

Study on sanctions in the field of commercial road transport

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31 MAIN OUTCOMES OF THE SURVEY

31.1 Introduction

As explained in Chapter 2 the desk research activity has been complemented by a Survey aimed at:

- I. identifying what the perception of stakeholders is on the functioning of national sanctions systems (questionnaire 1) and at obtaining figures on the number of infringements detected in each Member State (questionnaire 2);
- II. understanding what the opinion of Criminal law experts is on EU competence in the field of criminal law (questionnaire 3) and at obtaining some feedback by European stakeholders concerning a possible EU legislative initiative aimed at approximating sanctions for infringements of EU rules on road commercial transport (questionnaire 4).

A complete list of stakeholders targeted in each country for questionnaires 1, 2 and 4 - public authorities, trade associations - is summarised in the following table which includes the information concerning replies received up to January 2013. It also specifies where the stakeholders communicated did not intend to give any response. This table does not include information concerning Criminal law professors consulted (questionnaire 3), as such information is provided in a separate table (see Table 4).

31.2 Survey respondents

As explained above, within the context of the Survey carried out in this Study and aimed at assessing the effectiveness of MS sanctions systems and the appropriateness of an EU legislative action in the field of sanctions in the transport sector 3 questionnaire were sent to EU and national stakeholders: questionnaire 1,2 and 3.

Unfortunately, none of the EU stakeholders replied to the questions included in questionnaire 1.

This did not allow the Study to identify Member States' sanctions systems that are perceived by stakeholders as best practices or bad practises. In addition, the Study could not gather the opinion of EU stakeholders on the effectiveness of each individual MS' sanctions system.

On the other hand, one EU stakeholder provided in its statement useful information that allowed us to understand better what are the issues that are perceived by stakeholders as outstanding ones affecting the effectiveness of MS' systems of enforcement of EU legislation in the field of commercial road transport.

Such issues are described and summarised in the table below (Table 3). They are not analysed in detail as the analysis of most of the issues raised by stakeholders go beyond the scope of this Study.

Other very useful information were gathered during a meeting with European stakeholders.

That said, the comments of EU stakeholders have been elaborated in this Study and used a parameters to assess the effectiveness of Member States' sanctions systems.

For example, based on the comments received the Study was able to identify measures such as immobilization of the vehicles that are perceived as having a strong deterrent effect.

The comments received confirmed also that it is crucial that a sanctions system differentiates between the most serious and less serious infringements by adopting tailored sanctions.

We received more feedback by national stakeholders which replied to questionnaire 2.

Notably, the national competent authorities of 18 Member States replied to questionnaire 2, most of them providing also figures on the number of infringements detected on their territory broken down by typology of infringements detected (e.g. infringements of rules on driving times, on the transport of dangerous goods etc.).

Notably, the authorities of the following MS replied: Austria, Belgium, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Luxembourg, Latvia, Lithuania, Malta, Romania, Slovenia, Spain, Sweden, UK and Northern Ireland.

Few national stakeholders belonging to the private sector replied instead to questionnaire 2 or 4: notably the Austrian Wirtschaftskammern (WKO), the Belgian FEBETRA (*Fédération royale belge des Transporteurs et des Prestataires de services logistiques*), the Bulgarian AEBTRI (*Association des Entreprises Bulgares des Transports Internationaux et des Routes*), the Hungarian MKFE (Association of Hungarian Road Hauliers), CETM (*Confederación Española de Transporte de Mercancías*), the Swedish AKERI (Road Haulage Association).

It is worth pointing out that the fact that few (6) stakeholders representing the private sector, and notably transport operators, took part in the Survey has affected the possibility to take into consideration the position of such stakeholders in assessing the effectiveness of MS' sanctions systems and their possible flaws or strengths.

For example, the replies of the private sector would have allowed to identify infringements sanctioned in an excessive way in each MS, or to identify whether national enforcers tend to concentrate their resources on certain specific infringements: i.e. whether some MS' control systems focus on some infringements and to a minor extent on other infringements.

Finally, only one European stakeholder replied to questionnaire 4: UEAPME, - European Association of Craft, Small and Medium-sized Enterprises.

We regret the decision of EU stakeholders not to reply to such questionnaire because to have their view on the appropriateness of an EU action in the field of sanctions in commercial road transport would have been useful in order to identify stakeholders' views on the pros and cons of the different policy options for improving the enforcement of EU legislation.

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
<u>Austria</u>	Federal Office for Transport			Replied on 20 th April 2012	
	Ministry of Transport			Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Federal Ministry of Consumers' protection			Did not reply	
		AISO - Arbeitsgemeinschaft Internationaler Transportunternehmer Österreichs		Did not reply	
	WKO (Wirtschaftskammern Österreichs), replied on 10 January 2013 with a				

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	letter				
<u>Belgium</u>		GOCA - Groupement des Entreprises Agrées pour le Contrôle Automobile et le Permis de Conduire.	Did not reply		
		FEBETRA		Replied in mid August	
	Service public fédéral Mobilité et Transports. Direction générale Transport terrestre. Direction transport par route - Division contrôle			Replied on 30 th of August providing Belgian Reports	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		UPTR - Union professionnelle du transport et de la logistique.		Did not reply	
		Fédération belge des exploitants d'autobus et d'autocars et des organisateurs de voyages (FBAA)		Did not reply	
<u>Bulgaria</u>	Bulgarian Ministry of Transport			Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Executive Agency Road Transport Administration within the Ministry of Transport, Information Technology and Communication			Did not reply	
	Traffic Police			Did not reply	
	Executive Agency “Roads”			Did not reply	
	Border crossing points – Agency “Customs”-			Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		AEBTRI – Association des Entreprises Bulgares des Transports Internationaux et des Routes		Replied on 8 th August	
		BASAT - Bulgarian Association of European Road Transport Union		Did not reply	
<u>Cyprus</u>	Department of Labour Inspection, Ministry of Labour and Social			Replied on 5 th May 2012	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Insurance				
<u>Czech Republic</u>	Ministry of Transport Road Transport Department			Replied on 20 th April 2012	
		CESMAD – Association of Road Transport Operators		Did not reply	
<u>Denmark</u>		ITD – International Transport Denmark		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Danish National Police National Traffic Centre			Did not reply	
	Danish Road Directorate			Did not reply	
		DTL - Danish Transport and Logistics Association		Replied on 30 th May 2012	
<u>Estonia</u>	Ministry of Economic Affairs and Communications Transportation and Traffic Division of the			Replied on 4 th May 2012	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Road and Railways				
		ERAA - Association of Estonian International Road Carriers		Did not reply	
<u>Europe</u>		CORTE – Confederation of Organisations in Road Transport Enforcement	Did not reply		Did not reply
		ETF - European Transport Workers' Federation	Did not reply		Did not reply

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		Eurocontrol	Did not reply		Did not reply
		Eurocontrol Route	Meeting on 14 th June 2012		Did not reply
		Eurosmart – Association for Smart Security Industry	Did not reply		Did not reply
		EVU - European Association for Accident Research and Analysis	Did not reply		

Table 2**Overview of the Survey**

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		IRU – The international Road Transport Union	Replied on 30 th August 2012 with a letter		
		ECR TISPOL Inspectorate of the Ministry of Transport, Public Works and Water Management	Reply on 30 th March 2012		
		UETR- European Road Haulers Association	Did not reply.		Did not reply
		UEAPME - European	Did not reply		Replied on 15 th

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		Association of Craft, Small and Medium-sized Enterprises.			November 2012
		UPTR - Union professionnelle du transport et de la logistique	Did not reply		Did not reply
<u>Finland</u>	Road Transport Liikkuva Poliisi			Did not reply	
		SKAL - Suomen Kuljetus ja Logistiikka		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
<u>France</u>	Ministère de l'Ecologie, du Développement et de l'Aménagement Durables Direction générale de la mer et des transports Direction des transports maritimes, routiers et fluviaux Sous-direction des transports routiers			Replied on 14 th September 2012	
	Le ministre de l'équipement, des transports, du logement,			Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	du tourisme et de la mer				
		AFTRI – Association Française du Transport Routier International		Did not reply	
		CNR – Comité National Routier		Did not reply	
		FNTR - Fédération Nationale des Transports Routiers		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	<p>Ministère de l'intérieur, de l'outre-mer, des collectivités territoriales et de l'immigration</p> <p>Secrétariat général Direction de la modernisation et de l'action territoriale</p> <p>Sous-direction de la circulation et de la sécurité routières</p> <p>Bureau de la sécurité et de la réglementation</p>			Replied on 27 th August 2012	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	routières				
<u>Germany</u>		Bundesverband Güterkraftverkehr Logistik und Entsorgung (BGL) e.V.		Did not reply	
		VDA - Verband der Automobilindustrie		Did not reply	
	Bundesministerium für Verkehr, Bau und Stadtentwicklung			Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Bundesamt für Güterverkehr			Did not reply	
	Federal Ministry of Transport, Building and Urban Development			Did not reply	
<u>Greece</u>	Ministry of Infrastructure, Transport and Networks, Ministry of Labour and Social Security			Replied on 25 th July.	
		OFAE - Fédération Hellénique des Transports		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		Routiers Internationaux			
<u>Hungary</u>	National Transport Authority			Replied on the 6 th April 2012	
		MKFE –Association of Hungarian Road Hauliers		Replied on 19 th March 2012	
<u>Ireland</u>	Road Safety Authority and Health & Safety Authority			Replied on 16 th April 2012	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Road Transport Operator Licensing - Department of Transport, Tourism and Sport			Replied on 17 th April 2012	
		IRHA - Irish Road Haulage Association		Did not reply	
<u>Italy</u>	Ministry of Transport, Directorate General for Road Transport			Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Ministry of Intern- Department of Road Police			Did not reply	
		ANAV - Associazione Nazionale Autotrasporto Viaggiatori		Did not reply	
		CONFETRA - Confederazione Generale Italiana dei Trasporti e della Logistica		Did not reply	
		CONFTRASPORTO		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
<u>Latvia</u>	Traffic Surveillance Bureau of State Police of Latvia			Replied to a certain extent	
	Autotransporta inspekcija (Road Transport Inspectorate)			Did not reply	
<u>Lithuania</u>	LATVIJAS - Road Carriers Association			Replied on 8 th June 2012	
	LINAVA - Lithuanian National Road Carriers			Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Association				
<u>Luxembourg</u>	Ministère du Développement durable et des Infrastructures, Département des Transports			Replied on 31 st of July 2012	
		CCL – Confédération Luxembourgeoise du Commerce		Did not reply	
		FLEAA - Fédération		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		Luxembourgeoise des Exploitants d'Autobus et d'Autocars			
<u>Malta</u>	Malta Transport Authority			Replied on the 19 th April 2012	
<u>Netherlands</u>		KNV - Koninklijk Nederlands Vervoer		Did not reply	
<u>Poland</u>	Główny Inspektorat Transportu Drogowego		Did not reply		

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		ZMPD - Zrzeszenie Miedzynarodowych Przewozników Drogowych w Polsce		Did not reply	
<u>Portugal</u>	Instituto da Mobilidade e dos Transportes Terrestres			Did not reply	
		ANTP - National Association of Transport Operators		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
<u>Romania</u>	Inspectoratul de Stat pentru Controlul in Transportul Rutier (I.S.C.T.R.), through Romanian Road Transport Authority - Ministry of Transports and Infrastructure			Replied on the 12 th of April 2012	
		ARTRI- Asociatia Româna Pentru Transporturi Rutiere Internationale		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
<u>Slovakia</u>	National Labour Inspectorate			Did not reply	
		CESMAD – Slovakian association of road transport operators		Did not reply	
<u>Slovenia</u>	Transport Inspectorate of the Republic of Slovenia			Replied 14 th July 2012	
<u>Spain</u>	Ministerio de Fomento Dirección General de los			Replied on 2 nd September 2012	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
	Transportes por Carretera				
		ASTIC – Asociación del transporte internacional por carretera		Did not reply	
		CETM – Confederación Española de Transporte de Mercancías		Replied on 24 th April 2012	Replied on 3 rd October 2012
<u>Sweden</u>	Swedish Transport Agency			Replied on the 4 th of April 2012	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
		AKERI -Road Haulage Association		Replied on 16 th March 2012	
<u>United Kingdom</u>	VOSA - Vehicle and Operator Services Agency – DFT- Department for Transport			Replied on 15 th August 2012	
	Office of the Traffic Commissioner			Replied on 14 th July 2012	
		RHA - Road Haulage Association		Did not reply	

Table 2

Overview of the Survey

Country	Transport Authorities	Transport Associations	Outcome Questionnaire 1	Outcome Questionnaire 2	Outcome of Questionnaire 4
<u>Northern Ireland</u>				Replied on 20 th November 2012	

31.3 General comments

The followings are our comments on the results of the Survey carried out:

1. Most of the authorities consulted have provided some sort of information on the number of infringements of the provisions of EU professional road transport legislation. Notably, the authorities of the following MS replied to the Survey: Austria, Belgium, Cyprus, Czech Republic, Estonia, France, Greece, Ireland, Hungary, Lithuania, Latvia, Luxembourg, Malta, Romania, Slovenia, United Kingdom and Northern Ireland.
2. 15 of them provided figures on the infringements detected. The data are often broken down by typology of infringements (e.g. infringing daily driving times limits or rules on daily rest periods). Notably, the figures provided concern infringements detected in Austria, Belgium, Czech Republic, Estonia, France, Greece, Ireland, Hungary, Northern Ireland, Lithuania, Luxembourg, Malta, Romania, Slovenia, United Kingdom. It is worth pointing out, however, that the Study includes also figures on the number of infringements detected in Germany, Italy, Poland, Latvia and Slovakia. Such figures were obtained through informal contacts with national authorities or were collected through the analysis of publicly available sources and statistics.
3. All the authorities providing figures have provided information concerning infringements of Regulation (EC) No 561/2006/EC and (EEC) No 3821/85. Only some authorities were in the position to provide figures on infringements of other EU measures on commercial road transport (i.e. Regulations (EC) No 1071/2009, 1072/2009 and 1073/2009, Directive 2002/15/EC, Directives 2009/40/EC, 2006/126/EC, 2008/68/EC, and 96/53/EC), notably: Austria, Czech Republic, Estonia, France, Ireland, Lithuania, Luxembourg, Northern Ireland, UK.
4. The vast majority of the authorities have not provided specific figures concerning the most serious infringements (MSI) of EU professional road transport legislation. Only few authorities, namely Estonia, Ireland, Northern Ireland, UK gave some feedback on such infringements. The authors of this Study regret that most Member States could not provide any data on such infringements, as such data would have been particularly useful in order to assess the effectiveness of MS' sanctions systems. The

same applies to data on very serious infringements (VSI). No MS could provide data broken down according to the seriousness of the infringements detected. Overall, the non availability of the above data did not allow this Study to assess whether some sanctions systems favour a tendency to engage in hazardous behaviours among the transport operators. Consequently, the assessment of the effectiveness of MS sanctions systems was done using other parameters than the suitability of a sanction system to prevent hazardous behaviours (see national reports).

