

# **Study on sanctions in the field of commercial road transport**

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# EXECUTIVE SUMMARY

## **Foreword**

EU legislation on road transport aims at ensuring best conditions for an open, efficient, safe and cost effective market for professional road transport services in the European Union (“EU”).

Notably, EU action aims at ensuring that transport development complies with safety requirements and environmental protection, and more in general at ensuring that competition between transport operators exists. It also disciplines access to the profession, working conditions and the technical standards of vehicles.

- In particular, EU legislation on road transport services establishes *inter alia*: social rules for goods and passengers road transport operators and rules on their enforcement; rules governing the admission to the occupation and access to the road transport market; rules on standards to be complied with by vehicles (weights) or by their load (dangerous goods) and/or necessary licences (Community licence, driving licence). The following pieces of EU legislation compose the framework of EU legislation in the area of commercial road transport:
  - Rules on driving time and rest periods (Regulation (EC) No 561/2006 on driving times, breaks and rest periods of drivers)<sup>1</sup>.
  - Rules on enforcement (Directive 2006/22/EC<sup>2</sup>, as amended by Directive 2009/4/EC and Directive 2009/5/EC<sup>3</sup>).

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<sup>1</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, OJ L 102, 11 April 2006, pages 1–14.

<sup>2</sup> Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and

- Rules on working time (Directive 2002/15/EC which introduces the concept and limitations on working time in road transport)<sup>4</sup>.
- Rules on tachograph (Council Regulation (EEC) No 3821/85)<sup>5</sup>.
- Regulations (EC) No 1071/2009<sup>6</sup>, 1072/2009<sup>7</sup>, 1073/2009<sup>8</sup> on common rules for: access to occupation of road transport operator, access to the international road haulage, access to the international market for coach and bus services, respectively.
- Directive 2009/40/EC on roadworthiness tests for motor vehicles and their trailers<sup>9</sup>; Directive 2006/126/EC on driving licences<sup>10</sup>; Directive 2008/68/EC on

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(EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, OJ L 102, 11 April 2006, pages 35–44.

<sup>3</sup> Commission Directive 2009/4/EC of 23 January 2009 counter measures to prevent and detect manipulation of records of tachographs, amending Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, OJ L 21, 24. January 2009, pages 39–40.

<sup>4</sup> Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, OJ L 80, 23 March 2002, pages 35–39.

<sup>5</sup> Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, OJ L 370, 31 December 1985, pages 8–21.

<sup>6</sup> Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, OJ L 300, 14 November 2009, pages 51–71.

<sup>7</sup> Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market, OJ L 300, 14 November 2009, pages 72–87.

<sup>8</sup> Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, OJ L 300, 14 November 2009, pages 88–105.

<sup>9</sup> Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers, OJ L 141, 6 June 2009, pages 12–28.

the inland transport of dangerous goods<sup>11</sup>; Directive 96/53/EC 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<sup>12</sup>.

In brief, Regulation (EC) No 561/2006 lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road. Council Regulation (EEC) No 3821/85 on recording equipment in road transport sets technical standards and establishes the rules on the use, type approval, installation and inspection of tachographs.

Directive 2006/22/EC lays down minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85, such as rules on checks to be carried out at roadside and at the premises of transport undertakings.

Directive 2002/15/EC requires Member States to adopt measures which limit the maximum weekly working time of mobile workers, laying down minimum requirements with regard to the organization of the working time for all persons performing mobile road transport activities.

Regulation (EC) No 1071/2009 lays down provisions relating to the occupation of road transport operator, which includes the occupations of haulage operator and passenger transport operator. It applies to all undertakings engaged in this occupation within the EU and to undertakings which intend to engage in the occupation.

Regulation (EC) No 1072/2009 and No 1073/2009 set specific requirements for operators willing to carry out international carriage, and international carriage of passengers by coach and bus, requiring *inter alia* possession of a Community licence.

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<sup>10</sup> Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences OJ L 403, 30 December 2006, page 18-60. It recasts Council Directive 91/439/EEC of 29 July 1991 on driving licences, OJ L 237, 24 August 1991, pages 1–24.

<sup>11</sup> Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods OJ L 260, 30 September 2008, pages 13–59.

<sup>12</sup> Council Directive 96/53/EC of 25 July 1996 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, OJ L 235, 17 September 1996, pages 59–75.



Directive 2008/68/EC establishes a common regime for all aspects of the inland transport of dangerous goods, by road, rail, and inland waterway, providing that transport of dangerous goods between Member States, and between Member States and third countries (Article 4), must comply with specific requirements (indicated in the annexes).

Directive 96/53/EC aims at avoiding that differences between standards in force in the Member States with regard to the weights and dimensions of commercial road vehicles have an adverse effect on the conditions of competition and constitute an obstacle to traffic between Member States.

Directive 2009/40/EC requires that in each Member State, motor vehicles registered in that State and their trailers and semi-trailers shall undergo periodic roadworthiness tests and that Member States adopt such measures as they deem necessary to make it possible to prove that a vehicle has passed a roadworthiness test complying with at least the provisions of the Directive, and notify them to the other Member States and to the Commission.

The rules introduced by Directive 2006/126/EC aim at reducing possibilities of fraud, guaranteeing a true freedom of movement for EU drivers and reinforcing safety on European roads.

As to fraud, the Directive replaces the paper driving licence with a model in the form of a plastic card, requiring that existing paper licences do not need to be exchanged, but will no longer be issued once the new legislation applies. It also set, *inter alia*, minimum age requirements for different categories of driving licences,

EU legislation has not determined so far the type and level for sanctions that Member States should apply in connection with infringements of EU rules in commercial road transport.

Member States share, indeed, with the European Commission the responsibility for ensuring compliance with the above legislation. They are indeed required to lay down rules on effective, proportionate and non-discriminatory penalties applicable to infringements against the provisions of EU Regulations and Directives on professional road transport and to organize a system of appropriate and regular checks on their correct and consistent implementation.

Some provisions of the road package legislation provide for some harmonisation as regards infringements and their sanctioning. For example Regulation (EC) No

1071/2009, provides that the most serious infringement of EU rules (“MSI”) as listed in Annex IV should normally lead to withdrawal of licence of the transport undertaking.

The infringements list in such Annex refers to violations of rules on working and driving times as well as rules on standards to be complied by vehicles and by their load. In particular, pursuant to Annex IV the following infringements are to be considered as most serious infringements for the purposes of Article 6(2)(a) of Regulation No 1071/2009/EC, that is to say those infringement that might imply loss of good repute.

The table below lists such infringements.

<u>Table A</u> <i>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</i>	
➤	Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more
➤	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
➤	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
➤	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
➤	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
➤	Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence
➤	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

Table A

*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*

- 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

Article 22 of Regulation (EC) No. 1071/2009, Paragraph 2, gives some further specifications on the typologies of penalties to be adopted.

Firstly, it provides that Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation, and shall take all the measures necessary to ensure that they are implemented. Secondly, it requires that such penalties shall include, in particular, suspension of the authorisation to engage in the occupation of road transport operator, withdrawal of such authorisation and a declaration of unfitness of the transport manager.

Recital 26 of this Regulation states in addition that the possibility of immobilising the vehicle where serious infringements are detected should also be included within the common range of measures open to Member States, but does not define what should be considered a serious infringement.

Annex III of Directive 2006/22/EC as amended by way of Commission Directive 2009/5/EC contains a categorization of infringements against Regulation No (EC) 561/2006 and Regulation (EEC) No 3821/85, recommending which ones should be categorised as very serious (“VSI”), serious (“SI”) or minor (“MI”).

The table below contains a list of the infringements that are categorised as VSI by Annex III.

Table B

*Very serious infringements of EU rules foreseen in Annex III of Directive 2006/22/EC*

1. Driving more than 11 h per day if the daily time is 9 h

2. Driving more than 12 h per day if the daily driving time can be extended to 10

3. Driving more than 70 h a week
4. Driving more than 112 h and a half in two weeks
5. Exceed uninterrupted driving time of more than 6 h
6. Insufficient daily rest period of less than 8,30 h if reduced daily rest period not allowed
7. Insufficient reduced daily rest period of less than 7 h if reduced daily rest period is allowed
8. Insufficient split daily rest period of less than 3 h + 7h
9. Insufficient daily rest period of less than 7 h multi-manning
10. Insufficient reduced weekly resting period of less than 20 h
11. Insufficient weekly resting period of less than 36 h if reduced weekly resting period not allowed
12. Link between wage and distance travelled or amount of goods carried
13. No type approved recording equipment installed and used
14. Recording equipment not correctly functioning (for example: recording equipment not properly inspected, calibrated and sealed)
15. Recording equipment improperly used (not using a valid driver card, voluntary abuse,...)
16. Undertaking not keeping record sheets, printouts and downloaded data
17. Driver holding more than one valid driver card
18. Use of different driving card than the valid one
19. Use of defective or expired driver card
20. Recorded and stored data not available for at least 365 days
21. Use dirty damaged sheets or driver cards and data not legible
22. Incorrect use of record sheets/driver cards
23. Unauthorized withdrawal of sheets or driver card which has an impact on the record of relevant data
24. Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost

25. Not using manual input when required to do so
26. Not using correct sheet or driver card not in the correct slot (multimanning)
27. Incorrect use of switch mechanism
28. Surname missing on record sheet
29. Name missing on record sheet
30. Refuse to be checked
31. Unable to produce records of current day
32. Unable to produce records of previous 28 days
33. Unable to produce records of the driver card if the driver holds one
34. Unable to produce manual records and printouts made during the current day and the previous 28 days
35. Unable to produce driver card
36. Inable to produce print outs made during the current week and the previous 28 days
37. 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
38. Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified
39. Manipulation device that could be used to falsify data and/or printouts information present on vehicle switch/wire...)
40. Not repaired by an approved fitter or workshop
41. Driver not marking all information for the periods of time which are no longer recorded while recording equipment is unserviceable or malfunctioning
42. Driver card number and/or name and/or driving license number missing on temporary sheet
43. Lost or theft of driver card not formally declared to the competent Authority of the Member State where the theft occurred

In this context, Member States have adopted the following types of penalties for infringements of Regulations (EC) No 561/2006 and (EEC) No 3821/85: financial penalties, immobilisation of the vehicle, driving bans and imprisonment, and such penalties differ for drivers and for undertakings.

In recent documents published by the EC Commission it was found that the maximum fines vary appreciably between Member States, and that in some cases this cannot be justified on grounds of socio-economic differences (the amounts of the fines vary significantly between Member States, in extreme cases by as much as 1:10).

For example, the maximum fines vary from a fixed fine of € 58.23 in Malta to € 5,000 and more in Austria, Cyprus, Germany and Ireland.

In general, as to infringements of Regulations (EC) No 561/2006 the national systems of penalties differ widely, as some national legislations do not specify any differences between the different infringements and other legislations distinguish between specific infringements and apply different levels of penalties to these infringements<sup>13</sup>.

Other differences concern the fact that the legislation in some countries also includes temporary withdrawal of a driver's driving licence or the driver card, or that several Member States also apply higher or more severe penalties in cases of repeated or recurrent infringements.

In turns all the above differences imply that transport operators are not treated equally within the EU, and overall it affects the effectiveness of the enforcement regime of the EU legislation in force.

### ***EU competence in the area of criminal law***

Amongst many reforms provided for in the Treaty of Lisbon, the reform of the judicial cooperation in criminal matters is perhaps the deepest and the most visible. The Treaty of Lisbon has abolished the so called "third pillar" and the former Article 31, Paragraph 1, letter D) TEU has been replaced by the Article 83, Paragraph 1, TFEU, which provides as follows:

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<sup>13</sup> Report from the Commission - Analysing the penalties for serious infringements against the social rules in road transport, as provided for in the legislation of the Member States, COM/2009/225.

*“The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.*

*These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime”.*

In addition, Article 83 extends the areas of crime that can be subject to EU legislation. The new areas are: trafficking in human beings and sexual exploitation of women and children, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment and computer crime.

Most importantly Article 83, Paragraph 2, of the TFEU introduces a new provision, as there was no such provision in the former treaties. It reads:

*“If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76”.*

This Article can be seen as a formal sanctioning of the decisions of the ECJ in cases C-176/03 and C-440/05<sup>14</sup>. It constitutes a legal basis for the adoption of EU criminal law in areas which have been subject to harmonization if specific conditions are met and notably if compliance with the principles of proportionality, necessity and subsidiarity is demonstrated.

## ***The object of the Study***

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<sup>14</sup> Judgment of 13 September 2005, Commission/Council, Case C-176/03, ECR 2005, p. I-7879; Judgment of 23 October 2007, Commission/Council, C-440/05, ECR 2007 p. I-9097.

In this context the scope of this Study is threefold:

- to analyze and compare the national sanctioning systems of all 27 Member States of the EU concerning infringements against the EU road transport legislation, and in particular to assess how the national penalty systems work, and are applied in practice and how the type and level of penalties are related to the category of infringements (hereinafter also, “Comparative analysis”);
- to analyze and assess the scope of Article 83(2) of the TFEU, in order to establish to what extent such Article can be used to establish minimum rules with regard to the definition of criminal offences and sanctions for violations of road transport legislation, in order to ensure effective implementations of the EU policy;
- to make proposals for a future framework for the development of criminal policy for the purpose of enforcement of road transport legislation, and to identify criteria and conditions that could be used by the Commission in order to develop proposals related to sanctions (hereinafter also , “Analysis of legal scope for harmonization”) .

In particular, this Study aims at:

- better understanding the basic structure and practice of national criminal law and sanctions systems in all Member States;
- assessing whether criminal sanctions are necessary and are the most efficient way to achieve the objectives of the road transport legislation;
- analysing whether it is legally and practically appropriate, effective and proportionate to harmonise criminal offences and sanctions at the EU level;
- establishing minimum definitions of criminal offences and sanctions.

### ***The methodology of this Study***

The methodology applied for this Study is based on based on three main tools:



- A. desk research;
- B. interviews; and
- C. comparative analysis.

## **Comparative analysis**

As announced above, the first objective of this Study was to carry out a Comparative analysis of MS sanctions systems.

To this end the Study has analyzed in detail the national sanctions systems for infringements of the EU legislative framework on social rules in the road transport sector, national measures transposing Directive 2009/5/EC as well as national measures foreseeing sanctions for infringements of the other EU measures governing the commercial road transport sector.

At the same time, the impact of such legislation in Member States has been assessed through a series of interviews with the competent authorities of all 27 Member States and with representatives of the European enforcement bodies and the European sectoral social partners.

The analysis carried out has focused on the following aspects:

- the relationship between the national administrative and criminal sanctioning regimes in each Member State;
- the link between the sanctioning system in individual Member States and the common categorization of infringements established by Directive 2009/5/EC;
- the existence at national level of specific sanctions applicable to the most serious infringements of EU rules as listed in Annex IV of Regulation (EC) No 1071/2009;
- the bodies responsible for imposing and executing administrative and criminal sanctions;
- the identification of the operators to whom the penalties are applicable (driver, undertaking, transport manager or other persons in the transport chain);

- the assessment of the ways the penalties are imposed on foreign drivers and on undertakings;
- the assessment of the effectiveness and proportionality of the current penalty systems of the 27 Member States in term of enhancing compliance with the legislation in force;
- the identification of the most effective sanctions in reducing the number and seriousness of breaches.

Desk research activity has been carried out on legal texts, case law, relevant literature as well as EU and national reports.

It has been complemented by interviews with European and national stakeholders (“the Survey”). The scope of these interviews was to obtain:

- Information that allow to understand the concrete functioning of Member States’ practices at present as to sanctioning for infringements against the provisions of EU road transport legislation, and in particular those foreseen in the national legislation for infringements against professional road transport legislation.
- Quantitative data on infringements of EU legislation on professional road transport and their seriousness.
- Information concerning possible episodes of “forum shopping” (*i.e.* situation where hauliers who have committed an infringement might prefer to pay the penalty for this infringement in a Member State that applies very low fines rather than risk a very high penalty in another Member State).
- Information and opinions on the proportionality of national sanctions systems.
- Opinions on the reason why national sanctions systems are effective or not effective. On this respect stakeholders have been asked expressly to specify whether compliance with the relevant rules is more influenced by the level of sanctions or by other factors such as the efficiency of the control systems.

The collection of quantitative data has aimed at finding correlations between certain categories and levels of penalties and the level of compliance with EU legislation, and at assessing whether a higher level of compliance is ensured by sanctions addressing a specific category of operators.

In order to carry out the above interviews, the Contractor has used 2 questionnaires that have been approved by the European Commission.

Each questionnaire addresses a category of stakeholders, notably: European organizations, national authorities and national stakeholders.

The questionnaire addressed to European stakeholders aimed to gather information that could be useful in order to compare the effectiveness of national sanctions systems.

It also asked them whether, based on their experience in the sector, and in view of their contacts with the industry, they were able to identify the Member States' sanctions systems which can be considered proportionate and dissuasive.

The questionnaire addressed to national stakeholders, *i.e.* national authorities and national associations, was aimed at requesting to such stakeholders information on figures that could be useful in order to compare the effectiveness of national sanctions systems. They have also been requested to provide their opinions on the effectiveness and proportionality of their respective national sanctions system and on other factors that could affect/influence the level of compliance with the relevant rules on professional road transport. Where possible, they have been requested to provide examples of infractions that according to them are punished in an excessive way at national level.

Based on the description of national sanctions systems and on the results of the Survey, the Study has assessed the proportionality and effectiveness of national sanctions systems.

The Contractor's analysis has also aimed at assessing whether, based on a comparison of national sanctions systems, it could be concluded that criminal sanctions are the most efficient way to achieve the objectives of road transport legislation and notably to ensure a high level of compliance.

The Study has categorized the national systems based on the following parameters:

- a. severity and proportionality of the sanctions;
- b. suitability of the sanctions to influence the behaviour of all operators involved in the road transport value chain.

Based on such parameters the sanctions systems have been classified as follows:

1. Effective *vs* non effective systems: *i.e.* systems that contain sanctions that are able to influence in a positive way the the behaviour of all operators involved in the road transport value chain. By this we mean that the sanctions foster compliance with the law, without having as negative effect the consequence of putting out of the markets those transport operators whose behaviour does not affect competition and road safety.
2. Dissuasive *vs* non dissuasive systems: *i.e.* systems that foresee very severe penalties (*i.e.* very high financial penalties or measures that restrict personal freedom).
3. Proportionate *vs* non proportionate systems: *i.e.* systems that differentiate between serious and less serious infringements, and which have adopted sanctions that are tailored to the seriousness of each infringement, or to each category of infringements.

## **Presentation of results**

The results of desk research activity and interviews have been included in 28 Country Reports.

National reports are structured as follows.

A first part describes national rules implementing EU social rules on road transport. A second part describes the national rules implementing the road package where applicable, or simply foreseeing the relevant sanctions. A third part describes the rules on standards of vehicles and load and necessary licenses.

A fourth part describes the notion of criminal sanctions and of administrative sanctions in each legal system.

A fifth part describes the scope of application of national criminal law. A sixth part includes summary tables providing a list of infringements of the EU legislation on professional road transport as defined in each national legal system. Such tables detail

the following: a) typology of sanctions (i.e. whether administrative and/or criminal) applied; b) existence of rules on repeated infringements; c) content of the rules identifying who are the operators sanctioned in connection with each infringement; d) relation between administrative and criminal sanctions (*i.e.* concurrent/exclusive application).

A seventh and last part provides a conclusion on the effectiveness of the relevant national sanction system.

The assessment of the effectiveness of national sanction systems is mainly based on a legal analysis of the national provisions. The following factors have been taken into consideration:

- Are the sanctions tailored to the seriousness of the infringements?
- Does the system differentiate among repeated offences and mistakes?
- Are infringements defined in a clear way?
- Does the system include measures such as immobilization of the vehicle that are deemed dissuasive as they reduce the incentive to break the law when the advantage of breaking the rules is higher than the economic damage consequent to a fine?

Conclusions on the effectiveness of each MS sanctions system have also been based on the results of the Survey and on quantitative data provided by stakeholders and found through desk research.

## **Analysis of legal scope for harmonisation**

The methodology applied in order to carry out the Analysis of legal scope for harmonization includes mainly desk research. To complement this information, a Survey was organized with the aim of obtaining the opinion of the Members of the Academy on the scope of Article 83, Paragraph 2, of the TFEU and on the

appropriateness of EU measures approximating the national sanctions systems of the Member States of the EU in the area of commercial road transport.

The Survey has been carried based on a questionnaire that has been sent to professors of transport law and of EU criminal law.

A separate questionnaire has been sent to European stakeholders in August 2012 in order to gather stakeholders' views on a possible EU action aimed at approximating sanctions in the field of professional road transport.

The questions included in this latter questionnaire were aimed also at collecting opinions on the benefits of a possible adoption of an EU approximating measure and on the main risks associated with such an initiative.

Opinions of stakeholders were deemed to be useful in the process of carrying out a risk assessment in connection with each possible policy option for improving the effectiveness of the enforcement of EU rules in the area of commercial road transport.

## ***This Report***

This report is the Final Report of this Study.

It is structured as follows. The first Chapter contains some necessary information concerning the relevant legislation for this Study.

Chapter 2 illustrates the methodology used in the present Study.

Chapters from 3-30 instead provide an in-depth analysis of the Member States' national sanctions systems in the field of commercial road transport.

Chapter 31 includes an overview of the Survey carried out by the Contractor in the context of this Study, and summarizes its most important outcomes.

Chapter 32 contains a categorization of Member States' national sanctions systems and conclusions on their effectiveness.

Chapter 33 contains an analysis of the EU competence in the area of criminal law and an assessment of a necessity of a legislative action at EU level concerning criminal sanctions in the field of commercial road transport. It elaborates proposals for a future framework for the development of criminal policy for the purpose of enforcement of road transport legislation.

Chapter 34 identifies possible policy options for improving the effectiveness of MS sanctions systems in the area of commercial road transport.

### ***Member States' sanctions systems in the field of commercial road transport***

The analysis carried out in this Study shows that Member States' national sanctions systems for infringements of EU rules on commercial road transport are very different.

Such conclusion confirms the findings of an European Commission report dated 2009 in which the Commission remarked that the national systems of penalties differ widely<sup>15</sup>.

This conclusion referred to infringements of social rules, but based on the findings of this Study it can apply also to infringements of the rules of Regulations (EC) Nos 1071/2009, 1072/2009, 1073/2009, Directive 2009/40/EC, Directive 2006/126/EC, Directive 2008/68/EC, Directive 96/53/EC.

The differences between Member States' systems pertain to four main categories that have been identified in this Study:

1. Definition of the infringements: *i.e.* level of detail in the identification of the sanctioned conducts.
2. Adoption of tailored sanctions: *i.e.* the system foresees different levels of sanctions tailored to the seriousness of the infringements (consistency of the system).
3. Typology of enforcement: administrative *vs* criminal enforcement
4. Dissuasiveness and proportionality of sanctions: *i.e.* their suitability to punish in an adequate manner the infringements of road transport according to their seriousness and their deterrent effect.

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<sup>15</sup> Report from the Commission - Analysing the penalties for serious infringements against the social rules in road transport, as provided for in the legislation of the Member States, COM/2009/225.

Sub 1. The analysis of Member States' sanctions systems shows that the definitions of the infringements of EU rules are all but consistent across MS. In addition, in some Member States the conducts sanctioned are not defined but identified in a broad way (*e.g.* all infringements of a specific EU Regulation). In some Member States the sanctions applicable to some infringements of EU rules could not be identified easily, as national implementing measures do not contain specific provisions on sanctions (*e.g.* Italy).

However, the analysis showed also that some Member States such as the Netherlands and Belgium have adopted legislation describing in detail the conducts that are qualified as infringements of the rules on commercial road transport and how they should be sanctioned.

Other systems such as Germany have also been considered as a best practice because of the way the system identifies clearly the sanctioned conducts and the operators that have to be held liable. This applies in particular in respect to the infringements that are qualified by EU legislation as most serious infringements (MSI) of EU rules pursuant to Annex IV of Regulation (EC) No 1071/2009. German law describes in detail the conducts that should be qualified as MSI and sanctions them accordingly.

Sub 2. we found that only some Member States' sanctions systems differentiate in a consistent manner the level of sanctions applicable to the different infringements object of this Study. Notably, they either sanction infringements that are qualified as most serious and very serious with severe sanctions, or anyhow the national authorities are authorized to apply severe criminal sanctions when road safety is in danger.

On the other hand, many MS sanctions systems do not differentiate enough between less serious and more serious infringements. Notably, it was found that the difference in the amount of the sanctions in some MS does not seem to take into account the level of seriousness of the different infringements sanctioned.

In some MS (2) the same sanctions are abstractly foreseen for most of the infringements of the rules on commercial road transport, thus conveying a wrong message to transport operators concerning the gravity of different infringements.

Sub 3. the analysis showed that the enforcement options chosen by Member States differ widely.



Notably, we found that the same infringement might be qualified in a MS as a criminal offence and in another as an administrative offence.

For example in Bulgaria, Estonia, Germany, Hungary, Italy, Latvia, Lithuania, Slovenia, Spain infringements of social rules are qualified as administrative offences.

On the contrary, the same infringements are qualified as criminal offences in States such as Ireland, Denmark and Poland.

The situation is more complex in other MS. For example in States, such as Austria, the same infringement is qualified as administrative offence in case it is committed once and as criminal offence in case of recidivism.

Some MS have also a *tertium genus* of sanctions that applies when some conditions are met and excludes the application of the abstractly foreseen criminal sanction.

The same differences were found also in connection with sanctions for infringements of EU rules on access to the professions and on standards to be complied by vehicles.

The tables below give a more detailed overview.

<u>Table C Road Package</u>		
<i>Member State</i>	<i>Administrative Sanction</i>	<i>Criminal Sanction</i>
<b>Austria</b>	Mainly	Application of Criminal Code.
<b>Belgium</b>	No	✓
Belgium has a <i>tertium genus</i> of sanctions called “perception immediate” which is often applied in this field.		
<b>Bulgaria</b>	✓	no
<b>Cyprus</b>	✓	✓
<b>Czech Republic</b>	Mainly	Some
<b>Denmark</b>	No	✓
<b>Estonia</b>	✓	✓
<b>Finland</b>	Some	Mainly
<b>France</b>	✓	✓
<b>Germany</b>	✓	Only 1 infringement
<b>Greece</b>	✓	no
<b>Hungary</b>		no
<b>Ireland</b>	No	✓
<b>Italy</b>		no

<b>Latvia</b>	Mainly	some
<b>Lithuania</b>	Mainly	Only 2 infringements
<b>Luxembourg</b>	Some, cumulative with criminal sanction	✓
<b>Malta</b>		
<b>Northern Ireland</b>	✓	✓
<b>Poland</b>	Mainly	some
<b>Portugal</b>	✓	no
<b>Romania</b>	✓	Only two infringements
<b>Slovakia</b>	Mainly	Some
<b>Slovenia</b>	✓	Only one infringement
<b>Spain</b>	✓	no
<b>Sweden</b>	✓	Only for 2 infringements
<b>The Netherlands</b>	✓	✓
<b>United Kingdom</b>	Some	Mainly

<b>Table D Standards of Vehicles</b>		
<i>Member State</i>	<i>Administrative Sanction</i>	<i>Criminal Sanction</i>
<b>Austria</b>	✓	No
<b>Belgium</b>	There are some	Mainly
	Belgium has a tertium genus of sanctions called “perception immediate” which is often applied in this field.	
<b>Bulgaria</b>	Mainly	Application of Criminal Code.
<b>Cyprus</b>	✓	✓
<b>Czech Republic</b>	Mainly	Some
<b>Denmark</b>	No	✓
<b>Estonia</b>	✓	✓
<b>Finland</b>	Some	Mainly
<b>France</b>	✓	✓
<b>Germany</b>	✓	Aggravating circumstance or application of SGB
<b>Greece</b>	Mainly	some
<b>Hungary</b>	✓	Only for two infringements. The criminal sanctions however are cumulative
<b>Ireland</b>	Some	mainly
<b>Italy</b>	Mainly	Some
<b>Latvia</b>	Mainly	Some
<b>Lithuania</b>	✓	Only one infringement

<b>Luxembourg</b>	✓	✓
<b>Malta</b>	✓	✓
<b>Northern Ireland</b>	✓	✓
<b>Poland</b>	Mainly	Some
<b>Portugal</b>	✓	Only one infringement
<b>Romania</b>	✓	Only some infringement
<b>Slovakia</b>	Mainly	Only some infringements
<b>Slovenia</b>	✓	No
<b>Spain</b>	Mainly	Some, but not cumulative.
<b>Sweden</b>	✓	Some
<b>The Netherlands</b>	✓	✓
<b>United Kingdom</b>	Mainly	Some

Sub 4. it was found that only some Member States have adopted specific sanctions for those infringements that are qualified as very serious and most serious in EU legislation.

It was also found out that the sanctions for those infringements that are qualified as very serious and most serious differ widely, and that such differences show that Member States give to transport operators inconsistent messages concerning the gravity of such infringements.

The following examples can be useful to understand the reason why the Study came to such conclusion.

Example No. 1. The same infringement, qualified as most serious in EU legislation “*exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more*” is sanctioned:

- in Germany with a fine of up to 15,000 €;
- in Italy with a fine from 400 € - to 1,600 €;
- in Latvia with a fine up to 300 €.

Example No. 2. The same infringement, qualified as most serious in EU legislation “*transporting dangerous goods that are prohibited for transport (A) 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*” is sanctioned:

- in Austria with a monetary penalty up to 50,000 €;
- in Greece with a monetary penalty of approximately 146.73 €.

That said, the analysis identified some Member States’ sanctions systems that were found dissuasive, as they punish with heavy sanctions the most serious and very serious infringements of EU law. It also came to the conclusion that States like Belgium and the Netherlands should also be qualified as dissuasive because the law empowers the national authorities to apply severe sanctions when it is deemed appropriate.

Subsequently, the analysis selected the Member States whose sanctions systems are not only dissuasive, but also proportionate based on the following criteria:

- They either sanction infringements that are qualified as most serious and very serious with severe sanctions, or anyhow the national authorities are authorized to apply severe criminal sanctions when road safety is in danger (dissuasiveness).
- Their systems foresee less severe sanctions for less serious infringements.
- Thus, they reduce the incentive to commit more serious violations due to the fact that the damage threatened is proportionate to the gain deriving from breaching the law.

Based on the above criteria, the analysis identified as possible effective sanctions systems those of the following Member States: Belgium, the Netherlands, Germany and Luxembourg.

### ***Conclusions of this Study on the effectiveness of Member States' sanctions systems in the field of commercial road transport***

Based on the above findings the Study concluded that most of MS sanctions systems should be considered as non effective due to their features.

Indeed, most of MS sanctions systems do not differentiate enough between minor and more serious infringements. Thus, they might encourage hazardous behaviours, i.e. they might encourage transport operators to commit more serious infringements as they are sanctioned in the same way as minor infringements are. For example, once a driver has been driving for five minutes more than 9 hours, he could decide to drive for 4 hours longer because he knows that he is in the territory of a MS where the same sanctions is applicable when exceeding the daily maximum driving time by 10 minutes and when exceeding it by 4 hours or more.

On the other hand, sanctioning small infringements in a very severe way bears the risk of putting out of the market some undertakings who in general comply with the law and whose managers or employees have done simple mistakes, as well as some drivers whose driving behaviors are in general compliant.

The Study could not prove that there is a correlation between the fact that a MS does not foresee sanctions tailored to the seriousness of infringements and the fact that transport operators or drivers tend to engage in hazardous behaviors.

Indeed, most of the figures on the number of infringements detected by MS and provided by the latter to the authors of this Study were not broken down according to the seriousness of the infringements detected.

Therefore, we were not in the position to assess whether in some MS a substantial percentage of the infringements detected were MSI or VSI, and whether such finding was more recurrent in MS that do not foresee more severe sanctions for the more serious infringements than for the less serious ones.

However, it is posited in agreement that from a qualitative standpoint the fact that in many MS the sanctions are not tailored to the seriousness of the various infringements does affect the effectiveness of such systems.

Indeed, the lack of tailored sanctions does encourage the commission of more serious infringements and the elaboration of business model based on hazardous behaviours.

Based on such reasoning we concluded that most of MS sanctions systems for infringements of the rules on commercial road transport might be considered as non effective.

The results of the legal analysis were assessed in the light of the data collected within the context of the Study. Such data concern infringements of commercial road transport legislation detected in the Member States of the EU.

In first place, the analysis found that in most MS the number of infringements of the rules on commercial road transport detected on a yearly basis is substantial.

This applies in particular to infringements of the rules on driving times and rest periods.

The table below gives an overview of the number of infringements detected on a yearly basis in all the Member States that provided figures.

This table concerns infringements of the rules on driving times and rest periods (Regulation (EC) No 561/2006) detected on an early basis in the year 2010 or 2011, as most of the national authorities contacted provided figures on such infringements and

only some of them provided figures concerning infringements of other relevant EU rules governing the commercial road transport sector.

It is worth pointing out that the decrease of the number of infringements of the rules on driving times and rest periods in France is impressive (around 77%): the reasons for such decrease are unknown.

Table E

Number of infringements detected

Austria	Belgium	Czech Republic	Estonia	France	Germany	Greece-2009/2010	Hungary	Ireland	Italy	Latvia	Luxembourg	Malta	Northern Ireland	Romania - April 2011 to April 2012	Slovakia	Slovenia	UK
16,000 <sup>16</sup>	13,000 <sup>17</sup>	28,000 <sup>18</sup>	1,368 <sup>19</sup>	62,000 (2010)	97,406 <sup>21</sup>	530 <sup>22</sup>	1822 <sup>23</sup>	Above 15,000 <sup>24</sup>	27,355 <sup>25</sup>	Above 2,000 <sup>26</sup>	1,900 <sup>27</sup>	Below 10	200 <sup>28</sup>	Above 300 <sup>29</sup>	14,000 <sup>30</sup>	Above 15,	5,500 <sup>32</sup>

<sup>16</sup> Figures provided by the Austrian Authorities.

<sup>17</sup> Figures provided by the Belgian Authorities.

<sup>18</sup> The figures refer only to infringements detected during roadside checks. They have been provided by the Czech Authorities.

<sup>19</sup> Figures provided by the Estonian Authorities.



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21 Figures published by the Federal Office for Goods Transport.

22 Figures provided by the Greek Authorities.

23 The figures refer also to infringements of Regulation (EEC) No 3821/1985.

24 Figures provided by the Irish Authorities.

25 Publicly available figures.

26 The figures refer to non observance of the working resting schedule. Figures are not broken down by the EU Regulation and Directive violated.

27 Figures provided by the Luxembourg Authorities.

28 Figures provided by the Northern Ireland Authorities.

29 Figures provided by the Romanian Authorities.

30 Figures provided by the Slovak Authorities.

32 Figures provided by the UK Authorities.

20 Figures provided by the French Authorities.

31 Figures provided by the Slovenian Authorities.

The analysis of such data confirms the finding of the qualitative assessment of MS sanctions systems.

Indeed, many infringements of the rules on professional transport legislations are detected in most of EU MS for which data are available.

This finding could be considered as an element confirming that most of the MS sanctions systems are not effective.

It is also worth pointing out that despite the German and the Luxembourg sanctions systems can be deemed proportionate, many infringements are still detected on German and Luxembourg routes.

It was therefore concluded that such finding could cast into doubt the effectiveness of the above systems.

However, this conclusion should not be considered final because a simple analysis of the number of infringements detected in a Member State cannot alone be used as parameter to assess the effectiveness of its sanctions system.

In particular, such a finding cannot alone show that the German and Luxembourg systems are not effective despite the fact that from a qualitative standpoint such systems can be considered proportionate and dissuasive.

It could be argued for example that more infringements are detected in the territory of a Member State because controls are very efficient in such State, or because control officers are more experienced and are better trained than in other Member States.

Therefore, the Study does not conclude that the German and Luxembourg systems are not effective.

That said we found that, due to their peculiar features, the Dutch and the Belgian systems should be qualified as the most effective sanctions' systems for the following reasons:

- Their rules identify in a very specific way the conducts sanctioned.
- They empower the national authorities and enforcement bodies to tailor the sanctions to the seriousness of the infringements committed.

- They allow the enforcement bodies to take into account the profile of the offender.
- They foresee sanctions such as the immobilization of the vehicles, which are deemed to have a substantial dissuasive effect.

Overall, we found that the concrete approach of the above systems should be considered as a best practice in the EU.

### ***Conclusions on the necessity of approximating sanctions in the field of commercial road transport***

The analysis carried out in this Study and summarised in the above Paragraph shows that most of the Member States' sanctions systems for infringements of EU rules on commercial road transport are to be deemed not effective and that only some of them have the potential to be effective.

It also shows that the differences in the levels of sanctions in the Member States are striking and are not related to socio-economic differences, but to other factors such as, probably, the different perception across Member States of the seriousness of the infringements sanctioned.

For example, it occurs that the infringement of the same rule is sanctioned with a fine that is 250 higher in a Member State than in another (respectively Germany and Malta). It also occurs that differences are striking between MS with comparable socio-economic situations (Germany and Sweden, Slovakia and Czech Republic, Italy and Spain).

Differences do exist and are striking also between systems that foresee similar typologies of sanctions, e.g. between those which foresee criminal sanctions.

A couple of examples could be useful to explain this statement. The same infringement "Driving with no type approved recording equipment installed and used" is punished as follows across some of the MS of the EU which have chosen to sanction it with administrative sanctions.

**Table F**  
**Very Serious Infringements**

Infringement	Austria	Germany	Sweden	Lithuania	Latvia	Romania
<u>No type approved recording equipment installed and used</u>	Administrative sanction  Fine up to 2.180 € or up to 3.600 € (Employer)  Fine up to 5.000 € or imprisonment (recurrence) (Driver and transport operator)	Administrative sanction  Fine of up to € 15,000 (undertaking)  Fine of up to € 5,000 driver	Administrative sanction  Fine 4000 SEK (464 €)	Administrative sanction  Fine up to €290 (driver)  Fine up to €869 (the head of undertaking)	Administrative sanction  Fine LVL 200-400 (350-700€) (driver )  Fine LVL 500-1000 (718-1400 €) (carrier)	Administrative sanction fine between RON 8,000 and RON 16,000 (≈ between EUR 1,830 and EUR 3,660) (transport undertaking)

The table below shows that the same MSI “transporting dangerous goods that are prohibited for transport” is punished as follows across some of the MS of the EU which have chosen to sanction it with criminal sanctions.

**Table G**  
**Most Serious Infringements**

<b>Infringement</b>	<b>Germany</b>	<b>Estonia</b>	<b>France</b>	<b>Ireland</b>	<b>Poland</b>
<u><i>Transporting dangerous goods that are prohibited for transport</i></u>	<p>Criminal sanction Imprisonment for up to 5 years or fine (carrier)  Plus administrative fine of 1,000 € carrier and sender)</p>	<p>Misdemeanor sanction Fine up to 800 € (driver).  For transport undertakings a fine up to 800 €(natural persons) or up to 3,200 € (legal person)</p>	<p>No specific sanction  Criminal sanction  Fine up to 30,000 € fines and 1 year of prison  (Misdemeanors)</p>	<p>No specific sanction  Criminal sanction  Fine not exceeding 1,900 €. (various operators).</p>	<p>Criminal sanctions applicable to drivers, members of staff and other natural persons performing actions in transport of dangerous goods (maximum value of a fine – PLN 5,000.00 – approximately 1,215 €).</p>

The analysis of the tables above shows that socio-economic differences do not explain the differences in the amount of the fines foreseen by Member States. It is posited in agreement instead that other factors could justify such differences, such as a different perception of the gravity of the offence across the various MS

Such differences are deemed to affect the achievement of the objectives pursued by the EU with the adoption of harmonizing measures in the field of commercial road transport for the following reasons.

Firstly, such differences give the wrong message to operators about the extent to which the rules need to be respected.

Secondly, the fact that the penalties applied in case of commission of an infringement have not a comparable degree of dissuasiveness across the EU implies that the legal value of the relevant EU rule varies across Member States: in one Member State compliance with the relevant EU rule can be avoided with minimum damage, while in another compliance is necessary as the threatened damage is big.

The above situation in turn implies that transport operators are discriminated across the EU, as those operating in some Member States do not need to respect EU rules, while other operators have to.

Based on the above findings the authors of this Study conclude that an approximation of sanctions in the field of commercial road transport in the EU is necessary, in order to ensure that a clear and straightforward message is given to transport operators concerning the importance of complying with the rules on commercial road transport, and, consequently, to ensure a correct implementation of EU measures.

### **Stakeholders' views on the necessity of approximating sanctions in the field of commercial road transport**

As announced above the Survey carried out within the context of this Study has also gathered the stakeholders' views on the actions deemed necessary in order to address the current issues affecting the enforcement of EU rules in the field of

commercial road transport sector. Its findings show that there is a consensus on the fact that enforcement of EU rules on commercial road transport has some flaws.

Some of the stakeholders consulted (more than 5) would argue that guidelines are necessary in order to ensure a consistent interpretation of the infringements of EU law across Member States.

Only some of them (3) would instead be in favor of the adoption of an EU measure aimed at approximating sanctions for infringements of EU rules in such field. None of the stakeholders consulted expressed a clear support for an EU measure aimed at approximating criminal sanctions instead. It is worth pointing out that, overall, the outcome of the Survey carried out shows that there is a general agreement that increasing sanctions for infringements of EU rules would not automatically ensure compliance with EU rules.

Notably, the stakeholders contacted and in particular EU stakeholders fear that increasing sanctions in an indiscriminate way could give the wrong message to transport operators, and could make them rather commit serious breaches, as the sanctions for such breaches could become similar to the ones applied to less serious infringement.

Such position can be explained by the fact that the perception of stakeholders is that harmonizing criminal sanctions at EU level would imply increasing pecuniary fines and in general adopting excessive sanctions.

It is also worth pointing out that regrettably we did not receive much feedback by stakeholders from the private sector who are active in MS whose sanctions systems are particularly severe such as Germany, Denmark or Slovakia and who have a competitive disadvantage in comparison to operators active in MS where fines are lower or in any case less severe.

On the other hand the National Authorities contacted were not in a position or did not want to provide recommendations aimed at improving the current EU framework for the enforcement of EU rules on commercial road transport.

## ***Conclusions on the necessity to adopt criminal sanctions for the very serious and most serious infringements of EU law and on the proportionality of such a measure***

Based on the above findings, the Study concludes that the adoption of an EU measure aimed at approximating sanctions in the field of commercial road transport is necessary in order to ensure a proper enforcement of EU rules in such field.

This Study has subsequently assessed whether such an approximation should be realised by means of an EU criminal measure, and notably by means of the adoption of a Directive based on Article 83, Paragraph 2 of the TFEU.

In order to carry out such assessment the Study has firstly investigated the scope of EU competence in the field of substantive criminal law.

Secondly, it has assessed to what extent the adoption of EU approximating measures in the area of criminal law would be necessary and proportionate to the objective of ensuring the effective implementation of EU commercial road transport legislation.

### **Legal scope for harmonisation of sanctions at the EU level in respect of infringements against commercial road transport legislation**

Article 83, Paragraph 2 of the TFEU empowers the EU legislator to adopt provisions in the field of substantive criminal<sup>33</sup> law setting minimum rules concerning the definition of criminal offences and sanctions in areas to be identified.

From a procedural standpoint it allows the EU by means of directives to establish *minimum* rules with regard to the definition of criminal offences and sanctions if the approximation of criminal laws and regulations of the Member States proves

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<sup>33</sup> J.-C. PIRIS, *The Lisbon Treaty, A legal and Political Analysis*, Cambridge University Press 2010, page 180; E. HERLIN-KARNELL, *EU Competence in Criminal Law after Lisbon*, in A. BIONDI, P. EECKHOUT, S.RIPLEY, *EU Law After Lisbon*, Oxford university Press, 2012, pages 331-346.



essential to ensure the effective implementation of a Union policy in an area which has been subject harmonisation measures.

Such clause does not list specific crimes, but makes the fulfillment of certain legal criteria a precondition for the adoption of criminal law measures at EU level. It is an explicit legal basis for the adoption of criminal law directives to ensure the effective implementation of EU policies which have been subject to harmonization measures<sup>34</sup>.

The principles that should guide the EU legislator in adopting criminal law legislation are also clearly illustrated in the Commission Communication “Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law” (hereinafter, “the Communication”).

Pursuant to the Communication, the EU legislator should follow a two-step approach before adopting criminal legislation aimed at ensuring the effective implementation of EU policies which are the subject of harmonising measures.

In first place the decision on whether to adopt criminal law measures should be assessed in the light of the principle of necessity and proportionality. Criminal law should indeed be a means of last resort (*“ultima ratio”*). Consistently, the Communication clarifies that Article 83, Paragraph 2 of the TFEU should be read as allowing the adoption of criminal law measures supporting the enforcement of EU policies that are “essential” to achieve the goal of an effective policy implementation.

This implies that the EU legislator needs to analyse whether measures other than criminal law measures, e.g. sanction regimes of administrative or civil nature, could not sufficiently ensure the policy implementation and whether criminal law could address the problems more effectively.

This also implies assessing whether Member States’ sanction regimes achieve the desired result and difficulties faced by national authorities implementing EU law on the ground.

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<sup>34</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, COM/2011/573, page 2.

If the adoption of criminal law measures is proven necessary and proportionate, it is possible to proceed and evaluate the concrete measures to adopt.

As to the content of such measures, based on a reading of Article 83, Paragraph 2 of the TFEU, and on its interpretation provided in the above mentioned Communication, a full harmonisation of criminal rules of the Member States is to rule out.

On the contrary, EU legislation can foresee *minimum* rules concerning the definition of criminal offences and sanctions.

The Communication makes clear that as to the definition of criminal offences, the principle of legal certainty requires that the conduct that has to be considered criminal must be clearly defined.

As to sanctions, EU law could require certain sanction types or can fix levels or EU-wide definition of what are to be considered aggravating or mitigating circumstances.

EU measures may only set out which sanctions have to be made at least available to the judges of each Member State.

The principle of necessity and proportionality applies also to aspects such as deciding which criminal law measures to include in a particular legislative instrument. On this respect, an EU legislative instrument is bound to the respect of the principle of proportionality foreseen in the Charter of Fundamental Rights (Article 49).

Such Article at Paragraph 3 foresees that: “*the severity of penalties must not be disproportionate to the criminal offence*”.

The above principles have the following concrete implications that are relevant to the end of this Study:

- in order to establish the necessity for minimum rules on criminal law, the EU institutions need to be able to rely on clear factual evidence about the nature or effects of the crime in question and about a diverging legal situation in all Member States which could jeopardise the effective enforcement of an EU policy subject to harmonization;
- the necessity to tailor the sanctions to the crime.

The possible content of EU minimum rules on criminal law is clearly identified in the Communication.

Those elements are:

- the definition of the offences, i.e. the description of conduct considered to be criminal. It should cover the conduct of the main perpetrator but also in most cases ancillary conducts such as instigating, aiding and abetting;
- the definition of intentional conduct, but in some cases also seriously negligent conduct;
- the definition of what should be considered as “aggravating” or “mitigating” circumstances for the determination of the sanction in a particular case;
- the indication of whether EU measures cover offences committed by natural persons as well as by legal persons such as companies or associations, including a provision giving the choice to Member States concerning the type of liability of legal persons for the commission of criminal offences.

Other possible contents of EU legislation are rules on jurisdiction.

With respect to sanctions, the content of EU criminal law can be the following:

- EU criminal law can simply require Member States to take: a) effective, b) proportionate and c) dissuasive criminal sanctions for a specific conduct<sup>35</sup>.
- EU criminal law can determine more specifically, which types and/or levels of sanctions are to be made applicable, including provisions concerning confiscation. Such measures should be aimed at reducing the degree of variation between the national systems and to ensure that all Member States’ sanctions systems comply with the principle of effectiveness, proportionality and dissuasiveness.

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<sup>35</sup> Effective sanctions are sanctions suitable to achieve the desired goal, i.e. observance of the rules. Proportionate sanctions are those commensurated with the gravity of the conduct and its effects and not exceeding what is necessary to achieve the aim. Dissuasive sanctions are those that constitute an adequate deterrent for potential future perpetrator.

The EU policy areas where EU criminal law has been adopted and is required without doubt have been identified in the Communication.

Road transport is considered as an harmonized policy area that might need the adoption of EU criminal law. However, the Commission needs to explore further the necessity to adopt criminal measures to ensure effective enforcement in this area. For what is of interest for this Study, infringements of EU social and safety rules for professional transport are under consideration.

The criteria that should be applied in the assessment are:

1. the seriousness and character of the breach of law. On this respect it should be assessed to what extent an administrative sanction may not be a sufficiently strong response;
2. the necessity to stress strong disapproval through the application of criminal sanctions in order to ensure deterrence;
3. the efficiency of the sanction system must be considered, as well as the extent to which and the reasons why existing sanctions do not achieve the desired enforcement level;
4. the necessity to choose the type of sanction that is considered to be the most appropriate to reach the global objective of being effective, proportionate and dissuasive, having regards also to aspects such as the necessity that a sanction is decided and executed without delay, or to have a wider range of possible sanctions.

### **Conclusions on the necessity to adopt criminal sanctions for some infringements of EU law and on the proportionality of such a measure**

Against the above background the Study concludes that the EU could legitimately adopt an EU criminal measure in the field of commercial road transport to the extent that it would cover only serious breaches of law, such as the very serious (VSI) and most serious infringements (MSI) as listed in EU legislation.

Notably, the Study concludes that an EU criminal measure aimed at approximating sanctions applicable to such infringements would be necessary and proportionate in the light of the following considerations.

Firstly, the analysis of the sanctions applied to such infringements across Member States shows that an approximation of sanctions for such infringements is necessary as, on the one hand, the majority of Member States do not foresee sanctions that are tailored to their seriousness. On the other hand, the level and classification of sanctions differ widely across Member States.

This in turn gives to transport operators the wrong message on the gravity of such infringements.

Secondly, such an approach would be proportionate and respectful of Member States legal traditions for the following reasons.

Firstly the above infringements or some of them are already sanctioned in many Member States with criminal sanctions.

Secondly in many of them they are sanctioned with administrative sanctions that could be classified as criminal sanctions in the light of their severity and pursuant to the case law of the European Court of Human Rights.

Notably, according to the ECHR (“the Court”) a charge can be defined as criminal also having regard to the degree of severity of the penalty that the person concerned risks incurring.

This case law has been recently confirmed in the famous “Menarini” ruling, a judgment rendered in September 27, 2011 by the ECHR (case Menarini Diagnostics S.R.L. vs. Italy, complaint 43509/08) where the Court recognized that antitrust fines can have a criminal nature, despite the fact that in a national system they are qualified as administrative sanctions.

According to the ECHR reasoning one of the factors to take into account in order to conclude that a sanction has a criminal nature is its severity for the person concerned.

In this context, the fact that formal or substantial criminal sanctions are already foreseen in the area of commercial road transport by most of the MS of the EU is according to the authors of the Study an argument that proves that criminal sanctions are enforcement tools widely accepted in the commercial road transport sector.

The following table gives an overview of the sanctions that MS foresee for infringements of EU rules in the field of commercial road transport,

<b>Table H</b>
<b>Substantial and formal criminal sanctions applicable to infringements of EU rules in the field of commercial road transport</b>
Austria: in case of recidivism the penalties applied should be qualified as criminal in nature. In some cases as transport of dangerous goods the penalty reaches 50,000 € and therefore should be qualified as criminal in nature
Belgium: the sanctions for infringements of EU rules are all possibly criminal in nature. The so called system of <i>perception immédiate</i> ensures the flexibility of the system (see the Belgian report).
Cyprus: criminal sanctions are possibly applicable to most of infringements of EU rules in the field of road commercial transport .
Czech Republic: administrative sanctions that could be qualified as criminal ones are applicable to most of the very serious and most serious infringements of EU law.
Denmark: criminal sanctions are applicable to most of infringements of EU rules in the field of road commercial transport.
Estonia: very serious and most serious infringements are sanctioned with criminal sanctions.
Finland: criminal sanctions are applicable to most of infringements of EU rules in the field of road commercial transport.
France: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport.
Germany: criminal sanctions or administrative sanctions which should be qualified as criminal are applicable to most of the infringements of EU rules in the field of road commercial transport in Germany. Some reservations should be made with respect to the sanctions for infringements of the rules on roadworthiness tests and weight and dimensions.
Greece: as to the very serious infringements, tachograph frauds are sanctioned with criminal sanctions. Only some most serious infringements are sanctioned with criminal sanctions such as driving without a

driving licenses
Hungary: some most serious and very serious infringements are sanctioned with criminal sanctions such as using a false or expired driver's card, or transferring the operation of a power-operated vehicle in public road traffic to a person, who does not have the necessary authority license.
Ireland: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport
Italy: administrative sanctions that could be classified as substantially criminal are only applicable to some of the most serious infringements such as driving without a community licence and transport of dangerous goods.
Latvia: criminal sanctions are foreseen for infringements such as engaging in entrepreneurial activities without an authorization.
Lithuania: criminal sanctions are foreseen for infringements such as engaging in entrepreneurial activities without an authorization.
Luxembourg: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport.t
Malta: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport.
Netherlands: criminal sanctions are possibly applicable to most of the infringements of EU rules in the field of road commercial transport.
Poland: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport, but some most serious infringements are not sanctioned with criminal sanctions but with administrative ones.
Portugal: some of the most serious infringements and some very serious infringements are sanctioned with administrative sanctions that could be substantially qualified as criminal sanctions.
Romania: some most serious infringements are sanctioned with criminal sanctions, or might be possibly be sanctioned with criminal sanctions if the requirements for the offence of forgery are met.
Slovenia: some most serious infringements might possibly be sanctioned with criminal sanctions if the requirements for the offence of forgery are met
Slovakia: criminal sanctions or administrative sanctions that can be classified as substantial criminal

sanctions are applicable to most of the infringements of EU rules in the field of commercial road transport.
Spain: administrative sanctions which should qualify as criminal are applicable in case of recurrence of the most serious and very serious infringements in Spain.
Sweden: criminal sanctions are foreseen for infringements of the rules on driving licenses.
UK and NI: criminal sanctions are applicable to most of the infringements of EU rules in the field of commercial road transport

Such a comparison shows according to the authors of this Study that the adoption of criminal measures at EU level would be in line with Member States' sanctioning choices with regard to infringements of EU rules on commercial transport and in particular to the choices concerning the most serious and very serious infringements of EU law.

In conclusion, an EU criminal measure harmonizing sanctions for VSI and MSI infringements would have a beneficial effect to the extent that it would:

- give to the operators the right message concerning the disapproval for such infringements, by qualifying such infringements as criminal;
- align to a certain extent the level of the sanctions applied to the same infringement.

### **Conclusions on the content of an EU Directive aimed at approximating criminal laws and regulations**

The Study provides also guidelines on the possible content of an EU criminal measure harmonizing sanctions in the field of commercial road transport.

Notably, the Study concludes that an EU Directive aimed at approximating criminal laws and regulations should deal only with serious crimes, and therefore with the VSI and MSI of EU rules on commercial road transport to the extent that different sanction systems hinder the objective pursued by the EU with the adoption of harmonized measures in a sector.



It is posited in agreement that such interpretation complies with the principles of subsidiarity and proportionality. This is also consistent with the practice of the EU legislator. Indeed so far EU criminal measures adopted under the so called “First Pillar” (*i.e.* the Treaty establishing the European Community (“TEC”))<sup>36</sup> and legislative proposals based on Article 83, Paragraph 2 of the TFEU have addressed only serious offences<sup>37</sup>. This opinion is shared also by experts of EU criminal law consulted.

As to the content of such minimum rules on criminal law, an EU Directive should:

- Define the conduct identified as criminal, including the mens rea, ground for liability: intention, recklessness and (gross) negligence.
- Identify clearly the person to be considered liable for each conduct (driver, undertaking, employer, and consignor). As to the liability of legal person, for the commission of criminal offences, EU law should let Member States choose the type of liability of legal person for the commission of criminal offences. Indeed, it is known that the concept of criminal liability of legal person does not exist in all legal orders. This finding is confirmed also by this Study.

It should also determine more specifically, which types and/or levels of sanctions are to be made applicable, including provisions concerning confiscation.

The above conclusion is based on the following considerations.

The dissuasive effect of sanctions differs enormously also across those Member States that have qualified infringements of commercial road transport as criminal offences and sanctioned them with criminal sanctions. On this respect it will be useful

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<sup>36</sup> See Directive 2008/99/EC on the protection of the environment through criminal law, Considerandum 10. See also 2009/123/EC amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements, Considerandum 9 and Article 5a and Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Consideranda 22 and 23.

<sup>37</sup> Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation, COM (2011) 654, available at: [http://ec.europa.eu/prelex/detail\\_dossier\\_real.cfm?CL=en&DosId=200939](http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=200939).

to recall that the same most serious infringement” *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*” is punished in Luxembourg with imprisonment from 8 days to 5 years and or a fine of EUR 251 to EUR 25,000. In Malta the criminal sanction would amount to a fine of 58 EUR.

Against this background, it is posited in agreement that an EU measure aimed at approximating sanctions in the field of road commercial transport could improve the current situation and ensure the consistency of the sanctions applicable to infringements of commercial road transport legislation only to the extent that it establishes at least minimum sanctions applicable to certain infringements classified as criminal offences.

We doubt instead that it would be practical to fix maximum levels of fines, as some Member States apply sanctions proportionate to the wage and the turnovers of transport operators.

We believe that a measure shaped as above would be compliant with the principle of subsidiarity.

Indeed, fixing minimum level of criminal sanctions at EU level does not seem to affect substantially the sanctions’ systems of Member States, as all criminal systems foresee financial penalties as criminal sanctions.

The Study identified also the type and level of sanctions that would be necessary and the most efficient way to ensure better compliance with the legislation. Notably, the Survey and the legal analysis of the national sanctions systems showed the following:

- a. Proportionate and dissuasive financial penalties are considered the most suitable sanctions for infringements of commercial road transport.
- b. On the contrary, sanctions such as imprisonment, where foreseen, are rarely or never applied to the above infringements, and to any extent are not considered suitable penalties in the field of commercial road transport.
- c. Measures such as confiscation or immobilization of the vehicle are seen as effective complementary measures, because they do not allow the operators to gain the advantage related to the infringements of the relevant rules.

From all above, the Study concluded that the most appropriate sanctions for VSI and MSI would be financial penalties and measures such as confiscation or immobilization of the vehicle.

In order to ensure consistency, an EU criminal measure should identify the appropriate level of sanctions for each category of infringements.

A comparison of the different levels of criminal penalties applicable in the different Member States could help to identify minimum levels of penalties that would be appropriate and would take into account existing different socio-economic differences across the EU.

On this respect, the authors of this Study suggest that the financial penalties for the very serious infringements and most serious infringements could be shaped as follows:

Table 13		
	VSI	MSI
	Min	Min
Employee	1,000	2,000
Employer	10,000	20,000

We also note that in order to be effective such sanctions have to be accompanied by sanctions such as confiscation/immobilization of the vehicles and of the withdrawal of the driving licenses and of the Community licenses. Such sanctions could indeed be considered criminal in nature pursuant to the case law of the ECHR, as they do not allow the offender to exercise his profession, thus affecting substantially his financial interests.

EU law should contain provisions on recidivism, foreseeing what should be considered recidivism and requiring that it is considered an aggravating circumstance.

The EU could for example introduce measures requiring Member States to provide for sanctions such as the facultative confiscation of the vehicle in case of commission of the first offence and obligatory confiscation in case of a second offence.

For employers, it could foresee the temporary disqualification from the practice of commercial activities.

For employees, it could foresee a withdrawal of the driving license.

### ***Policy options for improving the enforcement of EU rules on commercial road transport***

In the above Paragraphs we argued that an EU legislative action in the area of criminal sanctions for VSI and MSI of EU commercial road transport legislation would be necessary and proportionate.

Such action, to be effective, should identify conducts that should be qualified as criminal and define *minimum* levels of pecuniary fines. Member States should then be let free to set maximum levels of fines, taking into account the socio-economic conditions in their territory.

That said, this Study has also identified different and alternatives policy options for improving the enforcement of EU rules on commercial road transport. It has also identified the pros and cons of each policy approach.

One alternative policy option could be a non action option.

In this scenario the EU should not adopt any measure in the field of sanctions for infringements of commercial road transport legislation.

Another option could be the adoption of the so called soft law measures, such as interpretative guidelines providing guidance on the definition of infringements and on the identification of those infringements that should be sanctioned in a more severe way in the light of their seriousness.

A third policy option would be an EU legislative action aimed at approximating sanctions in the field of road transport.

#### **First policy option: non action**

A non action option would imply that the EU refrains from adopting legislation in the field of sanctions for infringements of EU rules on commercial road transport.

This option would imply to maintain the *status quo*, and therefore a situation where the differences in the levels of sanctions in the Member States are striking, thus giving the wrong message to operators about the extent to which the rules need to be respected.

In turn, such situation affects the achievement of the objectives pursued by the EU with the adoption of harmonizing measures in the field of commercial road transport, and notably to create a level playing fields for transport operators because in some MS pecuniary sanctions are low to the extent that there is no need to comply with the relevant rules.

On the other hand, in other MS sanctions for the same infringements are very severe and this in turn implies that transport operators are discriminated across the EU, as those operating in some Member States do not need to respect EU rules, while other operators have to.

In addition, the existence of huge differences between MS' sanction systems encourages hazardous behaviours among transport operators and the establishment of business models exploiting regulatory differences across the EU.

Finally, the fact that most MS' sanction systems are not effective has a bearing on road safety.

### **Second policy option: soft law**

The second policy option would be the adoption of the so called soft law measures.

In the EU legal order “soft law measures” are guidelines, declarations and opinions, which, in contrast to directives, regulations and decisions, are not binding on those to whom they are addressed. However, such measures can produce some legal effects.

Notably, the EU could adopt interpretative guidelines providing guidance on the definition of infringements and on the identification of those infringements that should be sanctioned in a more severe way in the light of their seriousness.

It could for example make clear that sanctions for VSI and MSI should be more severe than sanctions foreseen for SI or MI. It could encourage MS to foresee criminal sanctions for VSI and MSI, or could invite MS to apply to the above infringements the same sanctions that are foreseen for other serious criminal or administrative offences in their legal systems.

Such an approach would without doubt be respectful of MS' different legal traditions. On the other hand, it would convey the right message to MS concerning the necessity to tailor the sanctions to the gravity of the different infringements.

However, we note that there is already some guidance at EU level with regard to the rating of the seriousness of the different infringements of EU rules on commercial road transport, but the above guidance at EU level has not led MS to adopt a consistent sanctionatory approach.

Indeed, Annex III of Directive 2006/22/EC and Annex IV of Regulation (EC) No 1071/2009 expressly identify which are the infringements of EU rules that should be considered serious and consequently should be sanctioned more heavily.

Despite such guidance only few MS have adopted specific sanctions for the MSI (*e.g.* Germany) and the VSI (*e.g.* Luxembourg), while in some MS the same sanction would apply to the case where a driver has been driving uninterruptedly for 9 and 30 hours (minor infringement (MI)), and to the one where the latter has been driving uninterruptedly for 15 hours (MSI) or 12 hours (VSI) or 10 and 30 hours (SI).

From all above follows that at this stage it is likely that a soft law approach would not substantially impact the current functioning of MS' enforcement systems of EU rules in the field of commercial road transport.

This in turn implies that the EU transport policy would continue fail to achieve its objectives in term of ensuring a level playing field and road safety, tackling discrimination among transport operators and preventing the establishment of hazardous business models.

### **Third policy option: approximation**

A third policy option for the commercial road transport sector would be approximation of sanctions under Article 83, Paragraph 2 of the TFEU.

In this scenario the EU could adopt a Directive approximating criminal sanctions for infringement of EU rules on commercial road transport.

As the criminal competence of the EU is limited to serious breaches of law, it is posited in agreement that only sanctions for the most serious and very serious infringements would fall into the scope of the criminal competence of the EU.

Such a Directive could impose substantial and dissuasive financial penalties and other measures such as withdrawal of authorizations or driving licences that are deemed to have a deterrent and dissuasive effect.

In compliance with the principle of subsidiarity and proportionality, such directive could fix minimum level of financial penalties for the various infringements, thus leaving each MS the possibility to fix a maximum based on the specific social conditions within their territory.

This option would have the following crucial factors:

- It could contribute to create a level playing field while giving MS the possibility to tailor the amount of the fines to the economic situation in their territory.
- It would convey a clear message that the VSI and MSI are serious offences as they have a bearing on road safety and on fair competition among transport operators.
- It would decrease the incentive to adopt business models exploiting regulatory differences.
- It would not affect substantially MS' sanction systems, as we realized that most MS foresee criminal sanction in the commercial road transport sector or administrative sanctions which are afflictive to the extent that they could be qualified as substantially criminal.

This option has also some disadvantages, and notably it could be argued that it will take a while before MS will be able to adapt their sanctions systems to the provisions of a Directive requiring them to apply criminal sanctions to VSI and MSI.

This could be true for those MS where VSI and MSI are sanctioned with administrative sanctions.

Changing the qualification of the applicable sanctions and qualifying VSI and MSI as criminal offences might imply that such MS will have to amend their applicable legislation substantially.

For example, it could be necessary to change the relevant rules identifying the competent authority which will impose the fines, or other procedural rules such as those regulating the delay for challenging the measure imposing the fine, or the competent courts to review the decision to impose a fine.

Overall, we can foresee the risk that the transposition process of a Directive harmonizing criminal sanctions in the field of commercial road transport might be long.

It is posited in agreement, however, that the above identified difficulties are compensated by the benefits that approximation could bring in term of eliminating one of the existing barrier to the realization of a fully integrated internal market for the provision of commercial road transport services. Notably, differences in MS' sanctions systems.



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# **1 BACKGROUND**

## **1.1 Introduction**

EU legislation on road transport has aimed at ensuring best conditions for an open, efficient, safe and cost effective market for professional road transport services in the European Union.

Notably, it aims at ensuring that transport development complies with safety requirements and environmental protection, and more in general at ensuring that competition between transport operators exists. It also disciplines access to the profession, working conditions and the technical standards of vehicles.

In particular, EU legislation on road transport services establishes *inter alia* social rules for goods and passengers road transport operators and rules on their enforcement; rules governing the admission to the occupation and access to the road transport market; rules on standards to be complied with by vehicles (weights) or by their load (dangerous goods) and/or necessary licences (Community licence, driving licence).

The current rules in the commercial road transport have been adopted and further adapted in the last 6 years, and constitute an essential foundation for safeguarding road safety, fair competition and adequate working conditions in the sector.

The following paragraphs provide an overview of the rules adopted by the EU in the commercial road transport sector, with the aim of providing a brief description of the legislative measures that will be assessed in this Study.

## **1.2 EU rules in the commercial road transport**

EU rules in the field of commercial road transport aim at safeguarding road safety, ensuring fair competition and adequate working conditions in the sector.

The following rules compose the EU social legislative framework in the area of road transport:

- Rules on driving time and rest periods (Regulation (EC) No 561/2006<sup>38</sup> on driving times, breaks and rest periods of drivers [hereinafter, “Regulation (EC) No 561/2006 or Regulation No 561/2006”]).
- Rules on enforcement (Directive 2006/22/EC<sup>39</sup>, as amended by Directive 2009/4/EC and Directive 2009/5/EC<sup>40</sup>).
- Rules on working time (Directive 2002/15/EC<sup>41</sup> which introduces the concept and limitations on working time in road transport).
- Rules on tachograph (Regulation (EEC) No 3821/85<sup>42</sup> [hereinafter, “Regulation (EEC) No 3821/85” or “Regulation No 3821/85”]).

The following measures lay down provisions on the access to the profession (so called “Road Package”):

- Regulations (EC) No 1071/2009<sup>43</sup>, 1072/2009<sup>44</sup>, 1073/2009<sup>45</sup> (hereinafter, “Regulations (EC) No 1071/2009, 1072/2009, 1073/2009” or “Regulations No

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<sup>38</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, OJ L 102, 11 April 2006, pages 1–14.

<sup>39</sup> Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, OJ L 102, 11 April 2006, pages 35–44.

<sup>40</sup> Commission Directive 2009/4/EC of 23 January 2009 counter measures to prevent and detect manipulation of records of tachographs, amending Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, OJ L 21, 24. January 2009, pages 39–40.

<sup>41</sup> Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, OJ L 80, 23 March 2002, pages 35–39.

<sup>42</sup> Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, OJ L 370, 31 December 1985, pages 8–21.

<sup>43</sup> Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the

1071/2009, 1072/2009, 1073/2009”) on common rules for: access to occupation of road transport operator, access to the international road haulage, access to the international market for coach and bus services, respectively.

Finally, the EU provides rules on standards for vehicles and their load and on necessary licences. The following rules fall within this category:

- Directive 2009/40/EC<sup>46</sup> on roadworthiness tests for motor vehicles and their trailers; Directive 2006/126/EC<sup>47</sup> on driving licences;
- Directive 2008/68/EC<sup>48</sup> on the inland transport of dangerous goods;
- Directive 96/53/EC<sup>49</sup> 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.

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occupation of road transport operator and repealing Council Directive 96/26/EC, OJ L 300, 14 November 2009, pages 51–71.

<sup>44</sup> Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market, OJ L 300, 14 November 2009, pages 72–87.

<sup>45</sup> Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, OJ L 300, 14 November 2009, pages 88–105.

<sup>46</sup> Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers, OJ L 141, 6 June 2009, pages 12–28.

<sup>47</sup> Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences OJ L 403, 30 December 2006, page 18-60. It recasts Council Directive 91/439/EEC of 29 July 1991 on driving licences, OJ L 237, 24 August 1991, pages 1–24.

<sup>48</sup> Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods OJ L 260, 30 September 2008, pages 13–59.

<sup>49</sup> Council Directive 96/53/EC of 25 July 1996 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, OJ L 235, 17 September 1996, pages 59–75.



## 1.2.1 Rules on driving time and rest periods

Regulation (EC) No 561/2006 is the main piece of social legislation in road transport. It lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road (Article 1).

It also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry (Article 1).

The scope of operations regulated includes passenger transport and road haulage operations, both international and national, long and short distance, drivers for own account and for hire and reward, employees and self-employed.

In particular, its rules establish that:

- Daily driving period shall not exceed 9 hours, with an exemption of twice a week when it can be extended to 10 hours (Article 6).
- Total weekly driving time may not exceed 56 hours and that the total accumulated driving time during any two consecutive weeks shall not exceed 90 hours (Article 6).

Article 7 disciplines breaks, while Article 8 disciplines daily and weekly rest periods.

In addition, Article 16 lays down rules on control procedures applicable where no recording equipment in accordance with Regulation (EEC) No 3821/85 has been fitted to the vehicle, while Article 19 lays down specific rules on penalties, providing that Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EEC) No 3821/85 and that penalties shall be effective, proportionate, dissuasive and non-discriminatory.

Member States are also required to enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country.

## 1.2.2 Rules on enforcement

The current legislation in place for recording equipment is Council Regulation No 3821/85/EEC on recording equipment in road transport which sets technical standards and establishes the rules on the use, type approval, installation and inspection of tachographs. It creates a range of legal obligations for manufacturers and authorities but also for transport operators and drivers. This Regulation has already been adapted ten times to technological progress.

It provides that recording equipment shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road (Article 3).

The tachograph is a device that records the driving time, breaks, rest periods as well as periods of other work undertaken by a driver.

It aims at helping to enforce the rules on driving times and rest periods and monitor the driving times of professional drivers in order to prevent fatigue, and guarantee fair competition.

This Regulation has been amended by Council Regulation (EC) No 2135/98<sup>50</sup> which provides the basis for the fully digital tachograph, which is a more secure and accurate recording and storage device than the analogue tachograph. It has recently been adapted by Regulation (EC) No. 1266/2009<sup>51</sup>, in order to make the tachograph more resistant against manipulation through magnets.

It is obligatory in the EU to install the digital tachograph in new vehicles, having a mass of more than 3,5 tonnes (in goods transport) and carrying more than 9 persons (in passenger transport).

Article 19 lays down provisions on penalties: in particular it requires Member States to adopt such laws, regulations or administrative provisions as may be necessary

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<sup>50</sup> Council Regulation (EC) No 2135/98 of 24 September 1998 amending Regulation (EEC) No 3821/85 on recording equipment in road transport and Directive 88/599/EEC concerning the application of Regulations (EEC) No 3820/85 and (EEC) No 3821/85, OJ L 274, 9 October 1998, pages 1–21.

<sup>51</sup> Commission Regulation (EU) No 1266/2009 of 16 December 2009 adapting for the tenth time to technical progress Council Regulation (EEC) No 3821/85 on recording equipment in road transport (Text with EEA relevance), OJ L 339, 22 December 2009, pages 3–23.

for the implementation of this Regulation, including measures covering means of carrying out checks on compliance and the penalties to be imposed in case of breach.

### **1.2.3 Directive 2006/22/EC**

Directive 2006/22/EC lays down minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 (Article 1). Pursuant to its Article 16 it had to be transposed by Member States by 1 April 2007.

In this respect it requires that Member States organise a system of appropriate and regular checks on correct and consistent implementation both at the roadside and at premises of undertakings of all transport categories (Article 2).

