 12,

¹⁸² Law 4 June 2010 No. 96, *Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee - Legge comunitaria 2009*, in OJ of 25 June 2010, No. 146.

¹⁸³ Decree of the ministry of Transport 25 November 2011, *Disposizioni tecniche di prima applicazione del Regolamento (CE) n. 1071/2009 del Parlamento europeo e del Consiglio del 21 ottobre 2009, circa norme comuni sulle condizioni da rispettare per esercitare l'attività di trasportatore su strada e abroga la direttiva 96/26/CE del Consiglio*, available at: http://www.mit.gov.it/mit/mop_all.php?p_id=11182.

last paragraph, states that the sanctions contained in the Legislative Decree No. 395 of 22 December 2000¹⁸⁴ will be relevant (hereinafter, “Legislative Decree 395/2000”).

More specifically, Article 19, Paragraph 1, of Legislative Decree 395/2000 foresees that, in case of death, physical incapacity, disappearance and diminishing of the legal capacity of the person entitled of the running of the transport activity (as provided for in Article 10, Paragraph 1, of the Legislative Decree 395/2000), the transport operator has to communicate to the competent Authority, within the term of 30 days, the provisional prosecution of the transport activity management¹⁸⁵. If it does not comply with this obligation, it will be subject to the payment of an amount which could vary from 2 up to 6 million liras (around 1,032 € and 3,098 €).

Article 19, Paragraph 2, penalises the lack of communication of the loss of good repute of the transport manager or of the transport operators with a fine from 10 up to 30 million of liras (around 5,164 € and 15,493 €).

Article 19, Paragraph 3, penalises the lack of communication of the loss of financial standing of the transport manager or of the transport operators with a fine from 3 up to 9 million of liras (around 1,549 € and 4,648 €).

Article 19, Paragraph 4, penalises the lack of communication of loss of professional competence of the transport manager or of the transport operators with a fine from 5 up to 15 million of liras (around 2,582 € and 7,7 46€).

In case of abusive exercise of the profession, Article 26 of the Law No. 298 of 1974¹⁸⁶ (hereinafter, the “Law 298/1974”) applies. Notably, any person who circulates without being chartered to the Transport Operator Register, or when it has been

¹⁸⁴ Legislative Decree of 22 December 2000 No. 395, *Attuazione della direttiva 98/76/CE del 1° ottobre 1998 del Consiglio dell'Unione europea, modificativa della direttiva 96/26/CE del 29 aprile 1996 riguardante l'accesso alla professione di trasportatore su strada di merci e di viaggiatori, nonché il riconoscimento reciproco di diplomi, certificati e altri titoli allo scopo di favorire l'esercizio della libertà di stabilimento di detti trasportatori nel settore dei trasporti nazionali ed internazionali*, in OJ of 30 December 2000, No. 303.

¹⁸⁵ See Note of the Ministry Of Transport No. 2 of 2 December 2011, available at the following website: http://www.mit.gov.it/mit/site.php?p=normativa&o=vd&id=1391&id_cat=&id_dett=0.

¹⁸⁶ Law of 6 June 1974 No. 298, *Istituzione dell'albo nazionale degli autotrasportatori di cose per conto di terzi, disciplina degli autotrasporti di cose e istituzione di un sistema di tariffe a forcilla per i trasporti di merci su strada*, in OJ of 31 July 1974, No. 200.

suspended or deleted from the register, is punished with the pecuniary fine varying from 2,000 € up to 12,000 €. This sum could be raised to 2,900 € up to 18,000 € when the author of the violation has infringed the rules concerning the freight road transport in the previous five years.

The transport operator which has allowed the driver to abusively circulate, is fined with a pecuniary sanction varying from 1,700 € up to 10,500 €.

Article 46 of the law foresees that, any person (driver or transport operator) who orders the transport without having the necessary licence or authorisation, or violating the conditions and limits contained therein, is sanctioned with a pecuniary fine varying from 2,900 € up to 18,000 €.

Article 46–*bis* of the same law punishes the violation of the rules on cabotage, with a pecuniary fine varying from 5,000 € up to 15,000 € and the seizure of the vehicle for three months (six in case of recidivism).

Under Article 207 of the Highway Code, the contravener can chose to pay the fine immediately -and in this case, the amount is halved - or later on. In the latter case, he has to pay a caution which is the half of the maximum fine foreseen by the provision violated or, in case of a vehicle registered in EU, an amount which is the half of the reduced amount.

If the contravener cannot pay the caution, the vehicle is blocked until the payment has occurred and, in any case, for maximum 60 days. The owner, or the driver, has to park the vehicle in the place designed by the Road Police Officer and bears the costs linked to the custody (Article 214 of the Highway Code).

To sum up, no criminal sanctions have been provided, and all the infringements are punished through the payment of a pecuniary fine. However submission of fake documents might be punished by a criminal sanction if the action fulfils all the criteria to be qualified as a forgery (see table below).

Please note that the Italian sanction system does not foresee a specific sanction system for those infringements that are qualified as most serious infringements described in Annex IV of Regulation (EC) No. 1071/2009.

16.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009

The Regulation (EC) No 1072/2009 (hereinafter, the “Regulation 1072/2009”) and the Regulation (EC) No 1073/2009 (hereinafter, the “Regulation 1073/2009”) have been implemented in the Decree of the Ministry of Transport No. 231 of 11 November 2011¹⁸⁷ (hereinafter, the “Decree 231/2011”).

The Article 1 of the Decree 231/2011 foresees that the licence for the international transport of freight and the licence for passengers is released for 5 years. The sanctions for the circulation without the driving licence for transport is contained in article 180 of the Highway Code, which provides for a sanction varying from 39 € up to 159 €.

As to the Regulation 1072/2009, the Ministry of Transport has provided an interpretative note on the application of the Regulation 1072/2009¹⁸⁸. Notably, it envisages that the competent Authority for releasing and renewing the Community licence is the Italian Ministry of Transport.

In case of abusive exercise of the profession, Article 26 of the previous Law 298/1974¹⁸⁹ still applies. It foresees that, whoever circulates without being chartered to the Transport Operator Register, or when it has been suspended or deleted from the register, is punished with the pecuniary fine from 2,000 € up to 12,000 €. This sum could be raised from 2,900 € up to 18,000 € when the author of the violation has infringed a rule concerning the freight road transport in the previous five years.

¹⁸⁷ *Decreto Diringenziale* of the Ministry of Transport of 11 November 2011, No. 231.

¹⁸⁸ Note of the Italian Ministry of Transport of 25 November 2011 No. 1, Prot. No 25760, *Direzione generale trasporto stradale e intermodalità - divisione 4. Regolamento (CE) 1072/2009: Licenze comunitarie per il trasporto internazionale di merci su strada e copie conformi. Attivazione del rilascio delle copie conformi con procedura informatizzata. Cabotaggio.*, available at the following link: http://www.mit.gov.it/mit/mop_all.php?p_id=11189.

¹⁸⁹ Law of 6 June 1974 No. 298, *Istituzione dell'albo nazionale degli autotrasportatori di cose per conto di terzi, disciplina degli autotrasporti di cose e istituzione di un sistema di tariffe a forcilla per i trasporti di merci su strada*, in OJ of 31 July 1974, No. 200.

Article 46–*bis* of the same law punishes the violation of the rules on cabotage, with a pecuniary fine varying from 5,000 € up to 15,000 € and the seizure of the vehicle for three months (six in case of recidivism).

Furthermore, the transport operator which has allowed the driver to abusively circulate, is fined with a pecuniary sanction varying from 1,700 € up to 10,500 €.

The same Article inflicts the accessory sanction of the seizure of the vehicle for three months. In case of reiterate infringement, a confiscation of the vehicle will be applied.

Article 46 of the Law 298/1974 punished the abusive transport of goods or passenger providing for fines which may vary from 4 million liras to 24 million liras (around 2,000 € to around 14,000 €). The fine may vary from 5,000 (2,900 €) to 30 million liras (around 18,000 €) if two infringements are repeated in 5 years.

Article 46 –*bis* instead, punished the infringements of the rules on cabotage with a fine varying from 5,000 € to 15,000 €. The same Article inflicts the accessory sanction of the seizure of the vehicle for three months. In case of reiterate infringement, the seizure of the vehicle will last for six months.

As to the Regulation 1073/2009, no specific sanctions are provided for in the Italian sanctioning system. However, the rules implementing the previous legislation (Regulation No. 684/92/EEC, hereinafter “the Regulation 684/92/EEC”), and contained in Law No. 218/2003¹⁹⁰ (hereinafter, the “Law 218/2003”) still apply.

Article 6 of Law 218/2003 foresees that when the transport is carried out by a driver not regularly employed, the Transport operator may be fined with a fine varying from 500 € up to 2,000 €.

Articles 9 and 10 of Law 218/2003 fine the circulation of a bus registered in a foreign country travelling without the necessary authorizations or documents with a pecuniary sanction varying from 1,500 € up to 6,000 €. Instead, when the transport is carried out not complying with the authorization, the fine will vary from 500 € up to 2,000 €.

¹⁹⁰ Law of 11 August-2003 No. 218, *Disciplina dell'attività di trasporto di viaggiatori effettuato mediante noleggio di autobus con conducente*, in OJ of 18 August 2003, No. 190.

This sum can be reduced of one third in case of prompt payment (Article 207 of the Highway Code), or when the infringement consists of travelling with modalities different from those indicated in the authorisation of in the documents (Article 9, Paragraph 2 of Law 218/2003).

Foreign drivers

Article 135, Paragraph 6, of the Highway Code provides that drivers holding a non – EU licence are subject to the same obligations and provisions contained therein, as well as to the sanction system provided for the Italian drivers.