5. We have asked the National Authorities to provide an estimate of infringements committed by foreign drivers on their relevant territory: most of the authorities (8) which have replied provided us with such figures. Notably: Austria, Czech Republic, France, Hungary, Ireland, Malta, Slovenia, UK.
6. We asked the national authorities and stakeholders to provide: (i) their opinions on the concrete functioning of the sanctions system in their respective Member State; and (ii) on its proportionality and dissuasiveness. None of the authorities expressed criticism on the way sanctions are applied in their own Member State. Mostly, they replied that they had no knowledge of this aspect.
7. We asked the national authorities and stakeholders to provide information concerning, *inter alia*, the application of imprisonment as a penalty for infringements of EU professional road transport legislation. Based on the replies received, in general imprisonment is rarely applied. This conclusion is confirmed by two national authorities (the UK and Luxembourg ones), by the Belgian Febetra and by the Danish Transport and Logistics Association (DTL).
8. We asked the national authorities and stakeholders to provide their opinion on the dissuasiveness of imprisonment as a penalty for infringements of EU professional transport legislation. Based on the replies received, imprisonment is not considered more effective or dissuasive than other penalties. None of the stakeholders consulted suggested indeed that imprisonment would be an effective sanction in the field of commercial road transport.
9. We have asked the national authorities and stakeholders to provide estimates on the number of Community licences withdrawn further to a serious infringement of Community road transport legislation. We did not receive significant figures concerning such aspect. Only 6 authorities were in the position to provide figures

concerning the number of Community licences withdrawn indeed: the Lithuanian, the Hungarian, the Irish, the Lithuanian, the Luxembourg and the Maltese one.

10. We asked the national authorities and stakeholders to provide examples of infringements of rules on professional road transport that are sanctioned in an excessive way in their respective Member State. Most of the authorities did not provide any relevant information on this respect. We received some input by EU stakeholders: see table below. Finally, we also received some input by a Danish stakeholder (DTL), by a Bulgarian (AEBTRI) and a Spanish stakeholder. Of the input received the following matters should be pointed out: a) some tachographs infringements might be sanctioned in an excessive way in Denmark; b) Spanish sanctions are heavy in comparison to the ones of other MS. It is questionable whether they are disproportionate, or whether other MS' sanctions are too low. In any event such a situation leads to discriminatory treatments, as operators sanctioned in Spain receive fines which are much higher than the ones imposed by other MS.
11. We asked the national authorities and stakeholders to provide examples of infringements of rules on professional road transport that should be considered serious but that are not sanctioned consistently in their respective Member State. Most of the authorities did not provide any relevant information on this aspect.
12. We asked the national authorities and stakeholders to express an opinion on the issue whether there is a connection between the level of compliance with rules on professional transport and the level and typology of penalties applied. Most of them replied affirmatively. Notably, 11 of them representing: Bulgaria, Cyprus, Denmark, Estonia, France, Lithuania, Luxembourg, Romania, Sweden, Slovenia and UK.
13. The national authorities were requested to identify factors that might influence the level of compliance with EU legislation on road professional transport other than sanctions. Most of the respondents agreed that fines need to be complemented with an efficient control system, otherwise their impact cannot be substantial: notably stakeholders representing 10 MS expressed this view.
14. We asked the national authorities and stakeholders to identify the type and the level of sanctions that would be necessary and that would represent the most efficient way to ensure better compliance with EU legislation on professional road transport. Based on the replies received we identified a consensus on the necessity of having sanctions tailored to the infringements' seriousness (see table below). 8 stakeholders

expressed explicitly or implicitly this view, representing the following MS: Bulgaria, Estonia, Spain, France, Malta, Sweden, UK. We believe, however, that this approach is shared by all stakeholders. Some of them did not find necessary to stress such aspect and focused on more specific issues. However, the necessity of proportionate penalties has been a recurrent topic of our discussions with stakeholders, such as those held with the ECR or Febetra.

15. We asked national authorities and stakeholders to provide their opinion on whether a system that foresees more severe sanctions for undertakings than for drivers is more effective. Some authorities agreed with the above mentioned statement. Notably, the authorities of the following MS replied affirmatively: France, Lithuania, Luxembourg, Czech Republic, Romania, Spain, Hungary.

Finally, we received very interesting inputs by IRU, and UEAPME. ECR 's input was collected in meetings held with such organization.

The table below illustrates the main outcomes of the Survey

Table 3

Topic	Findings
<p><u>Compliance with EU legislation</u></p>	<p>The figures provided by national authorities showed that a high number of infringements is committed in most of the MS that replied in the context of the Survey.</p> <p>This applies also in MS that have dissuasive sanctions. Infringements of social rules still represent the vast majority of infringements of EU rules on commercial road transport (see reply by the Cyprus Authority, Annex CY.1; by the Estonian Authority, Annex EE.1; by the French Authority, Annex FR.1; by the Irish Authority, Annex IE.1; by the UK Authority, Annex UK.1.1; by the Czech Authority, Annex CZ.1; by the Hungarian Authority, Annex HU.1).</p>
<p><u>Proportionality of Member States' sanctions systems</u></p>	<p>I. The stakeholders consulted refer that some MS' sanctions systems are disproportionate as they sanction in an excessive way irregularities related to the incorrect presentation of tachograph records, and in particular the rules concerning the attestation form to cover inactivity periods.</p> <p>It emerged that Spanish, French and Danish sanctions for missing attestation are regarded as excessive.</p> <p>Excess of driving times or other small infringements of the rules on breaks and rest periods seem to be sanctioned in an excessive way also in Austria and Spain.</p> <p>Italian sanctions foreseeing the immobilization of the vehicle for several months also when the infringement is not strictly related to road safety could be seen as a protectionist measure (reply by IRU, Annex EU. 4)</p>
<p><u>Sanctioning of very serious infringements pursuant to Annex III of Directive 2006/22/EC</u></p>	<p>I. Stakeholders suggest that very serious infringements should be only those ones which are realized when there is a deliberate intention to systematically break the rules (tachograph frauds) (reply by IRU, Annex EU. 4).</p> <p>II. Stakeholders suggest that EU legislation should provide some guidelines on circumstances, such as the causes and effects of infringements, as well as the motivation.</p>

Table 3

Topic	Findings
<p><u>Best practices</u></p>	<p>I. UK Operator Compliance Score (OCRS)¹ has been identified as best practice to the extent that it concentrates the resources of control bodies on operators considered a great potential risk in term of non compliance (Annex EU.4)</p> <p>II. The Service Standards and Service Level Agreements (SLAs) signed between the VOSA and the industry</p> <p>III . Dutch System of Audit and Enforcement Agreement²</p> <p>III. The Danish system is seen as a Best Practice to the extent that there is a tolerance limit for infringements and a very serious fine will be imposed only for infringements exceeding specific thresholds.</p>
<p><u>Infringements sanctioned in a disproportionate way</u></p>	<p>Minor infringements are deemed to be sanctioned in a disproportionate way. Particularly, less serious tachograph violations create some concerns (see reply by Febetra, Annex BE.2; reply by IRU, Annex EU.4; see reply by the</p>

¹ Since 2006 the Vehicle Operator and Services Agency (VOSA) have been using Operator Compliance Risk Score (OCRS) as a tool to help target those operators who are perceived to offer a greater risk to public safety through non-compliance.

² See Annex EU 2. In practise if an organisation satisfies some conditions, the Inspectorate (Dutch Authority) makes covenants about how it conducts supervision and therewith departs from the regular form of supervision. Under the covenant the company will agree to a set of conditions including, for example, provision of a management system that checks compliance and works towards continual improvement of this, regimes for reporting on risk management and incidents that occur and ensuring that any third parties which are contracted also fit with the quality requirements. In return the Inspectorate agrees to conduct as minimal as possible a number of audits or inspections to verify the activities of the company instead of the normal checking procedures and to evaluate the reports submitted by the company. The Inspectorate works in consultation with the company and designates specific persons to fulfil a consultation role.

Table 3

Topic	Findings
	DTL [Danish Association], Annex DK.1; by WKO (Annex AT.2)).
<p><u>Inconsistencies in the application of EU commercial road transport legislation</u></p>	<p>I. Differences in the interpretation of infringements across Member States are seen by IRU (Annex EU.4), by Febetra (Annex BE.2), by the UEAPME (<i>Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises</i>) (Annex EU.5), by the Slovenian Authority (Annex SI.1) and by the Austrian WKO (Annex AT.2) as the main inconsistency in the application of EU commercial road transport legislation. Particularly, one of the major problems identified is the inadequate knowledge on the part of control officers of how EU measures and national implementing measures have to be applied.</p> <p>This:</p> <ul style="list-style-type: none"> a. implies lack of legal certainty; b. prevents transport operators to undertake international transport operations due to the inconsistency of the rules. <p>II. Existence of different control practices and of divergent interpretations also within the same Member State (e.g. Spain) (reply by IRU, Annex EU. 4).</p> <p>III. Different implementations of Regulation (EC) Nos 1071-2-3/2009. In particular, different rules concerning the loss of good repute: in some MS, one most serious infringement leads to the loss of good repute, in some other MS various most serious infringements are even necessary.</p> <p>IV. Different levels of sanctions across Member States are deemed to affect legal certainty (see reply by CETM, Annex ES.2)</p> <p>V. Different MS have different enforcement priorities, thus infringements of some rules are more subject to controls than infringements of other rules in commercial road transport (Annex EU.1).</p>

Table 3

Topic	Findings
	VI. Lack of sanctions tailored to the very serious infringements across Member States, e.g. lack of specific sanctions on tachograph frauds (Annex EU.1).
<p><u>Necessity of an EU legislative action aimed at approximating sanctions in the field of road commercial transport</u></p>	<p>I. If at all necessary approximation of sanctions at EU level should deal only with the serious infringements (Annex EU.1).</p> <p>An EU action is seen as necessary (See reply by CETM, Annex ES.3) in order to ensure a level playing field by the UEAPME (<i>Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises</i>) (Annex EU.5), and by WKO (Annex AT.2).</p>
<p><u>Identified cons of an EU initiative aimed at approximating criminal sanctions</u></p>	<ul style="list-style-type: none"> ➤ Social differences ➤ Lengthy adaptation processes: risk that MS cannot quickly adjust their legal systems in order to correctly implement EU legislation (Annex EU.1, and ES.3) ➤ Risk of different awards of competences: the risk of adopting criminal sanctions is that controls could be awarded to non-experienced police officers (Annex EU.1). ➤ Interference with MS' competence in the area of criminal law (Annex AT.2)
<p><u>Other initiatives deemed necessary</u></p>	<p>I. Training of stakeholders and in particular of enforcement bodies (IRU, Annex EU.4; Febetra, Annex BE.2).</p> <p>II. Establishing a common EU enforcement area with uniform legal interpretations and enforcement practices.</p> <p>III. Establishing harmonized interpretations, enforcement and appeal requirements and procedures for all aspects of road transport legislation.</p>

Table 3

Topic	Findings
	<p>IV. Adopting a common roadside check form, valid throughout the EU and AETR region.</p> <p>V. Overseeing the harmonized application of fair and non discriminatory operator risk rating system by EU Member States.</p> <p>VI. Ensuring that comprehensive information flows exist both between national enforcement authorities but also between the latter and domestic and foreign road transport operators.</p> <p>VII. Developing a model for use throughout the EU of progressive dialogue between the enforcement bodies and operators. Such dialogue should be founded on the principle that both parties have a joint stake in shaping how controls are conducted and that official consultation and dialogue is required to ensure that the needs of both parties are taken into account.</p>
<p><u>Most effective fines</u></p>	<ul style="list-style-type: none"> ➤ High fines alone are not perceived as fostering the level of compliance (Reply by IRU, Annex EU. 4; reply by DTL, Annex DK.1). ➤ Financial penalties, if proportionate, are perceived as effective measures (Annex EE.1, Annex LT.1, Annex LU.1, Annex MT.1). Opinions not shared by UK Authority (Annex UK.1), according to which it is more important that the enforcement bodies have appropriate powers (suspending or revoking driver’s driving licences and taking action against those who hold operator’s licences). ➤ Sanctions for repeated infringements should be severe (Annex ES.1). ➤ Measures such as those preventing the vehicle to move for road safety reasons are deemed more dissuasive than financial penalties (see Minutes of the meeting with ECR, Annex EU.1; Annex FR.1, Annex LT.1, Annex LU.1, Annex HU.1).

Table 3

Topic	Findings
	<ul style="list-style-type: none"> ➤ Imprisonment as sanction, although abstractly foreseen, is never applied (see Annex BE.2 Febetra; See reply by DTL, Annex DK.1; Annex LU.1) or only seldom applied (Annex UK.1). ➤ Fines need to be complemented with an efficient control system, otherwise their impact cannot be substantial (see reply by Febetra, Annex BE.2; by DTL, Annex DK.1; by the Estonian Authority, Annex EE.1, by the Lithuanian Authority, Annex LT.1, by Luxembourg Authority, Annex LU.1, by the Maltese Authority, Annex MT.2, by the Slovenian Authority, Annex SI.1.1, by the Swedish Association of Road Haulage Companies, Annex SE.2, by the Bulgarian Association AEBTRI, Annex BU.1, by the Maltese Authority, Annex MT.1 and MT.1.1.). ➤ Fines for undertaking should be more severe than the ones affecting drivers (see reply by the French Authority, Annex FR.1, reply by the Lithuanian Authority, Annex LT.1, by the Luxembourg Authority, Annex LU.1, by the Czech Authority, Annex CZ.1, by the Romanian Authority, Annex RO.1, by the Spanish Authority, Annex ES.1, by Hungarian stakeholders Annex HU.1 and 2): the necessity to take into account the financial capacity of the operator is an issue.
<p><u>Issue of co-responsibility concerning infringements of Regulation (EC)</u></p>	<p>Some stakeholders argue that the transport operators should not be held liable for infringements committed by</p>

Table 3

Topic	Findings
<u>No 561/2006</u>	<p>drivers, unless he is proven as guilty.</p> <p>It is argued that no clear and uniform rules are in place concerning the responsibility of contractors and other operators in the transport supply chain (see reply by IRU, Annex EU.4; reply by Febetra, Annex BE. 2; see reply by the French Authority, Annex FR. 1)³.</p>

³ In Italy this issue is addressed by the law No 127/2010. Italian law 127/2010 contains a series of measures concerning the carriage of goods for hire or rewards including agreeing minimum costs for carriers, new rules on terms of payment and shared liability covering the entire transport chain. Each month, the Ministry of Transport (and in the future a special State Observatory of Transport Costs) calculates a minimum cost per kilometre travelled which must be adhered to by contractors (e. g. if “*costo minimo*” is 1.8 euros per km, contractor and hauler are free to agree on 1.9, or 2.2 or 2.5 etc- but not below 1.8). This aims to ensure that minimum transportation costs are always covered thereby reducing pressure on providers to deliver more/faster in order to simply cover costs. According to Articles 7 and 8 of the law, the police must assess the liability of both the client and the carrier along with that of the driver of the vehicle when they carry out roadside checks. Italian law requires a specific separate document of instructions (“*scheda di trasporto*”) to be kept on board by the driver which is also completed and signed by the contractor thereby allowing the police to check and enforce co-liability and impose sanctions.