It also requires that checks shall cover each year a large and representative number of mobile workers, drivers, undertakings and vehicles of all transport categories falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

In particular, it provides common methods to undertake roadside checks and checks at the premises of undertakings and promotes mechanisms of co-operation between Member States' authorities in charge of road transport enforcement.

In this respect it requires *inter alia* Member States to organise checks in such a way that, as from 1 May 2006, 1% of days worked by drivers of vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 are checked, and that this percentage will increase to at least 2 % from 1 January 2008 and to at least 3 % from 1 January 2010.

It also provides that, from 1 January 2012 this *minimum* percentage may be increased to 4 % by the Commission, and that in making its decision, the Commission shall also take into account the effectiveness of existing enforcement measures, in particular the availability of digital tachograph data at the premises of undertakings.

It specifies the percentage of working days to be checked at the roadside and at the premises of undertakings and defines modalities for roadside checks (Article 4), concerted checks (checks undertaken at the same time by enforcement authorities of two or more Member States, each operating in its own territory) (Article 5) as well as checks at the premises of road transport undertakings (Article 6). Directive 2006/22/EC requests Member States to designate an Intracommunity Liaison Body. These bodies

are in charge of assistance to other Intracommunity Liaison Bodies, co-ordination between Member States and liaison with the European Commission (Article 7).

Moreover, Directive 2006/22/EC requests Member States to establish a system for the electronic exchange of information (Article 8).

Article 9(3) provides that the Commission may, as appropriate, adapt Annex III with a view to establishing guidelines on a common range of infringements, divided into categories according to their gravity.

Annex III to the Directive now contains guidelines on a common range of infringements against Regulation (EC) No 561/2006 and Regulation (EEC) No. 3821/85, divided into categories according to their gravity.

Finally, Article 11 provides that the European Commission shall establish guidelines on best enforcement practice. Pursuant to such Article the Commission has adopted in 2009 a Recommendation on guidelines for best enforcement practice concerning checks of recording equipment to be carried out at roadside checks and by authorised workshops <sup>52</sup>.

The EU is also promoting harmonized enforcement practices through the Transport Regulators Align Control Enforcement (TRACE), a project that supports the development of a European harmonised training format for enforcers controlling the respect of Regulation (EC) No 561/2006.

The project started in August 2010 for a period of 24 months.

#### **1.2.4 Rules on working time**

Directive 2002/15/EC requires Member States to adopt measures which limit the maximum weekly working time of mobile workers, laying down minimum requirements with regard to the organization of the working time for all persons performing mobile road transport activities.

It supplements the provisions of Regulation (EC) No 561/2006.

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<sup>52</sup> Commission Recommendation of 23 January 2009 on guidelines for best enforcement practice concerning checks of recording equipment to be carried out at roadside checks and by authorised workshops (notified under document number C(2009) 108), OJ L 21, 24 January 2009, pages 87–99.

To that purpose:

- It contains some important definitions, such as those of working time, periods of availability, place of work, mobile worker, self-employed driver, week, night time and night work (Article 3).
- It contains provisions on *maximum* working week: 48 hours (this can be extended to 60 hours provided an average of 48 hours per week is not exceeded in any 4 month period) (Article 4).
- It contains provisions on breaks: not more than 6 hours should be worked consecutively without a break (at least 30 min when 6 to 9 hours are worked per day) (Article 5).
- It contains provisions on night work: not more than 10 hours worked in any 24-hour period when a night shift is performed.

As to rest time: the provisions of Regulation (EC) No 561/2006 are maintained (Article 6).

The rules are applicable to all mobile workers from 23 March 2005, while self-employed drivers were temporary excluded until 23 March 2009 (Article 2).

Pursuant to this Directive working time covers not only time spent at the wheel but also activities such as loading, maintenance and cleaning.

Finally, as to penalties, Article 11 lays down provisions on penalties, requiring Member States to lay down a system of effective, proportional and dissuasive penalties for breaches of the national provisions adopted pursuant to this Directive and to take all the measures necessary to ensure that these penalties are applied.

### **1.2.5 Rules on access to the profession**

Regulation (EC) No 1071/2009 lays down provisions relating to the occupation of road transport operator, which includes the occupations of haulage operator and passenger transport operator. It applies to all undertakings engaged in this occupation within the EU and to undertakings which intend to engage in the occupation.

The Regulation does not apply to specific categories of undertakings<sup>53</sup>.

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<sup>53</sup> Such as undertakings: engaged in the occupation of road haulage operator using vehicles the mass of which does not exceed 3.5 tonnes; engaged in road passenger transport services on a not-for-

The Regulation requires that every road transport undertaking shall designate a transport manager who shall be responsible for continuously managing the transport activities of the undertaking. The transport manager shall be resident in the EU and shall have a genuine link to the undertaking, for example as an employee, administrator or shareholder (Article 4).

It requires an undertaking wishing to engage in this occupation to have an establishment with an operating centre where it can keep all of the documents required for the pursuit of its business, and one or more vehicles registered in accordance with national legislation (Article 5).

In addition, the undertaking and the manager shall not have been convicted for any infringement of national rules in certain fields, such as, *inter alia*:

- commercial law;
- road traffic;
- trafficking in human beings or drugs (Article 6).

The undertaking shall not have infringed EU rules in fields such as:

- the driving time and rest periods of drivers;
- the roadworthiness of commercial vehicles;
- safety in the carriage of dangerous goods by road;
- driving licences (Article 6).

The undertaking must be able to meet its financial obligations. To do so, it shall have at its disposal, every year, capital and reserves totalling at least € 9,000 when only one vehicle is used, increased by € 5,000 € for each additional vehicle (Article 7).

The manager of the undertaking shall have passed a compulsory written examination which may be supplemented by an oral examination.

Member States are required designate one or more competent authorities responsible for:

- examining applications made by undertakings;
- granting authorisations to engage in the occupation of road transport operator;
- declaring a person to be fit or unfit to manage the transport activities of an undertaking;

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profit basis; engaged in the occupation of road transport operator using vehicles with a speed not exceeding 40 km/h.

- checking that the undertaking fulfils all the relevant requirements.

The competent authorities shall also be responsible for following up undertakings' applications for registration within three months. They shall be empowered to declare an undertaking unfit to manage transport activities (Article 10).

Each Member State is required to keep a national electronic register of undertakings authorised to engage in the occupation of road transport operator. The competent national authorities shall be responsible for supervising the data in that register.

The national registers shall be interconnected so that information may be exchanged electronically between the competent authorities of Member States (Article 16).

Regulation (EC) No 1072/2009 and No 1073/2009 set specific requirements for operators willing to carry out international carriage, and international carriage of passengers by coach and bus, requiring *inter alia* possession of a Community licence (Article 3).

As to infringements, Articles 12 and 13 of Regulation No 1072/2009/EC and 22 and 23 of Regulation No 1073/2009/EC set specific provisions, providing that serious infringements of Community road transport legislation may lead, *inter alia*, to withdrawal of the Community licence.

### **1.2.6 Rules on standards to be complied by vehicles and by their load and necessary licences**

Directive 2008/68/EC establishes a common regime for all aspects of the inland transport of dangerous goods, by road, rail, and inland waterway, providing that transport of dangerous goods between Member States, and between Member States and third countries (Article 4), must comply with specific requirements (indicated in the annexes). In the event of an accident where a Member State considers the relevant safety provisions to be insufficient, the Member State must notify the Commission the measures it proposes to take.

Pursuant to the Directive, Member States may request derogations from the provisions of the annexes for the transport of small quantities of certain dangerous goods, or where the transport occurs over a short distance or on rail transport on

particular designated routes. Once authorised, derogations are valid for a period of six years and Member States can request an extension of the derogation.

Directive 96/53/EC aims at avoiding that differences between standards in force in the Member States with regard to the weights and dimensions of commercial road vehicles have an adverse effect on the conditions of competition and constitute an obstacle to traffic between Member States.

To this end it provides that Member States shall not prohibit the use in their territory:

- in international traffic, of vehicles registered or put into circulation in any other Member State for reasons relating to their weights and dimensions;
- in national traffic, of vehicles registered or put into circulation in any other Member State for reasons relating to their dimensions; provided that such vehicles comply with the limit values specified in its Annex I (Article 3).

On the other hand, it requires that Member States do not authorise the normal circulation within their territories of vehicles or vehicle combinations for the national transport of goods and of vehicles for national passenger transport which are not in conformity with the characteristics set out in some points of its Annex I (Article 4)

Directive 2009/40/EC requires that in each Member State, motor vehicles registered in that State and their trailers and semi-trailers shall undergo periodic roadworthiness tests (Article 1), and that Member States adopt such measures as they deem necessary to make it possible to prove that a vehicle has passed a roadworthiness test complying with at least the provisions of this Directive, and notify them to the other Member States and to the Commission (Article 3).

Articles 4 and 5 lay down provisions on exceptions, allowing *inter alia* Member States to exclude certain vehicles from the scope of the Directive.

The rules introduced by Directive 2006/126/EC aim at reducing possibilities of fraud, guaranteeing a true freedom of movement for EU drivers and reinforcing safety on European roads.

As to fraud, the Directive replaces the paper driving licence with a model in the form of a plastic card (Article 3), requiring that existing paper licences do not need to be exchanged, but will no longer be issued once the new legislation applies.

It allows EU Member States which wish to equip the new licence with a microchip incorporating the information printed on the card (Article 1).



Pursuant to the Directive driving licence holders will retain their acquired rights, but regular renewal of the document will limit the scope for fraud by allowing the protection features of all licences, and the holder's photograph, to be updated. All licences will have a given period of validity and will be unconditionally valid in all EU countries.

It provides that all new category A (motorcycles) and category B (cars) licences issued after the Directive enters into force will in principle be valid for 10 years, allowing EU countries to opt for an administrative validity of up to 15 years. All new category C (lorries) and category D (buses/coaches) licences are valid for 5 years.

In order to improve freedom of movement for EU drivers EU countries' national driving licences must be based on the EU model (Article 1) and licences issued by EU countries must be mutually recognised (Article 2).

In order to improve road safety the Directive introduces also a new category of licence for mopeds (Article 4) and harmonises the frequency of medical checks for professional drivers. It also introduces minimum requirements for the initial qualification and the training of driving examiners.

Pursuant to the Directive, the driving licence may authorise the holder to drive vehicles in 7 categories but specific driving licences can be obtained for certain categories depending on the maximum cubic capacity and the maximum power in kW (kilowatts) (Article 4).

Driving licences must state the conditions subject to which the driver is authorised to drive. If, because of a physical disability, driving is authorised only for certain types of vehicle or for adapted vehicles, then this should be reflected through a specific code in the driving licence.

The issuing of driving licences is also subject to specific conditions, and the Directive fixes also the minimum age for the issuing of driving licences.

### **1.2.7 Specific legislation on enforcement and penalties**

Member States share with the European Commission the responsibility for ensuring compliance with the above legislation. They are indeed required to lay down rules on effective, proportionate and non-discriminatory penalties applicable to infringements against the provisions of the above Regulations and Directives and to

organize a system of appropriate and regular checks on their correct and consistent implementation.

Specific Guidelines for best enforcement practice concerning checks of recording equipment to be carried out at roadside checks and by authorised workshops have also been adopted by the Commission<sup>54</sup>.

Some provisions of the road package legislation provide for some harmonisation as regards infringements and their sanctioning. For example Regulation (EC) No 1071/2009, provides that the most serious infringement of EU rules as listed in Annex IV should normally lead to withdrawal of licence of the transport undertaking: see for example Article 6.

The infringements list in such Annex refers to violations of rules on working and driving times as well as rules on standards to be complied by vehicles and by their load. In particular, pursuant to Annex IV the following infringements are to be considered as most serious infringements (“MSI”) for the purposes of Article 6(2)(a) of Regulation No 1071/2009/EC, that is to say those infringement that might imply loss of good repute.

The table below lists such infringements.

<i><u>Table 1: 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></i>
➤ Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more
➤ 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
➤ 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
➤ 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

<sup>54</sup> Commission Recommendation 2009/60/EC, OJ L 21, 24 January 2009, pages 87-99.

**Table 1: 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**

<p>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</p>
<p>➤ 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</p>
<p>➤ Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence</p>
<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>➤ 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>

Article 22 of Regulation (EC) No 1071/2009, Paragraph 2, gives some further specifications on the typologies of penalties to be adopted.

Firstly, it provides that Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation, and shall take all the measures necessary to ensure that they are implemented. Secondly, it requires that such penalties shall include, in particular, suspension of the authorisation to engage in the occupation of road transport operator, withdrawal of such authorisation and a declaration of unfitness of the transport manager.

Recital 26 of this Regulation states in addition that the possibility of immobilising the vehicle where serious infringements are detected should also be included within the common range of measures open to Member States, but does not define what should be considered a serious infringement.

Annex III of Directive 2006/22/EC as amended by way of Commission Directive 2009/5/EC contains a categorization of infringements against Regulation

(EC) No 561/2006 and Regulation (EEC) No 3821/85, recommending which ones should be categorised as very serious, serious or minor.

In this context, Member States have adopted the following types of penalties for infringements of Regulations (EC) No 561/2006 and (EEC) No 3821/85: financial penalties, immobilisation of the vehicle, driving bans and imprisonment. Such penalties differ for drivers and for undertakings.

It has been found that the maximum fines vary appreciably between Member States, and that in some cases this cannot be justified on grounds of socio-economic differences (the amounts of the fines vary significantly between Member States, in extreme cases by as much as 1:10).

For example, the maximum fines vary from a fixed fine of € 58.23 in Malta to € 5,000 and more in Austria, Cyprus, Germany and Ireland.

In general as to infringement of Regulations (EC) No 561/2006 it has been remarked that the national systems of penalties differ widely, as some national legislations do not specify any differences between the different infringements and other legislations distinguish between specific infringements and apply different levels of penalties to these infringements<sup>55</sup>.

Other differences concern the fact that the legislation in some countries also includes temporary withdrawal of a driver's driving licence or the driver card, or that several Member States also apply higher or more severe penalties in cases of repeated or recurrent infringements.

In turns all the above differences imply that transport operators are not treated equally within the EU, and overall it affects the effectiveness of the enforcement regime of the EU legislation in force.

### **1.2.8 Recent developments**

Recently, the European Parliament adopted a resolution on penalties for serious infringements against the social rules in road transport (hereinafter, the "Resolution") noting that the differences in penalties for serious infringements against the social rules

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<sup>55</sup> Report from the Commission - Analysing the penalties for serious infringements against the social rules in road transport, as provided for in the legislation of the Member States, COM/2009/225.

in road transport as provided for in the legislation of the Member States concern not only the level of fines, but also the types and the categorisation of the penalties.

In this specific respect, the Resolution calls on the Member States to find legislative and practical ways of reducing the substantial differences in the type and level of penalties applied.

It is also suggested that to achieve further approximation of the types of penalties and of the levels of fines, a categorization of fines linked to a categorization of penalties is needed, and minimum and maximum penalties for each infringement against the social rules in road transport should be laid down.

On the other hand, the Commission report on the implementation of Regulation (EC) No 561/2006 and Directive 2002/15/EC reveals that a high amount of offences against driving times and tachograph regulations are committed<sup>56</sup>.

In this context in March 2011 the European Commission has adopted a White Paper Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system<sup>57</sup>, and has expressly foreseen in Annex I to the White Paper among initiatives to be undertaken in the next ten years one aimed at harmonising sanctions for infringements to EU rules on professional transport.

It should also be pointed out that the European Commission proposed on 19 July 2011 to revise the tachograph legislation with a view to improve the tachograph system to make fraud more difficult and reduce the administrative burden. In particular the proposal aims at developing the technical aspects of the tachograph and increasing efficiency, making full use of technologies such as satellite positioning.

The Proposal lays down also measures on penalties (Article 37), providing that the sanctions laid down by Member States for very serious infringements as defined in Directive 2009/5/EC shall be of the highest categories applicable in the Member States for infringements of road transport legislation.

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<sup>56</sup> Commission Staff Working Document, Report on the implementation in 2007-2008 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities, SEC(2011) 52.

<sup>57</sup> White Paper, Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM/2011/0144.

### **1.3 Article 83 of the TFEU (Treaty on the Functioning of the European Union)**

The framework of the EU cooperation in criminal law is mainly based on the principle of mutual recognition which was described as “*the motor of the European integration in criminal law in recent year*”. In the Tampere Program of 1999, the European Council endorsed the principle of mutual cooperation as future “*cornerstone of judicial co-operation in both civil and criminal matters within the Union*” .

However, under the TEU (Treaty on the European Union) a number of legal acts harmonizing penal laws were adopted. Such acts concerned areas considered crucial in the fight against organized crime.

The main legal instruments to approximate the national substantive criminal law were framework decisions.

Article 29 TEU provided that the area of freedom, security and justice “shall be achieved through closer police cooperation, judicial cooperation and, where necessary, through approximation of rules on criminal matters in the Member States, the latter in accordance with Article 31, Paragraph 1, letter *e*) TEU”. According to it, approximation shall be achieved by progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organized crime, terrorism and illicit drug trafficking. However, despite that strict regulation contained in Article 31, Paragraph 1, letter *e*) TUE, apart from crimes in relation to terrorism and illicit drug trafficking, a wide range of offences such as racism/xenophobia, high-tech crime, trafficking in human beings, financial crime, tax fraud, sexual exploitation of children, environmental crime and even unauthorized entry, transit and residence have been the subject of the harmonisation efforts in the EU.

On the other hand the use of criminal law as a tool to ensure effective implementation of a Community policy was only recognized by the European Court of Justice in 2005<sup>58</sup>:

*“while it is true that, as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community’s competence, this does not, however, prevent the*

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<sup>58</sup> Judgment of 13 September 2005, Commission/Council, C-176/03, ECR 2005, p. I-7879, Summary (see paragraphs 41-42, 47-48, 51-53).

*Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective”.*

Amongst many reforms provided for in the Treaty of Lisbon, the reform of the judicial cooperation in criminal matters is perhaps the deepest and the most visible. The Treaty of Lisbon has abolished the so called “third pillar” and the former Article 31, Paragraph 1, letter D) TEU has been replaced by the Article 83, Paragraph 1, TFEU, which provides as follows:

*“The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.*

*These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime”.*

As known, the transfer of this provision from TEU to TFEU is not only of technical nature, because the regulations of TFEU adopt the so called “community method” instead of the prevailing intergovernmental method which was typical of acts adopted under the third pillar.

In addition, Article 83 extends the areas of crime that can be subject to EU legislation. The new areas are: trafficking in human beings and sexual exploitation of women and children, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment and computer crime. However, as we have mentioned above, some of these areas were regulated by EU legislation despite the TEU did not mention them.

In turn and most importantly Article 83, Paragraph 2, of the TFEU introduces a new provision, as there was no such provision in the former treaties. It reads:

*“If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with*

*regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76*".

This Article can be seen as a formal sanctioning of the decisions of the ECJ in cases C-176/03 and C-440/05<sup>59</sup>. It constitutes a legal basis for the adoption of EU criminal law in areas which have been subject to harmonization if specific conditions are met and notably if compliance with the principles of proportionality, necessity and subsidiarity is demonstrated.

It is still questionable to what extent it can be used to establish minimum rules with regard to the definition of criminal offences and sanctions for violations of EU legislation in the area of road transport<sup>60</sup>.

## **1.4 The scope and structure of this Study**

In this context the scope of this Study is threefold:

- to analyze and compare the national sanctioning systems of all 27 Member States concerning infringements against the EU road transport legislation, and in particular assess how the national penalties systems work, having regard to how national penalties systems are applied in practice and how the type and level of penalties are related to the category of infringements (Objective 1 );
- to analyze and assess the scope of Article 83(2) of the TFEU, in order to establish to what extent such Article can be used to establish minimum rules with regard to the definition of criminal offences and sanctions for violations of

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<sup>59</sup> Judgment of 13 September 2005, Commission/Council, Case C-176/03, ECR 2005, p. I-7879; Judgment of 23 October 2007, Commission/Council, C-440/05, ECR 2007 p. I-9097.

<sup>60</sup> See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, COM/2011/573.



road transport legislation, in order to ensure effective implementations of the EU policy (Objective 2);

- to make proposals for a future framework for the development of criminal policy for the purpose of enforcement of road transport legislation, and to identify criteria and conditions that could be used by the Commission in order to develop proposals related to sanctions (Objective 3).

In particular, the Study aims at:

- better understanding a basic structure and practice of national criminal law and sanctions systems in all Member States;
- assessing whether criminal sanctions are necessary and are the most efficient way to achieve the objectives of the road transport legislation;
- analysing whether it is legally and practically appropriate, effective and proportionate to harmonise criminal offences and sanctions at the EU level;
- establishing minimum definitions of criminal offences and sanctions.

In order to achieve the above objectives we have developed a methodology that is illustrated in Chapter 2 of this Report.

Such Chapter illustrates the research template adopted in order to describe and assess the national sanction systems (Objective 1).

It illustrates the research framework that the Contractor has followed in order to carry out the tasks necessary to achieve Objectives 2 and 3 of this Study.

Chapters from 3-30 instead provide an in-depth analysis of the Member States' national sanctions systems in the field of road commercial transport.

Chapter 31 includes an overview of the Survey carried out by the Contractor in the context of this Study, and summarizes its most important outcomes.

Chapter 32 contains also a categorization of Member States' national sanctions systems and conclusions on the assessment of their effectiveness.

Chapter 33 contains an analysis of the EU competence in the area of criminal law and an assessment of a necessity of a legislative action at EU level concerning criminal sanctions in the field of commercial road transport. It elaborates proposals for

a future framework for the development of criminal policy for the purpose of enforcement of road transport legislation.

Chapter 34 identifies possible policy options for improving the effectiveness of MS sanctions systems in the area of commercial road transport.

## **2 METHODOLOGY**

### **2.1 Introduction**

This Chapter provides a summary of the research methodology that the Contractor is applying for this Study. It describes:

- the overall approach used;
- the scope of the desk research that has been undertaken; and
- the scope of the Survey that the Contractor has carried out.

The Commission requested us to:

- Analyze and compare the national sanction systems of all 27 Member States concerning infringements against the EU road transport legislation, and, in particular, assess how the national penalties systems work, having regard to how national penalties systems are applied in practice and how the type and level of penalties are related to the category of infringements (hereinafter also, the “Comparative analysis”).
- Analyze and assess the scope of Article 83(2) of the TFEU, in order to establish to what extent such Article can be used to establish minimum rules with regard to the definition of criminal offences and sanctions for violations of road transport legislation, in order to ensure effective implementation of the EU policy; make proposals for a future framework for the development of criminal policy for the purpose of enforcement of road transport legislation, and identify criteria and conditions that could be used by the Commission in order to develop proposals related to sanctions (hereinafter also, the “Analysis of legal scope for harmonisation”).

In order to address these questions, we developed a methodology based on three main tools:

- desk research;
- interviews; and

- comparative analysis.

## **2.2 Comparative analysis of sanctioning systems in Member States**

This Study has analyzed in detail the national sanctions systems for infringements of the EU legislative framework on social rules in the road transport sector, national measures transposing Directive 2009/5/EC as well as national measures foreseeing sanctions for infringements of the other EU measures governing the commercial road transport sector.

At the same time, the impact of such legislation in Member States has been assessed through a series of interviews with the competent authorities of most of the 27 Member States and with representatives of the European enforcement bodies and the European sectoral social partners.

The analysis carried out has focused on the following aspects:

- the relationship between the national administrative and criminal sanctioning regimes in each Member State;
- the link between the sanctioning system in individual Member States and the common categorization of infringements established by Directive 2009/5/EC;
- the existence at national level of specific sanctions applicable to the most serious infringements of EU rules as listed in Annex IV of Regulation (EC) No 1071/2009;
- the bodies responsible for imposing and executing administrative and criminal sanctions;
- the identification of the operators to whom the penalties are applicable (driver, undertaking, transport manager or other persons in the transport chain);
- the assessment on the ways the penalties are imposed on foreign drivers and on undertakings;

- the assessment of the effectiveness and proportionality of the current penalty systems of the 27 Member States in term of enhancing compliance with the legislation in force;
- the identification of the most effective sanctions in reducing the number and seriousness of breaches.

### **2.2.1 Desk research and interviews**

The analysis above has been carried out in first instance based on desk research activity. Desk research has been carried out using mainly:

- legal texts: legislative acts, communications of national authorities;
- relevant doctrine;
- relevant case law;
- EU and national reports (*e.g.* police reports).

Desk research activity has been complemented by interviews with European and national stakeholders (“the Survey”). The scope of these interviews was to obtain:

- Information that allow to understand the concrete functioning of Member States’ practices at present as to sanctioning for infringements against the provisions of EU road transport legislation, and in particular those foreseen in the national legislation for infringements against professional road transport legislation.
- Quantitative data on infringements of EU legislation on professional road transport and their seriousness.
- Information concerning possible episodes of “forum shopping” (*i.e.* situation where hauliers who have committed an infringement might prefer to pay the penalty for this infringement in a Member State that applies very low fines rather than risk a very high penalty in another Member State).
- Information and opinions on the proportionality of national sanctions systems.

- Opinions on the reason why national sanctions systems are effective or not effective. On this respect stakeholders have been asked expressly to specify whether compliance with the relevant rules is more influenced by the level of sanctions or by other factors such as the efficiency of the control systems.

In order to carry out the above interviews, the Contractor has used 2 questionnaires that have been approved by the European Commission.

Each questionnaire addresses a category of stakeholders, notably: European organizations, national authorities and national stakeholders (see Annex 1, questionnaire addressed to European stakeholders, Annex 2, questionnaire addressed to national authorities and stakeholders).

The questionnaire addressed to European stakeholders aimed to gather information or figures that could be useful in order to compare the effectiveness of national sanctions systems.

It also asked them whether, based on their experience in the sector, and in view of their contacts with the industry, they were able to identify the Member States' sanctions systems which can be considered proportionate and dissuasive.

The questionnaire addressed to national stakeholders, *i.e.* national authorities and national road associations, was aimed at requesting to such stakeholders information on figures that could be useful in order to compare the effectiveness of national sanctions systems. They have also been requested to provide their opinions on the effectiveness and proportionality of their respective national sanctions system and on other factors that could affect/influence the level of compliance with the relevant rules on professional road transport. Where possible, they have been requested to provide examples of infractions that according to them are punished in an excessive way at national level.

## **2.2.2 Comparative analysis**

Based on the description of national sanctions systems and on the results of the Survey, the Study has assessed the proportionality and effectiveness of national sanctions systems.

The Contractor's analysis has also aimed at assessing whether based on a comparison of national sanctions systems, it could be concluded that criminal sanctions are the most efficient way to achieve the objectives of road transport legislation and notably to ensure a high level of compliance.

The Study has categorized the national systems based on the following parameters:

- a. severity and proportionality of the sanctions;
- b. suitability of the sanctions to influence the behaviour of all operators involved in the road transport value chain.

Based on such parameters the sanctions systems have been classified as follows:

1. effective *vs* non effective systems: ie systems that contains sanctions that are able to influence in a positive way the the behaviour of all operators involved in the road transport value chain. By this we mean that the sanctions foster compliance with the law, without having as negative effect the consequence of putting out of the markets those transport operators whose behaviour does not affect competition and road safety;
2. dissuasive *vs* non dissuasive systems: *i.e.* systems that foresee very severe penalties (*e.g.* very high financial penalties or measures that restrict personal freedom);
3. proportionate *vs* non proportionate systems: *i.e.* systems that differentiate between serious and less serious infringements, and which have adopted sanctions that are tailored to the seriousness of each infringement, or to each category of infringements.

### **2.2.3 Presentation of results**

The results of desk research activity and interviews have been included in 28 Country Reports.

National reports are structured as follows.

A first part describes national rules implementing EU social rules on road transport. A second part describes the national rules implementing the road package where applicable, or simply foreseeing the relevant sanctions. A third part describes the rules on standards of vehicles and load and necessary licenses.

A fourth part describes the notion of criminal sanctions and of administrative sanctions in each legal system.

A fifth part describes the scope of application of national criminal law. A sixth part includes a summary table providing a list of infringements of the EU legislation on professional road transport as defined in each national legal system. Such table details the following:

- a) typology of sanctions (i.e. whether administrative and/or criminal) applied;
- b) existence of rules on repeated infringements;
- c) content of the rules identifying who are the operators sanctioned in connection with each infringement;
- d) relation between administrative and criminal sanctions (i.e. concurrent/exclusive application).

A seventh and last part provides a conclusion on the effectiveness of the relevant national sanction system.

The assessment of the effectiveness of national sanctions systems is based also on a legal analysis of the national provisions. The following factors have been taken into consideration:

- Are the sanctions tailored to the seriousness of the infringements?
- Does the system differentiate among repeated offences and mistakes?
- Are infringements defined in a clear way?
- Does the system include measures such as immobilization of the vehicle that are deemed dissuasive as they reduce the incentive to break the law when the



advantage of breaking the rules is higher than the economic damage consequent to a fine?

Conclusions on the effectiveness of each MS sanctions system have also been based on the results of the Survey and on quantitative data provided by stakeholders and found through desk research.

### **2.3 Analysis of legal scope for harmonisation of sanctions at the EU level in respect of infringements against the road transport legislation**

The second objective of this Study is to :

- I. analyze and assess the scope of Article 83(2) of the TFEU, in order to establish to what extent such Article can be used to establish minimum rules with regard to the definition of criminal offences and sanctions for violations of road transport legislation, in order to ensure the effective implementation of the EU policy;
- II. propose appropriate practical possibilities to harmonise (rectius “approximate”) definitions of criminal sanctions in order to enhance the effectiveness of the EU road transport policy and provide thorough justification for taking such approximation action at EU level.

This Study provides answers to the following questions.

- if the TFEU is to be interpreted in the sense that EU law should deal only with serious crimes, whilst less serious crimes should be left to the competence of the Member States;
- if the TFEU is to be interpreted in the sense that EU law should deal only with crimes with trans-border effect, while national law should deal with crimes whose impact is limited within national borders;
- if the TFEU should be interpreted that EU law should cover only criminal sanctions and not auxiliary elements such as investigative techniques;

- if the TFEU should be interpreted as it would be legally appropriate to establish EU minimum requirements for defining criminal offences and criminal sanctions for the purpose of the road transport legislation;
- if it would be legally appropriate to establish *minimum* and *maximum* sanctions applicable to certain infringements classified as criminal offences;
- what type and level of sanctions would be necessary and the most efficient way to ensure better compliance with the legislation;
- what should be the criteria for defining a criminal offence;
- what type of infringements should be classified as a criminal offence;
- what type and level of criminal sanctions should be imposed on such infringements classified as criminal offences.

In order to reply to the above the Contractor has elaborated a methodology based mainly on research and analysis.

Such methodology consists in:

1. identifying a common notion of criminal sanction and of criminal offence through the analysis of the doctrine and the national and international case law and a comparison of the definition provided in the 27 Member States of the EU;
2. reviewing the case law of the Court of Justice on the competence of the EU in the area of criminal law;
3. analyzing the measures already adopted by EU aimed at harmonizing sanctions;
4. analyzing the interpretation of Article 83, Paragraph 2, of the TFEU provided in the literature on the topic;
5. assessing - in the light of the relevant literature - to what extent the principle of subsidiarity might restrain the EU competence to approximate criminal laws and regulations of the Member States;
6. assessing in the light of the findings of the above comparative analysis and in the light of the relevant literature on criminal law whether criminal sanctions are necessary in order to ensure compliance with law in general and with EU rules on professional road transport in particular;

7. identifying possible options for EU measures approximating criminal sanctions in the field of professional road transport;
8. carrying out a risk assessment for each option identified.

The methodology applied in order to carry out the above analysis includes mainly desk research. To complement this information, a Survey was organized with the aim of obtaining the opinion of the Members of the Academy on the scope of Article 83, Paragraph 2, of the TFEU and on the appropriateness of EU measures approximating the national sanctions systems of the Member States of the EU.

The Survey has been carried based on a questionnaire that has been sent to professors of transport law and of EU criminal law (see Annex 3)

A separate questionnaire has been sent to European stakeholder in August 2012 in order to gather stakeholders' views on a possible EU action aimed at approximating sanctions in the field of professional road transport (see Annex 4).

The questions included in this latter questionnaire were aimed also at collecting opinions on the pros and cons of a possible adoption of an EU approximating measure.

Opinions of stakeholders were deemed to be useful in the process of carrying out a risk assessment in connection with each possible option for an EU legislative action aimed at approximating sanctions.

### **3 AUSTRIA - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR**

#### **3.1 Social rules on road transport**

##### **3.1.1 Rules on Driving Times and Rest Periods**

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

The Regulation No 561/2006 has been implemented by the *Kraftfahrgesetz*<sup>61</sup>, hereinafter “Motor Vehicle Act”. Section 134 Motor Vehicle Act generally sanctions all infringements of Articles 5-9 and Article 10 para. 4 and 5 of Regulation No. 561/2006. Neither are there any specifications as to whom the penalties are applicable, nor any special rules applicable to foreign drivers.

In general, pursuant to Austrian law not only direct offenders can be punished for the commitment of a criminal or regulatory offence. Criminal and administrative law also provide for other (natural and legal) persons to be punished.

Apart from direct offenders, persons instigating or contributing to a criminal offence can also be punished<sup>62</sup>. The same minimum and maximum penalties are applicable to them as to the direct offender<sup>63</sup>. However, everybody is punished according to the extent of his or her personal guilt. Moreover, with regard to sentencing,

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<sup>61</sup> Kraftfahrgesetz 1967, Austrian federal law gazette 267/1967 (Motor Vehicle Act).

<sup>62</sup> Section 12 Criminal Code.

<sup>63</sup> Section 13 Criminal Code.

instigating can constitute an aggravating ground<sup>64</sup> while mere contributing can be mitigated under certain circumstances<sup>65</sup>.

Legal persons can be punished for all types of criminal offence that have been committed in their interest or if obligations of the legal person have been violated by the commitment of the criminal offence<sup>66</sup>. Under these preconditions, legal persons can become criminally liable in two alternative ways:

- a decision maker (CEO, board of directors, supervisory board or other person with significant influence on the management<sup>67</sup>) commits the criminal offence unlawfully and with guilt<sup>68</sup> (however, it is not necessary that the decision maker is punishable himself or herself); or
- one or more employees commit the criminal offence unlawfully and either intentionally or through negligence (guilt is not necessary) and a decision maker enabled or facilitated its commitment by neglecting his duties<sup>69</sup>.

Only monetary penalties can be imposed on legal persons. Similar to monetary penalties for natural persons, they are calculated by taking into account the day rates and the legal person's economic capability<sup>70</sup>.

Administrative sanctions are applied just as in criminal law, not only to direct offenders but also to persons instigating or contributing to the offence, with the same minimum and maximum penalties applicable to them as to the direct offender. Whether the direct offender is punishable is of no importance<sup>71</sup>.

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<sup>64</sup> Section 33 cif. 3 Criminal Code.

<sup>65</sup> Section 34 para. 1 cif. 6 Criminal Code.

<sup>66</sup> Section 3 para. 1 Bundesgesetz über die Verantwortlichkeit von Verbänden für Straftaten, Austrian federal law gazette I 151/2005 (Law on the criminal liability of associations).

<sup>67</sup> Section 2 para. 1 Law on the criminal liability of associations.

<sup>68</sup> Section 3 para. 3 cif. 1 Law on the criminal liability of associations.

<sup>69</sup> Section 3 para. 3 cif. 2 Law on the criminal liability of associations.

<sup>70</sup> Section 4 Law on the criminal liability of associations.

<sup>71</sup> Section 7 Law on Administrative Penalties.

In contrary to criminal law, legal persons cannot be punished under administrative law. If a legal person has legal obligations under administrative law and the applicable law does not provide anything else, the person entitled to represent the legal person is criminally liable<sup>72</sup>. The representatives of a legal person can (and – if necessary to secure criminal liability – must) appoint one or more natural persons to be liable for the whole enterprise or certain subject matters or regions<sup>73</sup>. The legal persons are liable for the monetary penalties imposed on the natural persons that are criminally liable<sup>74</sup>.

In addition, the *Arbeitszeitgesetz*<sup>75</sup> (hereinafter “Working Time Act”), punishes employers infringing their obligations according to Articles 6 para. 1-3 and 5, Article 7, Article 8 para. 2, 4 and 5, Article 9, Article 10 para. 1 and 2, Article 12 sentence 2, Article 16 para. 2 and 3 Regulation No. 561/2006 as well as employers not safeguarding that their drivers do not act in accordance to their obligations under Chapter II of Regulation No. 561/2006. The *Arbeitsruhegesetz*<sup>76</sup>, (hereinafter “Act on rest periods”), punishes employers infringing their obligations according to Article 8 para. 6 and 7 and Article 12 sentence 2 with regard to weekly rest periods.

As for administrative penalties for violations of Regulation No 561/2006 and Regulation No 3821/85, the principle of extraterritoriality of sanctions as foreseen in Article 19 of Regulation No 561/2006 has been implemented by Section 134 para. 1a of the Motor Vehicle Act. The latter provision stipulates a variation of the general rule i.e. the Austrian law is applicable on all violations on routes within the territorial scope of application of the above Regulations. The place where the regulatory offence is detected is to be regarded as the place where it has been committed. Exemptions apply to cases where the regulatory offence is not persisting in Austrian territory or the offender

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<sup>72</sup> Section 9 para. 1 Law on Administrative Penalties.

<sup>73</sup> Section 9 para. 2 Law on Administrative Penalties.

<sup>74</sup> Section 9 para. 7 Law on Administrative Penalties.

<sup>75</sup> Bundesgesetz vom 11. Dezember 1969 über die Regelung der Arbeitszeit (*Arbeitszeitgesetz*), Austrian federal law gazette 461/1969 (*Working Time Act*).

<sup>76</sup> Section 27 para. 2 Bundesgesetz vom 3. Februar 1983 über die wöchentliche Ruhezeit und die Arbeitsruhe an Feiertagen, Austrian federal law gazette 144/1983 (*Act on rest periods*).

proves that he has already been punished abroad for the commitment of the regulatory offence.

### **3.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)**

Directive 2006/22/EC only sets out minimum rules for the implementation of Regulation (EEC) No. 3820/85 and Regulation (EEC) No. 3821/85. It has therefore been transposed by the same acts as Regulation 3 (EEC) 3821/85, the Motor Vehicle Act and the Working Time Act (see below). Section. 134 para. 1b of Motor Vehicle Act and Section. 28 para. 6 of Working Time Act refer to Annex III of Directive 2006/22/EC (as amended by Directive 2009/5/EC), taking over its categorization of infringements (very serious, serious and minor).

The categorization of the infringements as contained in annex III of Directive 2006/22/EC (as amended by Directive 2009/5/EC) as serious, very serious and minor has been implemented in Austria regarding infringements of Regulation No. 561/2006 and Regulation 3821/85 (regulatory offences).

The amount of the monetary penalty for drivers/transport operators depends on the seriousness of the infringement. In case of a serious infringement, the monetary penalty must not be less than 200 Euro, in case of a very serious infringement not less than 300 Euro<sup>77</sup>.

The minimum and maximum monetary penalty for employers also depends on the seriousness of the infringement committed i.e. serious, very serious or minor<sup>78</sup>.

### **3.1.1.3 Directive 2002/15/EC**

With regard to employed drivers, Directive 2002/15/EC has been implemented by the Working Time Act. Section28 Working Time Act provides sanctions for

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<sup>77</sup> Section134 para. 1b Motor Vehicle Act.

<sup>78</sup> Section28 para. 6 Working Time Act.

violations. The applicable rules to drivers are stricter than the ones applicable to other employees.

Regarding self-employed drivers, Austria has not yet implemented Directive 2002/15/EC.

In December 2011, the Ministry of Traffic presented a draft law on the implementation of the Directive to the Austrian Parliament<sup>79</sup>. The draft law foresees the amendment of three existing acts including sanctions (*Güterbeförderungsgesetz*<sup>80</sup>, hereinafter “Act on transport of goods”; *Gelegenheitsverkehrs-Gesetz*<sup>81</sup>, hereinafter Act on occasional traffic; *Kraftfahrliniengesetz*<sup>82</sup>, hereinafter “Motor Vehicle Lines Act”). However, it cannot be predicted when the Austrian Parliament will further process and adopt the law and what its final wording and contents will be.

### 3.1.2 Tachograph

#### 3.1.2.1 Regulation (EEC) No 3821/85

The Regulation No 3821/85 has been implemented by the Motor Vehicle Act and the Working Time Act. Sec. 134 of Motor Vehicle Act generally sanctions all infringements of Regulation No 3821/85. Neither are there any specifications as to

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<sup>79</sup> Ministerialentwurf betreffend ein Bundesgesetz, mit dem das Güterbeförderungsgesetz 1995 - GütbefG, das Gelegenheitsverkehrs-Gesetz 1996 - GelverkG und das Kraftfahrliniengesetz - KflG geändert werden (Ministerial draft concerning a Federal Law by which the Act on transport of goods 1995, the Act on occasional traffic 1996 and the Motor Vehicle Lines Act are amended) (340/Ministerial draft).

<sup>80</sup> Bundesgesetz über die gewerbsmäßige Beförderung von Gütern mit Kraftfahrzeugen, Austrian federal law gazette 593/1995 (Act on transport of goods).

<sup>81</sup> Bundesgesetz über die nichtlinienmäßige gewerbsmäßige Beförderung von Personen mit Kraftfahrzeugen, Austrian federal law gazette 112/1996 (Act on occasional traffic).

<sup>82</sup> Bundesgesetz über die linienmäßige Beförderung von Personen mit Kraftfahrzeugen, Austrian federal law gazette 203/1999 (Motor Vehicle Lines Act).



whom the penalties are applicable, nor any special rules applicable to foreign drivers (see para. above explaining general rules).

Employers not ensuring that their drivers act in accordance with their obligations under Regulation No. 3821/85 are punished under Section 28 para. 5 of Working Time Act. In addition, employers violating their obligations regarding the recording equipment, the record sheets or the driver cards under Article 3 para. 1, Article 13, Article 14, Article 15 (except para. 6) or Article 16 Regulation No. 3821/85 are to be punished under Section 28 para. 5 of Working Time Act.

Article 20 of Regulation No. 3821/85 abolished Regulation No. 1463/70. Since Austria joined the EU not earlier than 1995, no implementing measures had to be taken with regard to Regulation No. 1463/70.

## **3.2 Road package**

### **3.2.1 Regulation (EC) No 1071/2009**

Regulation No 1071/2009 has not been implemented into Austrian law yet. In December 2011, the Ministry of Traffic presented a draft law on the implementation of Regulation Nos. 1071/2009, 1072/2009 and 1073/2009 to the Austrian Parliament<sup>83</sup>. The draft law foresees the amendment of three existing acts including the related sanctions (Act on transport of goods, Act on occasional traffic, Motor Vehicle Lines Act). However, it cannot be predicted when the Austrian Parliament will further process and adopt the law and what its final wording and contents will be.

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<sup>83</sup> Ministerialentwurf betreffend ein Bundesgesetz, mit dem das Güterbeförderungsgesetz 1995 - GütbefG, das Gelegenheitsverkehrs-Gesetz 1996 - GelverkG und das Kraftfahrlniengesetz - KflG geändert werden (Ministerial draft concerning a Federal Law by which the Act on transport of goods 1995, the Act on occasional traffic 1996 and the Motor Vehicle Lines Act are amended) (340/Ministerial draft).

Until then, the contents of the replaced Directive 96/26/EC are still covered by the Act on occasional traffic, the Motor Vehicle Lines Act and the *Berufszugangsverordnung Kraftfahrlinien- und Gelegenheitsverkehr*<sup>84</sup> (hereinafter “Decree on the access to profession in motor vehicle line traffic and occasional traffic”) related to motor vehicle traffic of persons, and the Act on transport of goods and the *Berufszugangs-Verordnung Güterkraftverkehr*<sup>85</sup> (hereinafter “Decree on the access to profession in motor vehicle line traffic of goods”) related to motor vehicle traffic of goods.

However, there are provisions on sanctions in force that cover infringements of Regulation No. 1071/2009. Section 23 of Act on transport of goods punishes entrepreneurs and drivers violating provisions of directly applicable EU law on transport of goods and Section 15 of Act on occasional traffic punishes entrepreneurs and drivers violating provisions of directly applicable EU law on road traffic of persons.

### **3.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009**

Regulation No 1072/2009 and Regulation No 1073/2009 have not been implemented into Austrian law yet. In December 2011, the Ministry of Traffic presented a draft law on the implementation of Regulation No 1071/2009, Regulation

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<sup>84</sup> Verordnung des Bundesministers für öffentliche Wirtschaft und Verkehr über den Zugang zum mit Kraftfahrzeugen betriebenen Personenbeförderungsgewerbe, Austrian federal law gazette 889/1994 (Decree on the access to profession in motor vehicle line traffic and occasional traffic).

<sup>85</sup> Verordnung des Bundesministers für öffentliche Wirtschaft und Verkehr über den Zugang zum mit Kraftfahrzeugen betriebenen Güterbeförderungsgewerbe, Austrian federal law gazette 221/1994 (Decree on the access to profession in motor vehicle line traffic of goods).

No 1072/2009 and Regulation No. 1073/2009 to the Austrian Parliament<sup>86</sup>. The draft law foresees the amendment of three existing acts including sanctions (Act on transport of goods, Act on occasional traffic, Motor Vehicle Lines Act). However, it cannot be predicted when the Austrian Parliament will further process and adopt the law and what its final wording and contents will be.

There are provisions on sanctions in force that cover infringements of Regulation No 1072/2009 and Regulation No 1073/2009. Section 23 Act on transport of goods punishes entrepreneurs and drivers violating provisions of directly applicable EU law on transport of goods and Section 15 Act on occasional traffic punishes entrepreneurs and drivers violating provisions of directly applicable EU law on road traffic of persons.

### **3.3 Standards of vehicles and load and necessary licenses**

#### **3.3.1 Directive 2008/68/EC**

Directive 2008/68/EC has been implemented by the *Gefahrgutbeförderungsgesetz*<sup>87</sup> (hereinafter: “Act on the transport of dangerous goods”) and the *Verordnung über die Beförderung gefährlicher Güter auf Wasserstraßen*<sup>88</sup> (hereinafter “Decree on the transport of dangerous goods on waterways”) as well as by

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<sup>86</sup> Ministerialentwurf betreffend ein Bundesgesetz, mit dem das Güterbeförderungsgesetz 1995 - GütbefG, das Gelegenheitsverkehrs-Gesetz 1996 - GelverkG und das Kraftfahrlineingesetz - KflG geändert werden (Ministerial draft concerning a Federal Law by which the Act on transport of goods 1995, the Act on occasional traffic 1996 and the Motor Vehicle Lines Act are amended) (340/Ministerial draft).

<sup>87</sup> Bundesgesetz über die Beförderung gefährlicher Güter, Austrian federal law gazette 145/1998 (Act on the transport of dangerous goods).

<sup>88</sup> Verordnung des Bundesministers für Verkehr, Innovation und Technologie über die Beförderung gefährlicher Güter auf Wasserstraßen, Austrian federal law gazette II 13/2005 (Decree on the transport of dangerous goods on waterways).

the amendments of the appendices of the *Europäisches Übereinkommen über die internationale Beförderung gefährlicher Güter auf der Straße*<sup>89</sup> (“European Agreement concerning the International Carriage of Dangerous Goods by Road”, ADR) and the *Übereinkommen über den internationalen Eisenbahnverkehr*<sup>90</sup> (“Convention concerning International Carriage by Rail”, COTIF). The Act on the transport of dangerous goods mainly transposes the Directive 2008/68/EC as regards to road traffic and also contains the related sanctions.

### **3.3.2 Directive 1996/53/EC**

Directive 96/53/EC has been implemented into Austrian law by the Motor Vehicle Act. Section 134 of Motor Vehicle Act generally sanctions all infringements of this Act. Neither are there any specifications as to whom the penalties are applicable, nor any special rules applicable to foreign drivers.

### **3.3.3 Directive 2009/40/EC**

Directive 96/53/EC has been implemented into Austrian law by the Motor Vehicle Act (especially by Section 57a) and the *Prüf- und Begutachtungsstellenverordnung*<sup>91</sup> (hereinafter “Decree on test and assessment authorities”). Section 134 of Motor Vehicle Act generally sanctions all infringements of the Motor Vehicle Act itself as well as all decrees based on it, including the Decree on

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<sup>89</sup> Amendment of appendices A and B, Austrian federal law gazette III 15/2009.

<sup>90</sup> Amendment of the appendix on the order of the international railway transport of dangerous goods, Austrian federal law gazette III 110/2009.

<sup>91</sup> Verordnung des Bundesministers für Wissenschaft und Verkehr, mit der Bestimmungen über die Durchführung der besonderen Überprüfung und wiederkehrenden Begutachtung von Fahrzeugen sowie über die Prüfung von Fahrtschreibern, Kontrollgeräten und Geschwindigkeitsbegrenzern festgelegt werden, Austrian federal law gazette II 78/1998 (Decree on test and assessment authorities).

test and assessment authorities. Neither are there any specifications as to whom the penalties are applicable, nor any special rules applicable to foreign drivers.

### 3.3.4 Directive 2006/126/EC

Directive 2006/126/EC has been implemented by the *Führerscheinggesetz*<sup>92</sup> (hereinafter “Act on the driving licence”), the *Führerscheinggesetz-Durchführungsverordnung*<sup>93</sup> (hereinafter “Decree on the implementation of the Act on the driving licence”), the *Führerscheinggesetz-Gesundheitsverordnung*<sup>94</sup> (hereinafter “Health Decree to the Act on the driving licence”) and the *Fahrprüfungsverordnung*<sup>95</sup> (herein after “Decree on the driving test”). Section 37 of Act on the driving licence generally sanctions all infringements of the Act on the driving licence itself as well as all decrees based on it, thus including the Decree on the implementation of the Act on the driving licence, the Health Decree to the Act on the driving licence and the Decree on the driving test. Neither are there any specifications as to whom the penalties are applicable, nor any special rules applicable to foreign drivers.

## 3.4 ***Notion of criminal sanction and administrative sanction in the Austrian legal system***

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<sup>92</sup> Bundesgesetz über den Führerschein, Austrian federal law gazette I 120/1997 (Act on the driving license).

<sup>93</sup> Verordnung des Bundesministers für Wissenschaft und Verkehr über die Durchführung des Führerscheinggesetzes, Austrian federal law gazette II 320/1997 (Decree on the implementation of the Act on the driving license).

<sup>94</sup> Verordnung des Bundesministers für Wissenschaft und Verkehr über die gesundheitliche Eignung zum Lenken von Kraftfahrzeugen, Austrian federal law gazette II 322/1997 (Health Decree to the Act on the driving license).

<sup>95</sup> Verordnung des Bundesministers für Wissenschaft und Verkehr über die Fahrprüfung, Austrian federal law gazette II 321/1997 (Decree on the driving test).

The terms “criminal law” and “criminal sanction” are not defined under Austrian laws or other legal acts. However, there are well-established definitions in the literature.

- Criminal law is the sum of all provisions determining the conditions under which public sanctions, i.e. criminal sanctions and preventive measures shall be imposed in reaction to exactly determined behavioural patterns<sup>96</sup>.
- A criminal sanction was traditionally considered as an evil linked with reproof that is imposed because of guilt and according to the extent of guilt<sup>97</sup>. The purposes of criminal sanctions are individual and general prevention.

These definitions have grown historically and are relatively undisputed. It is however also well-accepted in the modern literature that these definitions are not based on theoretical needs. On one hand, criminal law encompasses some more public sanctions than the above-mentioned criminal sanctions and preventive measures, such as confiscation. On the other hand, administrative penalties are practically not regarded as criminal sanctions by criminal as well as administrative lawyers although they fulfil the criteria of the abovementioned definition. Administrative penalties are criminal sanctions<sup>98</sup>, but for historical and practical reasons they are not imposed by Courts but by administrative authorities<sup>99</sup>. It is thus useful to avoid confusion by speaking of judicial criminal sanctions or judicial criminal law if administrative penalties or administrative criminal law are not meant to be covered.

The distinction between judicial criminal law and administrative criminal law is thus only formal. In principle, the Austrian legislator is free to assign the execution of punitive laws to either Courts or administrative authorities. However it is important to

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<sup>96</sup> See for example *Triffterer*, Österreichisches Strafrecht Allgemeiner Teil, Springer, Vienna-New York, 1985, p. 4; *Kienapfel/Höpfel*, Strafrecht Allgemeiner Teil, 13<sup>th</sup> Ed., Manz, Vienna, 2009, page 12.

<sup>97</sup> See for example *Kienapfel/Höpfel*, Strafrecht Allgemeiner Teil, 13<sup>th</sup> Ed., Manz, Vienna, 2009, page 4.

<sup>98</sup> See *Merkel*, Allgemeines Verwaltungsrecht, Wissenschaftliche Buchgesellschaft, Leipzig, 1969, pages 270-273.

<sup>99</sup> See *Wiederin*, Die Zukunft des Verwaltungsstrafrechts, 16. Österreichischer Juristentag Vol III/1, Manz, Vienna, 2006, page 7.

note that Austria is a Federation. Only the Federal legislator is allowed to draft judicial criminal law<sup>100</sup>. Administrative criminal law falls both under the competence of the Federal and of the Regional legislators<sup>101</sup>. The procedural guarantees under Article 6 ECHR are respected in both procedures.

Generally, the Austrian legal position could be interpreted in a similar way to the categorization of infringements as serious, very serious and minor (“*Verbrechen*” – “*Vergehen*” – “*Verwaltungsübertretungen*”). Although this is not a decisive distinction between judicial criminal and administrative law, it is a matter of fact that the most serious infringements normally do not constitute regulatory offences (“*Verwaltungsübertretungen*”), but are assigned to Criminal Courts<sup>102</sup>.

The term “regulatory offence” (assigned to administrative authorities) is not explicitly defined by law, but its elements can well be deducted<sup>103</sup>:

- A prohibited<sup>104</sup>;
- and punishable<sup>105</sup>;
- act (active doing or omitting)<sup>106</sup>;
- by a human<sup>107</sup>;
- committed with mental capacity<sup>108</sup>;

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<sup>100</sup> Article 10 para. 1 cif. 6 Bundes-Verfassungsgesetz, Austrian federal law gazette 1/1930 (Federal Constitution).

<sup>101</sup> Article 10 para. 1 cif. 6, Article 11 para. 2 Federal Constitution.

<sup>102</sup> *Walter/Kolonovits/Muzak/Stöger*, *Verwaltungsverfahrenrecht*, 9<sup>th</sup> Ed., Manz, Vienna, 2011, p. 443; *Kienapfel/Höpfel*, *Strafrecht Allgemeiner Teil*, 13<sup>th</sup> Ed., Manz, Vienna, 2009, p. 12.

<sup>103</sup> See also *Walter/Kolonovits/Muzak/Stöger*, *Verwaltungsverfahrenrecht*, 9<sup>th</sup> Ed., Manz, Vienna, 2011, pp. 455-456.

<sup>104</sup> Section1 para. 1 *Verwaltungsstrafgesetz*, Austrian federal law gazette 1991/52 (Law on Administrative Penalties).

<sup>105</sup> Section1 para. 1 Law on Administrative Penalties; Art. 2 para. 3 *Einführungsgesetz zu den Verwaltungsverfahrensgesetzen*, Austrian federal law gazette 2008/87 (Law on the introduction of the acts on the administrative procedure).

<sup>106</sup> Section1 para. 1 Law on Administrative Penalties.

<sup>107</sup> Section1 para. 1 Law on Administrative Penalties.

- and guilt.<sup>109</sup>

Criminal offences are *inter alia* categorized by the penalty and the intent, what can be interpreted as a division between more and less serious criminal offences:

- Crimes (“*Verbrechen*”) are intentional criminal offences with a penalty of imprisonment of more than three years<sup>110</sup>.

Criminal sanctions as well as principal administrative penalties are:

- Imprisonment;
- Monetary penalties; in case the convict is unable to pay: imprisonment in lieu of a fine;

Imprisonment imposed by Criminal Court may be lifelong or for a certain time<sup>111</sup>. In the latter case, the imprisonment lasts at least one day and at the most 20 years<sup>112</sup>.

Monetary penalties are calculated in judicial criminal law by way of day rates<sup>113</sup>, taking into account the perpetrator’s economic capability. The minimum day rate is 4,- Euro, the maximum day rate 5,000 Euro<sup>114</sup>. The exact amount of the monetary penalty is the result of the following calculation: day rate (= economic capability) x number of day rates (= extent of the guilt).

Imprisonment and imprisonment in lieu of a fine imposed by an administrative authority lasts at least 12 hours and at the most 6 weeks<sup>115</sup>. Independent administrative authorities can impose imprisonment and imprisonment in lieu of a fine up to 3

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<sup>108</sup> Section 3 Law on Administrative Penalties.

<sup>109</sup> Section 5-6 Law on Administrative Penalties.

<sup>110</sup> Section17 para. 1 Strafgesetzbuch, Austrian federal law gazette 1974/60 (Criminal Code).

<sup>111</sup> Section18 Criminal Code.

<sup>112</sup> Section18 para. 2 Criminal Code.

<sup>113</sup> Section19 Criminal Code.

<sup>114</sup> Section19 para. 2 Criminal Code.

<sup>115</sup> Section12 Law on Administrative Penalties.



months<sup>116</sup>. The minimum for monetary penalties imposed by administrative authorities is fixed to 7 Euros.

In both criminal and administrative law certain items or criminal assets may be confiscated as an accessory sanction alongside imprisonment or monetary sanctions.

In criminal law, all items confiscated:

- have been used in order to commit an intentional criminal offence;
- should have been used in order to commit an intentional criminal offence or
- have been produced by an intentional criminal offence,

if they belong to the perpetrator in the moment the judicial decision is made (“*Konfiskation*”)<sup>117</sup>. Furthermore, all assets obtained for or by the commitment of a criminal offence are to be confiscated (“*Verfall*”)<sup>118</sup>. Since under the latter provision assets belonging to third persons might be confiscated, one of the exemptions applying to this rule protects buyers that obtained property *bona fide*<sup>119</sup>. In addition, severe rules on confiscation apply to criminal or terrorist organisations (“*Erweiterter Verfall*”)<sup>120</sup>.

In administrative procedures, the items confiscated are those:

- that belong to the perpetrator or any other guilty person.
- or that have been given to them by the person authorised to dispose of them (the items), to the extent that this person should have known that this disposal would lead to the commitment of a regulatory offence (“*Verfall*”)<sup>121</sup>.

Rules that protect certain interests of third persons do apply<sup>122</sup>.

Administrative laws might prescribe other types of penalties such as the withdrawal of licences. On these, the rules on sentencing (see below) are not applicable.

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<sup>116</sup> Article 5 ECHR.

<sup>117</sup> Section19a Criminal Code.

<sup>118</sup> Section20 Criminal Code.

<sup>119</sup> Section20a Criminal Code.

<sup>120</sup> Section20b Criminal Code.

<sup>121</sup> Section17 Law on Administrative Penalties.

<sup>122</sup> Section17 para. 2 Law on Administrative Penalties.

Criminal and administrative laws do not prescribe the exact penalty but a maximum and sometimes – in judicial criminal law only for crimes – also a minimum penalty. The exact extent of the penalty in a case is determined by the competent authority taking into account various factors. These factors are in judicial criminal law:

- guilt<sup>123</sup>;
- individual prevention<sup>124</sup>;
- general prevention<sup>125</sup>;
- mitigating grounds<sup>126</sup> (many possible factors, such as young age, confession, commitment under the influence of a third person, honourable reasons etc.)<sup>127</sup>;
- aggravating grounds<sup>128</sup> (for example if the perpetrator has committed more than one offence, has already been convicted for a similar offence before or has seduced another person to commit a criminal offence etc.)<sup>129</sup>;

In administrative law these factors are:

- damage<sup>130</sup>;
- danger<sup>131</sup>;
- other negative consequences<sup>132</sup>;
- mitigating grounds<sup>133</sup> (the same as in judicial criminal law);
- aggravating grounds<sup>134</sup> (the same as in judicial criminal law).

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<sup>123</sup> Section32 para. 1 Criminal Code.

<sup>124</sup> Section 32 para. 2 Criminal Code.

<sup>125</sup> Section32 para. 2 Criminal Code.

<sup>126</sup> Section32 para. 2 Criminal Code.

<sup>127</sup> Section34 Criminal Code.

<sup>128</sup> Section 32 para. 2 Criminal Code.

<sup>129</sup> Section33 Criminal Code.

<sup>130</sup> Section19 para. 1 Law on Administrative Penalties.

<sup>131</sup> Section19 para. 1 Law on Administrative Penalties.

<sup>132</sup> Section19 para. 1 Law on Administrative Penalties.

<sup>133</sup> Section19 para. 2 Law on Administrative Penalties.

### Concurrence between several sanctions

Has the same person committed more than one criminal offence, the offence with the highest penalty generally absorbs the other penalties. If one criminal offence has a higher maximum penalty while the other has a higher minimum penalty both are combined<sup>135</sup>. Has the same person committed more than one regulatory offence, all penalties are cumulated<sup>136</sup>.

### Concurrence between administrative and criminal sanctions

In general, the abovementioned cumulative principle regarding more than one administrative penalty also applies to the case where a person has committed a regulatory offence and a criminal offence: both can be imposed<sup>137</sup>. However, no such rule exists for cases where the same act constitutes a criminal offence and a regulatory offence. These constellations have to be examined under due consideration of the *ne bis in idem* principle (7<sup>th</sup> Protocol to the ECHR) and the existing case law of the ECtHR, which already has decided on relevant Austrian cases in this regard<sup>138</sup>. According to this case law, a final decision in a criminal procedure – in the broad notion of the ECtHR – impedes a second sanction with the same character. This does not apply if the second procedure only imposes an additional sanction that is to be counted as part of the first procedure, even if conducted by another authority. An example for the latter exemption

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<sup>134</sup> Section19 para. 2 Law on Administrative Penalties.

<sup>135</sup> Section28 para. 1 Criminal Code.

<sup>136</sup> Section22 para. 1 Law on Administrative Penalties.

<sup>137</sup> Section22 para. 2 Law on Administrative Penalties.

<sup>138</sup> ECtHR Gradinger v. Austria, App. No. 15963/90, 23 Oct 1995; ECtHR Hangl v. Austria, App. No. 38716/97, 20 Mar 2001; ECtHR Franz Fischer v. Austria, App. No. 37950/97, 29 May 2001; ECtHR Müller v. Austria, App. No. 28034/04, 18 Sep 2008. ECtHR R.T. v. Switzerland, App. No. 31982/96, 30 May 2000; ECtHR Philipps v. United Kingdom, App. No. 41087/98, 5 Jul 2001; ECtHR Nilsson v. Sweden, App. No. 73661/01, 13 Dec 2005; ECtHR Maszni v. Romania, App. No. 59892/00, 21 Sep 2006.

of the *ne bis in idem* principle would be the withdrawal of a driving licence following a conviction in a criminal procedure for drunken driving<sup>139</sup>.

### **3.5 Scope of application of Austrian criminal law**

Austrian criminal law first applies the principle of territory and the principle of flag i.e. Austrian criminal laws apply to all criminal offences committed in Austria<sup>140</sup> and on board of Austrian vessels or airplanes<sup>141</sup>.

To a smaller extent, the principle of personality, the principle of the protected good and the principle of universality also apply. There is a long list of criminal offences committed abroad falling under the Austrian jurisdiction, regardless of whether they are punishable under the *lex loci delicti*<sup>142</sup>. This exhaustive list is mainly governed by the principle of the protected good, but also by the principle of personality. An example is the commitment of a criminal act by or against an Austrian public official in performance of his duties. To that end, not even the international *ne bis in idem* principle under Art. 54 of the Convention implementing the Schengen Agreement would apply. This is due to a reservation Austria made to this Article in respect of few criminal acts.

Criminal offences not covered by this list fall under the Austrian jurisdiction only if they are punishable under the *lex loci delicti* and if one other precondition is met i.e. either the offender has or had the Austrian citizenship (active personality principle) or cannot be extradited for other reasons than the characteristics of the committed offence<sup>143</sup>.

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<sup>140</sup> Section62 Criminal Code.

<sup>141</sup> Section63 Criminal Code.

<sup>142</sup> Section64 Criminal Code.

<sup>143</sup> Section65 Criminal Code.

If not provided otherwise, the general rule in administrative law is the principle of territory. The Austrian administrative law only applies to regulatory offences committed in Austria<sup>144</sup>.

### **3.6 Summary tables**

As seen above, the distinction between judicial and administrative criminal law does not consist in a different theoretical character, but only in the assignation to different types of authorities, i.e. Courts and administrative authorities.

Judicial criminal sanctions are imposed by Criminal Courts. Generally, Austria has four levels of regular<sup>145</sup> Courts: the District Courts, the Regional Courts, the Higher Regional Courts and one Supreme Court. However, the judicial criminal procedure only consists of two levels of jurisdiction. In other words, there is only one Court of First Instance and one Appellate Court.

The preliminary proceedings are conducted by the public prosecutor's office located at the seat of the Regional Court in whose Court District the criminal offence has been committed, should have been committed or – if the crime scene is abroad or cannot be located – where its result appears or should have been appeared<sup>146</sup>.

The preliminary proceedings always fall under the jurisdiction of the Regional Court whose public prosecutor's office is dealing with the case.

In the trial phase the competent jurisdiction depends locally on the Court District the criminal offence has been committed, should have been committed or – if the crime scene is abroad or cannot be located – where its result appears or should have been appeared<sup>147</sup>. The subject-matter jurisdiction is – apart from exceptions – in general determined by the penalty of the respective criminal offence:

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<sup>144</sup> Section2 para. 1

<sup>145</sup> Not falling under this term: the Administrative court, the Constitutional court and the Asylum court.

<sup>146</sup> Section25 Strafprozessordnung, Austrian federal law gazette 1975/631 (Criminal Procedure Code).

<sup>147</sup> Section36 Criminal Procedure Code.

- Criminal offences with a monetary penalty or a penalty of imprisonment up to one year fall under the subject-matter jurisdiction of a District Court<sup>148</sup>.
- Criminal offences with a penalty of imprisonment of more than one year fall under the subject-matter jurisdiction of a single judge at a Regional Court<sup>149</sup>.
- Criminal offences with a penalty of imprisonment of more than five years fall under the subject-matter jurisdiction of a mixed bench at a Regional Court<sup>150</sup>.
- Criminal offences with a penalty of lifelong imprisonment or imprisonment of more than five years as lower limit and more than ten years as upper limit fall under the subject-matter jurisdiction of a jury at a Regional Court<sup>151</sup>.

The remedies and the appellate Courts depend on the Courts of First Instance.

- Appeals against judgments of the District Court fall under the jurisdiction of a Regional Court (panel of three judges)<sup>152</sup>.
- Appeals against judgments of the single judge at the Regional Court fall under the jurisdiction of a Higher Regional Court (panel of three judges)<sup>153</sup>.
- Appeals against judgments of the mixed bench or the jury at the Regional Court fall partly under the jurisdiction of a Higher Regional Court<sup>154</sup>, partly under the jurisdiction of the Supreme Court<sup>155</sup>.

The competent jurisdiction depends locally on the administrative district where the regulatory offence has been committed, even if its result appeared in another administrative district<sup>156</sup>. If it cannot be determined, in which administrative district the

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<sup>148</sup> Section30 Criminal Procedure Code.

<sup>149</sup> Section31 para. 4 Criminal Procedure Code.

<sup>150</sup> Section31 para. 3 Criminal Procedure Code.

<sup>151</sup> Section31 para. 2 Criminal Procedure Code.

<sup>152</sup> Section31 para. 6 Criminal Procedure Code.

<sup>153</sup> Section33 para. 1 Criminal Procedure Code.

<sup>154</sup> Section33 para. 1 Criminal Procedure Code.

<sup>155</sup> Section34 para. 1 Criminal Procedure Code.

<sup>156</sup> Section27 para. 1 Law on Administrative Penalties.

regulatory offence has been committed, the administrative authority taking the first step of prosecution is locally competent<sup>157</sup>.

At first instance, regulatory offences in general fall under the subject-matter jurisdiction of the District administrative authorities<sup>158</sup>. If a regulatory offence is committed in an administrative district where a Federal Police Directorate exists, it falls under the jurisdiction of the Federal Police Directorate, as far as the latter is administering the specific field of administrative law covering the regulatory offence (which is the case in road traffic law<sup>159</sup>)<sup>160</sup>. Appeals against penal orders of these authorities fall under the jurisdiction of the Independent Administrative Panel of the Federal state, where authority of first instance is located<sup>161</sup>.

Monetary penalties are to be executed by the Regional Courts (as Civil Courts) on application of respective authority of first instance<sup>162</sup>. Penalties of imprisonment are generally executed by the respective authorities of first instance if they have detention facilities<sup>163</sup>. Otherwise they might be executed in judicial prisons<sup>164</sup>.

The first table below provides an overview of the administrative and criminal sanctions foreseen in the Austrian legal system for the infringements of EU commercial road transport legislation. The following two tables provide a special overview on the applicable criminal sanctions and their dissuasive effect as well as on administrative sanctions and whether they have to be substantially considered as criminal law regarding the case law of the ECtHR.

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<sup>157</sup> Section27 para. 2 Law on Administrative Penalties.

<sup>158</sup> Section26 para. 1 Law on Administrative Penalties.

<sup>159</sup> Section95 para. 1 lit. b Straßenverkehrsordnung, Austrian federal law gazette 1960/159 (Road Traffic Act).

<sup>160</sup> Section26 para. 1 Law on Administrative Penalties.

<sup>161</sup> Section51 Law on Administrative Penalties.

<sup>162</sup> Section1 Verwaltungsvollstreckungsgesetz, Austrian federal law gazette 1991/52 (Law on Administrative Execution).

<sup>163</sup> Section53 para. 1 Law on Administrative Penalties.

<sup>164</sup> Section53 para. 2 Law on Administrative Penalties.