16.3 Standards of vehicles and load and necessary licences

16.3.1 Directive 2008/68/EC

The Legislative Decree of 27 January 2010, No. 35¹⁹¹ (hereinafter, the “Legislative Decree 35/2010”) has implemented Directive 2008/68/EC on the inland transport of dangerous goods.

The Article 1 of the Legislative Decree 35/2010 states that it applies at the transport of dangerous goods by road, rail or inland - waterway.

The transport of dangerous goods, according to Article 3 of the same piece of legislation, may be authorised by the Italian competent Authority under certain conditions. When these conditions are infringed, the Italian law provides for pecuniary sanctions and, in some cases, the arrest of the subject having infringed the law.

Article 6 of the Legislative Decree 35/2010 deals with the transport of dangerous goods by road. However, it does not introduce a new provision on this field, but modifies the existing rules contained in Article 168 of the Highway Code.

¹⁹¹ *Norme attuative dell'articolo 11 del decreto legislativo 27 gennaio 2010, n. 35, concernente l'attuazione della direttiva 2008/68/CE, relativa al trasporto interno di merci pericolose*, in OJ of 11 March 2010, No. 58.

Paragraph 8 of Article 168 of the Highway Code states that the transport of dangerous good without the necessary authorisation or - when the authorisation exists - infringing the conditions prescribed therein, is subject to a fine which may vary from 1,886 € up to 7,546 €. Paragraph 8 – *bis* adds that, in those cases, the suspension of the card of circulation and of the driving licence for a period between 2 up to 6 months. Furthermore, the repeated violations may entail the administrative seizure of the vehicle.

Paragraph 9 of Article 168 of the Highway Code provides that a fine between 382 € and 1,534 € for the infringements of the provisions concerning:

- the technical requirements of the, vehicles, tankers and containers transporting the dangerous substances;
- the lack or the incorrect placement of the warning signals and labels of danger on the vehicles, tankers and containers;
- the modalities of bay;
- the loading and transport operations.

Those infringements entail also the suspension of the card of circulation and of the driving licence¹⁹² for 2 up to 6 months.

When the carrier or the transport operator does not respect the more stringent provisions for the transport of dangerous goods (eventually) foreseen by the Ministry of Transport, he could be punished with the pecuniary fines provided in Paragraphs 8 and 9.

Article 168, Paragraph 9 - *bis*, imposes a fine varying from 382 € to 1,534 € whereas the carrier:

- does not respect the equipment requirements necessary to ensure the safety of the driver and or the crew (such as lifejackets or protective breathing equipment);
- does not draft and or maintain correctly the transport documents;
- does not comply with the security instructions.

¹⁹² Directive 2006/126/EC has been implemented through Legislative Decree of 18 April 2011, No. 59, *Attuazione delle direttive 2006/126/EC e 2009/113/EC concernenti la patente di guida*, in OJ of 30 April 2011, No. 9.

Outside the listed cases, Article 168, Paragraph 9 - *ter*, foresees also that the carrier may be subject to a pecuniary fine varying from 154 € to 613 € when there would be an infringement of:

- packaging and labelling requirements;
- other transport requirements different from the technical requirements of the vehicles, tankers and containers transporting the dangerous substances.

Finally, Paragraph 10 of Article 168, recalling Article 167 Paragraph 9 of the Highway Code, specifies that all the sanctions contained in Article 168 apply to the drivers as well as to the owner of the vehicle and to the transport operator.

Foreign drivers

Article 135, Paragraph 6, of the Highway Code provides that drivers holding a non EU licence are subject to the same obligations and provisions contained therein, as well as to the sanction system provided for the Italian drivers.

Article 207 disciplines the application of sanctions when the infringement is committed with vehicles registered abroad or vehicles registered in other EU Member States. It foresees that if a deposit is not given, the vehicle is seized. The infringer can also pay immediately a reduced amount.

16.3.2 Directive 1996/53/EC

The Directive No. 1996/53/EC, laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, has been implemented by Ministerial Decree of 6 April 1998 (hereinafter, the “Ministerial Decree”)¹⁹³.

¹⁹³ Ministerial Decree of 6 April 1998, *Attuazione della direttiva 96/53/CE del Consiglio del 25 luglio 1996 che stabilisce per taluni veicoli stradali che circolano nella Comunità, le dimensioni massime autorizzate nel traffico nazionale ed internazionale ed i pesi massimi autorizzati nel traffico internazionale*, in OJ of 5 May 1998 No. 102.

In the Italian law, the maximum vehicles authorised dimensions are set in Article 61 of the Highway Code while the weight is set in Article 62 of the Highway Code.

When the transport concerns a load that exceeds the legal size and/or weight limits for a specified portion of road, highway or other transport infrastructure, it is defined as an infringement of oversize load or overweight load under Article 10 of the Highway Code.

Article 4, Paragraph 3, of the Ministerial Decree foresees that, the transport of oversize load or overweight load is allowed only if it has obtained a specific authorisation by the competent Authority.

The sanctions related to the infringements of the Ministerial Decree are contained in Articles 10, 61 and 62 of the Highway Code.

Article 10 contains two main definitions:

- “Exceptional vehicle” (Article 10, Paragraph 1), referring to the vehicles exceeding the legal size and/or the legal weight limits;
- “Exceptional transport” (Article 10, Paragraph 2), which is the transport of oversize load or overweight load, that is to say a load that exceeds the legal size and/or weight limits for a specified portion of road, highway or other transport infrastructure.

Complying with Article 4, Paragraph 3, of the Ministerial Decree, the exceptional vehicle and the exceptional load transport are subject to a specific authorisation released by the competent Authority. If this authorisation lacks, the driver will then be subject to the sanctions provided for in the Highway Code.

Notably, Article 10, Paragraph 18, foresees that whoever drives an exceptional vehicle or carries out the exceptional load transport:

- without the prescribed authorisation, or
- infringing the conditions related to the agreed fares, the time periods, the duty of the technical escort, or,
- exceeding the maximum vehicles weights or authorised dimensions contained in the same authorisation.

is subject to a pecuniary sanction varying from 732 € up to 2,955 €.

At the same time, when the authorisation has been granted but the transport modalities are not complying with the conditions under which the circulation has been

authorised, Paragraph 19 imposes a pecuniary sanction comprised between 147 € up to 590 €.

Paragraph 20 instead, fines with a pecuniary sanction comprised between 39 € and 159 € when the transport undertaking is not able to exhibit the authorisation.

Paragraph 21, instead, fines with a sanction comprised between 398 € and 1,596 € the transport of good different from the ones provided in Article 54, Paragraph 1, lett. *n*) (*mezzi d'opera*), with a sum varying from 398 € up to 1,596 €. The additional sanction of the suspension of the circulation card may be inflicted. In case of recidivism (at least three infringements within 5 years) the qualification of means of transport is revoked¹⁹⁴.

Paragraph 22 foresees also that, in case of exceeding of maximum vehicles weights set by Article 62 of the Highway Code circulating on a specified portion of road, the pecuniary sanctions are comprised between 398 € up to 1,596 €.

Under Paragraph 23, all those pecuniary sanctions either apply to the transport operator than to the client, if the transport is exclusively made for the latter. Furthermore, the infringements foreseen at Paragraph 18, 21 and 22 entail the suspension of the driving licence for a period comprised between 15 and 30 days¹⁹⁵, as well as the suspension¹⁹⁶ of the circulation card from one to two months (Paragraph 24), and the administrative seizure of the vehicle (Paragraph 25).

Paragraph 25 *ter* foresees sanctions also for non compliance with the rules that a technical escort has to follow: if the team does not comply with the prescribed conditions foreseen or the modalities envisaged in the relevant regulation, it may be subject to the pecuniary sanction of 314 € up to 1,256 €.

Article 61 establishes the maximum authorised dimensions of a vehicle.

Article 61, Paragraph 7, of the Ministerial Decree, foresees that, outside the case of exceptional vehicle or exceptional transport provided for in Article 10, the circulation of a vehicle or group of vehicles exceeding authorised dimensions is punished with the pecuniary sanctions of 398 € up to 1,596 €.

Article 61 establishes the maximum authorised weight of a vehicle.

¹⁹⁴ Article 219 of the Highway Code.

¹⁹⁵ Article 217 of the Highway Code. The competent Authority is the Department for Road Transport.

¹⁹⁶ Article 218 of the Highway Code.

Article 62, Paragraph 7, of the Ministerial Decree, foresees that, vehicles or group of vehicles exceeding vehicles weights is subject to the sanctions foreseen in Article 10.

Foreign drivers

Article 135, Paragraph 6, of the Highway Code provides that drivers holding a non EU licence is subject to the same obligations and provisions contained therein, as well as to the sanction system provided for the Italian drivers.

Article 207 disciplines the application of sanctions when the infringement is committed with vehicles registered abroad or in other EU Member States. It foresees that if a deposit is not given, the vehicle is seized. The infringer can also pay immediately a reduced amount.

16.3.3 Directive 2009/40/EC

The Directive 2009/40/EC has not been transposed by the Italian Government because it is a recast directive.

The relevant rules on roadworthiness tests for motor vehicles and their trailers have been provided by the Ministerial Decree of 6 August 1998, No. 408¹⁹⁷ (hereinafter, the “Ministerial Decree 408/1996”) which has transposed Directive 996/96/EC.

Under Article 4, Paragraph 1, of the Decree 408/1996, the sanctions for the infringements of the rules on roadworthiness tests are provided for by Article 80 the Highway Code.

At Paragraph 4 of Article 80 foresees that the vehicle used for road and passenger transport have to be overhauled on an annual basis.