In Ireland the Road Safety Authority has produced a guidance leaflet for those involved in the industry explaining the chain of responsibility for breaches of the rules on driving time, breaks and rest time. The leaflet clearly underlines that the rules relating to drivers’ hours are also the responsibility of anyone who, as part of their business, manages, operates, schedules or uses road transport services. Based on such guidelines in Ireland a person who influences drivers and haulage contractors behaviour can be legally held responsible if that behaviour results in non-compliance with the tachographs and driving time rules.

31.4 Survey concerning the scope of Article 83, Paragraph 2 of the TFEU

Our Survey concerned also the scope of Article 83, Paragraph 2 of the TFEU.

In this context a questionnaire was sent to experts of EU Criminal law (Annex 3). Most of the Professors were not in the position to reply due to the complexity of the issues to be addressed.

Table 4	
<u>Survey's State of Play</u>	
Members of the Academia	Outcome
Prof. Bruckmueller	Not reply
Prof. Glaser	Replied on 23 April 2012
Prof. Ulfbeck	No reply
Prof. Horvathova	No reply
Prof. Maelicke	No reply
Prof. Metcalf	Replied on the 17 March 2012
Prof. Mitrache	No reply
Prof. Portius	No reply
Prof. Nyman-Metcalf,	No reply
Prof. Van Hooydonk	No reply
Prof. Terttu	No reply
Prof. Audejev Prof. Jokilehto	No reply

Table 4	
<u>Survey's State of Play</u>	
Members of the Academia	Outcome
Prof. Horkko	
Prof. Sieber	No reply
Mr. Waescher	No reply
Prof. Oangelid	No reply
Prof. Braum	No reply
Prof. Marin	No reply
Prof. Wagner	No reply
Prof. Haak	No reply
Prof. Caeiro	No reply
Prof. Pavlih	No reply
CEDIT -Centro de Derecho del Transporte Internacional	No reply
Prof. Mancuso	No reply
Prof. Mitsilegas	No reply
Prof. Spencer	No reply

However, two EU criminal law experts have so far replied to the questionnaire that the Contractor has sent to members of the Academy.

The results of such Survey are illustrated in the table below.

It should be pointed out that the experts of criminal law contacted highlighted the importance of putting in place an efficient control mechanism, as the existence of a real risk of detection is seen as crucial in ensuring compliance with the rules.

On this respect it was pointed out that “the actual level of sanctions matters less than the fact that all concerned know that any violation is likely to be detected” (see Annex EU.2).

Table 5

Scope of Article 83 (2) TFEU

<p><u>Scope of EU criminal competence in the transport sector:</u></p> <p><u>On the question whether it should address only crimes with cross-border effect</u></p>	<p>Both the experts confirmed the scope of EU competence in the transport sector goes beyond crimes with trans-border effect (Annex AT.2 and Annex EU.2)</p>
<p><u>Appropriateness of an EU intervention in the field of sanctions for infringements of EU commercial road transport legislation</u></p>	<p>It was suggested that EU criminal law measures should address only the most serious infringements of the EU's commercial road transport legislation (Annex AT. 2).</p>
<p><u>Most efficient sanctions</u></p>	<p>I. Pecuniary sanctions, in combination with seizures and confiscations;</p> <p>II. More severe sanctions for undertakings than for drivers (Annex AT.2; Annex EU.2)</p> <p>III. The level of sanctions should be such that they cannot be figured into the business plan of companies so that it is worth it to flaunt rules</p> <p>IV. Repeated offenses are treated seriously (Annex EU.2)</p> <p>V. Sanctions that are perceived as dissuasive are for example bans on driving for some time (Annex EU.2)</p>

Table 5

Scope of Article 83 (2) TFEU

Criteria that should be taken into account in order to define what infringements should be qualified as “criminal offences”

1. the extent of the legal wrong, and
2. the need for prevention (Annex AT.2)
3. the comparison of the legal positions of the EU Member States

32 CATEGORIZATION OF THE NATIONAL SANCTION SYSTEMS

32.1 Preliminary remarks

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

Such conclusion confirms the findings of the European Commission. It will be useful to remind that in a report dated 2009 the Commission remarked that the national systems of penalties differ widely⁴.

This conclusion referred to infringements of social rules, but can apply to all infringements object of this Study, notably 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 pertain to the 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 conduct sanctioned.
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 the sanctions.

⁴ 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 analysis was able to identify some common elements to most of the systems.

Finally, the analysis was also able to categorize Member States' national systems according to their effectiveness.

32.2 Differences in Member States' sanctioning approach: definitions and concepts

The analysis of Member States' sanctions systems for infringements of EU rules in commercial road transport shows that the definition at national level of the infringements of EU rules is all but consistent.

As a matter of fact we notice that there are Member States such as Belgium, the Netherlands, whose legislation describes in detail or identifies clearly the conducts that are qualified as infringements of the rules on commercial road transport and how they should be sanctioned. The level of detail of the legislation of the above countries can be qualified as very high.

The same is also applicable to the sanctions systems of Luxembourg, Germany, Spain, France, Cyprus, Denmark, Romania, Estonia, Latvia, Lithuania, Northern Ireland, UK, Portugal, Slovenia, Slovakia, and Sweden: the level of detail of such sanction systems could be gauged as high.

German approach to the definition of most serious infringements is very detailed. On this respect we believe that Germany should be considered a best practice in term of definition and sanctioning of the most serious infringements of EU law as listed in Annex IV to Regulation (EC) No. 1071/2009.

Other Member States such as Austria or Czech Republic, Finland, Hungary (as far as infringements of the rules on tachograph are concerned), Ireland define infringements in a broad way. Their level of detail can be defined as not high.

In other Member States such as Greece, Bulgaria, Malta, Poland infringements of social rules are defined in fair detail, but infringements of the EU rules on standards of vehicles are defined in a broad way.

In some Member States, EU legislation has not been implemented and it might be difficult to identify the relevant infringements and sanctions: this is true for the infringements of the Road Package in Member States such as Italy.

32.3 Differences in Member States' sanctioning approaches: consistent versus non consistent sanction systems

A second main difference in Member States' approach pertains to the fact that the sanctions are tailored to the specific infringements. This categorization does not imply that the sanctions are appropriate. It implies that the system differentiates adequately the level of the sanctions according to the seriousness of each infringement or of each category of infringements, thus giving the right message to operators concerning what should be perceived as a serious infringement, and what should be perceived as a non serious infringement.

On this respect the Member States' sanctions systems can be classified as very consistent, consistent, fairly consistent, inconsistent.

The following systems can be considered very consistent:

- Belgian;
- German;
- Dutch;
- Luxembourg.

We notice indeed that the Belgian, Dutch, German, Luxembourg sanctions' systems are tailored to the gravity and the recurrence of infringements in a way that allows to sanction in a severe way those operators who breach the law in a way that affects competition and road safety, and to avoid to penalize in a disproportionate way simple mistakes.

The systems of the following MS should be classified as consistent:

- Finland;

- France;
- Italy;
- Poland;
- Spain.

The French sanction system can be gauged as consistent. Indeed the system sanctions those infringements that should be classified as most serious with heavy penalties. Tailored sanctions are also applied to infringements of social rules that are qualified as very serious infringements by EU legislation. It is however questionable whether they are severe enough.

In the Finnish systems the amount of the financial depends on the revenue of the offenders and they are imposed by the Courts on a case by case basis.

As to Italy and Poland, see comments applicable to the French system.

The following systems should be classified as fairly consistent:

- Austrian;
- Bulgarian;
- Czech;
- Danish ;
- Estonian;
- Greek;
- Hungarian;
- Irish;
- Latvian;
- Lithuania;
- Portuguese;
- Romanian;
- Slovakian;

- Slovenian;
 - Spanish;
 - Swedish;
 - Northern Ireland and UK.
- As to the Austrian system with the exceptions of some sanctions applicable to the undertaking and concerning Regulations (EC) No 561/2006, the same sanction is abstractly foreseen for many different infringements: *i.e.* all infringements of Article 5-9 and Article 10 par. 4 and 5 of Regulation (EC) No 561/2006 are sanctioned as far as the driver is concerned abstractly with the same sanction. The same applies to all infringements of Regulation (EEC) No 3821/85. However, the system differentiates between serious, very serious and minor infringements concerning sanctions applicable to undertakings. Sanctions for infringements of the Road Package are quite homogenous, while the sanctions for infringements of the rules on transport of dangerous goods seem tailored to the seriousness of the infringements. Another factor to be taken into account is that the sanctions become very afflictive in case of recurrence of the infringements.
 - The Bulgarian system does not always take into account the seriousness of infringements: e.g. sanctions applicable to the drivers are quite homogeneous.
 - The Czech system foresees more severe sanctions for infringements that should be considered as more serious (tachograph frauds). However, it does not always take into account the seriousness of infringements: e.g. sanctions applicable to the drivers are quite homogeneous.
 - The Danish system tailors the sanctions for infringements of Regulations (EC) No 561/2006 to the gravity of the infringement, and foresees tolerance limits which are reasonable. Sanctions for infringements of the rules on tachograph are quite homogeneous. While sanctions for infringements of Road Package are tailored to the seriousness of each infringement.

- The Greek system does not seem to differentiate enough between serious and less serious infringements, meaning that the amount of the penalties applied are quite homogeneous.
- As to Estonia, we notice that different infringements are sanctioned with diversified sanctions. However, the difference in the amount of the sanctions does not seem to take into account the level of seriousness of the different infringements sanctioned.
- As to Ireland we notice that sanctions for infringements of the rules of the Road Package are very heavy and have a quite dissuasive effect, while for example sanctions for infringements of the rules on the transport of dangerous goods are not severe: e.g. sanctions abstractly foreseen for infringements of the Road Package are more than 300 times higher than the ones foreseen for the transport of dangerous goods, sanctions for infringements of the rules on the tachograph are not tailored to the seriousness of the infringements.
- As to Hungary, see the comments for Greece.
- As to Latvia, we notice that different infringements are sanctioned with diversified sanctions. However the difference in the amount of the sanctions does not seem to take into account the level of seriousness of the different infringements sanctioned.
- As to Lithuania, see comments for Latvia.
- As to Portugal, see comments for Latvia.
- As to Romania, see comments for Latvia.
- As to Slovakia, see comments for Latvia.
- As to Slovenia, see comments for Latvia.
- As to Spain, the system does not always seem to tailor the sanctions to the seriousness of the infringements.
- As to Sweden, see comments for Latvia.

- As to Northern Ireland and UK we notice that different infringements are

Table 6

sanctioned with diversified sanctions. However, the difference in the amount of the sanctions does not seem to take into account the level of seriousness of the different infringements sanctioned.

The following systems can be classified as non consistent.

As to Cyprus: the same sanctions are abstractly foreseen for most of the infringements of the rules on commercial road transport.

As to Malta: see comments to Cyprus.

32.4 Typology of enforcement: administrative vs. criminal enforcement

The following table illustrates the typologies of enforcement mechanisms in the Member States of the EU.

An analysis of the tables below shows that not only the levels of sanctions in Member States differ widely, but also their qualification and, consequently, the concrete way they are applicable: *e.g.* criminal sanctions are in general imposed by a Court.