Table AT 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><b>Regulation 561/06/EC</b></p>	<p><a href="#">Motor Vehicle Act</a></p>	<p>Section. 134</p>	<p>All infringements of Art. 5-9 and Art. 10 para. 4 and 5 Reg 561/2006</p>	<p>Driver (Art. 5-9) Transport operator (Art. 10 para. 4, 5)</p>	<p><b>Monetary penalty up to 5.000 €;</b> <b>1<sup>st</sup> case of recurrence: alternatively 6 weeks imprisonment;</b> <b>From the 2<sup>nd</sup> case of recurrence on:</b> <b>Imprisonment and monetary penalty</b></p>	
	<p><a href="#">Working Time Act</a></p>	<p>Section. 28 para. 5</p>	<p>All infringements of Art. 6 para. 1-3 and 5, Art. 7, Art. 8 para. 2, 4 and 5, Art. 9, Art. 10</p>	<p>Employer</p>	<p><b>Minor infringements:</b></p>	



Table AT 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)
			para. 1 and 2, Art. 12 sentence 2, Art. 16 para. 2 and 3 Reg 561/2006; Not safeguarding that the drivers act in accordance to their obligations under Chapter II of Reg 561/2006		<b>Monetary penalty</b> <b>from 72 € up to 1.815 €;</b> <b>1<sup>st</sup> case of recurrence: from 145 € up to 1.815 €;</b> <b>Serious infringements: from 200 € up to 2.180 €;</b> <b>1<sup>st</sup> case of recurrence: from 200 € up to 3.600 €;</b> <b>Very serious</b>	

Table AT 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest Periods**

<b>EU Legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative sanction(s)</b>	<b>Criminal sanction(s)</b>
					<b>infringements:</b> <b>from 300 € up to 2.180 €;</b>  <b>1<sup>st</sup> case of recurrence: from 350 € up to 3.600 €;</b>	
	<a href="#"><u>Act on rest periods</u></a>	Section. 27 para. 1 and 2	Infringements of Art. 8 para 6 and 7, Art. 12 sentence 2 Reg 561/2006 regarding weekly rests	Employer	<b>Monetary penalty from 72 € up to 2.180 €;</b>  <b>Case of recurrence: from 145 € up to 2.180 €;</b>	
<b>Directive</b>	<a href="#"><u>Working time and rest</u></a>	Section. 28	Exceed of the daily and weekly maximum	Employer	<b>Monetary penalty from 72 € up to</b>	

Table AT 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest Periods**

<b>EU Legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative sanction(s)</b>	<b>Criminal sanction(s)</b>
<b>2002/15/EC</b>	<b><u>periods</u></b>  <b><u>Working Time Act</u></b>	para. 3 cif.1	working time		<b>1.815 €;</b>  <b>1<sup>st</sup> case of recurrence: from 145 € up to 1.815 €;</b>	
		Section. 28 para. 3 cif. 2	No breaks as stipulated by law	Employer	<b>Monetary penalty from 72 € up to 1.815 €;</b>  <b>1<sup>st</sup> case of recurrence: from 145 € up to 1.815 €;</b>	
		Section. 28 para. 3 cif. 3	Exceed of the maximum driving time	Employer	<b>Monetary penalty from 72 € up to 1.815 €;</b>	

Table AT 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest Periods**

<b>EU Legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative sanction(s)</b>	<b>Criminal sanction(s)</b>
					<b>1<sup>st</sup> case of recurrence: from 145 € up to 1.815 €;</b>	
		Section. 28 para. 3 cif. 4	No driving breaks	Employer	<b>Monetary penalty from 72 € up to 1.815 €;</b> <b>1<sup>st</sup> case of recurrence: from 145 € up to 1.815 €;</b>	
		Section. 28 para. 3 cif. 5	No daily rest periods	Employer	<b>Monetary penalty from 72 € up to 1.815 €;</b> <b>1<sup>st</sup> case of recurrence: from</b>	

Table AT 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest Periods**

<b>EU Legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative sanction(s)</b>	<b>Criminal sanction(s)</b>
					<b>145 € up to 1.815 €;</b>	
		Section. 28 para. 3 cif. 6	No record in case of justified deviation from the rules	Employer	<b>Monetary penalty from 72 € up to 1.815 €;</b> <b>1<sup>st</sup> case of recurrence: from 145 € up to 1.815 €;</b>	
		Section. 28 para. 3 cif. 8	Use of drivers exceeding the maximum driving time	Employer	<b>Monetary penalty from 72 € up to 1.815 €;</b> <b>1<sup>st</sup> case of recurrence: from 145 € up to 1.815 €;</b>	

Table AT 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. 28 para. 3 cif. 9	Information and record of the drivers' working time	Employer	<b>Monetary penalty from 72 € up to 1.815 €; 1<sup>st</sup> case of recurrence: from 145 € up to 1.815 €;</b>	

Table AT 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 3821/85	<a href="#">Motor Vehicle Act</a>	Section134	All infringements of Reg 3821/85	Driver and transport operator, depending on who is obligated by the respective provision of Regulation 3821/85	<p><b>Monetary penalty up to 5.000 €; 1<sup>st</sup> case of recurrence: alternatively 6 weeks imprisonment;</b></p> <p><b>From the 2<sup>nd</sup> case of recurrence on: Imprisonment and monetary penalty</b></p>	

Table AT 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)
	<a href="#">Working Time Act</a>	Section. 28	Infringements of employer obligations regarding the recording equipment, the record sheets or the driver cards under Art. 3 para. 1, Art. 13, Art. 14, Art. 15 (except para. 6) or Art. 16 Reg 3821/85 are to be punished under Section. 28 para. 5	Employer	<p><b>Minor infringements:</b>  <b>Monetary penalty from 145 € up to 2.180 €;</b>  <b>1<sup>st</sup> case of recurrence:</b>  <b>from 200 € up to 3.600 €;</b></p> <p><b>Serious infringements:</b>  <b>from 200 € up to</b></p>	



Table AT 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>2.180 €;</p> <p><b>1<sup>st</sup> case of recurrence: from 200 € up to 3.600 €;</b></p> <p><b>Very serious infringements: from 300 € up to 2.180 €;</b></p> <p><b>1<sup>st</sup> case of recurrence: from 350 € up to 3.600 €;</b></p>	

Table AT 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)
		Section28	Not safeguarding that their drivers act in accordance with their obligations under Reg 3821/85	Employer	<p><b>Minor infringements:</b>  <b>Monetary penalty from 72 € up to 1.815 €;</b>  <b>1<sup>st</sup> case of recurrence:</b>  <b>from 145 € up to 1.815 €;</b>  <b>Serious infringements:</b>  <b>from 200 € up to</b></p>	

Table AT 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>2.180 €;</p> <p>1<sup>st</sup> case of recurrence: from 200 € up to 3.600 €;</p> <p>Very serious infringements: from 300 € up to 2.180 €;</p> <p>1<sup>st</sup> case of recurrence: from 350 € up to 3.600 €;</p>	

**Table AT 3**

**Road Package**

<b>EU Legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative sanction(s)</b>	<b>Criminal sanction(s)</b>
<b>Regulation No. 1071/2009/EC</b>	<a href="#"><u>Act on transport of goods</u></a>	Section. 23 para. 1 cif. 9	Infringement of any provision directly applicable (regarding road transport of goods)	Entrepreneur	<b>Monetary penalty from 1.453 up to 7.267 €</b>	
		Section. 23 para 2 cif. 5	Infringement of any provision directly applicable (regarding road transport of goods)	Driver	<b>Monetary penalty up to 726 €</b>	
	<a href="#"><u>Act on occasional traffic</u></a>	Section. 15 para. 1 cif. 7	Infringement of any provision directly applicable (regarding road traffic of persons)	Entrepreneur	<b>Monetary penalty from 1.453 up to 7.267 €</b>	
		Section. 15	Infringement of any provision directly	Driver	<b>Monetary penalty up to</b>	

**Table AT 3**

**Road Package**

<b>EU Legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative sanction(s)</b>	<b>Criminal sanction(s)</b>
		para. 5 cif. 5	applicable (regarding road traffic of persons)		<b>726 €</b>	
	<b><u>Criminal Code</u></b>	Sec. 224	Forgery of especially protected documents			<b>Imprisonment up to 2 years</b>
		Sec. 225	Acceptance, passing on or possession of forged especially protected documents			<b>Imprisonment up to 1 year</b>
		Sec. 227	Preparation of the forgery of especially protected documents			<b>Imprisonment up to 1 year</b>
<b>Regulation No. 1072/2009</b>	<b><u>Act on transport of goods</u></b>	Section. 23 para. 1 cif. 9	Infringement of any provision directly applicable (regarding road transport of goods)	Entrepreneur	<b>Monetary penalty from 1.453 up to 7.267 €</b>	

Table AT 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. 23 para 2 cif. 5	Infringement of any provision directly applicable (regarding road transport of goods)	Driver	<b>Monetary penalty up to 726 €</b>	
		Section. 224	Forgery of especially protected documents			<b>Imprisonment up to 2 years</b>
	<u>Criminal Code</u>	Section. 225	Acceptance, passing on or possession of			<b>Imprisonment</b>

Table AT 3

Road Package

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	Criminal sanction(s)
			forged especially protected documents			up to 1 year
		Section. 227	Preparation of the forgery of especially protected documents			Imprisonment up to 1 year
Regulation No. 1073/2009	<u>Act of occasional traffic</u>	Section. 15 para. 1 cif. 7	Infringement of any provision directly applicable (regarding road traffic of persons)	Entrepreneur	Monetary penalty from 1.453 up to 7.267 €	
		Section. 15 para. 5 cif. 5	Infringement of any provision directly applicable (regarding road traffic of persons)	Driver	Monetary penalty up to 726 €	
	<u>Criminal Code</u>	Section. 224	Forgery of especially protected documents			Imprisonment up to 2 years

**Table AT 3**

**Road Package**

<b>EU Legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative sanction(s)</b>	<b>Criminal sanction(s)</b>
		Section. 225	Acceptance, passing on or possession of forged especially protected documents			<b>Imprisonment up to 1 year</b>
		Section. 227	Preparation of the forgery of especially protected documents			<b>Imprisonment up to 1 year</b>



Table AT 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>Act on the transport of dangerous goods</u>	Section. 37 para. 1	Infringements of the provisions on education		Monetary penalty from 1.000 up to 50.000 €	
		Section. 37 para. 2 cif. 1-8	Infringements of the provisions concerning  - the general obligations of the involved persons (Section. 7);  - the special obligations of the involved persons regarding road transport (Section. 13);	Carrier, Principal, Sender, Recipient, Packer, Person in charge of Filling, Operator of a tank container,	<b>Danger category I: Monetary penalty from 750 € up to 50.000 €;</b>  <b>Danger category II: from 110 € up to 4.000 €;</b>  <b>Danger category III: up to 80 €;</b>	

Table AT 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)
				Transport operator, Loader, Unloader		
		Section. 37 para. 2 cif. 9	Infringements of the provisions concerning  - the special obligations of the driver (Section. 13 para. 2-4);  - Non compliance with controls on the road (Section. 15 para 5 and 6);  - Transport of dangerous goods without the	Driver	<b>Danger category I: Monetary penalty from 150 € up to 6.000 €;</b>  <b>Danger category II: from 110 € up to 4.000 €;</b>  <b>Danger category III: up to 80 €;</b>	

Table AT 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)
			necessary authorization;  - no draft and or correct maintenance of the transport documents			
		Section. 37 para. 3 cif. 1-2	Non compliance with the obligations concerning the institution of and responsibility vis-à-vis the dangerous good agent (Section. 11 para. 3 and 4)	Entrepreneur	<b>Monetary penalty from 110 € up to 4.000 €</b>	
		Section. 37 para. 3 cif. 3	Non compliance with the special obligations of the dangerous goods agent	Dangerous goods agent	<b>Monetary penalty from 110 € up to 4.000 €</b>	
		Section. 37 para. 3 cif. 4	Use or driving of a vehicle contrary to a interruption ordered by the authorities		<b>Monetary penalty from</b>	

Table AT 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. 16 para. 2) or non compliance with caution measures ordered by the authorities (Section. 16 para. 4)		<b>110,- € up to 4.000 €</b>	
		Section. 37 para. 3 cif. 6	Non compliance with conditions ordered by the authorities (Section. 17 para. 2 and 3)		<b>Monetary penalty from 110 € up to 4.000 €</b>	
		Section. 37 para. 3 cif. 7	Non compliance with other provisions of the European Agreement concerning the International Carriage of Dangerous Goods by Road		<b>Monetary penalty from 110 € up to 4.000 €</b>	
<b>Directive 96/53/EC</b>	<u><a href="#">Motor Vehicle Act</a></u>	Section. 134 para. 1	All infringements of the Motor Vehicle Act		<b>Monetary penalty up to 5.000 €;</b>	

Table AT 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><b>1<sup>st</sup> case of recurrence: alternatively 6 weeks imprisonment;</b></p> <p><b>From the 2<sup>nd</sup> case of recurrence on: Imprisonment and monetary penalty</b></p>	
<p><b>Directive 2009/40/EC</b></p>	<p><u><a href="#">Motor Vehicle Act</a></u></p>	<p>Section. 134 para. 1</p>	<p>All infringements of the Motor Vehicle Act (especially Section. 57a) and all decrees based on it, including the Decree on test and</p>		<p><b>Monetary penalty up to 5.000 €;</b></p>	

Table AT 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)
			assessment authorities		<b>1<sup>st</sup> case of recurrence: alternatively 6 weeks imprisonment;</b> <b>From the 2<sup>nd</sup> case of recurrence on: Imprisonment and monetary penalty</b>	
<b>Directive 2006/126/EC</b>	<u><a href="#">Act on the driving licence</a></u>	Section. 37 para. 1 and 2	All infringements of the Act on the driving license and all decrees based on it, including the Decree on the driving test		<b>Monetary penalty from 36 € up to 2.180 €;</b>	

Table AT 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><b>1<sup>st</sup> case of recurrence: alternatively 6 weeks imprisonment;</b></p> <p><b>From the 2<sup>nd</sup> case of recurrence on: Imprisonment and monetary penalty</b></p>	
		Section. 37 para. 2a	Driving without carrying the driving license (Section. 14 para. 1)	Driver	<b>Monetary penalty from 20 € up (minimum fine)</b>	

Table AT 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. 37 para. 2a	Not delivering (and exchanging) an invalid driving license (Section. 14 para. 4)	Driver	<b>Monetary penalty from 20 € up (minimum fine)</b>	
		Section. 37 para. 3 cif. 1 and 2	Driving without driving license	Driver	<b>Monetary penalty from 363 € up (minimum fine)</b>	
		Section. 37 para. 3 cif. 3	Driving a motor vehicle class D with more than 0,1 per mill alcohol in the blood (Section. 21 para. 3)	Driver	<b>Monetary penalty from 363 € up (minimum fine)</b>	
		Section. 37a	Driving a motor vehicle with more than 0,5 per mill alcohol in the blood (Section. 14	Driver	<b>Monetary penalty from</b>	



Table AT 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)
			para. 8)		300 € up to 3.700 €	

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

**Table AT 5**

**Infringements of commercial road transport legislation**

<b>Type of infringement(s) and Article of reference in national legislation</b>  <b>Corresponding EU legislation</b>	<b>Criminal sanction</b>	<b>Is it dissuasive?</b>
		<b>Yes or not</b>
<p>Forgery of especially protected documents (Section. 224 Criminal Code)</p> <p>Acceptance, passing on or possession of forged especially protected documents (Section. 225 Criminal Code)</p> <p>Preparation of the forgery of especially protected documents (Section. 227 Criminal Code)</p>	<p>Imprisonment up to 2 years (Section. 224 Criminal Code)</p> <p>Imprisonment up to 1 year (Section. 225 and 227 Criminal Code)</p>	<p>Yes</p>

**Table AT 5**

**Infringements of commercial road transport legislation**

<b>Type of infringement(s) and Article of reference in national legislation</b>	<b>Criminal sanction</b>	<b>Is it dissuasive?</b>
<b>Corresponding EU legislation</b>		<b>Yes or not</b>
Reg 1071/2009, Reg 1072/2009, Reg 1073/2009		

Table AT 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p> <p><b>Yes or not</b></p>
<p>All infringements of Art. 5-9 and Art. 10 para. 4 and 5 Reg 561/2006 (Section. 134 Motor Vehicle Act)</p> <p>All infringements of Reg 3821/85</p> <p>Reg 561/2006</p> <p>Reg 3821/85</p> <p>Directive 96/53/EC</p> <p>Reg 2009/40</p>	<p><b>Monetary penalty up to 5.000,- €;</b></p> <p><b>1<sup>st</sup> case of recurrence: alternatively 6 weeks imprisonment;</b></p> <p><b>From the 2<sup>nd</sup> case of recurrence on: Imprisonment and monetary penalty</b></p>	<p>Imprisonment</p>	<p>Yes</p>

Table AT 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>Yes or not</p>
<p>All infringements of the Act on the driving license and all decrees based on it, including the Decree on the driving test (Section. 37 para. 1 and 2 Act on the driving license)</p> <p>Directive 2006/126/EC</p>	<p><b>Monetary penalty from 36,- € up to 2.180,- €;</b></p> <p><b>1<sup>st</sup> case of recurrence: alternatively 6 weeks imprisonment;</b></p> <p><b>From the 2<sup>nd</sup> case of recurrence on: Imprisonment and monetary penalty</b></p>	<p>Imprisonment</p>	<p>Yes</p>

Table AT 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p> <p><b>Yes or not</b></p>
<p>(Section. 37 para. 2 cif. 1-8 Act on the transport of dangerous goods)</p> <p>Infringements of the provisions on education (Section. 37 para. 1 Act on the transport of dangerous goods)</p> <p>Infringements of the provisions concerning</p>	<p><b>Monetary penalty from 1.000,- up to 50.000,- €</b></p> <p><b>(Section. 37 para. 1 Act on the transport of dangerous goods)</b></p> <p><b>Danger category I: Monetary penalty from 750,- € up to 50.000 € (Section. 37 para. 2 cif. 1-8 Act on the transport of dangerous goods)</b></p>	<p>Very high monetary penalty abstractly prescribed</p>	<p>Yes</p>

**Table AT 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**

<b>Type of infringement and Article of reference in national legislation</b>  <b>Corresponding EU legislation</b>	<b>Administrative sanction that could be qualified as criminal sanction</b>	<b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b>	<b>Is it dissuasive?</b>
			<b>Yes or not</b>
- the general obligations of the involved persons (Section. 7);  - the special obligations of the involved persons regarding road transport (Section. 13)  Directive 2008/68/EC			

### 3.7 Effectiveness of the sanction system

On the basis of the available information, the Austrian authorities detected the following number of infringements in 2010.

Table AT 7	
Infringement	No.
Art. 6.1 Regulation No 561/2006 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	6144 infringements by national drivers on commercial road transport.
Art. 6.2 1 Regulation No 561/2006 Exceed weekly driving time	907 infringements by national drivers on commercial road transport.
Art. 6.3 Regulation No 561/2006 Exceed accumulated driving time during 2 consecutive weeks	1126 infringements only by national drivers on commercial road transport.



**Table AT 7**

Infringement	No.
<p>Art. 7 Regulation No 561/2006</p> <p>Exceed uninterrupted driving time</p>	<p>5581 infringements only by national drivers on commercial road transport.</p>
<p>Art. 8.6 Regulation No 561/2006</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>1902 infringements only by national drivers on commercial road transport.</p>
<p>Art. 13</p> <p>Recording equipment not correctly functioning (for example: recording equipment not properly inspected, calibrated and sealed)</p>	<p>272 infringements:</p> <p>regarding recording equipment improperly used (not using a valid driver card, voluntary abuse,...)</p> <p>voluntary abuse: 363 infringements</p>
<p>Art. 14.2 Undertaking not keeping record sheets, printouts and downloaded data</p>	<p>7</p>
<p>Art 3 Directive 2008/68/EC Transport of</p>	<p>Transport of dangerous goods not complying to the conditions laid down in Annex A of the ADR for the goods in</p>

**Table AT 7**

<b>Infringement</b>	<b>No.</b>
<p>dangerous goods whose transport is not admitted pursuant to the Annex A and B of the ADR</p>	<p>question, in particular as regards their packaging and labeling, conditions of carriage, loading, unloading and handling</p> <ul style="list-style-type: none"> <li>- National drivers: 1322</li> <li>- Member States: 1456</li> <li>- Third countries: 157</li> </ul> <p>Transport of dangerous goods not complying to the conditions laid down in Annex B of ADR in particular regarding the construction, equipment and operation of the vehicle carrying the goods in question.</p> <p>National drivers:            Category I 327, Category II 412, Category III 583.</p> <p>Member States: Category I 294, Category II 482, Category III 680.</p> <p>Third countries: Category I 21, Category II 41, Category III 95.</p>

The available figures mainly concern infringements of Regulation No 561/2006 and to some extent, rules on recording equipment and transport of dangerous goods.

The analysis of such figures, although partial, shows that the number of infringements of social rules in the road transport is significant if compared to other infringements.

From a comparative standpoint, the number of infringements detected in Austria is also significant. In other Member States analysed, the number of infringements of EU social road transport legislation is indeed much lower (Slovenia, Lithuania or Hungary).

It is instead lower than in countries like Italy, but this can be easily explained by the geographic and demographic differences between the two countries.

From a qualitative standpoint, the fact that infringements of Regulation No. 561/2006 are sanctioned according to their gravity can be considered as a positive feature of the Austrian system in terms of the proportionality of the sanctions. In addition, the sanction system is severe to the extent that many infringements, if recurrent, are sanctioned with imprisonment.

However, it should be pointed out that sanctions for exceeding maximum driving times or for infringements of rules on rest and breaks are less severe compared to sanctions for infringements of other rules on road commercial transport. It is posited in agreement that pecuniary sanctions are not that high to be considered criminal sanctions in nature.

It could be argued, looking at the figures concerning infringements of Article 6, 7 and 8 of Regulation No 561/2006 that there could be a correlation between the high number of infringements of such rules and the relatively less severe nature of the sanctions foreseen for such infringements.

This conclusion, due to the lack of statistical figures, is not final. Many factors should further be taken into account in order to conclude that the high number of infringements of EU social rules in the road transport sector is the consequence of low sanctions foreseen by the Austrian system in connection with such infringements. Other factors to be taken into consideration should be the number of vehicle checked, the volume of the traffic on Austrian roads. According to our estimates, however, the

figures would confirm that a significant percentage of the vehicles checked were found in breach of the rules on driving, rest and breaking times. Based on the above findings we would argue that the Austrian sanction system is not very effective as far as infringements of social rules in the road commercial transport sector are concerned.

As to the other legislation under assessment it is posited in agreement that the sanctions are effective and dissuasive, as the sanction system takes into account recurrence of infringements and foresees imprisonment or very high pecuniary penalties which are deemed to have a deterrent effect.

It is posited in agreement however that the overall effectiveness of the Austrian sanction system is affected by the fact that none of the infringements is sanctioned by the arrest of the vehicle or its confiscation. Such sanctions are indeed seen as effective sanctions, as the cost of financial penalties can be lower than the benefits from infringing the law, while the arrest or confiscation of the vehicle makes infringing the law non viable.

## 4 BELGIUM - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR

### 4.1 Social rules on road transport

#### 4.1.1 Rules on Driving Times and Rest Periods

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

###### *Relevant Belgian legislation for the implementation of the Regulation*

Regulation No 561/06 has been implemented by Royal Decree of 9 April 2007 (hereafter, “*RD of 9 April 2007*”) <sup>165</sup>. It entered into force the day it was published in the Belgian Official Journal (“*Le Moniteur Belge*” in French) <sup>166</sup> on April 11, 2007 and applies to both commercial road transport of goods and of persons.

###### *Scope of the RD of 9 April 2007*

Vehicles referred to in Article 6 of *RD of 9 April 2007* are not subject to Articles 5 to 9 of Regulation (EC) No 561/2006. This concerns road transport performed by certain types of vehicles such as vehicles belonging to (or hired by) public authorities to undertake road transport that do not compete with private transport undertaking;

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<sup>165</sup> Arrêté royal du 9 avril 2007 portant exécution du règlement CE n° 561/2006 du Parlement européen et du Conseil du 15 mars 2006 relatif à l'harmonisation de certaines dispositions de la législation sociale dans le domaine des transports par route, modifiant les règlements CEE n° 3821/85 et CE n° 2135/98 du Conseil et abrogeant le règlement CEE n° 3820/85 du Conseil, (M.B. 11.04.2007).

<sup>166</sup> The [Belgian](#) Official Journal (*Le Moniteur Belge* in French) is the [official journal](#) of the Kingdom of Belgium. Any new law or changes to it made by the government can only take effect once it has been published in the *Moniteur Belge*.

vehicles used or hired by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their professional activity within a radius of 100 km around their place of establishment; agricultural or forestry tractors used for their professional activities within a radius of 100 km around the place of establishment of the company that owns the vehicle, which leases or takes a lease; vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used.

*Relevant Belgian legislation for the sanctions related to Regulation No. 561/2006*

Sanctions foreseen by Articles 2 and 2bis of the Law of 18 February 1969 on the enforcement measures of treaties and international acts on transport by sea, road, rail or inland waterway (hereafter, “*Law of 18 February 1969*”) <sup>167</sup> i.e. imprisonment sentence and/or fines - are applicable to infringements against Regulation (EC) No 561/06/EC and the *RD of 9 April 2007*. It concerns the offences observed in Belgium or reported by the competent authority of another Member State or a third country, even in the event where they have been committed on the territory of another Member State or a third country.

Furthermore, it further stipulates that undertakings may also be held liable for offences committed by their drivers.

Where the offender who has already received a final sentence for an offence, commits within a period of 2 years from when the previous sentence expired the same offence, the minimum sanction is two times the one foreseen by the rule punishing the offence.

According to Article 2bis, para. 2 of *Law of 18 February 1969*, penal proceedings may however be avoided if the transporter accepts to pay a monetary penalty (“*perception immediate*” in French). Indeed, Article 2bis, para. 1 of *Law of 18 February 1969* stipulates that it may be perceived a monetary penalty for infringements

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<sup>167</sup> Loi du 18 février 1969 relative aux mesures d'exécution des traités et actes internationaux en matière de transport par mer, par route, par chemin de fer ou par voie navigable, (M.B. 04.04.1969).

against the rules on driving times, breaks and rest periods and which did not cause any damage to a third party. These monetary penalties, applicable to the driver and undertaking alike, are contained in Royal Decree of 19 July 2000<sup>168</sup> as amended by Royal Decree of 27 April 2007<sup>169</sup> on the collection and deposit of a sum imposed on certain infringements in connection to the rules on road transport (hereafter, “*RD of 19 July 2000*”).

### *Driving times and breaks*

Different fines apply to the infringements against Articles 6-8 of Regulation (EC) No 561/2006.

*RD of 19 July 2000* introduces a particular sanction system. It takes into account two parameters i.e. the driving times and the resting times taken by the driver to determine penalties for exceeding the maximum daily driving time (9 or 10 hours) or exceeding the authorised maximum uninterrupted driving time (4h30). Below is the table defining the level of penalty contained in the annex of *RD of 19 July 2000*. All infringements against rules on driving times are punished with a monetary penalty varying from 40 € to 1,600 €.

<b>Table BE 1</b>					
<b>Exceeding the maximum daily driving time<sup>170</sup></b>					
	<b>Less than 3 hours (1)</b>	<b>From 3 hours to 5 hours (1)</b>	<b>From 5 hours to 7 hours (1)</b>	<b>From 7 hours to 9 hours (1)</b>	<b>More than 9 hours (1)</b>
<b>1 hour or less (2)</b>	120 EUR	100 EUR	80 EUR	60 EUR	40 EUR
<b>From 1 hour to 2 hours (2)</b>	180 EUR	155 EUR	130 EUR	105 EUR	80 EUR

<sup>168</sup> Arrêté royal du 19 juillet 2000 relatif à la perception et à la consignation d’une somme lors de la constatation de certaines infractions en matière de transport par route, (M.B. 26.07.2000).

<sup>169</sup> Arrêté royal du 27 avril 2007 modifiant l’arrêté royal du 19 juillet 2000 relatif à la perception et à la consignation d’une somme lors de la constatation de certaines infractions en matière de transport par route, (M.B. 07.05.2007).

<sup>170</sup> The original table is only available in French and Dutch.

<b>Table BE 1</b>					
<b>Exceeding the maximum daily driving time<sup>170</sup></b>					
<b>From 2 hour to 3 hours (2)</b>	300 EUR	260 EUR	220 EUR	180 EUR	140 EUR
<b>From 3 hour to 5 hours (2)</b>	450 EUR	380 EUR	310 EUR	240 EUR	170 EUR
<b>From 5 hour to 8 hours (2)</b>	880 EUR	750 EUR	620 EUR	500 EUR	380 EUR
<b>From 8 hours to 12 hours (2)</b>	1320 EUR	1130 EUR	940 EUR	750 EUR	560 EUR
<b>More than 12 hours (2)</b>	1600 EUR	1360 EUR	1120 EUR	910 EUR	700 EUR

(1) The longest period of rest taken during the considered period of daily driving time.

(2) The hours of driving exceeding the authorised maximum daily driving period (9 or 10 hours).

As an example, if the driver is found exceeding the daily driving time by four hours, a higher penalty (450 €) is applied when the driver has had a rest period of less than three hours than when the driver has had a rest period of six hours (310 €).

The same annex introduces a system for defining penalties in case of exceeding the maximum uninterrupted driving time (4h30), and which takes into account the same parameters as stated above. Below is the corresponding table, all infringements against rules on breaks are punished with a monetary penalty varying from 20 € to 2,000 €.

<b>Table BE 2</b>			
<b>Exceeding the authorised maximum uninterrupted driving time<sup>171</sup></b>			
	<b>Less than 15 minutes break (1)</b>	<b>From 15 minutes to 30 minutes (1)</b>	<b>From 30 minutes to 45 minutes (1)</b>
<b>15 minutes or less (2)</b>	40 EUR	30 EUR	20 EUR
<b>From 15 minutes 30 minutes (2)</b>	80 EUR	60 EUR	40 EUR
<b>From 30 minutes to 1 hour (2)</b>	120 EUR	90 EUR	60 EUR

<sup>171</sup> The original table is only available in French or in Dutch.



**Table BE 2**

**Exceeding the authorised maximum uninterrupted driving time<sup>171</sup>**

<b>From 1 hour to 2 hours (2)</b>	240 EUR	180 EUR	120 EUR
<b>From 2 hours to 3 hours (2)</b>	400 EUR	300 EUR	200 EUR
<b>From 3 hours to 5 hours (2)</b>	600 EUR	450 EUR	300 EUR
<b>From 5 hours to 8 hours (2)</b>	1200 EUR	880 EUR	600 EUR
<b>More than 8 hours (2)</b>	2000 EUR	1460 EUR	1000 EUR

(1) The longest period of rest during the considered period of driving time. A 15-minute break will not be considered.

(2) The hours of driving exceeding the authorised uninterrupted driving time (4h30).

*Rest periods*

According to *RD of 19 July 2000*, sanctions may consist in a monetary penalty of 50 € for every 30 minutes of daily resting time missing or a fine of 100 € for every hour of weekly resting time missing.

Recital 26 of Regulation (EC) No. 561/2006 refers explicitly to the immobilisation of the vehicle as one of the measures against serious infringements. In Belgium, Article 4 of *RD of 9 April 2007* states that a controlling officer may order the immobilisation of the vehicle or the replacement of the driver to ensure, for example, that the driver takes a sufficient rest period (ex officio measure).

*Competent authorities for imposing fines pursuant to RD of 9 April 2007*

According to Article 3 of *RD of 9 April 2007*, controlling agents from the Federal and Local Police, controlling officers from the Directorate General Mobility and Road Safety (“*Direction Générale Mobilité et Sécurité routière*” in French) and from the Directorate General Land Transport (“*Direction Générale Transport Terrestre*” in French) of the Federal Public Service (FPS) Mobility and Transport

entrusted with a mandate to police, officers from the Administration of Customs and Excise (“*Administration des Douanes et Accises*” in French), social inspectors and controllers from the Social Laws Inspection of FPS Employment, Labour and Social Dialogue (“*Inspection des lois sociales du Service Public Federal (SPF) Emploi, Travail et Concertation Sociale*” in French), social inspectors and controllers from Inspection of FPS Social Security (“*Inspection Sociale du SPF Sécurité Sociale*” in French) and social inspectors and controllers from the National Social Security Bureau (“*Office national de la Sécurité Sociale*” in French) are competent to perform checks and to establish infringements against the RD of 9 April 2007.

#### *Foreign drivers*

Article 2bis, para. 3 of the *Law of 18 February 1969* applies to the driver who has no permanent residence in Belgium. If he does not pay the monetary penalty i.e. *perception immédiate*, he shall give a sum in consignment after the establishment of a statement of the facts (“*procès-verbal*” in French). This sum equals to the amount of the monetary penalty.

If the offender is not convicted, the sum in consignment shall be refunded. If convicted, the money is used to cover the payment of the monetary penalty and the expenses related to court proceedings.

If he refuses this alternative, the vehicle may be detained for a maximum period of 96 hours after the establishment of the infringement. At the expiry of that period, the vehicle may be seized if the monetary penalty remains unpaid. If the offender is convicted and the fine is not paid within the fourthy days of judgment, the vehicle may be sold to cover the fine and expenses related to court proceedings.

#### **4.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)**

Directive 2006/22/EC has been implemented by the Royal Decree of 8 May 2007 (hereafter, “*RD of 8 May 2007*”) <sup>172</sup>. It designates the competent authority as the Directorate General Land Transport of the FPS Mobility and Transport and which is responsible for the organisation of controls performed on the roadside and at the premises of undertakings. It addresses all checks required on drivers, transport operators and vehicles that fall under the scope of Regulation (EEC) No 3821/85.

There are no general qualifications of the infringements of legislation on commercial road transportation as serious, very serious and minor within the Belgian legal system. The courts will, in setting the sentence for specific infringements, take into consideration the circumstances surrounding the infringement, including the seriousness of the infringement.

*Competent authorities for imposing fines pursuant to RD of 8 May 2007*

Controlling agents from the Federal and Local Police, controlling officers from the Directorate General Mobility and Road Safety and from the Directorate General Land Transport of the FPS Mobility and Transport entrusted with a mandate to police, officers from the Administration of Customs and Excise, social inspectors and controllers from the Social Laws Inspection of FPS Employment, Labour and Social and controlling agents from the Inspection Service of Directorate General Environment of the FPS Public Health, Security of Food Chains and Environment (“*Service d’inspection de la Direction générale Environnement du SPF Santé publique, Sécurité de la Chaîne alimentaire et Environnement*” in French) are competent to perform checks and to establish infringements on the roadside (article 3).

As for checks performed at the premises of undertakings, Article 3 designates the abovementioned controlling officers as having this competence but also social

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<sup>172</sup> Arrêté royal portant transposition de 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 œuvre 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, (M.B. 10.05.07).

inspectors and controllers from Inspection of FPS Social Security and social inspectors and controllers from the National Social Security Bureau.

#### **4.1.1.3 Directive 2002/15/EC**

##### *Relevant Belgian legislation implementing the Directive*

General rules on working time are found in Articles 19 and 20 of the Labour Act of 16 March 1971<sup>173</sup> (hereafter, “*Labour Act of 16 March 1971*”) which apply to workers and employers alike.

##### *Maximum daily working time*

Article 19 states that the working time of workers shall not exceed 8 hours a day. Daily work must in principle be performed between 6 a.m. and 8 p.m. However, daily working time may be increased as follows:

- Article 20, para. 1: 9 hours if the worker does not work more than 5½ days a week (work schedule in which the worker, in addition to his weekly day of rest, has at least half a day of rest);
- Article 20, para. 2: 10 hours if the workers are absent from home for more than 14 hours a day because of the distance between the workplace and their place of residence or stay.

Except for derogations laid down by royal decree or collective agreement, the length of each work session cannot be less than three hours.

##### *Maximum weekly working time*

Article 20 states that the working time may not exceed 40 hours a week. On 1 January 2003, a rule was introduced in Belgian law under which working time was generally reduced to 38 hours a week.

##### *Derogations*

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<sup>173</sup> Loi du 16 mars 1971 sur le travail (MB 30.03.1971, erratum. - MB 12.10.1971)

In principle, it is prohibited to exceed the daily and weekly working time limits. However, there are a number of derogations and which require authorisation by royal decree. The royal decree lays down the cases for which the derogation is permitted and also the various maximum limits and conditions of application, where appropriate.

Therefore, Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities has been implemented into Belgian law by various Royal Decrees such as:

- Royal Decree of 10 August 2005 on the organisation of the working time of persons performing transport of goods by road<sup>174</sup>;
- Royal Decree of 10 August 2005 on the organisation of the working time of persons providing transport services of persons by autobus<sup>175</sup>;
- Royal Decree of 10 August 2005 on the organisation of the working time of persons providing occasional public transport services and/or international regular public transport services of persons by road<sup>176</sup>;
- Royal Decree of 10 August 2005 on the organisation of the working time of persons performing transport services on behalf of moving companies and any other related services<sup>177</sup>;
- Royal Decree of 10 August 2005 related to the working and resting time of persons performing transport services on sunday on behalf of chemical companies<sup>178</sup>.

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<sup>174</sup> Arrêté Royal du 10 aout 2005 relatif à la durée du travail des travailleurs mobiles occupés dans les entreprises de transport de chose (CP 140), (M.B. 31.05.2007).

<sup>175</sup> Arrêté Royal du 10 aout 2005 relatif à la durée du travail du personnel roulant occupé dans les entreprises exploitant un service d'autobus (CP 140), (M.B. 31.05.2007).

<sup>176</sup> Arrêté Royal du 10 aout 2005 relatif à la durée du travail des travailleurs mobiles occupés dans les entreprises de transport collectif de personnes par route exécutant des services occasionnels et/ou des services réguliers internationaux (CP 140), (M.B. 31.05.2007).

<sup>177</sup> Arrêté Royal du 10 aout 2005 relatif à la durée du travail du personnel occupé dans les entreprises de déménagements, garde-meubles et leurs activités connexes (CP 140), (M.B. 31.05.2007).

<sup>178</sup> Arrêté Royal du 24 aout 2005 relatif à la durée du travail et au repos du dimanche dans les entreprises ressortissant à la Commission paritaire de l'industrie chimique (CP 160), (M.B. 31.05.2007).

For instance, Article 3 of Royal Decree of 10 August 2005 on the organisation of the working time of persons performing transport of goods by road envisages that the limits of working time laid down in Articles 19 and 20 of *Labour Act of 16 March 1971* may be exceeded provided that the average weekly working time period do not exceed 48 hours. In any case, it cannot exceed 92 hours during two consecutive weeks of work and provided that the weekly working time fixed by law or by a collective labor agreement is met on average over a period of maximum one term.

Finally, self-employed are currently subject to the Directive. A Royal Decree has been issued in October 2012<sup>179</sup>.

#### *Relevant Belgian legislation for the sanctions related to Directive 2002/15/EC*

As regards the sanction system related to Directive 2002/15/EC, Article 138 of the law dated 6 June 2010 introducing the Social Penal Code (hereafter, "*Law of 6 June 2010*")<sup>180</sup> contains the applicable sanctions to offences relating to working time (e.g. exceeding the working time limits defined in the *Labour Act of 16 March 1971*).

In particular, *Law of 6 June 2010* has created a sanction system that classifies the infringements into four categories of offence as follows:

#### Offences of 4<sup>th</sup> degree, also known as *very serious offences*

The penalty may include

- an imprisonment sentence from 6 months up to 3 years and a penal fine varying from 3 600 € up to 36 000 € or only one of these two; or
- an administrative fine varying from 1 800 € up to 18 000 €

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<sup>179</sup> Arrêté royal du 8 octobre 2012 - modifiant l'arrêté royal du 9 avril 2007 portant exécution du Règlement (CE) n° 561/2006 du Parlement européen et du Conseil du 15 mars 2006 relatif à l'harmonisation de certaines dispositions de la législation sociale dans le domaine des transports par route, modifiant les Règlements (CEE) n° 3821/85 et (CE) n° 2135/98 du Conseil et abrogeant le Règlement (CEE) n° 3820/85 du Conseil et transposant partiellement la Directive 2002/15/CE du Parlement européen et du Conseil du 11 mars 2002 relative à l'aménagement du temps de travail des personnes exécutant des activités mobiles de transport routier, (M. B. 31.10.2012).

<sup>180</sup> Loi du 6 juin 2010 introduisant le Code pénal social, (M.B. 01.07.2010).

Examples of infringement include infringements of provisions concerning the health and safety of workers when the result of the offence leads to health issues for workers or accident at work, child labor, breaches of the obligations regarding corporate documents, etc.

#### Offences of 3<sup>rd</sup> degree, also known as *serious offences*

The penalty may include

- a penal fine varying from 600 € up to 6 000 €; or
- an administrative fine varying from 300 € up to 3 000 €

Examples of infringement include the failure to subscribe to an insurance policy against accidents at work, certain violations of regulations on the employment of foreign workers; to not voluntarily establish social audit of the company, etc.

#### Offences of 2<sup>nd</sup> degree, also known as *major offences*

The penalty may include

- a penal fine from 300 € up to 3 000 €; or
- an administrative fine from 150 € up to 1 500 €

Examples of infringement include the infringements of provisions protecting the privacy of workers, breaches of preventive measures of violence and moral or sexual harassment at the workplace, infringements of the provisions relating to working time and rest periods, etc.

#### Offences of 1<sup>st</sup> degree, also known as *minor offences*

The penalty consists in an administrative fine varying from 60 € up to 600 €

Examples of infringement include the offences that relate to breaches of purely administrative obligations such as documents to be filled or information to be transmitted between administrations.

As understood, the new Social Penal Code (SPC) provides for a prison sentence only for offences of 4<sup>th</sup> degree and more particularly, when the infringement results in an employee's health issue or an accident at work.

During a control, social law inspectors draw a statement of the facts (“*procès verbal*” in French) if they have observed an infringement to the rules on working time. This *procès verbal* is subsequently transmitted to the Public Ministry and a copy is addressed to the competent authority, the offender and/or the employer (aArticle 65 of *Law of 6 June 2010*).

Then, pursuant to Article 68 of *Law of 6 June 2010*, offences of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> degree may be prosecuted either by penal proceedings, extinction of the public action upon payment of a monetary sum or in a penal mediation. Upon receiving the *procès verbal* from the social inspector, the Public Ministry – within six months – shall decide, at its own discretion, whether to prosecute or not the infringement and, upon positive decision, which of the above procedures to follow.

In the event the Public Ministry renounces to prosecute the offender or fails to take a decision in the six-month time limit in any of the above-mentioned manners, the competent authority may decide whether to pursue the offender through the administrative fine procedure. In this case, according to article 69 of *Law of 6 June 2010*, the competent authority may punish these infringements of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> degree either with

- (i) an administrative fine;
- (ii) a guilty verdict<sup>181</sup>; or
- (iii) to close the case.

The competent authority has exclusive jurisdiction upon infringements of 1<sup>st</sup> degree. For these infringements, the competent authority may punish the offender either with

- (iv) an administrative fine;
- (v) a guilty verdict; or
- (vi) to close the case.

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<sup>181</sup> Following a guilty verdict (*une déclaration de culpabilité* in French), the competent authority will not issue any fine. However, the issuance of a guilty verdict is conditional upon damaged third parties request for damages under civil law.



Please be aware of the fact that penal proceedings exclude the application of administrative sanctions (article 71 of *Law of 6 June 2010*).

Finally, for the sanctions of specific infringements pertaining to working time, please refer to the summary tables below.

*Competent authorities for the implementation of the rules on working time referred in the Social Penal Code*

According to the Royal Decree of 10 November 1971<sup>182</sup>, the two general directorates of the FPS Employment, Labour and Social Dialogue are responsible for the monitoring and enforcement of the provisions on working time:

- Directorate-General for the supervision of social legislation (*Direction générale Contrôle des lois sociaux*, in French);
- Directorate-General for the supervision of wellbeing at work (*Direction générale Contrôle du bien-être au travail*, in French).
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## **4.1.2 Tachograph**

### **4.1.2.1 Regulation (EEC) No 3821/1985**

*Relevant Belgian legislation implementing Regulation (EEC) No 3821/1985*

Regulation (EEC) No 3821/1985 has been implemented by Royal Decree of 14 July 2005 (hereafter, “*RD of 14 July 2005*”)<sup>183</sup>.

*Scope of the RD of 14 July 2005*

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<sup>182</sup> Arrêté royal du 10 novembre 1971, (MB 18.01.1972).

<sup>183</sup> Arrêté royal du 14 juillet 2005 portant exécution du Règlement (CEE) n° 3821/85 du 20 décembre 1985 concernant l'appareil de contrôle dans le domaine des transports par route (M.B. 26.07.2005). (Erratum publié le 5-9-2005) et modifié par l'arrêté royal du 9 avril 2007.

Vehicles referred to in the Annex I of *RD of 14 July 2005* are not subject to the obligation concerning the mandatory equipment or use of a tachograph. This concerns road transport vehicles used for

(a) domestic and international transport such as for example: vehicles performing road transport of goods whose maximum authorised weight, inclusive the weights of trailers or semitrailers, does not exceed 3,5 tonnes; vehicles performing road passenger transport which can only transport a maximum of 9 persons, inclusive the driver; etc.

(b) domestic transport, only, such as vehicles performing regular road passenger transport; vehicles performing road passenger transport which can only transport a maximum of 17 persons, inclusive the driver; vehicles used by public authorities in order to carry out public services that do not compete with professional transporters; vehicles used by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their professional activity within a radius of 50 km around their place of establishment; etc.

*Relevant Belgian legislation for the sanctions related to Regulation (EEC) No 3821/1985*

According to Article 14 of *RD of 14 July 2005*, vehicles subject to the provisions of *RD of 14 July 2005*, are subject to the inspection of the tachograph and its installation as a whole in order to ensure that the tachograph and its installation comply with the provisions of Regulation No 3821/1985.

Article 18 of *RD of 14 July 2005* states that the infringements against Regulation (EEC) No 3821/1985 and of *RD of 14 July 2005* observed in Belgium or reported by the competent authority of another Member State or a third country, are pursued in accordance with the applicable laws.

Infringements pertaining to technical specifications or to the terms of use of the recording equipment may be punished on the basis of Article 2 of the *Law of 18 February 1969* or Article 4 of the Law of 21 June 1985 regarding the technical requirements to which any motor vehicles, their trailers and safety accessories have to

comply (hereafter, “*Law of 21 June 1985*”)<sup>184</sup>, even if the offence was committed on the territory of another Member State or of a third country.

Article 4 of *Law of 21 June 1985* foresees an imprisonment sentence of eight days to three months and a fine varying from 60 € to 60 000 € or only one of these two for infringements pertaining to the technical requirements of land transportation vehicles, their components and accessories of security.

Article 2 of *Law of 18 February 1969* foresees an imprisonment sentence of eight days to six months and a fine varying from 300 € to 60 000 € or only one of these two for infringements pertaining to the terms of use. It concerns the offences observed in Belgium or reported by the competent authority of another Member State or a third country, even in the event where they have been committed on the territory of another Member State or a third country.

Furthermore, it further stipulates that undertaking may also be held liable for offences committed by their drivers.

Where the offender who has already received a final sentence for an offence, commits within a period of 2 years from when the previous sentence expired the same offence, the minimum sanction is two times that provided by the regulation punishing the offence.

In addition, the court may, in cases determined by the King, order the confiscation or temporary immobilisation of vehicle. If the temporary immobilisation is ordered, the judge determines the length of it and indicates the place where the vehicle should be taken to be immobilised, at the expense and risk of the owner.

However, penal proceedings may be avoided if the transporter accepts to pay a monetary penalty (called “*perception immédiate*” in French). These monetary penalties are foreseen for a certain number of infringements against Regulation No 3821/1985 and are provided for in *RD of 19 July 2000*.

The tables below are contained in the annex of *RD of 19 July 2000* and details the categorisation of infringements related to *the recording equipment* (Table 1), *the driver's card for vehicle equipped by means of analogue tachograph* (Table 2), *the*

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<sup>184</sup> Loi du 21 juin 1985 relative aux conditions techniques auxquelles doivent répondre tout véhicule de transport par terre, ses éléments ainsi que les accessoires de sécurité (M.B. 13.08.1985).

*driver's card for vehicle equipped by means of digital tachograph (Table 3), the printouts of the digital tachograph (Table 4).*

**Table BE 3**

	<b>Infringements</b>	<b>Fine (in €)</b>
1.	The recording equipment does not conform with the regulation	1200
2.	As a result of improper installation, the seals were defeated (broken) without jeopardizing the proper functioning of the device.	50
3.	Despite the difference between the size of the tires and the data on the installation plaque, the circumference of the wheel corresponds to the data on the installation plaque.	50
4.	The equipment in the vehicle is not used while the vehicle or transportation is not exempt from the use of the tachograph.	1200
5.	The equipment in the vehicle broke down or performs poorly and the repair has not been executed as required. (Article 16.1 of Regulation No. 3821/85)	1200
6.	The recording equipment in the vehicle is not used correctly: in case of a double crew, the recording is made on the wrong record sheet. (Article 15.2 of Regulation No. 3821/85)	1200
7.	The recording equipment in the vehicle is not used correctly: the time indication on the record sheet is inaccurate. (Article 15.3 of Regulation No. 3821/85)	1200
8.	The recording equipment in the vehicle is not used correctly: the switching devices are not activated or used improperly.	50
9.	The recording equipment in the vehicle is not used correctly: the country code was not introduced into the digital tachograph (if data entry is manual) and / or the driver has not manually entered the periods of time when he was away from the vehicle.	50
10.	The recording equipment in the vehicle is not used correctly: when several drivers are present, it has not been ensured that data is recorded on the recording sheet of the driver who actually drives (in the case of an analogue tachograph) or that each driver has inserted his driver card into the correct slot of the digital tachograph	1200
11.	The recording device has been manipulated to prevent a correct record: Data has been changed or deleted, the recorded data is inaccessible or destroyed, a device was set up with the intent to commit these offences.	2400

12.	The vehicle is not equipped with a recording device while the vehicle or transportation is not exempt from the use of such recording equipment.	1200
13.	The vehicle is equipped with an analogue tachograph when he must have a digital tachograph.	1200
14.	The driver refuses the control of the recording equipment	2400

<b>Table BE 4</b> <sup>185</sup>		
	<b>Infringements</b>	<b>Fine (in €)</b>
1.	The driver card is not valid because its validity has expired	1200
2.	The driver card is not valid because it is defective or damaged and the finding of this offence is made more than 15 calendar days (or later if necessary to allow the vehicle to return to headquarters company) after its appearance	1 200
3.	The driver holds a driver card but is unable to produce the card because it was lost or stolen, nor a declaration for a lost or stolen driver card	1 200
4.	The driver holds a driver card but is unable to produce the card because it was lost or stolen and the finding of infringement is made more than 15 calendar days (or later if the necessary to allow the vehicle to return to company headquarters) after the loss or theft	1 200
5.	The driver holds a driver card but he does not have it with him in the vehicle	1200
6.	The driver refuses to present his driver card during a control procedure	2 400
7.	The driver has fraudulently used the card:  by using or possessing a driver card of another person; by alternately using two or more driving cards assigned to different drivers; by using a card that has been reported lost or stolen; by alternately using several valid driver cards that he owns; by using a false or forged card or a card with recorded data that were inaccessible or destroyed.	2 400

<sup>185</sup> The original table is only available in French or in Dutch.

**Table BE 5**

	<b>Infringements</b>	<b>Fine (in €)</b>
1.	The driver card is in the vehicle but not in the recording equipment	1 200
2.	Without any valid reason, the driver card has been removed from the recording equipment before the end of the work day while the vehicle is still in use,	1 200
3.	Driver card is in the hands of the driver, in the vehicle but has been removed from the recording equipment, without any valid reason, before the end of the work day, while the vehicle is not moving, and that there is no reason to remove the card from the recording equipment in accordance with article 15, para. 2 of Regulation 3821/85	1 200
4.	The driver does not hold a driver card while the vehicle or transport has not been exempted from the use of tachograph	1 200
5.	The driver holds a driver card but is unable to produce the card because it was lost or stolen, nor a declaration for a lost or stolen driver card.	50
6.	The driver holds a driver card but is unable to produce the card because it was lost or stolen and the finding of infringement is made more than 15 calendar days (or later if the necessary to allow the vehicle to return to company headquarters) after the loss or theft.	1 200
7.	The driver holds a driver card but he does not have it with him in the vehicle.	1 200
8.	The driver refuses to present his driver card during a control procedure	1 200
9.	The driver has fraudulently used the card: (1) by using or possessing a driver card of another person; (2) by alternately using two or more driving cards assigned to different drivers; (3) by using a card that has been reported lost or stolen; (4) by alternately using several valid driver cards that he owns; (5) by using a false or forged card or a card with recorded data that were inaccessible or destroyed.	1 200
10.	The driver card is in the vehicle but not in the recording equipment	2 400
11.	Without any valid reason, the driver card has been removed from the recording equipment before the end of the work day while the vehicle is still in use	2 400

Table BE 6<sup>186</sup>

	Infringements	Fine (in €)
	Where the driver card is damaged or performs poorly or where the driver is not in the possession of the driver card (as a result of theft or loss), and as a consequence:	
1.	the driver is unable to produce records or printouts through the digital tachograph and/or the driver failed to mention on the printouts: the data not recorded by the tachograph, his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) for the period that follows the last weekly rest period that he took.	1 200
2	the driver is unable to produce records or printouts through the digital tachograph and/or the driver failed to mention on the printouts: the data not recorded by the tachograph, his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) and, the controlling agent is unable to check whether the obligation related to daily or weekly resting time has been observed during the last 24 or 48 hours.	1 600
3.	the driver is unable to produce records or printouts through the digital tachograph and/or the driver failed to mention on the printouts: the data not recorded by the tachograph, his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) for the period that precedes the last weekly rest period that he took.	600
4.	The printouts produced by the digital tachograph have become illegible as result of the driver's carelessness.	1 200
	Where a driver has his normal residence in a non-EU country but which is a contractual party to the AETR Agreement:	1 200
5.	Where a driver who is not in possession of his driver card because it has yet to be issued by the competent authorities of his home country, is driving a vehicle registered in a non-EU country but member to the AETR Agreement and which is equipped with a digital tacograph, and is unable to present or produce printouts recorded by the digital tacograph and/or has failed to mention on the printouts his name and number of his driver's licence or of his driver card (if the identification	1 200

<sup>186</sup> The original table is only available in French or in Dutch.



	of the driver is impossible) for the on-going week and the last driving day of the preceding week.	
6.	Where a driver who is not in possession of his driver card because it has yet to be issued by the competent authorities of his home country, is driving a vehicle registered in a non-EU country but member to the AETR Agreement and which is equipped with a digital tacograph, and is unable to present or produce printouts recorded by the digital tacograph and/or has failed to mention on the printouts his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) for the on-going week and the last driving day of the preceding week and, the controlling agent is unable to check whether the obligation related to daily or weekly resting time has been observed during the last 24 or 48 hours, respectively.	1 200
7.	The driver refuses to present the data recorded through the digital tacograph during a control procedure	2 400
8.	The data recorded through the digital tachograph have been falsified, suppressed or destroyed	2 400

*Competent authorities for imposing fines pursuant to rules on tachograph*

The following authorities are responsible for investigating and reporting violations of the rules on tachograph: controlling officers of the Federal Police and the Local Police; officers of the Directorate-General Mobility and Road Safety and of Directorate-General Land Transportation of FPS Mobility and Transport entrusted with a mandate to police; officers of the Customs and Excise Administration; social inspectors and controllers of the Inspectorate for Social Legislation of FPS Employment, Labour and Social Dialogue.

## **4.2 Road package**

### **4.2.1 Regulation (EC) No 1071/2009**

*Relevant Belgian legislation for the implementation of the Regulation*

At the present time, Regulation No 1071/2009 has not been implemented in its entirety. This is due to the political issue that the Kingdom of Belgium went through in the recent years and namely that in the context of being without a government, Belgium had established a government of transition whose powers were limited by the Belgian Constitution.

For now, only the Royal Decree of 1 February 2012 (hereafter, “*RD of 1 February 2012*”) <sup>187</sup> directly deals with Regulation No 1071/2009. It defines the competent authority at the federal level for the implementation of Regulation (EC) No 1071/2009. The FPS Mobility and Transport is the competent authority to grant authorisations to engage in the occupation of road transport operator, and to suspend or withdraw such authorisations.

The Royal Decree regarding the full implementation of Regulation (EC) No 1071/2009 has yet to be published. Belgium is currently preparing a new legislation framework related to the “Road Package”. In the Belgian legislation, admittance to the occupation of professional road transport operator is governed by strict conditions related to professional competence, good repute and financial standing. More precisely, rules governing the abovementioned conditions to be complied with are provided by

- the Law of 3 May 1999 on road transport of goods (hereafter, “*Law of 3 May 1999*”) <sup>188</sup>;
- the Royal Decree of 7 May 2002 on road transport of goods (hereafter, “*RD of 7 May 2002*”) <sup>189</sup>;
- the Ministerial Decree of 8 May 2002 implementing *RD of 7 May 2002* (hereafter, “*MD of 8 May 2002*”) <sup>190</sup>; and
- the Royal Decree of 10 December 2003 (hereafter, “*RD of 10 December 2003*”) <sup>191</sup> and Royal Decree of 21 April 2007 as subsequently amended

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<sup>187</sup> Arrêté royal désignant l'autorité compétente chargée de l'application du Règlement (CE) n° 1071/2009 du Parlement européen et du Conseil du 21 octobre 2009 établissant des règles communes sur les conditions à respecter pour exercer la profession de transporteur par route, et abrogeant la Directive 96/26/CE du Conseil, (M.B. 14.02.2012).

<sup>188</sup> Loi du 3 mai 1999 relative au transport de choses par route, (M.B. 30.06.1999).

<sup>189</sup> Arrêté royal du 7 mai 2002 relatif au transport de choses par route, (MB 30.05.2002).

<sup>190</sup> Arrêté ministériel du 8 mai 2002 pris en exécution de l'arrêté royal du 7 mai 2002 relatif au transport de choses par route, (MB 30.05.2002).

by Royal Decree of 6 April 2010 laying down the requirements for the engagement in the occupation of road passenger transport operator (hereafter, “*RD of 21 April 2007*”)<sup>192</sup>.

When the abovementioned conditions are fulfilled, a transport authorisation is granted by the FPS Mobility and Transport to the undertaking engaging either in the occupation of road haulage or road passenger transport operator. This provision, however, is not applicable to the activities related to the transport of goods defined in Article 2 of *RD of 7 May 2002* and to the activities related to the transport of persons defined in article 2 of *RD of 21 April 2007*. For instance, it concerns road transport of goods by means of vehicles whose weight does not exceed 500 kg or road passenger transport by means of vehicles which can only transport a maximum of 9 persons, including the driver.

*Relevant Belgian legislation for sanctions related to Regulations No 1071/2009, No 1072/2009 and No 1073/2009*

At the present time, the Belgian legislation provides for the withdrawal of the authorisation to engage in the occupation of road transport operator when the abovementioned conditions are no longer met (*RD of 10 December 2003, RD of 7 May 2002, Law of 3 May 1999, RD of 21 April 2007*). Rather, the applicable sanctions to infringements related to the transport licence, delivered when the transporter satisfies the conditions to pursue the occupation of road transport operator, are various and more detailed. They are provided for in *Law of 3 May 1999, RD of 7 May 2002* on road transport of goods, and in *RD of 10 December 2003* and *RD of 21 April 2007* on road passenger transport. General applicable sanctions may also be found in the Decree Law of 30 December 1946 on the remunerated road passenger transport (hereafter, “*Decree Law of 30 December 1946*”)<sup>193</sup> and *Law of 3 May 1999*. Some provisions of the Belgian

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<sup>191</sup> Arrêté royal du 10 décembre 2003 fixant les conditions d'accès à la profession de transporteur de personnes par route, (M.B. 22.12.2003).

<sup>192</sup> Arrêté royal du 21 avril 2007 fixant les conditions d'accès à la profession de transporteur de personnes par route, (M.B. 27.04.2007).

<sup>193</sup> Arrêté-loi du 30 décembre 1946 relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars, (M.B. 30.06.1999).

Penal Code may also be applicable to these infringements where it concerns the falsification of documents.

*Sanctions for road transport of goods*

According to Article 35, para. 1 of *Law of 3 May 1999*, infringements against Article 36 of *Law of 3 May 1999* which includes, among others, the non compliance with the obligation

- to have a valid transport licence,
- to respect the delays concerning the good repute and the professional competence, to have an effective and permanent direction of the transport activities by a person designated to enforce his professional capacity,
- to provide guarantees,
- to respect the prescriptions regarding the validity of the transport licence
- to possess and present transport information and documents to controlling agents

are punishable with an imprisonment sentence of a period varying between 8 days and 6 months and a fine in the amount varying from 300 € to 60 000 € or only one of these two.

Article 35, para. 3 of *Law of 3 May 1999* further stipulates that the confiscation or temporary immobilisation of the vehicle may be ordered by the judge when the transporter is being convicted for not having a transport licence while performing transport operations of goods.

Article 37, para.1, 1° of *Law of 3 May 1999* further states that the ordering party, the freight forwarder, the sender and the forwarding agent may be punished in the event where, before performing road transport of goods, has neglected to ensure that the required transport licence is valid for the vehicle used to this purpose and that the required waybill has been established.

Article 37, para. 2 of *Law of 3 May 1999* states that the person running the transport activity (manager) and for whom a certificate of professional capacity has been issued will be held liable to the same extent than the transporter (if the transporter

is a natural person) for not having directed efficiently and permanently the transport activities. If the transporter is a legal entity, his representative will be held liable.

Finally, Article 30 of *Law of 3 May 1999* stipulates that, where the transporter, during a control, cannot provide to controlling agents the proof justifying the absence of the transport licence because of a possible derogation provided for in Article 28 of *Law of 3 May 1999*, controlling agents may order the transporter to return the vehicle to the loading location and to proceed with the unloading of the goods or to transfer them to another vehicle having the appropriate transport licence. Controlling agents may order the immobilisation of the vehicle until the unloading or the transfer of goods has been executed (ex officio measures).

#### *Sanctions for road passenger transport*

According to Article 30 of *Decree Law of 30 December 1946*, offences committed against the rules on road passenger transport are punishable with an imprisonment sentence of a period varying between 8 days and 3 months and a fine in the amount varying from 26 € to 10 000 € or only one of these two.

The exploitation without the required authorisation is punished with the same sanctions. Where the infringing act is regarded as very serious by the judge, the confiscation of the vehicle may be ordered.

In the event of recidivism, i.e. if the offender who has already received a final sentence for an offence, commits within a period of 2 years from when the previous sentence expired the same offence, the minimum fine is two times the one foreseen in the rules punishing the offence.

#### *Common provisions applicable to road transport operators*

Undertakings submitting fake documents to prove the conditions to be complied with to pursue the occupation of road transport operator are punished according to Chapter IV of the Belgian Penal Code on forgery and counterfeiting. The offence of forgery is punished with a penalty that may include an imprisonment sentence and a severe fine or only one of these two.

Finally, Articles 32 to 34 of *Law of 3 May 1999* and Article 31bis of *Decree Law of 30 December 1946* refer both to the monetary penalties (*perception immediate*

in French) that may be applied to certain infringements committed in road transport, including those against transport authorisations delivered for undertaking engaging in the occupation of road transport operators.

Penal sanctions may be avoided if the transporter accepts to pay the monetary penalty. These monetary penalties are foreseen for infringements related to transport licence and are provided for in *RD of 19 July 2000* and its annex. The tables below details the categorisation of infringements related to the transport licence issued for land transport of goods and those issued for road passenger transport operators.

Table BE 7<sup>194</sup>

	Infringements	Perception Immédiate (in €)
1.	No transport licence is present in the vehicle	900
1a.	No transport licence is present in the vehicle but the existence of the licence was immediately proven	50
2.	The presented transport licence is used for a vehicle other than the one indicated on the licence (in case of Belgian national and Community licence)	900
2a.	The presented transport licence is used for a vehicle other than the one indicated on the licence (in case of Belgian national and Community licence), but the existence of the licence for the controlled vehicle is immediately proven.	50
3.	The presented transport licence is used for a replacement vehicle in violation of the corresponding procedure (in case of Belgian national and Community licence).	50
4.	The presented transport licence is used for a hired or leased vehicle, but no rental or leasing contract can be presented	50
5.	The presented transport licence (Belgian national or Community licence) contains incomplete or incorrect records	50
6.	The presented transport licence contains illegible records which make identification/control impossible or is not controllable as a result of lamination	50
6a.	The presented transport licence contains illegible records which make identification/control impossible or is not controllable as a result of lamination but the existence of the licence is immediately proven	50
7.	The presented transport licence is in the possession of a person other than the person indicated on the document	900
8.	The presented transport licence is not valid because of overload or size	The fine is

<sup>194</sup> The original table is only available in French or in Dutch.

	violation	determined in accordance with the percentage of excess of sizes and weights
9.	The presented transport licence is the original of the national or Community licence instead of the copy	900
9a.	The presented transport licence is the original of the national or Community licence instead of a copy but the existence of the copy of the licence is immediately proven	50
10.	The presented extra-Community transport licence and/or the attached transport report was/were not or not completely filled out. (3)	900
11.	The presented ECMT licence is used for more than the permitted number of trips with cargo	1800
12.	The controlled vehicle is performing an illegal cabotage transport	1800
13.	The presented Community transport licence is invalid because of the absence of a driver's certificate	900
14.	The presented transport licence is false or the data indicated on it have been falsified.	1800
15.	The presented driver's certificate is false or the data indicated on it have been falsified	1800
16.	The driver refuses to submit the transport licence for control purposes	1800
17.	The driver refuses to submit the driver's certificate for control purposes	1800

<b>Table BE 8<sup>195</sup></b>		
	<b>Infringements</b>	<b>Perception Immédiate (in €)</b>

<sup>195</sup> The original table is only available in French or in Dutch.



1.	Vehicles used by an undertaking established in the Kingdom of Belgium	
1.1	No valid operating permit in the vehicle that carries out occasional services	50
1.2	No Community licence in the vehicle that carries out occasional services	900
1.3	Neither the waybill, nor any copy thereof in the vehicle that carries out occasional services is valid on the occasion of a national occasional service.	900
1.4	The waybill in the vehicle that carries out occasional services does not mention the minimum indications prescribed by article 11.3 of Regulation 684/92	50
1.5	The waybill in the vehicle that carries out occasional services does not mention other indications than those prescribed by article 11.3 of Regulation 684/92 (vehicle registration number, name(s) of driver(s), number of passengers)	50
1.6	No valid EU permit in the vehicle that carries out international regular services within the EU	900
1.7	No valid permit in the vehicle that carries out international regular services to non-EU countries or to Switzerland	900
1.8	No operating permit, Community licence, waybill (or a copy thereof), agreement or authorisation for international regular transport in vehicle that carries out transport services mentioned at points 1.1 to 1.7 but the existence of the document has immediately been proved.	50
2.	Vehicles registered in another EU Member State or in Switzerland	
2.1	No Community licence or any similar swiss document in the vehicle that carries out international occasional/regular services or occasional cabotage	900
2.2	No valid permit in the vehicle that carries out international regular services	900
2.3	No valid waybill in the vehicle that carries out occasional services	900
2.4	The waybill in the vehicle that carries out occasional services does not mention the minimum indications prescribed by article 11.3 of Regulation 684/92	900
2.5	The waybill in the vehicle that carries out occasional services does not	50

	mention other indications than those prescribed by article 11.3 of Regulation 684/92 (vehicle registration number, name(s) of driver(s), number of passengers)	
2.6	No valid waybill in the vehicle that carries out occasional services in the form of cabotage	900
2.7	The waybill in the vehicle that carries out occasional services in the form of cabotage does not mention the indications prescribed by article 6.2 of Regulation 12/98	900
2.8	The waybill in the vehicle that carries out occasional services in the form of Cabotage does not mention other indications than those prescribed by article 6.2 of Regulation 12/98 (vehicle registration number, name(s) of driver(s), number of passengers)	50
2.9	No valid statement or certificate in the vehicle in the occasion of a transport executed for its own account and which is related to an international regular services or an occasional service	900
2.10	No Community licence, authorisation for international regular transport, waybill or certificate in vehicle that carries out transport services mentioned at points 2.1 to 2.9 but the existence of the document has immediately proved	50
3.	Vehicles not registered in any EU Member States but registered in Switzerland	
3.1	No valid permit in the vehicle that carries out international regular services or occasional services and for which it has not been exempt from such permit	900
3.2	No valid waybill in the vehicle that carries out occasional services exempted from the permit	900
3.3	No valid permit in the vehicle that performs international shuttle services subject to authorisation	900
3.4	No valid waybill in the vehicle that performs international shuttle services not subject to any authorisation	900
3.5	The vehicle is performing occasional services in the form of cabotage in Belgium	1800

3.6	No authorisation or waybill in vehicle that carries out transport services mentioned at points 3.1 to 3.4, but the existence of the document has immediately proved	50
4.	The authorisation, certificate or waybill: - has been falsified or rendered illegible; - contains falsified data or rendered illegible; - is being used fraudulently.	
4.1	Vehicles used by an undertaking established in the Kingdom of Belgium	
4.1.1	The operating permit during an occasional service	100
4.1.2	The Community Licence during an occasional service	1800
4.1.3	The waybill or any copy thereof during a national occasional service	1800
Anne x 1, i), 4.1.4	The authorisation during an international regular service	1800
4.2	Vehicles registered in another EU Member State or in Switzerland	
4.2.1	Community licence or any similar swiss permit	1800
4.2.2	Authorisation during an international regular service or waybill during occasional service	1800
4.2.3	Certificate for transport performed for its own account, as mentioned in point 2.9	1800
4.3	Vehicles not registered in any EU Member States but registered in Switzerland	
4.3.1	Authorisation or waybill according to the nature of the transport service performed, as mentioned in point 3	1800
5.	The driver refuses to produce the authorisation, certificate or waybill for control purposes	
5.1	Vehicles used by an undertaking established in the Kingdom of Belgium	
5.1.1	Operating permit during occasional services	100

5.1.2	Community licence during an occasional service	1800
5.1.3	Waybill or copy thereof during a national occasional service	1800
5.1.4	Authorisation during an international regular service	1800
5.2	Vehicles registered in another EU Member State or in Switzerland	
5.2.1	Community licence or any similar swiss permit	1800
5.2.2	Authorisation during an international regular service or waybill during occasional service	1800
5.2.3	Certificate for transport performed for its own account, as mentioned in point 2.9	1800
5.3	Vehicles not registered in any EU Member States but registered in Switzerland	
5.3.1	Authorisation or waybill according to the nature of the transport service performed, as mentioned in point 3	1800

*Competent authorities for imposing sanctions pursuant to the law of 3 May 1999 and the RD of 7 May 2002*

According to article 58 of *RD of 7 May 2002*, police officers from the Federal and Local Police, agents from the authority competent for transport of goods entrusted with a police mandate and customs officers are competent to perform roadside checks and at the premises of undertakings and to establish infringements against *RD of 7 May 2002*.

*Competent authorities for imposing sanctions pursuant to the RD of 21 April 2007*

According to article 44 of *RD of 21 April 2007*, police officers from the Federal and Local Police, agents from the competent authorities entrusted with a police mandate and customs officers are competent to perform checks and to establish infringements against the present *RD of 21 April 2007*.

### *Foreign drivers*

According to Article 31bis, para. 3 of *Decree Law of 30 December 1946* and Article 33 of *Law of 3 May 1999*, the driver who has no permanent residence in Belgium shall give a sum in consignment after the establishment of a *procès-verbal* by the controlling agents if he does not pay the *perception immediate*. This sum equals to the amount of the instant fine.

If the offender is not convicted, the sum in consignment shall be refunded. If convicted, the money is used to cover the payment of the fine and the expenses related to court proceedings.

If he refuses to give a sum in consignment, the vehicle may be detained for a maximum period of 96 hours after the establishment of the infringement. At the expiry of that period, the vehicle can be seized if the monetary penalty remains unpaid. If the offender is convicted and the fine is not paid within the fourth days of judgment, the vehicle may be sold to cover the fine and expenses related to court proceedings.

### *The loss of good repute*

The Belgian sanction system does not foresee a specific sanction system for the infringements that are qualified as most serious infringements described in Annex IV of Regulation (EC) No 1071/2009. As previously mentioned, Belgium is still preparing the implementing act(s) for the “Road Package”. Therefore, there is, at the moment, no list of the most serious infringements and no specific provisions on how the rule of loss of good repute applies.

## **4.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009**

### *Relevant Belgian legislation for the implementation of the Regulation*

The Regulation (EC) No 1072/2009 and the Regulation (EC) No. 1073/2009 are well effective in Belgium. However, the royal decree implementing these regulations has yet to be published<sup>196</sup>.

However, with regard to Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market, some relevant provisions are found in *Law of 3 May 1999*. As for Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services, relevant measures are found in *Decree law of 30 December 1946*<sup>197</sup> and Regent Decree of September 20, 1947 regulating the regular transport, the regular temporary transport, the special forms of regular transport and occasional transport<sup>198</sup>.

*Relevant Belgian legislation for sanctions related to Regulations No 1072/2009 and No 1073/2009*

Please refer to paragraph above on the *Relevant Belgian legislation for sanctions related to Regulations Nos. 1071/2009, 1072/2009 and 1073/2009*.

### **4.3 Standards of vehicles and load and necessary licences**

#### **4.3.1 Directive 2008/68/EC**

On 21 June 2012, the European Commission has sent a reasoned opinion to Belgium for failure to adopt national legislation on the inland transport of dangerous

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<sup>196</sup> Replies collected through emails sent in July 2012 to Mrs. Isabelle De Maegt, FEBETRA (the Belgian road haulage and logistics providers federation) and the controlling officers from the FPS Mobility and Transport.

<sup>197</sup> Arrêté-loi relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars, (MB 20.01.1947).

<sup>198</sup> Arrêté du Régent du 20 septembre 1947 portant le règlement général relatif aux services réguliers, aux services réguliers temporaires, aux services réguliers spécialisés et aux services occasionnels, (MB 05.11.1947).

goods. Indeed, Directive 2008/68/EC should have been fully transposed by 30 June 2011<sup>199</sup>.

At the moment, the Royal Decree of 28 June 2009 on the transport by road or rail of hazardous goods other than explosive or radioactive substances (hereafter, “*RD of 28 June 2009*”)<sup>200</sup> has partially implemented Directive 2008/68/EC. Most of the rules and standards contained in this royal decree come from international treaties such as ADR<sup>201</sup> and RID<sup>202</sup>.

The territorial scope of application of *RD of 28 June 2009* extends to all domestic and international transport by road or rail of dangerous goods. The rules also apply to the loading and unloading activities, transfer to other means of transport and the necessary stops made during the transport.

Furthermore, it should be pointed out that *RD of 28 June 2009* addresses almost every person dealing with dangerous freight including carriers, shippers, fillers, senders, operators and drivers.

Transports of hazardous goods operated by vehicles or wagons belonging to or under the responsibility of the armed forces and those wholly performed within the perimeter of an enclosed area (article 2) are excluded from the scope of this royal decree.

Article 4 defines the general rules which states that transport of hazardous good is prohibited unless authorised by ADR or RID. In practice, this means that a licence is always required in order to perform such transport.

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<sup>199</sup> European Commission, Press Release IP/12/634, available at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/634&>

<sup>200</sup> Arrêté royal du 28 juin 2009 relatif au transport des marchandises dangereuses par route ou par chemin de fer, à l’exception des matières explosibles et radioactives (MB du 30 juin 2009).

<sup>201</sup> ADR means the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957, as amended.

<sup>202</sup> RID means the Regulations concerning the International Carriage of Dangerous Goods by Rail, appearing as Appendix C to the Convention concerning International Carriage by Rail (COTIF) concluded at Vilnius on 3 June 1999, as amended.

Derogations are however possible when road safety is not put at risk. After receiving the approval from the European Commission, it is necessary to obtain the authorisation from the competent Minister in Belgium. These derogations are always temporary (article 10) and concern transport of small quantities (article 8)<sup>203</sup>, those performed locally over short distances, or on particular designated routes, forming part of a defined industrial process and being closely controlled under clearly specified conditions (Article 9).

Finally, the transport of hazardous goods in RID Class 1 and Class 7 (explosive or radioactive substances), which are not covered by the RD of 28 June 2009, requires express and prior consent from the Federal Agency for Nuclear Control (Class 7) and the Federal Government Service for Economy (Class 1).