Paragraph 14 of the same Article sets for that, with the exceptions laid down in Article 176, Paragraph 18, of the Highway Code, which are specifically set for the circulation on highways or main extra - urban roads, whoever drives a vehicle which

¹⁹⁷ Ministerial Decree of 6 August 1998 No. 408, *Regolamento recante norme sulla revisione generale periodica dei veicoli a motore e loro rimorchi*, in OJ of 27 November 1998, No. 278.

has not been presented for the roadworthiness tests is subject to a pecuniary fine of 159 € up to 639 €. This sanction could be doubled where the roadworthiness test has been omitted for more than once. The vehicle is suspended from the circulation and noted on the circulation card as long as it does not comply with the roadworthiness test.

When the vehicle is subject to the roadworthiness test, its circulation is prohibited. In case of infringement of this prohibition, the driver will be subject to a fine varying from € 1,842 up to € 7,369 and is put under custody (*fermo*) of the vehicle for 90 days. In case of recurrence of the violation, the seizure (*confisca*) is provided.

Under Paragraph 17, whoever exhibits a false document attesting that the document has passed the roadworthiness test, is subject to a fine from 398 € up to 1,596 € and the withdrawal of the circulation card.

Foreign drivers

Article 135, Paragraph 6, of the Highway Code provides that drivers holding a non – EU licence are subject to the same obligations and provisions contained therein, as well as to the sanction system provided for the Italian drivers.

Article 207 disciplines the application of sanctions when the infringement is committed with vehicles registered abroad or in other EU Member States. It foresees that if a deposit is not given, the vehicle is seized. The infringer can also pay immediately a reduced amount.

16.3.4 Directive 2006/126/EC

Directive 2006/126/EC has been transposed by Legislative Decree No. 59 of 2001¹⁹⁸ which have modified several provisions of the Italian Highway Code.

Some of these modifications will enter into force starting from 2013.

All the infringements which could be relevant for this Study will not be analysed in the present Paragraph but they are contained in the table below . The table will

¹⁹⁸ Legislative Decree of 18 April 2011 No. 59 - *Attuazione delle direttive 2006/126/CE e 2009/113/CE concernenti la patente di guida*, in OJ of 30 April 2011, No. 99.

provide the state of play of the sanction system provided in the Highway Code, together with the relevant changes that will enter into force starting from 2013.

Article 116, Paragraph 13, of the Highway Code inflicts a pecuniary fine of 2,257 € up to 9,032 € to those driving:

- without a driving licence,
- with a driving licence which has not been renewed,
- driving after that the licence has been revoked.

In case of reiteration of the crime within two years, there is also the application of the criminal sanction of the imprisonment, which is cumulative to the administrative pecuniary sanction.

Paragraph 18 provides for the accessory sanction of the seizure of the vehicle for three months or, in case of recidivism, the accessory sanction of confiscation. However, where it is not possible to apply the seizure or the confiscation of the vehicle, the suspension of the driving licence from 3 up to 12 months will be applied.

Driving with a fake driving licence is subject to the same fines foreseen in Article 116, Paragraph 13 and constitutes a criminal offence, that is to say forgery (see, respectively, Article 477 and 482 of the Italian Criminal Code).

Article 135, Paragraph 6, of the Highway Code provides that drivers holding a non – EU licence are subject to the same obligations and provisions contained therein, as well as to the sanction system provided for the Italian drivers.

16.4 Notion of criminal sanction and of administrative sanction in the Italian legal system

In the Italian legal system, there is no clear criterion to distinguish between criminal and administrative sanctions. There are two main theories which aim at highlighting the differences between them.

Criminal sanctions are the consequences of criminal offences. Pursuant to Italian law criminal sanctions can be distinguished in principal and accessories.

Principal criminal sanctions can be distinguished in different categories:

1. Life imprisonment, imprisonment and fines (in Italian “*multe*”) are foreseen for serious offences such as crimes.
2. Arrest and fines of minor entity (in Italian “*ammende*”) are the criminal penalties for less serious offences such as misdemeanours.

Criminal sanctions can be distinguished in custodial sanctions (imprisonment and arrest) and in pecuniary sanctions (fines).

Custodial sanctions affect the freedom of the offender, fines affect his patrimony.

Accessories sanctions are: interdictions from public officers. It is an automatic consequence of a convict decision.

Criminal sanctions can only be imposed to physical persons and not to legal persons such as corporations or other entities. Their administrators would indeed be liable for actions committed by corporations that are qualified as criminal offences.

Criminal sanctions are subject to the principle of legality.

Indeed pursuant to Article 1 of the Criminal Code: “*No one can be punished for a fact that is not expressly foreseen as a criminal offence and with sanctions that have not been previously foreseen by the law*”. Article 25 of the Italian Constitution establishes a similar principle.

As to the administrative penalties, they are disciplined by law of 24 November 1981, No. 689¹⁹⁹.

An administrative penalty is the consequence of the administrative offences.

Administrative penalties imply the payment of an amount of money, but might also consist in measures limiting the right to use a good.

Both criminal and administrative offences are those actions that violate a rule that protects a public interest. However, Italian law does not foresee a criterion to distinguish criminal offences from administrative offences. It could be argued that the difference is formal, meaning that if the law foresees a criminal sanction for an offence, than such offence would be criminal.

Criminal and administrative sanctions have similarities as they both consist in the limitation of a right of the person that has violated a rule.

¹⁹⁹ Law of 24 November 1981, No. 689, *Modifiche al sistema penale*, in OJ of 30 November 1981, No. 329.

They are deemed to have a dissuasive effect since they consist in a threat to inflict damage to potential offenders.

Both criminal and administrative sanctions have to be proportionate having regard to the seriousness of the offence (see Article 11 law No. 689/1981 for administrative sanctions).

The differences between administrative and criminal sanctions are the following:

- the different limitation period: 5 years for administrative sanctions (Article 28 of Law No. 689/1981), varying for criminal sanctions depending on the typology of sanction (article 157 of the Criminal Code);
- administrative penalties cannot affect personal freedom of the offender; on the contrary criminal sanctions can. This aspect is considered by many Italian experts of criminal law as the main difference between the two typologies of sanctions²⁰⁰;
- the different rules applicable with respect to the burden of proof. Criminal sanctions can be applied only after the alleged offender is proven guilty. In case of administrative sanctions is the alleged offender who has to prove his innocence when contesting the measure imposing the above sanction (e.g. decision of the Italian Supreme Court (Cassazione Civile) of 2 February 1999, No. 865 and 4 April 1996, No. 3148).

In addition, it is argued that one of the differences between criminal sanctions and administrative ones consists in the nature of the goods that are protected through the imposition of such sanction.

However, this argument has no legal grounds and a clear criterion as to what are the interests or goods that need to be protected by criminal sanctions has not been provided (with the obvious exceptions of goods as life, public faith, security of the State and other goods that traditionally fall within the scope of criminal law)²⁰¹.

²⁰⁰ P. CERBO, *Sanzioni amministrative*, in *Dizionario di diritto pubblico*, directed by S. Cassese, Giuffrè, Milan, 2006, 5425. M.A. SANDULLI, *Le sanzioni amministrative pecuniarie*, Jovene, Napoli, 1983, page 12.

²⁰¹ N. MAZZACUVA, *Diritto penale e Costituzione*, AA.VV., *Introduzione al sistema penale*, I, Giappichelli, Torino, 2006, 3, pages 83 ss.; A. PAGLIARO, *Sanzione penale*, in *Enciclopedia giuridica*, XXVIII, 1991, 1.

Pursuant to Italian law administrative sanctions are the following:

- pecuniary administrative sanctions;
- non pecuniary administrative sanctions, consisting in measures which affect in a different way a right of an offender.

Article 10 of the Law No. 689/1981 foresees that an administrative sanction consists of the payment of an amount which cannot be less than 10 € and not more than 15,000 €. Proportional administrative sanctions have no *maximum* limit. However, the maximum limit of the administrative sanctions for each infringement cannot be more than ten times the minimum.

Non pecuniary administrative sanctions can be of different nature:

- They can be personal measures, such as disciplinary sanctions (suspension, destitution);
- They can be prohibitive measures (prohibition to carry out an activity).

Concurrence between several administrative sanctions

Article 8, first paragraph, of the Law No. 689/1981²⁰² foresees that whoever, “*with the same action or omission*” breaches different administrative provisions, or commits more violations of the same provisions, is subject to the sanction foreseen for the most serious infringement increased up to the triple.

As to the identification of “most serious infringement”, while the academia refers to the penalty concretely applied, the Courts refer to the highest amount indicated by the provisions²⁰³.

The Italian Court of Cassation²⁰⁴ has specified that article 8, first paragraph does not apply to multiple actions or omissions in violation of the same provision of the

²⁰² “*Salvo che sia diversamente stabilito dalla legge, chi con un'azione od omissione viola diverse disposizioni che prevedono sanzioni amministrative o commette più violazioni della stessa disposizione, soggiace alla sanzione prevista per la violazione più grave, aumentata sino al triplo*”.

²⁰³ Corte di Cassazione, SS. UU. Penali, ruling of 25 January 1994, No. 748.

Highway Code. In this case, there will be a plurality of actions and, consequently, a plurality of infringements. Therefore, each of them will be subject to its own sanction (cumulativity of the sanctions).

Concurrence between administrative and criminal sanctions

Sometimes it seems to be possible that the same fact can be referred to both the criminal law and administrative law. An interpretative criterion has been provided by Article 9 of Law No. 689/1981, which foresees that, when the “same fact” is punished with a criminal sanction and an administrative sanction, the special provision will apply. This means that it is not possible to have a concurrence of offences, as happened in the past, but only the application of one of the provisions.

It is important to highlight that the rule will apply only to the same conduct, meaning that there is a common, overlapping area between the conduct described by the two provisions. If the conducts described in the provision would have been different, the rules simply interfere, but a problem of concurrence of rules never come up.

According to the case law²⁰⁵, when the legislator has provided an administrative sanction and a criminal one, the first will apply, as specified in Article 9 of Law No. 689/198, unless it is clear that the legislator would apply both of them.