Table 6 Social rules		
Member State	Administrative sanction	Criminal Sanction
Austria	✓	In case of recurrence
Belgium	✓	✓
	Belgium has a <i>tertium genus</i> of sanctions called “perception immediate” which is often applied in this field.	
Bulgaria	✓	no
Cyprus	✓	✓
Czech Republic	Mainly	some
Denmark	Only 1 infringement	✓
Estonia	✓	no
Finland	Some	Mainly
France	Only 1 infringement	✓
Germany	✓	no
Greece	✓	Some infringements
Hungary	✓	no
Ireland	Only for 1 infringement	✓
Italy	✓	no
Latvia	✓	no
Lithuania	✓	no
Luxembourg	Some, cumulative with the criminal sanctions	✓
Malta	✓	✓
Northern Ireland	✓	✓
Poland	Some	Mainly
Portugal	✓	Only one infringement
Romania	✓	Only one infringement
Slovakia	Mainly	Some
Slovenia	✓	No
Spain	✓	no
Sweden	✓	Only for 1 infringement
The Netherlands	✓	✓
United Kingdom	✓	✓

Table 7 Road Package

Member State	Administrative Sanction	Criminal Sanction
Austria	Mainly	Application of Criminal Code.
Belgium	No	✓
	Belgium has a <i>tertium genus</i> of sanctions called “perception immediate” which is often applied in this field.	
Bulgaria	✓	no
Cyprus	✓	✓
Czech Republic	Mainly	Some
Denmark	No	✓
Estonia	✓	✓
Finland	Some	Mainly
France	✓	✓
Germany	✓	Only 1 infringement
Greece	✓	no
Hungary	✓	no
Ireland	No	✓
Italy	✓	no
Latvia	Mainly	some
Lithuania	Mainly	Only 2 infringements
Luxembourg	Some, cumulative with criminal sanction	✓
Malta	✓	✓
Northern Ireland	✓	✓
Poland	Mainly	some
Portugal	✓	no
Romania	✓	Only two infringements
Slovakia	Mainly	Some
Slovenia	✓	Only one infringement
Spain	✓	no
Sweden	✓	Only for 2 infringements
The Netherlands	✓	✓
United Kingdom	Some	Mainly

Table 8 Standards of Vehicles		
Member State	Administrative Sanction	Criminal Sanction
Austria	✓	No
Belgium	There are some	mainly
	Belgium has a tertium genus of sanctions called “perception immediate” which is often applied in this field.	
Bulgaria	Mainly	Application of Criminal Code.
Cyprus	✓	✓
Czech Republic	Mainly	Some
Denmark	No	✓
Estonia	✓	✓
Finland	Some	Mainly
France	✓	✓
Germany	✓	Aggravating circumstance or application of SGB
Greece	Mainly	some
Hungary	✓	Only for two infringements. The criminal sanctions however are cumulative
Ireland	Some	mainly
Italy	Mainly	some
Latvia	Mainly	some
Lithuania	✓	Only one infringement
Luxembourg	✓	✓
Malta	✓	✓
Northern Ireland	✓	✓
Poland	Mainly	Some
Portugal	✓	Only one infringement
Romania	✓	Only some infringement
Slovakia	Mainly	Only some infringements
Slovenia	✓	no
Spain	Mainly	Some, but not cumulative.
Sweden	✓	some
The Netherlands	✓	✓
United Kingdom	Mainly	some

32.4.1 Administrative infringement and administrative sanction versus the concept of criminal offence and criminal sanction

In the legal order of the Member States there is no uniform definition of administrative infringement or of criminal offence. In fact Member States do use a formal legal definition. Administrative infringements are those that are defined as such in administrative regulations. Criminal are those that are defined as such in the special part of the criminal code and/or in special statutes/acts. In the criminal law doctrine qualitative distinctions between *mala in se* (criminal) and *mala prohibita* (administrative) are considered as old-fashioned and useless. This means that the distinction is a policy decision, however with consequences concerning:

- the available investigative powers;
- the bodies that are investigating and imposing the sanction;
- the framework of procedural safeguards and applicable human rights standards.

In the legal order of the Member States there is neither a uniform definition of administrative sanctions or criminal sanctions, with exception of the imprisonment that is in general reserved to criminal justice.

In several Member States the same conduct can moreover be an administrative infringement and a criminal offence (overlapping). In practice criminal enforcement is then given priority in case of intent, repeating offenders are serious damage.

The notion of criminal and administrative sanctions varies in Member States' national systems.

While each national system foresees different typologies of sanctions, such as criminal, administrative and civil, there is not a general understanding of what sanction should be considered as administrative.

In Germany for example the notion of administrative sanction is restricted to punitive sanctions, but it is extending to measures intended to ensure the fulfillment of

certain obligations. In Sweden any penalty applied for breaching an administrative law is considered as an administrative sanction.

In Spain administrative sanctions are those sanctions that mirror criminal sanctions but are inflicted by administrative bodies.

Some States, like Germany for instance, have a system of administrative sanctioning (*Ordnungswidrigkeitengesetz*) that can be qualified as a hybrid enforcement system. It is administrative in character, but the appeal procedure is before criminal courts. Moreover many sanctions can be qualified as criminal in nature.

Several States make also the distinction between administrative measures and administrative sanctions.

At international level the European Court of Human Rights in several decisions, has elaborated the concept of “criminal charge”, a concept that encompasses also administrative sanctions⁵.

According to the ECHR a sanction for an infringement can be defined as a criminal charge, triggering all the procedural guarantees under Article 6(1-3) even if the national legislator has defined the infringement of being of a civil or administrative nature. What does matter also is not only the national classification, but also the nature of the infringement and the punitivity of the sanctions imposed.

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.

In this case the ECHR confirmed the application of Article 6(1)⁶ of the European Convention of Human Rights (Convention), regarding the right to an independent and impartial tribunal in competition law procedures.

⁵ Case *Oztiirk vs. Germany* (1984); *Engel a.o. vs. Netherlands* (1976).

⁶ Article 6 reads:

The Court has interpreted Article 6 broadly in terms of its respective application to sanction procedures (including disciplinary and administrative proceedings).

The judgment of the ECHR was rendered further to a complaint of Menarini, an Italian pharmaceutical company based in Italy. In 2001 the Italian Competition Authority (hereinafter, “AGCM”) investigated the company for the alleged breach of antitrust rules. In a decision of 30 April 2003, AGCM fined the company 6 M€ for price fixing and market sharing in the national diabetes diagnosis test market. All the defendant company's appeals against that decision were rejected. Relying on the referred article of the Convention, regarding the right to a fair trial, Menarini submitted a complaint before the ECHR stating that in the Italian jurisdiction it had no access to a court with full jurisdiction, as the national court review was apparently restricted to verifying the legality of the AGCM decision. Thus, under this legal and factual

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Everyone charged with a criminal offence has the following minimum rights:

to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

to have adequate time and facilities for the preparation of his defence;

to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.

framework, the company maintained in the complaint that Italy had breached Article 6 of the Convention.

The decision of the ECHR confirmed that the procedure against *Menarini* in the Italian jurisdiction had a "criminal nature" for the purpose of Article 6 of the Convention. The elements taken into account by the ECHR to determine whether the procedure had a criminal nature, based on settled case law, were: (i) the classification of the infringement by the national legislation; (ii) the nature of the offence; and (iii) the nature and severity of the applied penalty (Engel-criterion)

The infringement was formally qualified by the domestic legislation as having an administrative nature and not criminal, but this criterion was not determinant for the ECHR. In relation to the nature of the infringement, the ECHR stated that the application of competition rules by a competition authority affecting the general interests of economic agents has already been held to be criminal for the purpose Article 6. In addition, the amount of fine applied to Menarini and the respective deterrent effect led the ECHR to determine that the sanction had a criminal nature.

In conclusion, in its case law (mostly related to Article 6 and 7 ECHR), the ECHR has evolved an autonomous notion of criminal law, that goes beyond the national definitions and rules. Since its landmark decision in the Engel case, the ECHR determines the criminal law nature of a provision by 3 criteria: (1) the classification of the provision under national law, (2) the very nature of the offence and (3) the degree of severity of the penalty.

For what is of interest for this Study, especially regarding the third Engel-criterion, this case law does not allow to draw an exact line to decide which level of (monetary) penalty automatically can be qualified as having a criminal nature and thus triggers the guarantees under Article 6(1-3)⁷.

However, based on a comparison of all Member States' sanction systems and on the Engel-criterion, this Study has identified some levels of fines that could be

⁷ See for example the different thresholds in the judgments *Weber* and *Ravnsborg*: ECtHR *Weber v. Switzerland*, App. No. 11034/84, 22 May 1990; ECtHR *Ravnsborg v. Sweden*, App. No. 14220/80, 23 Mar 1994.

considered of criminal nature in all Member of the EU, and should thus comply with the minimum criteria of Article 6(1-3) ECHR.

For example it could be argued that fines above 1,000 Euros applicable to natural persons could be deemed to be criminal pursuant to the Engel criterion.

On the other hand, fines above 10,000 Euros for legal person could deem to be criminal in nature pursuant to the Engel criterion.

Other sanctions deemed criminal in nature would be also measures such as exclusion from jobs, exclusion from subsidy schemes.

On this respect the tables below provide a useful overview of the typology of criminal and administrative sanctions applicable in all Member States to infringements of road transport legislation object of this Study.

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
<u>Austria</u>	1 year imprisonment	2 year imprisonment	Euro 72.00	Euro 50,000.00	
<u>Belgium</u>	8 days imprisonment; Euro 10; Temporary immobilization; 3 days disqualification from driving.	6 months imprisonment Euro 60,000.00; --- Permanent disqualification from driving.	Euro 300.00	Euro 3,000.00	
<u>Bulgaria</u>	---	Imprisonment up to 2 years	BGN 50.00, equal to Euro 25.55.	BGN 7,000.00, equal to Euro 3,578.30	Please be aware of the fact that:

⁸ Please be aware that for the purpose of this table we are showing only the amount of the administrative fines. Any other administrative measure (immobilization of the vehicle, withdrawal of licence, ecc) is not considered in this table. For a more detailed list of such measures, please refer to the national tables.

⁹ *Ut supra*

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
					criminal sanctions are provided only in one circumstance; for the sanction to be criminal, there must be recidivism; the origin of the sanction is the criminal code and not road transport legislation.
<u>Cyprus</u>	---	Imprisonment up to 5 years	CYP 50,00, equal to circa Euro 85,00	CYP 40,000.00, equal to circa Euro 68,244.00	
<u>Czech Republic</u>	---	Maximum 3 years imprisonment Seizure of goods	---	Fine up to CZK 1,000,000.00 equal to circa Euro 40,000.00	Please be aware that a very limited number of infringements are

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
		Disqualification			qualified as criminal.
<u>Denmark</u>	Fine of DKK 100 for Driver; Fine of DKK 200 for Operator	Maximum fine of DKK 25,000 (if aggravating circumstances are applied); Fine of DKK 3,000 for Driver; Fine of DKK 6,000 for Operator; Imprisonment up to 6 years; Suspension of license	NA	NA	
<u>Estonia</u>	---	Imprisonment up to 3 years		For natural person a fine up to Euro 800.00;	Criminal sanction are provided for only few

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction ⁸	Minimum administrative sanction ⁹	Maximum administrative sanction	Comments
				For legal person a fine up to Euro 3,200.00	infringements. For those infringement a pecuniary sanction is always provided together with the imprisonment. With particular regards to the Estonian legal system, we cannot provide with a range of such penalties as the amount heavily relies on the financial capacity of the offender.
<u>Finland</u>	----	Imprisonment up to 6 years	NA	NA	Most of the infringement classified as criminal are sanctioned also with a fine. The amount of the

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction ⁸	Minimum administrative sanction ⁹	Maximum administrative sanction	Comments
					fine cannot be determined in advance as it depends on the net income of the offender.
<u>France</u>		Fine up to Euro 30,000.00; Maximum of 7 years imprisonment; Suspension of the license for up to 3 years; Cancellation of the license; Confiscation of the vehicle;	NA	NA	

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
		Prohibition from driving; Road safety awareness works; Community works.			
<u>Germany</u>	---	Imprisonment up to 10 years	---	Fine up to Euro 200,000,00	
<u>Greece</u>	---	Up to 10 years imprisonment; Up to Euro 3,000 fine plus 6 months imprisonment	Euro 20,00	Euro 4,000.00.	Please be aware that the Greek legislation in the field of road transport provides for a very limited number of criminal infringements.
<u>Hungary</u>		Imprisonment up to 2 years	Circa Euro 17.00	Circa Euro 2,775.00	Please be aware that the Hungarian legislation in

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
					the field of road transport provides for a very limited number of criminal infringements (2).
<u>Ireland</u>	Minimum fine Euro 1.000,00	Maximum fine Euro 500,000.00; Imprisonment up to 3 years.	---	Fixed charges prescribed by court	
<u>Italy</u>	Imprisonment from 1 year; Fine from Euro 2,257.00.	Imprisonment up to 6 years; Fine up to Euro 9,032.00	Minimum fine equal to Euro 39,00	Maximum fine equal to Euro 18,000.00	Please be aware that the Italian legislation in the field of road transport provides for a very limited number of criminal infringements.

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
<u>Latvia</u>		<p>Imprisonment up to 10 years or community services;</p> <p>a fine not exceeding one hundred and fifty times the minimum monthly wage;</p> <p>deprivation of the right to operate a vehicle for a term not exceeding five years</p>	Minimum fine of LVL 2, equal to circa Euro 3	Maximum fine of LVL 5,000.00, equal to circa Euro 7,160.00	
<u>Lithuania</u>		Imprisonment up to 6 years	---	A fine up to Euro 2.896.00	Please be aware that the Lithuanian legislation in the field of road transport provides for a very

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
					limited number of criminal infringements.
<u>Luxembourg</u>	Imprisonment of 8 days; Fine of Euro 145.	Imprisonment up to 6 years; Fine of Euro 25,000.00.	Euro 12,00.	Euro 250.00.	
<u>Malta</u>	7 months of imprisonment; Fine of Euro 58,23.	Imprisonment up to 4 years; Fine up to Euro 12,000.00.	---	Maximum fine equal to Euro 3,000.00.	
<u>The Netherlands</u>			Euro 100.00	Euro 4,400.00.	
<u>Northern Ireland</u>	---	Imprisonment up to 2 years;	Fixed penalty of GBP 30.00, equal to circa	Fixed penalty of GBP 200.00, equal to circa	

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
		A fine up to 20.000,00 GBP, equal to Euro 24,762.3 ¹⁰	Euro 37.00.	Euro 250,00; On summary conviction a maximum fine of GBP 1,000.00 equal to circa Euro 1,240.00	
<u>Poland</u>	Imprisonment from 1 month; A fine from PLN 50, equal to Euro 12.2.	Imprisonment up to 5 years; A fine up to PLN 1,080,000.00, equal to Euro 265,080.00	PLN 50.00 equal to circa Euro 12.00.	PLN 15,000.00 equal to circa Euro 3,660.00	
<u>Portugal</u>	---	Imprisonment up to 2 years;	Euro 60.00	Euro 61,200.00	

¹⁰ \ Conversion rate correct at October 10th, 2012.

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
		Fine up to 240 days.			
<u>Romania</u>	Imprisonment from 1 year; A minimum fine of RON 500, equal to circa Euro 110.00	Imprisonment up to 5 years; A maximum fine of RON 30.000,00, equal to circa Euro 6,865.00	RON 1,500.00, equal to circa Euro 340.00	RON 40.000,00 equal to circa Euro 9,200.00	Please be aware that the Romanian legislation in the field of road transport provides for a very limited number of criminal infringements.
<u>Slovakia</u>		Imprisonment up to 10 years	---	Maximum fine of Euro 50,000.00	Please be aware that the Slovakian legislation in the field of road transport provides for a very limited number of criminal infringements.
<u>Slovenia</u>	N.A	N.A.	Euro 40.00	Euro 8,000.00	Please be aware that there are no specific

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction ⁸	Minimum administrative sanction ⁹	Maximum administrative sanction	Comments
					criminal sanctions in the field of road transport. However, we can affirm that the amount of fines for minor offences can be analogically applied to the field of road transport. In the light of the above, we can affirm that the maximum fine applicable to a natural person is Euro 5.000,00 and to an undertaking is Euro 1.000.000,00.
<u>Spain</u>	N.A	N.A.	Euro 200,00	Euro 18,000.00	In the framework of the Spanish legal system,

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction ⁸	Minimum administrative sanction ⁹	Maximum administrative sanction	Comments
					cannot be supported that infringements covered by the transport legislation would be considered as criminal.
<u>Sweden</u>	---	Imprisonment up to 1 year; Fines, no threshold can be identified	500.00 SEK, equal to circa Euro 58.00	4,000.00 SEK, equal to circa Euro 460.00.	Please be aware that the Swedish legislation in the field of road transport provides for a very limited number of criminal infringements. Moreover, for some infringements the criminal code may be applicable.