*Relevant Belgian legislation for the sanctions related to Directive 2008/68/EC*

As previously mentioned, Belgium did not implement Directive 2008/68/EC and received a reasoned opinion from the European Commission for failure to adopt national legislation on the inland transport of dangerous goods. At the moment, no direct text apprehends the infringements related to Directive 2008/68/EC and *RD of 28 June 2009*.

However, it is worth mentioning that, with regard to the ADR Convention, the Royal Decree of 24 March 1997 relating to the collection and deposit of fines for offences of the rules on the transport by road or rail of hazardous goods other than explosive or radioactive substances<sup>204</sup>, as amended by Royal Decree of 27 April 2007<sup>205</sup> and Royal Decree of 11 June 2011<sup>206</sup>, (hereafter, “*RD of 24 March 1997*”) has introduced a penalty system based on the so-called *perception immédiate*.

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<sup>203</sup> Article 8 does not apply to substances having a medium or high level of radioactivity.

<sup>204</sup> Arrêté royal du 24 mars 1997 relatif à la perception et à la consignation d'une somme lors de la constatation d'infractions en matière de transport par route de marchandises dangereuses, à l'exception des matières explosibles et radioactives, (MB 16.04.1997).

<sup>205</sup> Arrêté royal du 27 avril 2007 modifiant l'arrêté royal du 24 mars 1997 relatif à la perception et à la consignation d'une somme lors de la constatation d'infractions en matière de transport par route de marchandises dangereuses à l'exception des matières explosibles et radioactives, (M.B. 07.05.2007).



In addition, Royal Decree of 5 July 2006 as last amended by Royal Decree of 17 March 2009 defines specific rules concerning the designation and the professional qualification of safety advisors for the transport of dangerous goods by road, rail and waterway (hereafter, “*RD of 5 July 2006*”)<sup>207</sup>. Penal sanctions are foreseen for undertakings that do not comply with the rules provided for in *RD of 5 July 2006* and are as follows:

- Article 2, para. 1 of *Law of 18 February 1969* governs infringements committed against Class 1 and 7 of Annex A of the ADR. It foresees an imprisonment sentence of a period varying between 8 days and 6 months and a fine in the amount varying from 300 € to 60 000 € or only one of these two. In the event of repeated offences within a period of 2 years from when the previous sentence expired, the minimum sanction is two times that provided by the regulation punishing the offence.
- Articles 5 to 9 of *Law of 28 May 1956* related to explosive substances and mixtures thereof or subject to deflagration and related machines (hereafter, “*Law of 28 May 1956*”)<sup>208</sup> govern the infringements pertaining to Class 1 of Annex A of the ADR. The *Law of 28 May 1956* foresees the following sanctions:
  - Infringements pertaining to Class 1 of Annex A of the ADR: imprisonment sentence of a period varying between 15 days and 2 years and a fine in the amount

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<sup>206</sup> Arrêté royal du 11 juin 2011 modifiant l’arrêté royal du 24 mars 1997 relatif à la perception et à la consignation d’une somme lors de la constatation d’infractions en matière de transport par route de marchandises dangereuses à l’exception des matières explosibles et radioactives, (M.B. 04.10.2011).

<sup>207</sup> Arrêté royal du 5 juillet 2006 concernant la désignation ainsi que la qualification professionnelle de conseillers à la sécurité pour le transport par route, par rail ou par voie navigable de marchandises dangereuses, (M.B. 0.05.2007).

Arrêté royal du 17 mars 2009 modifiant l’arrêté royal du 5 juillet 2006 concernant la désignation ainsi que la qualification professionnelle de conseillers à la sécurité pour le transport par route, par rail ou par voie navigable de marchandises dangereuses, (M.B. 27.04.2009).

<sup>208</sup> Loi du 28 mai 1956 relative aux substances et mélanges explosibles ou susceptibles de déflager et aux engins qui en sont chargés, (M.B. 09.06.1956).

varying from 600 € to 6 000 € or only one of these two. The confiscation of the abovementioned substances, mixtures thereof and machines is also foreseen.

If the infringement took place with the intent to commit a crime, the offender is punished with time or life imprisonment and a fine in the amount varying from 600 € to 24 000 € or only one of these two. The confiscation of the abovementioned substances, mixtures thereof and machines is also foreseen.

If the infringement took place with the intent to commit a misdemeanour, the offender is punished with an imprisonment sentence of a period varying between 1 month and 3 years and a fine in the amount varying from 600 € to 12 000 € or only one of these two.

If the infringement has caused physical damages to a third party due to negligence, the offender is punished with an imprisonment sentence of a period varying between 1 month and 2 years and a fine in the amount varying from 600 € to 1 000 € or only one of these two .

If the infringement has caused the death of a third party due to negligence, the offender is punished with an imprisonment sentence of a period varying between 6 months and 5 years and a fine in the amount varying from 600 € to 3 600 €.

- Articles 49 and 50 of the Law of 15 April 1994 concerning the protection of the population and of the environment against the dangers resulting from ionizing radiation and related to the Federal Agency of Nuclear Control (hereafter, “*Law of 15 April 1994*”)<sup>209</sup> govern the infringements pertaining to Class 7 of Annex A of the ADR. For these

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<sup>209</sup> Loi du 15 avril 1994 relative à la protection de la population et de l’environnement contre les dangers résultant des rayonnements ionisants et relative à l’Agence fédérale de Contrôle nucléaire, (MB. 04.1994).

infringements, the *Law of 15 April 1994* foresees an imprisonment sentence of a period varying between 3 months and 2 years and a fine in the amount varying from 6 000 € to 6 000 000 € only one of these two .

Finally, Royal Decree of 30 September 2005 categorizing the offences of the general rules of Road Traffic Policing by degree (hereafter, “RD of 30 December 2005”)<sup>210</sup> defines the infringements of Articles 48 and 48bis of the Royal Decree of 1 December 1975 on the general rules of Road Traffic Policing and the use of public roads (hereafter, “RD of 1 December 1975”)<sup>211</sup> as infringements of 3rd degree (i.e. serious offences endangering directly the safety of persons):

- Article 48 of *RD of 1 December 1975* concerns the orange panel that any vehicle performing the carriage of dangerous goods shall be equipped with;
- Article 48bis of *RD of 1 December 1975* prohibits any vehicle performing the carriage of dangerous goods to use public roads marked by the C24a, C24b or C24c signals.

Non compliance with these articles leads to either a *perception immediate* of 150 € imposed by controlling agents or a penal sanction comprising a fine in the amount varying from 165 € to 2 750 € and a possible deprivation of the right to drive for a period varying between 8 days and 5 years. In the event of recidivism, the fine is doubled.

#### *Perception immediate*

*RD of 24 March 1997* introduces a list of offences of the rules on land transport of dangerous goods and established the corresponding fines. Fine varies between 50 € and 1 500 € for infringements against provisions on:

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<sup>210</sup> Arrêté royal du 30 décembre 2005 désignant les infractions par degré aux règlements généraux pris en exécution de la loi relative à la police de la circulation routière, (MB 09.12.2005).

<sup>211</sup> Arrêté royal du 1 décembre 1975 portant règlement général sur la police de la circulation routière et l’usage de la voie publique, (MB 09.12.1975).

- Transport and identification documents (e.g. impossibility to identify the goods due to missing data; no indication of the dangerous nature of the goods or substances carried; etc.);
- Authorisation Certificate (e.g. non existing or non valid certificate);
- Driver certificate (e.g. non existing or non valid certificate);
- Instructions in writing (e.g. absent, illegible or incomplete; not in the required languages; etc.);
- Loading certificate (e.g. non existing or illegible certificate; printouts of the data are not available);
- Signaling - vehicle / tank (e.g. no signaling of the vehicle, the UN number on the orange panels does not match with the data provided on transport documents; wrong hazard codes on orange panels; etc.);
- Parcels (e.g. mark and marking; labelling; etc.);
- Tanks (e.g. insufficient or missing marking; date of periodic inspection of the tank has expired; etc.);
- Containers (e.g. non authorised goods or substances in bulk; leaks; container in bad condition; etc.);
- Goods for which transportation is prohibited;
- Equipments (e.g. fire extinguisher in an insufficient capacity; date of periodic inspection has expired; etc.);
- Particular marking (e.g. marking is missing for elevated temperature substances or for goods/substances which are dangerous for the environment; no/illegible sign of warning for vehicle or containers transported under fumigation; etc.);
- Exemptions (e.g. conditions are not met to benefit from an exemption); and
- Other requirements (e.g. limitations related to quantities transported are not observed; maintenance of the vehicle or container is not respected; etc.).

#### *Concurrent offences*

Where a *perception immédiate* may be applied by controlling agents, the total collectable amount must not exceed 2 500 € if multiple offences are committed by the same transport operator. This amount may be reduced to 1 250 € where the exemptions foreseen under Section 1.1.3.6 of the annex A of the ADR may be applied (article 3 of *RD of 24 March 1997* as last amended by *RD of 11 June 2011*).

### *Immobilisation of the vehicle as ex officio measures*

Furthermore, according to the Royal Decree of 19 October 1998, as amended by the Royal Decree of 23 May 2006 on the uniform control procedures of road transport of dangerous goods<sup>212</sup>, controlling agents may order the immobilisation of the vehicle for the above-mentioned infringements until the unlawful situation is rectified.

### *Foreign drivers*

Where the offender has no fix residence in Belgium and refuses to pay the *perception immédiate* proposed by a controlling agent, he then is subject to the payment of a sum in consignment whose amount equals the instant fine. The total collectable amount must not exceed 2 500 € when simultaneous infringements have been committed by the same offender (article 5 of *RD of 24 March 1997*).

### *Competent authorities*

For goods of Classes 2 to 6 and Classes 8 and 9 of the ADR, controlling officers from the FPS Mobility and Transport entrusted with a police mandate, controlling agents from the Federal and Local Police, and custom officers from the FPS Finance are competent to perform checks and to establish infringements against ADR, RID and the *RD of 28 June 2009*.

For goods of Class 1, the competent authority is the Control Service Department of the FPS Economy, SMEs, Middles Classes and Energy.

For goods of Class 7, the competent authority is the Transport and Security Department of the Federal Agency for Nuclear Control.

## **4.3.2 Council Directive 96/53/EC**

### *Relevant Belgian legislation implementing the Directive*

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<sup>212</sup> Arrêté royal portant exécution de la directive 95/50/CE du Conseil du 6 octobre 1995 concernant des procédures uniformes en matière de contrôle des transports de marchandises dangereuses par route, (*M.B. 26.11.1998*).

The relevant Belgian legislation implementing Council Directive 96/53/EC is Royal Decree of 2 June 2010 related to road traffic of exceptional vehicles (hereafter, “*RD of 2 June 2010*”)<sup>213</sup>.

Article 3 states that the provisions are applicable to exceptional vehicles which means any motor vehicle, trailer or combination of vehicles as defined in Article 1 of the technical regulations<sup>214</sup> which, by its construction or its indivisible load, exceeds the weight limits or dimensions set in the Highway Code and the technical regulation.

Its Article 4 provides a categorization of these exceptional vehicles. They are classified according to four categories.

The transport of oversize load or overweight load is only allowed if a specific authorisation has been released by the competent authority. There are two types of authorisations:

- The long-term authorisation
  1. For transport of category 1: validity for a maximum of 5 years
  2. For transport category 2: validity of maximum 1 year
- The short-term authorisation
  1. For transport of category 3: validity for a period of maximum 4 months
  2. For transport of category 4: validity for a period of maximum 2 months

#### *Sanction system related to the RD of 2 June 2010*

The sanction system related to infringements against standards on weights and dimensions of heavy vehicles is provided for in the *RD of 19 July 2000*.

Driver and undertakings may be both held liable for infringements against rules on dimensions and weights. The applicable Belgian law distinguishes between vehicles with an overall weight of more than 12 tonnes and the ones with an overall weight of less than 7.5 tons. Generally, the more the authorised operating weight is exceeded (in percentage), the higher the fine.

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<sup>213</sup> Arrêté royal du 2 juin 2010 relatif à la circulation routière des véhicules exceptionnels, (MB 21.06.2010).

<sup>214</sup> Arrêté royal du 15 mars 1968 portant règlement général sur les conditions techniques auxquelles doivent répondre les véhicules automobiles et leurs remorques, leurs éléments ainsi que les accessoires de sécurité (MB 28.03.1968)

<b>Table BE 9</b>		
<b>Percentage to which the maximum is exceeded</b>	<b>Excess of permissible maximum weight and maximum sizes as a result of the cargo</b>	<b>Excess of permissible maximum weight and maximum sizes as a result of adjustments made to the vehicle</b>
Up to 5%	60 EUR	82,5 EUR
More than 5% to 10%	300 EUR	412,5 EUR
More than 10% to 15%	560 EUR	770 EUR
More than 15% to 20%	800 EUR	1100 EUR
More than 20% to 30%	1000 EUR	1375 EUR
More than 30% to 40%	1120 EUR	1540 EUR
More than 40%	1240 EUR	1705 EUR

Finally, according to article 62 of the Law on Road Traffic Policing coordinated by the Royal Decree of 16 March 1968<sup>215</sup>, controlling agents may order the transport operator to unload their vehicles of the excess weight observed. If the driver refuses, the vehicle may be retained at the expenses of the offender until the rectification of the unlawful situation.

*Competent authorities for imposing fines pursuant to the RD of 2 June 2010*

According to article 35 of *RD of 2 June 2010*, controlling officers designated by Article 3, 1° and 2° of the Highway Code are competent to perform checks and to establish infringements against the rules of *RD of 2 June 2010*.

Those are controlling agents from the Federal and Local Police and controlling officers from the Administration of Regulation of Traffic Circulation and Infrastructure (“*Administration de la Réglementation de la Circulation et de l’Infrastructure*” in

<sup>215</sup> Loi du 16 mars 1968 relative à la police de la circulation routière, (MB 27.03.1968).

French) and from the Administration of Land Transport (“*Administration du Transport Terrestre*” in French) entrusted with a mandate to police.

### 4.3.3 Directive 2009/40/EC

The relevant pieces of legislation are the Law of 21 June 1985 regarding the technical requirements that any motor vehicles, their trailers and safety accessories must meet (hereafter, “*Law of 21 June 1985*”)<sup>216</sup> and various Royal Decrees. It concerns the Royal Decree of 12 September 2011 amending the Royal Decree of 1 September 2006 establishing the technical roadside inspection of commercial vehicles registered in Belgium or abroad and amending the Royal Decree of 1 September 2006 on the collection and deposit of a sum imposed on certain infringements in connection to technical requirements applicable to any road transport vehicle, its components, and safety accessories (hereafter, the “*RD of 12 September 2011*”)<sup>217</sup>, the recent Royal Decree of 10 January 2012 amending the Royal Decree dated 15 March 1968 regarding the general rules on the technical requirements to which any motor vehicles, their trailers and safety accessories must meet (hereafter, the “*RD of 10 January 2012*”).

#### *Sanctions system related to RD of 12 September 2011*

According to Article 4, para. 1 of *Law of 21 June 1985*, offences committed against the technical prescriptions are punished with an imprisonment sentence of a period varying between 8 days and 3 months and a fine in the amount of between 60 € and 60 000 € or only one of these two.

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<sup>216</sup> Loi du 21 juin 1985 relative aux conditions techniques auxquelles doivent répondre tout véhicule de transport par terre, ses éléments ainsi que les accessoires de sécurité (M.B. 13.08.1985).

<sup>217</sup> Arrêté royal du 11 septembre 2011 modifiant l'arrêté royal du 1er septembre 2006 instituant le contrôle technique routier des véhicules utilitaires immatriculés en Belgique ou à l'étranger et l'arrêté royal du 1er septembre 2006 relatif à la perception et à la consignation d'une somme lors de la constatation de certaines infractions aux conditions techniques auxquelles doivent répondre tout véhicule de transport par terre, ses éléments ainsi que les accessoires de sécurité, (MB 23.11.2011).



In the event of recidivism within a period of 2 years from when the previous sentence expired, the minimum applicable sanction is two times that provided by the regulation punishing the offence.

Furthermore, Chapter IV of the Belgian Penal Code applies where the offence relates to the forgery and counterfeiting of documents. In this case, according to articles 196 to 210 of the Belgian Penal Code, an imprisonment sentence and/or a fine is foreseen.

The annex 2 of the Royal Decree of 1 September 2006 on the collection and deposit of a sum imposed on certain infringements in connection to technical requirements applicable to any road transport vehicle, its components, and safety accessories<sup>218</sup> (hereafter, “*RD of 1 September 2006*”) subsequently amended by the *RD of 12 September 2011* provides a list of monetary penalty (“*perception immédiate*” in French) for the infringements of the rules on roadworthiness tests. These monetary penalties vary between 50 € and 6 000 €.

#### *Concurrent offences*

Where a *perception immédiate* may be applied by controlling agents, the total collectable amount shall not exceed 3 000 € if multiple offences are committed by the same offender. This total amounts to maximum € 6 000€ for the offences mentioned in points 1c (fake or counterfeit certificate), 2i (refusal of vehicle control), 3d (manipulation of the speed monitor), and 3e (refusal of control of the speed monitor) of Annex 2 of *RD of 1 September 2006*.

#### *Competent authorities*

Controlling officers from the FPS Mobility and Transport entrusted by a police mandate and agents from the Federal and Local Police are responsible for the roadside

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<sup>218</sup> Arrêté royal du 1 septembre 2006 relatif à la perception et à la consignation d’une somme lors de la constatation de certaines infractions aux conditions techniques auxquelles doivent répondre tout véhicule de transport par terre, ses éléments ainsi que les accessoires de sécurité, (MB 06.09.2006).

inspections of commercial vehicles which are registered in Belgium or abroad (Article 1 of *RD of 1 September 2006*).

#### *Foreign drivers*

According to Article 5 of *RD of 1 September 2006*, when the offender has no domicile or permanent residence in Belgium and does not pay immediately the amount proposed by the controlling agents, he shall pay a sum in consignment whose amount equals the instant fine.

The total collectable amount shall not exceed 6000€ when several infringements have been committed by the same offender. This total amounts to a maximum of 6 000€ for the offences mentioned in points 1c (fake or counterfeit certificate), 2i (refusal of vehicle control), 3d (manipulation of the speed monitor), and 3e (refusal of control of the speed monitor) of Annex 2 of *RD of 1 September 2006*.

#### **4.3.4 Directive 2006/126/EC**

The relevant pieces of legislation are the Law on Road Traffic Policing coordinated by the Royal Decree of 16 March 1968 (hereinafter, *RD of 16 March 1968*) and Royal Decree of 28 April 2011<sup>219</sup> on driving licence, which will enter into force on 19 January 2013.

#### *Sanctions related to the rules on driving licence*

The sanctions are foreseen by Articles 30, 31 and 32 of the *RD of 16 March 1968*<sup>220</sup>. Fines vary between 10 € and 2000 €.

Where the offence concerns the submission of a fake driving licence or any

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<sup>219</sup> Arrêté royal du 28 avril 2011 modifiant les catégories du permis de conduire, le modèle du permis de conduire et les conditions pour les examinateurs, conformément à la Directive 2006/126/CE du Parlement européen et du Conseil du 20 décembre 2006 relative au permis de conduire.

<sup>220</sup> Loi relative à la police de la circulation routière coordonnée par l'arrêté royal du 16 mars 1968, (MB 27.03.1968).

other fake document, Articles 196 to 210 of the Belgian Penal Code apply. The penalty either includes an imprisonment term and a fine or only one of these two.

Furthermore, sanctions may include a deprivation of the right to drive for a given time or permanently depending on the case and the immobilisation of the vehicle as a safety measure (*mesure de sûreté*), at the expenses of the offender, provided that the vehicle is the property of the driver or at his exclusive disposal at the time of the immobilisation of the vehicle (Articles 50 and 51, 3° of *RD of 16 March 1968*).

Finally, the confiscation of the vehicle may be ordered if the deprivation of the right to drive is permanent or for a period of at least six months when the vehicle is the property of the driver. It should be noted that the deprivation of the right to drive is of 2 types:

- Article 38 of *RD of 16 March 1968*: the deprivation is ordered as a sentence and ordered by the Judge. The disqualification may be sentenced for a period of eight days and up to five years. It may be ordered in the event of recidivism and in this case, the disqualification is permanent. In addition, the deprivation may be limited to certain categories of vehicles or limited to the weekend and public holidays. Finally, the deprivation may end upon the satisfaction to driving examination.
- Article 42 of *RD of 16 March 1968*: the deprivation is ordered for a physical or psychological incapacity of the driver. This sanction may be ordered in the occasion of an infringement against the rules on Road Traffic Policing or of a road accident for which the driver is responsible. It may be ordered permanently or for a time corresponding to the duration of the incapacity of the driver.

Finally, the immediate withdrawal of the driving licence may be foreseen for the cases defined in article 55 of *RD of 16 March 1968* and for instance, in the event of a hit and run offence or road accident causing severe injuries or death of persons and which results from the direct fault of the driver.

*Competent authority for imposing fines pursuant to the rules on driving licence.*

According to Article 1 of Royal Decree of 22 December 2003 on the collection and deposit of a sum in consignment in the occasion of the establishment of offences relating to the law on Road Traffic Policing and its implementing decrees (hereafter, the

*RD of 22 December 2003*)<sup>221</sup>, controlling officers of the Federal Police and Local Police, controlling officers of the Control Direction of the Directorate-General Land Transportation of FPS Mobility and Transport entrusted with a mandate to police, officers of the Customs and Excise Administration are competent to perform checks and controls and to impose sanctions for infringements against the rules on driving licence.

#### *Foreign drivers*

According to Article 5 of *RD of 22 December 2003*, if the offender does not have a domicile or permanent residence in Belgium and one or more violations were identified at the same time, the amount paid cannot exceed 750 €. This amount is exclusively limited to 350 € for offences of 1<sup>st</sup> or 2<sup>nd</sup> degree which correspond to minor or major offences such as driving while using a mobile phone or stationing the motor vehicle on the crosswalk as defined by Royal Decree of 30 September 2005 categorizing road traffic offences by degree of severity<sup>222</sup>.

#### **4.4 Notion of criminal sanction and of administrative sanction in the Belgian legal system**

In Belgian criminal law, a statutory triple division of criminal offences is used: crimes (*crimes*), misdemeanours (*délits*) and contraventions (*contraventions*).

The competence of the Criminal Courts is related to this triple division of offences. In that perspective, it should be noted that Police Courts are competent to deal with all contraventions as well as some misdemeanours enumerated in Sect. 138 of the CCP, e.g. traffic offences and the resulting misdemeanour of assault and battery. The Correctional Courts are in principle competent to handle all misdemeanours, whereas crimes come before the Assize Courts.

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<sup>221</sup> Arrêté royal du 22 décembre 2003 relatif à la perception et à la consignation d'une somme lors de la constatation des infractions relatives à la loi sur la police de la circulation routière et ses arrêtés d'exécution, (MB 31.12.2003).

<sup>222</sup> Arrêté royal du 30 septembre 2005 désignant les infractions par degré aux règlements généraux pris en exécution de la loi relative à la police de la circulation routière, (MB 09.11.2005).

With regards to administrative sanction, Belgian law does not provide for a specific definition. However, scholars and case law define administrative sanctions as unilateral adversely affecting action of the Public Administration issued without recourse to the judicial authority and a with a repressive purpose in response to an unlawful action. In any event, an a posteriori right to seek for a judicial remedy is provided for.

There was much discussion on the characteristics that distinguish the two categories of sanction. In principle, they are differentiated by the authority that pronounces them.

To determine whether an administrative offence falls under the scope of criminal matters, the Court refers to three criteria, and namely:

- the qualification of the offence as defined under the domestic legal system;
- the nature of the offence as such; and
- the degree or severity of the sanction.

#### *Concurrence between administrative and criminal sanctions*

Albeit being formally different, recent Belgian case law is pointing towards recognizing criminal nature to some repressive administrative sanctions: with regards to this *tertium genus* of sanctions the principle of *ne bis in idem* applies, principle which – albeit not expressly provided by the Belgian law – is widely recognized by the High Courts as a general principle of law.

According to this general legal principle, the same infringement cannot be sanctioned with two sanctions having the same nature (i.e. criminal sanctions and repressive administrative sanctions).

Please be aware of the fact that the same infringement can be sanctioned with multiple sanctions having different nature (i.e. a criminal sanction together with a non repressive administrative sanction) as this is not contrary to the *ne bis in idem* principle as interpreted by Belgian case law.

As to the issue of cumulation of sanction, Article 60 of the Belgian criminal code (Code Penal) provides that the criminal sanction can be cumulated but the total sanction shall not exceed the double of the more serious fine. There is no explicit provision which regulates the *tertium genus* of repressive administrative sanction,

however it can be argued that Article 60 applies also to the cumulation of such sanctions with criminal sanction.

Finally, please be aware that all the legal instruments mentioned in this report provide for a specific maximum cap in the event more infringements are perpetrated through a single action.

#### *Brief explanation of the concept of Perception Immédiate*

A *perception immédiate* is a monetary penalty or transaction by which the Public Ministry proposes to the alleged offender to not criminally prosecute if the alleged offender agrees to pay a monetary sum foreseen for a certain number of infringements by the Belgian Law. To our knowledge, this system is only or mainly foreseen for offences committed in the area of road transport.

To be valid, this procedure shall only be applicable to the following:

- offence which did not cause any damage to a third party and punishable with a fine or an imprisonment sentence of a maximum period of 5 years, i.e. misdemeanours and contraventions;
- the Public Ministry only envisages to apply a fine or a fine and a special confiscation;
- no other proceeding has already been initiated regarding the offence.

Finally, if the offender does not agree to pay the monetary penalty, the Public Ministry will then recover its appreciation power and may decide whether to prosecute the offender or not.

#### **4.5 Scope of application of Belgian criminal law**

The rules on the scope of application of the Belgian criminal law are laid down in Articles 3 and 4 of the Belgian Penal Code.

Article 3 states that all infringements committed on the territoriality of the Kingdom of Belgium shall be punished according to Belgian law, regardless of the gravity of the offence, the nationality of the perpetrator or that of the victim.

The territoriality of the Kingdom of Belgium comprises the land territory located within the borders, the continental shelf and territorial waters as well as the national airspace. Belgian law is also applicable for infringements committed on board of vessels and planes registered in Belgium.

Article 4 states that the law provides for extraterritorial competences to Belgian Courts in the conditions defined under articles 6-14 of the Preliminary Title of the Code of Criminal Procedure. Notably, it states that is punishable under Belgian law a Belgian national or a foreigner who commits a crime (*crime*) or misdemeanour (*délits*) abroad regarding the following offences (Articles 6, 1° and 10, 1° of the Preliminary Title of the Code of Criminal Procedure):

- crimes against the personality of the Belgian State;
- crimes regarding acts of production, counterfeiting, falsification and alteration of seals, stamps, documents and belongings of the State, Belgian public administrations or institutions;
- crimes having as object the Euro and any other currency having legal tender in Belgium, or pertaining to their production, counterfeiting, falsification or alteration thereof;
- public officers, abusing of their authority or violating the duties in their functions;
- crimes against a Belgian national or institution or an institution or body of the European Union having its seat in Belgium;

Pursuant to Article 12bis of the Preliminary Title of the Code of Criminal Procedure, Belgian Courts have jurisdiction where extraterritorial competence is imposed under a rule of international law binding on Belgium.

Pursuant to Article 10, 5° of the Preliminary Title of the Code of Criminal Procedure, crimes committed outside Belgium by a foreigner against a Belgian national may be prosecuted in Belgium provided that:

- the foreigner is to be found in Belgium;
- the act shall be punishable under the law of the country where it has been perpetrated by a term of imprisonment of at least five years.

## 4.6 Summary tables

Table BE 10							
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
<b>SOCIAL RULES ON ROAD TRANSPORT</b> <u>Rules on Driving Times, Breaks and Rest Periods</u>							
Regulation 561/06/EC	<a href="#">Law dated 18 February 1969</a>	Article 2	Infringements committed against Regulation 561/06 and RD of 9 April 2007	Driver Undertaking		(See below)	Imprisonment from 8 days to 6 months and a fine (in the amount of between 300 € and 60 000 €), <b>OR</b> only one of these two <sup>223</sup>

<sup>223</sup> As mentioned above, penal sanctions may be avoided if the transporter accepts to pay a monetary penalty (called *perception immédiate* in French) imposed by controlling agents during a roadside check.



Table BE 10

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<a href="#">Law dated 18 February 1969</a> <a href="#">Recidivism</a>	Article 2, para.1, al. 6	Where the offender who has already received a final sentence for an offence, commits within a period of 2 years from when the previous sentence expired the same offence.	Driver Undertaking			<b>The minimum sanction is two times that provided by the regulation punishing the offence.</b>
	<a href="#">Law dated 18 February 1969</a>	Article 2, para. 4	Infringements committed against Regulation 561/06/EC and RD of 9 April 2007 and as defined by the King				<b>Temporary immobilisation or confiscation ordered by the judge</b>
	<a href="#">Age</a> <a href="#">RD of 27.04.2007 and its Annex</a> <a href="#">(perception immédiate)</a>	Annex 1, c), 1.	Not respecting the minimum age for conductors	Driver Undertaking		<b>75 €</b>	

**Table BE 10**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<u>Driving Time</u>  <u>RD of 27.04.2007 and its Annex</u> <u>(perception immédiate)</u>	Annex 1, c), 2.	Exceeding the authorised daily driving time	Driver Undertaking		<b>The penalty may include: A fine of 40 € up to 1600 €<sup>224</sup></b>	
		Annex 1, c), 6.	Exceeding the authorised weekly driving time	Driver Undertaking		<b>100 € for every hour exceeding the authorised weekly driving time</b>	

<sup>224</sup> The sanction will be defined in accordance to the number of hours exceeding the daily driving times and the uninterrupted number of hours of rest period for the concerned period.

**Table BE 10**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, c), 3.	Exceeding the authorised continuous driving times	Driver Undertaking		A fine of 20 € up to 2.000 € <small>225</small>	
	<u>Rest Periods</u>  <u>RD of 27.04.2007 and its Annex</u> <u>(<i>perception immédiate</i>)</u>	Annex 1, c), 4.	Not respecting the compulsory minimum daily rest period	Driver Undertaking		A fine of 50 € for every 30 minutes of daily resting time missing	
		Annex 1, c), 5.	Not respecting the compulsory minimum weekly rest period	Driver Undertaking		A fine of 100 € for every hour of weekly resting time missing	

<sup>225</sup> The sanction will be defined in accordance to the number of hours exceeding the authorised uninterrupted and the duration of the longest uninterrupted rest period for the concerned period. In case of transport licence, the sentence imposed can include jail time, the fine or a combination of both.

**Table BE 10**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<a href="#">RD of 9 April 2007</a>	Article 4	Infringements committed against Articles 6, 7 and 8 of Regulation 561/06/EC		Immobilisation of the vehicle until/upon the unlawful situation has been remedied (ex officio measures)		

**Table BE 11**

<p><b>SOCIAL RULES ON ROAD TRANSPORT</b></p> <p><u>Rules on Working Time</u></p>
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EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)		
Directive 2002/15/EC	<a href="#">Law of 6 June 2010 introducing the Social Penal Code</a>	Art. 138 Social Penal Code, Livre II	Exceeding the average daily or weekly working time or the maximum daily or weekly working time (when authorised by law or Collective Labor Agreement)  Failure to provide the mobile worker with a compulsory compensatory rest when exceeding the authorised maximum period of working time	Undertaking	<p><b>Offence of 2<sup>nd</sup> degree either punished with:</b></p> <table border="1"> <tr> <td><b>A fine of 150 € up to 1 500 €</b></td> <td><b>OR<sup>226</sup></b> <b>A fine from 300 € up to 3 000 €</b></td> </tr> </table>	<b>A fine of 150 € up to 1 500 €</b>	<b>OR<sup>226</sup></b> <b>A fine from 300 € up to 3 000 €</b>
		<b>A fine of 150 € up to 1 500 €</b>	<b>OR<sup>226</sup></b> <b>A fine from 300 € up to 3 000 €</b>				
		Art. 138, para. 2, Social Penal Code, Livre II	The employer does not provide the mobile worker in writing for an account of working time  The employer establishes an incomplete, incorrect account of working time	Undertaking	<p><b>Offence of 2<sup>nd</sup> degree either punished with:</b></p> <table border="1"> <tr> <td><b>A fine of 150 € up to 1 500 €</b></td> <td><b>OR</b> <b>A fine from 300 €</b></td> </tr> </table>	<b>A fine of 150 € up to 1 500 €</b>	<b>OR</b> <b>A fine from 300 €</b>
		<b>A fine of 150 € up to 1 500 €</b>	<b>OR</b> <b>A fine from 300 €</b>				

<sup>226</sup>

Penal proceedings exclude the application of administrative sanctions (article 71 of the Social Penal Code).

Table BE 11

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Working Time**

EU Legislati on	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	
						up to 3 000 €
		Art.144 Social Penal Code, Livre II	Working six consecutive hours without a break	Driver Undertaking	Offence of 2 <sup>nd</sup> degree either punished with:	
					A fine of 150 € up to 1 500 €	OR A fine from 300 € up to 3 000 €
		Art.144 Social Penal Code, Livre II	Working time not interrupted by a break of at least 30 minutes, if working hours total between six and nine hours	Driver Undertaking	Offence of 2 <sup>nd</sup> degree either punished with:	

**Table BE 11**

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Working Time**

EU Legislati on	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	
					A fine of 150 € up to 1 500 €	OR  A fine from 300 € up to 3 000 €
		Art.144 Social Penal Code, Livre II	Working time not interrupted by a break of at least 45 minutes, if working hours total more than nine hours	Driver Undertaking	Offence of 2 <sup>nd</sup> degree either punished with:	
					A fine of 150 € up to 1 500 €	OR  A fine from 300 € up to 3 000 €

**Table BE 11**

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Working Time**

EU Legislati on	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	
		Art. 138 Social Penal Code, Livre II	Exceeding the daily working time of ten hours in each 24 period when night work is performed	Driver Undertaking	<b>Offence of 2<sup>nd</sup> degree either punished with:</b>	
					<b>A fine of 150 € up to 1 500 €</b>	<b>OR A fine from 300 € up to 3 000 €</b>
		Art. 193, 194, 195, 196, 203, 205, Social Penal Code, Livre II	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	Undertaking	<b>Offence of 2<sup>nd</sup> degree either punished with: (in some cases, the sanction is multiplied by the number of workers concerned)</b>	



**Table BE 11**

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Working Time**

EU Legislati on	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	
					A fine of 150 € up to 1 500 €	OR  A fine from 300 € up to 3 000 €
		Art. 138, para. 1, Social Penal Code, Livre II	The employer does not establish in writing an account of time worked by a mobile worker	Undertaking	Offence of 3 <sup>rd</sup> degree either punished with:	
					A fine of 300 € up to 3 000 €	OR  A fine of 600 € up to 6 000 €

Table BE 11

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Working Time**

EU Legislati on	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative sanction(s)	
		Art. 138, para. 2, 3° Social Penal Code, Livre II	Failure to keep records of the working time of mobile workers for at least two years after the end of the period covered	Undertaking	Offence of 2 <sup>nd</sup> degree either punished with:	
		Art.108 and 111 Social Penal Code, Livre II	Recidivism	Driver Undertaking	A fine of 150 € up to 1 500 €	OR A fine from 300 € up to 3 000 €
					<b>In the event of recidivism, penalties, either administrative or criminal, equal to the double of the maximum penalty if the infringement occurs within the same year of the prior offence</b>	

Table BE 12							
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
<b>SOCIAL RULES ON ROAD TRANSPORT</b> <u>Tachograph</u>							
Regulation 3821/85	<a href="#">Law of 21 June 1985</a>	Article 4	Infringements pertaining to the technical requirements of land transportation vehicles, their components and accessories of security	Driver Undertaking		(See below)	<b>Imprisonment from 8 days to 5 years and a fine (in the amount of between 60 € and 60 000 €), OR only one of these two<sup>227</sup></b>

<sup>227</sup> As mentioned above, penal sanctions may be avoided if the transporter accepts to pay a monetary penalty (called *perception immédiate* in French) imposed by controlling agents during a roadside check.

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<a href="#">Law of 18 February 1969</a>	Article 2	Infringements pertaining to the terms of use of the recording equipment	Driver Undertaking		(See below)	Imprisonment from 8 days to 6 months and a fine (in the amount of between 300 € and 60 000 €), OR only one of these two <sup>228</sup>
	<a href="#">Recidivism Law of 18 February 1969</a>	Article 2	Where the offender who has already received a final sentence for an offence, commits within a period of 2 years from when the previous sentence expired the same offence	Driver Undertaking			The minimum fine is two times that provided by the regulation punishing the

<sup>228</sup> As mentioned above, penal sanctions may be avoided if the transporter accepts to pay a monetary penalty (called *perception immédiate* in French) imposed by controlling agents during a roadside check.

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							offence.
	<a href="#">Law of 18 February 1969</a>	Article 2					Confiscation or temporary immobilisation of the vehicle until the unlawful situation is rectified
	<a href="#">Perception immédiate</a>	Annex e), 1	The recording equipment does not conform with the regulation	Driver Undertaking		1.200 €	
	<a href="#">Recording Equipment</a>	Annex e), 2	As a result of improper installation, the seals were defeated (broken) without jeopardizing the proper functioning of the	Driver Undertaking		50 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<a href="#"><u>RD of 19 July 2000</u></a>		device.				
		Annex e), 3	Despite the difference between the size of the tires and the data on the installation plaque, the circumference of the wheel corresponds to the data on the installation plaque.	Driver Undertaking		<b>50 €</b>	
		Annex e), 4	The equipment in the vehicle is not used while the vehicle or transportation is not exempt from the use of the tachograph.	Driver Undertaking		<b>1.200 €</b>	
		Annex e), 5	The equipment in the vehicle broke down or performs poorly and the repair has not been executed as required.	Driver Undertaking		<b>1.200 €</b>	
		Annex e), 6	The recording equipment in the vehicle is not used correctly: in case of a double crew, the recording is made on the wrong record sheet.	Driver Undertaking		<b>1.200 €</b>	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex e), 7	The recording equipment in the vehicle is not used correctly: the time indication on the record sheet is inaccurate.	Driver Undertaking		1.200 €	
		Annex e), 8	The recording equipment in the vehicle is not used correctly: the switching devices are not activated or used improperly.	Driver Undertaking		50 €	
		Annex e), 9	The recording equipment in the vehicle is not used correctly: the country code was not introduced into the digital tachograph (if data entry is manual) and / or the driver has not manually entered the periods of time when he was away from the vehicle.	Driver Undertaking		50 €	
		Annex e), 10	The recording equipment in the vehicle is not used correctly: when several drivers are present, it has not been ensured that data is recorded on the recording sheet of the driver who actually drives (in the case of an analogue tachograph) or that each driver	Driver Undertaking		1.200 €	

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EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			has inserted his driver card into the correct slot of the digital tachograph				
		Annex e), 11	The recording device has been manipulated to prevent a correct record: Data has been changed or deleted, the recorded data is inaccessible or destroyed, a device was set up with the intent to commit these offences.	Driver Undertaking		2.400 €	
		Annex e), 12	The vehicle is not equipped with a recording device while the vehicle or transportation is not exempt from the use of such recording equipment.	Driver Undertaking		1.200 €	
		Annex e), 13	The vehicle is equipped with an analogue tachograph when he must have a digital tachograph.	Driver Undertaking		1.200 €	
		Annex e), 14	The driver refuses the control of the recording equipment	Driver Undertaking		2.400 €	



Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex d), 1	The driver is unable to produce recording sheets (or particular sheets) for control, for the time period that follows the last weekly resting time he had taken.	Driver Undertaking		1.200 €	
		Annex d), 2	The driver is unable to produce recording sheets (or particular sheets) for control, for the time period that follows the last weekly resting time he had taken and as a result, the controlling agent is unable to check whether the compulsory daily or weekly resting time has been observed during the last 24 or 48 hours, respectively.	Driver Undertaking		1.600 €	
		Annex d), 3	The driver is unable to produce recording sheets (or particular sheets) for control, for the time period that precedes the last weekly resting time he had taken.	Driver Undertaking		600 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex d), 4	The driver refuses to produce recording sheets (or particular sheets) for control, for the time period that follows the last weekly resting time he had taken, or it appears that recording sheets for the same period are in the vehicle while their absence has been recorded/noted	Driver Undertaking		2.400 €	
		Annex d), 5	Recording sheets do not comply with the prescribed model and/or are not appropriate to be used with the recording equipment set in the vehicle and as a result, no relevant data has been recorded	Driver Undertaking		1.200 €	
		Annex d), 6	Record sheets are illegible and/or uncontrollable because they have been damaged and no spare sheets can be found	Driver Undertaking		1.200 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex d), 7	Without any valid reason, one or more record sheets have been removed before the end of the work day from the recording equipment, or the latter has been opened before the end of the work day.	Driver Undertaking		1.200 €	
		Annex d), 8	Without any valid reason, one or more record sheets have been removed before the end of the workday from the recording equipment, or the latter has been opened before the end of the work day. However, the control of the driving and resting time remains possible.	Driver Undertaking		50 €	
		Annex d), 9	The driver do not strictly apply the regulation	Driver Undertaking		50 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex d), 10	The driver has used more than one record sheet during the work day, unless necessary in the case of transfer of vehicle to guarantee that the record sheet complies with the prescribed model and is appropriate to the recording equipment set in the new vehicle.	Driver Undertaking		1.200 €	
		Annex d), 11	The driver has left for more than 24 hours one or more record sheets in the recording device, and as a result, the control is impossible.	Driver Undertaking		1.200 €	
		Annex d), 12	The driver did not record on the record sheets the time periods when he has moved away from the vehicle	Driver Undertaking		50 €	
		Annex d), 13	The data have not been recorded on the right record sheets (case where there are 2 or more drivers) (This sanction cannot be cumulated to e.6 and e.10)	Driver Undertaking		1.200 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex d), 14	Indication of time on record sheets is inaccurate, notably from a difference of +3 UCT for vehicles registered in the EU and according to the ad hoc table for the other vehicles.	Driver Undertaking		1.200 €	
		Annex d), 15	The driver has failed to mention the following data on record sheets: surname and name, start date of the use of record sheet, the licence number of the vehicle.	Driver Undertaking		1.200 €	
		Annex d), 16	The driver has failed to mention the following data on record sheets: the end date of the use of record sheet, the odometer reading at the beginning of the first journey and the end of the last journey and at the time of a possible change of vehicle, the start time of change of vehicle, if appropriate, the location at the beginning and the end of the use of the record sheet	Driver Undertaking		50 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex d), 17	The driver did not establish a particular sheet (replacement or spare sheet) in accordance with the prescriptions: indications related to time periods and/or name and/or driving licence number have not been mentioned and as a result, his identification is impossible.	Driver Undertaking		1.200 €	
		Annex d), 18	The driver did not establish a particular sheet (replacement or spare sheet) in accordance with the prescriptions: indications related to time periods and/or name and/or driving licence number have not been mentioned and as a result, his identification is impossible, and as a result, the controlling agent is unable to check whether the compulsory daily or weekly resting time has been observed during the last 24 or 48 hours, respectively.	Driver Undertaking		1.600 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex d), 19	The driver did not establish a particular sheet (replacement or spare sheet) in accordance with the prescriptions: name and/or driving licence number have not been mentioned or are incomplete but his identification remains possible.	Driver Undertaking		50 €	
		Annex d), 20	Record sheets are in the vehicle while the driver has presented a certificate of absence for the same period.	Driver Undertaking		2.400 €	
		Annex d), 21	Data on record sheets have been falsified, erased or destroyed.	Driver Undertaking		2.400 €	
		Annex d), 22	In case of regular transport of persons, as envisaged in art. 16 of Regulation 561/2006, there is no record extracts and/or copies of the service schedule, record sheets or printouts from the digital tachograph (in cases where transport services other than regular transport	Driver Undertaking		1.200 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			services are performed)				
		Annex d), 23	In case of regular transport of persons, as envisaged in art. 16 of Regulation 561/2006, there is no register/record in the vehicle in accordance with the provisions of the regulation cited above, so that the control of services of driver is impossible	Driver Undertaking		<b>1.200 €</b>	
		Annex d), 24	In case of regular transport of persons, as envisaged in art. 16 of Regulation 561/2006, there is no record extracts or conform extracts and as a result, the controlling agent is unable to check whether the compulsory daily or weekly resting time has been observed during the last 24 or 48 hours, respectively.	Driver Undertaking		<b>1600 €</b>	



Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex d), 25	In case of regular transport of persons, as envisaged in art. 16 of Regulation 561/2006, the record in the vehicle has not been established in accordance with the provisions of para. 2 and 3 of the regulation cited above. However, the control of the services of the driver remains possible.	Driver Undertaking		50 €	
	<a href="#">Perception immediate</a>  <a href="#">Driver's card</a>  <a href="#">RD of 19 July 2000</a>	Annex g), 1	The driver card is not valid because its validity has expired	Driver Undertaking		1.200 €	
		Annex g), 2	The driver card is not valid because it is defective or damaged and the finding of this offence is made more than 15 calendar days (or later if necessary to allow the vehicle to return to headquarters company) after its appearance	Driver Undertaking		1.200 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex g), 3	The driver holds a driver card but is unable to produce the card because it was lost or stolen, nor a declaration for a lost or stolen driver card.	Driver Undertaking		1.200 €	
		Annex g), 4	The driver holds a driver card but is unable to produce the card because it was lost or stolen and the finding of infringement is made more than 15 calendar days (or later if the necessary to allow the vehicle to return to company headquarters) after the loss or theft.	Driver Undertaking		1.200 €	
		Annex g), 5	The driver holds a driver card but he does not have it with him in the vehicle.	Driver Undertaking		1.200 €	
		Annex g), 6	The driver refuses to present his driver card during a control procedure	Driver Undertaking		2.400 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex g), 7	The driver has fraudulently used the card: (1) by using or possessing a driver card of another person; (2) by alternately using two or more driving cards assigned to different drivers; (3) by using a card that has been reported lost or stolen; (4) by alternately using several valid driver cards that he owns; (5) by using a false or forged card or a card with recorded data that were inaccessible or destroyed.	Driver Undertaking		2.400 €	
		Annex f), 1	The driver card is not valid because its validity has expired	Driver Undertaking		1.200 €	
		Annex f), 2	The driver card is not valid because it is defective or damaged and the finding of this offence is made more than 15 calendar days (or later if necessary to allow the vehicle to return to headquarters company)	Driver Undertaking		1.200 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			after its appearance				
		Annex f), 3	The driver card is in the vehicle but not in the recording equipment	Driver Undertaking		1.200 €	
		Annex f), 4	Without any valid reason, the driver card has been removed from the recording equipment before the end of the work day while the vehicle is still in use,	Driver Undertaking		1.200 €	
		Annex f), 5	Driver card is in the hands of the driver, in the vehicle but has been removed from the recording equipment, without any valid reason, before the end of the work day, while the vehicle is not moving, and that there is no reason to remove the card from the recording equipment in accordance with article 15, para. 2 of Regulation 3821/85	Driver Undertaking		50 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex f), 6	The driver does not hold a driver card while the vehicle or transport has not been exempted from the use of tachograph	Driver Undertaking		1.200 €	
		Annex f), 7	The driver holds a driver card but is unable to produce the card because it was lost or stolen, nor a declaration for a lost or stolen driver card.	Driver Undertaking		1.200 €	
		Annex f), 8	The driver holds a driver card but is unable to produce the card because it was lost or stolen and the finding of infringement is made more than 15 calendar days (or later if the necessary to allow the vehicle to return to company headquarters) after the loss or theft.	Driver Undertaking		1.200 €	
		Annex f), 9	The driver holds a driver card but he does not have it with him in the vehicle.	Driver Undertaking		1.200 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex f), 10	The driver refuses to present his driver card during a control procedure	Driver Undertaking		2.400 €	
		Annex f), 11	The driver has fraudulently used the card: (1) by using or possessing a driver card of another person; (2) by alternately using two or more driving cards assigned to different drivers; (3) by using a card that has been reported lost or stolen; (4) by alternately using several valid driver cards that he owns; (5) by using a false or forged card or a card with recorded data that were inaccessible or destroyed.	Driver Undertaking		2.400 €	
	<u>Perception immediate</u>		<i>Where the driver card is damaged or performs poorly or where the driver is not in the possession of the driver card (as a result of theft or loss), and as a consequence:</i>				
	<u>Production of information by means of digital tachograph</u>						

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<a href="#">RD of 19 July 2000</a>	Annex h), 1	The driver is unable to produce records or printouts through the digital tachograph and/or the driver failed to mention on the printouts: the data not recorded by the tachograph, his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) for the period that follows the last weekly rest period that he took.	Driver Undertaking		1.200 €	
		Annex h), 2	The driver is unable to produce records or printouts through the digital tachograph and/or the driver failed to mention on the printouts: the data not recorded by the tachograph, his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) and, the controlling agent is unable to check whether the obligation related to	Driver Undertaking		1.600 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			daily or weekly resting time has been observed during the last 24 or 48 hours.				
		Annex h), 3	The driver is unable to produce records or printouts through the digital tachograph and/or the driver failed to mention on the printouts: the data not recorded by the tachograph, his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) for the period that precedes the last weekly rest period that he took.	Driver Undertaking		600 €	
		Annex h), 4	The printouts produced by the digital tachograph have become illegible as result of the driver's carelessness.	Driver Undertaking		1.200 €	
			<i>Where a driver has his normal residence in a non-EU country but which is a contractual party to the AETR Agreement:</i>				



Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex h), 5	Where a driver who is not in possession of his driver card because it has yet to be issued by the competent authorities of his home country, is driving a vehicle registered in a non-EU country but member to the AETR Agreement and which is equipped with a digital tacograph, and is unable to present or produce printouts recorded by the digital tacograph and/or has failed to mention on the printouts his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) for the on-going week and the last driving day of the preceding week.	Driver Undertaking		1.200 €	
		Annex h), 6	Where a driver who is not in possession of his driver card because it has yet to be issued by the competent authorities of his	Driver Undertaking		1.600 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			home country, is driving a vehicle registered in a non-EU country but member to the AETR Agreement and which is equipped with a digital tacograph, and is unable to present or produce printouts recorded by the digital tacograph and/or has failed to mention on the printouts his name and number of his driver's licence or of his driver card (if the identification of the driver is impossible) for the on-going week and the last driving day of the preceding week and, the controlling agent is unable to check whether the obligation related to daily or weekly resting time has been observed during the last 24 or 48 hours, respectively.				
		Annex h), 7	The driver refuses to present the data recorded through the digital tacograph	Driver Undertaking		2.400 €	

Table BE 12

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			during a control procedure				
		Annex h), 8	The data recorded through the digital tachograph have been falsified, suppressed or destroyed	Driver Undertaking		2.400 €	

Table BE 13							
EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
<u>Road Package</u>							
<b>Regulation Nos.</b> <b>1071/2009/E C,</b> <b>1072/2009/E C,</b> <b>1073/2009/E C</b>	<a href="#">Law of 3 May 1999</a> <a href="#">Road Transport of Goods</a>	Article 35, para. 1, al. 1	Infringements against Article 36 of the Law of 3 May 1999:  - Obligation to hold a valid transport licence;	Driver Ordering party Freight forwarder Sender Forwarding agent		(See below)	<b>Imprisonment from 8 days to 6 months and a fine (in the amount of between 300 € and 60 000 €),</b> <b>OR</b> <b>only one of these two<sup>229</sup></b>

<sup>229</sup> As mentioned above, penal sanctions may be avoided if the transporter accepts to pay a monetary penalty (called *perception immédiate* in French) imposed by controlling agents during a roadside check.

Table BE 13

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			- Respecting delays related to the honorability and the professional capacity; - Permanent and effective direction and management of the company's activities	Undertaking Manager Undertaking			
	<a href="#">Law of 3 May 1999 Road Transport of Goods</a>	Article 35, para. 2	Where the offender who has already received a final sentence for an offence, commits within a period of 2 years from when the previous sentence expired the same offence	Driver Undertaking			<b>The minimum fine is two times that provided by the regulation punishing the offence.</b>
	<a href="#">Decree Law of 30 December 1946 Road Passengers Transport</a>	Article 30					
	<a href="#">Law of 3 May 1999 Road Transport of Goods</a>	Article 35, para. 3 and 4	Transport of goods performed by means of a vehicle not covered by a transport licence	Driver Undertaking			<b>Confiscation or temporary immobilisation of</b>

Table BE 13

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							the vehicle ordered by the judge
	<a href="#"><u>Decree Law of 30 December 1946 Road Passengers Transport</u></a>	Article 30	Offences committed against the rules on road passenger transport, including the exploitation of passenger transport services without holding the required authorisation in order to do so.	Driver Ordering party Freight forwarder Sender Forwarding agent		(See below)	Imprisonment sentence of a period varying between 8 days and 3 months and a fine (in the amount of between 26 € and 10 000 €)

Table BE 13

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							<b>OR only one of these two<sup>230</sup>.</b>
	<a href="#">Belgian Penal Code</a>	Chapter IV, Art. 196 -214 (Offence of forgery)	Falsification of transport documents	Driver Undertaking			<b>The penalty either includes an imprisonment sentence and/or a fine or only one of these two.</b>
	<a href="#">Perception immediate</a> <a href="#">Transport Licences for road</a>	Annex 1, a), 1.	No transport licence is present in the vehicle	Driver Undertaking		<b>900 €</b>	

<sup>230</sup> As mentioned above, penal sanctions may be avoided if the transporter accepts to pay a monetary penalty (called *perception immédiate* in French) imposed by controlling agents during a roadside check.

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<a href="#">transport of goods</a>  <a href="#">RD of 19 July 2000</a>	Annex 1, a), 1a.	No transport licence is present in the vehicle but the existence of the licence was immediately proven	Driver Undertaking		50 €	
		Annex 1, a), 2.	The presented transport licence is used for a vehicle other than the one indicated on the licence (in case of Belgian national and Community licence)	Driver Undertaking		900 €	
		Annex 1, a), 2a.	The presented transport licence is used for a vehicle other than the one indicated on the licence (in case of Belgian national and Community licence), but the existence of the licence for the controlled vehicle is immediately proven.	Driver Undertaking		50 €	



**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, a), 3.	The presented transport licence is used for a replacement vehicle in violation of the corresponding procedure (in case of Belgian national and Community licence).	Driver Undertaking		50 €	
		Annex 1, a), 4.	The presented transport licence is used for a hired or leased vehicle, but no rental or leasing contract can be presented	Driver Undertaking		50 €	
		Annex 1, a), 5.	The presented transport licence (Belgian national or Community licence) contains incomplete or incorrect records	Driver Undertaking		50 €	
		Annex 1, a), 6.	The presented transport licence contains illegible records which make identification/control impossible or is not controllable as a	Driver Undertaking		50 €	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			result of lamination				
		Annex 1, a), 6a.	The presented transport licence contains illegible records which make identification/control impossible or is not controllable as a result of lamination but the existence of the licence is immediately proven	Driver Undertaking		50 €	
		Annex 1, a), 7.	The presented transport licence is in the possession of a person other than the person indicated on the document	Driver Undertaking		900 €	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, a), 8.	The presented transport licence is not valid because of overload or size violation	Driver Undertaking		<b>The fine is determined in accordance with the percentage of excess of sizes and weights</b>	
		Annex 1, a), 9.	The presented transport licence is the original of the national or Community licence instead of the copy	Driver Undertaking		<b>900 €</b>	
		Annex 1, a), 9a.	The presented transport licence is the original of the national or Community licence instead of a copy but the existence of the copy of the licence is immediately proven	Driver Undertaking		<b>50 €</b>	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, a), 10.	The presented extra-Community transport licence and/or the attached transport report was/were not or not completely filled out. (3)	Driver Undertaking		<b>900 €</b>	
		Annex 1, a), 11.	The presented ECMT licence is used for more than the permitted number of trips with cargo	Driver Undertaking		<b>1800 €</b>	
		Annex 1, a), 12.	The controlled vehicle is performing an illegal cabotage transport	Driver Undertaking		<b>1800 €</b>	
		Annex 1, a), 13.	The presented Community transport licence is invalid because of the absence of a driver's certificate	Driver Undertaking		<b>900 €</b>	
		Annex 1, a), 14.	The presented transport licence is false or the data indicated on it have been falsified.	Driver Undertaking		<b>1800 €</b>	

Table BE 13

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, a), 15.	The presented driver's certificate is false or the data indicated on it have been falsified	Driver Undertaking		1800 €	
		Annex 1, a), 16.	The driver refuses to submit the transport licence for control purposes	Driver Undertaking		1800 €	
		Annex 1, a), 17.	The driver refuses to submit the driver's certificate for control purposes	Driver Undertaking		1800 €	
	<a href="#">Perception immediate</a>  <a href="#">Transport Licence for passengers road transport</a>  <a href="#">RD of 19 July 2000</a>	Annex 1, i), 1.	<b>Vehicles used by an undertaking established in the Kingdom of Belgium</b>				
		Annex 1, i), 1.1	No valid operating permit in the vehicle that carries out occasional services	Driver Undertaking		50 €	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, i), 1.2	No Community licence in the vehicle that carries out occasional services	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 1.3	Neither the waybill, nor any copy thereof in the vehicle that carries out occasional services is valid on the occasion of a national occasional service.	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 1.4	The waybill in the vehicle that carries out occasional services does not mention the minimum indications prescribed by article 11.3 of Regulation 684/92	Driver Undertaking		<b>50 €</b>	
		Annex 1, i), 1.5	The waybill in the vehicle that carries out occasional services does not mention other indications than those prescribed by article 11.3 of	Driver Undertaking		<b>50 €</b>	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			Regulation 684/92 (vehicle registration number, name(s) of driver(s), number of passengers)				
		Annex 1, i), 1.6	No valid EU permit in the vehicle that carries out international regular services within the EU	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 1.7	No valid permit in the vehicle that carries out international regular services to non-EU countries or to Switzerland	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 1.8	No operating permit, Community licence, waybill (or a copy thereof), agreement or autorisation for international regular transport in vehicle that carries out transport services mentioned at points 1.1 to 1.7 but the existence of the	Driver Undertaking		<b>50 €</b>	

Table BE 13

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			document has immediately been proved.				
		Annex 1, i), 2.	<b>Vehicles registered in another EU Member State or in Switzerland</b>	Driver Undertaking			
		Annex 1, i), 2.1	No Community licence or any similar swiss document in the vehicle that carries out international occasional/regular services or occasional cabotage	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 2.2	No valid permit in the vehicle that carries out international regular services	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 2.3	No valid waybill in the vehicle that carries out occasional services	Driver Undertaking		<b>900 €</b>	



**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
				ng			
		Annex 1, i), 2.4	The waybill in the vehicle that carries out occasional services does not mention the minimum indications prescribed by article 11.3 of Regulation 684/92	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 2.5	The waybill in the vehicle that carries out occasional services does not mention other indications than those prescribed by article 11.3 of Regulation 684/92 (vehicle registration number, name(s) of driver(s), number of passengers)	Driver Undertaking		<b>50 €</b>	
		Annex 1, i), 2.6	No valid waybill in the vehicle that carries out occasional services in the	Driver Undertaking		<b>900 €</b>	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			form of cabotage	ng			
		Annex 1, i), 2.7	The waybill in the vehicle that carries out occasional services in the form of cabotage does not mention the indications prescribed by article 6.2 of Regulation 12/98	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 2.8	The waybill in the vehicle that carries out occasional services in the form of Cabotage does not mention other indications than those prescribed by article 6.2 of Regulation 12/98 (vehicle registration number, name(s) of driver(s), number of passengers)	Driver Undertaking		<b>50 €</b>	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, i), 2.9	No valid statement or certificate in the vehicle in the occasion of a transport executed for its own account and which is related to an international regular services or an occasional service	Driver Undertaking		900 €	
		Annex 1, i), 2.10	No Community licence, autorisation for international regular transport, waybill or certificate in vehicle that carries out transport services mentionned at points 2.1 to 2.9 but the existence of the document has immediately proved	Driver Undertaking		50 €	
		Annex 1, i), 3	<i>Vehicles not registered in any EU Member States but registered in Switzerland</i>				

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, i), 3.1	No valid permit in the vehicle that carries out international regular services or occasional services and for which it has not been exempt from such permit	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 3.2	No valid waybill in the vehicle that carries out occasional services exempted from the permit	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 3.3	No valid permit in the vehicle that performs international shuttle services subject to authorisation	Driver Undertaking		<b>900 €</b>	
		Annex 1, i), 3.4	No valid waybill in the vehicle that performs international shuttle services not subject to any authorisation	Driver Undertaking		<b>900 €</b>	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, i), 3.5	The vehicle is performing occasional services in the form of cabotage in Belgium	Driver Undertaking		1800 €	
		Annex 1, i), 3.6	No authorisation or waybill in vehicle that carries out transport services mentioned at points 3.1 to 3.4, but the existence of the document has immediately proved	Driver Undertaking		50 €	
		<i>Annex 1, i), 4</i>	The autorisation, certificate or waybill: - has been falsified or rendered illegible; - contains falsified data or rendered illegible; - <i>is being used fraudulently.</i>				
		<i>Annex 1, i), 4.1</i>	<i>Vehicles used by an undertaking established in the Kingdom of Belgium</i>				

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, i), 4.1.1	The operating permit during an occasional service	Driver Undertaking		100 €	
		Annex 1, i), 4.1.2	The Community Licence during an occasional service	Driver Undertaking		1800 €	
		Annex 1, i), 4.1.3	The waybill or any copy thereof during a national occasional service	Driver Undertaking		1800 €	
		Annex 1, i), 4.1.4	The authorisation during an international regular service	Driver Undertaking		1800 €	
		<i>Annex 1, i), 4.2</i>	<i>Vehicles registered in another EU Member State or in Switzerland</i>				
		Annex 1, i), 4.2.1	Community licence or any similar Swiss permit	Driver Undertaking		1800 €	

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, i), 4.2.2	Authorisation during an international regular service or waybill during occasional service	Driver Undertaking		1800 €	
		Annex 1, i), 4.2.3	Certificate for transport performed for its own account, as mentioned in point 2.9	Driver Undertaking		1800 €	
		<i>Annex 1, i), 4.3</i>	<i>Vehicles not registered in any EU Member States but registered in Switzerland</i>				
		Annex 1, i), 4.3.1	Authorisation or waybill according to the nature of the transport service performed, as mentioned in point 3	Driver Undertaking		1800 €	
		Annex 1, i), 5	The driver refuses to produce the authorisation, certificate or waybill for control purposes				
		<i>Annex 1, i), 5.1</i>	<i>Vehicles used by an undertaking established in the Kingdom of</i>				

**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			<i>Belgium</i>				
		Annex 1, i), 5.1.1	Operating permit during occasional services	Driver Undertaking		<b>100 €</b>	
		Annex 1, i), 5.1.2	Community licence during an occasional service	Driver Undertaking		<b>1800 €</b>	
		Annex 1, i), 5.1.3	Waybill or copy thereof during a national occasional service	Driver Undertaking		<b>1800 €</b>	
		Annex 1, i), 5.1.4	Authorisation during an international regular service	Driver Undertaking		<b>1800 €</b>	
		<i>Annex 1, i), 5.2</i>	<i>Vehicles registered in another EU Member State or in Switzerland</i>				



**Table BE 13**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1, i), 5.2.1	Community licence or any similar Swiss permit	Driver Undertaking		1800 €	
		Annex 1, i), 5.2.2	Authorisation during an international regular service or waybill during occasional service	Driver Undertaking		1800 €	
		Annex 1, i), 5.2.3	Certificate for transport performed for its own account, as mentioned in point 2.9	Driver Undertaking		1800 €	
		<i>Annex 1, i), 5.3</i>	<i>Vehicles not registered in any EU Member States but registered in Switzerland</i>				
		Annex 1, i), 5.3.1	Authorisation or waybill according to the nature of the transport service performed, as mentioned in point 3	Driver Undertaking		1800 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
<u>Rules and Standards of Vehicles and Load and Necessary Licences</u>							
<b>I</b> Directive 2008/68/EC (Partial implementation)	<a href="#">Law of 18 February 1969</a>	Art. 2	Infringements against the rules provided for in RD of 5 July 2006 (designation and professional competences of safety advisors) for goods Class 1 and 7 of Annex A of the ADR	Undertaking			<b>Imprisonment from 8 days to 6 months and a fine (in the amount of between 300 € and 60 000 €), OR only one of these two.</b>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<a href="#">Law of 28 May 1956</a>	Art. 5 to 9	Infringements against the rules provided for in RD of 5 July 2006 (designation and professional competences of safety advisors) for goods Class 1 of Annex A of the ADR :	Undertaking			<p><b>Imprisonment sentence of a period varying between 15 days and 2 years and a fine in the amount varying from 600 € to 6 000 € or only one of these two.</b></p> <p><b>+ Confiscation of the substances, mixtures thereof and</b></p>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							<b>machines.</b>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			- with the intent to commit a crime				<p><b>A time or life imprisonment and a fine in the amount varying from 600 € to 24 000 € or only one of these two.</b></p> <p><b>+ Confiscation of the substances, mixtures thereof and machines.</b></p>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			- with the intent to commit a misdemeanour				<b>Imprisonment sentence of a period varying between 1 month and 3 years and a fine in the amount varying from 600 € to 12 000 € or only one of these two.</b>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			- If the infringement has caused physical damages to a third party due to negligence				<b>Imprisonment sentence of a period varying between 1 month and 2 years and a fine in the amount varying from 600 € to 1 000 € or only one of these two</b>
			- If the infringement has caused the death of a third party due to negligence				<b>Imprisonment sentence of a period varying between 6 months and 5</b>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							years and a fine in the amount varying from 600 € to 3 600 €
	<a href="#">Law of 15 April 1994 (protection of the population and of the environment)</a>	Art. 49 and 50	Infringements pertaining to Class 7 of Annex A of the ADR.	Driver Undertaking			Imprisonment sentence of a period varying between 3 months and 2 years and a fine in the amount varying from 6 000 € to 6 000 000 € only one



Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							of these two
	<a href="#">RD of 30 September 2005</a>	Art. 3	Infringement against article 48 (vehicle not equipped with the orange panel) and/or article 48bis (use public roads showing the C24a, C24b or C24c signals which is prohibited for the transport of dangerous goods) of RD of 1 December 1975 are offences of 3 <sup>rd</sup> degree	Driver		<b>OR 150 €</b>	<b>Fine in the amount varying from 165 € to 2 750 € and a possible deprivation of the right to drive for a period varying between 8 days and 5 years. In the event of recidivism, the fine is</b>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							<b>doubled.</b>
	<u><i>Perception Immédiate</i></u>						
	<u>Transport and identification documents</u>	Annex of RD 11 June 2011, point 1.1	No indication of the dangerous nature of the goods or substances carried.	Driver Undertaking		<b>1.500 €</b>	
	<u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 1.2	Impossibility to identify the goods due to missing data or contradictory data	Driver Undertaking		<b>500 €</b>	
		Annex of RD 11 June 2011, point 1.3	Printouts of the data are not available	Driver Undertaking		<b>250 €</b>	
		Annex of RD 11 June 2011, point 1.4	Quantities are missing, incomplete or insufficient	Driver Undertaking		<b>250 €</b>	
		Annex of RD 11 June 2011, point	The mention of 'dangerous for the environment' is missing or illegible	Driver Undertaking		<b>50 €</b>	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		1.5					
		Annex of RD 11 June 2011, point 1.6	Other elements are missing	Driver Undertaking		50 €	
		Annex of RD 11 June 2011, point 1.7	Crew member does not have identification document with his identification picture	Driver Undertaking		50 €	
	<a href="#">Authorisation certificate</a>  <a href="#">RD of 24 March 1997 as lastly amended by RD of 11 June 2011</a>	Annex of RD 11 June 2011, point 2.1	Inexisting	Driver Undertaking		1.000 €	
		Annex of RD 11 June 2011, point 2.2	Expired or not valid/applicable for the goods carried	Driver Undertaking		1.000 €	
		Annex of RD 11 June 2011, point	Absent but valid	Driver Undertaking		50 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		2.3					
	<u>Driver certificate</u>  <u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 3.1	Inexisting	Driver Undertaking		1.000 €	
		Annex of RD 11 June 2011, point 3.2	Expired or not valid	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 3.3	Absent but valid	Driver Undertaking Driver Undertaking		50 €	
	<u>Writing instructions</u>  <u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 4.1	Absent, illegible or incomplete	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point	Not in the required languages	Driver Undertaking		250 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<u>June 2011</u>	4.2					
		Annex of RD 11 June 2011, point 4.3	Not at the regulated place	Driver Undertaking		50 €	
		Annex of RD 11 June 2011, point 4.4	Other infringements	Driver Undertaking		50 €	
	<u>Loading certificate</u>	Annex of RD 11 June 2011, point 5.1	Absent, illegible or incomplete	Driver Undertaking		500 €	
	<u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 5.2	Printouts of the data are not available	Driver Undertaking		250 €	
	<u>Signaling - vehicle / tank</u>	Annex of RD 11 June 2011, point	No signaling of the vehicle	Driver Undertaking		1.500 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	6.1					
		Annex of RD 11 June 2011, point 6.2	The number UN on the orange plates does not match to the data provided on transport documents	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 6.3	Wrong hazard codes on orange plates	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 6.4	Insufficient or poor signaling = one or more orange plates missing	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 6.5	Insufficient or poor signaling = one or more big tags missing			250 €	
		Annex of RD 11 June 2011, point 6.6	One or more big tags do not match with those mentioned in column 5 of table A of the ADR	Driver Undertaking		250 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 6.7	Vehicle signaled by orange plates and, possibly big tags not or insufficiently hidden in the case of non ADR transport	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 6.8	Other non-conformity related to big tags (e.g. dimensions)	Driver Undertaking		50 €	
		Annex of RD 11 June 2011, point 6.9	Other non-conformity related to orange panels	Driver Undertaking		50 €	
	<u>Parcels</u>  <u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 7.1	<i>Marking and mark</i>				
		Annex of RD 11 June 2011, point 7.1.1	The identification number does not match with the data provided on the transport document	Driver Undertaking		500 €	

**Table BE 14**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 7.1.2	UN marking is missing (i.e. packaging not tested)	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 7.1.3	use of non-authorized packaging	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 7.1.4	the name of the gas is missing or wrong	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 7.1.5	Identification number is missing	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 7.1.6	the date of periodic inspection of the gas container has expired	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point	the date of periodic inspection of the IBC has expired	Driver Undertaking		250 €	



Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		7.1.7					
		Annex of RD 11 June 2011, point 7.1.8	the use period of certain packaging or IBC has expired	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 7.1.9	"Over-packaging" is missing or not in the requested language and / or UN numbers, hazard labels are missing when those applied on the packaging are not visible	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 7.1.10	the marking of 'dangerous for the environment' is missing or illegible	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 7.1.11	other non-conformities related to mark and marking	Driver Undertaking		50 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 7.2	<i>Labelling</i>				
		Annex of RD 11 June 2011, point 7.2.1	one or more labels are missing	Driver Undertaking Driver Undertaking		<b>250 €</b>	
		Annex of RD 11 June 2011, point 7.2.2	one or more labels do not match with those mentioned in column 5 of table A of the ADR	Driver Undertaking		<b>250 €</b>	
		Annex of RD 11 June 2011, point 7.2.3	other non-conformities related to labeling	Driver Undertaking		<b>50 €</b>	
		Annex of RD 11 June 2011, point 7.3	<i>Others</i>				
		Annex of RD 11	the package is not closed	Driver		<b>1.500 €</b>	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		June 2011, point 7.3.1		Undertaking			
		Annex of RD 11 June 2011, point 7.3.2	leakage on the packaging	Driver Undertaking		<b>1.500 €</b>	
		Annex of RD 11 June 2011, point 7.3.3	quantity not respected or deformation of the packaging endangering the stability or safety	Driver Undertaking		<b>1.000 €</b>	
		Annex of RD 11 June 2011, point 7.3.4	Non-compliance with the common rules on packaging	Driver Undertaking		<b>1.000 €</b>	
		Annex of RD 11 June 2011, point 7.3.5	Non-compliance with the common rules on loading	Driver Undertaking		<b>1.000 €</b>	
		Annex of RD 11 June 2011, point 7.3.6	Non-compliance with the common rules on loading (consumer products and animal foods)	Driver Undertaking		<b>1.000 €</b>	

**Table BE 14**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 7.3.7	Unsecured Cargo on the vehicle	Driver Undertaking		<b>1.000 €</b>	
		Annex of RD 11 June 2011, point 7.3.8	Gas cylinder valves not in conformity with the standards	Driver Undertaking		<b>500 €</b>	
		Annex of RD 11 June 2011, point 7.3.9	Cargo insufficiently secured	Driver Undertaking		<b>500 €</b>	
		Annex of RD 11 June 2011, point 7.3.10	Cargo container insufficiently secured to the transport vehicle	Driver Undertaking		<b>500 €</b>	
		Annex of RD 11 June 2011, point 7.3.11	Packaging is damaged	Driver Undertaking		<b>250 €</b>	
		Annex of RD 11 June 2011, point	Other non-conformity	Driver Undertaking		<b>50 €</b>	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		7.3.12					
	<u>Tanks</u>  <u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 8.1	<i>Labeling</i>				
		Annex of RD 11 June 2011, point 8.1.1	Marking is missing or incomplete	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 8.1.2	The periodic date of tank inspection has expired	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 8.2	<i>Others</i>				
		Annex of RD 11 June 2011, point 8.2.1	Non authorised substances in the tank	Driver Undertaking		1.500 €	

**Table BE 14**

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 8.2.2	Unclosed tank or leakage to tank or its related equipment	Driver Undertaking		<b>1.500 €</b>	
		Annex of RD 11 June 2011, point 8.2.3	Quantity not respected	Driver Undertaking		<b>1.000 €</b>	
		Annex of RD 11 June 2011, point 8.2.4	Rule on partial loading 20 % - 80 % not respected	Driver Undertaking		<b>1.000 €</b>	
		Annex of RD 11 June 2011, point 8.2.5	Cargo container non in conformity with the standards of the Container code or with the special provisions required for the transported goods	Driver Undertaking		<b>500 €</b>	
		Annex of RD 11 June 2011, point 8.2.6	Container is insufficiently secured to the frames	Driver Undertaking		<b>500 €</b>	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 8.2.7	Exceptional inspection not performed after repair, modification or accident	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 8.2.8	Tank valves unclosed	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 8.2.9	Other non conformity to the tank	Driver Undertaking		50 €	
	<u>Bulk RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 9.1	Unauthorised substances <i>in bulk</i>	Driver Undertaking		1.500 €	
		Annex of RD 11 June 2011, point	leak	Driver Undertaking		1.500 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		9.2					
		Annex of RD 11 June 2011, point 9.3	dangerous goods not allowed in this type of vehicle or container	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 9.4	Unbalanced load on the loading platform	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 9.5	Container structurally in a bad state	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 9.6	Container insufficiently attached to the vehicle	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 9.7	Non compliance with special provisions	Driver Undertaking		250 €	



Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
	<u>Transport bans</u>  <u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 10.1	dangerous goods not allowed for transport	Driver Undertaking		1.500 €	
	<u>Equipment</u>  <u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 11.1	Fire extinguisher, with insufficient capacity, inoperative, not in conformity, non-appropriate to all classes of inflammability or absent	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 11.2	the mask for an emergency evacuation is missing	Driver Undertaking		250 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 11.3	for every other missing element than the one mentioned under point 11.2	Driver Undertaking		50 €	
		Annex of RD 11 June 2011, point 11.4	Other non conformity related to the fire extinguisher	Driver Undertaking		50 €	
	<a href="#">Particular marking</a>  <a href="#">RD of 24 March 1997 as lastly amended by RD of 11 June 2011</a>	Annex of RD 11 June 2011, point 12.1	marking is missing for elevated temperature substances or for goods/substances which are dangerous for the environment or illegible marking	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 12.2	illegible or no sign of warning for vehicle or containers transported under fumigation	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 12.3	marking is missing at the back of the container	Driver Undertaking		50 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 12.4	Other non conformity	Driver Undertaking		50 €	
	<u>Exemptions</u>  <u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 13.1	Prescriptions under chapter 3.4 or 3.5 are not observed	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 13.2	Do not satisfy the conditions for a total exemption	Driver Undertaking		250 €	
	<u>Other prescriptions</u>  <u>RD of 24 March 1997 as lastly amended by RD of 11 June 2011</u>	Annex of RD 11 June 2011, point 14.1	Limitations related to quantities transported are not observed	Driver Undertaking		1.000 €	
		Annex of RD 11 June 2011, point 14.2	Smoking ban is not observed or non conformity of the lightening apparatus	Driver Undertaking		500 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 14.3	the electrical or braking equipment is not in conformity or the connectors are not connected between the motor vehicle and the trailer	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 14.4	Dangerous wastes of packaging group I, on the outside of the tank or container or the vehicle / container (bulk)	Driver Undertaking		500 €	
		Annex of RD 11 June 2011, point 14.5	Dangerous wastes of packaging group II ou III, on the outside of the tank or container or the vehicle / container (bulk)	Driver Undertaking		250 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 14.6	The cleaning of the vehicle or container is not performed (bulk transport or caused by the leak of a package)	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 14.7	Fuel tank not in conformity	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 14.8	Definition of transport unit not in conformity	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 14.9	no supervision or monitoring of the vehicle	Driver Undertaking		250 €	
		Annex of RD 11 June 2011, point 14.10	non compliance with the special transport provisions	Driver Undertaking		250 €	

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex of RD 11 June 2011, point 14.11	Non compliance with the definition of "crew"	Driver Undertaking		50 €	
		Annex of RD 11 June 2011, point 14.12	Non compliance with special provisions applicable to particular substances or goods	Driver Undertaking Driver Undertaking		50 €	
		Annex of RD 11 June 2011, point 14.13	other non compliance related to the vehicle	Driver Undertaking		50 €	
<b>Council Directive 96/53/EC</b>	<a href="#"><u>RD of 19 July 2000 (perception immediate)</u></a>	Annex 1), Appendix 1	As a result of load, the authorised maximum weight and maximum dimensions have not been observed	Driver Undertaking	<b>Immobilisation of the vehicle (art. 37)</b>	<b>From 60 € up to 1.240 €<sup>231</sup></b>	

<sup>231</sup>The sanction will be defined in accordance to the number of hours exceeding the daily driving times and the uninterrupted number of hours of rest period for the concerned period.