16.5 Scope of application of Italian criminal law

The rules on the scope of application of Italian criminal law are laid down in Articles 6 - 10 of the Criminal Code.

Article 6 states that anyone who commits a crime within the State shall be punished according to Italian law. The crime is considered committed in the territory of the State, when the act or omission has occurred in whole or in part in the territory of the State, or has occurred as the result of the action or omission.

²⁰⁴ Corte di Cassazione, ruling of 4 march 2011, No. 5252.

²⁰⁵ Corte di Cassazione, SS. UU. Penali, ruling of 28 October 2010 – 21 January 2011, No. 1936.

Article 7 lays down rules on the application of Italian criminal law for actions committed abroad. Notably, it states that is punishable under Italian law a citizen or a foreigner who commits in the foreign territory any of the following offences:

- crimes against the personality of the Italian State;
- crimes of counterfeiting the seal of the State and use of this seal counterfeited;
- crimes of falsification of the legal coin of the State, or of other debit certificates;
- crimes committed by public officers, abusing their authority or violating the duties of their functions;
- any other offense for which special laws or international conventions establish the applicability of Italian criminal law.

Pursuant to Article 8, an Italian citizen or a citizen of another State can be punished pursuant to Italian law if he commits a political crime different from the one listed in Article 7. However, a request of the Ministry of Justice on this respect is necessary.

Political crimes are generally defined as those crimes that offend a political interest of the State or a political right of the citizen.

Article 9 lays down rules on crimes committed by a citizen abroad. It applies to crimes excluded from the scope of Articles 7 and 8.

It establishes that: *“the citizen, who commits [...] a crime for which Italian law provides life imprisonment, or imprisonment for not less than the minimum three years shall be punished according to Italian law, provided that he is within the territory of the State. If this is the crime for which he established a deprivation of liberty of shorter duration, the offender shall be punished at the request of the Minister of Justice or instance, or complaint by the victim.”*

If the above crimes are committed against the European Communities, a foreign state or a foreigner, the offender shall be punished at the request of the Minister of Justice, provided that the extradition has not been granted, or has not been accepted by the State in which he committed the crime and the offender is within the territory of the State.

Finally, Article 10 foresees rules concerning crimes which are excluded from the scope of Articles 7 and 8 and are committed by a non citizen abroad. In this respect, it foresees that the stranger, who committed in foreign territory, against the State or a citizen, a crime for which Italian law provides life imprisonment, or imprisonment for not less than the minimum one year, shall be punished according to Italian law, provided that it takes place within the territory of the State, and there is the request of the Minister of Justice or petition or complaint by the victim.

If the crime is committed against the European Communities, a foreign country or a foreigner, the offender shall be punished according to Italian law, on request of the Minister of Justice, provided that:

- he is in the territory of the State;
- he committed a crime for which Italian law foresees life imprisonment, or imprisonment of not less than the minimum three years;
- his extradition was not granted, or has not been accepted by the State Government in which he committed the crime, or by the State to which he belongs.

16.6 Summary table

In the Italian legal system the role of the competent authorities are the following:

- the Authorities entitled to notify and impose fines, under Article 12 of the Highway Code, are:
 - the State Police, mainly the Traffic Police (“*Polizia Stradale*”);
 - *Carabinieri*;
 - the Officer of the Ministry of Intern in charge of the service of Traffic Police;
 - the Officer of the Ministry of Labour in charge of inspections in the transport operators’ premises;
- the Judiciary Authority executes fines (Court of First Instance, *Giudice di Pace*, or *Prefetto*, or Criminal Courts, whenever the fact represent a crimes);

- the Department of Road Transport of the Ministry of Transport revokes authorisation when applicable.

The table below provides an overview of the administrative and criminal sanctions foreseen in the Italian legal system for the infringements of EU commercial road transport legislation.

In the table, we specify whether criminal sanctions are cumulative or alternative to administrative sanctions.

With the expression cumulative, we intend that criminal sanctions can be applied in combination to administrative sanctions. Should the application of the criminal sanction excludes the application of the administrative sanction, we specify that the criminal sanction is alternative.

Please note that according to Italian law transport undertakings and owners of vehicles are jointly liable with the drivers for the payment of pecuniary administrative sanctions related to the commission of an infringement (Article 196 of the Highway Code).

Table IT 1

SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation (EC) No561/2006	<u>Minimum Age</u> <u>D. Lgs. No285 of 30 April 1992 (“Highway Code”), as modified by Law No 120 of 29 July 2010</u>	Article 115 par. 1, lett. d) and e).	Not respecting minimum age for conductors.	Driver	From 159 to 639 €	
				Undertaking (Paragraph 5)	From 39 to 159 €	
	<u>Driving Time</u>	Article 174, Paragraph 4	Exceeding the daily driving time up to 10%.	Drivers Crew Members (Paragraph10)	From 38 € up to 152 €	
		Article 174, Paragraph 5	Exceeding the daily driving time of more than the 10%.	Drivers Crew Members	From 300 € up to 1,200 €	

Table IT 1

SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				(Paragraph10)		
		Article 174, Paragraph 5	Exceeding the daily driving time from 10 % up to 20%.	Drivers Crew Members (Paragraph10)	From 300 up to 1,200 €	
		Article 174, Paragraph 6	Exceeding the daily driving time of more than 20%.	Drivers Crew Members	From 400 up to 1,600 €	
		Article 174, Paragraph 7	Exceeding the weekly driving time up to 10%.	Drivers Crew Members	From 38 € up to 152 €	
		Article 174, Paragraph 7	Exceeding the weekly driving time from 10 % up to 20%.	Drivers Crew Members	From 250 € up to 1,000 €	
		Article 174,	Exceeding the weekly driving time of	Drivers	From 400 € up to	

Table IT 1

SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Paragraph 7	more than 20%.	Crew Members	1,600 €	
		Article 174, Paragraph 7	Exceeding the biweekly driving time up to 10%.	Drivers Crew Members	From 38 € up to 152 €	
		Article 174, Paragraph 7	Exceeding the biweekly driving time from 10 % up to 20% .	Drivers Crew Members	From 250 € up to 1,000 €	
		Article 174, Paragraph 7	Exceeding the biweekly driving time of more than 20%.	Drivers Crew Members	From 400 € up to 1,600 €	
	<u>Rest Periods</u>	Article 174, Paragraph 4	Not respecting the rules on daily rest period up to 10%.	Drivers Crew Members	From 200 € up to 800 €	
	<u>Highway Code</u>	Article 174, Paragraph 5	Not respecting the rules on daily rest period from 10% to 20 %.	Drivers Crew Members	From 350 € up to 1,400 €	

Table IT 1

SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 174, Paragraph 6	Not respecting the rules on daily rest period of more than 20%.	Drivers Crew Members	From 400 € up to 1,600 €	
		Article 174, Paragraph 7	Not respecting the rules on weekly rest period over 10%	Drivers Crew Members	From 250 € up to 1,000 €	
		Article 174, Paragraph 7	Not respecting the rules on the weekly rest period from 10% to 20 %.	Drivers Crew Members	From 350 € up to 1,400 €	
		Article 174, Paragraph 7	Not respecting the rules on the weekly rest period of more than 20%.	Drivers Crew Members	From 400 € up to 1,600 €	
	<u>Breaks</u> <u>Highway Code</u>	Article 174, Paragraph 8	Infringements of break time rules	Drivers Crew Members	From 155 € up to 620 € Increasable of 1/3	

Table IT 1

SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					from 22 p.m and 7 p.m.	
	<u>Recidivism</u> <u>Highway Code</u>	Article 174, Paragraph 11	Recurrence of all the infringements provided for in Article 174, paragraphs 4, 5, 6, 7, 8, 9 of the Highway Code	Drivers Crew Members	From 1.769 € up to 7.078 € and Temporary withdrawal by the Road agent of the driver's driving licence and circulation card.	
	<u>Transport undertaking's</u>	Article 174, Paragraph	- Inobservance of Regulation No561/2006;	Transport undertaking	From 307 € up to 1,228 €	

Table IT 1

SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	liability Highway Code	14	- non maintenance of the documents; expiration, incompleteness or alteration of the documents.		and Suspension from 1 up to 3 months in case of repeated infringements; (Paragraph 15) Decadency or repeal of the authorisation in case of recidivism (Paragraph 16).	
Directive	Driver' s	Article 9,	- Non exhibition,	Driver	From 143 € up to 570	

Table IT 1

SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
2006/22/EC (amended by Directive 2009/4/EC)	absence from work D. Lgs. No144 of 4 August 2008	Paragraph 4	- incompleteness, or alteration of the documents attesting the driver's absence from work.		€	
		Article 9, Paragraph 5	Non maintenance of the drivers' documents for the prescribed period (1 year).	Transport Operator	From 143 € up to 570 €	
Directive 2002/15/EC	Working time and rest periods D. Lgs. No 234 of 19 November	Article 9, Paragraph 1	Exceed of the average (48 h) and maximum (60 h) weekly working time.		From € 130 up to 780 € for each worker and each period	
		Article 9, Paragraph 1	Exceed of the average (48 h) and maximum (60 h) weekly working time for more than 10 %.		From 260 € up to 1,560 € for each worker and each period	

Table IT 1

SOCIAL RULES ON ROAD TRANSPORT						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	2007	Article 9, Paragraph 2	No breaks after six consecutive hours.		From € 103 up to 300 €	
		Article 9, Paragraph 3	Rest periods.		From € 105 up to 630 €	
		Article 9, Paragraph 4	In case of night work, the day work has been more than 10 hours in the 24 h.		From € 300 up to 900 € for each worker and each day	
		Article 9, Paragraph 5	Information and record of the drivers' working time.	Transport manager/operator	From 250 € up to 1,500 €	