Table 9

Criminal sanctions and administrative sanctions in the commercial road transport sector - range

Member State	Minimum criminal sanction	Maximum criminal sanction⁸	Minimum administrative sanction⁹	Maximum administrative sanction	Comments
<u>United Kingdom</u>	---	Imprisonment up to 2 years; A fine up to 20,000.00 GBP, equal to Euro 24,762.3 ¹¹	60.00 GBP, equal to circa Euro 74.00	200.00 GBP, equal to circa Euro 250.00	

¹¹ Correct at October 10th, 2012.

32.5 Proportionality and dissuasiveness

A fourth main difference among Member States' sanctions systems pertains to their proportionality and dissuasiveness, *i.e.* their suitability to punish in an adequate and proper way the infringements of road transport according to their seriousness.

In this respect, firstly, we notice that only some Member States have adopted specific sanctions for the infringements that are qualified as most serious infringements of EU law as listed in Annex IV of Regulation (EC) No 1071/2009, notably, Bulgaria, Germany, Estonia, Romania and Spain (to a certain extent).

Secondly, we notice that that only some Member States have adopted specific sanctions for the infringements that are qualified by EU law as very serious: Austria, France, Latvia, Luxembourg, Netherlands, Romania, Spain (to a certain extent).

The tables below (last paragraphs of this Chapter) provide an overview of the sanctions applicable in the different Member States for infringements of the most serious and very serious infringements of EU law. They show that the level of sanctions differs widely among Member States also with respect to such specific infringements.

It will be useful to make a couple of examples to show this difference. The same most serious infringement “*exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more*” is punished:

- 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 €.

Another example is: “*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*”.

This infringement is punished:

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

The analysis of these tables can allow assessing the proportionality and dissuasiveness of the national systems of all Member States.

Based on such analysis, the Authors of this Study concluded that the following systems are dissuasive:

- Belgium;
- Germany;
- Luxembourg;
- Netherlands, to the extent that criminal sanctions apply when road safety is deemed affected;
- Portugal, as far as infringements of social rules are concerned;
- Slovakia.

Indeed such countries sanction with heavy sanctions the most serious and very serious infringements of EU law. For States like Belgium and Netherlands, the situation is more complex, indeed the law empowers the national authorities to apply severe sanctions or to opt for less severe sanctions. Therefore it is up to the national authorities to apply tailored sanctions to the seriousness of the infringements detected. In practice the Public Prosecutor Office has elaborated guidelines to select the cases that deserve criminal law enforcement.

That said, the sanctions' systems of Slovakia and Portugal were found not particularly consistent, meaning that such systems do not seem to differentiate enough between infringements that should be sanctioned with heavy sanctions and infringements that should be sanctioned with less severe sanctions.

On the contrary, it is posited in agreement that the Belgian, Dutch, German and Luxembourg systems could be considered to be proportionate systems since:

- they sanction infringements that are qualified as most serious and very serious with severe sanctions, or they empower the national authorities to apply severe criminal sanctions when road safety is in danger (dissuasiveness).
- their system foresees less severe sanctions for less serious infringements.
- thus, they reduce the incentive to commit more serious violations as the damage threatened is proportionate to the gain realized from breaching the law.

32.6 Common features to Member States' sanctions' systems

The analysis allowed identifying common features to most or all Member States' national sanctions systems in the field of road commercial transport.

Firstly, most of them contain provisions on recidivism, meaning provisions that foresee most severe penalties for repeated offenders.

Secondly, most of the Member States' sanction systems allow to sanction infringements committed by foreign drivers and infringements committed abroad.

Thirdly, most of the Member States foresee not only the liability of the driver but also the liability of the transport undertaking. However, not all of them foresee more severe sanctions for the undertakings than the ones applicable to the driver.

Fourthly, in all Member States criminal sanctions are imposed by a Court.

Finally, in all Member States criminal sanctions can consist in imprisonment or in financial penalties.

The table below illustrates the common elements in the Member States' legislation in the field of commercial road transport.

Table 10

ROAD COMMERCIAL TRANSPORT – COMMON TRENDS

Member State	Recidivism	Imprisonment qualified as criminal	Sanction to foreign drivers	Criminal sanctions are imposed by a court	Liability of the transport undertaking	Financial penalties qualified as criminal
Austria	Yes	No Imprisonment can also be a principal administrative penalty.	Yes	Yes	Yes	Yes
Belgium		Yes	Yes	Yes	Yes	Yes
Bulgaria	Yes	Yes	There are no specific rules sanctioning foreign drivers, thus we assume they are sanctioned as nationals.	Yes	Yes	Yes
Cyprus	Yes	Yes	Yes, foreign drivers	Yes	Yes	Yes

Table 10

ROAD COMMERCIAL TRANSPORT – COMMON TRENDS

			are treated as nationals.			
Czech Republic	Yes	Yes	Yes, albeit some special rules apply.	Yes	Yes	Yes
Denmark	Yes	Yes	Yes	Yes	Yes	Yes
Estonia	Yes	Yes	Yes		Yes	Yes
Finland	no	Yes	Yes	Yes	No liability of legal person, natural person may be liable	Yes
France	Yes	Yes	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes		Yes	Yes
Greece	Yes	Yes	Yes	Yes	Yes	Yes
Hungary		Yes	Yes	Yes	Yes	Yes
Ireland	No	Yes	Yes, specific	Yes	Yes	Yes

Table 10

ROAD COMMERCIAL TRANSPORT – COMMON TRENDS

			provisions with respect to foreign drivers			
Italy	Yes	Yes	Yes, specific provisions apply.	Yes	Yes	Yes
Latvia	no	Yes	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	Yes	Yes, general sanctioning system applies together with specific rules for non residents	Yes	Yes	Yes
Malta	Yes, but – in the field of road transport – only in the Passenger Transport Service	Yes	Yes	Yes	Yes	Yes

Table 10

ROAD COMMERCIAL TRANSPORT – COMMON TRENDS

	regulation and not in the Motor Vehicles (Carriage of Goods by Road) Regulations					
Netherlands	Yes. Dutch law provides also for “repeated recidivism” which is an aggravated recidivism.	Yes	Yes, specific rules apply	Yes	Yes	Yes
Northern Ireland	no	Yes	Yes	Yes	Yes	Yes
Poland	no	Yes	Yes	Yes	Yes, administrative liability.	Yes
Portugal	Yes	Yes	Yes		Yes	Yes
Romania	Yes	Yes	Yes, general rules applied together	Yes	Yes	Yes

Table 10

ROAD COMMERCIAL TRANSPORT – COMMON TRENDS

			with some specific rules			
Slovakia	Yes	Yes	Yes	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes, EU national. Nothing is provided for non EU nationals	Yes	Yes	Yes
Sweden		Yes	Yes		Yes	Yes
United Kingdom	Yes	Yes	Yes	Yes	Yes	Yes

32.7 Conclusions on the effectiveness of Member States sanctions systems

The analysis of the sanctions systems of the 27 Member States of the EU showed that four sanctioning systems should be classified as proportionate and dissuasive:

- Belgium;
- Germany;
- Luxembourg;
- Netherlands.

Such legal analysis has been complemented by collections of data concerning infringements detected in the Member States of the EU.

The analysis of data on infringements detected shows that despite the German sanctions system can be deemed proportionate, many infringements are still detected on German routes.

It could be argued that such element could cast into doubt the effectiveness of the German system.

The same applies to Luxembourg system.

We believe instead 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:

- 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.

32.8 Overview of the sanctions applicable to the most serious infringements of EU law as listed in Annex IV of Regulation (EC) No 1071/2009

		Infringement	Infringement	Infringement	Infringement	Infringement	Infringement	Infringement	Infringement
	Member State	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 (A) and/or speed limiter (A.I), or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter (B) or falsifying record sheets or data downloaded from the tachograph and/or the driver	driving without a valid roadworthiness certificate if such a document is required under Community law (A) and/or driving with a very serious deficiency of, inter alia, the braking system, the steering	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	carrying passengers or goods without holding a valid driving licence (Infringement A) or carrying by an undertaking not holding a valid Community licence (infringement B)	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 and/or forged documents	carrying goods exceeding the maximum permissible laden mass by 20% or more for vehicles the permissible laden weight of which exceeds 12 tones, and by 25% or more for vehicles the permissible laden weight of which does not exceed 12

				card 7(C)	linkages, the wheels/tires, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle (B)	it leads to a decision to immobilise the vehicle (B)			tonnes
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A U S T R I A 12	No specific sanction. Administrative sanction. Monetary penalty from 1,453 € up to 7,267€ (Entrepreneur) Monetary penalty up to 726,- € (Driver)	No specific sanction. Administrative sanction. Monetary penalty from 1,453 € up to 7,267€ (Entrepreneur) Monetary penalty up to 726 € (Driver)	No specific sanction. Administrative sanction. Monetary penalty from 1,453 € up to 7,267 € (Entrepreneur) Monetary penalty up to 726€ (Driver) Possible criminal sanction applicable to anyone who falsifies data downloaded from the recording equipment or on the driver card in order to prove a right or a claim: Imprisonment up to 1 year (Sec. 225a Criminal Code)	No specific sanction. Administrative sanction Monetary penalty up to 5,000€; 1 st case of recurrence: alternatively 6 weeks imprisonment; From the 2 nd case of recurrence on: Imprisonment and monetary penalty (Owner of the vehicle, Sec. 134 Motor Vehicle Act)	No specific sanction. Administrative sanction Monetary penalty from 110 € up to 50,000 € (Danger category I and II, which might to a decision to immobilise the vehicle)	No specific sanction. Administrative sanction. Monetary penalty up to 726 € (Driver) Monetary penalty from 1,453€ up to 7,267 € (Entrepreneur) Driving without driving license: Monetary penalty from 363 € up (minimum fine, driver; Sec. 37 Act on the driving license)	No specific sanction. Administrative sanction. Monetary penalty. from 300 € up to 2,180 € Case of recurrence: from 350 € up to 3,600 € (Employer) Monetary penalty from 300 € up to 5,000 €; 1 st case of recurrence: alternatively 6 weeks imprisonment; From the 2 nd case of recurrence on: Imprisonment and monetary penalty (Owner of the vehicle, Sec. 134 Motor Vehicle Act)	No specific sanction. Administrative sanction. Monetary penalty up to 5,000 €; 1 st case of recurrence: alternatively 6 weeks imprisonment; From the 2 nd case of recurrence on: Imprisonment and monetary penalty
	However, please note that in case of recurrent infringements Austrian law foresees imprisonment			Possible criminal sanction applicable to anyone who uses	Monetary penalty from 1,453 € up to 7,267 € (Entrepreneur) Monetary			From the 2 nd case of recurrence on: Imprisonment and monetary penalty

B E L G I U M 13	No specific sanction.	No specific sanction.	No specific sanction.	No specific sanction.	No specific sanction. Criminal sanction	No specific sanction	No specific sanction.	No specific sanction.	
	Criminal sanction.	Criminal sanction.	Criminal sanction	Criminal sanction	Imprisonment and/or fine depending on the qualification of the infringement +	Criminal sanction	Criminal sanction	Criminal sanction	
	Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (driver and undertaking)	Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (driver and undertaking)	Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (driver and undertaking)	Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (driver and undertaking)	Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (driver and undertaking)	Confiscation of the substances, mixtures thereof and machines is possible (driver and undertaking)	Fine from 200 € up to 2,000 € Deprivation of the right to drive a motor vehicle for a period of at least 8 days up to 5 years.	Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (driver and undertaking)	Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (driver and undertaking)
						No specific sanction			
						Criminal sanction			
						Imprisonment:8 days to 6 months and/or			

¹³ Please note that Belgium has also a system of financial penalties called *perception immédiate*.

						a fine 300 €-60,000 € (Driver Undertaking)		
B U L G A R I A	No specific sanction. Administrative fine up to 1,500 BGN (driver) (1 BGN = 0,510681 €; 1 € = 1,95817 BGN)	No specific sanction. Administrative fine up to 1,500 BGN (driver)	No specific sanction. Administrative fine from 1,500 BGN (driver) up to 5,000 BGN (undertaking)	Administrative sanction Fine between 50 BGN and 150 BGN for the driver	Administrative sanction Fine of 3,000 BGN for a driver and a sanction of BGN 3,000 for the undertaking	Administrative sanction Fine 1,500 BGN in case of first violation (driver) 3000 BGN in case of first violation (undertaking)	Imprisonment up to three years/up to ten years. In minor cases, the sanctions are up to a six-month imprisonment or probation, or an imprisonment up to three years. Imprisonment up to two years or probation for providing false information in	Fines varying between 500 BGN and 5,000 BGN (sender, person responsible for loading)

							order to obtain an official document.	
C Y P R U S	No specific sanction Administrative fine up to 2000 £ and or criminal sanction of imprisonment not exceeding six months (employer, driver) (1 GBP= 1,23833 €; 1 € = 0,807542 GBP)	No specific sanction Administrative fine up to 2000 £ and or criminal sanction of imprisonment not exceeding six months (employer, driver)	No specific sanction Administrative fine up to 2000 £ and or criminal sanction of imprisonment not exceeding six months (employer, driver)	No specific sanction Criminal sanction imprisonment not exceeding three months (Owner / person who has control or the undertaking of the vehicle)	No specific sanction Administrative fine not exceeding forty thousand pounds and/or criminal sanction of imprisonment not exceeding five years (any person)	No specific sanction Administrative fine not exceeding 2000 £ and/or imprisonment not exceeding one year (in case of repeating offence , the law imposes further which is not exceeding 100 £ for each day of the infringement	No specific sanction Administrative fine up to 2000£ and or criminal sanction of imprisonment not exceeding six months	No specific sanction Administrative fine up to 2000 £ and or criminal sanction of imprisonment not exceeding six months (driver)

						<p>(any person).</p> <p>Also, section 23(1) of the same law, it states that violation of the provisions of this Act and the regulations shall be punished regardless if any criminal or disciplinary liability is imposed under other legal provisions</p> <p>Fine: between fifty and one thousand pounds,</p>		
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						depending on the severity of the attested violation (any person)		
C Z E C H R E P U B L I C	No specific sanction Administrative sanction Penalty of up to 10,000 CZK or Disqualification from driving ranging from six months to one year (driver). 1 CZK = 0,0400690 €; 1€= 24.9569 CZK)	No specific sanction Administrative sanction Penalty of up to 10,000 CZK, or Disqualification from driving ranging from six months to one year driver).	No specific sanction Administrative sanction Penalty of up to 5,000 CZK (driver).	No specific sanction Administrative sanction Penalty of up to 10,000 CZK or Disqualification from driving ranging from six months to one year (Different sanction for driving with a very serious deficiency)	No specific sanction Administrative sanction Penalty of up to 10,000 CZK (driver)	No specific sanction (A) Administrative sanction Penalty of up to 10,000 CZK, or Disqualification from driving ranging from six months to one year (driver) (B) Fine of up to	No specific sanction Administrative sanction Penalty of up to 5,000 CZK (driver).	No specific sanction Administrative sanction Penalty of up to 500,000 CZK (driver).