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Annex 1), Appendix 1	As a result of adjustments made to the vehicle, the authorised maximum weight and maximum dimensions have not been observed	Driver Undertaking	Immobilisation of the vehicle (art. 37)	From 82,5 € up to 1.705 € <sup>232</sup>	
<b>Directive 2009/40/EC</b>	<a href="#">Law of 21 June 1985</a>	Article 4, para. 1	Offences committed against the technical prescriptions contained in the RD of 15 March 1968	Driver Undertaking			<b>Imprisonment sentence of a period varying between 8 days and 3 months and a fine (in the amount of between 60 € and 60 000 €)</b>

<sup>232</sup> The sanction will be defined in accordance to the number of hours exceeding the daily driving times and the uninterrupted number of hours of rest period for the concerned period.

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							<b>OR only one of these two.</b>
		Article 4, para. 1	Recidivism	Driver Undertaking			<b>The minimum fine is two times that provided by the regulation punishing the offence.</b>
	<a href="#"><i>Perception Immédiate</i></a> <a href="#">RD of 12 September 2011</a>	<b>Annex 2, 1a</b>	Driving a vehicle without a valid roadworthiness certificate or with an expired certificate and for which roadworthiness tests are mandatory	Driver Undertaking		<b>900 €</b>	
		<b>Annex 2, 1b</b>	Driving a vehicle without a roadworthiness certificate but its	Driver Undertaking		<b>50 €</b>	



Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
			existence has immediately been proved				
		<b>Annex 2, 1c</b>	Driving a vehicle with a fake roadworthiness certificate	Driver Undertaking		<b>1800 €</b>	
	<a href="#">Belgian Penal Code</a>	Chapter IV, Art. 196-214 (Offence of forgery)	Driving a vehicle with a fake roadworthiness certificate	Driver Undertaking		See below	<b>The penalty either includes an imprisonment sentence and/or fine</b>
<b>Directive 2006/126/EC</b>	<a href="#">RD of 16 March 1968</a>	<b>Art. 30, para. 1, 1°</b>	Transport of goods or of people carried out by a driver who has no driving licence	Driver Undertaking			<b>The penalty may includes: a fine from 200 € up to 2000 € +</b>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Art. 38, para. 1, 5°					<p>Deprivation of the right to drive a motor vehicle (ordered by the Judge) for a period of at least 8 days up to 5 years.</p> <p>In the event of recidivism within the 3 years</p>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Art. 50					<p>preceding the infringement, the deprivation of the right to drive is ordered for a period of at least 5 years OR permanently.</p> <p>+ Immobilisation of the vehicle</p>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
		Art. 30, para. 1, 3°	Transport of goods or of people carried out by a driver who has a fake driving licence	Driver Undertaking			a fine from 200 € up to 2000 € + - Deprivation of the right to drive a motor vehicle (ordered by the Judge) for a period of at least 8 days up to 5 years. In the event of recidivism within the 3 years preceding the infringement,

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							for a period of at least 5 years OR permanently. (Art. 38, para. 1, 5°)
	<a href="#">Belgian Penal Code</a>	Art. 196 to 210 (Offence of forgery)	Transport of goods or of people carried out by a driver who has a fake driving licence	Driver Undertaking			The penalty either includes an imprisonment term and/or a fine
	<a href="#">RD of 16 March 1968</a>	Art. 30, para. 3	Transport of goods or of people carried out by a driver who has a revoked driving licence	Driver Undertaking			The penalty may either include: Imprisonment for a period of

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							at least 3 months up to 1 year and a fine from 200 € up to 2000 € OR only one of these two + A disqualification from driving a motor vehicle for a period of at least 3 months and max. 5 years OR permanently,

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							<p>when the driving licence has been revoked by application of art. 55 of Law dated 16 March 1968.</p> <p>+ Immobilisation of the vehicle (Art. 51, 3°)</p>
		Art. 30, para 4	Recidivism	Driver Undertaking			In the event of recidivism, penalties are doubled if the infringement

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							occurs within the same year of the prior offence
		Art. 31	Transport of people or of goods carried out by a driver driving a vehicle falling in a category not covered by the driving licence	Driver Undertaking			From 10 € up to 500 €
		Art. 30, para. 1, 4°	Transport of people or of goods carried out by a driver driving a vehicle in conditions non authorised in the driving licence	Driver Undertaking			The penalty may either include: From 200 € up to 2000 € for non-compliance



Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							<p>with art. 23, para. 1, 3° (medical examination and physical disabilities) + - Deprivation of the right to drive a motor vehicle (ordered by the Judge) either permanently OR for a period equal to the incapacity</p>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							<b>time (Art. 42)</b>  + - <b>Immobilisation of the vehicle (Art. 50)</b>
		Art. 30, para. 2, 1°					<b>From 50 € up to 500 € for non-compliance with art. 23, para. 1, 2° and 4° (theory and practical)</b>

Table BE 14

EU Legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Penalty		
					Administrative sanction(s)	Perception Immédiate	Criminal sanction(s)
							driving tests)
		Art. 32	Any person who let the a driver having no driving licence or no adequate driving licence drive the motor vehicle	Driver Undertaking			From 100 € up to 1000 €

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

**Table BE 15**

**Infringements of commercial road transport legislation**

<b>Type of infringement(s) and Article of reference in national legislation</b>  <b>Corresponding EU legislation</b>	<b>Criminal sanction</b>	<b>Is it dissuasive?</b>
Please note that pursuant to Belgian law most of the infringements on commercial road transport are sanctioned with criminal sanctions with some exceptions (see above)		

#### **4.7 Sanctions which could be considered substantially criminal in the Belgian legal system**

Please note that all the infringements of the rules on commercial road transport are sanctioned in Belgium with criminal sanctions, therefore we could not identify infringements sanctioned with administrative sanctions that are substantially criminal sanctions.

**Table BE 16**

**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**

<b>Type of infringement and Article of reference in national legislation</b>  <b>Corresponding EU legislation</b>	<b>Administrative sanction that could be qualified as criminal sanction</b>	<b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b>	<b>Is it dissuasive?</b>
N.A.			

## 4.8 Effectiveness of the sanctions system

We received from the Belgian Government some relevant information concerning the functioning of the Belgian sanction system for infringements of the rules on commercial road transport (Annex B.1).

The tables below illustrate the number of checks at the roadside carried out in 2009 and 2010.

<b>Table BE 17</b>			
<b>CHECKS AT THE ROADSIDE 2010 Number of drivers checked at the roadside by country of registration and main type of carriage</b>			
<b>Main type of carriage</b>	<b>EU/EEA/Switzerland</b>		<b>Third Countries</b>
	<b>Nationals</b>	<b>Non-nationals</b>	
<b>Carriage of passengers</b>	1.032	1.998	20
<b>Carriage of goods</b>	10.861	22.330	413
<b>TOTAL:</b>	<b>11.893</b>	<b>24.328</b>	<b>433</b>

<b>Table BE 18</b>			
<b>CHECKS AT THE ROADSIDE 2009 Number of drivers checked at the roadside by country of registration and main type of carriage</b>			
<b>Main type of carriage</b>	<b>EU/EEA/Switzerland</b>		<b>Third Countries</b>
	<b>Nationals</b>	<b>Non-nationals</b>	
<b>Carriage of passengers</b>	1.033	2.217	15
<b>Carriage of goods</b>	11.977	24.672	347
<b>TOTAL:</b>	<b>13.010</b>	<b>26.889</b>	<b>362</b>

The following tables illustrate the number of offences detected at the roadside. A reading of the table shows that a decrease of the number of offences has been recorded in Belgium in 2010 compared to 2009 and that such decrease has taken place despite the fact that more divers were checked in 2010 compared to 2009.

Table BE 19							
OFFENCES - number and type of offences detected at the roadside 2010							
Article	Type of offence	Carriage of passengers			Carriage of goods		
		EU/EEA/Switzerland		Third Countries	EU/EEA/Switzerland		Third Countries
		Nationals	Non-nationals		Nationals	Non-nationals	
R 6	<b>Driving times:</b>						
	- daily limit	2	15	0	234	701	5
	- weekly limit	0	0	0	5	20	0
	- fortnightly limit	0	0	0	0	0	0
R 6	Lack of records for other work and / or availability						
R 7	Breaks in driving time (driving more than 4,5 hours without break or break too short)	0	7	0	168	247	0
R 8	<b>Rest periods:</b>						
	- daily minimum	3	17	0	155	731	5
	- weekly minimum	1	2	0	4	30	0



<b>R 10 &amp; 26</b>	<b>Driving time records:</b>							
	- 1 year for keeping data	<b>this type of offence is not applicable for road-side checks, therefore do not enter any data here</b>						
	- record sheets for the preceding 28 days							
<b>D Annex I A</b>	<b>Recording equipment:</b>							
	- incorrect functioning	0	0	0	5	4	0	
	- misuse or manipulation of the recording equipment	0	3	0	4	18	1	
							<b>Total:</b>	<b>2.387</b>

Table BE 20

## OFFENCES - number and type of offences detected at the roadside -2009

Article	Type of offence	Carriage of passengers			Carriage of goods		
		EU/EEA/Switzerland		Third Countries	EU/EEA/Switzerland		Third Countries
		Nationals	Non-nationals		Nationals	Non-nationals	
R 6	<b>Driving times:</b>						
	- daily limit	4	15	0	204	854	2
	- weekly limit	0	0	0	2	9	0
	- fortnightly limit	0	0	0	0	0	0
R 6	Lack of records for other work and / or availability	1	12	0	11	59	0
R 7	Breaks in driving time (driving more than 4,5 hours without break or break too short)	1	10	0	174	345	2
R 8	<b>Rest periods:</b>						
	- daily minimum	3	26	0	159	931	3
	- weekly minimum	0	1	0	3	25	6
R 10 &	<b>Driving time records:</b>						

26	- 1 year for keeping data	this type of offence s not applicable for road-side checks, therefore do not enter any data here					
	- record sheets for the preceding 28 days						
D Annex IA	<b>Recording equipment:</b>						
	- incorrect functioning	2	0	0	3	3	0
	- misuse or manipulation of the recording equipment	0	1	0	3	32	0
							<b>Total: 2,906</b>

The following table illustrates the number of drivers checked and number of working days checked at the premises of the undertaking. It is interesting to note that while the number of drivers checked and the number of working days checked at the premises of undertakings decreased in 2010, the number of offences detected increased.

**Table BE 21**

**Number of drivers checked and number of working days checked at the premises of undertaking 2010**

<b>Type of carriage</b>	<b>Number of drivers checked</b>	<b>Number of working days checked</b>
<b>I. Typology</b>		
<b>Carriage of passengers</b>	<b>557</b>	<b>7.345</b>
<b>Carriage of goods</b>	<b>10.735</b>	<b>215.423</b>
<b>Total:</b>	<b>11.292</b>	<b>222.768</b>
<b>II. Typology</b>		
<b>Carriage for hire or reward</b>	<b>11.292</b>	<b>222.768</b>
<b>Carriage on own account</b>	<b>548</b>	<b>12.364</b>
<b>Total:</b>	<b>11.840</b>	<b>235.132</b>

**Table BE 22**

**Number of drivers checked and number of working days checked at the premises of undertaking 2009**

<b>Type of carriage</b>	<b>Number of drivers checked</b>	<b>Number of working days checked</b>
<b>I. Typology</b>		
<b>Carriage of passengers</b>	<b>901</b>	<b>13.228</b>
<b>Carriage of goods</b>	<b>12.757</b>	<b>263.811</b>
<b>Total:</b>	<b>13.658</b>	<b>277.039</b>
<b>II. Typology</b>		
<b>Carriage for hire or reward</b>	<b>13.655</b>	<b>276.957</b>
<b>Carriage on own account</b>	<b>777</b>	<b>15.234</b>
<b>Total:</b>	<b>14.432</b>	<b>292.191</b>

The following tables illustrate the number and type of offences detected at the premises.

<b>Table BE 23</b>			
<b>OFFENCES - Number and type of offences detected at the premises 2010</b>			
<b>Article</b>	<b>Type of offence</b>	<b>Carriage of passengers</b>	<b>Carriage of goods</b>
<b>R 6</b>	<b>Driving times:</b>		
	- daily limit	15	2.796
	- weekly limit	1	84
	- fortnightly limit	0	245
<b>R 6</b>	Lack of records for other work and / or availability	25	585
<b>R 7</b>	Breaks in driving time (driving more than 4,5 hours without break or break too short)	94	4.902
<b>R 8</b>	<b>Rest periods:</b>		
	- daily minimum	50	1.880
	- weekly minimum	29	385
<b>R 10 &amp; 26</b>	Driving time records:		
	- 1 year for keeping data	28	1.097
	- record sheets for the preceding 28 days		

<b>D Annex I</b>	<b>Recording equipment:</b>		
	- incorrect functioning	0	36
	- misuse or manipulation of the recording equipment	30	599
<b>Total:</b>	<b>12.881</b>		

Table BE 24

## OFFENCES - number and type of offences detected at the premises 2009

Article	Type of offence	Carriage of passengers	Carriage of goods
<b>R 6</b>	<b>Driving times:</b>		
	- daily limit	41	2.582
	- weekly limit	1	77
	- fortnightly limit	0	16
<b>R 6</b>	Lack of records for other work and / or availability	30	609
<b>R 7</b>	Breaks in driving time (driving more than 4,5 hours without break or break too short)	64	3.209
<b>R 8</b>	<b>Rest periods:</b>		
	- daily minimum	119	1.585
	- weekly minimum	28	186
<b>R 10 &amp; 26</b>	<b>Driving time records:</b>		
	- 1 year for keeping data	<b>28</b>	<b>1.097</b>
	- record sheets for the preceding 28 days		
<b>D Annex I</b>	<b>Recording equipment:</b>		
	- incorrect functioning	<b>2</b>	<b>209</b>
	- misuse or manipulation of the recording equipment	<b>25</b>	<b>951</b>
<b>Total:</b>		<b>10.859</b>	



The following table illustrates the National Enforcement Capacity in 2010 in Belgium.

<b>Table BE 25</b>	
<b>National Enforcement Capacity</b>	
(a) Number of control officers involved in checks at the roadside and at the premises	55
(b) Number of control officers trained to be able to analyse data from digital tachographs at the roadside or at company premises	55
(c) Number of units of equipment provided to control officers to be able to download, read and analyse data from digital tachographs at the roadside and company premises	55

From a quantitative standpoint we note that the number of infringements of social rules detected in Belgium is substantial if compared to the infringements of the rules on driving and rest periods detected in other Member States such as Netherlands or Denmark or Sweden.

We have also received some input by Belgian stakeholders, concerning the functioning of the Belgian system from a qualitative standpoint.

In its contribution to our Survey, for example, Febetra (*Fédération royale belge des Transporteurs et des Prestataires de services logistiques*) (Annex B.2) expressed the opinion that Belgian control and sanctions system as far as infringements of driving and resting times rules are concerned can be considered as a good practice because:

- for the determination of the fine, control officers take into account the number of driving hours in excess and the rest period the driver took. On this respect, we have explained before that the Belgian system tailors the sanctions for infringements of the rules on driving time to the rest taken by the driver. Indeed, the sanctions system takes into account the driving time but also the resting time for the calculation of the penalty.

Febetra refers that imprisonment is foreseen as a penalty in Belgium but to its knowledge it was never applied.

Febetra pointed out some more general issues concerning the functioning of controls in Member States in general.

The issues raised pertain to two categories:

1. typology of infringements detected and training of controllers: a substantial number of infringements is observed in respect to the legislation on driving and resting times in Belgium and not that many are detected in connection with the transport of dangerous goods. This could be explained by the fact that controlling agents may not have the adequate training or knowledge necessary to perform checks on ADR for instance.
2. modalities to conduct the controls: A. controls/checks are more often conducted on national transport operators. The main reason is linked to a language issue; B. checks are often conducted during the day and less during the night.

That said, we appreciate that for example infringements of the rules on driving and rest periods are sanctioned in Belgium also with the immobilization of the vehicles, as such sanction is deemed to have a substantial dissuasive effect.

It is also posited in agreement that the system of the *perception immédiate* allows Belgian Authorities to apply sanctions with a certain degree of flexibility and to avoid to apply heavy criminal sanctions should it be not appropriate.

However, we note that compared to other Member States, Belgian financial sanctions applied under the system of *perception immédiate* for infringements of the rules on commercial road transport seem to be not particularly high, and their dissuasiveness could be cast into doubt. Such considerations apply in particular to the sanctions concerning the rules on the transport of dangerous goods.

To this consideration we should add that the figures received by the Belgian Authority show that the level of compliance with social rules on road transport is not yet very high in Belgium.

In conclusion, it is posited in agreement that the Belgian sanctions system can be deemed as one of the most proportionate and flexible in the EU. We also consider such system as one of the most effective in the EU with some reservations.

## **5 BULGARIA - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR**

### **5.1 Social rules on road transport**

#### **5.1.1 Rules on Driving Times and Rest Periods**

##### **5.1.1.1 Regulation (EC) No 561/2006 and Directive 2002/15/EC on the organisation of the working time of persons performing mobile transport activities**

The Regulation (EC) No 561/2006 has been implemented by Road Transport Act as of 1999<sup>233</sup> (hereinafter “RTA”) and Instruction No. N-3 for the Measures Implementing Regulation (EEC) No 3821/85 on recording equipment in the road transport, Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No. 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (hereinafter “Instruction No. N-3”)<sup>234</sup>.

Regulation (EE) No 561/2006 and Directive 2002/15/EC on the organisation of the working time of persons performing mobile transport activities has been implemented by the Instruction on the organisation of the working time of persons performing road transport activities (hereinafter, “the Instruction on the organisation of the working time”)<sup>235</sup>. The Instruction has been enacted on the basis of the Labour Code and there is no sanction established for the violation of its provisions in the area of road transport. The very general provisions of Art. 414 of the Labour Code applies. It provides for any violation of the labour legislation a sanction for the employer between

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<sup>233</sup> Official Gazette, issue 82 as of September 17th, 1999, as amended from time to time.

<sup>234</sup> Official Gazette, issue 31 as of April 31st, 2009, as amended from time to time.

BGN 1,500 and BGN 15,000 and in case of a second violation – a sanction between BGN 5,000 and 20,000.

### Sanctions in respect of the driver

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 Article 93b of the RTA.

The penalties are only applicable to the driver.

### Driving times

Article 93b, Paragraph 1- 4 of the RTA introduces different thresholds of penalty for the infringements of rules on driving times.

If the driver exceeds the daily driving time limits (Paragraph 1):

- up to one hour, he can be fined BGN 100 (EURO 1 = BGN 1,95583 – fixed exchange rate);
- between one and two hours, he can be fined BGN 300;
- over two hours, he can be fined BGN 1,500.

If the driver has exceeded the weekly driving time (Paragraph 2):

- up to 4 hours, he can be fined BGN 100;
- between 4 and 14 hours, he can be fined BGN 500;
- over 14 hours, he can be fined BGN 1,500.

If the driver has exceeded the total accumulated driving time during any two consecutive weeks (Paragraph 3):

- up to 10 hours, he can be fined BGN 100;
- between 10 and 22 ½ hours, he can be fined BGN 500;
- over 22 ½ hours, he can be fined BGN 1,500.

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<sup>235</sup> Official Gazette, issue 77 as of September 19th, 2006, as amended from time to time.

If the driver has exceeded the continuous driving time (Paragraph 4)

- up to 30 minutes, he can be fined BGN 100;
- between 30 and 90 minutes, he can be fined BGN 300;
- over 90 minutes, he can be fined BGN 1,500.

### Breaks

Article 93b, Paragraph 5 of the RTA introduces the following thresholds of penalty for the infringements of rules on breaks:

- up to 15 minutes, he can be fined BGN 50;
- over 15 minutes, he can be fined BGN 100.

### Rest periods

Article 93b, Paragraph 6- 9 of the RTA introduces the following thresholds of penalties for the infringements of rules on the daily rest periods.

If the driver has violated the regular daily rest period (Paragraph 6):

- up to one hour, he can be fined BGN 100;
- between 1 and 2 hours, he can be fined BGN 300;
- over 2 hours, he can be fined BGN 1,500.

If the driver has violated the reduced daily rest period (Paragraph 7):

- up to one hour, he can be fined BGN 200;
- between 1 and 2 hours, he can be fined BGN 500;
- over 2 hours, he can be fined BGN 1,500.

If the driver has violated the separated daily rest period (Paragraph 8):

- up to one hour, he can be fined BGN 100;
- between 1 and 2 hours, he can be fined BGN 300;
- over 2 hours, he can be fined BGN 1,500.

If the driver has violated the daily rest period in a case of multi-manning (Paragraph 9):

- up to one hour, he can be fined BGN 100;
- between 1 and 2 hours, he can be fined BGN 300;

- over 2 hours, he can be fined BGN 1,500.

Article 93b, Paragraph 10-11 of the RTA introduces the following thresholds of penalty for the infringements of rules on the weekly rest periods.

If the driver has violated the reduced weekly rest period (Paragraph 10):

- up to two hour, he can be fined BGN 100;
- between 2 and 4 hours, he can be fined BGN 200;
- over 4 hours, he can be fined BGN 1,000.

If the driver has violated the regular weekly rest period (Paragraph 11):

- up to three hour, he can be fined BGN 100;
- between 3 and 9 ½ hours, he can be fined BGN 200;
- over 9 ½ hours, he can be fined BGN 1,000.

#### *Transport undertaking's liability*

Article 104 Paragraph 1 of the RTA provides that the transport undertaking is to be sanctioned BGN 1,000 when it does not observe the rules contained in the Regulation No 561/2006, without specifying the type of infringements.

Article 93d Paragraph 1 of the RTA provides that the transport undertaking is to be sanctioned BGN 3,000 when it provides its drivers any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of the Regulation.

The RTA does not explicitly deal with sanctioning administrative offences committed abroad. The general rule of Art. 4 of the Administrative Offences and Penalties Act therefore applies. Namely, the administrative sanctions provided in the Bulgarian legislation apply for (1) all administrative offences committed within the territory of the Republic of Bulgaria, on a Bulgarian ship or plane and (2) to Bulgarian citizens who have committed administrative offences abroad punishable by the Bulgarian laws, if they affect the interests of the country. The precondition for sanctioning an administrative offence committed abroad – the interest of Bulgaria to be

affected, is rather unclear and Bulgarian authorities in practice refrain from sanctioning such administrative offences.

### *Foreign drivers*

There are no specific rules or sanctions concerning infringements committed by foreign drivers.

#### **5.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)**

Directive 2006/22/EC has been transposed by Chapter Seven of the RTA. Chapter Seven addresses all the checks required on drivers, transport companies and vehicles which fall under the scope of Regulation (EEC) No 3821/85.

The Executive Agency “Road Transport Administration” ([www.rta.government.bg](http://www.rta.government.bg)) is the state body empowered with the checks for the implementation of Regulations (EEC) No 3820/85 and 3821/85.

The Executive Agency collects statistics from the checks as per Article 3 of Directive 2006/22/EC. The Minister of Transport, Information Technology and Communications via the Executive agency is the designated body pursuant to Article 7 of Directive 2006/22/EC and communicates the texts as per Article 16 Paragraph 2 of Directive 2006/22/EC.

Bulgarian law does not contain a categorization of infringements as serious, very serious and minor. These are criteria for determining the exact extent of the sanction, reciprocity being required by the law. For cases of minor offence, the sanctioning authority does not impose a sanction but rather warns the offender, verbally or in writing, that a sanction shall be imposed for a repeated offence.

#### **5.1.2 Tachograph**



### 5.1.2.1 Regulation (EEC) No 3821/85

The Regulation (EEC) No 3821/85 has been implemented by the RTA, Instruction No. N-3 and Instruction No. N-RD-16-1054 on the approval of recording equipment and recording sheets and on the requirements in respect of the persons engaged in the installation, checking and repair of recording equipment<sup>236</sup>.

#### Sanctions related to the use and functioning of the recording equipment

Article 93c of the RTA provides fines as follows:

- a fine of BGN 100 for a driver:
  - Paragraph 7 – who uses dirty or damaged recording equipment list or a driver card containing information, which is readable;
  - Paragraph 8 – who fails to submit an application for replacement or cancellation of a damaged, improper, lost or stolen driver card within the term, as set in Regulation No (EC) 561/2006 or in AETR;
  - Paragraph 15 – who fails to indicate in the recording equipment list his/her forename and family name or the time related to the change of the vehicle;
  - Paragraph 16 – who as a driver of a vehicle, equipped with a digital recording equipment, has failed to enter the symbol of the country, in which the daily driving time has started and ended;
  - Paragraph 21 - who, within the period, when the recording equipment has been out of order or not serviceable, has failed to undersign it.
- a fine of BGN 200 for a driver:
  - Paragraph 9 - who, without permission, takes out of the recording equipment the recording equipment list or driver card, which does not affect the recording of the respective information;
  - Paragraph 10 - who uses the recording equipment list or driver card for a period longer than the one provided, and this has not resulted in a loss of information;

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<sup>236</sup> Official Gazette, issue 91 as of October 21st, 2008.

- Paragraph 13 – who fails to ensure that the time recorded on the recording equipment list conforms to the official time in the country where the concerned vehicle has its registration;
- a fine of BGN 500 for a driver:
  - Paragraph 1 - who drives a vehicle equipped with a recording equipment not functioning in compliance with the requirements of Regulation (EEC) No 3821/85 or AETR;
  - Paragraph 2 - who drives a vehicle equipped with a digital recording equipment not complying with the requirements concerning the proper use of the driver card, laid down in Regulation (EEC) No 3821/85 or in AETR;
  - Paragraph 3 - who in case of check by the monitoring bodies, fails to provide printouts because of missing paper;
  - Paragraph 7 - who uses a dirty or damaged recording equipment list or a driver card containing information which is not readable;
  - Paragraph 14 - who does not correctly use the recording equipment switching unit;
  - Paragraph 15 – who fails to indicate in the recording equipment list:
    - the date of beginning and end of the use of the recording equipment list;
    - the place of beginning and end of the use of the recording equipment list;
    - the registration number of the vehicle;
    - the readings of the vehicle odometer at the beginning or at the end of the use of the recording equipment list;
  - Paragraph 22 - who in case of loss or theft of the driver card, has failed to send formal notification to the competent bodies in the country, where the event took place;
  - Paragraph 24 - who commits violations related to the improper use of recording equipment list or of driver card, for which no other punishment is provided.
- a fine of BGN 1,500 for a driver:

- Paragraph 4 - who holds more than one valid driver card;
- Paragraph 5 - who uses a driver card, issued in the name of a different person;
- Paragraph 6 - who uses a damaged or expired driver card;
- Paragraph 9 - who, without permission, takes out of the recording equipment the recording equipment list or driver card, which affects the recording of the respective information;
- Paragraph 10 - who uses the recording equipment list or driver card for a period, longer than the one provided, resulting in a loss of information;
- Paragraph 11 – who fails to enter the information concerning the periods of “other work”, “time of availability”, “stop” or “daily rest”, when he/she is unable to use the recording equipment installed in the vehicle, because he/she is out of the vehicle;
- Paragraph 12 - who in case of a multi-manning, has failed to insert the recording equipment chart or the driver card in the correct recording equipment;
- Paragraph 17 - who fails to present in case of check by the monitoring bodies:
  - the recording equipment list for the current day and those for the past 28 calendar days;
  - the driver card (if relevant) and the records thereof;
  - the manual records and printouts, made during the current day and within the past 28 calendar days.
- Paragraph 18 – who falsifies, hides or deletes information, recorded in the recording equipment list or stored in the digital recording equipment or driver card or on the digital recording equipment printouts;
- Paragraph 19 – who manipulates the recording equipment, recording equipment list or driver card and this may result in falsifying the information;
- Paragraph 20 – who drives a vehicle with a fitter device for the falsification of the information, contained in the recording equipment list

or stored in the digital recording equipment or in the driver card, or on the digital recording equipment printout;

- Paragraph 21 - who, within the period, when the recording equipment has been out of order or not serviceable:
  - has failed to enter the whole information for the referred period;
  - has failed to enter the driver card number and/or his/her names, and/or the driving licence number;
- Paragraph 23 - who carries out public transport or transport of passengers or cargo for his/her own account by means of vehicles falling under the scope of Regulation (EEC) No 3821/85 or of AETR, in which no recording equipment is installed or in which the installed recording equipment is not of an approved type.

#### *Sanctions related to the installation and repair of recording equipment*

Article 93a of the RTA provides that a person (a natural or a legal one) engaged in the installation and/or repair of recording equipment without an authorisation, or uses another card for the installation or repair, or fails to follow the technical and administrative requirements of the RTA and the Instructions is to be sanctioned with a fine of BGN 4,000, 3,000 or 5,000, respectively. In case of a subsequent violation, the sanction is BGN 10,000.

#### *Liability of the transport undertaking*

Article 104, Paragraph 2-11 of the RTA provides the applicable sanctions to the transport undertaking:

- a sanction of BGN 500:
  - Paragraph 2 - that allows or instructs the carrying out of public transport or transport at own account by means of motor vehicles, falling under the scope of Regulation (EEC) No 3821/85 or of AETR, which are not equipped with a recording equipment or the equipped recording equipment on the vehicles is not of an

approved type (in case of a subsequent violation, the sanction is BGN 8,000 and the licence for the carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked).

- a sanction of BGN 1,000:
  - Paragraph 11 - which does not provide the drivers with a sufficient quantity of available papers for printouts.
- a sanction of BGN 1,500:
  - Paragraph 9 – which manipulates the recording equipment, the recording equipment list or the driver card, which may result in information forgery (in case of a subsequent violation, the sanction is BGN 8,000 and the licence for the carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked).
- a sanction of BGN 2,000:
  - Paragraph 5 - which has not provided the driver with the required information according to Regulation (EEC) No 3821/85, Regulation (EC) No 561/2006 or AETR.
- a sanction of BGN 3,000:
  - Paragraph 3 - which has not provided the proper operation of the recording equipment;
  - Paragraph 4 – which instructs or allows the carrying out of transport of passengers or cargo by means of a motor vehicle, equipped with a digital recording equipment by a driver, who does not hold a driver card In case of a subsequent violation, the sanction is BGN 8,000 and the licence for the carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked);
  - Paragraph 6 – which has not provided the driver with a sufficient number of recording equipment lists and/or the recording equipment lists are not of an approved type;

- Paragraph 8 – which falsifies, hides or deletes information recorded on the recording equipment list, in the driver card or on the printouts of the digital recorder (In case of a subsequent violation, the sanction is BGN 8,000 and the licence for the carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked);
  - Paragraph 12 – which has not performed the repair of the recording equipment in an approved service centre, or the repair has not been carried out on the road within 7 days from the identification of the recording equipment malfunction, and as a result, the vehicle cannot reach back the enterprise (in case of a subsequent violation, the sanction is BGN 8,000 and the licence for the carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked)
- a sanction of BGN 5,000:
- Paragraph 7 - that does not keep the recording equipment charts, the printouts and the information downloaded from the digital recording equipment or driver card for a period of 365 days or refuses to provide them for revision to the monitoring bodies, (in case of a subsequent violation, the sanction is BGN 8,000 and the licence for the carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked);
  - Paragraph 10 - having vehicles equipped with a forgery device to falsify the information recorded in the recording equipment list, stored in the digital recording equipment, on the driver card or the printouts from the digital recording equipment (in case of a subsequent violation, the sanction is BGN 8,000 and the licence for carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked).

Foreign drivers

There are no specific rules or sanctions concerning infringements committed by foreign drivers.

## **5.2 Road package**

### **5.2.1 Regulation (EC) No 1071/2009**

Annex IV to Regulation (EC) No 1071/2009 has been implemented by the RTA. The infringements listed in Paragraphs 1-2 and 6 are sanctioned in relation with the implementation of the EU social rules on road transport (see the previous section). The infringements listed in Paragraphs 4 and 5 of Annex IV are also sanctioned in Chapter Eight of the RTA and Paragraph 3 of Annex IV – in the Road Traffic Act (as amended from time to time, hereinafter “RTA”)<sup>237</sup> as follows:

- Article 179 Para 1 p. 4 of the RTA provides a fine between BGN 50 and BGN 150 for a driver driving a vehicle in technical deficiency requiring immediate immobilisation – Paragraph 3 of Annex IV;
- Article 103 of the RTA provides a fine of BGN 3,000 for a driver and a sanction of BGN 3,000 for a transport undertaking transporting dangerous goods in violation of ADR rules – Paragraph 4 of Annex IV;
- Article 93 of the RTA provides that a driver carrying passengers or goods without a valid licence or other documents required by the EU and the national legislation is to be fined BGN 1,500 in case of first violation, BGN 3,000 in case of second violation and BGN 6,000 in case of systematic violations (more than three). Article 96 provides for a monetary sanction of BGN 3,000 in case of a second violation and of BGN 5,000 for the transport undertaking. The licence is subject to a revocation in case of second infringement – Paragraph 5 of Annex IV.

It seems that there is no explicit sanction for the violation envisaged in Paragraph 7 of Annex IV for the driver and the transport undertaking. Article 98b of the

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<sup>237</sup> Official Gazette, issue 20 as of March 5th, 1999.

RTA provides fines varying between BGN 500 and BGN 5,000 for the sender or the person responsible for loading the goods when exceeding the maximum permissible laden mass.

Chapter IX of the Special Part of the Penal Code establishes the so-called documentary crimes. They are regulated in a general way but they include the creation and use of fake licence or fake community licence (forgery) as well as providing fake information to obtain such licence.

Article 308 of the Penal Code provides imprisonment up to three years for a forgery of an official document and up to ten years provided that the offence is committed with a purpose of obtaining a material benefit. In minor cases, the sanctions are up to a six-month imprisonment or probation, or an imprisonment up to three years. Article 316 of the Penal Code provides the same sanctions for a person who uses a fake document being aware of the forgery.

Article 314 of the Penal Code provides imprisonment up to two years or probation for providing false information in order to obtain an official document.

### **5.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009**

The Regulation (EC) No 1072/2009 and the Regulation (EC) No 1073/2009 have been implemented in the RTA and in the Instruction No. 11 on the international road transport of passengers and goods<sup>238</sup> (as amended from time to time, hereinafter “Instruction No. 11”).

The sanctions for the circulation without a licence for transport is Article 93 of the RTA as commented above. The implementing measure does not contain specific sanctions for the infringement of the above Regulations.

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<sup>238</sup> Official Gazette, issue 108 as of November 19th, 2002,



## **5.3 Standards of vehicles and load and necessary licences**

### **5.3.1 Directive 2008/68/EC**

Directive 2008/68/EC on the inland transport of dangerous goods has been implemented by the RTA and the Instruction No. 40 on the conditions and procedures for the road transport of dangerous goods<sup>239</sup> (as amended from time to time, hereinafter “Instruction No. 40”).

Article 103 of the RTA provides a fine of BGN 3,000 for a transport undertaking transporting dangerous goods in violation of the ADR rules. It also provides a fine of BGN 3,000 for a driver transporting dangerous goods:

- by means of a vehicle which type, design or auxiliary equipment does not meet the requirements of ADR;
- by means of a vehicle registered in the Republic of Bulgaria and for which no certificate of approval of road vehicles has been issued by the Executive Agency “Road Transport Administration” for carrying particular dangerous goods;
- by means of a vehicle, registered outside the Republic of Bulgaria, for which there is no certificate of approval of road vehicles issued by a competent body under ADR of the respective country, carrying particular dangerous goods;
- by means of a vehicle which is not meant for the cargo subject to carriage;
- by means of a composition of road vehicles with more than one trailer;
- without written instructions required for the carried cargo;
- being forbidden for carrying such goods according to ADR;
- without a valid certificate for the carriage of dangerous goods.

The driver is to be fined BGN 1,000 when transporting dangerous goods:

- by means of a damaged or non-insulated tank or packing;
- by means of a vehicle not equipped with fire extinguishers in accordance with the requirements of ADR or they are not serviceable;

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<sup>239</sup> Official Gazette, issue 15 as of February 24th, 2004.

- by means of a vehicle not marked or labelled according to the requirements of ADR;
- in packages without marking or labels indicating that they are dangerous according to the requirements of ADR.

#### *Foreign drivers*

There are no specific rules or sanctions concerning infringements committed by foreign drivers.

### **5.3.2 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 implemented the RTA and the Instruction No. 11 on the traffic of oversize or overweight vehicles<sup>240</sup> (as amended from time to time, hereinafter “Instruction No. 11”).

Article 177 Paragraph 3 of the RFA provides a fine between BGN 1,000 and BGN 3,000 for driving a vehicle in violation of the maximum authorised dimensions and weight.

#### *Foreign drivers*

There are no specific rules or sanctions concerning infringements committed by foreign drivers.

### **5.3.3 Directive 2009/40/EC**

The Directive 2009/40/EC of roadworthiness test for motor vehicles and their trailers has been implemented by the RTA and the Instruction No. N-32 as of 16

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<sup>240</sup> Official Gazette, issue 15 as of February 24th, 2004.

December 2011 for the roadworthiness tests for vehicles (as amended from time to time, hereinafter “Instruction No. N-33”).

Article 178a of the RTA provides for sanctions in respect of violations related to the roadworthiness tests for vehicles as follows:

- Paragraph 1 - a fine or sanction amounting to BGN 5,000 to any person who issues documents for periodical roadworthiness tests for vehicles without a duly authorisation;
- Paragraph 2 - a fine or sanction amounting to BGN 3,000 to any person who fails to assist the supervisory authorities with the check of the material, facilities and measurement equipment related to periodical roadworthiness tests for vehicles and in case of a second offence, the fine/sanction is BGN 5,000;
- Paragraph 4 - a property sanction amounting to BGN 1, 000 to a person duly authorised to carry out periodical roadworthiness tests for vehicles who:
  - fails to file a notification or a document certifying the performance of periodical roadworthiness tests for vehicles with the competent authorities;
  - as a result of the inappropriate storage of documents certifying the performance of periodical roadworthiness tests for vehicles, has allowed their loss, theft or damage, and in case of a second offence the sanction is BGN 2,000.

Furthermore Article 178a of the RTA provides fines/sanctions for violations of the provisions of Instruction No. N-32:

- a sanction of BGN 2,000 to a person who has failed to establish the required organisation or has failed to exercise control of compliance with the requirements of Instruction No. N-32;
- a fine amounting to BGN 1,500 to be imposed to:
  - a chairman of an inspection commission or a technical specialist who allows a periodical roadworthiness tests for vehicles to be carried out in violation of the requirements of Instruction No. H-32, or by using facilities and measuring equipment not meeting the requirements of Instruction No. H-32;
  - a chairman of an inspection commission or a technical specialist who fails to enter the data of an inspection for roadworthiness tests for vehicles according to the requirements of Instruction No. H-32;

- a technical specialist who fails to check the fitness of the equipment, parts, units, apparatus, mechanisms, components and characteristics of the road vehicles subject to roadworthiness tests for vehicles according to the methods prescribed in Instruction No. H-32;
- a technical specialist who qualifies a technical deficiency in breach of the requirements specified in Instruction No. H-32 or issues incorrect opinion in the document for periodical roadworthiness tests for vehicles;
- a technical specialist working with malfunctioning equipment, apparatus and measuring means or uses the equipment improperly, or manipulates or changes their indications;
- a technical specialist who fails to notify the Executive Agency "Road Transport Administration" within the time limit specified in Instruction No. H-32 that his individual stamp is lost, stolen or damaged, and in case of a second offence the fine is BGN 3,000.

A technical specialist who, as a result of improper storage of the individual stamp, has made possible its loss, theft or damage shall be imposed a fine amounting to BGN 1,000. And at last, for violations of the requirements for performance of periodical roadworthiness tests for vehicles and the requirements for keeping the documentation related thereto, where no other penalty has been specified, the persons responsible shall be imposed a fine or a sanction amounting to BGN 500.

#### *Foreign drivers*

There are no specific rules or sanctions concerning infringements committed by foreign drivers.

#### **5.3.4 Directive 2006/126/EC**

Directive 2006/126/EC on driving licences has been transposed by the RTA and the Instruction No. 3 on acquiring the capacity of driving examiners<sup>241</sup> (hereinafter “Instruction No. 3”), the Instruction No. 37 on the conditions and procedure for driving training and on conditions and procedure for the issue of a licence for driving training (as amended from time to time, hereinafter “Instruction No. 37”<sup>242</sup>) and the Instruction No. 38 on the conditions and procedure for driving examinations and controlling tests<sup>243</sup> (as amended from time to time, hereinafter “Instruction No. 37”).

Article 177 Paragraph 1 of the RTfA provides a fine between BGN 100 and BGN 300 to a person:

- who drives a vehicle after he has been deprived from this right by court or administrative order;
- who drives a vehicle without having the respective driving licence or the latter has been withdrawn;
- as an owner, official or driver, who admits or concedes the driving of a vehicle to a person, who does not have the respective driving licence (as well to a person who has consumed alcohol or other intoxicating substance),
  - in those three cases, a fine between BGN 1,000 and BGN 5,000 is applied in case of second violation;
- who without a dully authorisation carries out driving training.

Article 343c Paragraph 1 of the Penal Code provides for an imprisonment sentence of up to two years to a person driving a vehicle during the period of time when he/she is deprived of the right to drive a vehicle, provided that this is the second offence, the first one being sanctioned as an administrative offence.

Article 178 Paragraph 1 point 6 of the RTA provides a fine of between BGN 2,000 and BGN 7,000 to a person who violates the prescriptions of the legal rules applicable to the training equipment and programmes.

Article 178b Paragraph 1 provides a fine or a sanction amounting to BGN 5,000 to a person who is engaged in drivers training without holding an authorisation.

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<sup>241</sup> Official Gazette, issue 71 as of September 13th, 2011.

<sup>242</sup> Official Gazette, issue 82 as of August 27th, 2002.

<sup>243</sup> Official Gazette, issue 42 as of May 21st, 2004.

Article 178b Paragraph 2 provides a fine or a sanction amounting to BGN 3,000 to a person who fails to allow control authorities to check the training equipment or if he fails to supply them with the entire documentation related to the driving training, in case of a second violation, the fine being BGN 5,000.

Article 178b Paragraph 4 provides for a fine or a sanction amounting to BGN 1,000 to a person who is duly authorised for driving training and:

- fails to keep the register of driving trainees and of the documentation in compliance with the relevant legal requirements;
- improperly keeps the register of the driving trainees, which results in loss, theft or damage of the register;
- performs the training activity with a head of the training activity who does not meet the relevant legal requirements;
- organises the training activity in premises that do not meet the relevant legal requirements;
- fails to provide the conditions required for carrying out the theoretical and practical tests;
- fails to supply the video records after the theory exams in the training centre.

Article 178b Paragraph 5 provides a fine amounting to BGN 500 to the head of training activity in a training centre who:

- fails to ensure the compliance with the relevant legal requirements of the training documentation for the training of the driving licence candidates under Article 153, Item 1 during the training;
- fails to issue in time and fails to keep the training related documents;
- during the training process orders or allows violation of:
  - the daily workload of the trainees;
  - the daily workload of the trainers;
  - the schedule for the theory training;
  - the obligation for notification for individual training;
  - performance of the intermediary and internal examinations;
- fails to announce and update the information regarding the training and test fees;

- allows the issue of a certificate for test admission to a person who has not passed the required training and/or has failed to successfully pass the internal exams;
- allows violations regarding the training-related documentation.

Article 178b Paragraph 6 provides for a fine amounting to BGN 500 to a trainer in theoretical and/or practical training who:

- fails to observe the relevant legal requirements for the training documentation;
- allows violation in keeping the documentation related to training;
- fails to enter in time the data into the training-related documents;
- violates the daily load of the trainers;
- during training violates:
  - the daily load on the trainees;
  - the schedule for the theory training;
  - the length of the studying classes;
  - the sitting of the intermediary and internal exams;
- as a member of an examination commission, violates the procedure for the theoretical and practical exams.

Furthermore Art. 178c of the RTA provides a fine amounting to BGN 3,000 to a person who violates the conditions and procedure for psychological tests for drivers as established in the appropriate law, and in case of a second violation the fine amounts to BGN 5,000.

#### ***5.4 Notion of criminal sanction and of administrative sanction in the Bulgarian legal system***

The offences which constitute a criminal act (crime) are determined as such by the law, namely they are exhaustively determined in the Penal Code. This is a requirement of the Constitution. The rest of the offences (only determined in a wide scope of Acts of the Parliament) are administrative offences.

The systems of sanctions for criminal and administrative offences are different but partially coincide.

The sanctions for crimes as established by the Penal Code are: life imprisonment, imprisonment, probation, confiscation of property, fine, temporary deprivation of the right to occupy certain state or public positions, temporary deprivation of the right to practice a certain profession or professional activity, deprivation of the right to hold granted orders, honorary titles and insignia of honor, deprivation of a military rank and a public reprobation.

The sanctions for administrative offences established by the Administrative Offences and Penalties Act are: a public reprobation, fine (the same monetary punishment is called just a sanction in a case of legal persons/undertakings) and a temporary deprivation of right to practice a certain profession or professional activity.

So all sanctions provided for administrative offences are provided for crimes as well. Thus the formal criterion is whether the offence is declared by the law for a crime or for an administrative offence. The procedure for imposing a penalty for a crime and an administrative offence is different.

#### Foreign persons

According to Article 4 of the Administrative Offences and Penalties Act, the Bulgarian administrative sanctions system applies to any administrative offence committed within the territory of Bulgaria and/or on board of a Bulgarian plane or vessel, irrespective of the nationality of the offender. It also applies to Bulgarian citizens having committed abroad acts that are offences from the point of view of Bulgarian administrative sanctions system, provided that the interests of the Bulgarian state are harmed.

Therefore the fees/sanctions provided may be imposed both to Bulgarian and foreign drivers and undertakings.

Although applicable only in one of the abovementioned cases, the Penal Code applies in principle to crimes committed within the territory of Bulgaria.

#### Legal persons/Undertakings

In principle, the fines established in the Bulgarian administrative sanctions system apply to natural persons only. But when the Bulgarian administrative sanctions system provides for so-called “sanctions” they are applied to legal persons i.e.



undertakings. In the abovementioned analysis of the penalties, fines and sanctions are clearly differentiated. Fines are thus imposed only to natural persons and sanctions – to any offender.

Punishments pursuant to the Penal Code are applicable only to natural persons.

#### *Concurrence between several sanctions*

All sanctions for different infringements are applied. According to Article 18 of the Administrative Offences and Penalties Act where several administrative offences have been committed by one act (this is exactly the case where the same behavior infringes more than one rule) or the same person has committed more than one offence, the imposed sanctions shall be incurred individually for each of them.

#### *Concurrence between administrative and criminal sanctions*

The principle “*Non bis in idem*” applies to the accumulation of a criminal and an administrative sanction. Only one sanction may be imposed. If the offence is a crime, it is only sanctioned as a crime although from a formal point of view, it constitutes an administrative offence as well.

This is notably the case of driving with a revoked licence. Article 343c Paragraph 1 of the Penal Code provides for a prison punishment of up to two years to a person driving a vehicle during the period of time when he/she is deprived of the right to drive a vehicle, provided that this is the second offence, the first one being sanctioned as an administrative offence. The first offence is therefore an administrative one and the second, a crime.

### **5.5 The scope of application of the Bulgarian criminal law**

Although applicable only in one of the abovementioned cases, the Penal Code applies in principle to crimes committed within the territory of Bulgaria.

## 5.6 Summary Tables

In the Bulgarian legal system, the role of the competent authorities are as follows:

### Pursuant to the Road Transport Act

The Executive Agency “Road transport Administration” officials maintain the control for the application of the relevant legal rules and establish the offences. On the basis of their findings, the Minister of Transport, Information Technologies and Communication imposes fines and sanctions subject to an appeal in front of the Courts.

### Pursuant to the Road Traffic Act

Traffic police officers and State Automobile Inspection officials maintain the control for the application of the relevant legal rules and establish the offences. On the basis of their findings, the Minister of Interior and in some cases, the Minister of Transport, Information Technologies and Communication or officials authorised by the competent minister, impose fines and sanctions subject to an appeal in front of the Courts.

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

Table BG 1						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
<b>SOCIAL RULES ON ROAD TRANSPORT</b>						
<u>Rules on Driving Times, Breaks and Rest Periods</u>						
<b>Regulation 561/06/EC</b>						
	<u>Driving Times</u>	Article 93b, Paragraph 1	Exceeding the daily driving time up to one hour	Drivers	<b>100</b>	
	Article 93b, Paragraph 1- 4 of the RTA	Article 93b, Paragraph 1	Exceeding the daily driving time between one and two hours	Drivers	<b>300</b>	
		Article 93b, Paragraph 1	Exceeding the daily driving time over two hours	Drivers	<b>1500</b>	
		Article 93b, Paragraph 2	Exceeding the weekly driving time up to 4 hours	Drivers	<b>100</b>	

**Table BG 1**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Article 93b, Paragraph 2	Exceeding the weekly driving time between 4 and 14 hours	Drivers	<b>500</b>	
		Article 93b, Paragraph 2	Exceeding the weekly driving time more than 15 hours	Drivers	<b>1500</b>	
		Article 93b, Paragraph 3	Exceeding the biweekly driving time up to 10 hours	Drivers	<b>100</b>	
		Article 93b, Paragraph 3	Exceeding the biweekly driving time between 10 and 22 ½ hours	Drivers	<b>500</b>	
		Article 93b, Paragraph 3	Exceeding the biweekly driving time over 22 ½ hours	Drivers	<b>1500</b>	
		Article 93b, Paragraph 4	Exceeding the continuous driving time up to 30 minutes	Drivers	<b>100</b>	

**Table BG 1**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Article 93b, Paragraph 4	Exceeding the continuous driving time between 30 and 90 minutes	Drivers	<b>300</b>	
		Article 93b, Paragraph 4	Exceeding the continuous driving time over 90 minutes	Drivers	<b>1500</b>	
	<u>Rest Periods</u>  Article 93b, Paragraph 6 - 11 of the RTA	Article 93b, Paragraph 6	Not respecting the rules on regular daily rest period up to one hour	Drivers	<b>100</b>	
		Article 93b, Paragraph 6	Not respecting the rules on regular daily rest period between 1 and 2 hours	Drivers	<b>300</b>	
		Article 93b, Paragraph 6	Not respecting the rules on regular daily rest period over 2 hours	Drivers	<b>1500</b>	
		Article 93b, Paragraph 7	Not respecting the rules on reduced daily rest period up to one hour	Drivers	<b>200</b>	

**Table BG 1**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
		Article 93b, Paragraph 7	Not respecting the rules on reduced daily rest period between 1 and 2 hours	Drivers	<b>500</b>	
		Article 93b, Paragraph 7	Not respecting the rules on reduced daily rest period over 2 hours	Drivers	<b>1500</b>	
		Article 93b, Paragraph 8	Not respecting the rules on separated daily rest period up to one hour	Drivers	<b>100</b>	
		Article 93b, Paragraph 8	Not respecting the rules separated daily rest period between 1 and 2 hours	Drivers	<b>300</b>	
		Article 93b, Paragraph 8	Not respecting the rules on daily rest period over 2 hours	Drivers	<b>1500</b>	
		Article 93b, Paragraph 9	Not respecting the rules on daily rest period in a case of multi-manning up to one hour	Drivers	<b>100</b>	

**Table BG 1**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
		Article 93b, Paragraph 9	Not respecting the rules on daily rest period in a case of multi-manning between 1 and 2 hours	Drivers	<b>300</b>	
		Article 93b, Paragraph 9	Not respecting the rules on daily rest in a case of multi-manning period over 2 hours	Drivers	<b>1500</b>	
		Article 93b, Paragraph 10	Not respecting the rules on reduced weekly rest period up to 2 hours	Drivers	<b>100</b>	
		Article 93b, Paragraph 10	Not respecting the rules on reduced weekly rest period between 2 and 9 ½ hours	Drivers	<b>200</b>	
		Article 93b, Paragraph 10	Not respecting the rules on reduced weekly rest period over 9 ½ hours	Drivers	<b>1000</b>	
		Article 93b, Paragraph 10	Not respecting the rules on reduced weekly rest period up to 2 hours	Drivers	<b>100</b>	

Table BG 1

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Article 93b, Paragraph 10	Not respecting the rules on reduced weekly rest period between 2 and 9 ½ hours	Drivers	<b>200</b>	
		Article 93b, Paragraph 11	Not respecting the rules on regular weekly rest period over 9 ½ hours	Drivers	<b>1000</b>	
	<u>Breaks</u>	Article 93b, Paragraph 5 of the RTA	Infringements of break time rules: - up to 15 minutes - over 15 minutes	Drivers	- <b>50</b> - <b>100</b>	
	<u>Transport undertaking's liability</u> RTA	Article 104, Paragraph 1	- Inobservance of Regulation No. 561/2006	Transport undertaking	<b>1000</b>	
		Article 93d Paragraph 1	Providing drivers any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a	Transport undertaking	<b>3000</b>	



**Table BG 1**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction)  In BGN</b>	<b>Criminal sanction(s)</b>
			kind as to endanger road safety and/or encourages infringement of Regulation No. 561/2006			

Table BG 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
	<a href="#">Article 93c of the RTA</a>	Paragraph 7	Use of dirty or damaged recording equipment list or a driver card containing information, which is readable;	Driver	<b>100</b>	
		Paragraph 8	Failure to submit an application for replacement or cancellation of a damaged, improper, lost or stolen driver card within the term, set in Regulation (EC) 561/2006 or AETR;	Driver	<b>100</b>	

**Table BG 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 15	Failure to indicate in the recording equipment list his/her forename and family name or the time of change of the vehicle;	Driver	<b>100</b>	
		Paragraph 16	Failure as a driver of a vehicle, equipped with a digital recording equipment to enter the symbol of the country, in which the daily driving time has started and ended;	Driver	<b>100</b>	

**Table BG 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 21	Failure within the period, when the recording equipment has been out of order or not serviceable to undersign it.	Driver	<b>100</b>	
		Paragraph 9	Taking out, without permission, of the recording equipment, recording equipment list or driver card, which does not affect the recording of the respective information;	Driver	<b>200</b>	

**Table BG 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 10	Use of recording equipment list or driver card for a period, longer than the provided one, and this has not resulted in loss of information;	Driver	<b>200</b>	
		Paragraph 13	Failure to make sure that the time recorded on the recording equipment list conforms to the official time in the country of vehicle registration.	Driver	<b>200</b>	

**Table BG 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 1	Driving a vehicle equipped with a recording equipment which is not functioning in compliance with the requirements of Regulation (EEC) 3821/85 or AETR;	Driver	<b>500</b>	
		Paragraph 2	Driving a vehicle equipped with a digital recording equipment and does not comply with the requirements concerning the proper use of the driver card, laid down in Regulation (EEC) 3821/85 or in AETR;	Driver	<b>500</b>	

**Table BG 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction)  In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 3	In case of a check by the monitoring bodies failure to provide printouts because of missing paper;	Driver	<b>500</b>	
		Paragraph 7	Use of dirty or damaged recording equipment list or a driver card containing information which is not readable;	Driver	<b>500</b>	
		Paragraph 14	Failure to use correctly the recording equipment switching unit;	Driver	<b>500</b>	

**Table BG 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction)  In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 15	Failure to indicate in the recording equipment list: - date of beginning and end of using of the recording equipment list; - the place of beginning and end of using of the recording equipment list; - the registration number of the vehicle; - the readings of the vehicle odometer at the beginning or at the end of using of the recording equipment list;	Driver	<b>500</b>	



Table BG 2

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 22	in case of loss or theft of the driver card failure to send formal notification to the competent bodies in the country, where the event has taken place;	Driver	<b>500</b>	
		Paragraph 24	Violations related to improper use of recording equipment list or of driver card, for which no other punishment is provided.	Driver	<b>500</b>	
		Paragraph 4	Holding more than one valid driver card;	Driver	<b>1500</b>	

Table BG 2

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 5	Uses of a driver card, issued in the name of a different person;	Driver	<b>1500</b>	
		Paragraph 6	Use of a damaged driver card or expired driver card;	Driver	<b>1500</b>	
		Paragraph 9	Without permission, taking out of the recording equipment recording equipment list or driver card, which affects the recording of the respective information;	Driver	<b>1500</b>	

**Table BG 2**

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**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 10	Use of recording equipment list or driver card for a period, longer than the provided one, and this has resulted in loss of information;	Driver	<b>1500</b>	
		Paragraph 11	Failure to enter the information concerning the periods of “other work”, “time of availability”, “stop” or “daily rest”, when he/she is not able to use the installed in the vehicle recording equipment, because he/she is out of the vehicle;	Driver	<b>1500</b>	

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**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction)  In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 12	In case of a multi-manning failure to insert the recording equipment chart or the driver card in the correct recording equipment;	Driver	<b>1500</b>	

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**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 17	failure to present in case of a check by the monitoring bodies: - the recording equipment list for the current day and those for the past 28 calendar days; - the driver card (if relevant) and the records thereof; - the manual records and printouts, made during the current day and within the past 28 calendar days.	Driver	<b>1,500</b>	

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**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 18	Falsification, cover or deletion information, recorded in the recording equipment list or stored in the digital recording equipment or driver card or on the digital recording equipment printouts;	Driver	<b>1500</b>	
		Paragraph 19	Manipulation of the recording equipment, recording equipment list or driver card and this may result in falsifying the information;	Driver	<b>1500</b>	

**Table BG 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction)  In BGN</b>	<b>Criminal sanction(s)</b>
		Paragraph 20	Driving a vehicle with fitter device for falsification of the information, contained in the recording equipment list or stored in the digital recording equipment or in the driver card, or on the digital recording equipment printout;	Driver	<b>1500</b>	

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**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 21	within the period, when the recording equipment has been out of order or not serviceable:  - failure to enter the whole information for the referred period;  - failure to enter the driver card number and/or his/her names, and/or the driving licence number;	Driver	<b>1500</b>	



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**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
		Paragraph 23	Carrying out public transport or transport at his/her own account of passengers or cargoes by vehicles, falling under the scope on Regulation (EEC) 3821/85 or of AETR, which are not fitted with a recording equipment or the fitted on the vehicles recording equipment are not of an approved type.	Driver	<b>1500</b>	
		Paragraph 1	Engagement in installation and/or repair of recording equipment without an authorization	A natural or legal person – manager, technician, etc.	<b>4000</b>	

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**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
		Paragraph 2	Use of another card for installation or repair	A natural or legal person – manager, technician, etc.	<b>3000</b>	
		Paragraph 3	Failure to follow the technical and administrative requirements following from the RTA and the Instructions	A natural or legal person – manager, technician, etc.	<b>5000</b>	

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## SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 2	Allowing or instructing for carrying out public transport or transport at own account by motor vehicles, falling under the scope of Regulation (EEC) 3821/85 or of AETR, which are not fitted with a recording equipment or the fitted recording equipments on the vehicles are not of an approved type ( <b>In a case of a subsequent violation the sanction is BGN 8,000 and the licence for carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked</b> ).	Transport undertaking	<b>500</b>	
		Paragraph 11	Failure to provide the drivers with sufficient quantity of available paper for printouts.	Transport undertaking	<b>1000</b>	
		Paragraph	manipulation of the recording equipment, the recording	Transport	<b>1500</b>	

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SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction In BGN	Criminal sanction(s)
		9	Equipment list or the driver card, which may result in information forgery ( <b>In a case of a subsequent violation the sanction is BGN 8,000 and the licence for carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked</b> ).	undertaking		
		Paragraph 5	Failure to provide the driver with the required information according to Regulation (EEC) 3821/85, Regulation (EC) 561/2006 or AETR.	Transport undertaking	<b>2000</b>	
		Paragraph 3	Failure to provide the proper operation of the recording equipment	Transport undertaking	<b>3000</b>	

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SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 4	Instruction or allowing to carry out transport of passengers or cargo by a motor vehicle, fitter with a digital recording equipment by a driver, which does not hold a driver card <b>(In a case of a subsequent violation the sanction is BGN 8,000 and the licence for carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked);</b>	Transport undertaking	<b>3000</b>	
		Paragraph 6	Failure to provide the driver with a sufficient number of recording equipment lists and/or the recording equipment lists are not of an approved type;	Transport undertaking	<b>3000</b>	

Table BG 2

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 8	falsification, cover or deletion of information, recorded on the recording equipment list, in driver card or on the printouts from the digital <b>(In a case of a subsequent violation the sanction is BGN 8,000 and the licence for carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked);</b>	Transport undertaking	<b>3000</b>	

Table BG 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 12	failure to make provision for the repair of recording equipment in an approved service centre or the repair has not been carried out on the road, where within 7 days from identification of recording equipment malfunction the vehicle cannot reach back the enterprise, <b>(In a case of a subsequent violation the sanction is BGN 8,000 and the licence for carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked)</b>	Transport undertaking	<b>3000</b>	

Table BG 2

## SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Paragraph 7	Failure to keep the recording equipment charts, the printouts and the information downloaded from the digital recording equipment or driver card for a period of 365 days or refuse to provide them for revision to the monitoring bodies, <b>(In a case of a subsequent violation the sanction is BGN 8,000 and the licence for carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked);</b>	Transport undertaking	<b>5000</b>	



Table BG 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
	<a href="#">Article 93c of the</a>	Paragraph 10	Possession of a vehicle in which a forgery device of the information recorded in the recording equipment list, stored in the digital recording equipment, on the driver card or in the printouts from the digital recording equipment has been found, (In a case of a subsequent violation the sanction is BGN 8,000 and the licence for carriage of goods or passengers on the territory of Bulgaria or the EU licence is to be revoked).	Transport undertaking	<b>5000</b>	

Table BG 2

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
	<p><u>RTA</u>  <u>(in a case of a second violation – BGN 10,000)</u></p> <p><u>Article 104 of the RTA</u></p>					

**Table BG 3**

**Road Package**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
<b>Regulations No. 1071/2009/EC 1072/2009/EC 1073/2009/EC</b>	<a href="#"><u>Road Traffic Act and Road Transport Act</u></a>	Art. 179 Para 1 p. 4 of RTA	Driving a vehicle in technical deficiency requiring immediate immobilization	Driver	<b>From 50 up to 150</b>	
		Art. 103 of RTA	Non communication of the loss of good repute	Driver/Transport undertaking	<b>3000</b>	
		Art. 103 of RTA	Carrying passengers or goods without a valid licence or other documents required by the EU and the national legislation	Drive	<b>1500 (in a case of second violation – 3,000 and in a case of systematic violations – 6000)</b>	
				Transport undertaking	<b>3000 (in a case of second violation – 5000)</b>	

**Table BG 4**

**Standards of Vehicles, Load and Necessary Licences**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
<b>Directive 2008/68/EC</b>	<a href="#"><u>Road Transport Act</u></a>	Article 103	Transport of dangerous goods in violation of ADR requirements	Driver/ Transport undertaking	<b>3000</b>	
		Article 103	Transporting dangerous goods - by a vehicle, the type, the design or the auxiliary equipment of which do not meet the requirements of ADR; - by a vehicle, registered in the Republic of Bulgaria, for which there is no certificate of approval of road vehicles, carrying particular dangerous goods, issued by the Executive Agency "Road Transport Administration"; - by a vehicle, registered outside the	Driver	<b>3000</b>	

**Table BG 4**

**Standards of Vehicles, Load and Necessary Licences**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
			Republic of Bulgaria, for which there is no certificate of approval of road vehicles, carrying particular dangerous goods, issued by a competent body under ADR of the respective country; - by a vehicle which is not meant for the cargo subject to carriage; - by a composition of road vehicles with more than one trailer; - without written instructions required for the carried cargo; - being forbidden for carrying according to ADR; - without a valid certificate for carriage of dangerous goods.			