Table IT 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation 3821/1985/EEC	Highway Code	Article 179, Paragraph 2	<p>Tachograph:</p> <ul style="list-style-type: none"> - not installed or used; - non responding to the standards, or - malfunctioning. <p>Non-insertion of:</p> <ul style="list-style-type: none"> - record sheets, or <p>the driver's card.</p>	Driver	<p>From 798 € up to 3,194 €</p> <p>Suspension of the driving license from 15 days up to 3 months (Paragraph 9).</p>	
		Article 179,	- Alteration of the	Driver	Double of the	

		Paragraph 2	tachograph, or - damage to the seals of the tachograph.		sanction of 798 € up to 3,194 €. Suspension of the driving license from 15 days up to 3 months (Paragraph 9).	
Regulation No 1463/70?	<u>Law No 727 of 13 November 1978</u> <u>(applying when the Article 179 does not)</u>	Article 179, Paragraph 2 – bis	Speed control equipment: - not installed, - non responding to the standards, or - malfunctioning.	Driver	From 891 € up to 3,565 € (Doubled in case of alteration of the speed control equipment). Suspension of the driving license from 15	

					<p>days up to 3 months (Paragraph 9).</p> <p>Revocation of driving license, in case of alteration of the speed control equipment (Paragraph 9).</p>	
		<p>Article 179, Paragraphs 3 and 4</p>	<p>Circulation of a vehicle:</p> <ul style="list-style-type: none"> - Lacking of speed control equipment. Lacking of a tachograph or related record sheets. - With a speed control equipment or tachograph malfunctioning or altered. Use of the recording equipment or tachograph 	<p>Transport undertaking</p> <p>(Where the driver, the transport undertaking and employer are the same person, the sanction are imposed only</p>	<p>From 767 € up to 3,068 €</p> <p>After 3 infringements foreseen in Paragraph 3, suspension of the license or authorisation for 1 year,</p>	

			non complying with Regulation's requirements.	once).	inflicted by the Department of Road Transport (Paragraph 4).	
	Article 179, Paragraph 7 and 8		Non regularization of the equipment after that the Road Agent who has inflicted the sanction cautions the driver to regularise it within 10 days.	Driver or Transport undertaking	Seizure of the vehicle	
	Article 19		<ul style="list-style-type: none"> - Use of record sheets non complying with standards - Non- fill in of record sheets - Use of dirty, damaged or non recordable record sheets; - Non correspondence between effective time indicated and the recording time; - Impossibility to show 	Driver or transport operator	From 48 € up to 94 €	

			record sheets of the running week or of the last day of the previous working week. all further non specified infringements of Regulation 1463/70 as amended (<i>e.g.</i> refusal to be checked, surname missing on record sheets, date of begin missing).			
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Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Regulation (EC) No 1071/2009 Authorisation released by the Driver and Vehicle Licensing Agency of the Ministry of Transport (Article 9)	<u>Legislative Decree 22 December 2000, No395</u>	Article 19, Paragraph 1	Non communication to the competent Authority, within 30 days, of the prosecution of the transport activity management, due to death, physical incapacity, disappearance and diminishing of the legal capacity of the person entitled of the running of the transport activity.	Transport manager	From 2 up to 6 millions of Liras (around 1,032 € and 3,098 €).	
		Article 19, Paragraph 2	Non communication of the loss of good repute.	Transport manager (Paragraph 1) or	From 10 up to 30 millions of Liras (around 5,164 € and	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				transport operator (Paragraph 4).	15,493 €).	
		Article 19, Paragraph 3	Non communication of the loss of financial standing	Transport operator	From 3 up to 9 millions of Liras (around 1,549 € and 4,648 €).	
Regulation (EC) No 1071/2009 Regulation (EC) No 1072/2009 Regulation (EC) No 1072/2009 Regulation (/EC) No 1073/2009	<u>Law No 298/74</u> <u>Law No 298/74</u> <u>Law No298/74</u> <u>Law No298/74</u> <u>Law No218/2003</u> <u>Law No218/2003.</u> <u>[In Italy, there are no specific sanctions for infringements of</u>	Article 19, Paragraph 4	Non communication of the loss of professional competence.	Transport operator	From 5 up to 15 millions of Liras (around 2,582 € and 7,7 46€).	
		Article 26	Abusive exercise of the profession.	Transport operator	From 4 million liras to 24 million liras (around 2,000 € to around 12,000 €). From 5,000 (2,900	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<p><u>Regulation 1073/2009, thus the rules implementing the previous legislation (Regulation No684/92/EEC) apply].</u></p>		<p>Awarding the transport of goods to an undertaking exercising abusively the profession</p>		<p>€) to 30 million liras (around 18,000 €) in case of 2 infringement in 5 years.</p> <p>Accessory sanction: seizure of the vehicle for three months. In case of reiterate infringement confiscation.</p> <p>From 3 million liras (1,700</p>	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					€) to 18 million liras (10,500 €).	
		Article 26	Abusive exercise of the profession	Transport operator	From 4 million lira to 24 million liras (around 2,000 € to around 12,000 €). From 5,000 (2,900 €) to 30 million liras (around 18,000 €) in case of 2 infringement in 5 years. Accessory	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			Awarding the transport of goods to an undertaking exercising abusively the profession		<p>sanction: seizure of the vehicle for three months. In case of reiterate infringement confiscation.</p> <p>From 3 million liras (1,700 €) to 18 million liras (10,500 €).</p>	
		Article 46	Abusive transport, but the transport has to be effectively carried out.	Transport operator and drivers (in general, all those which give a	<p>From 4 million liras to 24 million liras (around 2,000 € to around 14,000 €).</p>	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
				conscious contribution to the abusive transport).	<p>From 5,000 (2,900 €) to 30 million liras (around 18,000 €) if two infringements in 5 years.</p> <p>Accessory sanction: seizure of the vehicle for three months. In case of reiterate infringement confiscation.</p>	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 46 -bis	Breach of rules on cabotage (obligation to carry copy of the Community licence, or evidence required by Article 8 of Regulation No 1072/2009)	Transport operator	<p>From 5,000 € to 15,000 €</p> <p>Accessory sanction: seizure of the vehicle for three months. Seizure of 6 months in case of reiterate infringement.</p> <p>(possibility to pay immediately 5,000 euro; or obligation to pay deposit. If not done seizure of</p>	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					the vehicle at expenses of offender)	
		Article 6	Transport carried out by drivers not regularly employed.	Transport operator	From 500 € to 2000 €	
		Articles 9 and 10	Abusive transport	Transport operator	From 1,500 € to 6,000 € This sum can be reduced of 1/3 in case of prompt payment (Article 207 of the highway Code), or when the infringement consists of	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>travelling with modalities different from those indicated in the authorization of in the documents (Article 9, Paragraph 2 of Law 218/2003).</p> <p>If no immediate payment is made and a caution is not paid the law provides the seizure of the</p>	