				(driver)		CZK 500,000 (transport operator)		
D E N M A R K	No specific sanction Criminal sanction Fine DKK (driver 100 and operator 200 DKK each time the limit of driving time is exceeded with 1 per cent) or imprisonment(of maximum four months). Suspension of driver's driving license if infringement of more than 30 per	No specific sanction Criminal sanction Fine (driver 100 DKK and operator 200 DKK each time the limit of driving time is exceeded with 1 per cent) or imprisonment (of maximum four months) Suspension of driver's driving license if	No specific sanction Criminal sanction Fine (3,000 DKK for the driver and 6,000 DKK for the owner) or imprisonment (of maximum four months). Conditional suspension of driver's driving license, if the rules have been infringed 6 times in three years. If the rules have	No specific sanction Criminal sanction Fine not further specified However, if infringement is subject to stricter sanctions under Danish criminal law, imprisonment may be applicable	No specific sanction Criminal sanction Fine not further specified However, if infringement is subject to stricter sanctions under Danish criminal law, imprisonment may be applicable (any person).	No specific sanction Criminal sanction Fine set in accordance with the size of any economic gains sought by the infringement up to 12 months of imprisonment (driver) For	No specific sanction Administrative sanction Withdrawal of the card by the police Criminal Sanctions: Please note that forgery and fraud are separately criminalized according to the general rules of the Danish	No specific sanction Criminal sanction Fine of 1,000 DKK or more (divisible by 500 DKK), cf. Highway Code section 118a (driver, transport operator, owner)

	cent. 1 DKK = 0.134095 €; 1 € = 7.45742 DKK)	infringement of more than 30 per cent.	been infringed 12 times in three years, the suspension of the drivers driving license is absolute.	(owner, user).		infringements of rules on Community license: Current level of fines 4,000 DKK (any person)	Penal Code. The penalty ranges from fine to imprisonment of up to 6 years in severe cases.	
E S T O N I A	No specific sanction Misdemeanor sanction Fine up to 400 € (driver). For transport undertakings a fine up to 800 € (natural persons) or up to 3,200 € (legal person).	No specific sanction Misdemeanor sanction Fine up to 800 €(driver). For transport undertakings a fine up to 800 € (natural persons) or up to 3,200 € (legal	Misdemeanor sanction Fine up to 400 € - 1,200 € depending on the specific violation (driver). For transport undertakings a fine up to 800 € (natural persons) or up to 3,200 € (legal person).	Misdemeanor sanction Fine up to 200 € (driver). For transport undertakings a fine up to 400 € (natural persons) or up to 3,200 € (legal person).	Misdemeanor sanction Fine up to 800 € (driver). For transport undertakings a fine up to 800 €(natural persons) or up to 3,200 € (legal person)	Misdemeanor sanction Fine up to 400 € (driver) (A). For transport undertakings a fine of 1,200 € (natural	No specific sanction Misdemeanor sanction Fine up to 400 € (driver). For transport undertakings a fine up to 400 € (natural persons) or up to 3,200 € (legal	Misdemeanor sanction Fine up to 800 € (driver). For transport undertakings a fine up to 800 € (natural persons) or up to 3,200 € (legal person).

		person).				person). or up to 3,200 € legal person (A). For transport undertakings a fine of 1,200 € (natural person). or up to 3,200 € legal person (B)	person) Criminal sanction In case of forging relevant documents a pecuniary punishment or up to one year of imprisonment (natural person).	
F I N L A N D	No specific sanction Criminal sanction: fine no further specified (driver)	No specific sanction Criminal sanction: fine no further specified (driver)	No specific sanction Criminal sanction: fine no further specified (driver, employer, or representative of the employer)	No specific sanction Criminal sanction Fine no further specified or max. 6 months Imprisonment or	No specific sanction Criminal sanction: fine no further specified or max. 2 years of imprisonment (the author of the offence)	No specific sanction Criminal sanction: fine no further specified or max. 6 months imprisonment (the author of	No specific sanction Criminal sanction: fine no further specified (driver)	No specific sanction Criminal sanction: fine no further specified or max. 6 months imprisonment (the road user)

				30 day-fines or max 2 years of imprisonment (road user)		the offence)		
F R A N C E	No specific sanction Criminal sanction Fine up to 1,500 € (driver, transport manager, or transport operator) This amount can be increased to € 3,000 € in the case of a persistent offender and Additional penalties possible.	No specific sanction Criminal sanction Fine up to 1,500 € (driver, transport manager, or transport operator) This amount can be increased to 3,000 € in the case of a persistent offender and	No specific sanction Criminal sanction Fine up to 30,000 € 1 year prison (Misdemeanour) (driver, transport manager, or transport operator)	No specific sanction Criminal sanction Fine up to 750 € (IV class) (owner of the vehicle)	No specific sanction Criminal sanction Fine up to 30,000 € fines and 1 year of prison (Misdemeanors) (driver, transport manager, or transport operator, principal)	No specific sanction Criminal sanction Fine up to 15,000 € and imprisonment up to 1 year - Possible immobilizatio n of the vehicle (Article L325- 1) + Prohibition from driving	No specific sanction Criminal sanction Fine up to 30,000 € 1 year prison (Misdemeanour) (driver, transport manager, or transport operator)	No specific sanction Criminal sanction Fine up to 750 € (IV class) if it exceeds of the maximum authorized weight more than 1 tone, multiplication of the fine for each tone of overtaking + Administrative

	<p>The maximum amount of a fine applicable to legal persons is five times that applicable to natural persons.</p>	<p>Additional penalties possible.</p> <p>The maximum amount of a fine applicable to legal persons is five times that applicable to natural persons.</p>				<p>this type of vehicle of more than five years</p> <p>Road safety awareness work (cumulative)</p> <p>+</p> <p>Administrative sanction</p> <p>Possible confiscation of the vehicle (driver) (A)</p> <p>Criminal sanction</p> <p>Fine up to 1,500 € (</p> <p>recidivism (fine up to</p>		<p>sanction</p> <p>Possible Immobilization of the vehicle (various operators)</p>
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						3,000 € for natural persons/for transport operators ten times what provided for natural persons) (Transport manager / Undertaking) (B)		
G E R M A N Y	Administrative sanction Fine of up to 15,000 € (undertaking) Fine of up to 5,000 € (driver)	Administrative sanction Fine of up to 15,000 € (undertaking) Fine of up to 5,000 €	Administrative sanction Fine of up to 15,000 € (undertaking) (A) - Fine of up to € 2,000 (owner) (A.1) -Criminal	No sanction (A) Administrative sanction Fine of up to 2,000€ (owner) (B)	Criminal sanction Imprisonment for up to 5 years or fine (carrier and sender) (A) Administrative sanction Fine of up to 1,000 € (B)	Criminal sanction Imprisonment for up to 1 year or fine (A) Administrative sanction	Criminal sanction Imprisonment for up to 5 years or fine (offender)	Administrative sanction Fine of up to 2,000 € (owner)

			<p>sanction</p> <p>Imprisonment for up to 5 years or fine (offender)(B)</p> <p>- Criminal sanction</p> <p>Imprisonment for up to 2 years or fine (offender) (C)</p>		<p>(carrier, sender, driver)</p> <p>Plus criminal sanction</p> <p>Imprisonment for up to 5 years or fine (driver , owner).</p>	<p>Fine of up to 20,000 € (carrier)(B)</p>		
G R E E C E	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine up to 300 € (driver) 600 € (undertaking)</p> <p>plus removal of the vehicle's</p>	<p>No specific sanction</p> <p>Administrative sanction Fine up to 300 € (driver) 600 € (undertaking)</p> <p>plus removal of the vehicle's registration</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine up to 1,000 € (driver) to 4,000 € (undertaking)</p> <p>plus removal of the vehicle's registration document and</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine up to €400 (driver and owner)</p>	<p>No specific sanction</p> <p>Administrative sanction 50,000 GRD (approx. 146.73 €) (driver)</p> <p>For certain breaches, as an administrative measure, the driver's license may be revoked</p>	<p>No specific sanction</p> <p>Criminal sanction</p> <p>max. 3,000 € plus imprisonment of up to six months (driver) (A)</p>	<p>No specific infringement</p> <p>Administrative sanction</p> <p>Fine 1,00 € - 4,000 € plus removal of the vehicle's registration document and number-plates</p>	<p>No specific infringement</p> <p>Administrative sanction</p> <p>Fine 3,000 € plus removal of the vehicle's registration document and number-plates</p>

	<p>registration document and number-plates for a period of one month</p> <p>(1 GRD = 0.00293470 €; 1 €= 340.750 GRD)</p>	<p>document and number-plates for a period of one month</p>	<p>number-plates for a period of six months</p> <p>Infringement A1 and B could also be qualified as forgery:</p> <p>Criminal sanction: imprisonment of at least three months and maximum imprisonment of up to 10 years.</p>		<p>for 10 days – Fine 100,000 GRD to 1,000,000 GRD (i.e. approx. 293,47 € to 2,934.70 €) (undertaking)</p>		<p>for a period of six months (driver, transport undertaking)</p> <p>Criminal sanction possible: imprisonment of at least three months and of up to 10 years</p>	<p>for a period of four months (offender not specified)</p>
H U N G A R Y	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine in the amount of up to approximately 1,041€. (driver,</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine in the amount of up to approximately 1,041 € (driver</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine in the amount of approximately 35 € up to</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine in the amount of approximately</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine in the amount of approximately 2,775 €. (various</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine in the amount of approximately 694 € (A)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine in the amount of approximately 35 € up to</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine in the amount of approximately 35 € up to 2,775</p>

	undertaking)	undertaking).	approximately 2,082 € (driver undertaking).	17 € and approximately 520 € (offender).	operators, e.g. loader, carrier)	Fine in the amount of approximately 2,775 € (B). (driver and undertaking)	approximately 2,082 € (driver and undertaking)	€ (various transport operators)
I R E L A N D	No specific sanction Criminal sanction up to 3 months imprisonment Fine from 1,000 € up to 2,000 € (driver).	No specific sanction Criminal sanction Up to 3 months imprisonment Fine from 1,000 € up to €2,000 (driver).	No specific sanction Criminal sanction Imprisonment for up to but not exceeding 6 months. Fine up to but not exceeding £1,000 (approximately 1,240.13 €). (offender)	No specific sanction Administrative sanction 5 penalty points Criminal sanction a fine of up to 2,000 € or imprisonment for a term of up to three months	No specific sanction Criminal sanction Fine not exceeding 1,900 €. (various operators).	No specific sanction Criminal sanction Fine of up to 5,000 € and/or a term of imprisonment of up to 6 months Plus Penalty Points (driver) (A) No specific	No specific sanction Criminal sanction Imprisonment for up to but not exceeding 6 months (offender).	No specific sanction Criminal sanction A fine of 1,500 € Plus Administrative sanction penalty points (user, owner or consignor)

				Recidivism: disqualification n period of not less than one year and (driver and owner)		sanction Criminal sanction Fine or to imprisonment for a term not exceeding 6 months or to both, or fine not exceeding 500,000 € or to imprisonment for a term not exceeding 3 years or to both (undertaking) (B)			
I	No specific	No specific	No specific	No specific	No specific	No specific	No specific	No specific	No specific

T A L Y	sanction	sanction	sanction	sanction	sanction	sanction	sanction	sanction
	Administrative sanction	Administrative sanction	Administrative sanction	Administrative sanction	Administrative sanction	Administrative sanction of the seizure of the vehicle for 3 months	Administrative sanction	Administrative sanction
	Fine from 400 € - to 1,600 € (driver)	Fine 400 € - 1,600 € (driver)	Fine 798 € - 3,194 €	Fine 159 € - 639 €	Fine 1,886 € - 7,546 €	Suspension of the driving license from 3 up to 12 months.	Fine 798 € - to 3,194 €	Suspension of the circulation card from one up to 6 months and of the driving license from 15 up to 30 days
			Suspension of the driving license from 15 days up to 3 months (driver) (A)	Doubled when the test is omitted for more than once.	Suspension of the card of circulation and of the driving license for a period between 2 up to 6 months (various operators)	Suspension of the driving license from 3 up to 12 months.	Suspension of the driving license from 15 days up to 3 months (driver)	Seizure of the vehicle (driver and client)
				Suspension of the circulation (driver)		From 2,257 € up to 9,032 € (driver)		
						+ Plus Criminal sanction (in case of reiteration) imprisonment up to 1 year		

						(A). Administrative sanction Fine 2,000 € - 12,000 €. Fine (2,900 €) - 18,000 € in case of 2 infringement in 5 years (undertaking). (B).		
L A T V I A	Administrative sanction Fine 50 LVL -100 LVL (around 143 €) (driver) 150 LVL - 300 LVL (carrier)	Administrative sanction Fine 50 LVL -100 LVL (around 143 €) (driver) 150 LVL (around 215 €)- 300 LVL (around	Administrative sanction Fine 200 LVL - 400 LVL (driver) Fine 500 LVL - 1 000 LVL (around 1,400 €) (carrier)	Administrative sanction Fine 40 LVL - 60 LVL (driver and undertaking) (A)	Administrative sanction Fine 250 LVL - 500 LVL (carrier) Fine 250 LVL - 500 LVL (consignor - a	Administrative sanction Fine 30 LVL- 400 LVL (driver) with administrative arrest from 5	Administrative sanction Fine 200 LVL – 400 LVL (driver) Fine 500 LVL - 1 000 LVL	Administrative sanction Fine LVL 200- 500 (driver) Fine LVL 1 600-4 000 (carrier)