Table BG 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
		Article 103	transporting dangerous goods: - by a damaged or non-insulated tank or packing; - by a vehicle not fitted with fire extinguishing devices according to the requirements of ADR or these are not serviceable; - by a vehicle not marked or labelled according to the requirements of ADR; - in packages without marking or labels indicating that they are dangerous according to the requirements of ADR.	Driver	<b>1000</b>	

Table BG 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
Directive 96/53/EC	<a href="#">Road Traffic Act</a>	Article 177 Paragraph 3	Driving a vehicle in violation of the maximum authorized dimensions and weight	Driver	<b>From 1000 up to 3000</b>	
Directive 2009/40/EC	<a href="#">Road Traffic Act</a>	Article 178a Paragraph 1	Issue of documents for periodical roadworthiness tests for vehicles without a dully authorization	Any natural or legal person	<b>5000</b>	
		Article 178a Paragraph 2	Circulation during the roadworthiness test	Any natural or legal person	<b>3000 (in a case of a second offence – 5000)</b>	
		Article 178a Paragraph 4	failure to file a notification or a document certifying the performance of periodical roadworthiness tests for vehicles with the competent authorities;	A person dully authorized to carry out periodical roadworthiness tests for	<b>1000 (in a case of a second offence – 2000)</b>	

Table BG 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
			as a result of the inappropriate storage of documents certifying the performance of periodical roadworthiness tests for vehicles occurred their loss, theft or damage,	vehicles		
		Article 178a	failure to establish the required organization or to exercise control of compliance with the requirements of Instruction No. N-32	Any person	<b>2000</b>	
		Article 178a	- a chairman of an inspection commission or a technical specialist who allows a periodical roadworthiness tests for vehicles to be carried out in violation of the	As described in the respective provision	<b>1500 (in a case of a second offence – 3000)</b>	



**Table BG 4**

**Standards of Vehicles, Load and Necessary Licences**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
			requirements of Instruction No. H-32, or by using facilities and measuring equipment not meeting the requirements of Instruction No. H-32;  - a chairman of an inspection commission or a technical specialist who fails to enter the data of an inspection for roadworthiness tests for vehicles according to the requirements of Instruction No. H-32;  - a technical specialist who fails to check the fitness of the equipment, parts, units, apparatus, mechanisms, components and characteristics of the road vehicles subject to roadworthiness tests for vehicles			

**Table BG 4**

**Standards of Vehicles, Load and Necessary Licences**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction)  In BGN</b>	<b>Criminal sanction(s)</b>
			<p>according to the methods prescribed in Instruction No. H-32;</p> <ul style="list-style-type: none"> <li>- a technical specialist who qualifies a technical deficiency in breach of the requirements specified in Instruction No. H-32 or issues incorrect opinion in the document for periodical roadworthiness tests for vehicles;</li> <li>- a technical specialist working with malfunctioning equipment, apparatus and measuring means or uses the improperly, or manipulates or changes their indications;</li> <li>- a technical specialist who fails to notify the Executive Agency "Road Transport Administration" within the</li> </ul>			

Table BG 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
			time limit specified in Instruction No. H-32 that his individual stamp is lost, stolen or damaged,			
		Article 178a	<p>A technical specialist who, as a result of improper storage of the individual stamp, has made possible its loss, theft or damage;</p> <p>violations of the requirements for performance of periodical roadworthiness tests for vehicles and the requirements for keeping the documentation related thereto, where no other penalty has been specified</p>	As described in the respective provision	<p><b>1000</b></p> <p><b>500</b></p>	

Table BG 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
<p><b>Directive 2006/126/EC</b></p>	<p><a href="#"><u>Road Traffic Act</u></a></p>	<p>Article 177, Paragraph 1</p>	<p>a person:</p> <ul style="list-style-type: none"> <li>- who drives a vehicle after he has been deprived from this right by court or administrative order;</li> <li>- who drives a vehicle without having the respective driving licence or it has been withdrawn;</li> <li>- as an owner, official or driver, who admits or concedes the driving of a vehicle to a person, who does not have the respective driving licence (as well to a person who has consumed alcohol or other intoxicating substance);</li> <li>- who without a dully authorization</li> </ul>	<p>As described in the respective provision</p>	<p><b>From 100 to 300 (in a case of a second offence – from 1000 to 5000)</b></p>	<p><b>Article 343c Paragraph 1 of the Penal Code provides for punishment of up to two years imprisonment to a person driving a vehicle during the period of time when he/she is deprived of its</b></p>

**Table BG 4**

**Standards of Vehicles, Load and Necessary Licences**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
			carries out driving training		<b>No higher sanction for a second offence</b>	<b>right to drive a vehicle provided this is the second offence, the first one being sanctioned as an administrative offence.</b>
		Art. 178 Paragraph 1 p. 6	a person who violates the prescriptions of the legal rules applicable to the training equipment and programmes	As described in the respective provision	<b>From 2000 to 7000</b>	

**Table BG 4**

**Standards of Vehicles, Load and Necessary Licences**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Administrative fine/sanction) In BGN</b>	<b>Criminal sanction(s)</b>
		Art. 178b Paragraph 1	a person who is engaged in drivers training without holding a dully authorisation	As described in the respective provision	<b>5000</b>	
		Art. 178b Paragraph 2	a person who fails to allow control authorities to check the training equipment or if he fails to supply them with the entire documentation related to the driving training	As described in the respective provision	<b>3000 (in a case of a second offence – 5000)</b>	
		Art. 178b Paragraph 4	a person who dully authorized for driving training: - fails to keep the register of driving trainees and of the documentation in compliance with the relevant legal requirements;	As described in the respective provision	<b>1000</b>	

**Table BG 4**

**Standards of Vehicles, Load and Necessary Licences**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
			<ul style="list-style-type: none"> <li>- improperly keeps the register of the driving trainees, which results in loss, theft or damage of the register;</li> <li>- performs the training activity with a head of the training activity who does not meet the relevant legal requirements;</li> <li>- organize the training activity in premises that do not meet the relevant legal requirements;</li> <li>- fails to provide the conditions required for carrying out the theoretical and practical tests;</li> <li>- fails to supply the video records after the theory exams in the training</li> </ul>			

Table BG 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
			centre.			
		Art. 178b Paragraph 5	head of training activity in a training centre who: <ul style="list-style-type: none"> <li>- fails to ensure the compliance with the relevant legal requirements of the training documentation for training of the driving licence candidates under Art. 153, Item 1 during the training;</li> <li>- fails to issue in time and fails to keep the training related documents;</li> <li>- during the training process orders or allows violation of:                             <ul style="list-style-type: none"> <li>a) the daily workload of the trainees;</li> <li>b) the daily workload of the trainers;</li> </ul> </li> </ul>	As described in the respective provision	<b>500</b>	



**Table BG 4**

**Standards of Vehicles, Load and Necessary Licences**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction)  In BGN	Criminal sanction(s)
			c) the schedule for the theory training; d) the obligation for notification for individual training; e) performance of the intermediary and internal examinations; - fails to announce and update the information regarding the training and test fees; - allows the issue of a certificate for test admission to a person who has not passed the required training and/or has failed to successfully pass the internal exams; - allows violations regarding the			

Table BG 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
			training-related documentation.			
		Art. 178b Paragraph 6	a trainer in theoretical and/or practical training who: <ul style="list-style-type: none"> <li>- fails to observe the relevant legal requirements for the training documentation]</li> <li>- allows violation in keeping the documentation related to training;</li> <li>- fails to enter in time the data into the training-related documents;</li> <li>- violates the daily load of the trainers;</li> </ul>	As described in the respective provision	<b>500</b>	

Table BG 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
			- during training violates: a) the daily load on the trainees; b) the schedule for the theory training; c) the length of the studying classes; d) the sitting of the intermediary and internal exams; - as a member of an examination commission violates the procedure for the theoretical and practical exams.			
		Art. 178c	a person who violates the conditions and procedure for psychological tests for drivers as established in the	As described in the respective provision	<b>3000 (in a case of a second offence – 5000)</b>	

Table BG 4						
<u>Standards of Vehicles, Load and Necessary Licences</u>						
EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Administrative fine/sanction) In BGN	Criminal sanction(s)
			appropriate by-law			

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

**Table BG 5**

**Infringements of commercial road transport legislation**

<p><b>Type of infringement(s) and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Criminal sanction</b></p>	<p><b>Is it dissuasive?</b></p>
<p>A person:</p> <ul style="list-style-type: none"> <li>- who drives a vehicle after he has been deprived from this right by court or administrative order;</li> <li>- who drives a vehicle without having the respective driving licence or it has been withdrawn;</li> <li>- as an owner, official or driver, who admits or concedes the driving of a vehicle to a person, who does not have the respective driving licence (as well to a person who has consumed alcohol or other intoxicating substance);</li> <li>- who without a dully authorization carries out driving training. (Article 177, Road Traffic Act, Paragraph 1)</li> </ul> <p>Directive 2006/126/EC</p>	<p>Article 343c Paragraph 1 of the Penal Code provides for punishment of up to two years imprisonment to a person driving a vehicle during the period of time when he/she is deprived of its right to drive a vehicle provided this is the second offence, the first one being sanctioned as an administrative offence.</p>	<p>Yes</p>
<p>Chapter IX of the Special Part of Penal Code</p>	<p>Art. 308 of the Penal Code provides imprisonment up to</p>	<p>Yes</p>

**Table BG 5**

**Infringements of commercial road transport legislation**

<p><b>Type of infringement(s) and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Criminal sanction</b></p>	<p><b>Is it dissuasive?</b></p>
<p>establishes the so-called documentary crimes. They are regulated in a general way but they comprise the creation and use of a fake licence or a fake community licence (forgery) as well providing fake information to obtain a licence.</p> <p>Regulation 1071/2009, Regulation 1072/2009, Regulation 1073/2009</p>	<p>three years for a forgery of an official document and up to ten years provided the offence is committed with a purpose of material benefit. In minor cases the sanctions are up to six months imprisonment or probation, resp., imprisonment up to three years. Art. 316 of the Penal Code provides the same sanctions for a person who uses a fake document being aware of the forgery.</p> <p>Art. 314 of the Penal Code provides imprisonment up to two years or probation for providing false information in order an official document to be issued.</p>	

## 5.7 Sanctions which could be considered substantially criminal in the Bulgarian legal system

**Table BG 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  Corresponding EU 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?
			Yes or not
<p>There are no sanctions imposed by the Bulgarian legislation implementing the EU directives and regulations on commercial road transport which are formally administrative but are substantively criminal. Indeed, the highest fine provided for the offences researched does not exceed BGN 10,000. Such amount is not deemed to be capable of affecting substantially the economic interest of the offender.</p>			

## **5.8 Effectiveness of the Sanctions System**

The Bulgarian administrative sanctions system is deemed not to be effective. Such conclusion is based on the following grounds:

- The system does not distinguish properly between serious and not serious infringements and in a lot of cases, there is a fixed fine or sanction. Furthermore, the lack of the differentiation does not allow to allocate an appropriate sanction to the concrete offence.
- The sanctions do not differentiate between undertakings as to the impact of the sanction on the enterprise, meaning that the undertakings with a big turnover are punished in the same way as undertakings with a small one.
- Lack of specific criminal sanctions for the most serious breaches is also deemed to make the system less effective.
- The number of infringements detected in the years 2007-2008 in Bulgaria and concerning infringements of the rules of driving times, rest periods and recording equipment was relatively high<sup>244</sup>. No data are available for 2010. However, the figures of 2007-2008 can still be used to assess the level of compliance in the country.
- The system does not provide for the immobilisation of the vehicle or the confiscation or suspension of driving documents. It is posited in agreement that such measures are deemed to be effective in order to ensure compliance with the law.

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<sup>244</sup> See the Report on the implementation in 2007-2008 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities (25th report from the Commission on the implementation of the social legislation relating to road transport), Commission Staff Working Document, Sec(2011) 52.



## **6 CYPRUS- COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR**

### **6.1 *Social rules on road transport***

#### **6.1.1 Rules on Driving Times and Rest Periods**

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

Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85, have been transposed into Cyprus national law, as the ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007)<sup>245</sup>. According to the specific Act, every employer and passenger vehicle driver, for which a permission has been granted for the use of road passenger transport such as an urban taxi with the imposition of fare per passenger and that is used for regular passenger services in specified roads, for which distance does not exceed 50 km, shall apply the provisions of the Regulation (EC) No 561/2006 (driving hours, driving during a period of two consecutive weeks, breaks, daily rest, weekly rest, banning of certain types of fees, company's liability, derogation from the Regulation (EC) No 561/2006). However, these provisions are not expressed as such in ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007). Still, sanctions are imposed where any of these provisions is infringed, proving their effective application in Cyprus Law.

The owners of these vehicles have the choice to install a tachograph, or use a service program and road timetable. The exception applies for vehicles that are exempted from the requirement of installation/use of tachograph. In order to be exempted from such use, they should submit an application for exemption to the Department of Road Transport. If the request is approved, then a certificate is issued, which must be moved and displayed in case of check control.

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<sup>245</sup> Gazette, issue No. 4133, App. 1 Part I, dated 13 July 2007.

As regards the provisions related to sanctions applied to infringements, the ‘Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007) provides in Section17(1) that any person, who infringes any of the provisions of the specific Cyprus law or the Articles 5, paragraph (2), 6, 7, 8, 9, 10, 12, 16, 20 of the Regulation (EC) No 561/2006 or the articles 3, paragraph (1), 13, 14, paragraphs (1) and (2), 15 paragraphs (1), (2), (3), (4), (5), (5a), (7) and (8), 16 paragraphs (1), (2) and (3), apart from the last point of the paragraph 3 of the Regulation (EEC) No 3821/85, is liable of an offence and if convicted, is subject to an imprisonment not exceeding six months or a fine not exceeding two thousand pounds or to both such sanctions.

Referring to Section2 of the Cyprus law (Law 86(1)/2007), any person who drives or permits the driving of a vehicle, that is under the categorisation of the specific law, of which a plate is not installed or a periodic inspection plate as it is referred in Regulation (EEC) No 3821/85, is guilty of an offence and is subject to imprisonment not exceeding three months or a fine not exceeding one thousand pounds or to both such sanctions.

According to Section3 of the Cyprus law (Law 86(1)/2007), in case of a legal person, every natural person representing the undertaking is at the same time with the legal person, guilty of an offence and is liable under the penalties provided in the specific law.

In Section6(3) of ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007), it is stated that ‘if during a road check performed in another Member State on a vehicle registered in the Republic, it is found that there were violations that cannot be detected during the check due to the lack of necessary data, the competent authority shall cooperate with the competent authority of the Member State in order to assist in clarifying the matter’.

Section7(3) of the ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007), states that ‘during the check, the inspectors shall take into account the information given from the institution of another Member State on the activities of the under check enterprise in that other Member State’.

According to Section14(2) of the ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007), ‘in case that an inspector or/and police officer has a reasonable cause to believe, under his powers given to him

by the current section, that violation or non compliance with any provision of this Act or the Regulations referred to in the preamble, he has the following powers against the owner or manager of the premises or any other place or vehicle: i) to ask the termination of the said breach for non-compliance and specify the time within which this termination shall be, at his discretion to supervene and ii) to immobilise the vehicle in question until the cause of the infringement is removed, provided that the breach might endanger the road safety’.

According to Section16(1)(a) ‘person who ‘hampers any inspector or/and police officer in his performance of his duties according to the provision of this Act, or b) fails to comply with any requirement imposed to him by an inspector or/and police officer, under any provision of this Act, or c) without reasonable cause, fails to provide an inspector or/and police officer any other assistance or information, which is reasonably requested by the specific inspector or/and police officer for the purpose of fulfilling his duties under this Act, or d) provides any information by knowingly making a false statement, is guilty of an offence and if convicted, is liable to imprisonment not exceeding three months or to a fine not exceeding 750 pounds or to both sanctions.

#### Foreign drivers

In Section6(1)(iii) of ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007), it is stated that the road checks of all categories of transport are organised in such a way without any discrimination, irrespective of the country of registration of the vehicle, the driver’s country of residence, country of operation, the source and the destination of the movement and the type of analogue or digital tachograph’.

This implies that there are no different penalties when the violation is committed by a foreigner. The same sanctions are therefore applied.

#### **6.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)**

The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007) transposes also Directive 2006/22/EC into Cyprus law. Its

purpose is to be compatible with the Directive 2006/22/EC and in accordance with the determination of measures (powers of the inspectors, offences, penalties) for the implementation of Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85/EC.

According to Section20(1) for a better application of the provisions of the ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007), the Ministerial Council is issuing Regulations. Section2 states that without any interference with the generality of the above subsection, the abovementioned Regulations may regulate b) the procedures for the introduction of a seriousness rating system for undertakings, according to the relative number and seriousness of the infringements committed against Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85 by a specific enterprise.

Annex III of ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007) replicates the categorisation of infringements contained in Directive 2006/22/EC (as amended by Directive 2009/4/EC and Directive 2009/5/EC). This categorisation is taken into account by Cyprus Courts in applying a specific sanction to an infringement.

### **6.1.1.3 Directive 2002/15/EC**

Directive 2002/15/EC has been transposed into Cyprus national law as the ‘The organisation of working time of persons performing mobile road transport Act of 2005’ (Law 47(1)/2005)<sup>246</sup>.

‘The organisation of working time of persons performing mobile road transport Act of 2005’ (Law 47(1)/2005) which transposes Directive 2002/15/EC in Section14(1) provides that any person who fails to comply with any requirement imposed to him pursuant to any provision of this Act or the regulations hereunder mentioned or permits a person who is employed or is subject to the orders to carry out such violation, be guilty of an offence and, if convicted, to be subject to an imprisonment sentence not exceeding six months or a fine not exceeding two thousand pounds or to both sanctions.

SubSection2 of Section14 of the Act states that when a legal person commits an offence under this Act, any person representing the legal person for the purposes of this

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<sup>246</sup> Gazette, issue No. 3989, App. 1. Part I, dated 6 May 2005.

Act and every director or board member or chief executive or secretary or other officer of such person or any person holding any of the above capacities in this subsection, who authorises, permits or encourages, even by negligence, the infringing act, is, together with the legal person, guilty of that offence and, upon conviction, is liable to the sanctions provided in this law for that offence.

### Foreigners

Section 3(1) of 'The organisation of working time of persons performing mobile road transport Act of 2005' states that 'the scope of this Directive only covers mobile workers employed by transport undertakings established in a Member State participating in mobile road transport activities covered by Regulation (EC) No 3820/85, the 'Control of driving hours and resting of drivers of certain vehicles Law of 2004 or/and the AETR Agreement'.

## **6.1.2 Tachograph**

See above.

## **6.2 Road package**

### **6.2.1 Regulation (EC) No 1071/2009**

The Regulations (EC) No 1071/2009, No 1072/2009 and No 1073/2009 are automatically effective in Cyprus, but there are no Cyprus Laws regarding their implementation. Nevertheless, the relevant national rules concerning the conditions to be complied with to pursue the occupation of road transport operator are laid down in 'On the occupation of road transport laws of 2001 until 2011' (Law 101(1)/2001)<sup>247</sup>).

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<sup>247</sup> Gazette, issue No. 3513, App. 1, Part I, dated 13 July 2001.

This Law provides the regulation and control of the operation of companies in the occupation of road haulage operator and road passenger transport and related matters.

Section 22 of the Law 101(1)/2001 provides the types of infringement and the related applicable sanctions. According to Section 22(1), any person who: a) establishes or operates a business in violation of Article 4 (established in accordance with the Law provisions), b) fails to return the revoked or suspended licence or take any action which requires the possession of a valid and current licence while his licence is revoked or suspended under the provisions of Article 10 or c) fails to return the revoked or suspended licence 'A', 'D' or 'E' or take any action which requires the possession of a valid permit and valid 'A', 'D' or 'E' licence while the authorisation of the 'A', 'D' or 'E' licence has been revoked or suspended, under the provisions of Articles 14 and 16 respectively, or d) contravenes or fails to comply with any obligation imposed on it under the provision of this Act or e) contravenes or fails to comply with any lawful instruction or order given to it by any inspector or hinders the inspectors' performance of duties and responsibilities under the provisions of Article 20 or f) contravenes or fails to comply with any terms of the permit or licence 'A' or the licence 'D' of the licence 'E' issued to him under the provisions of this Law, or g) while he is not a holder of a valid business licence, advertises or uses in any way the term 'road transport company' or other similar terms, name or inscription is liable of an offence and if convicted, liable to an imprisonment sentence not exceeding one year or to a fine not exceeding 2,000 pounds or to both sanctions and in case of repeating offence, into a further fine which is not exceeding 100 pounds for each day of the infringement.

Section 23 deals with the offences and related penalties. According to Section 23(1), 'violation of the provisions of this Act and the regulations shall be punished, regardless of whether any criminal or disciplinary liability is imposed under other legal provisions, a fine between fifty and one thousand pounds, depending on the severity of the attested violation.'

'The financial penalty is imposed on the licensee by justification for decision of the action of the competent authority stating the violation. The amount of each penalty would be indicative according to the directives of the Minister, in setting out the basic breaches with their corresponding penalties, without this limiting, within the limits of the directives, the discretion of the competent authority stating the specific defendants to freely decide, based on the facts as appropriate' (Section 23(2)).

‘The competent authority shall notify the licensee the penalty and does not allow the operation of the company before the payment of the fine imposed’ (Section23(3)).

‘An appeal against the decision on the imposition of a penalty is allowed. An Appeal to the Minister should be exercised within thirty days of the notification of the decision’ (Section23(4)). The appeal of Section4, does not suspend the execution of the decision (Section23(5)).

The amount of the penalty is permanently accrued by the Republic, if no action is taken within the deadline of seventy-five days of notification of the decision of the imposition of the penalty or, in case of appeal (subSection4), an appeal is introduced to the Minister, from the moment that the notification of the decision of the Minister’ (Section23(6)).

Cyprus law does not contain any provision concerning the infringements that are qualified or defined as the most serious infringements of EU law, listed in Annex IV to Regulation No 1071/2009 .

### Foreigners

Section22(2) states that ‘when road transport offenses committed by non-resident in the territory of the Republic, in violation of the provisions of this Law and Regulations on road transport of goods or passengers, which could lead to the withdrawal of the permit for the exercise of occupation of road transport, the competent authority shall provide the Member State of the Union in which the road transport is established, with all the information available on these offences and if any related sanctions have been imposed’.

## **6.3 Standards of vehicles and load and necessary licences**

### **6.3.1 Directive 2008/68/EC**

Directive 2008/68/EC has been transposed into Cyprus national law as the ‘The Law Amending the original law of Road transport of dangerous goods Act of 2010’ (Law 14(1)/2010)<sup>248</sup>.

‘The Law Amending the original law of Road transport of dangerous goods Act of 2010’ (Law 14(1)/2010) should be read together with the ‘The Law of Road Transport of dangerous goods Acts of 2004 – 2007 (Law 29(I)/2004)’<sup>249</sup>.

According to the latter, Section24(1) denotes that any person who a) hinders the inspector’s performance of duties and powers conferred to him under this Law or related regulations or orders, b) hinders any police officer or a person accompanying the inspector in accordance with subSection4 of Section10 to enter premises, c) refuses to provide the inspector or accompanying person, in accordance with sub-Section3 of Section10, secure access to any part of premises, d) refuses or fails to comply with any requirement of the inspector submitted pursuant to Section10, is guilty of an offence and if convicted, liable to an imprisonment sentence not exceeding three months or a fine not exceeding one thousand pounds or to both sanctions’.

Section24(2) denotes that ‘any person who a) violates the provisions of Section5, b) transfers or permits the carriage of dangerous goods who knowingly fails to comply with the provisions of this Act or of any related regulation or orders issued or c) uses, permits or tolerates the use of labelling or document issued under this Act or regulations, misleading or falsifying or forging them in order to deceive another person, is guilty of an offence and, if convicted, is liable to an imprisonment sentence not exceeding five years or a fine not exceeding forty thousand pounds or to both sanctions’.

Section24(3) states that ‘any person who contravenes any other provision of this Act or regulations or orders issued, for which no provision of sanction is imposed, is guilty of an offence and if convicted, is to be punished with a fine not exceeding two thousand pounds’.

Regarding Section24(4) of this Act, ‘when a legal person commits an offence under this Act, any person who represents the legal person for the purposes of this Act and every director or board member or chief executive or secretary or other officer of such person or any person holds any of the above capacities in this subsection, who

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<sup>248</sup> Gazette, issue No. 4233, App. 1. Part I, dated 5 March 2010.

<sup>249</sup> Gazette, issue No. 3815, App. 1. Part I, dated 5 March 2004.



authorises, permits or encourages the carrying out of an infringing actor whose omission has permitted the offence, is, together with the legal person, guilty of that offence and, upon conviction, is liable to the penalties provided in this law for that offence’.

### Foreigners

According to Section4(1) of ‘The Law of Road Transport of dangerous goods Acts of 2004 – 2007 (Law 29(I)/2004), ‘The specific Law is applicable on the road transport of dangerous goods undertaken by any vehicles moving dangerous goods within the Republic or between the Republic and another Member State and, in cases concerning checks done in those vehicles, is applicable to the vehicles that enter the Republic from a third country’.

As it concerns the checks, Section8(1) of ‘The Law of Road Transport of dangerous goods Acts of 2004 – 2007 (Law 29(I)/2004)’ denotes that ‘the road vehicles transporting dangerous goods and which are moving within the the Republic, either registered in the Republic, in another Member State or a third country, are subject to checks, in order to determine their compliance with the provisions of the specific Law’.

### **6.3.2 Directive 1996/53/EC**

Directive 96/53/EC has been transposed into Cyprus national law by 'The Motor Vehicles and Road Traffic Act 1972’ (Law 86/1972) which defines the maximum dimensions and weights for vehicles of international and domestic routes.

### **6.3.3 Directive 2009/40/EC**

The Directive 2009/40/EC has not been transposed into Cyprus national law. The relevant Laws on roadworthiness tests for vehicles and the technical inspection centres have been laid down by ‘The Motor Vehicles (M.O.T. and Technical Inspection Centres) Law of 2007 (N.1(1)/2007<sup>250</sup>. This Act is amended by ‘The Law Amending

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<sup>250</sup> Gazette, issue No. 4107, App. 1 Part I, dated 15 January 2007.

the Motor Vehicles (M.O.T. and Technical Inspection Centres) Act of 2010 (N.56(1)/2010)<sup>251</sup>. The latter law should be read together with the The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2009 ('basic Law') and the basic law together with the Amended Law would be referred to as 'The The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2010'.

According to Section12(1) of 'The The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2010', any motor vehicle that has no certificate of roadworthiness is prohibited of road use. Both the owner and the person who have the control of the vehicle or the undertaking of the vehicle, acting in violation of the provisions of this Laws, are liable of an offence punishable with an imprisonment sentence not exceeding three months or a fine not exceeding one thousand pounds or to both sanctions (Section12(3)).

As regards administrative sanctions, Section50 of 'The The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2010', the Registrar has the power to impose a fine between 100 pounds and 2,000 pounds, depending on the seriousness of the infringement, in case where it is found that the I.K.T.E.O. or the manager of the line of technical check is infringing any of his responsibilities under this Law. Before the imposition by the Registrar of this fine, he should prepare a written notice about his intention to speculate the challenged infringement and call the legal entity or natural person to an apology and presentations (Section51(1)).

According to Section54(1) of 'The The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2010', criminal and civil liability is imposed for offences committed by legal persons together with the Members of the Board, the Secretary or other officer or administrative body of the legal person, who is found that he is involved or he participated in the offence.

Criminal offences are defined in Section57 of 'The The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2010' which states that a person who infringes any of the provisions of the specific Law, is liable of an offence and, if convicted, sanctioned by a fine not exceeding five thousand pounds or an imprisonment sentence not exceeding two years or to both sanctions.

### Foreigners

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<sup>251</sup> Gazette, issue No. 4247, App. 1 Part I, dated 25 June 2010.

No express provision is laid down in ‘The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2010’ on foreigners.

#### **6.3.4 Directive 2006/126/EC**

Directive 2006/126/EC has not been transposed into Cyprus national law yet while the deadline for its implementation was set to 19 January 2011.

The relevant rules on the subject matter are laid down on ‘The Professional driving licence Law of 2011’ (Law 80(1)/2011)<sup>252</sup>.

Section 7 of this Act, has to do with forgery, falsification or alteration of a document. Section 7(a) states that a) each person who forges, falsifies or alters any driving licence, certificate or other document issued under this Law or Regulation, or b) each person who fraudulently: i) uses or allows to be used by any other person any licence, certificate or other document forged, falsified or altered in this way, or ii) grants to any person or receives from another person licence, certificate or other document forged, falsified or altered in this way, or iii) issue a licence, certificate or other document in contravention of this Act or the Regulations, is guilty of an offence and if convicted, is liable to an imprisonment sentence not exceeding three years or a fine not exceeding three thousand euros (€3,000) or to both sanctions.

Section 8 has to do with the withdrawal, suspension of the licence. According to Section 8(1), subject to subSection (2) the Department may revoke or suspend under Article 6 of this Act issued permit for any one of the following reasons:

- if the granting or renewal of a licence has been secured at the deceit, misrepresentation, or concealment of a material fact that was made under the knowledge of the licensee.
- if the licensee has been denied by the Court the right to hold a licence under this Act or regulations.
- if, in the exercise of disciplinary jurisdiction of the Disciplinary Council it found the licensee guilty of a disciplinary offence, as defined in the Regulations.

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<sup>252</sup> Gazette, issue No. 4282, App. 1. Part I, dated 29 April 2011.

- if the licensee ceases to satisfy the requirement referred to in paragraph d) of subSection(2) of Article 6 of this Act.

According to Section8(2), ‘no licence shall be revoked or suspended under subSection(1), unless the licensee is given a two week notice for the intended revocation or suspension, stating in details the reasons for the revocation or suspension, and provided that he is given the opportunity to provide written reasons for refuting this action’.

Section8(3) states that ‘The validity of the licence is revoked or suspended automatically and in the same extent if and where its holder:

- wanted in any way to be deprived of the right to hold a licence, or
- is disqualified of the right of possession, acquisition or retention of a licence by a Court’.

Section8(4) denotes that ‘in case of revocation or suspension of licence determined under this section, the holder thereof shall immediately return it to the Department without being able to get any returned fees paid for it. If the holder of such licence fails to return it, as provided above, the licence can be confiscated and returned to the Department by any Supervisor or Controller or police officer in uniform and he is found guilty of an offence and if convicted, is liable to a fine not exceeding a thousand euros (€1,000)’.

According to Section11(1), any person who a) contravenes the provisions of the subSection1 of Section5 of the Law, or b) contravenes or fails to comply with any lawful order or directive issued by any Supervisor or Controller or a police officer while performing their duties under this Act and the Regulations, or c) contravenes or fails to comply with any condition mentioned in the licence, is guilty of an offence and if convicted, is liable to an imprisonment sentence for a period not exceeding one year or a fine not exceeding two thousand euros (€2,000) or to both sanctions’.

A person who fails to appear before the Department or the Disciplinary Council, when asked to do so, in time and place indicated in the call or during trial, or refuses to answer any lawfully question referred to him, is guilty of an offence and if convicted, is subject to a fine not exceeding five hundred Euros (€500) (Section11(2)).

According to Section12, independent from any criminal liability under this Act or any other law in force, licensees can be held disciplinary liable, in accordance with the Regulations.

## **6.4 Notion of criminal sanction and of administrative sanction in the Cyprus legal system**

Cyprus administrative law does not include any administrative sanction. It only states the available remedies i.e. an annulment of an administrative decision (individual administrative act) and an appeal (revisional appeal) against a judgment of a single judge of the Supreme Court.

Criminal sanctions in the Cyprus legal system are defined in Section 26 of the Criminal Code (Cap 154), according to which 'The Court has the power to impose a) imprisonment for life, b) imprisonment, c) fine, d) imposition of compensation, e) provision of guaranty for the maintenance of order and good conduct, or for hearing of a court judgment, f) surveillance and g) any other penalty or treatment required by another Law'.

Imprisonment for life is the highest and maximum criminal penalty and which is only imposed to crimes such as treason or intended murder (Section 29 of the Criminal Code) and armed hostilities against the Republic or inciting foreigner to invade with armed forces in the Republic (sections 36 and 37 of the Criminal Code).

Penalties for less serious criminal offences are defined in Section 374 of the Criminal Code such as hampering the free movement to public place, placing and leaving garbage in public place, etc.

Whether a Court in Cyprus is going to impose a fine or an imprisonment depending on the severity of the offence, a Court in Cyprus may impose a fine or an imprisonment. The Court can impose the highest sanction referred into the specific Act and may not exceed it. The Court generally starts from imposing a fine if the offense is not a severe one and if the sanction imposed is able to deter further offenses committed by the same person. If the Court believes that the offense is very severe, then it may choose to impose an imprisonment solely, or an imprisonment combined with a fine. All the relevant circumstances of the person committing the offense will be taken into consideration by the Court imposing a sanction. So it is always up to the Court alone to decide which sanction is necessary in each case based on the sanctions provided by the specific Act.

### *Concurrence between several sanctions*

There are no specific rules in Cyprus governing the situation where for the same action, several infringements have been committed against the provisions on commercial road transport.

In Cyprus every infringement will be punished, even if it is committed at the same time when another infringement is committed. It is up to the court to decide whether to punish both infringements separately or together thus limiting the liability. For example, if the sanction of the first infringement is a penalty of 500 Euros and the second penalty 300 Euros, the court may either impose a penalty of 800 (500 + 300) Euros or of 600 Euros (limiting the penalty because both infringements are considered at the same time).

When instead, more infringements are committed with different actions, all the sanctions for the different infringements will be applied. If more infringements are committed at the same time, and the court finds it appropriate, it may decide that all defendant's infringements are treated in the same proceeding. This should be done if the infringements have the same basis, they have the same legal and factual background. As regards the accumulation of sanctions, again this is up to the court. Usually, as a practice in Cyprus, different infringements, when accepted by the Court, are tried together in order to avoid double jeopardy, for time management reasons and also for the defendant to be able to get a possible limit (discount) on sanctions that will be imposed to him.

*Concurrence between administrative and criminal sanctions*

N.A.

## **6.5 Scope of application of Cyprus criminal law**

The relevant Cypriot rules on extraterritorial application of criminal law are laid down in the Cyprus Criminal Code (Cap 154). Section 5(1) reads that 'The Criminal Code and any other Law foreseeing an offence, apply to all the offences committed c) in any foreign country by a citizen of the Republic while this person is under the services of the Republic, or d) in any foreign country by a citizen of the Republic, if the offence is punishable in the Republic with an imprisonment not exceeding two years

and the act or omission that constitutes the offence is as well sanctionable according to the Law of the country where the offence is committed and e) in any foreign country from any person if the offence has to do with illegal transport of dangerous drugs.

Nevertheless, according to Section2, criminal prosecution will not be conducted in the Republic in respect of an offence committed in a foreign country if the offender was tried in the specific country for such offence and is acquitted or sentenced.

## **6.6 Summary tables**

The relevant national authorities/bodies responsible for imposing and executing administrative and criminal sanctions are as follows: regarding ‘The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007’ (Law 86(1)/2007), Section13 reads that the Minister of Labour and Social Insurance by notification that publishes in the Gazette of the Republic, authorises inspectors for effective implementation of the provisions of the specific Act. So the imposition of administrative and criminal sanctions rests on the inspectors or/and police and the execution rests on the Courts of the Republic.

‘The organisation of working time of persons performing mobile road transport Act of 2005’ (Law 47(1)/2005) provides in Section11 that the Minister of Labour and Social Insurance by notification that publishes in the Gazette of the Republic, authorises an officer or officers of the competent authority (Department of Labour relationships of the Ministry of Labour and Social Insurance and any other service authorised by the Minister to exercise special tasks for the purposes of this Act) to act as authorised officers for the effective implementation of the provisions of the specific Act and to impose if needed administrative and criminal sanctions. The execution of the sanctions is imposed by the Courts of the Republic.

‘The Law of Road Transport of dangerous goods Acts of 2004 – 2007 (Law 29(I)/2004) states in Section10(1) that all the checks are undertaken by an inspector authorised by the competent authority (the Manager of the Department of Road Transport of the Ministry of Communications and Works) for the imposition of administrative and criminal sanctions where needed. The execution of these sanctions is imposed by the Courts of the Republic. Revocation of a decision, act or omission of the competent authority could be made through the Minister of Communications and

Works, who according to Section 20(4) of this Act, is able a) to ratify or annul the challenged decision or act, b) to amend the decision or act, c) to decide to replace the challenged decision or act or treatment of the omission and d) refer the case to the competent authority for review in the light of any instruction or comment’.

As it concerns the ‘The Motor Vehicles and Road Traffic Act 1972’ (Law 86/1972) the impositions of administrative and criminal sanctions are imposed by the Police and executed by the Courts of the Republic.

According to ‘The The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2010, the competent authority for the imposition of sanctions is the Registrar. Execution of the sanction is also made by the Registrar if it concerns administrative fines otherwise any other criminal sanction is executed by the Courts of the Republic.



Table CY 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	Pecuniary criminal sanction(s)	Criminal sanction(s)
Regulation 561/06/EC	<a href="#">Age</a>	Article 5.2	The minimum age limit for assistants of drivers is 18 years old.	Employer/Driver/Any person infringing the provisions of the Law/Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>
	<a href="#">Driving Times</a>  <a href="#">The Control of driving hours</a>	Article 6.1	Exceeding the daily driving time of 9 hours, where is not permitted its extension up to 10 hours	Employer/Driver/Any person infringing the provisions of the Law/Legal person – together with the natural person representing	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>

Table CY 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	Pecuniary criminal sanction(s)	Criminal sanction(s)
	<a href="#"><u>and rest periods of drivers of certain vehicles Act of 2007 (Law 86(1)/2007)</u></a>		or Exceeding the daily driving time of 10 hours, where it is permitted its extension up to 10 hours	it is liable for the offence depending on the type of infringement		
		Article 6.2	Exceeding the weekly driving time	Employer/Driver/Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine – 2000 pounds (Depends on the offence)</b>	<b>Imprisonment not exceeding six months  Or to both such sanctions (Depends on the offence)</b>

Table CY 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	Pecuniary criminal sanction(s)	Criminal sanction(s)
		Article 6.3	Exceeding the total of driving time of two consecutive weeks	Employer/Driver/Any person infringing the provisions of the Law/ Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>
	<a href="#"><u>Rest Periods</u></a>  <a href="#"><u>The Control of driving hours</u></a>	Article 8.2	Insufficient daily rest, less than 11 hours, where reduced daily rest period is not permitted/ insufficient daily rest, less	Employer/Driver/Any person infringing the provisions of the Law/Legal person – together with the natural person representing	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>or to both such sanctions</b> <b>(Depends on the offence)</b>

Table CY 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	Pecuniary criminal sanction(s)	Criminal sanction(s)
	<a href="#"><u>and rest periods of drivers of certain vehicles Act of 2007 (Law 86(1)/2007)</u></a>		than 9 hours, where reduced daily rest period is permitted/ Insufficient allocate of daily rest into two periods, of which the first is at least 3 hours and the second one is less than 9 hours	it is liable for the offence depending on the type of infringement		
		Article 8.5	Insufficient daily rest period, less than 9 hours in cases of multi-manning	Employer/Driver/Any person infringing the provisions of the Law /Legal person – together with the natural person	<b>Maximum fine – 2000 pounds (Depends on the offence)</b>	<b>Imprisonment not exceeding six months  Or to both such sanctions (Depends on the offence)</b>

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EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
				representing it is liable for the offence depending on the type of infringement		
		Article 8.6	Insufficient reduced weekly rest period, less than 24 hours / nsufficient weekly rest period, less than 45 hours, where reduced weekly rest period is not permitted	Employer/ Driver/ Any person infringing the provisions of the Law/ Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>
	<a href="#">Breaks</a>	Article 7	Exceeding of the driving time without having any	Employer/ Driver/ Any person infringing the	<b>Maximum fine –</b>	<b>Imprisonment not exceeding</b>

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**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	Pecuniary criminal sanction(s)	Criminal sanction(s)
	<a href="#"><u>The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007 (Law 86(1)/2007)</u></a>		break	provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>2000 pounds</b> <b>(Depends on the offence)</b>	<b>six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>
	<a href="#"><u>Transport undertaking's liability</u></a>	Article 10.1	-connection of salary with the distance of travelling or the volume of goods	Transport undertaking	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the</b>	<b>Imprisonment not exceeding six months</b>

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EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
	<p><b>The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007 (Law 86(1)/2007)</b></p>		<p>carried, if payments are of such nature as to endanger the road safety or/and encourage the violation of Regulation No. 561/2006</p>		<p><b>offence)</b></p>	<p><b>Or to both such sanctions (Depends on the offence)</b></p>
<p><b>Directive 2006/22/EC (amended by</b></p>	<p><b><u>Driver's absence from work</u></b></p>	<p>Article 16.2</p>	<p>- improper functioning of check equipment (determination of possible</p>	<p>Employer / Driver/ Any person infringing the provisions of the Law /</p>	<p><b>Maximum fine – 2000 pounds (Depends on the</b></p>	<p><b>Imprisonment not exceeding six months</b></p>

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**Rules on Driving Times, Breaks and Rest Periods**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
<b>Directive 2009/4/EC)</b>	<b>The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007 (Law 86(1)/2007)</b>		misuse of the equipment and/or the driver's card and/or record sheets or where applicable, the non existence of the documents referred to in Article 16 of the Regulation No. 561/2006	Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>offence)</b>	<b>Or to both such sanctions (Depends on the offence)</b>
<b>Directive 2002/15/EC</b>	<b><u>Working time</u></b>	Section5(1)	The average of the weekly average working time must not exceed 48 hours.	Any person who fails to comply with any requirement imposed to him	<b>Maximum fine – 2000 pounds (Depends on the</b>	<b>Imprisonment not exceeding six months</b>



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Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
	<b>‘The organisation of working time of persons performing mobile road transport Act of 2005’ (Law 47(1)/2005)</b>		This time may be temporarily increased to 60 hours if the average working time of the affected mobile worker or self-employed driver does not exceed 48 hours per week during 4 months starting from the first week which starts from the first week of the increased of the working time	pursuant to any provision of this Act / Legal persons14(2) and any natural person representing it – every director, board member or chief executive or secretary or other officer, or any other person that holds the capacities provided in this subsection	<b>offence)</b>	<b>Or to both such sanctions (Depends on the offence)</b>

Table CY 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	Pecuniary criminal sanction(s)	Criminal sanction(s)
		Section6(1)	- mobile workers should not work over six consecutive hours without having a break	Any person who fails to comply with any requirement imposed to him pursuant to any provision of this Act / Legal person s14(2) and any natural person representing it – every director, board member or chief executive or secretary or other officer, or any other person that holds the capacities provided in this subsection	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>

Table CY 1

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Rules on Driving Times, Breaks and Rest Periods

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
		Section6(2)	- working time should be interrupted by breaks of at least 30 minutes if working hours total between six and nine hours, and at least 45 minutes, if working hours total more than nine hours otherwise this infringes the Law	Any person who fails to comply with any requirement imposed to him pursuant to any provision of this Act / Legal person s14(2) and any natural person representing it – every director, board member or chief executive or secretary or other officer, or any other person that holds the capacities provided in this subsection	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>

Table CY 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	Pecuniary criminal sanction(s)	Criminal sanction(s)
	<a href="#">Breaks</a>	Section6(3)	- breaks may be subdivided into periods of at least 15 minutes each	<p>Any person who fails to comply with any requirement imposed to him pursuant to any provision of this Act /</p> <p>Legal person s14(2) and any natural person representing it – every director, board member or chief executive or secretary or other officer, or any other person that holds the capacities provided in this subsection</p>	<p><b>Maximum fine – 2000 pounds</b></p> <p><b>(Depends on the offence)</b></p>	<p><b>Imprisonment not exceeding six months</b></p> <p><b>Or to both such sanctions</b></p> <p><b>(Depends on the offence)</b></p>

Table CY 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	Pecuniary criminal sanction(s)	Criminal sanction(s)
	<a href="#">Rest periods</a>	Section7	- for the purposes of this Act, apprentices and trainees shall, as regarding the rest period, to be subject to the same provisions as the other mobile workers pursuant to Regulation 3820/85/EC, of the AETR Agreement	Any person who fails to comply with any requirement imposed to him pursuant to any provision of this Act /  Legal person s14(2) and any natural person representing it – every director, board member or chief executive or secretary or other officer, or any other person that holds the capacities provided in this subsection	<b>Maximum fine – 2000 pounds</b>  <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b>  <b>Or to both such sanctions</b>  <b>(Depends on the offence)</b>

**Table CY 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)</b>	<b>Criminal sanction(s)</b>
<b>Regulation 3821/1985/EC</b>	<a href="#"><u>The Control of driving hours and rest periods of drivers of certain vehicles Act of 2007 (Law 86(1)/2007)</u></a>	Article 3.1  ( <a href="#"><u>installation of a tacograph</u></a> )	Tachograph:  - not installed or used  - non responding to the standards	Employer/ Driver/ Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine – 2000 pounds</b>  <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b>  <b>Or to both such sanctions</b>  <b>(Depends on the offence)</b>
		Article 13	- malfunctioning  -damage to the seals of the tachograph	Employer / Driver / Any person infringing the provisions of the Law /	<b>Maximum fine 2000 pounds</b>  <b>(Depends on the</b>	<b>Imprisonment not exceeding six months</b>  <b>Or to both such sanctions</b>

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			Non-insertion of:  - (the driver's card, infringement per purpose)	Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>offence)</b>	<b>(Depends on the offence)</b>
		Article 14.1	- not sufficient record sheets inside the car  - record sheet not complying with the standards  - not enough paper for the use of the tachograph	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine 2000 pounds</b>  <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b>  <b>Or to both such sanctions</b>  <b>(Depends on the offence)</b>

**Table CY 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)</b>	<b>Criminal sanction(s)</b>
		Article 14.2	the enterprise does not save the record sheets and data of download	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>
		Article 15.1	- use of unclean or damaged record sheets or driver cards and readable data - use of dirty or damaged	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>



Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			record sheets or driver cards and unreadable data  - failure to submit within seven calendar days the request for a replacement driver card, which shows malfunctioning in its use, is lost or stolen	the offence depending on the type of infringement		
		Article 15.2	- improper use of record sheets/driver cards  - unauthorised removal of record sheets or driver card, with impact on the	Employer / Driver /Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for	<b>Maximum fine – 2000 pounds</b>  <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b>  <b>Or to both such sanctions</b>  <b>(Depends on the offence)</b>

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			recording of data - unauthorised removal of record sheets or driver card, without any impact on the recorded data - use of record sheet or driver card for the coverage period longer than that provided for them, without data loss - use of record sheet or driver card for the coverage period longer than that provided for	the offence depending on the type of infringement		

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			them, with data loss - not using manual record when it was necessary - not using the proper record sheet or driver card in the correct slot (multiple manning)			
		Article 15.3	- the time recorded on the record sheet does not agree with the official time of the country of registration of the vehicle - incorrect use of the	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			switching mechanism	the offence depending on the type of infringement		
		Article 15.5	<ul style="list-style-type: none"> <li>- non inclusion of surname on the record sheet</li> <li>- non inclusion of name on the record sheet</li> <li>- failure to indicate the start or end of the use on the record sheet</li> <li>- non inclusion of the place of start or end of the use on the record sheet</li> <li>- non inclusion of the</li> </ul>	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<p><b>Maximum fine – 2000 pounds</b></p> <p><b>(Depends on the offence)</b></p>	<p><b>Imprisonment not exceeding six months</b></p> <p><b>Or to both such sanctions</b></p> <p><b>(Depends on the offence)</b></p>

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			registration number on the record sheet  - non inclusion of the indication of the term (start) of the distance-meter on the record sheet  - non inclusion of the indication of the term (end) of the distance-meter on the record sheet  - failure to indicate the change of vehicle on the record sheet			

**Table CY 2**

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)</b>	<b>Criminal sanction(s)</b>
		Article 15.5a	- non inclusion of the symbol of the country on the record sheet	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>
		Article 15.7	- refusal for check control - failure to submit data of the distance of the day - failure to submit of the immediate preceding 28	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			<p>days</p> <ul style="list-style-type: none"> <li>- failure to submit data of the card driver if the driver has a card</li> <li>- failure to submit the manual record and printouts of the distance of the day and the preceding 28 days</li> <li>- failure to submit a driver card</li> <li>- failure to submit printouts of the distance of the day and the preceding</li> </ul>	<p>the offence depending on the type of infringement</p>		

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			28 days=			
		Article 15.8	<p>- forgery, removal, destruction of data recorded on record sheets, saved in the recording equipment or on the driver's card or printouts from the recording equipment</p> <p>- intervention in the recording equipment, on the record sheet or driver's card, that may cause distortion of the data</p>	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<p><b>Maximum fine – 2000 pounds</b></p> <p><b>(Depends on the offence)</b></p>	<p><b>Imprisonment not exceeding six months</b></p> <p><b>Or to both such sanctions (Depends on the offence)</b></p>



Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			or/and information from printouts  - existence inside the vehicle an intervention device (switch/cable e.t.c), which could be used to falsify data or/and information from printouts			
		Article 16.1	- repair by an unauthorised technician or workshop  - has not been repaired at the roadside	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for	<b>Maximum fine – 2000 pounds</b>  <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b>  <b>Or to both such sanctions</b>  <b>(Depends on the offence)</b>

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
				the offence depending on the type of infringement		
		Article 16.2	<ul style="list-style-type: none"> <li>- the driver has not recorded all the information for the periods not longer recorded on, if the recording equipment is not working or working poorly</li> <li>- the number of the driver's card is missing or/and the name or/and the number of the licence number of the temporary</li> </ul>	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<p><b>Maximum fine – 2000 pounds</b></p> <p><b>(Depends on the offence)</b></p>	<p><b>Imprisonment not exceeding six months</b></p> <p><b>Or to both such sanctions</b></p> <p><b>(Depends on the offence)</b></p>

Table CY 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			record sheet registration card - signature is missing from the temporary record sheet			
		Article 16.3	- loss or stolen driver card has not been officially registered with the competent authority of the Member State in which it was stolen	Employer / Driver / Any person infringing the provisions of the Law / Legal person – together with the natural person representing it is liable for the offence depending on the type of infringement	<b>Maximum fine – 2000 pounds</b> <b>(Depends on the offence)</b>	<b>Imprisonment not exceeding six months</b> <b>Or to both such sanctions</b> <b>(Depends on the offence)</b>

Table CY 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
<p>Regulation No 1071/2009/EC</p> <p>Regulation No</p>	<p><u>'On the occupation of road transport laws of 2001 until 2011' (Law 101(1)/2001)</u></p>	<p>Section7(1)</p>	<p>- time while good repute is not met</p>	<p>Persons 21 years and above during the time of the imposition of the sanction</p>		<p><b>Imprisonment exceeding one year but not exceeding two years</b></p> <p><b>5 years imprisonment</b></p> <p><b>2 ½ years imprisonment</b></p> <p><b>1 ½ years imprisonment</b></p> <p><b>Imprisonment exceeding six months but not exceeding one years</b></p> <p><b>4 years imprisonment</b></p> <p><b>Two years imprisonment</b></p> <p><b>One year imprisonment</b></p> <p><b>Imprisonment exceeding three</b></p>



**Table CY 3**

**Road Package**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
<b>C</b>				Persons 21 years and above during the time of the imposition of the sanction		
				Persons less than 21 years during the time of the imposition of the sanction		
				Persons less than 18 years during the time of the imposition of the sanction		
				Persons 21 years and above during the time of the imposition of the		

Table CY 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
				sanction		
				Persons less than 21 years during the time of the imposition of the sanction		
				Persons less than 18 years during the time of the imposition of the sanction		
		<b>Section22(1)</b>	a) establishes or operates a business in violation of Article 4 (established in accordance with the Law provisions)	Person	<b>fine not exceeding 2000 pounds in case of a repeating offence, into a further fine which is not</b>	<b>imprisonment not exceeding one year Or to both such sanctions</b>

Table CY 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			<p>b) fails to return the revoked or suspended licence or take any action which requires the possession of a valid and current licence while his licence is revoked or suspended under the provisions of Article 10 or</p> <p>c) fails to returned the revoked or suspended licence 'A', 'D' or 'E' or take any action which requires the possession of a valid permit and valid 'A', 'D' or 'E' licence while</p>		<p><b>exceeding 100 pounds for each day of the infringement.</b></p>	



**Table CY 3**

**Road Package**

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			<p>the authorisation of the 'A', 'D' or 'E' licence has been revoked or suspended, under the provisions of Articles 14 and 16 respectively,</p> <p>or</p> <p>d) contravenes or fails to comply with any obligation imposed on it under the provision of this Act</p> <p>or</p> <p>e) contravenes or fails to comply with any lawful</p>			

**Table CY 3**

**Road Package**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)</b>	<b>Criminal sanction(s)</b>
			<p>instruction or order given to it by any inspector or hinders its inspectors' performance of duties and responsibilities under the provisions of Article 20</p> <p>or</p> <p>f) contravenes or fails to comply with any term of the permit or licence 'A' or the licence 'D' of the licence 'E' issued to him under the provisions of this Law,</p> <p>or</p>			

Table CY 3

Road Package

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)	Criminal sanction(s)
			g) while he is not a holder of a valid business licence, advertises or uses in any way the term 'road transport company' or other similar term, name or inscription			
		<b>Section23(1)</b>	- violation of the provisions of this Act and the regulations shall be punished, regardless if any criminal or disciplinary liability is imposed under		<b>Fine between fifty and one thousand pounds, depending on the severity of the attested violation.</b>	

**Table CY 3**

**Road Package**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)</b>	<b>Criminal sanction(s)</b>
			other legal provisions			

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
<b>Directive 2008/68/EC</b>	<u><a href="#">‘The Law Amending the original law of Road transport of dangerous goods Act of 2010’ (Law 14(1)/2010) that should be read together with the ‘The Law of Road Transport of dangerous goods Acts of</a></u>	Section24(1)	<p>a) hinders inspector’s performing of his duties and powers conferred to him under this Law or under so issued regulations or orders,</p> <p>b) hinders any police officer of a person accompanying the inspector in accordance with sub-Section4 of Section10 to enter premises</p> <p>c) refuses to provide the inspector or person</p>	Any person	<b>fine not exceeding one thousand pounds</b>	<b>imprisonment not exceeding three months</b> <b>Or to both such sanctions</b>

## CY 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
	<u>2004 – 2007</u> <u>(Law</u> <u>29(I)/2004)</u>		<p>accompanying him in accordance with sub-Section3 of Section10, secure access to any part of premises</p> <p>d) refuses or fails to comply with any requirement of the inspector submitted pursuant to Section10</p>			
		Section24(2)	<p>a) violates the provisions of Section5</p> <p>b) transfers or permits the carriage of dangerous</p>	Any person	<b>fine not exceeding forty thousand pounds</b>	<b>imprisonment not exceeding five years</b> <b>Or to both such sanctions</b>

## CY 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
			<p>goods who knowingly fails to comply with the provisions of this Act or under such regulation or orders issued</p> <p>c) uses or permits or tolerates the use of labelling or document issued under this Act or regulations issued, misleading or falsifying or forging them in order to deceive another person</p>			
		Section24(3)	- any person who contravenes any other	Any person	<b>fine not exceeding two thousand</b>	

**CY 4**

**Standards of Vehicles, Load and Necessary Licences**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)/ other administrative measures</b>	<b>Criminal sanction(s)</b>
			provision of this Act or under such regulations or orders issued, for which no provision of sanction is imposed		<b>pounds</b>	
		Section24(4)	commits an offence under this Act - who authorises or permits or encourages the commission of an act or omission constituting the offence	Any person who represents the legal person for the purposes of this Act and every director or board member or chief executive or secretary or other officer of such person or any person holds any of the above capacities in this subsection, is,	<b>penalties provided in this law for that offence</b>	<b>penalties provided in this law for that offence</b>



**CY 4**

**Standards of Vehicles, Load and Necessary Licences**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)/ other administrative measures</b>	<b>Criminal sanction(s)</b>
				together with the legal person, guilty of that offence and, upon conviction, is liable to the penalties provided in this law for that offence’.		

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
<b>Directive 96/53/EC</b>	<b><u>The Motor Vehicles and Road Traffic Act 1972' Law 86/1972)</u></b>	Article 28A	- exceeding the weight limit 15% of the permitted limit	Driver	<p><b>Notice for a payment according to the special payment that should be paid and any other burdens (this should be paid within 15 days)</b></p> <p><b>If not paid within 15 days it can become doubled</b></p> <p><b>If not paid within 30 days then a fine is imposed not exceeding 550</b></p>	<p><b>Imprisonment not exceeding one year</b></p> <p><b>Or to both such sanction</b></p>

**CY 4**

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
					<b>pounds</b>	
<b>Directive 2009/40/EC</b>	<u><a href="#">The Directive 2009/40/EC has not been transposed into Cyprus</a></u>	Section12(1)	- any motor vehicle that has no certificate of roadworthiness is prohibited of road use.	Owner / Person who has control or the undertaking of the vehicle		<b>imprisonment not exceeding three months</b> <b>Or to both such sanctions</b>

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
	<u>national law.</u> <u>The relevant</u> <u>Laws on</u> <u>roadworthiness</u> <u>tests for</u> <u>vehicles and</u> <u>the technical</u> <u>inspection</u> <u>centres have</u> <u>been laid down</u> <u>by The Motor</u> <u>Vehicles</u> <u>(M.O.T. and</u> <u>Technical</u> <u>Inspection</u> <u>Centres) Law</u>					

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
	<u>of 2007 (N.1(1)/2007).</u> <u>This Act is amended by ‘The Law Amending the Motor Vehicles (M.O.T. and Technical Inspection Centres) Act of 2010 (N.56(1)/2010).</u> <u>The latter Law should be read together with</u>					

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
	<u>the The Motor Vehicles (M.O.T. and Technical Inspection Centres) Laws of 2007 until 2009 ('basic Law') and the basic law together with the Amended Law would be referred to as 'The The Motor Vehicles</u>					

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
	<u>(M.O.T. and Technical Inspection Centres) Laws of 2007 until 2010’.</u>					
		Section50	- <b>I.K.T.E.O.</b> or the <b>manager</b> of the line of technical check is infringing any of his responsibilities under this Law.		Before the imposition by the Registrar of this fine, he should prepare a written notice about his intention to speculate the challenged infringement and call	

CY 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
					the legal entity or natural person to an apology and presentations (Section51(1)).  <b>Fine between 100 – 2000 pounds</b>	
		Section54(1) and Section57	- person who infringes any of the provisions of the specific Law	Legal persons together with the Members of the Board, the <b>Secretary</b> or other <b>officer</b> or <b>administrative body</b> of	<b>Fine not exceeding five thousand pounds</b>	<b>Imprisonment not exceeding two years</b>  Or to both such sanctions



## CY 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
				the legal person		
<b>Directive 2006/126/EC</b>	<u><a href="#">The relevant rules on the subject matter are laid down on 'The Professional driving licence Law of 2011' (Law 80(1)/2011)</a></u>	Section7(a)	- person who forges, falsifies or alters any driving licence, certificate or other document issued under this Law or Regulation, or b) person who fraudulently: i) uses or allows to be used by any other person any licence, certificate or other document forged, falsified	Person	<b>Fine not exceeding €3,000 euros</b>	<b>imprisonment not exceeding three years</b>  <b>Or to both such sanctions</b>

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
			or altered in this way, or ii) grants to any person or receives from another person licence, certificate or other document forged, falsified or altered in this way, or iii) issue a licence, certificate or other document in contravention of this Act or the Regulations			
		Section8(1)	a) if the granting or renewal of a licence has been secured at the deceit, misrepresentation, or	Licencee	<b>According to subSection(2) the Department may revoke or suspend</b>	

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
			<p>concealment of a material fact that was made under the knowledge of the licencee</p> <p>b) if the licencee has been denied by the Court the right to hold a licence under this Act or the regulations</p> <p>c) if, in the exercise of disciplinary jurisdiction of the Disciplinary Council wanted to find the licencee guilty of a disciplinary offence, as defined in the</p>		<p><b>under Article 6 of this Act issued permit for any one of the following reasons</b></p>	

CY 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
			Regulations d) if the licensee ceases to satisfy the requirement referred to in paragraph d) of subSection(2) of Article 6 of this Act.			
		Section8(2)		Licencee	<b>No licence shall be revoked or suspended under subSection(1), unless is given two weeks notice to the licensee for the intended revocation or suspension,</b>	

**CY 4**

**Standards of Vehicles, Load and Necessary Licences**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)/ other administrative measures</b>	<b>Criminal sanction(s)</b>
					<b>stating in detail the reasons for the revocation or suspension, and provided him the opportunity to provide written reasons for refuting this action’.</b>	
		Section8(3)	a) wanted in any way to be deprived of the right to hold a licence, or  b) disqualified of the right of possession, acquisition or retention of a licence by	Holder of the licence	<b>The validity of the licence is revoked or suspended automatically and in the same extent where the holder of</b>	

**CY 4**

**Standards of Vehicles, Load and Necessary Licences**

<b>EU legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringement(s)</b>	<b>Author</b>	<b>Pecuniary criminal sanction(s)/ other administrative measures</b>	<b>Criminal sanction(s)</b>
			a Court'		<b>it wanted a) or b)</b>	
		Section8(4)	- in case of revocation or suspension of licence determined under this section, the holder thereof shall immediately return it to the Department without being able to get any returned fees paid for it. If the holder of such a licence fails to return it, as provided above, the licence can be confiscated and returned to the Department by any	Holder of the licence	<b>Fine not exceeding thousand euros (€1000)</b>	

## CY 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
			Supervisor or Controller or police officer in uniform and he is guilty of an offence			
		Section11(1)	<p>- person who a) contravenes the provisions of the subSection1 of Section5 of the Law,</p> <p>or</p> <p>b) contravenes or fails to comply with any lawful order or directive is given to it by any Supervisor or Controller or a police</p>	Person	<b>Fine not exceeding 2000 euros</b>	<b>Imprisonment for a period not exceeding one year</b> <b>Or to both such sanctions</b>

CY 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
			uniform while performing their duties under this Act and the Regulations, or  c) contravenes or fails to comply with any condition mentioned in the licence			
		Section11(2)	- Person who fails to appear before the Department or the Disciplinary Council, when asked to do so in time and place indicated in the call or during trial, or refuses to answer any lawfully referred to him	Person	<b>Fine not exceeding 500 euro.</b>	



CY 4

Standards of Vehicles, Load and Necessary Licences

EU legislation	Relevant National Legislation for infringement	Article of reference	Type of infringement(s)	Author	Pecuniary criminal sanction(s)/ other administrative measures	Criminal sanction(s)
			question			
		Section12	- independent from any criminal liability from any criminal liability under this Act or any other law in force, licencees can be held and disciplinary liable, in accordance with the Regulations.	Licencee	<b>Disciplinary liable</b>	

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

**Table CY 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**

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

## 6.7 Sanctions which could be considered substantially criminal in the Cypriot legal system

The table below illustrates the infringements sanctioned with administrative sanctions that should be classified as criminal. Most of the infringements on road transport are sanctioned with criminal sanctions (general rule). Administrative sanctions are the exceptions of the general rule. For example revocation or suspension of licence if is imposed by the Registrar, would be an administrative sanction (see Directive 2009/40/EC). The same fines can also be criminal sanctions if they are imposed by the Court.

<b>Table CY 6</b>			
<b>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</b>			
<b>Type of infringement and Article of reference in national legislation</b>	<b>Administrative sanction that could be qualified as criminal sanction</b>	<b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b>	<b>Is it dissuasive?</b>
<b>Corresponding EU legislation</b>			
The Directive 2009/40/EC The Motor Vehicles (M.O.T. and Technical Inspection Centres) Law of 2007 (N.1(1)/2007).			

**Table CY 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>‘The Professional driving licence Law of 2011’ (Law 80(1)/2011)</p> <p>a) if the granting or renewal of a licence has been secured at the deceit, misrepresentation, or concealment of a material fact that was made under the knowledge of the licence</p> <p>b) if the licensee has been denied by the Court the right to hold a licence under this Act or the regulation</p> <p>c) if, in the exercise of disciplinary jurisdiction of the Disciplinary Council wanted to find the licensee guilty of a disciplinary offence, as defined in the Regulations</p> <p>d) if the licensee ceases to satisfy the requirement referred to in paragraph d) of subSection(2) of Article 6 of this Act.</p> <p>licensee guilty of a disciplinary offence, as</p>	<p><b>According to subSection(2) the Department may revoke or suspend under Article 6 of this Act issued permit for any one of the following reasons</b></p>	<p>Revocation or suspension of licence by the Department is a high penalty which is a criminal sanction as it could originally be imposed by the Court</p>	<p><b>Yes</b></p>

Table CY 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>Section8(3)</p> <p>a) wanted in any way to be deprived of the right to hold a licence, or</p> <p>b) disqualified of the right of possession, acquisition or retention of a licence by a Court</p>	<p><b>The validity of the licence is revoked or suspended automatically and in the same extent if and where the holder of it wanted a) or b)</b></p>	<p>Revocation or suspension of licence by the Department is a high penalty which is a criminal sanction as it could originally be imposed by the Court</p>	<p><b>Yes</b></p>

## **6.8 Effectiveness of the sanctions system**

We did not receive any figures from the Cyprus authority concerning the number of infringements of EU commercial road transport legislation detected in Cyprus in the last years.

Based on the figures contained in the 25th report from the Commission on the implementation of the social legislation relating to road transport<sup>253</sup>, the number of offences detected at the roadside represents 10% of the drivers checked at the roadside.

On the basis of the information received, the most prevalent infringements recorded on a yearly basis in Cyprus concern social rules, such as weekly driving times, tachograph rules and working times (Articles 6.3, 7 and 8.6 of Regulation (EEC) No 561/2006, Articles 14.2, 15.1, 15.2, 15.3 and 15.5 of Regulation (EC) No 3821/85 and Article 5 of Directive 2002/15/EC).

It should also be pointed out that based on the available information, only about 50% of the maximum fines foreseen by the law is applied in practice by Cyprus courts.

From a qualitative standpoint the Cyprus legal system is severe to the extent that all infringements of road commercial transport are sanctioned with criminal sanctions and also with imprisonment. According to the Cyprus Authority, sanctions are becoming heavier.

However, we notice that the system does not always define or distinguish which offences are to be considered as more serious and which are not.

Indeed, criminal sanctions including imprisonment are also foreseen for infringements that should not be qualified as being serious or very serious infringements, and on the other hand, very serious infringements are not sanctioned more severely.

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<sup>253</sup> See the Report on the implementation in 2007-2008 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities (25th report from the Commission on the implementation of the social legislation relating to road transport), Commission Staff Working Document, Sec(2011) 52.

The fact that national Courts impose the concrete penalty by taking into account the severity of the infringement can however be seen as a factor that to a certain extent might ensure that penalties are proportionate to the severity of the infringements.

In the light of all above, we consider the Cyprus system repressive to the extent that imprisonment is foreseen very often for infringements of the rules on commercial road transport.

On the other hand, financial penalties are not deemed to be proportionate, as the same amount is foreseen for very different infringements.

In conclusion, it could be argued that the Cyprus system might be deemed not effective to the extent that its proportionality and consistency can be cast into doubt.

## **7 CZECH REPUBLIC - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR**

### **7.1 Social rules on road transport**

#### **7.1.1 Rules on Driving Times and Rest Periods**

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

Regulation (EC) No 561/2006 on the Harmonisation of Certain Social Legislation Relating to Road Transport (“Regulation on the Harmonisation of Social Legislation”) was implemented in the Czech Republic by the following legislation:

- Regulation No. 478/2000 Coll., implementing Act No. 111/1994 Coll., on Road Transport, as amended (“Act on Road Transport”).
- Regulation No. 156/2008 Coll., on Development of the Professional Competences of Drivers.
- Regulation No. 341/2002 Coll., on Authorisation of Technical Capacity and Technical Conditions of Vehicles Operating on Motorways<sup>254</sup>.
- Regulation No. 589/2006 Coll., determining different Working Hours and Break Time of Transport Sector Workers, as amended (“Regulation on Working Hours”).
- Regulation No. 522/2006 Coll., on Public Professional Control and Motorways Controls (“Regulation on Public Professional Control”).

##### *Foreign drivers*

Sanctions are applied to foreign drivers or undertakings to the same extent as they are to Czech citizens. However, foreign drivers are subject to some special rules.

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<sup>254</sup> This relates to vehicles once authorised in another state



These different rules are mainly connected to the Points System that is in place in the Czech Republic. Under this system, for some infringements (both criminal and administrative infringements)<sup>255</sup>, a defined number of points is registered in the Central Register of Drivers. There is a maximum number of 12 points set. The points are not in themselves sanctions for infringements but rather allow the authorities to monitor whether people repeatedly commit infringements.

If a Czech driver reaches the maximum number of points (12), he/she must deliver his/her driving licence to the competent authority within the five days of receipt of the notice. If a foreign driver reaches the maximum number of points, a different procedure will be applied. Under the Act on Motorway Traffic, such driver will be deprived of the right to drive a vehicle in the territory of the Czech Republic for one year. In such case, the Ministry of Transport does not retain the driving licence and shall notify the authority which issued the driving licence of such driver having been banned. A Czech driver is deprived of the right to drive a vehicle at the expiration of the five working days after receipt of the notification.

Further, in this context, it is important to note that as of 1 June 2012, the Police of the Czech Republic or customs offices are authorised to collect bail ranging from CZK 5,000 to CZK 100,000 from a transport operator if (i) he/she is suspected of having committed an administrative delict and (ii) there is a suspicion that he/she would avoid the proceedings or the enforcement of a penalty seems to be impossible. If the driver cannot provide immediate bail, the Police of the Czech Republic or customs offices are authorised to prevent a driver from further driving by technical means or to prohibit him/her from further driving and withhold documents regarding the vehicle<sup>256</sup>.

#### **7.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)**

Directive 2006/22/EC on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social

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<sup>255</sup> List of these infringements is stipulated by Schedule to Act on Motorways Traffic.

<sup>256</sup> Section 35c of Act. no. 111/1994 Coll., on Road Transport.

legislation relating to road transport activities and repealing Council Directive 88/599/EEC (amended by Directive 2009/4/EC and Directive 2009/5/EC) was implemented in the Czech Republic by the following legislation:

- Act on Road Transport.
- Regulation on Public Professional Control.
- Act No. 226/2006 Coll., amending the Act on Road Transport, the Act on Traffic Conditions on Motorways, Act No. 168/1999 Coll., on Liability Insurance for Damage Caused by Operation of a Vehicle, the Act on Motorway Traffic, Act No. 634/2004 Coll., on Administrative Fees and the Act on Administrative Infractions.

Annex 8 to the Regulation No. 522/2006 Coll., on Public Professional Control contains a list of infringements of EC Regulation No. 561/2006 and ranks them on scale ranging from “less serious”, through “serious” to “very serious”.

For every infringement, there is a sanction whose minimum and maximum levels are stipulated by law. The specific valuation is at the discretion of the competent authority.

#### **7.1.1.3 Directive 2002/15/EC**

Directive 2002/15/EC on the Organisation of the working Time of Persons performing mobile Road Transport Activities (“Directive on the Organisation of the Working Time”) – was implemented in the Czech Republic by the following legislation:

- Act No. 262/2006 Coll., Labour Code, as amended (“Labour Code”).
- Regulation on Working Hours.

As regards working time, the rules stipulated by the Directive on the Organisation of the Working Time<sup>257</sup>, Regulation on Working Hours and the Labour Code contain definitions of infringements; however, the sanctions are specified in Act No. 251/2005 Coll., on Labour Inspection (“Act on Labour Inspection”).

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<sup>257</sup> Article 11 of Directive on the Organisation of Working Time.

### Foreign drivers

See above.

## **7.1.2 Tachograph**

### **7.1.2.1 Regulation (EEC) No 3821/85**

Regulation No 3821/85 on Recording Equipment in Road Transport (“Regulation on Recording Equipment”) was implemented in the Czech Republic by the following legislation:

- Act No. 200/1990 Coll., on Administrative Infractions, as amended (“Act on Administrative Infractions”).
- Act No. 247/2000 Coll., on Obtaining and Development of Professional Competences for Driving Motor Vehicles (“Act on Professional Competences for Driving Motor Vehicles”).
- Act on Road Transport.
- Act on Motorway Traffic No. 361/2000 Coll., on Motorway Traffic, as amended (“Act on Motorway Traffic”).
- Regulation No 478/2000 Coll., implementing the Act on Road Transport.
- Act No 56/2001 Coll., on Traffic Conditions on Motorways (“Act on Traffic Conditions on Motorways”).
- Regulation No 341/2002 Coll., on Authorisation of Technical Capacity and Technical Conditions of Vehicles operating on Motorways, as amended.
- Notice No 9/2003 Coll., on Acceptance of Agreement on the International Occasional Carriage of Passengers by Coach and Bus (“Notice on Acceptation of INTERBUS Treaty”).
- Regulation on Public Professional Control.
- Regulation No 124/2007 Coll., on Template of Driver’s Memory Card.

As for the rules for tachographs, the requirements stipulated by Regulation on Recording Equipment are implemented in the Czech Republic mainly by the Regulation Implementing the Act on Road Transport; the sanctions for an infringement of these rules are contained mainly in the Act on Administrative Infractions and in the Act on Road Transport.

### Foreign drivers

See above.

## **7.2 Road package**

### **7.2.1 Regulation (EC) No 1071/2009**

Regulation (EC) No 1071/2009 Establishing Common Rules Concerning the Conditions to be Complied With to Pursue the Occupation of Road Transport Operator and Repealing Council Directive 96/26/EC was implemented in the Czech Republic by the following legislation:

- Act on Road Transport.
- Act No. 13/1997 Coll., on Infrastructure (“Act on Infrastructure”).
- Act on Motorway Traffic.

The Czech system does not have a specific sanctioning system for those infringements that are qualified as the most serious infringements in Annex IV of Regulation (EC) No 1071/2009. They are sanctioned in the same way as other infringements and the same procedure is followed. The sanctions applicable to these infringements are as follows:

1. Exceeding the maximum six-day or fortnightly driving time limits by margins of 25 per cent or more. Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 per cent or more without taking a break or without an uninterrupted rest period of at least 4.5 hours.

- Section 23, paragraph 1, letter f) of Act on Administrative Infractions
  - Penalty of up to CZK 10,000, or
  - Disqualification from driving ranging from six months to one year.
2. 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.
- Section 23, Paragraph 1, letter c) of Act on Administrative Infractions
  - Penalty of up to CZK 5,000
3. Driving without a valid roadworthiness certificate if such a document is required under Community law.
- Section 23, Paragraph 1, letter c) of Act on Administrative Infractions
  - Penalty of up to CZK 5,000
4. Driving with a very serious deficiency in, 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.
- Section 36 of Regulation No. 341/2002 Coll., on Approval of Technical Competence and Technical Conditions of Vehicles on the Roads
  - Penalty of up to CZK 10,000, or
  - Disqualification from driving ranging from six months to one year.
5. Transporting dangerous goods that are prohibited from being transported 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 the lives or the environment to such an extent that it leads to a decision to immobilise the vehicle.
- Section 23, Paragraph 1, letter f) of Act on Administrative infractions
  - Penalty of up to CZK 10,000.
6. Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence.
- Section 23, Paragraph 1, letter f) of Act on Administrative infractions
  - Penalty of up to CZK 10,000, or

- Disqualification from driving ranging from six months to one year.

7. 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.

- Section 23, Paragraph 1, letter c) of Act on Administrative infractions
- Penalty of up to CZK 5,000.

8. Carrying goods exceeding the maximum permissible laden mass by 20 per cent or more for vehicles whose permissible laden weight exceeds 12 tonnes, and by 25 per cent or more for vehicles whose permissible laden weight does not exceed 12 tonnes.

- Section 42a, paragraph 4, letter c), d), e) of Act on Infrastructure
- Penalty of up to CZK 500,000.

## **7.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009**

Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market was implemented in the Czech Republic by the following legislation:

- (i) Act on Road Transport

Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services, was implemented in the Czech Republic by the following legislation:

- (i) Act on Road Transport

## **7.3 Standards of vehicles and load and necessary licenses**

### **7.3.1 Directive 2008/68/EC**

Directive 2008/68/EC on the Inland Transport of dangerous Goods (“Directive on Dangerous Goods”) was implemented in the Czech Republic by the following legislation:

- Act on Road Transport.
- Act No. 266/1994 Coll., on Railways, as amended (“Act on Railways”).
- Act No. 114/1995 Coll., on Inland Shipping, as amended.
- Regulation No. 1/2000 Coll., on Rules of Transportation for Public Rail Transport.
- Act on Conditions of Traffic on Motorways.

Further the rules of transport of dangerous goods stipulated by the Directive on Dangerous Goods were implemented in the Czech Republic by Act on Railways and Act on Road Transport. However, the infringements and sanctions arising from this implementation which are specific for road transport are contained in Act on Road Transport and Act on Administrative Infractions.

### **7.3.2 Directive 1996/53/EC**

Council 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 (“Directive on Maximum Authorised Dimensions and Weights”) was implemented in the Czech Republic by the following legislation:

- Act on Traffic Conditions on Motorways.
- Regulation No. 478/2000 Coll., applying Act on Motorway Traffic.
- Act on Authorisation of Technical Capacity.

The rules stipulated by the Directive on Maximum Authorised Dimensions and Weights were implemented by several pieces of legislation. However, the implementing legislation only contains obligations required by this Directive. Sanctions for infringements of these rules are only specified in the Act on Motorway Traffic.