Table IT 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					vehicle.	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Directive 2008/68/EC	<u>Transport of dangerous goods</u> <u>Highway Code</u>	Article 168, Paragraph 8	<ul style="list-style-type: none"> - Transport of dangerous goods without the necessary authorization, or - -when the authorization exists, infringing the conditions prescribed therein. 	Driver Transport operator Owner of the vehicle (Article 168, Paragraph10)	From 1,886 € up to 7,546 € Suspension of the card of circulation and of the driving licence for a period between 2 up to 6 months. Repeated violations may entail the administrative seizure of the vehicle. (Article 168, Paragraph8- bis)	
		Article 168, Paragraph 9	Infringements of the provisions concerning:	Carrier Transport	From 382 € up to 1,534 €	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			<ul style="list-style-type: none"> - the technical requirements of the, vehicles, tankers and containers transporting the dangerous substances; - the lack or the incorrect placement of the warning signals and labels of danger on the vehicles, tankers and containers; - the modalities of bay; - the loading and transport operations. 	<p>Operator</p> <p>Owner of the vehicle</p> <p>(Article 168, Paragraph10)</p>	<p>and</p> <p>Suspension of the card of circulation and of the driving licence for 2 up to 6 months.</p>	
		Article 168, Paragraph 9 - bis	<ul style="list-style-type: none"> - Non compliance with the equipment requirements necessary to ensure the safety of the driver and or the crew (such as lifejackets or protective 	<p>Carrier</p> <p>Transport operator</p>	<p>From 382 € up to 1,534 €</p>	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			breathing equipment); - no draft and or correct maintenance of the transport documents; - non compliance with the security instructions.	Owner of the vehicle (Article 168, Paragraph10)		
		Article 168, Paragraph 9 - ter,	Non compliance with: - packaging and labelling requirements; - other transport requirements different from the technical requirements of the vehicles, tankers and containers transporting the dangerous substances.	Carrier Transport operator Owner of the vehicle (Article 168, Paragraph10)	From 154 € to 613 €	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
Directive 96/53/EC	Highway Code	Article 10, Paragraph 18	<p>Driving without the prescribed authorisation</p> <p>- infringing the conditions related to the agreed fares, the time periods, the duty of the technical escort;</p> <p>- exceeding the maximum vehicles weights or authorised dimensions contained in the same authorisation.</p>	<p>Driver</p> <p>Client</p>	<p>From 732 € up to 2,955 €</p> <p>Suspension of the circulation card from one up to 6 months.</p> <p>And of the driving licence from 15 up to 30 days</p> <p>(Article 10, Paragraph24)</p> <p>Seizure of the vehicle (Article 10, Paragraph25)</p>	
		Article 10, Paragraph 19	Non compliance of the transport modalities with the ones agreed for	Driver	From 147 € up to 590 €	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			the circulation.	Client		
		Article 10, Paragraph 20	Non exhibition of the authorisation	Driver Client	From 39 € up to 159 €	
		Article 10, Paragraph 21	Transport of goods different from the ones authorised.	Driver Client	From 398 € up to 1,596 € and Suspension of the circulation card from one up to 6 months. And of the driving licence from 15 up to 30 days (Article 10,	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>Paragraph24)</p> <p>Seizure of the vehicle (Article 10, Paragraph25)</p>	
		<p>Article 10, Paragraph 22</p>	<p>Exceeding of the maximum authorised weight.</p>		<p>Suspension of the circulation card from one up to 6 months.</p> <p>And of the driving licence from 15 up to 30 days</p> <p>(Article 10, Paragraph24)</p> <p>Seizure of the vehicle (Article 10, Paragraph25)</p>	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 10, Paragraph 25 ter	Non compliance with the prescribed conditions foreseen or the modalities envisaged in the relevant regulation on technical escort	Driver Client	From 314 € up to 1,256 €.	
		Article 62, Paragraph 7	Exceeding of the maximum authorised weight, outside the case of article 10, Paragraph 22	Client	From 398 € up to 1,596 €	
		Article 62, Paragraph 7	Exceeding of the maximum authorised size	Driver Client	Recall of the sanction foreseen in Article 10	
Directive 2009/40/EC	<u>Highway Code</u>	Article 80, Paragraph 14	Vehicle not subject to the roadworthiness tests	Driver	From 159 € up to 639 € Doubled when the test is omitted for more than once. Suspension of the circulation	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 80, Paragraph 14	Circulation during the roadworthiness test	Driver	<p>From € 1,842 up to € 7,369</p> <p>custody of the vehicle for 90 days.</p> <p>Seizure of the vehicle in case of recurrence of the violation</p>	
		Article 80, Paragraph 17	Submission of a false roadworthiness certificate	Driver	<p>From 398 € up to 1,596 €</p> <p>and</p> <p>withdrawal of the circulation card</p>	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
	<u>Criminal Code</u>	Articles 476 (forgery committed by a public officer), 482(forgery committed by a private), 469 (forgery in public certificate)	Alteration of the roadworthiness certificate	The author of the alteration (“whoever”)		<p>Article 469 (one third of the fines provided in Articles 467 and 468)</p> <p>Article 476 . imprisonment from 1 up to 6 years</p> <p>Article 482: 8 months up to 4 years.</p>
Directive 2006/126/EC	<u>Highway Code</u>	Article 115, Paragraph 3	Lack of physical and minimum standards of physical and mental fitness required.	Driver	<p>From 80 € to 318 €</p> <p>(or 159 up to 639 € in case of vehicle</p>	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			Lack of the minimum age to drive: - quadricycles and mopeds - motor vehicles and Agricultural or forestry tractor - vehicles for the transport of goods - vehicles for the transport of persons Exceeding the limit to drive: - vehicle transporting goods - vehicle transporting passengers		exceeding 7,5 ton) Accessory sanction of the seizure of the vehicle for 30 days.	
		Article 115, Paragraph 1- quater	17 years old taking driving lessons: - without the adult conductor - without driving school	Driver	From 80 € up to 318 € Accessory sanction of the seizure of the vehicle for 30 days.	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 115, Paragraph 4	Minor of 18 years with licence A: - driving a motorcycles having cylinder capacity of more than 125 cc and maximum power of 11 KW, - transporting another person.	Driver	From 39 € up to 159 € Accessory sanction of the seizure of the vehicle for 30 days. (Starting from 19.1.2013, from 38 € up to 155 € for transport of other person)	
		Article 115, Paragraph 5	Consigning the vehicle to someone without: - driving licence, - the certificate of physical and mental fitness required, or - professional certificate	Keeper of the vehicle	From 39 € up to 159 € Accessory sanction of the seizure of the vehicle for 30 days.	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 115, Paragraph 5	<ul style="list-style-type: none"> - Minor of 21 years old driving of vehicle of category KA or KB or used for emergency service; - driving of vehicle requiring drivers' qualification card. 	Driver	<p>From 155 € up to 624 €</p> <p>Starting from 19.1.2013</p>	
		Article 116, Paragraph 13	<p>Driving:</p> <ul style="list-style-type: none"> - without a driving licence - or with a driving licence: - not renewed, or revoked. 	Driver	<ul style="list-style-type: none"> - Administrative sanction of the seizure of the vehicle for 3 months - If it is not possible to impose seizure or confiscation, suspension of the driving licence from 3 up to 12 months. 	<p>From 2.257 up to 9.032 €</p> <p>In case of reiteration of the crime within two years, there is also the application of the criminal sanction of the imprisonment</p>

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
						<p>up to 1 year.</p> <p>Criminal sanction (misura di sicurezza) of confiscation in case of recidivism.</p> <p>The sanction is cumulative</p>
		Article 116, Paragraph 13	Driving with a fake driving licence	Driver	<ul style="list-style-type: none"> - Administrative sanction of the seizure of the vehicle for 3 months - Administrative 	<p>From 2.257 up to 9.032 €</p> <p>Driving with a fake patent is criminal</p>

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>sanction of confiscation in case of recidivism.</p> <p>- If it is not possible to impose seizure or confiscation, suspension of the driving licence from 3 up to 12 months</p>	<p>offence, foreseen under Articles 477 and 482 of the Italian Criminal Code.</p> <p>Cumulative.</p>
		Article 116, Paragraph 12	<p>Consigning the vehicle to someone without:</p> <ul style="list-style-type: none"> - driving licence, - the certificate of physical and mental fitness required, or - professional certificate 	Keeper of the vehicle	From 398 up to 1,596 €	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 116 Paragraph 13 - bis	Driving mopeds without the licence and being: <ul style="list-style-type: none"> - minor of 14 years old - not having the driving licence of B type or it has been suspended 	Driver	From 555 € up to 2.220 Administrative sanction of the seizure of the vehicle for 60 days	
		Article 116 Paragraph 15	Drive without the professional certificate o driver's card	Driver	From 159 € up to 639 € Administrative sanction of the seizure of the vehicle for 60 days.	
		Article 116 Paragraph 16	Lack of professional certificate for: <ul style="list-style-type: none"> - circulation with a rented vehicle for transport person; - disabled people; 	Driver	From 400 € up to 1.600 € Starting from	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			<ul style="list-style-type: none"> - transport of goods with vehicle with category C1 or C, or C1E or CE; - Transport of persons (D1, D1E, D and DE). 		19.01.2013	
		Article 117, Paragraph 5	Driving motorcycles trespassing the driving conditions and the speed limits	Driver (category B)	From 152 € up to 608 € Suspension of the validity of the license from 2 up to 8 months.	
		Article 118, Paragraph 11	Consigning the vehicle to someone without: <ul style="list-style-type: none"> - driving licence, - the certificate of physical and mental fitness required, or - professional certificate 	Owner / Keeper of the vehicle	From 159 € up to 639 € Accessory sanction: seizure of the vehicle for 6 months.	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 118, Paragraph 12	Driving trolleybuses without: <ul style="list-style-type: none"> - license, - professional certificate, - certificate attesting the minimum standards of physical and mental fitness. 	Driver	From 159 € up to 639 € Accessory sanction: seizure of the vehicle for 6 months.	
		Article 118, Paragraph 13	Driving trolleybuses without the certificate attesting the minimum standards of physical and mental fitness.	Driver	From 80 € up to 318 € Accessory sanction: seizure of the vehicle for 6 months	
		Article 120	Release to the driver without the moral requirements of: <ul style="list-style-type: none"> - driving licence, - the certificate of physical and mental fitness required, or - professional certificate 	Driver and Vehicle Licensing Agency	From 1.000 € up to 3.000	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
		Article 124	Driving Agricultural or forestry tractor without the prescribed: <ul style="list-style-type: none"> - driving licence, - the certificate of physical and mental fitness required, or - - professional certificate 	Driver	<p>From 2.514 € up to 10.061 €</p> <ul style="list-style-type: none"> - Administrative sanction of the seizure of the vehicle for 3 months - Administrative sanction of confiscation in case of recidivism. 	
		Article 124	Giving an agricultural or forestry tractor to someone without the prescribed: <ul style="list-style-type: none"> - driving licence, - the certificate of physical and mental fitness required, or 	Keeper of the vehicle	<p>From 398 up to 1.596 €</p> <ul style="list-style-type: none"> - Administrative sanction of the seizure of the vehicle for 3 	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			- - professional certificate		<p>months</p> <p>- Administrative sanction of confiscation in case of recidivism.</p>	
		Article 125, Paragraph 3	Drivers holding a category A licence driving vehicles without the prescribed driving licence	Driver (category A)	<p>From 159 € up to 639 €</p> <p>Administrative sanction of the suspension of the licence from 1 up to 3 months.</p>	
		Article 125, Paragraph 4	Drivers holding a category A, B, C, D licence driving vehicles without the prescribed driving licence	Driver	<p>From 80 € up to 318 €</p>	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			Disable holding a category A or B driving vehicles without the prescribed driving licence		<p>(Starting from 19.1.2013:</p> <ul style="list-style-type: none"> - from 155 € up to 624 € - for disabled people, it will be 78 € up to 311 €) <p>Administrative sanction of the suspension of the licence from 1 up to 3 months.</p>	
		Article 126, Paragraph 7	Driving with a licence or a circulation card which is expired	Driver	<p>From 159 € up to 639 €</p> <p>Administrative sanction of the withdrawal of the</p>	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					licence or of the circulation card	
		Article 128, Paragraph 2	Circulation in lack of the revision of the licence or a circulation card which are expired.	Driver	From 155 € up to 624 € Administrative sanction of the revocation of the licence or of the circulation card	
		Article 132, Paragraph 5	Circulation with an imported vehicle, motor vehicle or trailer non complying with custom duties.	Driver	From 80 € up to 118 €	
		Article 133, Paragraph 5	Circulation with an imported vehicle, motor vehicle or trailer without the distinguishing sign of the Member State issuing the	Driver	From 80 € up to 118 €	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			licence			
		Article 134, Paragraph 2	Circulation with an imported vehicle, motor vehicle or trailer when the related provisional circulation card is expired.	Driver	From 80 € up to 318 € Confiscation of the vehicle	
		Article 135, Paragraph 4	Driving with a non - EU licence or permission without the related translation	Driver	From 80 € up to 318 €	
		Article 135, Paragraph 5	Driving with a non - EU driving licence without - the certificate of physical and mental fitness required, or - professional certificate	Driver	From 159 € up to 639 €	
		Article 135, Paragraph 8	Driving without international permission	Driver	From 400 € up to 1.600 €	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					Starting from 19.1.2013	
		Article 135, Paragraph 9	International permission non complying with the international rules.	Driver and Vehicle Licensing Agency	From 78 € up to 311 € Starting from 19.1.2013	
		Article 135, Paragraph 10	Driving with a non EU licence but without: - the certificate of physical and mental fitness required, or - professional certificate	Driver	From 400 € up to 1.600 € Starting from 19.1.2013	
		Article 135, Paragraph 11	Resident in Italy since one year driving with a non EU licence which has expired	Driver	Administrative sanction of the seizure of the vehicle for 3 months If it is not possible to impose seizure or	From 2.257 up to 9.032 € In case of reiteration of the crime within two