	(1 LVL = 430 €) (carrier) 1.43691 €; 1 € = 0.695937)		40 LVL - 80 LVL (driver) (B).	natural person) Fine 1,000 LVL - 5,000 LVL (consignor – a legal person) (A) Fine 300 LVL - 500 LVL (consignor – a natural person) Fine 2,000 LVL - 5,000 LVL (consignor – a legal person) (B) Possible application of criminal penalty - deprivation of liberty for a term not exceeding two years or custodial arrest, or community service, or a fine	to 15 days (A) Fine 150 LVL -300 LVL (carrier) (B) Criminal sanction Deprivation of liberty for a term not exceeding five years or confiscation of property, or community service, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without	(carrier).	Fine LVL 1 400-500 (consignor – a natural person) Fine LVL 1 600-4 000 (consignor – a legal person)
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					not exceeding sixty times the minimum monthly wage, with or without deprivation of the right to operate a vehicle for a term not exceeding five years. (B).	deprivation of the right to engage in entrepreneurial activity for a term of not less than two years and not exceeding five years. (B)		
LITHUANIA ¹⁴	No specific sanction Administrative sanction Fine 87 € - 145 € (driver).	No specific sanction Administrative sanction Fine 217 € - 290 € (driver).	No specific sanction Administrative sanction Fine 290 € (driver)- 869 € (undertaking) (A)	No specific sanction Administrative sanction Fine from 29 € up to 43 € (driver, transport	No specific sanction Administrative sanction Fine 290 €- 579 € (Consignor) From 58 € - 116 € (driver)	No specific sanction Administrative sanction Fine from 290 € up to 434 € or administrative arrest (driver ,	No specific sanction Administrative sanction From 145 € up to 290 €(driver) ¹⁵	No specific sanction Administrative sanction from 145 € up to 290 € (driver) From 290 € up to 579 €

¹⁴ Please consider that in Lithuania infringements of Annex IV to Regulation (EC) No 1071/2009 are sanctioned also with the non compulsory suspension of the validity of issued copies of a licence.

¹⁵ In case of forgery, fine, arrest or imprisonment for a term of up to three years.

			Fine from 724 € up to 1448 € (A.1)	undertaking)	From 116 €- 232 € (undertaking)	transport undertaking) (A) Administrative sanction Fine from 290 € up to 869 € with a confiscation illegally received incomes or other objects. In case of a recurrence fine from 869 € up to 1738 € Or Criminal sanction Community service or a	(undertaking)
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						fine or a restriction of liberty or an imprisonment sentence for a term of up to four years (offender) (B)		
L U X E M B O U R G	No specific criminal sanction. Imprisonment from 8 days to 5 years And/or a fine from 251 € to 25,000 € Plus immobilization of the vehicle until	No specific criminal sanction. Imprisonment from 8 days to 5 years And/or a fine from 251 € - to 25,000 € Plus	No specific criminal sanction Imprisonment from 8 days to 5 years And/or a fine from 251 € to 25,000 € Plus immobilization of the vehicle until compliance with	No specific criminal sanction. Fine between 25 € and 250 € which can be doubled as of 500 € in case of very serious infringements Plus a pecuniary	No specific criminal sanction. Imprisonment from 8 days to 6 months And/or a fine from 251 € to 10,000 € Plus Driving ban until compliance with	No specific sanction Criminal sanction. (A) Imprisonment from 8 days to 3 years And/or a fine from 500 € to 10,000 €	No specific criminal sanction. No specific criminal sanction. Imprisonment from 8 days to 5 years And/or a fine from	No specific criminal sanction. Imprisonment from 8 days to 1 year And/or a fine from 251 € to 5,000 € Plus a pecuniary administrative

	compliance with the provisions (driver, undertaking)	immobilization of the vehicle until compliance with the provisions (driver, undertaking)	the provisions (driver, undertaking)	administrative fine of 145 € and the revocation of 2 points on the driving license (offender)	the provisions Temporary immobilization of the vehicle (driver, undertaking)	(Driver, Owner, holder) (B) imprisonment from 8 days to 3 months; and/or a fine of between 251 € to 15,000 € (Operator)	251 € to 25,000 € Plus immobilization of the vehicle until compliance with the provisions (driver, undertaking)	sanction from 12 € to 250 € and a confiscation of the vehicle (ordered by a judge) (driver)
M A L T A	No specific sanction Criminal sanction Fine 58,23€	No specific sanction Criminal sanction	No specific sanction Criminal sanction	No specific sanction Criminal sanction	No specific sanction ¹⁶ Penalty: of not less than	No specific sanction Criminal sanction	No specific sanction Criminal sanction	No specific sanction Criminal sanction Fine ¹⁷ (ammenda) of

¹⁶ We have obtained verbal confirmation from the Authority for Transport in Malta who have confirmed that there are no specific sanctions for infringements A and B. Legislation intended to include specific sanctions is currently being contemplated. In the meantime, however, Maltese Courts have applied the sanctions specified in the general law, that is, in the Authority for Transport in Malta Act (Chapter 499), which provide for the sanctions included in the table.

	And/or Administrative sanction Fine not exceeding 3,000 € Plus One penalty point for every 10€ or part thereof imposed by way of fine Plus Penalty of 350€ and corresponding penalty points.	Fine 58,23 € And/or Administrative sanction Fine not exceeding 3,000 € Plus One penalty point for every 10€ or part thereof imposed by way of fine Plus Penalty of 350€	Fine 58,23€ (driver and transport undertaking)	Fine 232,94€ or imprisonment not exceeding 3 months (driver).	25€ but not exceeding 50,000 € Administrative Sanction: not exceeding 100,000 € for each contravention or 1,500 € for each day of non- compliance (offender).	Fine 232,94€ or imprisonment not exceeding 3 months (driver)(A) Fine (ammenda) of €58,23 (operator) (B).	Fine 58,23€ driver, undertaking)	11,65 € (driver). A fine of 58,23€ ¹⁸ (undertaking).
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¹⁷ The Motor Vehicles Regulations (S.L. 65.11, Article 69) contains a general prohibition that no person may drive any motor vehicle which is so overloaded with goods as to constitute danger. However, no specific sanction is envisaged for breach of this prohibition, so that arguably the sanctions for breach of the general law, in terms of Article 55 of the Traffic Regulation Ordinance could be applicable. These impose as a sanction the punishment laid down for contraventions in the Criminal Code.

¹⁸ Moreover, the Carriage of Goods by Road Regulations (Article 5(1)) imposes a prohibition that no undertaking may engage in the occupation of road haulage operator for hire or reward unless duly authorized by the Authority under these regulations. To this end, the Authority for Transport may impose a number of conditions and requirements including the permissible laden mass. Breach of these requirements, if applicable, would be sanctioned by a criminal sanction.

	(driver)	and corresponding penalty points. (driver)						
N E T H E R L A N D S	No specific sanction Administrative sanction 550 €. Employer / self-employed	No specific sanction Administrative sanction up to 1,350 € Employer / self-employed	No specific sanction Administrative sanction Fine 2, 200 € (A) 1, 300 € - 550 € , (B and C) Employer / self-employed employee	No specific sanction Criminal offence. Maximum penalty is two months custody or a fine of the second fine category (3, 900 €) Possible target amount 390 € ¹⁹ .	No specific sanction Criminal sanction six years imprisonment, community punishment or a fine of the fifth category (78,000 €) ²⁰ (various operators).	No specific sanction Criminal sanction Two months custody or a fine of the second fine category (3,900 €). Target amount 330 € criminal (A) Criminal fine	No specific sanction Administrative sanction Fine 1,300 € - 550 € (driver)	No specific sanction Criminal sanction, Target amounts are specified, but in case the maximum weight is exceeded > 25 % not specified (any

¹⁹ The target amounts indicate which sanction the police or the Public Prosecutor's Service will impose in first instance with respect to offences for which an out-of-court settlement can be offered by the police respectively the Public Prosecutor's Service.

				(Owner/holder , Driver)		(operator)		person)
P O L A N D	No specific sanction.	No specific sanction.	No specific sanction.	No specific sanction.	No specific sanction.	No specific sanction.	No specific sanction.	No specific sanction.
	Criminal sanction for the driver. The value of the fine depends on the number of hours in excess. Criminal sanction for the manager of the undertaking in case of allowing such infringement. The value of the fine	Criminal sanction for the driver. The value of the fine depends on the number of hours in excess. Criminal sanction for the manager of the undertaking in case of allowing such	Criminal sanction for the driver up to PLN 2,000.00 (approximately 486 €). Criminal sanction for the manager in the amount of PLN 2,000.00 (approximately 486 €).	Administrative sanction - retention of the vehicle registration document by a police. Criminal sanction – a fine in the amount of PLN 50.00 (approximatel	Administrative sanction - fine up to PLN 10,000.00 (2,432 €) for the participants of road transport. Criminal sanctions applicable to drivers, members of staff and other natural persons	Criminal sanction – fine in the amount of PLN 500.00 (approximatel y 121 €) (driver). (A) No specific sanction. Administrative sanction -	Criminal sanction - fine in the amount of PLN 500.00 (121 €) (driver). Criminal sanctions from the Polish Criminal Code for the forgery may be applicable.	Administrative sanction - fine up to PLN 15,000.00 (approximately 3,648 €), (Article 140aa and Article 140ab of the Road Traffic Act foreseeing these administrative sanctions will

²⁰ Please note that the Dutch system is complex. Please refer to the Dutch report for details concerning recidivism or for information on the tariffs applicable in case of out of courts settlements and the demand of the Public Prosecutor in criminal proceedings. The concrete sanction applicable is in practise not foreseeable in advance.

	<p>is PLN 2,000.00 (approximately 486 €).</p> <p>Administrative sanction for the undertaking.</p> <p>The value of the fine depends on the number of hours in excess.</p> <p>(1 PLN = 0.244513 €; 1€ = 4.08976 PLN)</p>	<p>infringement.</p> <p>The value of the fine is PLN 2,000.00 (approximately 486 €).</p> <p>Administrative sanction for the undertaking.</p> <p>The value of the fine depends on the number of hours in excess.</p>	<p>Administrative sanction for the undertaking up to PLN 5,000.00 (approximately 1,215 €).</p>	<p>y 12 €).</p> <p>(A)</p> <p>No specific sanction.</p> <p>Administrative sanction - retention of the vehicle registration document by a police.</p> <p>If it causes threat to the road traffic safety – criminal sanction (a fine up to the amount of PLN 500.00 – approximately</p>	<p>performing actions in transport of dangerous goods (maximum value of a fine – PLN 5,000.00 – approximately 1,215 €).</p>	<p>fine in the amount of PLN 8,000.00 (1944 €).</p> <p>(Transport undertaking; entity performing the road transport activities)</p> <p>(B)</p>	<p>These criminal sanctions are as follows:</p> <ul style="list-style-type: none"> - a fine, the restriction of liberty or imprisonment for between 3 months to 5 years; - in case of an act of less significance - a fine, the restriction of liberty or imprisonment for up to 2 years. 	<p>become effective on 1st of January 2013) (various operators).</p>
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				121€). (B) (Anyone who is responsible for roadworthiness tests (undertakings))				
P O R T U G A L	No specific sanction Administrative sanction for the driver and the undertaking The value of the fine is proportionate to the no of hours in excess Fine from € 2.040 up to € 61,200	No specific sanction Administrative sanction for the driver and the undertaking from € 204 up to € 61,200	No specific sanction Administrative sanction Fine from €1.200 up to €3,600 (transport undertaking, singular person) From €1.200 up to €6,000 (transport undertaking, legal person) From € 600 up to	Rule foreseen on Regulation 1071/2009/EC, not yet transposed to the Portuguese legal system. Nevertheless administrative sanction fine for the Transport undertaking from €250 up to € 1.250.	Administrative sanction up to €2.250 (singular person) From €1.500 up to €4.500 (legal person)	Rule foreseen on Regulation 1071/2009/EC, not yet transposed to the Portuguese legal system. Nevertheless, Decree-Law 3/2001 is applicable and, in accordance with article 24 of said	No specific sanction Administrative sanction fine - from 600 € up to 1,800 € (driver) - from 1, 200 € up to 3,600 € (singular person) From 1,200 € up to 6,000 € (legal person) (undertaking)	No specific sanction Administrative sanction fine from 600 € up to 3,000 € (undertaking)

			€1,800 (driver)			Decree-Law, transportation by a non-licensed entity is punished with a pecuniary fine between € 500 and € 2,500. The pecuniary fee is the same when carrying passengers is done by an undertaking not holding a valid Community licence		
R O M A	Administrative sanction Fine between 4,000 RON (the	Administrative sanction Fine between 4,000 RON (the	Administrative sanction Fine between with a fine between	Administrative sanction Fine between 14,000 RON	Administrative sanction Fine between 8,000 RON (the	Criminal sanction Imprisonment between 1 and	Criminal sanction Imprisonment between 1 and 5	Administrative sanction Fine between 14,000 RON

N I A	equivalent of 899 €) and 8,000 RON (the equivalent of 1,798 €) (Undertaking / Road transport operator)	equivalent of 899 €) and 8,000 RON (the equivalent of 1,798 €) (Undertaking / Road transport operator)	8,000 RON (the equivalent of 1,798 €) and 16,000 RON (undertaking (A and A.1)	(the equivalent of 3,146 €) and 18,000 RON (the equivalent of 4,045 €)	equivalent of 1,798 €) and 10,000 RON (the equivalent of 2,247 €) (Consigner and/or transporter, or Driver, if the undertaking of the road transport operator cannot be determined)	5 years (driver) (A); Fine between 14,000 RON (3,146 €) and 18,000 RON (4,045 €) Undertaking / Road transport operator (B)	years, sanction) To be combined with Imprisonment between 3 months and 3 years (for forgery) (driver)	(the equivalent of 3,146 €) and 18,000 RON (the equivalent of 4,045 €) (undertaking / Road transport operator).
	(1 RON = 0.218808 €; 1€ = 4.57022 RON)		Imprisonment from 3 months to 3 years (for forgery) Or Fine between 8,000 RON and 16,000 RON(= between 1,830 € and 3,660 €) (undertaking) (Band C)					
S L O V	150 € - 800 € -1,250 € (undertaking)	No specific sanction Administrative sanction Fine up	600 €-3,300 € (underaking) 300 € - 600 € (responsible	Driver up to 500 € Undertaking	Fine up to 4,000 € (Undertaking)	Keeper of the vehicle 500 € Fine up to	800 € - 2,000 300 € - 600 €	Fine up to 900 € (driver) Fine up to 3,000