### **7.3.3 Directive 2009/40/EC**

Directive 2009/40/EC on Roadworthiness Tests for Motor Vehicles and their Trailers (“Directive on Roadworthiness Tests”) was implemented in the Czech Republic by the following legislation:

- Regulation No. 302/2001 Coll., on Technical Controls and Vehicles Emissions Measuring, as amended.
- Act on Traffic Conditions on Motorways.
- Act No. 320/2002 Coll., on Amending and Cancellation of some Acts in relation to Closing District Offices.
- Regulation No. 341/2002 Coll., on Authorisation of the Technical Capacity and Technical Conditions of Vehicles Operating on Motorways, as amended (“Act on Authorisation of Technical Capacity”).
- Act No. 103/2004 Coll., amending Act No. 266/1994 Coll., on Railways.
- Act No. 124/2008 Coll., amending Act No. 269/1994 Coll., on Criminal Register.

As to the rules for roadworthiness tests, the Directive on Roadworthiness Tests was implemented in the Czech Republic by Regulation No. 302/2001 Coll., which specifies obligations of transport operators and clients of the National Technical Control of Motor Vehicles (the body that issues certificates of roadworthiness, without which no vehicle may operate on Czech public highways). However, both infringements and sanctions are specified in the Act on Motorway Traffic and Act on Traffic Conditions on Motorways.

### **7.3.4 Directive 2006/126/EC**

Directive No. 2006/126/EC was implemented in the Czech Republic by the following legislation:

- Act on Motorway Traffic.
- Act on Professional Competences for Driving Motor Vehicles.



- Regulation No. 31/2001 Coll., on Driving Licences and Drivers Register.
- Act No. 320/2002 Coll., on Amendment and Cancelling of Some Acts in Relation to Cancelling District Offices.
- Act No. 170/2007 Coll., amending Acts in Relation to the Entry of the Czech Republic into the Schengen Zone.
- Regulation No. 167/2002 Coll., Implementing Act on Professional Competences for Driving Motor Vehicles.
- Act No. 384/2008 Coll., amending Act No. 155/1998 Coll., on Sign Language.

As regards the rules for driving licences, the Directive on Driving Licences was implemented in the Czech Republic by Act No. 297/2011 Coll., amending the Act on Motorways Traffic. It provides harmonisation of rules related to driving licence. The infringements and sanctions related to driving licences are stipulated in Act on Motorways Traffic.

#### ***7.4 Notion of criminal sanction and of administrative sanction in the Czech legal system***

Criminal sanctions are the consequences of criminal offences. A criminal offence is legally defined in Section 13, paragraph 1 of Act No. 40/2009 Coll., Criminal Code (“CC”) as an illegal act identified as punishable by criminal law and which presents the characteristics set out under such law.

Administrative sanctions are the consequences of administrative infractions or of other administrative delicts. An administrative infraction is legally defined in Section 2, Paragraph 1 of the Act on Administrative Infractions as culpable conduct that violates or endangers the interest of society and is expressly identified as an administrative infraction in the Act on Administrative Infraction or another act unless it is to be qualified as “other administrative delict” or a criminal offence.

Other administrative delicts are not legally defined. As opposed to administrative infractions:

- only legal entities and entrepreneurs are liable for other administrative delicts;
- administrative delict proceedings are governed by Act No. 500/2004 Coll., Administrative Procedure Act, unlike administrative infractions, whose proceedings are regulated mainly by the Act on Administrative Infractions, and
- maximum applicable penalties are several times higher than penalties for administrative infractions.
- the main differences between criminal offences and administrative infractions are as follows:
  - Criminal liability of an offender and the criminal consequences associated with it may only be applied in socially harmful cases where the application of liability under another legal regulation (such as the Act on Administrative infractions or Act No. 40/1964 Coll., the Civil Code) is insufficient. Hence, criminal liability is an ultima ratio instrument. This is called the principle of subsidiarity of criminal prosecution.
  - As regards liable persons, only individuals are liable for committing an administrative infraction, while both individuals and legal entities are liable for committing a criminal offence.
  - Another difference lies in the fault. An intentional wrongful act is necessary for committing a criminal offence unless criminal law expressly stipulates that committing such an act merely through negligence is sufficient. On the other hand, commitment through negligence is sufficient for an administrative infraction unless an act stipulates that the explicit intention to commit such an act is necessary.
  - All criminal offences are codified in the CC while the legal framework concerning administrative infractions is concentrated in more than thirty acts, particularly in the Act on Administrative infractions.

Further, there is a difference in sanctions. Sanctions for criminal offences are set forth in the CC (see question No. 7), while sanctions for administrative infractions are found in the Act on Administrative Infractions. Both acts also regulate protective measures.

For a criminal offence, the following criminal penalties and protective measures could be imposed:

- prison sentence of up to 3 years;
- house arrest of up to 2 years;
- community service of 50 to 300 hours;
- monetary penalty of up to CZK 36,500,000M;<sup>258</sup>
- forfeiture of a possessed item or other assets;
- punishment by disqualification from an activity for 1 to 10 years;<sup>259</sup>
- prohibition of residence of 1 to 10 years;
- deportation.

Protective measures are as follows:

- protective treatment;
- security detention;
- confiscation of items or other assets.

Criminal sanctions must be imposed while taking into account the nature and seriousness of the criminal offence committed and the offender's personal circumstances. Further, when determining the scope of sanction the court takes into account mitigating and aggravating circumstances.

Mitigating circumstances that might be frequently used in the field of transportation are as follows:

- committing a criminal offence at an age close to that of a legal minor<sup>260</sup>;
- causing minor damage or other minor detrimental effects by committing the criminal offence;

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<sup>258</sup> A monetary penalty is calculated as a product of (i) the amount of "daily rates" (which range from 20 to 730 daily rates) and (ii) the value of the daily rates (which ranges from CZK 100 to CZK 50,000). Hence, a maximum monetary penalty is a product of 730 times by CZK 50,000.

<sup>259</sup> Punishment by disqualification could only be imposed if the offender has committed a criminal offence in association with such activity.

<sup>260</sup> A legal minor is a person who does not attain the age of 15 and does not exceed the age of 18 while committing a wrongful act.

- contributing to the removal of the detrimental consequences of a criminal offence or voluntarily covered the damages;
- reporting his/her criminal offence to the authorities; and
- sincerely regretting committed criminal offence.

Aggravating circumstances that might be frequently used in the field of transportation are as follows:

- committing a criminal offence deliberately or with prior consideration;
- violating a special obligation due to a criminal offence;
- exploiting his/her employment, position or function to commit a criminal offence; and
- causing more serious damage or other more serious detrimental effects.

The type and severity of sanction depends on:

- the particular wrongful act committed;
- facts of a case.

Administrative sanctions for other administrative delicts are set by the individual acts which define the infringements.

The system of penalties for administrative infractions and other administrative delicts is anchored in multiple pieces of legislation.

- Sanctions identified by the Act on Administrative Infractions

The Act on Administrative Infractions defines four types of sanctions and two types of protective measures,<sup>261</sup> namely:

Sanctions:

- warning;
- penalty (up to CZK 1,000, unless stated otherwise);
- disqualification; and
- forfeiture of an item in possession.

Protective measures:

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<sup>261</sup> Section 11 in connection with Section 16 of Act on Administrative Infractions.

- restrictive measure, and
- confiscation of an item.

For administrative infringements in the field of road transport, the following sanctions are foreseen by the Act on Administrative Infringements.<sup>262</sup>

- penalty of up to CZK 10,000, or
- punishment by disqualification from driving ranging from six months to one year.

- Sanctions identified by Act on Motorway Traffic

The system of sanctions for administrative infractions is contained in Section125c of the Act on Motorway Traffic that states four kinds of sanctions:

- penalty ranging from CZK 1,000 to CZK 2,500 imposed in administrative hearing on a penalty ticket issued by the Police or other authority<sup>263</sup>;
- penalty ranging from CZK 1,500 to CZK 50,000; and
- prohibition driving motor vehicles ranging from one month to two years.

Other relevant infringements and sanctions for them are contained in Section23 of the Act on Administrative Infractions. The Act on Administrative Infractions foresees the same kinds of sanctions as the Act on Road Transport. The ranges of the penalties are as follows:

- penalty of up to CZK 5,000 in administrative hearing on a ticket;
- penalty of up to CZK 10,000, and
- prohibition on driving of motor vehicles for a period of six month to 12 months.

Act on Road Transport foresees higher sanctions for transport operators in the following ranges:

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<sup>262</sup> Section23, Paragraph 2 of Act on Administrative Infractions

<sup>263</sup> An administrative hearing on a ticket may be applied if (i) the administrative infraction is reliably identified, (ii) a simple warning is not enough (iii) the accused person is willing to pay a penalty and (iv) an appeal is not permitted.

- up to CZK 100,000 for, for example, a vehicle not being properly identified or a vehicle not being recorded in the Register of Road Vehicles;
- up to CZK 500,000 for, for example, a transport operator not complying with international treaties on road transportation or operating road transport without relevant authorisation;
- up to CZK 750,000, for, for example, a transport operator operating regular passenger transport without a licence or permit; and
- up to CZK 1,000,000 for a transport operator who does not comply with conditions governing the road transportation of dangerous goods.

Section 11, paragraph 2 of the Act on Administrative Infractions stipulates that sanctions may be imposed consecutively or concurrently. However, a warning cannot be imposed together with a penalty.

When determining the type of sanction and its scope, the competent authority considers the severity of the administrative infraction, in particular:

- the manner by which the offence has been committed and the consequences of the administrative infraction;
- the circumstances under which the administrative infraction was committed;
- the extent of his/her fault and his/her motive;
- the offender himself/herself;
- whether and if an offender has been the subject of disciplinary proceedings.

In criminal law, an offender may be an individual or a legal entity. Act No 418/2011 Coll., on liability of legal entities and proceedings against them contains a list of criminal offences for which a legal entity is liable. Among these, criminal offences such as counterfeiting and the alteration of public documents could occur in the field of commercial road transport.

An administrative infraction may be committed only by an individual. Nevertheless, other administrative delicts may be committed by an individual and a legal entity. If the fault is proved, the driver of a vehicle would be the sanctioned person in most cases. By contrast, legal persons have strict liability for administrative infractions in the field of transportation. However, legal persons could be relieved of

their liability if one of the circumstances set by law<sup>264</sup> is fulfilled (i.e. a legal entity shall be released from liability only if it proves that the infringement could not have been avoided even if it had exerted the maximum effort that may reasonably be required).

#### Concurrence between several administrative sanctions

As regards concurrent infringements in commercial road transport legislation, this issue is expressly covered only by the Act on Administrative Infractions. Under the Act on Administrative Infractions, if a person commits more than one administrative infraction for whose prosecution the same authority is responsible, joint proceedings are held. In joint proceedings, a sanction is imposed only for the infraction which commands the highest penalty (principle of “absorption”). In other words, sanctions for administrative infractions cannot be cumulative.

As regards other legislation regulating commercial road transport, there are no explicit rules concerning concurrent infringements. However, according to the relevant Czech case law, the above-mentioned principle of absorption should also be used in the event of the concurrence of other administrative delicts, if for such delicts a joint proceeding is held.

Hence, it can be concluded that if, in the event of concurrent infringements, a joint proceedings is held, the sanctions are not cumulated but rather, a sanction is imposed only for that infraction which commands the highest penalty.

#### Concurrence between administrative and criminal sanctions

The Czech legal system strictly distinguishes between criminal and administrative sanctions. When an act is classified as administrative delict, it is not possible to apply the criminal regime at the same time. This separation of criminal and administrative procedure affects the sanctions which is possible to impose in respect of one act of infringement. If an administrative sanction is applied, it is not possible to apply a criminal sanction at the same time (and *vice versa*). This principle, which is

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<sup>264</sup> Act No. 13/1997 Coll., on Infrastructures (“Act on Infrastructures”).

contained in legal literature, is called “Subsidiarity of Criminal Repression” and is also anchored in law<sup>265</sup>. Under this principle a criminal sanction is applicable when civil law and administrative law instruments are insufficient for the reparation of the committed act<sup>266</sup>.

## **7.5 Scope of application of Czech criminal law**

The territorial application of the CC is based on five basic and internally coherent principles.

Under the Principle of Territoriality (Section 4 of the CC), the culpability of an act (i.e. whether such act is illegal and can be punished) committed in the territory of the Czech Republic shall be assessed under the law of the Czech Republic. This principle shall also be applied to the distance criminal offences (i.e. criminal offences that were committed in the territory of the Czech Republic, either entirely or in part, even though the violation or endangering of the interest protected by the criminal law occurred or was supposed to have occurred, either entirely or in part, abroad or vice versa).

The second principle is called the Principle of Active Personality (Section 6 CC) under which the local applicability of the law of the Czech Republic shall also apply to the culpability of an act committed abroad by a citizen of the Czech Republic or a foreigner who has been granted permanent residence in the Czech Republic, irrespective of the place in which a criminal offence was committed. A discrepancy may arise between Czech and foreign rule of law when Czech law forbids a certain action while such action is not punishable abroad or vice versa. If an action is punishable only by foreign legislation, the offender will not be punishable in the Czech Republic and vice versa.

The Principle of Passive Personality states that the law of the Czech Republic shall also assess the culpability of an act committed abroad against a Czech national or a foreigner to whom permanent residence in the Czech Republic has been granted if an

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<sup>265</sup> Section 11 Paragraph 1, Letter h) in connection with Section 171 of Act No. 141/1961 Coll., Code of Criminal Procedure, as amended (“Code of Criminal Procedure”).

<sup>266</sup> Jelínek and Col., Substantive Criminal Law. General and Special part, 2010.



act is punishable in the place in which it was committed and if the place where such an act was committed is not subject to any authority with the power to prosecute criminal acts (i.e. such a place is in effect lawless). Consequently, if an act is not punishable abroad, the offender will not be punished in the Czech Republic either.

The Principle of Protection states that the law of the Czech Republic applies to the culpability of listed criminal offences aimed especially against essential interests (e.g. humanity), even when such a criminal offence was committed abroad by a foreign national or by a foreigner to whom permanent residence in the Czech Republic has not been granted.

The Principle of Registration states that the culpability of an act committed outside the territory of the Czech Republic, on board of a ship or another vessel or on board of an aircraft or other means of air transport which is registered in the Czech Republic, shall also be assessed under the law of the Czech Republic. The place of commission of such an act is assessed the same manner as in the case of distance criminal offences (described above).

The Subsidiary Principle of Universality states that the law of the Czech Republic shall also apply to the culpability of an act committed abroad by a foreign national or a person with no nationality who was not granted permanent residence in the territory of the Czech Republic, even if:

- the act is also punishable under the law effective in the territory in which it was committed; and
- the offender was apprehended in the territory of the Czech Republic and was not extradited or transferred for criminal prosecution to another State or to another authority entitled to bring a criminal prosecution.

The culpability of an act is assessed by the law of the Czech Republic if an international treaty which is incorporated into the system of law so stipulates. In this situation, the international treaty might broaden or exclude the above-mentioned principles.

## **7.6 Summary tables**

Under the Act on Administrative infractions, the authorities responsible for imposing administrative sanctions in the Czech Republic are:

- municipal authorities or special bodies of municipalities<sup>267</sup>, who impose and execute sanctions for :
  - administrative infractions against “order in public administration” in the matters entrusted to the municipal authorities, and
  - administrative infractions against the municipal authorities, against public order, against property and administrative infractions against peaceful coexistence, if not committed by violation of special regulations on road traffic, or
- other administrative bodies stipulated by special law, i.e.
  - Police of the Czech Republic, which supervises the safety and free flow of traffic on the road and imposes and executes penalties for administrative infractions against the safety and free flow of traffic on the road only within the scope of the administrative procedure on the issuance of a penalty ticket, 268 and
  - Municipal authority with extended powers, who imposes and executes all administrative infractions against the safety and free flow of traffic on the road.<sup>269</sup>

The court is the only body that is authorised to impose sanctions (i.e. punishment and other protective measures) in criminal procedure.

Decisions related to the enforcement of punishments and other protective measures shall be enforced, unless provided otherwise, by the court which decided on the matter in the first instance<sup>270</sup>.

In the Czech Republic, the responsible authorities for imposing and executing sanctions regarding commercial road transport are stipulated by the individual acts. The authorities in charge are as follows:

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<sup>267</sup> Section 53, Paragraph 1 of Act on Administrative Infractions.

<sup>268</sup> Section 124, Paragraph 9, Letter (d) of Act on Motorway Traffic.

<sup>269</sup> Section 124, Paragraph 5, Letter (j) of Act on Motorway Traffic.

<sup>270</sup> Under Section 315, paragraph 2 of Code of Criminal Procedure.

(i) Act on Administrative Infractions

Under the Act on Administrative Infractions the responsible authorities are as follows:

- municipal authorities (or special bodies of municipalities),
- other administrative bodies stipulated by special law (e.g. the Police of the Czech Republic).

(ii) Act on Motorway Traffic

Under the Act on Motorway Traffic, the responsible authorities are as follows:

- “municipal authority with extended powers” (please refer to our earlier report),
- Police of the Czech Republic (in the administrative hearing on a penalty ticket).

(iii) Act on Road Transport

Under the Act on Road Transport, the responsible authorities are as follows:

- Ministry of Transport,
- Transport authority (i.e. (i) the metropolitan authority of towns with their own charter (in practice, only larger towns), or (ii) the regional authority).

(iv) Act on Traffic Conditions on Motorways

Under the Act on Traffic Conditions on Motorways the responsible authorities are as follows:

- municipal authority with extended powers,
- Ministry of Transport,
- Police of the Czech Republic or the custom office (in the administrative hearing on penalty ticket).

(v) Act on Infrastructure

Under the Act on Infrastructure the responsible authorities are as follows:

- municipal authority with extended powers,

- Police of the Czech Republic or custom office (in the administrative hearing on penalty ticket)

(vi) Act on Labour Inspection

- Under the Act on Labour Inspection the responsible authorities are as follows:
  - regional labour inspectorate,
  - State Office of Labour Inspection.

(vii) Trade Act

Under Trade Act the responsible authority is the municipal trade licence office.

Under all of the above mentioned acts the same authority which imposes the penalty is also responsible for the execution of the penalty.

Sanctions imposed by the responsible authorities, except for sanctions imposed in the administrative hearing on penalty ticket, can be challenged. The authorities responsible for the appeal proceedings are stipulated by the relevant acts. In general, the appeal authorities are authorities which are superior to the authorities which imposed the penalty.

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
Regulation 561/2006 Directive 2002/15	<u>Age</u> <u>Act No. 361/2000 Coll., on Motorway Traffic, as amended (“Act on Motorway Traffic”)</u>	Section 125d, Paragraph 1, Letter (b)	Not respecting minimum age for drivers.	Transport operator	<b>Up to CZK 100,000.</b>	N/A
	<u>Driving Time</u> <u>Act No. 111/1994 Coll., on Road Transport, as amended (“Act on Road Transport”)</u>	Section 35, Paragraph 2, Letter (b)	Failure to ensure compliance with specified maximum number of driving hours.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A
	<u>Act No. 200/1990</u>	Section 23,	Failure to keep a record on driving time.	Driver	<b>Fine of up to CZK 10,000.</b>	N/A

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
	<a href="#"><u>Coll., on Administrative Infractions, as amended (“Act on Administrative Infractions”)</u></a>	Paragraph 1, Letter (f)			<b>Disqualification ranging from six months to one year.</b>	
	<a href="#"><u>Act on Administrative Infractions Regulation No. 589/2006 Coll., determining different Working hours and break time of transport</u></a>	Section 23, Paragraph 1, Letter (f) of Act on Administrative Infractions (which sets the	Non-compliance with specified period of driving time:  Working time over -13 hours daily, or -48 hours weekly (maximum 60 hours), or -10 hours during consecutive 24 hours when working at night.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
	<a href="#">sector workers</a> (“ <a href="#">Regulation on Working Hours</a> ”)	sanction)  Section4 and 5 of Regulation on Working Hours (which sets the duration of working time)				
	<a href="#">Act on</a>	Section23,	Failure to submit a record on driving time.	Driver	<b>Fine of up to CZK 10,000.</b>	N/A

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
	<a href="#"><u>Administrative Infractions</u></a>	Paragraph 1, Letter (f)			<b>Disqualification ranging from six months to one year.</b>	
	<a href="#"><u>Rest Periods Act on Road Transport</u></a>	Section35, Paragraph 2, Letter (b)	Failure to ensure compliance with specified rest periods.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A
		Section35, Paragraph 2, Letter (h)	Failure to keep in a vehicle a record of rest periods taken.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A
	<a href="#"><u>Act on Administrative Infractions</u></a>	Section23, Paragraph 1, Letter (f)	Failure to keep a record on rest periods.	Driver	<b>Fine of up to CZK 10,000.</b> <b>Disqualification ranging from</b>	N/A



Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
					<b>six months to one year.</b>	
		Section23, Paragraph 1, Letter (f)	Non-compliance with specified rest periods.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A
		Section23, Paragraph 1, Letter (f)	Failure to submit a record of rest periods.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A
	<a href="#"><u>Breaks Act on Administrative Infractions</u></a>	Section23, Paragraph 1, Letter (f)	Failure to keep a record of breaks.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
		Section23, Paragraph 1, Letter (f)	Non-compliance with specified period of breaks.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A
		Section23, Paragraph 1, Letter (f)	Failure to submit a record of breaks.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A
	<u>Recidivism</u>				<b>There are no specific rules regarding repeat offences relating to administrative infractions and other</b>	<b>“Repeat offence” is to be interpreted</b>

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
					<p><b>administrative offences, except for some infringements (such as repeated lack of a ‘tachograph or its malfunctioning), which have a repeated breach of the given rules as one of its characteristics.</b></p>	<p><b>d as an aggravating circumstance for the purposes of the imposition of a penalty.</b></p>
	<p><b><u><a href="#">Driver’s absence from work</a></u></b>  <b><u><a href="#">Act No. 40/2009</a></u></b></p>	<p>Section348</p>	<p>Counterfeiting a document attesting the driver’s absence from work (i.e. so called “public document”) or substantially altering its contents with the intention of using it as if it were authentic or using such document as if it were authentic.</p>	<p>Driver</p>		<p><b>Prison sentence of up to three years.</b></p>

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
	<u>Coll., Criminal Code (“Criminal Code”)</u>					<b>Disqualification.</b>
	<u>Act on Road Transport</u>	Section35, Paragraph 1, Letter (c) Section3, Paragraph 3	Non-maintenance of drivers’ documents for the prescribed period of five years.	Transport Operator	<b>Fine of up to CZK 100,000.</b>	N/A
	<u>Working time and rest periods</u>	Section28, Paragraph 1, Letter (k) of Act	Exceeding the average (48 h) or maximum (60 h) weekly working time.	Transport operator	<b>Fine of up to CZK 1,000,000.</b>	N/A

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
	<a href="#">Act No. 251/2005 Coll., on Labour Inspection (“Act on Labour Inspection”)</a>  <a href="#">Regulation on Working Hours</a>	on Labour Inspection Section4, Paragraph 1 of Act on Labour Inspection and Section5, Paragraph 1 of Regulation on working hours				

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
		(which sets the maximum number of working hours per week)				
		Section28, Paragraph 1, Letter (f) of Act on Labour Inspection (which sets the	Working more than six consecutive hours without a break.	Transport operator	<b>Fine of up to CZK 1,000,000.</b>	N/A

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
		sanction)  Section9 of Regulation on working hours (which sets the duration of a break and a maximum duration of working hours)				

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
		Section28, Paragraph 1, Letter (f) of Act on Labour Inspection (which sets the sanction)  Section9 of Regulation on Working Hours	Not having rest periods of at least 45 minutes after not more than six hours of continuous work if working hours amount to more than nine hours.	Transport operator	<b>Fine of up to CZK 1,000,000.</b>	N/A



Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
		(which sets the duration of break and working hours)				
		Section28, Paragraph 1, Letter (t) (which sets the sanction)  Section5,	If, in the case of a night shift, the total amount of hours worked on the day exceeds 10 hours in the 24 hours.	Transport operator	<b>Fine of up to CZK 400,000.</b>	<b>N/A</b>

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
		Paragraph 2 of Regulation on Working Hours (which sets the duration of working time at night)				

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
		Section28, Paragraph 1, Letter (m) of Act on Labour Inspection	Failure to record the working time of persons undertaking mobile road transport.	Transport operator	<b>Fine of up to CZK 400,000.</b>	N/A
	<a href="#"><u>Act on Road Transport Regulation on Working Hours</u></a>	Section35, Paragraph 2, Letter (h) (which sets the sanction) Section6 of Regulation	Failure to keep the records of the working time of persons for one year after the end of the period covered.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A

Table CZ 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 infringements	Author	Administrative sanctions	Criminal sanctions
		on Working Hours (which sets the duration of the period)				
		Section10, Paragraph 2	Failure to give information regarding the relevant national requirements, the internal rules (in particular collective agreements and any company agreements).	Transport operator	<b>Fine of up to CZK 200,000.</b>	N/A

Table CZ 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
Regulation 3821/1985	Act on Administrative Infractions	Section23, Paragraph 1, Letter (f)	Tachograph is not installed, used or submitted.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A
	Regulation No. 478/2000 Coll., implementing Act on Road Transport(“Regulation implementing Act on Road Transport”)	Section23, Paragraph 1, Letter (f)  Section1, Paragraph 3 of Regulation implementing Act on Road	Failure to use tachograph in the prescribed manner.  This involves not entering the following information into the tachograph:  first name and surname of a driver,  date of start or end of use of the sheet missing,  place of start or end of use of the sheet missing,  registration number missing on record sheet,  odometer reading (start) missing on record sheet,  odometer reading (end) missing on record sheet,	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A

Table CZ 2

**SOCIAL RULES ON ROAD TRANSPORT**

Tachograph

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		Transport (which sets the requirements for tachographs)	time of driving, rest period and safety break, and reason for extended driving time.			
	<b>Act on Road Transport</b>	Section 35, Paragraph 2, Letter (h) of Act on Road Transport	Failure to ensure installation of tachograph in a vehicle.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A

Table CZ 2

**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 35, Paragraph 2, Letter (b) of Act on Road Transport  Section 1, Paragraph 3 of Regulation implementing Act on Road Transport	Failure to ensure its proper management.  This entails entering: first name and surname of a driver, date of start or end of use of the sheet missing, place of start or end of use of the sheet missing, registration number missing on record sheet, odometer reading (start) missing on record sheet, odometer reading (end) missing on record sheet, time of driving, rest period and safety break, and reason for extended driving time.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A

Table CZ 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		(which sets the requirements for tachograph )				
	<b>Act No. 56/2001 Coll., on traffic Conditions on Motorways (“Act on traffic Conditions on Motorways”)</b>	Section 83a, Paragraph 1, Letter (a)	Alteration, or damage of the seals of the tachograph.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A



Table CZ 2

**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

<b>EU legislation</b>	<b>Relevant national legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringements</b>	<b>Author</b>	<b>Administrative sanctions</b>	<b>Criminal sanctions</b>
	<b>Act on Administrative Infractions</b>	Section23, Paragraph 1, Letter (f)	Speed control equipment is not installed, not used or not submitted.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging from six months to one year.</b>	N/A
	<b>Act on Road Transport</b>	Section35, Paragraph 1, Letter (b)	Failure to ensure installation of speed control equipment.  - Lack of a tachograph or related record sheets.  - Malfunctioning of speed control equipment or tachograph.	Transport operator	<b>Fine of up to CZK 100,000.</b>	N/A
		Section35, Paragraph	Use of the recording equipment or a tachograph that does not comply with the requirements set out	Transport operator	<b>Fine of up to CZK 100,000.</b>	N/A

Table CZ 2

SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		1, Letter (b)	by Regulation 478/200 Coll.			
		Section 35a, Paragraph 2, Letter (a)	Repeated lack of a tachograph or its malfunctioning at least three times within five years.	Transport operator	<b>Cancellation or amendment of concession.</b>	N/A

**Table CZ 3**

**Road Package**

<b>EU legislation</b>	<b>Relevant national legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringements</b>	<b>Author</b>	<b>Administrative sanctions</b>	<b>Criminal sanctions</b>
<b>Regulation 1071/2009 Authorisation released by the Driver and Vehicle Licensing Agency of the Ministry of Transport (Article 9 )</b>	<b>Act No. 455/1991 Coll., Trade Act</b>	Section62, Paragraph 1, Letter (w) (which sets the sanction)	Failure to report loss of good repute within 15 days of the loss (as one of the conditions for operating transportation).	Transport operator	<b>Fine of up to CZK 20,000 or up to CZK 5,000 in administrative hearing on a ticket.</b>	<b>N/A</b>
		Section62, Paragraph 1, Letter (w) (which sets the sanction)	Failure to communicate loss of financial standing within 15 days of the loss (as one of the conditions for operating transportation).	Transport operator	<b>Fine of up to CZK 20,000 or up to CZK 5,000 in administrative hearing on a ticket.</b>	<b>N/A</b>
		Section62, Paragraph 1, Letter	Failure to communicate loss of professional competence within 15 days from the loss (as one of the conditions for operating transportation).	Transport operator	<b>Fine of up to CZK 20,000 or up to CZK 5,000 in administrative hearing on a</b>	<b>N/A</b>

Table CZ 3

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		(w) (which sets the sanction)			<b>ticket.</b>	
	<b>Act on Road Transport</b>	Section35b , Paragraph 4, Letter (b), point 3	Failure to approve continuation of financial standing by 31 July every year.	Transport operator	<b>Cancelation or amendment of concession.</b>	N/A
		Section35b , Paragraph 4, Letter (b), point 4	Loss of good repute due to a decision of transport authority.	Transport operator	<b>Cancelation or amendment of concession.</b>	N/A
	<b>Criminal Code</b>	Section209	Whoever enriches themselves or someone else by putting someone in error, using one's error, or by concealing material facts and thus causing damage to a stranger's property that is not negligible	Driver  Transport operator		<b>Prison sentence of up to two years.</b>

**Table CZ 3**

**Road Package**

<b>EU legislation</b>	<b>Relevant national legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringements</b>	<b>Author</b>	<b>Administrative sanctions</b>	<b>Criminal sanctions</b>
			(amounting to at least CZK 5,000) commits a fraud.			<p><b>Disqualification.</b></p> <p><b>Forfeiture of items or other assets.</b></p>
	<b>Act on Road Transport</b>	Section35, Paragraph 2, Letter (a)	Operating road transport without authorisation.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A
<b>Regulation</b>	<b>Act on Road Transport</b>	Section35, Paragraph	Operating road transport without authorisation.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A

**Table CZ 3**

**Road Package**

<b>EU legislation</b>	<b>Relevant national legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringements</b>	<b>Author</b>	<b>Administrative sanctions</b>	<b>Criminal sanctions</b>
<b>1072/2009</b>		2, Letter (a)				
		Section35, Paragraph 3, Letter (h)	Carrying out international carriage without community licence.	Transport operator	<b>Fine of up to CZK 750,000.</b>	<b>N/A</b>
		Section35, Paragraph 2, Letter (a)	Infringement of the rules on cabotage <sup>271</sup> under Section32 of Act on Road Transport:  Operating road transport without authorisation.	Transport operator	<b>Fine of up to CZK 500,000.</b>	<b>N/A</b>
	<b>Criminal Code</b>	Section209	Whoever enriches themselves or someone else by putting someone in error, using one's error, or by			<b>Prison sentence</b>

<sup>271</sup> Cabotage means carrying out transport by a transport operator between places within the territory of the Czech republic.

**Table CZ 3**

**Road Package**

<b>EU legislation</b>	<b>Relevant national legislation for infringement</b>	<b>Article of reference</b>	<b>Type of infringements</b>	<b>Author</b>	<b>Administrative sanctions</b>	<b>Criminal sanctions</b>
			concealing material facts and thus causing damage to a stranger's property that is not negligible (at least CZK 5,000) commits a fraud.			<p><b>of up to two years.</b></p> <p><b>Disqualification.</b></p> <p><b>Forfeiture of items or other assets.</b></p>
<b>Regulation 1073/2009</b>	<b>Act on Road Transport</b>	Section35, Paragraph 1, Letter (g)	State of a technical base for road transport is contrary to requirements.	Transport operator	<b>Fine of up to CZK 100,000.</b>	N/A
		Section35,	Carrying out international carriage of passengers	Transport	<b>Fine of up to CZK 750,000.</b>	N/A

Table CZ 3

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
		Paragraph 3, Letter (h)	without Community licence.	operator		
		Section35, Paragraph 1, Letter (g)	International transport is carried out with an expired authorisation of transport company.	Transport operator	<b>Fine of up to CZK 100,000.</b>	N/A
		Section35, Paragraph 1, Letter (j)	Transport carried out by drivers not regularly employed.	Transport operator	<b>Fine of up to CZK 100,000.</b>	N/A
		Section35, Paragraph 2, Letter (a)	Carrying out transport services which are not included in the authorisation.	Transport operator	<b>Fine of up to CZK 500,000.</b>	N/A
	<b>Act on</b>	Section23,	Carrying out international carriage of passengers by	Driver	<b>Fine of up to CZK 10,000.</b>	N/A



Table CZ 3

Road Package

EU legislation	Relevant national legislation for infringement	Article of reference	Type of infringements	Author	Administrative sanctions	Criminal sanctions
	<b>Administrative Infractions</b>	Paragraph 1, Letter (f)	coach and bus without carrying: -a copy of the necessary authorisation, -a copy of the contract between the operator of the regular service and the undertaking providing the additional vehicles or an equivalent document, or - a certified true copy of the Community licence issued to the operator providing the additional vehicles for the service.		<b>Disqualification ranging from six months to one year.</b>	

Table CZ 4

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
<b>Directive 2008/68</b>	<u>Transport of Dangerous goods</u>  <b>Act on Administrative Infractions</b>	Section23. Paragraph 1, Letter (g)	Transport of dangerous goods without necessary authorisation testifying that the driver has been properly trained.	Driver	<b>Fine of up to CZK 10,000.</b>	N/A
		Section23. Paragraph 1, Letter (g)	Transport of dangerous goods without marking a vehicle.	Driver	<b>Fine of up to CZK 10,000.</b>	N/A
		Section23. Paragraph 1, Letter (g)	Transport of dangerous goods without obligatory equipment.	Driver	<b>Fine of up to CZK 10,000.</b>	N/A
	<b>Act on Road Transport</b>	Section35, Paragraph 4	Not ensuring that all the duly completed accompanying documents are in the vehicle.  Failure to ensure that the competent transport unit is	Transport operator	<b>Fine of up to CZK 1,000,000.</b>	N/A

			<p>equipped with required documents.</p> <p>Failure to ensure authorised crew of transport units.</p> <p>Taking over and transferring dangerous goods that are not allowed for transport.</p> <p>Non compliance with provisions on loading, unloading and manipulation, and the supervision of a trading unit and the service it provides.</p> <p>Failure to prevent leakage from or damage to transported goods.</p> <p>Failure to prevent prescribed instructions in the event of accident or extraordinary event.</p> <p>Failure to provide transport by marked transport units.</p> <p>Failure to equip a transport unit with fire extinguishers.</p> <p>Failure to appoint security advisor for transport.</p> <p>Failure to preserve prescribed documents for at least</p>			
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			two years.			
			Non-compliance with provisions on means of transport.			
		Section35, Paragraph 4	<p>Failure to hand over duly completed documents that should accompany goods to be transported to a carrying agent.</p> <p>Transferring dangerous goods that are not allowed to be transported.</p> <p>Breaching provisions on prohibition on the loading of goods that should not be loaded together.</p> <p>Handing over dangerous goods contrary to provisions on means of transportation.</p> <p>Using unauthorised materials for packaging.</p> <p>Failure to use signs and safety marks on vehicle.</p> <p>Failure to appoint a security advisor for transport.</p> <p>Failure to provide training for people involved.</p>	Consignor	<b>Fine of up to CZK 1,000,000.</b>	<b>N/A</b>

			Failure to preserve prescribed documents for at least two years.				
		Section35, Paragraph 4	Failure to appoint a security advisor for transport.  Failure to preserve prescribed documents for at least two years.  Failure to provide training for people involved.  Non compliance with provisions on unloading, cleaning and decontamination of a vehicle.	Consignee	<b>Fine of up to CZK 1,000,000.</b>	N/A	
	<b>Directive 96/53</b>	<b>Act on Motorway Traffic</b>	Section125c , Paragraphs 4, Letter (d) and Paragraph 5	Driving without the prescribed authorisation.  Exceeding the maximum authorised dimensions contained in the same authorisation.	Transport operator	<b>From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six to twelve months.</b>	N/A
			Section125c , Paragraphs 4, Letter (d) and Paragraph 5	Exceeding the maximum size permitted by the competent authorities.	Transport operator	<b>From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six to twelve months.</b>	N/A
<b>Act No. 13/1997 Coll., on</b>		Section42a, Paragraph	Exceeding the maximum authorised weight limit during low-speed checking tests.	Driver	<b>Fine of up to CZK 500,000 in</b>	N/A	

	<p><b>Infrastructures</b>  <b>(“Act on Infrastructures”)</b></p> <p><b>Regulation No. 341/2002 Coll., on Authorisation of Technical Capacity and Technical Conditions of Vehicles operating on Motorways (“Regulation on Authorisation of Technical Capacity”)</b></p>	<p>4, Letter (c) of Act on Infrastructures (which sets the sanction)</p> <p>Section 15, Paragraph 2 of Regulation on Authorisation of technical Capacity (which sets the requirements for maximum weight)</p>	<p>Maximum authorised weight:</p> <p>Vehicle with two axles (18 tonnes)</p> <p>Vehicle with three axles (25 tonnes)</p> <p>Vehicle with four and more axles (32 tonnes)</p> <p>Trailer with two axles (18 tonnes),</p> <p>Trailer with three axles (24 tonnes)</p> <p>Trailer with four and more axles (32 tonnes)</p> <p>Articulated vehicle (48 tonnes).</p>		<p><b>administrative proceedings or up to CZK 15,000 in administrative hearing on a ticket.</b></p>	
		<p>Section 42a, Paragraph 4, Letter (d) of Act on</p>	<p>Exceeding of the maximum authorised weight during low-speed control weighting and continue driving (vehicle is not diverted from traffic).</p>	<p>Driver</p>	<p><b>Fine of up to CZK 500,000 in administrative proceedings or up to</b></p>	

		<p>Infrastructures (which sets the sanction)</p> <p>Section 15, Paragraph 2 of Regulation on Authorisation of technical Capacity (which sets the requirements for maximum weight)</p>	<p>Maximum authorised weight:</p> <p>Vehicle with two axles (18 tonnes)</p> <p>Vehicle with three axles (25 tonnes)</p> <p>Vehicle with four and more axles (32 tonnes)</p> <p>Trailer with two axles (18 tonnes)</p> <p>Trailer with three axles (24 tonnes)</p> <p>Trailer with four and more axles (32 tonnes)</p> <p>Articulated vehicle (48 tonnes).</p>		<p><b>CZK 30,000 in administrative hearing on a ticket.</b></p>	
		<p>Section 42a, Paragraph 4, Letter (e) (which sets the sanction)</p>	<p>Exceeding of the maximum authorised weight during high-speed control weighting (vehicle is not diverted from traffic).</p> <p>Maximum authorised weight:</p> <p>Vehicle with two axles (18 tonnes)</p>	<p>Driver</p>	<p><b>Fine of up to CZK 500,000 in administrative proceedings or up to CZK 30,000 in order proceedings.</b></p>	

	Section 15, Paragraph 2 of Regulation on Authorisation of technical Capacity (which sets the requirements for maximum weight)	<p>Vehicle with three axles (25 tonnes)</p> <p>Vehicle with four and more axles (32 tonnes)</p> <p>Trailer with two axles (18 tonnes)</p> <p>Trailer with three axles (24 tonnes)</p> <p>Trailer with four and more axles (32 tonnes)</p> <p>Articulated vehicle (48 tonnes).</p>		<p><b>Conditions of order proceedings:</b></p> <p><b>Accused person undoubtedly committed an administrative infraction, and Administrative proceedings on a ticket did not take place.</b></p>	
<b>Act on Motorway Traffic</b>	Section 125c, Paragraphs 4, Letter (d) and Paragraph 5	Driving a vehicle which does not comply with the conditions or the procedures envisaged in the relevant regulation on technical escort and could cause an immediate threat to other road users.	Driver	<b>From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six to twelve months.</b>	
<b>Act on Administrative Infractions</b>	Section 23, Paragraph 1, Letter (f)	Transport of goods other than the ones authorised.	Driver	<b>Fine of up to CZK 10,000.</b>  <b>Disqualification ranging</b>	



					<b>from six months to one year.</b>	
<b>Directive 2009/40</b>	<b>Act on Motorway Traffic Act on traffic Conditions on Motorways</b>	Section83, Paragraph 1, Letter (d)	Vehicle is operated without having passed a roadworthiness test.	Driver	<b>Up to CZK 50,000 in administrative proceedings or up to CZK 5,000 in administrative hearing on a ticket.</b>	<b>N/A</b>
	<b>Criminal Code</b>	Section348	Submission of a false public document (roadworthiness certificate) - could be qualified as counterfeiting of public documents.	Driver  Transport operator		<b>Prison sentence of up to three years; or Disqualification.</b>
		Section348	Alteration of a public document (roadworthiness certificate) - could be qualified as alteration of public documents.	Driver  Transport operator		<b>Prison sentence of up to three years; or Disqualification.</b>
<b>Directive 2006/126</b>	<b>Act on Motorway Traffic</b>	Section125c , Paragraphs 4 and 5	1. Lack of physical and minimum standards of physical and mental fitness required.	Driver	<b>1.+ 2. From CZK 25,000 to CZK 50,000 and suspension of the</b>	<b>N/A</b>

			<p>2. Not being of the minimum age to drive.</p> <p>3.Exceeding the speed limit:  for 40 km/h or more (urban) or 50 km/h (rural)  for 20 km/h or more (urban) or 30 km/h (rural)  for less than 20 km/h (urban) or 30 km/h (rural).</p>		<p><b>driving licence from one to two years.</b></p> <p><b>3.a) From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six to twelve months.</b></p> <p><b>b) From CZK 2,500 to CZK 5,000 and suspension of the driving licence from one to six months if the infringement is made twice or more within one year.</b></p> <p><b>c) From CZK 1,500 to CZK 2,500.</b></p>	
	<b>Criminal Code</b>	Section348	Alteration of a public document – i.e. driving with a fake driving licence.	Driver		<b>Prison sentence of up to three years or disqualificati</b>

					<b>on.</b>
<b>Act on Motorway Traffic</b>	Section 125c Paragraph 4, Letters (a) and Paragraph 5	Driving without a driving licence.	Driver	<b>From CZK 25,000 to CZK 50,000 and suspension of the driving licence from one up to two years.</b>	<b>N/A</b>
	Section 125c Paragraph 4, Letters (d) and Paragraph 5	Driving without driving licence (having been retained by police).	Driver	<b>From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six to twelve months.</b>	<b>N/A</b>
	Section 125c Paragraph 4, Letters (d) and Paragraph 5	Driving without certificate of physical and mental fitness.	Driver	<b>From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six to twelve months.</b>	<b>N/A</b>
	Section 125c Paragraph 4, Letters (a) and Paragraph 5	Driving with EU licence, international licence or licence issued by third country even though the right to drive in the Czech Republic has been suspended due to various earlier infringements.	Driver	<b>From CZK 25,000 to CZK 50,000 and suspension of the driving licence from one up to two years.</b>	<b>N/A</b>
	Section 125c Paragraph 4, Letters (d) and	Driving without the professional certificate.	Driver	<b>From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six</b>	<b>N/A</b>

	Paragraph 5				<b>to twelve months.</b>	
	Section125c Paragraph 4, Letters (d) and Paragraph 5	Driving without possession of the relevant professional certificate being noted in the driving licence.	Driver		<b>From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six to twelve months.</b>	<b>N/A</b>
	Section125c . Paragraph 6, Letters (a)	Driving with a licence or a circulation card which has expired.	Driver		<b>Up to CZK 2,000.</b>	<b>N/A</b>
	Section125c , Paragraph 2	Ordering or allowing someone to drive a vehicle without examining her/his personal data.	Transport operator		<b>From CZK 5,000 to CZK 10,000</b>	<b>N/A</b>
	Section125c , Paragraph 4, Letters (a) and Paragraph 5	Driving a vehicle falling into a category not covered by driving licence.	Driver		<b>From CZK 25,000 to CZK 50,000 and suspension of the driving licence from one up to two years.</b>	<b>N/A</b>
	Section125c , Paragraph 4, Letter (a) and Paragraph 5	Driving without a professional certificate.	Driver		<b>From CZK 25,000 up to CZK 50,000</b> <b>Suspension of the driving licence from six up to twelve months.</b>	<b>N/A</b>
<b>Criminal Code</b>	Section348	Driving with a suspended driving licence.	Driver			<b>Prison sentence of</b>

						<b>up to three years.</b>  <b>Disqualificati on.</b>
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The table below gathers the sanctions which are considered formally criminal in the Czech legal system. Please note that in the Czech Republic only administrative sanctions are foreseen for infringements of EU professional road transport legislation.

However, we have identified below those infringements that may fall within the scope of criminal provisions contained in the Criminal Code.

Table CZ 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>Driver's absence from work</p> <p>Act No. 40/2009 Coll., Criminal Code ("Criminal Code") Section 348</p> <p>Counterfeiting a document attesting the driver's absence from work (i.e. so called "public document") or substantially altering its contents with the intention of using it as if it were authentic or using such document as if it were authentic.</p> <p>Directive 2006/22/EC (amended by Directive 2009/4/EC)</p>	<p>Prison sentence of up to three years.</p> <p>Disqualification.</p>	<p>Yes</p>
<p>Criminal Code, Section 348</p> <p>Submission of a false public document (roadworthiness certificate) - could be qualified as counterfeiting of</p>	<p>Prison sentence of up to three years; or</p>	<p>Yes</p>

<p>public documents.</p> <p>Directive 2009/40/EC</p>	<p>Disqualification.</p>	
<p>Criminal Code Section348</p> <p>Alteration of a public document (roadworthiness certificate) - could be qualified as alteration of public documents.</p> <p>Directive 2009/40/EC</p>	<p>Prison sentence of up to three years; or</p> <p>Disqualification.</p>	<p>Yes</p>
<p>Criminal Code Section348</p> <p>Alteration of a public document – i.e. driving with a fake driving licence.</p> <p>Directive 2006/126/EC</p>	<p>Prison sentence of up to three years or disqualification.</p>	<p>Yes</p>
<p>Criminal Code Section348,</p> <p>Driving with a suspended driving licence.</p> <p>Directive 2006/126/EC</p>	<p>Prison sentence of up to three years.</p> <p>Disqualification.</p>	<p>Yes</p>



## **7.7 Sanctions which could be considered substantially criminal in the Czech legal system**

The maximum fine for infringements covered in our report is CZK 1,000,000. In our view, such a fine is not inappropriate in comparison to fines in other fields of administrative law (such as in the field of energy or consumer protection), where fines amount go as high as CZK 50,000,000.

As regards disqualification, it is posited in agreement that such limitation of activity could be considered as constituting a criminal sanction in nature pursuant to the case law of the ECHR.

As to the seizure of a vehicle, we note that for none of the infringements discussed in our report, such sanction is foreseen.

Therefore, in view of the above, we think that the following sanctions imposed in the Czech Republic in the field of commercial road transport are substantially criminal in nature.

**Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>Act No. 200/1990 Coll., on Administrative Infractions, as amended (“Act on Administrative Infractions”)</p> <p>Section 23, Paragraph 1, Letter (f)</p> <p>Failure to keep a record on driving time.</p> <p>Regulation 561/2006</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the possibility to work</p>	<p>Yes</p>

**Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>Act on Administrative Infractions</p> <p>Regulation No. 589/2006 Coll., determining different Working hours and break time of transport sector workers (“Regulation on Working Hours”)</p> <p>Section23, Paragraph 1, Letter (f) of Act on Administrative Infractions (which sets the sanction)</p> <p>Regulation 561/2006</p> <p>Section4 and 5 of Regulation on Working Hours (which sets the duration of working time)</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the possibility to work</p>	<p>Yes</p>

Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>Non-compliance with specified period of driving time:</p> <p>Working time over:</p> <ul style="list-style-type: none"> <li>• 13 hours daily, or</li> <li>• 48 hours weekly (maximum 60 hours), or</li> <li>• 10 hours during consecutive 24 hours when working at night.</li> </ul>			
<p>Act on Administrative Infractions Section23, Paragraph 1, Letter (f)</p> <p>Failure to submit a record on driving time.</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the</p>	<p>Yes</p>

**Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>Regulation 561/2006</p>		<p>possibility to work</p>	
<p>Act on Administrative Infractions Section23, Paragraph 1, Letter (f)</p> <p>Failure to keep a record on rest periods.</p> <p>Regulation 561/2006</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the possibility to work</p>	<p>Yes</p>
<p>Breaks</p>	<p>Fine of up to CZK 10,000.</p>	<p>Disqualification is</p>	<p>Yes</p>

**Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>Act on Administrative Infractions</p> <p>Section23, Paragraph 1, Letter (f)</p> <p>Failure to keep a record of breaks.</p> <p>Regulation 561/2006</p>	<p>Disqualification ranging from six months to one year.</p>	<p>deemed to be an afflictive sanction able to affect the possibility to work</p>	
<p>Section23, Paragraph 1, Letter (f)</p> <p>Non-compliance with specified period of breaks.</p> <p>Regulation 561/2006</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the possibility to work</p>	<p>Yes</p>

**Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>Section23, Paragraph 1, Letter (f)</p> <p>Non-compliance with specified period of breaks.</p> <p>Regulation 561/2006</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the possibility to work</p>	<p>Yes</p>
<p>Section23, Paragraph 1, Letter (f)</p> <p>Failure to submit a record of breaks.</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the</p>	<p>Yes</p>

**Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>Regulation 561/2006</p>		<p>possibility to work</p>	
<p>All infringements of Regulation 3821/1985</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p> <p>Or</p> <p>Cancelation or amendment of concession.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the possibility to work</p>	<p>Yes</p>
<p>All infringements of the rules of the Road Package</p>	<p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six</p>	<p>Disqualification is deemed to be an afflictive sanction</p>	<p>Yes</p>



**Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
	<p>months to one year.</p>	<p>able to affect the possibility to work</p>	
<p>All infringements of Directive 96/53/EC</p>	<p>From CZK 5,000 to CZK 10,000 and suspension of the driving licence from six to twelve months</p> <p>Or</p> <p>Fine of up to CZK 10,000.</p> <p>Disqualification ranging from six months to one year.</p>	<p>Disqualification is deemed to be an afflictive sanction able to affect the possibility to work</p>	<p>Yes</p>

**Table CZ 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><b>Type of infringement and Article of reference in national legislation</b></p> <p><b>Corresponding EU legislation</b></p>	<p><b>Administrative sanction that could be qualified as criminal sanction</b></p>	<p><b>Why can this sanction be qualified as criminal despite its formal qualification as administrative sanction?</b></p>	<p><b>Is it dissuasive?</b></p>
<p>All infringements of Directive 2006/126/EC</p>	<p>Financial penalties plus suspension of the driving licence</p>	<p>Suspension of the driving licence is deemed to be an afflictive sanction able to affect the possibility to work</p>	<p>Yes</p>

## 7.8 Effectiveness of the sanctions system

Below, we provide an overview of statistics regarding the regulation of working time in the commercial road transport, which is one of the areas covered in our report. These statistics are based on the results of inspections performed by the State Office of Labour Inspection (“SOLI”).

<b>Table CZ 7</b>			
<b>Results of inspections performed by State Office of Labour Inspection in line with Government Regulation No. 589/2006 Coll. on the organisation of working time in transport</b>			
<b>1. Number of companies inspected</b>	<b>Year 2010<sup>272</sup></b>	<b>Year 2009<sup>273</sup></b>	<b>Year 2008<sup>274</sup></b>
	452	242	611
<b>2. Total number of infringements</b>	298	N/A	583
<b>3. Breakdown by categories of infringement</b>	<ul style="list-style-type: none"> <li>- Infringements of not keeping a record of driving time: 186</li> <li>- Infringements of the minimum daily rest period: 72</li> <li>- Infringements of daily driving time limits: 40</li> </ul>	N/A	<ul style="list-style-type: none"> <li>- Infringements of not keeping record of driving time: 393</li> <li>- Infringements of the minimum daily rest period and</li> <li>- Infringements of daily driving time limits: 190</li> </ul>

<sup>272</sup> According to the Annual Compiled Report of Results of Controls conducted by Labour Inspectorate for the year 2010 (provided by SOLI).

<sup>273</sup> According to Annual Compiled Report of Results of Controls conducted by Labour Inspectorate for the year 2009 (provided by SOLI).

<sup>274</sup> According to the Annual Compiled Report of Results of Checks conducted by Labour Inspectorate for the year 2008 (provided by SOLI).

It follows from the above statistics that compared to the year 2008, the total number of infringements decreased in the year 2010. This is mainly attributable to the decrease in the number of infringements of not keeping a record of working time. However, infringements of not keeping a record of working time still represent the majority of the infringements sanctioned. This aspect was also expressly acknowledged in the conclusions of the report of the Labour Inspectorate for the year 2010. The report stated that transport operators prefer to focus on meeting the requirements for minimum daily rest periods and maximum daily driving time, since for these infringements fierce sanctions could be imposed. By contrast, keeping a record of the working time of drivers is viewed by transport operators as a time-consuming administrative burden and they are often negligent in their duty to keep a record of working time.

<b>Table CZ 8</b>							
<b>Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85 infringements (2011)</b>							
<b>Road side checks</b>							
	<b>Carriage of passengers by coach and bus</b>			<b>Carriage of goods</b>			<b>Σ</b>
	<b>CZ</b>	<b>EU/EHP/CH</b>	<b>Third countries</b>	<b>CZ</b>	<b>EU/EHP/CH</b>	<b>Third countries</b>	
<b>N 561/2006, Art.6 driving period (daily, weekly, biweekly)</b>	66	27	2	1132	1276	73	2576
	14	17	0	186	324	16	557
	12	14	0	278	703	9	1016
<b>N 561/2006, art. 6 (no records)</b>	114	14	0	1767	485	37	2417
<b>N 561/2006, art. 7</b>	143	72	2	2457	1898	62	4634
<b>N 561/2006, art. 8</b>	173	105	19	2655	2072	211	5235

**Table CZ 8**

**Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85 infringements (2011)**

**Road side checks**

	Carriage of passengers by coach and bus			Carriage of goods			Σ
	CZ	EU/EHP/CH	Third countries	CZ	EU/EHP/CH	Third countries	
	37	39	0	549	1129	75	1829
<b>N 561/2006, art. 10 a 26</b>	510	40	22	8257	2435	891	12155
<b>N 3821/85 art. 15 (8), art. 16</b>	54	6	0	643	57	6	766
	42	8	1	284	127	4	466
<b>N 3821/85 art. 15 (2) (5)</b>	144	73	2	2562	626	89	3496

However, it can be concluded that in the field of the organisation of working time in commercial transport, there has been a decrease of the total number of infringements.

That said, the Czech Authority provided us also with the following information. The number of infringements of social rules detected in 2011 was substantial.

<b>Table CZ 9</b>			
<b><i>Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85 infringements (2011)</i></b>			
<b>Check at the premises</b>			
<b>Art</b>	<b>Carriage of passengers by coach and bus</b>	<b>Carriage of goods</b>	<b>Σ</b>
<b>N 561/2006 Art.6</b>	<b>73</b>	<b>809</b>	882
	24	98	122
	0	47	47
<b>N 561/2006 Art.6 (no records)</b>	70	362	432
<b>N 561/2006 Art.7</b>	73	1263	1336
	180	1631	1811
<b>N 561/2006 Art.8</b>	2	297	299
<b>N 3821/85 Art. 14(.2)</b>	251	2357	2608
<b>N 3821/85 Art. 15(.8), Art. 16</b>	0	65	65
	0	29	29

The table below also illustrates that 10% of the vehicles checked in Czech Republic are found in non compliance with the EU rules on transport of dangerous goods.

<b>Table CZ 10</b>					
<b>Directive 2008/68/EC</b>					
	<b>CZ</b>	<b>EU/EHP/CH</b>		<b>Third countries</b>	<b>Σ</b>
<b>Vehicle unites controlled for compliance with ADR</b>	1981	479		31	2491
<b>Vehicle unites not in compliance with ADR</b>	242	53		2	297
<b>Infringements</b>	Risk category I	49	14	0	63
	Risk category II	106	18	2	126
	Risk category III	92	23	0	115

Based on the figures received by the Czech Authority, it seems that the number of vehicles overloaded on Czech roads is also substantial: 5% of the vehicles controlled.

<b>Tble CZ 11a</b>					
<b>Council Directive 96/53/EC</b>					
<b>Place</b>	<b>Controlled vehicles</b>	<b>Weighted</b>	<b>%</b>	<b>Overloaded</b>	<b>%</b>
Ústí nad Labem	1965	<b>34</b>	1,73	<b>31</b>	<b>91,18</b>
Plzeň	1507	<b>141</b>	9,36	<b>85</b>	<b>60,28</b>
Jihlava	1570	<b>253</b>	16,12	<b>94</b>	<b>37,15</b>
Brno	2247	<b>246</b>	10,95	<b>95</b>	<b>38,62</b>
Ostrava	1377	<b>387</b>	28,11	<b>214</b>	<b>55,30</b>
Hradec Králové	1469	<b>280</b>	19,06	<b>116</b>	<b>41,43</b>
středočeská	1509	<b>88</b>	5,83	<b>31</b>	<b>35,23</b>
C.Budějovice	1625	<b>425</b>	26,16	<b>96</b>	<b>22,59</b>
Liberec	2106	<b>165</b>	7,84	<b>50</b>	<b>30,30</b>
Karlovy Vary	1110	<b>270</b>	24,33	<b>151</b>	<b>55,93</b>
Prostějov	1490	<b>166</b>	11,14	<b>54</b>	<b>32,53</b>
Zlín	1868	<b>178</b>	9,53	<b>64</b>	<b>35,96</b>
Pardubice	1760	<b>341</b>	19,38	<b>147</b>	<b>43,11</b>
Praha	1283	<b>101</b>	7,87	<b>53</b>	<b>52,48</b>
Jihlava-dálniční	1266	<b>253</b>	19,99	<b>57</b>	<b>22,53</b>
<b>Together:</b>	<b>24152</b>	<b>3328</b>	<b>13,78</b>	<b>1338</b>	<b>40,20</b>



The Czech Authority provided us also with figures concerning the number of vehicles controlled at roadside checks in 2011 and found non compliant with social legislation.

The figures received, according to us, do not allow to conclude that foreign drivers prefer to be checked and sanctioned in Czech Republic. However it is worth pointing out that the number of Slovakian and German vehicles found in breach of social legislation in the Czech territory is substantial.

<b>Table CZ 12</b>	
<b>Member state</b>	<b>Number of vehicles controlled at roadside checks with infringement of social legislation</b>
Austria	140
Belgium	9
Bulgaria	45
Cyprus	0
Denmark	2
Estonia	5
Finland	1
France	4
Germany	985
Greece	5
Hungary	278
Ireland	4
Italy	50
Latvia	6
Lithuania	16
Luxembourg	2
Malta	0

<b>Table CZ 12</b>	
<b>Member state</b>	<b>Number of vehicles controlled at roadside checks with infringement of social legislation</b>
Netherlands	42
Poland	633
Portugal	14
Romania	78
Slovakia	1046
Slovenia	58
Spain	22
Sweden	5
United Kingdom	5

From a qualitative stand point, we got some input from the Czech Authority which confirmed that in their country financial penalties are proportionate and dissuasive.

The Czech Authority was able to identify infringements sanctioned in a disproportionate way: notably, Article 7 of the Regulation No 561/2006 concerning exceeding uninterrupted driving time.

That said based on a legal analysis and on the figures collected, it could be argued that the Czech system is not effective as far as infringements of the rules on the transport of dangerous goods are concerned, as the percentage of infringements detected is high if compared to the vehicle checked.

As to social rules, as announced, the number of infringements detected is substantial, i.e. more than 30,000 infringements. Therefore, it could be argued that the system is not so effective despite the fact that substantially criminal sanctions are foreseen for most of such infringements.

## **8 DENMARK - COUNTRY REPORT ON SANCTIONS IN THE ROAD TRANSPORT SECTOR**

### **8.1 Social rules on road transport**

#### **8.1.1 Rules on Driving Times and Rest Periods**

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

Regulation (EC) No 561/2006 has been implemented by Act No. 557 of 24 June 2005 and Act No. 347 of 6 May 2009 modifying the Danish Highway Code (hereinafter referred to as the “Highway Code”). The Danish Highway Code currently in force is the consolidated Act No 1047 of 24 October 2011.

Pursuant to Section 86a of the Highway Code the Danish Minister of Justice is empowered to provide new provisions on the implementation, application and control of the compliance with EC regulations and directives or the like concerning rules on driving times and rest periods within road transportation. Such authorisation has been utilized by the Minister of Justice cf. Order No. 328 of 28 March 2007 as amended by Order No. 975 of 16 July 2007 (hereinafter referred to as the “Order on driving times, breaks and rest periods”).

The provisions on sanctions related to the infringements of rules on driving times, breaks and rest periods envisaged in the Regulation (EC) No 561/2006 are found in Section 118, Subsections 1, 2, 7 and 8 of the Highway Code and in Chapter 4 (Articles 10-14) of the Order on driving times, breaks and rest periods.

Sanctions apply to the driver as well as the owner/operator of the vehicle as described below.

The specific levels of sanction for infringements of Regulation (EC) No 561/2006 are regulated in the Director of Public Prosecutions’ (*Rigsadvokaten*) Communication No. 4/2000 which is most recently amended in February 2010.

Pursuant to clause 3.2 of the *travaux préparatoires* of Act No. 557 of 24 June 2005, the general principle is that a driver is penalised with a fine of DKK 100 for each time the limits of driving time and/or rest periods are exceeded by 1 per cent.

The owner/operator of the vehicle is penalised with a fine of DKK 200 for each time the limits of driving time and/or rest periods are exceeded by 1 per cent.

Pursuant to Section 118, subSection 8 of the Highway Code, the owner/operator of the vehicle is objectively liable for any infringement of the rules on driving time and/or rest periods, i.e. the owner/operator will be penalised with a fine regardless of whether or not he has acted negligently.

According to Section 118a, stk.1 in the Highway Code, the fine is rounded upwards to the closest amount divisible with 500 with a minimum fine of DKK 500. Prosecution is only initiated if the limit of driving time and/or rest periods are exceeded by 5 per cent or more.

Section 118a, subSection 2 provides that fines may be reduced for persons with low income. There is no increase in sanctions for repeat offenders.

### Breaks

As regards breaks, the tolerance limit of 5 per cent is replaced by a 5 minutes tolerance limit on each break. This means that one break of at least 40 minutes complies with the requirements of Regulation (EC) No 561/2006. Infringement of the 5 minute tolerance limit only leads to accumulation of driving time, if the break is more than 1/3 too short compared to the requirements on breaks established in Regulation No 561/2006.

For infringements committed on 11 April 2007 or later, a fine of DKK 1,500 to the driver, DKK 3,000 to the owner/operator is applicable in case of a break which is more than 5 minutes too short. This fine applies to the cases in which there are no grounds for cumulating the driving times.

Such fine is only to be applied if the driving time without breaks is exceeded. The fine does not apply to breaks that are so short (more than 1/3 too short) that accumulation of the driving times occurs.

For joint breaks, this means that a fine will be applicable to the interval between 39 minutes to 30 minutes (cf. the 5 minutes tolerance limit regarding breaks and as a joint break of less than 30 minutes results in accumulation of driving times).

If the break is split, no fine will apply to the first break of 15 minutes (cf. the 5 minutes tolerance limit regarding breaks and as a break of less than 10 minutes results in accumulation of the driving times) .

As regards the second break of no less than 30 minutes, the fine applies to the interval between 24 minutes and 20 minutes (cf. the 5 minutes tolerance limit regarding breaks and as a break of less than 20 minutes results in accumulation of the driving time).

Accumulation of driving times only occurs in connection with too short a rest period, if the rest period is more than 1 hour too short.

#### *Suspension of driving licence*

The driver's driving licence is to be suspended if an infringement of more than 30 per cent the rules on driving times and/or rest periods takes place pursuant to Section125, subSection1, No. 6 of the Highway Code. The general principle is that the suspension of the driving licence is conditional upon the driver committing additional infringement of Danish law.

Suspension of driving licence only takes place if either the driving time or the rest period on an isolated basis is exceeded by more than 30 per cent. This has the effect that the driving licence will not be suspended, if the infringement of the rules on daily driving time is solely due to the interaction between the rules on daily driving times and rest periods

As regards the rules on driving times without breaks, suspension of the driving licence is applicable, if both the rules on driving times as well as the total break is exceeded by more than 30 per cent.

The sanction of suspension of the driving licence applies unconditionally, if the driver has committed several infringements of the rules on driving times and/or rest periods that each would independently results in a conditional suspension of the driving licence. This will be the case if several infringements are committed under different Driving Stages cf. Section126, subSection1, No. 7 of the Highway Code. If several

infringements are committed within the same Driving Stage, the suspension of the driving licence will only be conditional.

The definition of Driving Stage is the following: the period starting at the point in time where the driver activates the tachograph after a rest of no less than 9 hours until the point in time where it has been established that a rest period of no less than 9 hours has occurred.

#### **8.1.1.2 Directive 2006/22/EC (amended by Directive 2009/4/EC and Directive 2009/5/EC)**

Directive 2006/22/EC has been implemented by Order No. 975 of 16 July 2007, amending Order No. 328 of 28 March 2007 (“Order on drive and rest-periods in road transport”).

According to Order on drive and rest-periods in road transport, Section9(a), the operator is obliged to store documentation received by the Danish police or a foreign authority, concerning the control of the compliance with the Order’s Section1(2), conducted at the company’s address or on road at one the company’s drivers.

Section1(2) of the Order on drive and rest-periods in road transport, concerns the control of the compliance with Regulation (EC) No 561/2006 of 15 March 2006, Regulation (EEC) No 3821/85 of 20 December 1985 and AETR.

The operator is obliged to store the information for 1 year, cf. the Order on drive and rest-periods in road transport Section9(a).

According to Order on drive and rest-periods in road transport Section12(3), the infringement of Section9(a), cf. Section1(2), is penalised with a fine.

The operator is liable even though he has not acted negligently in any matter, cf. the Highway Code Section118(8), cf. the Highway Code Section86a(1).

Limited companies or organisations are liable in accordance with the Highway Code, Section118(9), and the Penal Code, chapter 5.

There are no general qualifications of the infringements of legislation of commercial road transportation as serious, very serious and minor within the Danish legal system. The Courts will in setting the sentence for specific infringements take into

consideration the circumstances surrounding the infringement, including the seriousness of the infringement.

### **8.1.1.3 Directive 2002/15/EC**

Directive 2002/15/EC has been implemented by Act No. 395 of 1 June 2005 on working time for mobile employees within the road transportation sector.

The Act provides the employee with numerous rights, which the operator is obliged to respect. However, only the infringement of the rules concerning registration and storage of the information concerning the employee's working time is penalised. The remaining provisions in the Act, is sanctioned by civil law compensation to the employee, for the operators infringement of the rights of the employee.

The provisions on sanctions related to the infringements of the Section3 (3) & (4) of the Act, is found in Section8(1) & (2) of the implementing Act.

Pursuant to the Act on working time for mobile employees within the road transportation sector, Section8(1), the operator of the transportation will be punished by fine, for not respecting the rules in the Act's Section3(3) & (4), regarding the registration of the employees working time, and storage of the information of the employees working time. According to Section8(2) of the Act, a limited corporation or organisation may be punished by fine, according to chapter 5 of the Danish penal code.

The driver can be punished by fine for not, on the request of the operator, handing over information about work conducted for another employer, according to the Act's Section 3(3), cf. Section8(1).

According to the Act on working time for mobile employees within the road transportation sector, Section3(3), the operator is obliged to register the working time of the employee, and to request the necessary information from the employee about working time conducted for another employer, which the employee is obliged to deliver in writing.

Furthermore, according to Section3(4) of the Act, the operator is obliged to store the information about the employees' working time for two years, after the period of which the calculation of the employee's average working time is expired.

The Act on working time for mobile employees within the road transportation sector provides the employee with numerous rights. If the rights are not respected by the operator, civil law compensation can be awarded to the driver. The size of the compensation is estimated by the Courts, according to the extent of infringement. Case law has shown examples of compensation of DKK 20,000.

## **8.1.2 Tachograph**

### **8.1.2.1 Regulation (EEC) No 3821/85**

Regulation No 561/2006 has been implemented by Act No. 557 of 24 June 2005 and Act No. 347 of 6 May 2009 modifying the Danish Highway Code.

Pursuant to Section 86a of the Highway Code, the Danish Minister of Justice is empowered to provide new provisions on the implementation, application and control of the compliance with EC regulations and directives or the like concerning rules on driving times and rest periods within road transportation. Such authorisation has been utilised by the Minister of Justice cf. Order No. 328 of 28 March 2007 as amended by the Order on driving times, breaks and rest periods.

Pursuant to Section 118, Subsection 8 of the Highway Code and clause 3.2.3.2 in *the travaux préparatoires* to Act No. 557 of 24 June 2005, a fine of DKK 3,000 applies to infringements of the provisions of Regulation (EEC) No 3821/85, equivalent to a 30 per cent infringement of Regulation (EC) No 561/06/EC.

The fine for the owner/operator is DKK 6,000. Pursuant to Section 118, Subsection 8 of the Highway Code, the owner/operator of the vehicle is objectively liable for any infringement of Regulation (EEC) No 3821/85, i.e. the owner/operator will be penalised with a fine regardless of whether or not he has acted negligently.

There is no increase in sanctions for repeat offenders.

Section 118a, subsection 2 of the Highway Code provides that fines may be reduced for persons with low income.



According to the Circular from the Minister of Justice of 31 October 2006 certain changes have been made to the practice regarding sanctions for infringement of Regulation (EEC) No 3821/85:

- The analogue control unit may be opened provided that it is opened with a view to proceed an internal inspection and provided that the vehicle is not in operation during the opening. Per daily working period, up to six openings may take place, and each opening may last 1 minute at the maximum. If these conditions are met, the opening of the control unit is not regarded as unnecessary opening contrary to Article 13, cf. Article 15(2) of Regulation No 3821/85.
- Only one fine is sentenced to the driver and the transport undertaking, if the driver contravenes Article 15, (7), Subsection (a), (i) of Regulation (EEC) No 3821/85 stating that the driver must be able to show the record sheets for the relevant week and the record sheets that he has used during the last 15 days (after 1 January 2008, it means the last 28 days). In these situations, the sentencing of only one fine to the driver and the transport undertaking requires that the transport undertaking or the driver subsequently submits the missing record sheets to the police for inspection (within a deadline set by the police). If this requirement is not met, the driver and the company are fined according to standard practice for each record sheet missing.
- Whatever the number of completion errors or missing information on each sheet, the driver and the transport undertaking are only fined once for each record sheet found to be incorrectly or inadequately completed. Thus, charges are only pressed for one breach of Article 15(5) of Regulation (EEC) No 3821/85 for each record sheet inspected.
- No charges are pressed for breach of Article 15(2) of the Regulation (EEC) No 3821/85 in situations where the record sheets are not used during a legal daily rest taken in the vehicle.

As to the assessment of the individual breaches of Regulation (EEC) No 3821/85, it is stated in Section 3.2.3.2. in the *travaux préparatoires* to Act No 557 of 24 June 2005 that the Ministry of Justice is of the opinion that a distinction between the

excusable and deliberate actions would be inappropriate and difficult to handle in practice - especially in connection with criminal cases in which the prosecution's burden of proof will presumably be difficult to bear. Hence, the Ministry of Justice accepts the recommendation of the public prosecutor to maintain the existing sanction system according to which all breaches are penalised equally, taking into account that all breaches of the regulations, in principle, may be contributing to hindering the control of the regulations in respect of driving hours and rest hours.

Thus, in the *travaux préparatoires*, it is implied that a breach of the rules in the control unit regulation is to be penalised, whether the breach can be regarded as being "excusable", i.e. oversight, or as a deliberate breach of the rules.

#### *Suspension of driving licence*

The law implies that breach of the rules on control units in the future only leads to conditional revocation of the driving licence, if six breaches have been committed within a period of three years, cf. Section 125(1), no. 7 of the Danish Highway Code. The breaches of Regulation (EEC) No 3821/85 can be committed during one or more drives, and they can be committed in the same situation or independently.

After twelve breaches of Regulation (EEC) No 3821/85 at summary judgment, the revocation of the driving licence shall be unconditional, as two times six breaches can each substantiate a conditional revocation of the driving licence.

Furthermore, an explicit title to abstain from a conditional revocation of the driving licences under certain mitigating circumstances has been introduced, although six breaches of Regulation No (EEC) 3821/85 have been committed within a period of three years, cf. Section 125(3) of the Highway Code.

According to the *travaux préparatoires* to Act No 347 of 6 May 2009, this exemption clause is very narrow in scope, presumably to be used if a breach of Regulation (EEC) No 3821/85 is due to slovenliness or oversight on the driver's part and not an attempt to complicate or hinder the inspection work of the police.

Driving prohibition for first-time holders of a driving licence has not been implemented.

By Act No. 557 of 24 June 2005, a title to unconditional revocation of driving licence has been inserted in Section 126(1) No. 3 of the Highway Code, if a driver has

continued driving even though the driver knew or should have known that an unauthorised constructive interference in the control unit of the vehicle or its connections had been made.