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>confiscation, suspension of the driving licence from 3 up to 12 months</p> <p>Starting from 19.1.2013</p>	<p>years, there is also the application of the criminal sanction of the imprisonment.</p> <p>Confiscation in case of recidivism.</p> <p>The sanction is cumulative</p>
		Article 135, Paragraph 12	Resident in Italy since one year driving with a valid non EU licence but with an expired professional certificate	Driver	<p>From 400 € up to 1.600 €</p> <p>Seizure of the vehicle for Starting from</p>	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					19.01.2013	
		Article 136, Paragraph 6	Resident in Italy since one year driving with a non EU licence which has expired	Driver	From 555 € up to 2.220 Administrative sanction of the seizure of the vehicle for 60 days.	
		Article 136, Paragraph 6 bis	Resident in Italy since one year driving with a valid non EU licence but with an expired professional certificate	Driver	From 159 € up to 639 € Administrative sanction of the seizure of the vehicle for 60 days.	
		Article 136, Paragraph 7	- Resident in Italy since less than one year driving with an expired non EU license or	Driver	- Administrative sanction of the seizure of the	From 2.257 up to 9.032 €

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			other relevant professional certificate; - Resident in Italy for more than one year driving with valid non EU license or other relevant professional certificate.		vehicle for 3 months - Administrative sanction of confiscation in case of recidivism. - If it is not possible to impose seizure or confiscation, suspension of the driving licence from 3 up to 12 months	In case of reiteration of the crime within two years, there is also the application of the criminal sanction of the imprisonment. The sanction is cumulative
		Article 136 bis,	Driving without a professional certificate	Driver	- Administrative sanction of the seizure of the vehicle for 3	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					<p>months</p> <p>- Administrative sanction of confiscation in case of recidivism.</p>	
		Article 136 ter, Paragraph 3	Circulation with a suspended driving licence.	Driver	<p>From 159 € up to 639 €</p> <p>Administrative sanction of the seizure of the vehicle for 60 days.</p>	
		Article 137, Paragraph 12	Circulation with a military driving licence (or belonging to the Police, Fireman and so on) on a civil vehicle.	Driver	<p>From 159 a euro 639</p> <p>Administrative sanction of the</p>	

Table IT 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
					seizure of the vehicle for 60 days. Suspension of the driving licence.	

The table below gather the sanctions which are considered formally criminal in the Italian legal system.

Table IT 5

Infringements of commercial road transport legislation		
Type of infringement(s) and Article of reference in national legislation	Criminal sanction	Is it dissuasive?
Corresponding EU legislation		
Directive 2009/40/EC Criminal Code Articles 476 (forgery committed by a public officer), 482(forgery committed by a private), 469 (forgery in public certificate) Alteration of the roadworthiness certificate	Article 469 (one third of the fines provided in Articles 467 and 468) Article 476 imprisonment from 1 up to 6 years Article 482: 8 months up to 4 years.	Yes
Directive 2006/126/EC Highway Code Article 116, Paragraph 13 Driving: - without a driving licence - or with a driving licence: - not renewed, or revoked. Article 116, Paragraph 13	From 2.257 up to 9.032 € In case of reiteration of the crime within two years, there is also the application of the criminal sanction of the imprisonment up to 1 year. Criminal sanction (misura di sicurezza) of confiscation in case of recidivism.	Yes

Table IT 5

Infringements of commercial road transport legislation

<p>Type of infringement(s) and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Criminal sanction</p>	<p>Is it dissuasive?</p>
<p>Driving with a fake driving licence</p>		
<p>Directive 2006/126/EC Highway Code Article 116, Paragraph 13 Driving with a fake driving licence</p>	<p>From 2.257 up to 9.032 €</p> <p>In case of reiteration of the crime within two years, there is also the application of the criminal sanction of the imprisonment up to 1 year.</p> <p>Criminal sanction (misura di sicurezza) of confiscation in case of recidivism.</p>	<p>Yes</p>
<p>Directive 2006/126/EC Highway Code Article 135, Paragraph 11 Resident in Italy since one year driving with a non EU</p>	<p>From 2.257 up to 9.032 €</p> <p>In case of reiteration of the crime within two years, there is also the application of the criminal sanction of</p>	<p>Yes</p>

Table IT 5

Infringements of commercial road transport legislation

Type of infringement(s) and Article of reference in national legislation Corresponding EU legislation	Criminal sanction	Is it dissuasive?
licence which has expired	the imprisonment. Confiscation in case of recidivism.	

16.7 Sanctions which could be considered substantially criminal in the Italian legal system

As already stated, the Italian system provides for a “formal” definition of criminal and administrative sanctions. The Italian courts adopted this criterion and there is not, as far as we know, any debate concerning the possible “criminal attitude” of a penalty defined as administrative in our legal system.

The law simply provides for that maximum applicable for the administrative fine is of 15,000 €, which does not apply in case of proportional sanctions.

However, going beyond the formal definition, it is possible to deduce that the amount of certain penalties is so high that it reveals its repressive and deterrent intent which is typical of the criminal sanctions.

Based on our research and on a comparison between the amount of financial administrative penalties foreseen by Italian rules, we conclude that most of the rules on driving time are punished with sanctions that are administrative from a substantial and formal point of view.

Different conclusions apply to sanctions for infringements of Regulation (EC) No. 1071/2009 and Regulation (EC) No. 1072/2009 which are close to the maximum amount of administrative sanction. The maximum pecuniary fine committed for breach of rules on cabotage is of 15,000 €, while a fine of 9,032 € is imposed in case of driving without the licence. It is posited in agreement that such administrative fines should be qualified as criminal in the light of their seriousness.

Table IT 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

<p>Type of infringement and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Administrative sanction that could be qualified as criminal sanction</p>	<p>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</p>	<p>Is it dissuasive?</p>
<p>Law No 298/74, Article 26, Abusive exercise of the profession.</p> <p>Regulation (EC) No 1071/2009</p>	<p>From 4 million liras to 24 million liras (around 2,000 € to around 12,000 €).</p> <p>From 5,000 (2,900 €) to 30 million liras (around 18,000 €) in case of 2 infringement in 5 years.</p> <p>Accessory sanction: seizure of the vehicle for three months. In case of reiterate infringement confiscation.</p>	<p>Very high monetary penalty abstractly prescribed and afflictive accessory sanction.</p>	<p>Yes</p>

Table IT 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

<p>Type of infringement and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Administrative sanction that could be qualified as criminal sanction</p>	<p>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</p>	<p>Is it dissuasive?</p>
<p>Law No. 298/74, Article 26, Awarding the transport of goods to an undertaking exercising abusively the profession</p> <p>Regulation (EC) No 1071/2009</p>	<p>From 3 million liras (1,700 €) to 18 million liras (10,500 €).</p>	<p>Very high monetary penalty abstractly prescribed</p>	<p>Yes</p>

Table IT 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

<p>Type of infringement and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Administrative sanction that could be qualified as criminal sanction</p>	<p>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</p>	<p>Is it dissuasive?</p>
<p>Law No298/74</p>	<p>From 4 million liras to 24 million liras (around 2,000 € to around 14,000 €).</p>	<p>Very high monetary penalty abstractly prescribed and</p>	<p>Yes</p>

Table IT 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

<p>Type of infringement and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Administrative sanction that could be qualified as criminal sanction</p>	<p>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</p>	<p>Is it dissuasive?</p>
<p>Article 46</p> <p>Abusive transport, but the transport has to be effectively carried out.</p> <p>Regulation (EC) No 1072/2009</p>	<p>From 5,000 (2,900 €) to 30 million liras (around 18,000 €) if two infringements in 5 years.</p> <p>Accessory sanction: seizure of the vehicle for three months. In case of reiterate infringement confiscation.</p>	<p>afflictive accessory sanction.</p>	
<p>Law No298/74</p> <p>Article 46 -bis</p> <p>Breach of rules on cabotage (obligation to carry copy of the Community licence,</p>	<p>From 5,000 € to 15,000 €</p> <p>Accessory sanction: seizure of the</p>	<p>Very high monetary penalty abstractly prescribed and afflictive accessory sanction.</p>	<p>Yes</p>

Table IT 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

<p>Type of infringement and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Administrative sanction that could be qualified as criminal sanction</p>	<p>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</p>	<p>Is it dissuasive?</p>
<p>or evidence required by Article 8 of Regulation No 1072/2009)</p> <p>Regulation (EC) No 1072/2009</p>	<p>vehicle for three months.</p> <p>Seizure of 6 months in case of reiterate infringement.</p>		
<p>Law No218/2003</p> <p>Article 6</p> <p>Transport carried out by drivers not regularly employed.</p> <p>Regulation (/EC) No 1073/2009</p>	<p>From 500 € to 2000 €</p>	<p>. Very high monetary penalty abstractly prescribed</p>	<p>Yes</p>