#### Access to premises of transport undertakings

According to Section 86a, Subsection 5 of the Highway Code, the Police has, at any time and without a Court order, the right to access the premises of transport undertakings upon showing valid identification in order to ensure that the provisions in the EC regulations on driving times, rest periods and breaks are complied with. Such access includes the access to the corporate bookkeeping and documents of transport undertakings in both physical and electronic form.

### **8.1.3 Sanctions for infringements of both Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85**

If there are one or more infringements of both Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85 at summary judgment, the rules in Section 118 a (3), 1 of the Highway Code on consecutive sentencing are applicable, which means that the fines for the infringements are added together, cf. Section 118 a (6) of the Highway Code. The fine is rounded up to the nearest amount divisible by 500.

An infringement of the provisions of both Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85 at summary judgment, leads to unconditional revocation of the driving licence, cf. Section 126(1) No. 7 of the Highway Code, cf. Section 125(1) Nos. 6 and 7, if the infringement of each of the regulations independently could lead to conditional revocation of the driving licence. This means that the driving licence is suspended unconditionally, if the daily driving time is exceeded by 30 per cent and if the provisions of Regulation (EEC) No 3821/85 have been infringed six times.

#### Foreign drivers, owners and operators and infringements committed abroad

Section 134 (5) of the Highway Code provides that the sanctions applicable to infringements of Regulation (EC) No 561/2006 and Regulation (EC) No 3821/85 apply to both Danish and foreign drivers regardless of whether the transport has been carried out in the service of a carrier domiciled in Denmark or in a foreign state. Section 134, Subsection 5 of the Highway Code explicitly establishes that foreign drivers' infringement of the said EC Regulations taking place within Danish territory are subject to Danish jurisdiction and the sanctions found herein. Furthermore, infringements of the said EC Regulations committed within the territory of another EU Member State or a third country that are discovered in Denmark are also subject to Danish jurisdiction and the sanctions found herein.

Foreign owners of road transportation vehicles or operators of road transport vehicles are also subject to Danish jurisdiction and the sanctions found herein for infringements of the abovementioned EC Regulations and may be prosecuted by the Danish Police.

## **8.2 Road package**

### **8.2.1 Regulation (EC) No 1071/2009**

Regulation (EC) No 1071/2009 has not been implemented directly into Danish legislation. However, the adoption of Regulation (EC) No 1071/2009 resulted in a national adoption of Act No. 471 of 18 May 2011 modifying the Danish Act on Road Haulage and the Danish Act on Road Passenger Transport in accordance with Regulation (EC) No 1071/2009. Both Acts thus work as supplements to Regulation (EC) No 1071/2009,

The Acts currently in force are the consolidated Act No. 1086 on Road Haulage of 8 September 2010 (hereinafter "the Act on Road Haulage") and the consolidated Act No. 1087 on Road Passenger Transport of 8 September 2010 (hereinafter "the Act on Road Passenger Transport").

The provisions on sanctions related to the infringements of rules envisaged in Regulation (EC) No 1071/2009 are found in sections 17 and 17a of the Act on Road

Haulage and in sections 22 and 22a of the Act on Road Passenger Transport. See the below table for a detailed overview of the relevant rules.

The Danish sanction system does not foresee a specific sanction system for the infringements that are qualified as most serious infringements described in Annex IV of Regulation (EC) No 1071/2009. The sanctioning provisions on such infringements are spread in different pieces of legislation and not subject to a specific regime. There is also no list of the most serious infringements and no specific provisions on how the rule of loss of good repute applies.

Infringements of Regulation No 1071/2009 and the abovementioned Acts are sanctioned by fines unless higher punishment is applicable pursuant to rules laid down in another statute. E.g. pursuant to Section 131 of the Danish Penal Code exercising activities without required public authorisation or continuingly pursuing activities for which the right is suspended, is penalised with a fine or imprisonment up to 6 months.

The specific level of fines imposed for infringements of Regulation (EC) No 1071/2009 and the abovementioned Acts are not regulated by law or administrative regulations, but based on case law. The Danish Minister of Transportation has made recommendations as to the minimum level of fines. These recommendations are included in the table on sanctions below.

Regulations laid down pursuant to the Acts may prescribe penalties of fines for violation of the provisions of the Regulations, cf. Section 17(2) of the Act on Road Haulage and in Section 22(2) of the Act on Road Passenger Transport.

Sanctions apply to the any person (physical or legal) infringing the relevant provisions. Undertakings (legal persons) may be imposed to criminal liability pursuant to chapter 5 of the Danish Penal Code, cf. Section 17(3) of the Act on Road Haulage and in Section 22(3) of the Act on Road Passenger Transport.

The economic benefits obtained or attempted to be obtained through a violation of the Acts or for breach of EU rules on matters governed by the Acts may be emphasised on when determining the punishment, cf. Section 17(4) of the Act on Road Haulage and in Section 22(4) of the Act on Road Passenger Transport.

Particularly, serious or repeated violations of the Acts may result in confiscation of the used motor vehicle if it is considered necessary to prevent further violations of the law and if confiscation is not unreasonable, cf. Section 17a of the Act on Road

Haulage and in Section 22a of the Act on Road Passenger Transport. Additionally, the general provisions on confiscation in the Danish Penal Code apply.

The submission of fake documents, circulation with a fake authorisation or providing fake information to get an authorisation is subject to the provisions on forgery in the Danish Penal Code. In Denmark no specific rules apply to such violations.

### **8.2.2 Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009**

The introduction of Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009 did not require any changes in (or implementations into) Danish legislation, since these areas are not regulated in Danish law.

## **8.3 *Standards of vehicles and load and necessary licenses***

### **8.3.1 Directive 2008/68/EC**

The Directive 2008/68/EC on the inland transport of dangerous goods has been implemented by executive order on road transport of dangerous goods No. 818 of 28 June 2011 (hereinafter referred to as the “Order on road transport of dangerous goods”) and executive order on haulage No. 1489 of 12 December 2007 (hereinafter referred to as the “Order on haulage”). The Order on road transport of dangerous goods has its legal basis in the Highway Code and the Order on haulage has its legal basis in Consolidated Act No. 1086 of 8 September 2010 on haulage.

The provisions on sanctions related to the infringements of rules laid down in the abovementioned orders are found in Section 37 of the Order on road transport of dangerous goods and in Section 17 of the Order on haulage. See the below table for a detailed overview of the relevant rules.

Generally, infringements of the Order on road transport of dangerous goods are sanctioned by fines unless higher punishment is applicable pursuant to rules laid down

in another legislation, cf. Order on road transport of dangerous goods Section 37 (1). However, infringement of Section 31 is fined in accordance with Section 118, subSection 1, no 3 of the Highway Code.

Elaborating provisions on e.g. the amount of the fine, recidivism and legal persons are located in the Highway Code Chapter 17 – see the general comments to Directive 96/53/EC in Section below.

The police have the authority to stop and inspect a vehicle carrying dangerous goods, see Section 36 of the Order on road transport of dangerous goods.

Infringements of the Order on haulage are fined, see Order on haulage Section 17 (1).

The economic benefits obtained or attempted to be obtained through a violation of the Acts or for breach of EU rules on matters governed by the Acts may be emphasised on when determining the punishment, see Section 17(4) of the Act on Road Haulage.

Particularly, serious or repeated violations of the Acts may result in confiscation of the used motor vehicle if it is considered necessary to prevent further violations of the law and if confiscation is not unreasonable, see Section 17a of the Act on Road Haulage.

Additionally, the general provisions on confiscation in the Penal Code sections 76-77a apply.

The specific level of fines imposed for infringements of the Order on road transport of dangerous goods and the Order on haulage are not regulated by law or administrative regulations, but based on case law.

Sanctions apply to the any person (physical or legal) infringing the relevant provisions. Undertakings (legal persons) may be imposed to criminal liability pursuant to chapter 5 of the Danish Penal Code, see Section 37 (3) of the Order on road transport of dangerous good and Section 17 (2) of the Order on haulage.

### **8.3.2 Directive 96/53/EC**

Directive 96/53, 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 executive order No. 17225 of 15 September 1997 (hereinafter referred to as the “Order on detailed regulation on road vehicles”). The Order amends the executive order No. 17132 of 20 March 1997 (hereinafter referred to as the “2nd Order on detailed regulation on road vehicles”) in accordance with the Directive. The 2nd Order on detailed regulation on road vehicles finds its legal basis in the Highway Code.

Generally, inobservance of the requirements to road vehicles set out in the Order on detailed regulation on road vehicles is subject to a fine, see the Introductory Section of the 2nd Order on detailed regulation on road vehicles.

Elaborating provisions on e.g. the amount of the fine, recidivism and legal persons are located in the Highway Code Chapter 17.

The amount of the fine is DKK 1,000 or more (divisible by 500), see Highway Code Section 118a (1). The specific level of fines imposed for infringements of the Order on detailed regulation on road vehicles are not regulated by law or administrative regulations, but based on case law.

Sanctions apply to the any person (physical or legal) infringing the relevant provisions. Undertakings (legal persons) may be imposed to criminal liability pursuant to chapter 5 of the Danish Penal Code, cf. Highway Code Section 118 (9).

Where the offender commits several infringements by one or more actions, the fines for each infringement are combined, cf. Highway Code Section 118a (2).

In case of recidivism, it will only constitute an aggravating factor, that the offender is previously convicted for infringements of relevance to the case, if the present infringement is committed within 5 years, after the previous ruling became final, cf. Highway Code Section 118b (1).

Confiscation of the road vehicle is authorised in Section 76-77a of the Penal Code, cf. Highway Code Section 133a (8), e.g. in case of particularly serious or repeated violations of the Order on detailed regulation on road vehicles.

### *Foreign drivers*



If the road vehicle is registered outside of Denmark and the driver is domiciled outside of Denmark, the police can detain the road vehicle until the fine is paid, cf. Highway Code Section 120.

### **8.3.3 Directive 2009/40/EC**

Directive 2009/40/EC has not been transposed by the Danish legislator due to the fact that it is a recast directive. However, the previous EC legislation in the area of roadworthiness tests for motor vehicles and their trailers (Directive 96/96/EC and Directive 2006/22/EC) has been implemented into Danish law.

The Council directive 96/96/EC on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers has been implemented by Act No. 473 of 9 June 2004 on authorisation and inspection of vehicles (hereinafter referred to as the “Act on authorisation and inspection of vehicles”), Act No. 255 of 30 March 2011 on changing the Act on authorisation and inspection of vehicles, statutory order No. 762 of 8 July 2004 on authorisation and inspection of vehicles (hereinafter referred to as the “statutory order on authorisation and inspection of vehicles”), statutory order No. 724 of 24 June 2011 on companies conducting inspection of vehicles (hereinafter referred to as the “statutory order on companies conducting inspection of vehicles”), statutory order No. 824 of 11 August 2008 on companies conducting re-inspection of vehicles (hereinafter referred to as the “statutory order on companies conducting re-inspection of vehicles”), statutory order No. 1549 of 18 December 2009 on changes to statutory order No. 824, and consolidated law No. 1039 of 8 October 2009 on taxi driving et cetera (hereinafter referred to as the “law on taxi driving”).

The Act on authorisation and inspection of vehicles sets out an obligation to present the vehicle for inspection and further sets out that a permit for a company is needed to conduct inspections of vehicles.

The conditions and requirements on inspections of vehicles are elaborated in statutory order on authorisation and inspection of vehicles, statutory order on companies

conducting inspection of vehicles and statutory order on companies conducting re-inspection of vehicles.

According to the Act on taxi driving, a permit is needed to perform commercial passenger transport. Furthermore, in municipalities where 10 or more permits are granted, the permit holders are obliged to connect to a reservation office.

The Act on authorisation and inspection of vehicles Section13(1) set out that the infringement of the law is penalised by fine of DKK 1,000 for every commenced inspection period. Further, the failure to present a vehicle for inspection according to Section3(1) gives the Police the possibility of confiscating the vehicles number plates.

Infringement of statutory order on authorisation and inspection of vehicles, statutory order on companies conducting inspection of vehicles and statutory order on companies conducting re-inspection of vehicles are all penalised by fine. Further, the Transport authority can revoke a permit when the conditions and requirements of the above mentioned statutory orders have not been met.

Infringement of the Act on taxi driving is according to Section16 penalised by fine.

#### **8.3.4 Directive 2006/126/EC**

Directive 2006/126/EC has required the enactment of 2 amending Acts to the Highway Code. These are Act No. 1551 of 21 December 2010 and Act No. 479 of 23 May 2011. In addition, the implementation of Directive 2006/126/EC required the passing of order No. 304 of 2 April 2009 regarding driver's licenses, and order No. 92 of 16 January 2009 regarding teaching plans for motorcycle education (A). Several actions that are now breaches of the directive were already criminalised before the passing of the directive. These provisions did, therefore, not need to be altered for the directive to be implemented.

The general rules regarding criminal sanctions regarding the Danish Highway Code applies to all sanctions mentioned with legal basis in the Highway Code. These are reviewed above.

Order No. 304 of 2 April 2009, art. 109 No. 1 penalises several specific instances of illegal conduct regarding driver's licenses. In all cases, the penalty is a fine. In addition, Section 109 No. 2 entails a general clause according to which disregard of the terms of a permit given according to the order, or omission to comply with any prohibition or any instruction given according to this order is penalised with a fine.

The use of a false driver's license with the intent of deceiving is considered as forgery and is criminalised according to the Danish Penal Code. The penalty ranges from fine to an imprisonment of up to 6 years in severe cases.

#### ***8.4 Notion of criminal sanction and of administrative sanction in the Danish legal system***

Criminal law in Denmark follows a strict principle of legality. This principle is set forth in Section 1 of the Danish Penal Code which only allows for penalty to be imposed, if legal basis exists in a legal code or if a code allows for penalty in situations perfectly analogous to this. Furthermore, there is a prohibition on the imposition of retroactive criminal laws in accordance with the European Convention on Human Rights art. 7.

As is the case with most criminal systems, two elements must be fulfilled in order for an action (or omission) to be penalised. The first element is the *actus reus*, which is the physical act of committing a crime. The second element is the *mens rea*. Under Danish law the *mens rea* is divided into 3 categories. The first is intent which is perfected if the accused meant to commit the act with the acceptance of the consequences connected to such act. The second is advertent negligence where the consequence was not the purpose of the accused's actions but where he did recognise that the inherent risk of the consequence occurring was more than 50 per cent, and chose to act anyway. The last is *dolus eventualis* where the accused did not intend the consequence and where risk of the consequence occurring was less than 50 per cent but where the accused chose to act anyway, thereby accepting the unlikely fallout which in fact did occur. For the imposition of criminal sanctions it does not matter which of the

abovementioned types of subjective guilt is present; all are equally sufficient for an act to be penalised.

As a general rule, breaches under the Danish Penal Code must be accompanied by mens rea in order to be penalised.

In addition to the Danish Penal Code, several other codes contain provisions that serve as legal basis for criminal offenses. Breaches of other laws than the penal code require only the offender to have acted negligently for sanctions to be imposed. There are a few exceptional provisions according to which persons can be punished under a strict liability regime which means they are punished without taking into consideration any subjective element whatsoever. As an example such provisions enable the penalisation under strict liability of an employer who provides unsafe working conditions, of the owner of trucks driving overweight, and of an editor for the content of published magazines.

Companies and other legal entities can be punished under Danish law provided the pertaining law contains a provision to this effect. Any legal entity's breach of the Danish Penal Code can be penalised as per Section 306 of the Penal Code.

Generally, all sanctions having a penalising character can only be imposed as a criminal sanction. Administrative sanctions are limited to revocations of permits and authorisations and often times revocations of permits and authorisations are vested with the Police.

As regards sentencing (e.g. size of fines and time of imprisonment), this is subject to case law. The Minister of Justice and the Director of the Public Prosecutions may issue recommendations and guidelines, but ultimately sentencing (including establishing size of fines and length of imprisonment) is within the competence of the Courts.

In general, the legislative power only enacts wide ranges of penalty and the competence of sentencing the offender is then left to the competence of the Courts taking into consideration the general rules on sentencing found in the Danish Penal Code.

There are no general qualifications of the infringements of legislation of commercial road transportation as serious, very serious and minor within the Danish legal system. However, the courts will in setting the sentence for specific infringements

take into consideration the circumstances surrounding the infringement, including the seriousness of the infringement.

#### Concurrence between several sanctions

Generally, if more than one infringement is detected, all sanctions for the infringements committed are applied. There is no limit to sanctions applicable.

#### Concurrence between administrative and criminal sanctions

Both administrative and criminal sanctions can generally be applied:

Administrative and criminal sanctions are generally cumulative, unless where specifically indicated that this is not the case."

Where *actus reus* (the elements of a crime) have been fulfilled in more than one penalty provision by the same behaviour – all sanctions applies to this behaviour.

### **8.5 Scope of application of Danish criminal law**

Danish law follows the internationally recognised principles of criminal jurisdiction. This entails the principle of criminal jurisdiction over all actions committed within Denmark (or on Danish vessels outside of Denmark), and the principle of jurisdiction over Danish citizens for actions committed outside of Denmark.

Furthermore, Denmark has criminal jurisdiction over certain severe crimes committed outside of Denmark if they are committed against Danish citizens, and if the action was criminalised according to the law in the country of the scene of the crime, as per Section 7a of the Danish Penal Code.

According to Section 8a of the Danish Penal Code, there is Danish criminal jurisdiction over any Danish citizen or any person located within Denmark for actions covered by the statute of the International Criminal Court.

#### Foreign drivers, owners and operators

As already mentioned, Section 134 (5) of the Highway Code provides that the sanctions applicable to infringements of Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85 apply to both Danish and foreign drivers regardless of whether the transport has been carried out in the service of a carrier domiciled in Denmark or in a foreign state. Section 134, subSection 5 of the Highway Code explicitly establishes that foreign drivers infringement of the said EC Regulations taking place within Danish territory are subject to Danish jurisdiction and the sanctions found herein. Furthermore, infringements of the said EC Regulations committed within the territory of another EU member state or a third country that are discovered in Denmark are also subject to Danish jurisdiction and the sanctions found herein.

Foreign owners of road transportation vehicles or operators of road transport vehicles are also subject to Danish jurisdiction and the sanctions found herein for infringements of the abovementioned EC Regulations and may be prosecuted by the Danish Police.

## **8.6 Summary tables**

The power of inflicting criminal sanctions upon citizens (physical or legal persons) lies with the Prosecution Authorities (“*Anklagemyndigheden*”) headed by the Director of the Public Prosecutions (“*Rigsadvokaten*”). The Police forms part of the Prosecution Authorities and are generally entrusted with issuing permits and authorisations within commercial road transportation, apart from the competences that lies with The Minister of Transport.

The power to issue fines and suspend driving licences lies with the Police and such sanctions are categorised as criminal sanctions. If the Prosecution Authorities finds that a criminal sanction is justified, a formal criminal case is initiated against the offender before the Courts. However, in the case of minor fines, the case is only heard before the Courts, if the offending party denies having infringed the relevant piece of legislation or denies accepting the sanction issued by the Police.

Table DK 1

## SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
<b>Regulation 561/06/EC</b>	<p><u>Age</u></p> <p><u>Consolidated act no. 1047 of 24 October 2011 (hereinafter referred to as the “Highway Code”)</u></p> <p><i>(ferdselsloven)</i></p> <p><b>and</b></p> <p><u>Executive order No. 328 of 28 March 2007 (hereinafter referred to as the “Order on drive and rest-periods in road transport“)</u></p> <p><i>(bekendtgørelse om køre- og hviletidsbestemmelserne i</i></p>	<p>Section 11 (1), no. 1 of Order on drive and rest-periods in road transport cf. Section 86a, cf. Section 118 of Highway Code.</p>	<p>Not respecting the rules for minimum age for conductors, cf. Regulation 561/2006, art. 5 (1) and (2).</p>	<p>Operator.</p>		<p><b>Fine or imprisonment (of maximum four months).</b></p>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<a href="#"><u>vejtransport)</u></a>					
	<p><a href="#"><u>Driving Time</u></a></p> <p><a href="#"><u>Highway Code</u></a></p> <p><a href="#"><u>and</u></a></p> <p><a href="#"><u>Order on drive and rest-periods in road transport</u></a></p>	<p>Section 11 (1) no. 2 of Order on drive and rest-periods in road transport, cf. Section 86a, cf. Section 118 of Highway Code.</p>	<p>Exceeding the daily driving time up to 5%, cf. Regulation 561/2006, art. 6 and 7.</p>	<p>Operator</p> <p>Driver</p>		<p><b>Fine (driver DKK 100 and operator DKK 200 each time the limit of driving time is exceeded with 1 per cent) or imprisonment (of maximum four months).</b></p> <p><b>Prosecution is only initiated, if the limit of driving time and/or rest periods is exceeded with 5 per cent or</b></p>



Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						<p><b>more.</b></p> <p><b>Suspension of driver's driving license if infringement of more than 30 per cent.</b></p>
		<p>Section 11 (1) no. 2 of Order on drive and rest-periods in road transport, cf. Highway Code Section 86a, cf. Section 125 (1) no. 6.</p>	<p>Exceeding the weekly driving time with 5%, cf. Regulation 561/2006, art. 6 and 7.</p>	<p>Operator Driver</p>		<p><b>Fine (driver DKK 100 and operator DKK 200 each time the limit of driving time is exceeded with 1 per cent) or imprisonment (of maximum four months)</b></p> <p>.</p>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						<p><b>Prosecution is only initiated if the limit of driving time and/or rest periods is exceeded with 5 per cent or more.</b></p> <p><b>Suspension of driver's driving license if infringement of more than 30 per cent.</b></p>
	<p><a href="#">Rest Periods</a></p> <p><a href="#">Highway Code</a></p>	<p>Section 11 (1) no. 3 of Order on drive and rest-periods in road transport, cf.</p>	<p>Not respecting the rules on daily rest period exceeding with 5%, cf. Regulation 561/2006, art. 6 and 7.</p>	<p>Operator</p> <p>Driver</p>		<p><b>Fine (driver DKK 100 and operator DKK 200 each time the limit of rest periods is exceeded with 1 per cent or</b></p>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>and</u></p> <p><u>Order on drive and rest-periods in road transport</u></p>	<p>Highway Code Section 86a, cf. Section 118, cf. Section 125 (1) no. 6.</p>				<p><b>imprisonment (of maximum four months).</b></p> <p><b>Prosecution is only initiated if the limit of driving time and/or rest periods is exceeded with 5 per cent or more.</b></p> <p><b>Suspension of driver's driving license if infringement of more than 30 per cent.</b></p>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

Rules on Driving Times, Breaks and Rest

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>Payment</u></p> <p><u>Highway Code</u></p> <p><u>and</u></p> <p><u>Order on drive and rest-periods in road transport</u></p>	<p>Section11 (1) no. 4 of Order on drive and rest-periods in road transport, cf. Highway Code Section86a, cf.sSection118.</p>	<p>Not respecting the rules on payment, cf. Regulation 561/2006, art. 10 (1).</p>	<p>Operator</p>		<p><b>Fine or imprisonment (of maximum four months).</b></p>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

Rules on Driving Times, Breaks and Rest

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>Control Measures</u></p> <p><u>Highway Code</u></p> <p><u>and</u></p> <p><u>Order on drive and rest-periods in road transport</u></p>	Section11 (1) no. 5 of Order on drive and rest-periods in road transport, cf. Highway Code Section86a, cf. Section118.	Not respecting the rules on the operator’s control measures, cf. Regulation 561/2006, art. 10 (2).	Operator		<b>Fine or imprisonment (of maximum four months).</b>
		Section11 (1) no. 6 of Order on drive and rest-periods in road	Not respecting the rules on legal time schedules for transportation, cf. Regulation	Operator		<b>Fine or imprisonment (of maximum four months).</b>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><a href="#">Time Schedules</a></p> <p><a href="#">Highway Code</a></p> <p><a href="#">and</a></p> <p><a href="#">Order on drive and rest-periods in road transport</a></p>	<p>transport, cf. Highway Code Section 86a, cf. Section 118.</p>	<p>561/2006, art. 10 (4).</p>			
		<p>Section 11 (1) no. 7 of Order on drive and rest-periods in road transport, cf.</p>	<p>Not respecting the rules on securing and recording of data, cf. Regulation 561/2006, art. 10 (5).</p>	<p>Operator</p>		<p><b>Fine or imprisonment (of maximum four months).</b></p>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>Data</u></p> <p><u>Highway Code</u></p> <p><u>and</u></p> <p><u>Order on drive and rest-periods in road transport</u></p> <p><u>Route-driving</u></p> <p><u>Highway Code</u></p>	<p>Highway Code Section86a, cf. Section118.</p> <p>Section11 (1) no. 8 of Order on drive and rest-periods in road transport, cf. Highway Code Section86a, cf. Section118.</p>	<p>Not respecting the rules in Regulation 561/2006, art. 16.</p>	<p>Operator</p> <p>Driver</p>		<p><b>Fine or imprisonment (of maximum four months).</b></p>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>and</u></p> <p><u>Order on drive and rest-periods in road transport</u></p>					
	<p><u>Keeping and producing evidence</u></p>	<p>Section11 (1) no 7.of Order on drive and rest-periods in road transport, cf. Highway Code Section86a, cf. Section118.</p>	<p>Not respecting the rules of keeping and producing evidence, cf. Regulation 561/2006, art. 20.</p>	<p>Operator Driver</p>		<p><b>Fine or imprisonment (of maximum four months)</b></p>



Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>Breaks</u></p> <p><u>Highway Code</u></p> <p><u>and</u></p> <p><u>Order on drive and rest-periods in road transport</u></p>	<p>Section11 (1) no. 3 of Order on drive and rest-periods in road transport, cf. Highway Code Section86a, cf. Section118, cf. Section125 (1) no. 6.</p>	<p>Infringements of break time rules with a 5 minutes tolerance limit on each break, cf. Regulation 261/2006, art. 8 and 9.</p>	<p>Operator</p> <p>Driver</p>		<p><b>Fine (driver DKK 1,500, operator DKK 3,000) or imprisonment (of maximum four months).</b></p> <p><b>Suspension of driver's driving license if both the rules on driving time as well as the total break is exceeded by more than 30 per cent.</b></p>
	<p><u>Transport operators liability</u></p> <p><u>Highway Code</u></p>	<p>Section13 of Order on drive and rest-periods in road transport,</p>	<p>Strict liability for the operator for driving conducted in his favour, if:</p>	<p>Operator</p>		<p><b>Fine</b></p>

Table DK 1

**SOCIAL RULES ON ROAD TRANSPORT**

Rules on Driving Times, Breaks and Rest

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>and</u></p> <p><u>Order on drive and rest-periods in road transport</u></p>	<p>cf. Highway Code Section 86a, cf. § 118 (8).</p>	<p>the minimum age for conductors is not respected,</p> <p>the driving time is exceeded,</p> <p>the rest-periods is not respected,</p> <p>not respecting the rules on payment,</p> <p>not respecting the rules concerning the corporations control measures,</p> <p>not respecting the rules concerning securing and</p>			

Table DK 1

SOCIAL RULES ON ROAD TRANSPORT

Rules on Driving Times, Breaks and Rest

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			storage of data,  not respecting the rules on route driving.			
<b>Directive 2006/22/EC (amended by Directive 2009/40/EC)</b>	<u><a href="#">Storage of information</a></u>  <u><a href="#">Executive order no. 328 of 28 March 2007 (hereinafter referred to as the “Order on drive and rest-periods in road transport“)</a></u>	Section12 (3), cf. Section9a, cf. Section1 (2) of the Order on drive and rest-periods in road transport, cf.	Infringement of the obligation to store documentation, provided by the police or foreign authorities, concerning the control of the compliance with Section1 (2) of the Order on drive and rest-periods in	Operator		<b>Fine</b>

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**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
	<p><i>(“bekendtgørelse om køre- og hviletidsbestemmelserne i vejtransport”).</i></p> <p><b><u>amended by Executive order no. 975 of 16 July 2007.</u></b></p> <p><b><u>Highway Code</u></b></p>	<p>Highway Code Section 118 (8) and (9), cf. Section 86a (1).</p>	<p>road transport, conducted at the company or on road.</p>			
<b>Directive 2002/15/EC</b>	<p><b><u>Working time and rest periods</u></b></p> <p><b><u>Consolidated act no. 395 of 1 June 2005 (hereinafter referred to as the “Act on working time for mobile employees within the road transportation sector”)</u></b></p> <p><i>(Lov om arbejdstid for mobile</i></p>	<p>Section 3 (1), cf. Section 7 (1)</p>	<p>Exceed of the average (48 h) and maximum (60 h) weekly working time.</p>			<b>No penalty – civil law compensation to the driver</b>
		<p>Section 9 (1), cf. Section 7 (1)</p>	<p>Exceed of the average (48 h) and maximum (60 h) weekly working time for more than 10 %.</p>			<b>No penalty – civil law compensation to the driver</b>

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**SOCIAL RULES ON ROAD TRANSPORT**

**Rules on Driving Times, Breaks and Rest**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
	<a href="#"><i>lønmodtagere inden for vejtransportsektoren</i></a>	Section4 (1), cf. Section7 (1)	No breaks after six consecutive hours.			<b>No penalty – civil law compensation to the driver</b>
		Section4, (2), (3) and (4), cf. Section7 (1)	Rest periods.			<b>No penalty – civil law compensation to the driver</b>
		Section6, cf. Section7 (1)	In case of night work, the day work has been more than 10 hours in the 24 h.			<b>No penalty – civil law compensation to the driver</b>
		Section8 (1), cf. Section3 (3) and (4)	Information and record of the drivers' working time.	Operator, driver, cf. Section3 (3).		<b>Fine</b>

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SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
Regulation 3821/1985/EEC	<p><u>Order on drive and rest-periods in road transport</u></p> <p><u>and</u></p> <p><u>Implemented changes in executive act no. 975 of 16 July 2007</u></p>	Section12 (1)	<p>Tachograph:</p> <ul style="list-style-type: none"> <li>- not installed</li> <li>- failure to install, test and inspect</li> <li>- incorrect use of Tachograph</li> <li>- failure to repair when operation is disturbed</li> <li>- failure to note time periods when the recording equipment is unserviceable or malfunctioning.</li> </ul>	Any person (physical or legal) infringing the mentioned provisions.		<p><b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).</b></p> <p><b>The fine is not increased in case of recidivism.</b></p> <p><b>Conditional suspension of driver's driving license, if the rules have been infringed 6 times in three years cf. Highway Code Section125(1) no. 7.</b></p> <p><b>If the rules have been infringed 12 times in</b></p>

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SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			Driver card: - Incorrect use of  Record sheets: - Failure to supply  - incorrect storage			<b>three years, the suspension of the drivers driving license is absolute.</b>
		Section 12 (2) cf. sections 4-9	Record sheets - Non responding to the standards  - Supply all manual record	Driver		<b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).</b>

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## SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			sheets to the company Driver cards - Non responding to the standards Company cards - Failure to register - Failure to back-up data - Failure to transfer data to external media	Company		<b>Only one fine is fixed for the driver respectively the company for noncompliance with Section9 (cf. Section15 (7) of regulation 3821/1985/EEC) cf. Section2 of circular letter no. 9988 of 31 October 2006 regarding the change of the practice regarding the sanctions of driving time and rest periods</b>  <i>(Cirkulæreskrivelse om ændring af praksis</i>



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Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						<p><i>vedrørende sanktionerne på køre- og hviletidsområdet.)</i></p> <p>The fine is not increased in case of recidivism.</p> <p>Conditional suspension of driver's driving license if the rules have been infringed 6 times in three years cf. Highway Code Section125 (1) no 7. If the rules have been infringed 12 times in three years, the suspension of the drivers driving license is</p>

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**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						<p><b>absolute.</b></p>
		<p>Section12 (2), cf. Section10</p>	<p>Tachograph:  Failure to repair  - operation disturbance  - malfunctioning</p>	<p>Any person (physical or legal) infringing the mentioned provisions.</p>		<p><b>The police can issue an injunction banning the use of the vehicle.</b></p> <p><b>Conditional suspension of driver's driving license if the rules have been infringed 6 times in three years cf. Highway Code Section125(1) no. 7. If the rules have been infringed 12 times in three years, the suspension of the drivers driving license is</b></p>

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SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						absolute.
		Section12 (3), cf. Section9a	Failure to store documents and control data for 1 year.	Company		<p><b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner).</b></p> <p><b>The fine is not increased in case of recidivism.</b></p> <p><b>Conditional suspension of driver's driving license if the rules have been infringed 6 times in three years cf. Highway Code Section125(1) no. 7. If the rules have been infringed 12 times in three years,</b></p>

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## SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						the suspension of the drivers driving license is absolute.
	<a href="#">Executive order no. 687 of 29 June 2005 on issuing of tachograph cards (hereinafter referred to as the “Order on issuing tachograph cards”)</a> <i>(bekendtgørelse om udstedelse af fartskriverkort)</i>	Section19 (1)	Tachograph card issued on the basis of inaccurate information, forged documents or fail to fulfill the safety regulations.	Any person (physical or legal) infringing the mentioned provisions.	<b>Withdrawal of the card by the police.</b>	
		Section23 (1), cf. Section10 (2)	Distribution of pin number for personal workshop card.	Any person (physical or legal) infringing		<b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of</b>

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SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				the mentioned provisions.		<b>maximum four months).</b> <b>The fine is not increased in case of recidivism.</b>
		Section 23 (2) cf. art. 14 (4)(a) of Regulation 3821/1985/EEC	Having more than one valid driver card.	Driver		<b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).</b> <b>The fine is not increased in case of recidivism.</b>
	<a href="#"><u>Executive order No. 686 of 29 June 2005 on authorisation of workshops to do work on</u></a>	Section 14 (1), cf. art. 12(1) of Regulation	Installation and repair of tachographs are only to be performed by authorised	Any person (physical or legal)		<b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or</b>

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## SOCIAL RULES ON ROAD TRANSPORT

Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<u>tachographs (hereinafter referred to as the “Order on authorisation of workshop to do work on tachographs”)</u>  <i>(bekendtgørelse om autorisation af værksteder til udførelse af arbejde på kontrolapparater (fartskrivere) inden for vejtransport)</i>	3821/1985/EEC	contractors and workshops.	infringing the mentioned provisions.		<b>imprisonment (of maximum four months).</b>  <b>The fine is not increased in case of recidivism.</b>
		Section14 (1), cf. Section3 (2)	Failure to report to the Commissioner of Police of lost seals for the tachograph.	Workshop		<b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).</b>  <b>The fine is not increased in case of recidivism.</b>
		Section14 (1), cf. Section3(3)	Failure to send in a withdrawn workshop card giving the	Workshop		<b>Fine (DKK 3,000 for the driver and DKK 6,000</b>

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Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			reason for withdrawal to the Commissioner of Police.			<p><b>for the owner) or imprisonment (of maximum four months).</b></p> <p><b>The fine is not increased in case of recidivism.</b></p>
		Section14 (1), cf. Section3(4)	Failure to supply a yearly written report to the Commissioner of Police regarding faults, defects and deviation on the examined tachographs.	Workshop		<p><b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).</b></p> <p><b>The fine is not increased in case of recidivism.</b></p>
		Section14 (1), cf.	Failure to supply the	Workshop		<b>Fine (DKK 3,000 for the</b>

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Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		sections 8 (2)-(7)	Commissioner of Police with all documentation when:  - A workshop is closed or sold,  - Authorization expires.  Necessary inspection, cf. Section4, has not been complied with.			<b>driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).</b>  <b>The fine is not increased in case of recidivism.</b>
		Section14 (1), cf. Section9 (2)	Failure to return all relevant documentation, seals and authorization certificate to the Commissioner of Police when authorization has been revoked.	Workshop		<b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).</b>  <b>The fine is not increased</b>



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Tachograph

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						<b>in case of recidivism.</b>
		Section14 (1), cf. Section16 (3)	Failure to return seals and authorization certificate to the Commissioner of Police when former authorization has been revoked according to Section16 (2).	Workshop		<b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).  The fine is not increased in case of recidivism.</b>
		Section14 (1), cf. Section17 (4)	Failure to return all documentation and workshop cards to the Commissioner of Police when a temporary authorization expires and the workshop has not been given a	Workshop		<b>Fine (DKK 3,000 for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).</b>

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**SOCIAL RULES ON ROAD TRANSPORT**

**Tachograph**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			D-authorization.			<b>The fine is not increased in case of recidivism.</b>

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EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
Regulation No. 1071/2009/EC	<u>Consolidated Act No. 1086 on road haulage of 8 September 2010 (hereinafter referred to as the “Act on road haulage”)</u>  <i>(godskørselsloven)</i>	Section 17 (1) (1), cf. Section 1(1)	<u>Driving without an authorisation:</u>  Undertakings established on the Danish territory and engaged in the occupation of road haulage operator for hire or reward solely by means of motor vehicles or combinations of vehicles with a total weight exceeding the allowed maximum total weight, needs an authorisation.  According to Order No. 1489 of 12 December 2007 (“Order on haulage”) such weight limit is 3,500 kilograms (3.5 tons).	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – DKK 4,000</b>  <b>(Under aggravating circumstances, i.e. if the violation occurs over a longer period, fines are increased to DKK 10,000. According to case law a “longer period” is minimum 3 to 6 months).</b>  <b>Recommended level of fines by the Minister of Transport – DKK 10,000</b>

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**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
						<b>(Under aggravating circumstances, i.e. if the violation occurs over a longer period, fines are increased to DKK 25,000. According to case law a “longer period” is minimum 3 to 6 months).</b>
		Section17 (1) (1), cf. Section1 (2)	Infringement of the rules on cabotage and failure to obtain an EU-authorisation regarding international transport.	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – DKK 4,000</b>  <b>(Under aggravating circumstances, i.e. if the violation occurs over a longer period, fines are increased to DKK</b>

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**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
						<p><b>10,000. According to case law a “longer period” is minimum 3 to 6 month).</b></p> <p><b>Recommended level of fines by the Minister of Transport – DKK 10,000</b></p> <p><b>(Under aggravating circumstances, i.e. if the violation occurs over a longer period, fines are increased to DKK 25,000. According to case law a “longer period” is minimum 3 to 6 months).</b></p>

**Table DK 2**

**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
		Section17 (1) (1), cf. Section6 (2)	Not carrying the authorisation in the vehicle while driving.	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – DKK 500</b>  <b>Recommended level of fines by Minister of Transport – DKK 1,500</b>
		Section17 (1) (1), cf. Section6 (3)	Lending out authorisations or transfer of authorisations to others.	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – DKK 1,000</b>  <b>Recommended level of fines by the Minister of Transport – DKK 2,500</b>
		Section17 (1) (1), cf. Section6 (4)	Breach of salary and working conditions for chauffeurs	Any person (physical or		<b><u>Fines:</u></b>  <b>Current level of fines –</b>

**Table DK 2**

**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
			according to existing collective agreements.	legal) infringing the mentioned provisions.		<p><b>no case law</b></p> <p><b>Recommended level of fines by the Minister of Transport – the fines should reflect obtained economic advantages, however, minimum DKK 10,000.</b></p>
		Section17 (1) (1), cf. Section6a (1)	Illegal temporary employment of chauffeurs.	Any person (physical or legal) infringing the mentioned provisions.		<p><b><u>Fines:</u></b></p> <p><b>Current level of fines – DKK 2,000</b></p> <p><b>Recommended level of fines by the Minister of Transport – DKK 5,000</b></p>

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<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
		Section17 (1) (1), cf. Section15	If not returning authorisation when recalled, disqualified or annulled to the Danish Minister of Transportation.	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – DKK 500</b>  <b>Recommended level of fines by the Minister of Transport – DKK 1,500</b>
		Section17 (1) (1), cf. Section16b (4)	Lack of security regarding operator liability while driving abroad.	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – no case law</b>  <b>Recommended level of fines by the Minister of Transport – DKK 1,500</b>
		Section17 (1) (2)	Violation of the terms specified in the authorisation	Any person (physical or		<b>Fines (not specified)</b>



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EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			or approval under or regulations issued pursuant to Act on Road Haulage.	legal) infringing the mentioned provisions.		
		Section17 (1) (3)	Violation of the provisions contained in the Regulations on road haulage.	Any person (physical or legal) infringing the mentioned provisions.		<p><b><u>Fines:</u></b></p> <p><b>Violation of Regulation No. 1071/2009/EC – not specified (if not covered of the above violations).</b></p> <p><b>Violation of Regulation No. 1072/2009/EC – see below</b></p>
		Section17 (1) (4), cf. Section6a (2)	Commercially hiring out drivers without being authorized thereto.	Any person (physical or legal) infringing the		<b>Fines (not specified)</b>

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EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				mentioned provisions.		
	<p><a href="#"><u>Consolidated Act No. 1087 on road passenger transport of 8 September 2010 (hereinafter referred to as the “Act on road passenger transport”)</u></a></p> <p><i>(buskørselsloven)</i></p>	Section22 (1) (1), cf. Section1 (1)	<p><u>Driving without an authorisation:</u></p> <p>Undertakings established on the Danish territory and engaged in commercial road passenger transport services with Danish registered motor vehicles fitted to transport more than 9 people including the chauffer, need an authorisation.</p>	Any person (physical or legal) infringing the mentioned provisions.		<p><b><u>Fines:</u></b></p> <p><b>Current level of fines – DKK 4,000</b></p> <p><b>(Under aggravating circumstances, i.e. if the violation occurs over a longer period, fines are increased to DKK 10,000. According to case law a “longer period” is minimum 3 to 6 months).</b></p> <p><b>Recommended level of</b></p>

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**Road Package**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						<p><b>finest – DKK 10,000</b></p> <p><b>(Under aggravating circumstances, i.e. if the violation occurs over a longer period, fines are increased to DKK 25,000. According to case law a “longer period” is minimum 3 to 6 months).</b></p>
		<p>Section22 (1) (1), cf. Section1 (2)</p>	<p>Infringement of the rules on cabotage and failure to obtain an EU-authorisation regarding international transport.</p>	<p>Any person (physical or legal) infringing the mentioned provisions.</p>		<p><b><u>Fines:</u></b></p> <p><b>Current level of fines – DKK 4,000</b></p> <p><b>(Under aggravating circumstances, i.e. if the violation occurs over a</b></p>

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<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
						<p><b>longer period, fines are increased to DKK 10,000. According to case law a “longer period” is minimum 3 to 6 months).</b></p> <p><b>Recommended level of fines – DKK 10,000</b></p> <p><b>(Under aggravating circumstances, i.e. if the violation occurs over a longer period, fines are increased to DKK 25,000. According to case law a “longer period” is minimum 3 to 6 months).</b></p>

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**Road Package**

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section 22 (1) (1), cf. Section 1a	<p>Lending out or renting out a vehicle for passenger transport with no chauffeur without being authorized for this purpose.</p> <p>The authorisation arrangement in this regard is regulated in Executive order no. 1488 of 12 December 2007 on road passenger transport, with later modifications.</p>	Any person (physical or legal) infringing the mentioned provisions.		<p><b><u>Fines:</u></b></p> <p><b>Current level of fines – DKK 4,000</b></p> <p><b>(Under aggravating circumstances, i.e. if the violation occurs over a longer period, fines are increased to DKK 10,000. According to case law a “longer period” is minimum 3 to 6 months).</b></p> <p><b>Recommended level of fines – DKK 10,000</b></p> <p><b>(Under aggravating circumstances, i.e. if the</b></p>

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**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
						<b>violation occurs over a longer period, fines are increased to DKK 25,000. According to case law a “longer period” is minimum 3 to 6 months).</b>
		Section22 (1) (1), cf. Section9 (1)	Illegal temporary employment of chauffeurs.	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – DKK 1,000</b>  <b>Recommended level of fines – DKK 2,500</b>
		Section22 (1) (1), cf. Section17 (1)	If not returning authorisation when recalled, disqualified or annulled to the Danish	Any person (physical or legal) infringing the		<b><u>Fines:</u></b>  <b>Current level of fines –</b>

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**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
			Minister of Transportation.	mentioned provisions.		<b>DKK 500</b>  <b>Recommended level of fines – DKK 1,500</b>
		Section22 (1) (1), cf. Section18 (2)	Breach of salary and working conditions for chauffeurs according to existing collective agreements.	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – no case law</b>  <b>Recommended level of fines – the fines should reflect obtained economic advantages, however, minimum DKK 10,000.</b>
		Section22 (1) (1), cf. Section18 (3)	Lending out authorisations or transfer of authorisations to	Any person (physical or legal)		<b><u>Fines:</u></b>  <b>Current level of fines –</b>

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**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
			others.	infringing the mentioned provisions.		<b>DKK 500</b>  <b>Recommended level of fines – DKK 1,500</b>
		Section22 (1) (1), cf. Section20a (4)	Lack of security regarding operator liability while driving abroad.	Any person (physical or legal) infringing the mentioned provisions.		<b><u>Fines:</u></b>  <b>Current level of fines – no case law</b>  <b>Recommended level of fines – DKK 1,500</b>
		Section22 (1) (2)	Violation of the terms specified in the authorisation or approval under the Act on road passenger transport or regulations issued pursuant to this act.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fines (not specified)</b>



**Table DK 2**

**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
		Section22 (1) (3)	Violation of the provisions contained in the Regulations on road passenger transport.	Any person (physical or legal) infringing the mentioned provisions.		<p><b><u>Fines:</u></b></p> <p><b>Violation of Regulation No. 1071/2009/EC – not specified (if not covered of the above violations).</b></p> <p><b>Violation of Regulation No. 1073/2009/EC – see below</b></p>
		Section22 (1) (4), cf. Section9 (2)	Commercially hiring out drivers without being authorized thereto.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fines (not specified)</b>
<b>Regulation No.</b>	<b><u>Not implemented</u></b>					<b>According to recommendations</b>

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**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
1072/2009/EC						<p>provided by the Danish Minister of Transportation the following sanctions are recommended:</p> <p><u>Fines:</u></p> <p>Current level of fines – DKK 4,000</p> <p>(Under aggravating circumstances fines are increased to DKK 10,000).</p> <p>Recommended level of fines – DKK 10,000</p> <p>(Under aggravating</p>

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Road Package

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						circumstances fines are increased to DKK 25,000).
Regulation No. 1073/2009/EC	<u>Not implemented</u>					<p>According to recommendations provided by the Danish Minister of Transportation the following sanctions are recommended:</p> <p><u>Fines:</u></p> <p>Current level of fines – DKK 4,000</p> <p>(Under aggravating circumstances fines are increased to DKK</p>

**Table DK 2**

**Road Package**

<b>EU-legislation</b>	<b>Relevant National Legislation for infringement</b>	<b>Section(s) of reference</b>	<b>Type of infringement(s)</b>	<b>Subject(s) of sanction</b>	<b>Adm. Sanction(s)</b>	<b>Criminal sanction(s)</b>
						<p><b>10,000).</b></p> <p><b>Recommended level of fines – DKK 10,000</b></p> <p><b>(Under aggravating circumstances fines are increased to DKK 25,000).</b></p>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
Directive 2008/68/EC	<u>Transport of dangerous goods</u>  <u>Executive order on road transport of dangerous goods no. 818 of 28 June 2011 (hereinafter referred to as the “Order on road transport of dangerous goods”)</u>  <i>(“bekendtgørelse om transport af farligt gods”)</i>	Section36 (1)  Section36 (2)  Section36 (3)	<ul style="list-style-type: none"> <li>- The police is allowed to stop and inspect a vehicle carrying dangerous goods</li> <li>- The police is allowed to inspect the vehicle in accordance with annex 5 contained in the order</li> <li>- In exceptional cases the police is allowed to disregard annex 5 when they inspect the vehicle</li> </ul>	Any person (physical or legal) infringing the mentioned provisions		

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section37 (1)	<p>- Infringement of the following sections and subsections of the order is fined:</p> <p>(Section2-3, Section4 (1)-(2), Section9 (2)-(3), Section10-12, Section13 (1), Section14, Section16 (1)-(3), Section17-18, Section20 (1), Section24 (1), Section26-27, Section28 (1), (3) and (4), Section30 (1), the technical regulations contained in Section40 and annex 3.)</p> <p>(Section29 (1) and (3).)</p> <p>Section2:</p>			<p><b>Infringement is fined unless a higher penalty is stated in another legislation</b></p>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>Everyone involved in transport of dangerous goods according to this order must demonstrate caution and alertness</p> <p>Section3:</p> <p>Waste and emission of dangerous goods must immediately be reported to the emergency dispatch center</p> <p>Section4:</p> <p>(1) Road transport of dangerous goods must be done in accordance with the provisions in the Order on road</p>			

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>transport of dangerous goods, and with respect of all agreements that Denmark may have entered into concerning such regulation.</p> <p>(2) National road transport of dangerous goods carried out on vehicles registered in Denmark where a concerted national certificate has been made must be carried in accordance with</p>			



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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>ADR (European Convention on International Transport of Dangerous Goods)</p> <p>Section9 (2):</p> <p>Technical requirements and permission for the use of refill containers</p> <p>Section9 (3):</p> <p>Technical requirements for roadtransport by private persons</p> <p>Section13 (1):</p> <p>Permission from the Ministry</p>			

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>of Justice for transport of dangerous goods which is excluded from transport according to ADR</p> <p>Section14:</p> <p>Noncompliance with service standards regarding fire extinguisher</p> <p>Sections 16 (1)-(3), 17 and 18:</p> <p>No draft or correct maintenance of the transport documents provided.</p> <p>Section20 (1):</p> <p>Certain vehicles must be</p>			

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>approved before they can be used for road transport.</p> <p>Section24 (1):</p> <p>Containers must comply with the provisions in ADR and approved by the competent authority.</p> <p>Section26:</p> <p>Requirements regarding packaging.</p> <p>Section27:</p> <p>Requirements regarding transport of diverse goods at the</p>			

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>same time.</p> <p>Section28 (1), (3) and (4): Education requirements and proof of education for drivers and instructors.</p> <p>Section30 (1): Education requirements for persons employed with inspection and testing.</p> <p>Section40: Compliance with technical requirements</p>			

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>Section29 (1) and (3):</p> <p>Noncompliance with the conditions and rules provided by The Danish Emergency Management Agency</p>			
		Section37 (2)	<p>- Infringement of Section31 of the Order on road transport of dangerous goods concerning:</p> <ul style="list-style-type: none"> <li>- The police commissioner can decide that road transport of dangerous goods included in annex 4 of the order is to be carried out by a</li> </ul>			<p><b>Infringement is fined in accordance with Section118 (1) no. 3 of Highway code</b></p>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			specific route			
		Section37 (3)		A legal entity can be held liable in accordance with chapter 5 of the Penal Code		
	<u>Executive order on haulage no. 1489 of 12 December 2007 (hereinafter referred to as the “Order on haulage”)</u> <i>(bekendtgørelse om godskørsel)</i>	Section17 (1)	- Infringement of Section1 (1), concerning:  Permission for haulage is required if you are established on Danish territory with transport for others’ account and the total weight of the			

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>vehicle exceeds 3.500 kilograms.</p> <p>- Infringement of Section4 (1) and (3), concerning:</p> <p>Permission for rent out of drivers is required if you are established on Danish territory as a driver temp company.</p> <p>The driver temp company must in connection to the rent out of the driver hand out a form.</p> <p>- Infringement of Section11 (1) and (2), concerning:</p> <p>Vehicles used for company</p>			

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>driving which exceeds a total weight of 3.500 kilograms must be registered</p> <p>The vehicle's certificate shall be signed</p> <p>- Infringement of Section12 concerning:</p> <p>The name of the user of a vehicle used for haulage for others' account or a vehicle as mentioned in Section11 must be added to the coachwork.</p>			
		Section17 (2)		A legal entity can be held		



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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				liable in accordance with chapter 5 of the Penal Code		
<p><b>Directive 96/53/EC</b></p>	<p><a href="#">Detailed technical regulation on road vehicles</a></p> <p><a href="#">Executive order no 17225 of 15 September 1997 (hereinafter referred to as the “Order on detailed technical regulation of road vehicles”)</a></p> <p><i>(bekendtgørelse om detailforskrifter for køretøjer)</i>, cf. <a href="#">Executive order 17132 of 20</a></p>	<p>Introductory Section of 2<sup>nd</sup> Order on detailed technical regulation of road vehicles, cf. Highway Code Section 118 (7), sentence 1.</p>	<p>Inobservance of the requirements to road vehicles set out in the Order on detailed technical regulation of road vehicles.</p>	<p>Driver and/or owner of the road vehicle and/or owner/operator of transport undertaking</p>		<p><b>Fine of DKK 1.000 or more (divisible by 500), cf. Highway Code Section 118a (1).</b></p> <p><b>Several infringements: The fines for each infringement are combined, cf. Highway Code Section 118a (2).</b></p> <p><b>Recidivism: Only an aggravating factor, that</b></p>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>March 1997</u></p> <p><u>(hereinafter referred to as the “2<sup>nd</sup> Order on detailed technical regulation of road vehicles)</u></p> <p><i>(“bekendtgørelse om detailforskrifter for køretøjer”)</i>, cf. Section68 (1) of the Highway Code</p>			<p>Legal persons are subject to criminal sanctions, cf Highway Code, Section118 (9), cf. Chapter 5 of the Penal Code.</p>		<p><b>the offender is previously convicted for infringements of relevance to the case, if the present infringement is committed within 5 years, after the previous ruling by a court became final, cf. Highway Code Section118b (1).</b></p> <p><b>Driver is domiciled and road vehicle is registered outside of Denmark: The road vehicle can be detained by the police until payment, cf. Highway Code</b></p>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
						<p><b>Section120.</b></p> <p><b>Confiscation of road vehicle, cf. Penal Code Section76-77a, cf. Highway Code Section133a (8).</b></p>
<b>Directive 96/96/EF</b>	<p><u><a href="#">Consolidated act no. 473 of 9 June 2004 on authorisation and inspection of vehicles (hereinafter referred to as the “Act on authorisation and inspection of vehicles”)</a></u></p> <p><i>(lov om godkendelse og syn af køretøjer)</i></p>	Section13 (1) cf. Section3 (1) and (2)	Failure to present its vehicle for inspection after being called in	Owner		<p><b>The Police can confiscate a vehicle’s number plates.</b></p> <p><b>Fine (DKK 1,000 for every commenced inspection period).</b></p>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><u>and</u></p> <p><u>Consolidated act no. 255 of 30 March 2011 on changing the law on authorization and inspection of vehicles vehicles (hereinafter referred to as the “Act on changing the law on authorization and inspection of vehicles vehicles”)</u></p> <p><i>(lov om ændring af lov om godkendelse og syn af køretøjer)</i></p>					
		Section8 (1)	<p>The holder of the permit has violated the conditions of the permit grossly or repeatedly.</p> <p>The owner of the company or</p>		<p>The Transport Authority can withdraw</p>	

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			any other responsible persons has debt to the State of DKK 100,000 or more.		the right to conduct inspections and re-inspections	
	<p><a href="#"><u>Executive order no. 762 of 8 July 2004 on authorisation and inspection of vehicles (hereinafter referred to as the “Order on authorisation and inspection of vehicles”)</u></a></p> <p><i>(bekendtgørelse om godkendelse og syn af køretøjer)</i></p>	Section 12 (3) and (4)	<p>Where a vehicle, that is approved without prior testing, is not delivered for inspection after the Danish Road Safety and Transport Agency has reminded the permit holder</p> <p>Or</p> <p>A control according to Section 12 (1) shows that the vehicle does not comply with</p>	The permit holder	The Danish Road Safety and Transport Agency can withdraw the permit	

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			the permit			
		Section54 (2)	Failure to present a vehicle for inspection  Or  The vehicle was not approved at inspection or re-inspection	Owner		<b>The police can confiscate a vehicles number plate.</b>
		Section69 (1) and (2)	A standard type permit holder or a dealer repeatedly gives incorrect information regarding the vehicles compliance with the permit or that the car was brand new	Permit holder  Dealer	The Danish Road Safety and Transport Agency can decide that for 2-6 moths all vehicles	

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
					have to be inspected before use.	
		Section69 (3)	A dealer or a workshop repeatedly has given incorrect information regarding inspection free coupling of car and trailers.	Dealer Workshop	The Danish Road Safety and Transport Agency can decide that for 2-6 months all vehicles have to be inspected before use.	
		Section75 (1), cf.	Failure to have a car,	Owner		<b>Fine</b>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section1 (1)-(2)	motorcycle, moped, tractors, trailers and others type approved or approved at inspection before use.			
		Section75 (1), cf. Section9 (2)	Failure to bring an inspection report when driving a moped that is not subject to registration.	Owner User		<b>Fine</b>
		Section75 (1), cf. Section10	Driving a moped without registration that does not comply with the rules set out in Section10.	Owner User		<b>Fine</b>
		Section75 (1), cf. Section1 1(6)	Failure to obtain a new approval from the Danish Road Safety and Transport Agency when important changes have	Owner		<b>Fine</b>



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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			been made.			
		Section75 (1), cf. Section14(4)	The manufacture or its representative must issue a type certificate for all vehicles subject to registration.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section75 (1), cf. Section14 (5)	The use of a moped where this is not subject to registration is not either standard type approved, filed as EF type approved, EF type approved and inspected according to Section9 or EF type approved and in use according to	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			Section10.			
		Section75 (1), cf. Section19 (1)	Failure to present a vehicle for inspection before using the vehicle.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section75 (1), cf. Section20 (1)-(3)	Failure to present a deregistered car for inspection before using the car	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section75 (1), cf. Section21 (1)	Failure to present a vehicle for inspection within 3 weeks when the vehicle has changed owner or user.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section75 (1), cf. Section22 (1)	Failure to present a vehicle for inspection when the vehicle has been converted or the equipment changed	Owner User		<b>Fine</b>
		Section75 (1), cf. Section23 (1)-(2)	Failure to present a vehicle for inspection when the character or the use of the vehicle have changed	Owner User		<b>Fine</b>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section75 (1), cf. Section25	Connecting a vehicle to a trailer or the like subject to registration without approval	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section75 (1), cf. Section42	The use of a vehicle that has been given a conditional approval with an indication of faults for more than what is needed for the repair of the vehicle.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section75 (1), cf. Section45 (2)-(3)	Failure to bring an additional certificate when using a vehicle	Any person (physical or		<b>Fine</b>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			subject to Section45 (1) no. 1-4.	legal infringing the mentioned provisions.		
		Section75 (1), cf. Section49	Failure to stop the use of or change the vehicle when exemption according to Section48(2) has been refused.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section75 (1), cf. Section51	Use of a vintage car not complying with the conditions set out by the inspection company.	Any person (physical or legal) infringing		<b>Fine</b>

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Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				the mentioned provisions.		
		Section75 (1), cf. Section52(3)	The use of a vehicle that has been refused approved, cf. Section52 (2), for more than what is needed for the repair of the vehicle.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section75 (1), cf. Section61(2)	The use of a vehicle that has been refused approved, cf. Section61 (1), for more than what is needed for the repair of the vehicle.	Any person (physical or legal) infringing the mentioned		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				provisions.		
		Section75 (1), cf. Section72	Failure to have a vehicle approved at inspection after this has been used with border number plates ( <i>grænsenummerplader</i> ).	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
	<u><a href="#">Executive order no. 724 of 24 June 2011 on companies conducting inspection of vehicles (hereinafter referred to as the “Order on companies conducting inspection of vehicles”)</a></u>  <i>(bekendtgørelse om</i>	Section44 (1), cf. Section1 (1) and (3)	Conducting inspection of vehicles without permission from the Transport authority.  Company conducting inspections and also commercially repairing vehicles.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<u><i>virksomheder, der foretager syn af køretøjer</i></u>					
		Section44 (1), cf. sections 8-15 (2) and(4)	Failure to comply with the conditions set for the permission to inspect vehicles.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section44 (1), cf. sections 16 and 18 (1)	Failure to comply with the educational requirements for the company's technical responsible person.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>



Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section44 (1), cf. sections 17 and 18 (1)	Failure to comply with the educational requirements for the inspection staff.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section44 (1), cf. Section20 (1) and (2)	Failure to comply with the requirements for equipment mentioned in appendix 2 of Order on companies conducting inspection of vehicles.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section44 (1), cf. Section21 (1)	The company hasn't got communication equipment fit	Any person (physical or		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			for communicating with the Transport authority.	legal) infringing the mentioned provisions.		
		Section44 (1), cf. Section22 (1)-(5)	Failure to comply with the requirement for inspection of similar vehicles.  <i>(Flådesyn)</i>	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section44 (1), cf. Section23(1)	Failure to pay a fee of DKK 22 per inspection or re-inspection to the Transport authority.	Any person (physical or legal) infringing		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				the mentioned provisions.		
		Section44 (1), cf. sections 23-27	Failure to comply with requirements for quality management.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section44 (1), cf. Section33	Failure to supply all necessary information to the supervising authority.	Any person (physical or legal) infringing the mentioned		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				provisions.		
		Section44 (1), cf. Section34 (2) and (3)	Failure to provide equipment and localities for the Transport authority.  Failure to assist in a control inspection.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section44 (1), cf. Section41	Failure to comply with the conditions of the permission to perform inspections of vehicles.  The company or the technical responsible person has debt to the State of DKK 50,000 or more.	Any person (physical or legal) infringing the mentioned provisions.	The Transport authority can revoke the permission to perform inspections	<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			The company owner has debt to the State of DKK 100,000 or more.		of vehicles.	
	<p><u><a href="#">Executive order no. 824 of 11 August 2008 on companies conducting re-inspection of vehicles (hereinafter referred to as the “Order on companies conducting re-inspection of vehicles”)</a></u></p> <p><i>(bekendtgørelse om virksomheder, der foretager omsyn af køretøjer (Omsynsvirksomheder))</i></p> <p><u><a href="#">and</a></u></p>	Section 31 (1), cf. Section 6 (1)	Failure to comply with the requirements for the permit as set out in sections 6 (3), 7-16, 21-23 and 26 (2) and the conditions set out in Section 2 (1)-(12).	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<u>Executive order no. 1549 of 18 December 2009 on changes to Order on companies conducting re-inspection of vehicles</u>  <i>(bekendtgørelse om ændring af bekendtgørelse om virksomheder, der foretager omsyn af køretøjer (Omsynsvirksomheder))</i>					
		Section 31 (1), cf. sections 7-10	Failure to comply with the requirements for the permit.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section31 (1), cf. sections 11-12 (2) and (4)	Failure to comply with the requirements for the technical responsible person.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section31 (1), cf. Section13 (1) and (2)	Failure to comply with the educational requirements for the technical responsible person.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section31 (1), cf. Section15 (1)	Failure to pay a fee of DKK 22 per re- inspection or re-	Any person (physical or		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			inspection to the Transport authority.	legal) infringing the mentioned provisions.		
		Section31 (1), cf. Section16	Failure to comply with the requirements for equipment mentioned in appendix 2 of Order on companies conducting re-inspection of vehicles.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section31 (1), cf. sections 17 (2) and 18	Failure to comply with the requirements for control of repair work.	Any person (physical or legal) infringing		<b>Fine</b>



Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				the mentioned provisions.		
		Section31 (1), cf. Section21	Failure to supply the Transport authority with all relevant information regarding the company which is important for the given permit.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section31 (1), cf. Section23	Failure to supply all necessary information to the supervising authority.  Failure to provide equipment and localities for the Transport	Any person (physical or legal) infringing the mentioned		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			authority.	provisions.		
		Section31 (1), cf. Section26 (2)	Failure to notify the Transport authority when grounds for annulment of the permit according to Section26 (1) can be found.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section31 (1), cf. Section29	When a permit for re-inspection is not present the company must not give the impression of having such a permit.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
	<p><a href="#">Consolidated act no. 1039 of 8 October 2009 on taxi driving et cetera (hereinafter referred to as the “Act on taxi driving”)</a></p> <p><i>(bekendtgørelse af lov om taxikørsel m.v.)</i></p>	Section 6	If the conditions for a license according to this law have repeatedly been violated	The company	The authority giving the license can revoke this or refuse renewal.	
		Section 16 (1) (1), cf. Section 1 (1)- (2)	Commercial passenger transport without a permit or violating the international rules for commercial passenger transport	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section 16 (1) (1), cf. Section 4 (2)	Failure to comply with the conditions for a permit holder	The company		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			set out in Section3 (1) no. 1-4, 6 and 7.			
		Section16 (1) (1), cf. Section5 (2), (3) and (5)	Failure to bring the permit when using the vehicle.  Use of the permit by others that the permit holder.  Failure to comply with regulation on wages and working conditions for the drivers.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section16 (1) (1), cf. Section9	Failure to hand back other signs when a permit is revoked, refused renewal or annulled.	Any person (physical or legal) infringing the		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
				mentioned provisions.		
		Section16 (1) (1), cf. Section10 (1)	Failure to connect to a reservation office in municipalities with 10 or more permits.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>
		Section16 (2)	Failure to comply with conditions set out in a permit or approval according to this law.	Any person (physical or legal) infringing the mentioned provisions.		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
Directive 2006/126/EC	<a href="#">Highway Code</a>	Section56 (1), cf. Section117 d (2)	Driving without having a driver's license, or without being in possession of driver's license	Driver		<p><b>Fine</b></p> <p><b>The fine shall be set in accordance with the size of any economic gains sought by the infringement.</b></p> <p><b>Under severe circumstances up to 12 months of imprisonment.</b></p>
		Section60 (1)	Driving while no longer fulfilling the requirements for obtaining a drivers licence	Driver		<b>Revocation of the driver's license.</b>
		Section60 (5), cf. Section118 (1)	Failure to turn in driver's license in the event of	Driver		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		no. 1	revocation of same			
		Section60a (5)	Failure to turn in driver's license in the event of a ban on driving, cf. Section127.	Driver		<b>Fine</b>
		Section62 (1), cf. Section117d (2)	Driving tractors or motorized equipment by a person without a driver's license for automobiles (B) or tractors.	Driver		<b>Fine</b>
		Section62 (2), cf. Section118 (1) no. 1	Driving tractors and motorized equipment outside of areas adequately shut off, by a person above the age of 15 without a license for automobiles (B) or license for driving tractors and motorized equipment.	Driver		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section63, cf. Section118 (1) no. 1	Driving a small moped without a license for small mopeds (A1), license for automobiles (B), or license for tractors	Driver		<b>Fine</b>
		Section63a, cf. Section117d (2)	Driving a large moped without driver's license for automobiles (B) or large motorcycles (A2)	Driver		<b>Fine</b>  <b>The fine shall be set in accordance with the size of any economic gains sought by the infringement.</b>
		Section64, cf. Section118 (1) no. 1	Persons under the age of 18 driving a small moped without a license for this (A1)	Driver		<b>Fine</b>



Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section117 a	Driving a vehicle requiring a driver's license, despite the right to drive or the right to obtain a driver's license has been unconditionally revoked	Driver		<p><b>Fine.</b></p> <p><b>According to Section117b (2) the fine is set in accordance with the income of the offender at the time of the crime</b></p> <p><b>In case of recidivism up to 18 months imprisonment.</b></p>
		Section1, cf. Section109	Being in possession of more than one driver's license issued by an EU or EEC member state	Holder		<b>Fine</b>
		Section15 (2), cf.	Driving a large motorcycle	Driver		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
		Section109	without a license (A2) for same			
	<a href="#"><u>Executive order no 304 of 2 April 2009 on driver's license (hereinafter referred to as the "Order on driver's license")</u></a>  <i>(kørekortsbekendtgørelsen)</i>	Section62 (1), cf. Section109	Failure to have a duplicate license issued, in the event of loss or damage to an already existing license, if the holder wishes to use the right to drive	Driver		<b>Fine</b>
		Section73 (1)-(3)	Failure to hand in the license to the police, in the event of: <ul style="list-style-type: none"> <li>- The issuance of a ban on driving, or the revocation of the right to drive by the police.</li> </ul>	Driver		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			<p>- Issuance of restrictions on the right to drive, if these are related to the driver's health.</p> <p>If the driver has an international driver's license issued by the Danish state, this must also be handed in to the police, in the event of a revocation of the right to drive.</p>			
		Section88 (1), cf. Section109	Commercial conveyance of passengers on the basis of a driver's license issued by the self-governing overseas	Any person (physical or legal) infringing		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			administrative division of Greenland or any foreign state, excluding states that are members of the EU or the EEC.	the mentioned provisions		
		Section91 (1), cf. Section109	<p>Any person with normal residence in Denmark driving a vehicle without being in possession of a Danish, Greenlandic or driver's license, or a license issued by any member state of the EU or the EEC.</p> <p>Driver's licenses issued by third countries are recognized until 14 days after the holder obtains normal residence in</p>	Driver		<b>Fine</b>

Table DK 3

Standards of Vehicles, Load and Necessary Licences

EU-legislation	Relevant National Legislation for infringement	Section(s) of reference	Type of infringement(s)	Subject(s) of sanction	Adm. Sanction(s)	Criminal sanction(s)
			Denmark.			
	<p><u>Consolidated Act no. 1062 of 17 November 2011 (hereinafter referred to as the “Penal code”)</u></p> <p><i>(straffeloven”)</i></p>	Section171, cf. Section172	Use of a false document, including driver’s license, with the intent of deceiving	User of the driver’s license		<p><b>Imprisonment up to 2 years</b></p> <p><b>In severe cases up to 6 years</b></p>

**Table DK 4**

**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 Danish law most of the infringements on commercial road transport are sanctioned with criminal sanctions, but there are few exceptions (see table below). Criminal sanctions are dissuasive in Denmark.

## 8.7 Sanctions which could be considered substantially criminal in the Danish legal system

Table DK 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

<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>Regulation 3821/1985/EEC</p> <p>Executive order no. 687 of 29 June 2005 on issuing of tachograph cards. Tachograph card issued on the basis of inaccurate information, forged documents or fail to fulfil the safety regulations.</p>	<p>Withdraw of the card by the police</p>	<p>High Penalty that substantially affects the operator</p>	<p>Yes.</p>
<p>Directive 96/96/EC</p> <p>Consolidated act no. 1039 of 8 October 2009 on taxi driving et cetera. Section6. If the conditions for a license according to this law have repeatedly been violated</p>	<p>The authority giving the license can revoke this or refuse renewal.</p>	<p>High Penalty that substantially affects the operator</p>	<p>Yes.</p>

## **8.8 Effectiveness of the sanctions system**

In general, there is not much public information available regarding the effectiveness of sanctions within Danish criminal law.

However, as regards the regulations of driving times and rest periods, we have been able to locate a report on the level of sanctions from the Director of the Public Prosecutions dated February 2008. The main conclusions of this report are referred to below.

In 2005, new rules were implemented regarding the sanctions for breaches of the rules regarding driving times and rest periods. The sanctions were tightened due to the relative high number of breaches and the great risk breaches impose on other road users and bus passengers.

In 2006 and 2007, the sanctions were relaxed regarding suspension of driver's licences and the severeness of fines, following complaints from drivers and haulage contractors. In general, however, the sanctions stayed at a higher level than before 2005. The rationale behind the adjustments was to balance the size of the fines to remove any incentive to infringe the rules, but at the same time it was the intention not to penalise in a non-proportional way.

According to the report from the Director of the Public Prosecutions the amount of breaches continues to be at a high level.

The severeness of the sanctions for the breaches has risen but by far, the most frequently applied sanctions are fines of less than DKK 10,000. There are, however, cases of fines greatly exceeding DKK 10,000 with the highest given in the 9-month period the report observes amounting to DKK 170,500.

Suspensions of driving licences are fairly rare and have only occurred in 5.6 per cent of the cases observed in the report. However, according to the Danish police's official webpage, an infringement of more than one provision concerning the drive and rest-periods, sanctioned by a conditional suspension of driving licence, must result in an unconditionally suspension of driving licence, if the infringement has stretched over more than one driving-course.

Considering the non-observance of any decrease in the amount of breaches of the rules regarding driving times and rest periods, there is no basis for assuming that the



tightening of the sanctions has had the desired effect. The industry does not seem to have been discouraged from breaches and the new sanctions can therefore not be said to be any more efficient than the previous ones.

Another factor that should be taken into account and that was pointed out by the stakeholder consulted is that the sanction system for infringements of Regulation (EC) No 561/2006 is quite proportionate as infringements are sanctioned according to their seriousness, and the driver will have his licence suspended if the infringement is higher than 30%.

The same is not true for the sanctions for infringements of Regulation (EEC) No 3821/1985. The sanction system is more undifferentiated.

The stakeholder consulted pointed out that the system is not graduated and this implies that trivial infringements are sanctioned with heavy penalties and that the system is perceived as unfair.

That said, the Danish system seems dissuasive in consideration of number of offences of EU rules on commercial road transport detected in the years 2007-2008 if compared to other countries such as the Netherlands or Slovenia which have comparable numbers of drivers checked at the roadside (less than 200 offences detected for infringements of rules on driving times and rest periods, breaks and availability of records. Countries as the Netherlands where the number of drivers checked at roadside is comparable to the number of checks carried out in Denmark in the same period registered a number of offences of around 7,000)<sup>275</sup>.

It is posited in agreement that such difference shows at least that the Danish system is quite dissuasive if compared to other systems.

However, overall the system might be considered as not proportionate: indeed based on the information received trivial infringements are sanctioned with very severe sanctions in Denmark.

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<sup>275</sup> See the Report on the implementation in 2007-2008 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities (25th report from the Commission on the implementation of the social legislation relating to road transport), Commission Staff Working Document, Sec(2011) 52.