Table IT 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

<p>Type of infringement and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Administrative sanction that could be qualified as criminal sanction</p>	<p>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</p>	<p>Is it dissuasive?</p>
<p>Transport of dangerous goods</p> <p>Highway Code, Article 168, Paragraph 8</p> <p>Transport of dangerous goods without the necessary authorization, or when the authorization exists, infringing the conditions prescribed therein.</p> <p>Directive 2008/68/EC</p>	<p>From 1,886 € up to 7, 546 €</p> <p>Suspension of the card of circulation and of the driving licence for a period between 2 up to 6 months.</p> <p>Repeated violations may entail the administrative seizure of the vehicle.</p> <p>(Article 168,</p>	<p>High monetary penalty abstractly prescribed and afflictive accessory sanction.</p>	<p>Yes</p>

Table IT 6

Infringements of commercial road transport legislation sanctioned with administrative sanctions that substantially could be considered criminal in the light of the case law of the ECHR

<p>Type of infringement and Article of reference in national legislation</p> <p>Corresponding EU legislation</p>	<p>Administrative sanction that could be qualified as criminal sanction</p>	<p>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</p>	<p>Is it dissuasive?</p>
	<p>Paragraph 8- bis)</p>		

16.8 Effectiveness of the sanctions system

Based on the information available²⁰⁶, the following number of vehicles have been checked in Italy in the years 2010 and 2011.

Table IT 7				
	2010	2011	Difference	%
NATIONALITY OF THE VEHICLE	AMOUNT OF VEHICLES CHECKED			
Italian	229.152 (90,5%)	234.989 (89,3%)	5.837	2,5
E.U. Country	20.168 (8%)	23.544 (9 %)	3.376	16,7
Extra - E.U. Country	3.997 (1,5 %)	4.542 (1,7 %)	545	13,6
Total	253.317	263.075	9.758	3,9

The majority of the infringements detected has been committed by drivers on board of national vehicles.

The above table shows the percentage of the infringements for nationality of the vehicles detected for the year 2011. For a total amount of 92,744 vehicles checked, 92,2 % are Italians, 6,6 % come from EU countries and the 1,2 % from non - EU countries.

²⁰⁶ Information available at the following website:
http://www.cnafita.it/images/stories/3_maggio_2012_COMMISSIONE_SICUREZZA_STRADA_LE_dati_Polstrada_modalita_compatibilita.pdf.

Chart IT 1

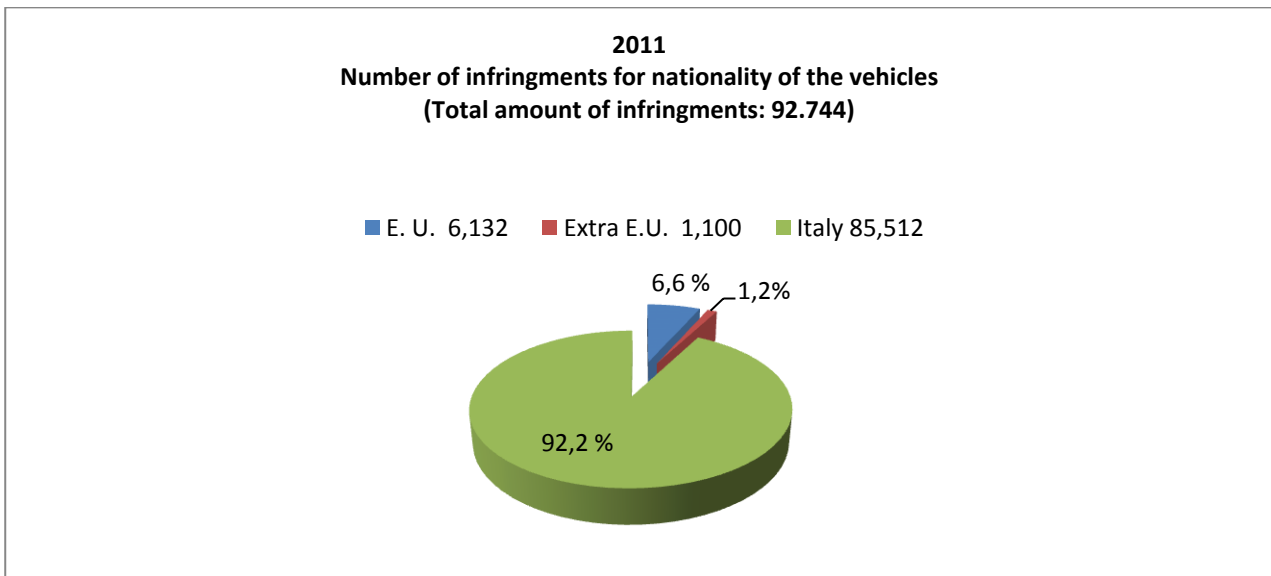
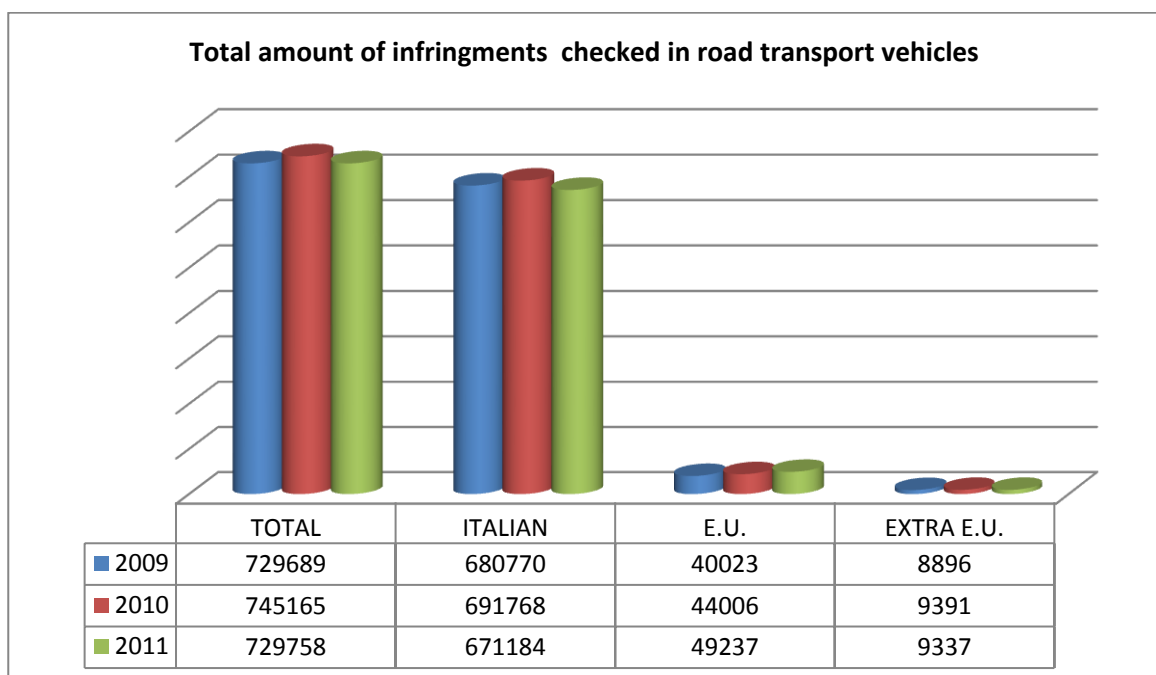


Chart IT 2

The data available show the following trend for the year 2009, 2010 and 2011:

- a decrease in the number of infringements by the Italian road transport operators;
- an increase in the number of infringements detected for vehicles coming from the EU and non EU countries.



That said, figures are available also for 2011 and concern the infringements detected in Italy. The table below, showing the details of infringements by nationality of the vehicle, displays that, independently from the origin of the vehicle, most of the infringements detected concern the driving times, breaks and rest periods sanctioned by Article 174 of the Highway Code with a pecuniary fine which may vary from a minimum of 39 € up to a maximum of 1,600 €.

Table IT 8												
2011												
Infringements detected for nationality of the vehicle												
L. 298/74					Highway code							
	Article 26/1	Article 26/2	Article 46	Article 7 c2	Article 61	Article 62	Article 142	Article 164	Article 167	Article 174	Other	Total
	Abusive exercise of the profession	Awarding the transport of goods to an undertaking exercising abusively the profession	Abusive transport	Awarding the transport of goods to an undertaking exercising abusively the profession	Maximum authorised length	Maximum authorised weight	Speed Limit	Arrangement of the cargo on vehicles	Transport of goods with vehicles and trailers	Driving time and rest periods		
IT	191	43	381	344	114	51	12.518	596	3.461	24.049	43.764	85.512
EU	9	5	249	57	48	1	1.112	39	197	2.983	1.432	6.132

NON-EU	2	1	148	13	5	1	167	6	24	323	410	1.100
Total	202	49	778	414	167	53	13.797	641	3.682	27.355	45.606	92.744

This table illustrates that the infringements detected are, in descending order:

- Efficiency of the vehicle (Article 79 Highway Code);
- Rules on driving times and Rest Periods (Article 174);
- Tachograph (Article 19 of the Law 727/78 and Article 179 Highway Code);
- Speed limits (Article 142 Highway Code);
- Roadworthiness certificate (Article 80, Highway Code);
- Modification to the vehicle structure (Article 79, Highway Code);
- Transport of goods with vehicles and trailers (Article 167, Highway Code);
- Abusive transport (Articles 26-46, Law Decree 298/74);
- Rules on cabotage (Article 46- *bis*, Law 298/74);
- Transport card (Article 7, Law Decree 286/05).