E N I A	(300 € to 600 € (driver person of the undertaking) Responsible person of the undertaking) 150 € - Driver	800 € - 1,250 € (undertaking) 300 € (Responsible person of the undertaking)	5,000 € (Person responsible 500 €)		8.000 € (undertaking)		€ (undertaking)
	S L O V A K I A ²¹	No specific sanction Administrative sanction for the driver Fine of up to approx. 1,660 €. Prohibition of activity of up to 2 years (even cumulatively). Or Criminal	No specific sanction Administrative sanction for the driver Fine of up to approx. 1,660 € Prohibition of activity of up to 2 years (even cumulatively). Or Criminal	No specific sanction Administrative sanction Fine of 166 € (any person). Prohibition of activity for up to 2 years (This even cumulatively)Or Criminal sanction	No specific sanction Administrative sanction for the driver Fine of up to 500 € or Fine of up to up to 1,500 € Or Criminal sanction Imprisonment	No specific sanction Administrative sanction A fine of up to 5,000 € Imprisonment between 0 € to 10 years. (driver, undertaking)	No specific sanction Administrative sanction for the driver Fine of up to approx 1,660 €). Prohibition of activity for up to 2 years (this even cumulatively)Or

²¹ See Slovakian report for the liability of the undertaking.

	sanction Imprisonment of up to 2 years (driver).	sanction Imprisonment of up to 2 years (driver).	Imprisonment of up to 2 years. (driver)(A) Administrative sanction for natural person Fine of up to approx 1,660 € Or Criminal sanction Imprisonment of up to 3 years. (driver) (B)/(C).		between 0 to 10 years (driver). - Administrative sanction for the undertaking Fine between 500 € to 20.000 €. Or Criminal sanction Imprisonment between 0 to 10 years.		Criminal sanction Imprisonment of up to 3 years (driver).	150 € and 800 € Prohibition of activity for 3 years. Or criminal sanction Imprisonment of up to 2 years (any person).
S P A I N	Administrative sanction for the undertaking Fine 3,301 € - 4,600 € 4,601 € - 6,000 € (if previously	Administrative sanction for the undertaking Fine 3,301 € - 4,600 € 4,601 € - 6,000 € (if previously	Administrative sanction for the undertaking Fines between 4,601 € to 6,000 € / from 6,001 € to 18,000 € in case	No specific sanction Administrative sanction for the offender 500 € (might be increased	Administrative sanction for the undertaking and other person involved (2,001 € to 3,300 € / 3,301 € to 4,600 € in case of	No specific sanction Administrative sanction for the offender 500 € (might be increased	Administrative sanction Fines will range from 4,601 € to 6,000 € / from 6,001 € to 18,000 € in case of recidivism	Administrative sanction Fine ranging from 3301€ to 4,600 €- 4,601 € to 6,000 € in case of recidivism (undertaking,

	sanctioned) Vehicle's immobilization For the driver 500 €	sanctioned) Vehicle's immobilization For the driver 500 €	of recidivism	of 30%)	recidivism.	of 30%) (A) Fines will range from 4,601 € to 6,000 €/ from 6,001 € to 18,000 € in case of recidivism Plus immobilization of the vehicle (B)	(undertaking)B)	consignor)
S W E D E N (No specific sanction Administrative sanction Fine of up to approx. Drivers Employer 4,000 SEK	No specific sanction Administrative sanction Fine of up to approx. Drivers Employer From	No specific sanction Administrative sanction Fine of up to approx. Drivers Employer 4,000 SEK	No specific sanction Administrative sanction Fine of up to approx. Driver Owner 15,00 SEK	No specific sanction Administrative sanction Fine of up to approx. Driver Fine up to 4,000	No specific sanction Administrative sanction Fine of up to approx. Driver 500 SEK	No specific sanction Administrative sanction Fine of up to approx. Fine Employer driver 4,000 SEK	No specific sanction Administrative sanction Fine of up to approx. - Driver 2,500 SEK

	1 SEK = 0.116160 €; 1 € = 8.60880 SEK)	1,000 to 4,000 SEK			SEK	Immobilization of the vehicle or transport of the vehicle out of the country. Fine or imprisonment for 1 year. No fine levels available.		
UNITED KINGDOM	No specific sanction Administrative sanction 200 £ (-Driver - any other person) Or Criminal sanction fine not exceeding	No specific sanction Administrative sanction 200 £ (-Driver - any other person) Or Criminal sanction fine not	No specific sanction Administrative sanction 200 £ Or criminal sanction 5,000 £ (driver , undertaking)	No specific sanction Administrative sanction Discretionary disqualification penalty points. Or Criminal sanction fine not	No specific sanction Criminal sanction Imprisonment for a term not exceeding 12 months or a fine not exceeding 20,000 £ or both. Or imprisonment or up to 2 years	No specific sanction Criminal sanction for the driver Fine not exceeding 1,000 £ (A) No specific sanction Administrative	No specific sanction Administrative sanction for driver and undertaking of 60 £ Or criminal sanction fine not exceeding 5,000	No specific sanction Administrative sanction for the user of the vehicle 200 £ Or criminal sanction up to 5,000 £ (any person, user)

A								
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32.9 Overview of the sanctions applicable to very serious infringements of EU rules foreseen in Annex III of Directive 2006/22/EC

Sanctions						
Very serious infringements of EU rules foreseen in Annex III of Directive 2006/22/EC	AUSTRIA	BELGIUM ²²	BULGARIA (1 BGN = 0,510681 €; 1 € = 1,95817 BGN)	CYPRUS (1 GBP= 1,28333 €; 1 € = 0,807542 GBP)	CZECH REPUBLIC (1 CZK = 0,0400690 €; 1€= 24,9569 CZK)	DENMARK 1 DKK = 0.134095 €; 1 € = 7.45742 DKK)
1. Driving more than 11 h per day if the daily time is 9 h	Fine from 300 € up to 2,180 € (Employer) Monetary penalty from 300 € up to	No specific criminal sanction. Imprisonment: 8 days to 6 months and/or a fine 300 €-60,000 €	No specific sanction Administrative fine 1,500 BGN (driver)	No specific sanction Administrative fine up to 2000 £ and or criminal sanction of imprisonment not exceeding six months	No specific sanction Fine of up to 10,000 CZK. Disqualification ranging from six	No specific sanction Criminal sanction Fine (driver 100 DKK and operator

²² Please note that Belgium has also a system of financial penalties called perception immediate. The fines foreseen under the system of perception immediate exclude the application of the criminal sanction.

	<p>5.000 €; 1st case of recurrence: alternatively 6 weeks imprisonment; From the 2nd case of recurrence on: Imprisonment and monetary penalty (Driver and transport operator)</p>	<p>But possible also a pecuniary sanction up to 300 € (<i>perception immédiate</i>) (offender/ person inciting)</p>		(employer/driver/any person)	months to one year (driver) ²³	200 DKK each time the limit of driving time is exceeded with 1 per cent) or imprisonment (of maximum four months)
2. Driving more than 12 h per day if the daily	Same as above	No specific criminal sanction. Imprisonment: 8 days to 6 months and/or a fine	Same as above	Same as above	Same as above	Same as above

²³ Please note that the transport undertaking is in general sanctioned for failure to ensure compliance with the rules on driving time and rest periods.

<p>driving time can be extended to 10</p>		<p>300 € - 60,000 €</p> <p>But possible also a pecuniary sanction up to 300 € (<i>perception immédiate</i>)</p> <p>(offender/ person inciting)</p>				
<p>3. Driving more than 70 h a week</p>	<p>Same as above</p>	<p>No specific criminal sanction.</p> <p>Imprisonment: 8 days to 6 months and/or a fine 300 € - 60,000 €</p> <p>But possible also a pecuniary sanction of 100 € for every hour exceeding the</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>

		authorised weekly driving time (<i>perception immédiate</i>) (offender/ person inciting)				
4. Driving more than 112 h and a half in two weeks	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
5. Exceed uninterrupted driving time of more than 6 h	Fine from 300 € up to 2,180 € Case of recurrence: from 350 € up to 3,600 € (Employer) Monetary penalty from 300 € up to 5.000 €; 1 st case of recurrence: alternatively 6	No specific criminal sanction. Imprisonment: 8 days to 6 months and/or a fine 300 € - 60,000 € But possible also a pecuniary sanction of up to 1,200 € (offender/ person inciting)	Same as above	Same as above	Same as above	No specific sanction Criminal sanction Fine (driver 1,500 DKK, operator 3,000 DKK) or imprisonment (of maximum four months). Suspension of driver's driving

	<p>weeks imprisonment;</p> <p>From the 2nd case of recurrence on:</p> <p>Imprisonment and monetary penalty</p> <p>(Driver and transport operator)</p>					<p>license if both the rules on driving time as well as the total break is exceeded by more than 30 per cent</p>
<p>6. Insufficient daily rest period of less than 8,30 h if reduced daily rest period not allowed</p>	<p>Same as above</p>	<p>No specific criminal sanction.</p> <p>Imprisonment: 8 days to 6 months and/or a fine 300 € - 60,000 €</p> <p>But possible also a fine of 50 € for every 30 minutes of daily resting time missing</p> <p><i>(perception immédiate)</i></p> <p>(offender/ person inciting)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Criminal sanction</p> <p>Fine (driver 100 DKK and operator 200 DKK or imprisonment (of maximum four months).</p> <p>Suspension of driver's driving license if infringement of</p>

						more than 30 per cent.
7. Insufficient reduced daily rest period of less than 7 h if reduced daily rest period is allowed	Same as above					
8. Insufficient split daily rest period of less than 3 h + 7h	Same as above					
9. Insufficient daily rest period of less than 7 h multi-manning	Same as above					

<p>10. Insufficient reduced weekly resting period of less than 20 h</p>	<p>Same as above</p>	<p>No specific criminal sanction.</p> <p>Imprisonment: 8 days to 6 months and/or a fine 300 € - 60,000 €</p> <p>Possible fine of 100 € for every hour of weekly resting time missing (<i>perception immédiate</i>)</p> <p>(offender/ person inciting)</p>	<p>No specific sanction</p> <p>Administrative fine up to 1,000 BGN</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>
<p>11. Insufficient weekly resting period of less than 36 h if reduced weekly resting period not allowed</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>

12 Link between wage and distance travelled or amount of goods carried	Same as above	No specific sanction Criminal sanction. Imprisonment: 8 days to 6 months and/or a fine 300- 60,000 € (offender/ person inciting)	Administrative fine up to 3,000 BGN (undertaking)	Same as above (undertaking)	No specific sanction Administrative sanction Fine of up to 500,000 CZK (undertaking)	No specific sanction Criminal sanction Fine or imprisonment (of maximum four months)
13 No type approved recording equipment installed and used²⁴	Same as above	No specific sanction. Criminal sanction Imprisonment: 8 days to 6 months and/or a fine 300 € 60,000 € Possible fine up to 1,200 € (<i>perception immédiate</i>) (offender/ person inciting)	Administrative fine up to 500 BGN (undertaking)	Same as above (employer/ driver/ any person)	No specific sanction Administrative sanction Fine of up to 10,000 CZK. Disqualification ranging from six months to one year (driver)	No specific sanction Criminal sanction Fine (3,000 DKK for the driver and 6,000 DKK for the owner) or imprisonment (of maximum four months).

²⁴ Please note that the fine for the undertaking for not ensuring installation or proper management of the tachograph amounts to CZK 500,000.

14. Recording equipment not correctly functioning (for example: recording equipment not properly inspected, calibrated and sealed)	Same as above	Same as above.	Same as above (driver)	Same as above	No specific sanction Administrative sanction Fine of up to 500,000 CZK (undertaking).	Same as above
15. Recording equipment improperly used (not using a valid driver card, voluntary abuse,...)	Same as above	Same as above	Same as above (driver)	Same as above	No specific sanction Administrative sanction Fine of up to 10,000 CZK. Disqualification ranging from six	Same as above

					months to one year (driver).	
16. Undertaking not keeping record sheets, printouts and downloaded data	Same as above	No specific criminal sanction. Imprisonment:8 days to 6 months and/or a fine 300 €- 60,000 € (offender/ person inciting)	Administrative fine up to 5,000 BGN	Same as above	No specific sanction Administrative sanction Fine of up to 500,000 CZK (undertaking)	Same as above
17. Driver holding more than one valid driver card	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 €- 60,000 € Possible fine up to 2,400 € (perception immediate)	Administrative fine up to 1,500 BGN (driver)	Same as above	No specific sanction Administrative sanction Penalty of up to 5,000 CZK (driver)	Same as above

		(offender/ person inciting)				
18. Use of different driving card than the valid one	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 €. Possible fine up to 2,400 € (perception immediate (offender/ person inciting)	Administrative fine up to 1,500 € BGN (driver)	Same as above	No specific sanction Administrative sanction Penalty of up to 5,000 CZK (driver)	Same as above
19. Use of defective or expired driver card	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 €-60,000 € Possible fine up to	Same as above	Same as above	Same as above	Same as above

		1,200 € (<i>perception immédiate</i>) (offender/ person inciting)				
20. Recorded and stored data not available for at least 365 days	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (offender/ person inciting)	Administrative fine up to 5,000 BGN (undertaking)	Same as above	No specific sanction	Same as above
21. Use dirty damaged sheets or driver cards and data not legible	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 €- 60,000 € Possible fine up to 1,200 € (<i>perception immédiate</i>)	Administrative fine up to 500 BGN (driver)	Same as above	No specific sanction Administrative sanction Fine of up to 10,000 CZK. Disqualification ranging from six	Same as above

		(offender/ inciting) person			months to one year (driver).	
22. Incorrect use of record sheets/driver cards	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
23.Unauthorized withdrawal of sheets or driver card which has an impact on the record of relevant data	Same as above	Same as above	Administrative fine up to 1,500 BGN (driver)	Same as above	Same as above	Same as above
24.Record sheet or driver card used to cover a period longer than that for which it is intended	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (offender/ person	Same as above	Same as above	Same as above	No specific sanction Misdemeanor sanction Fine up to 400 € (driver).

and data is lost		inciting)				
25. Not using manual input when required to do so	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 €- 60,000 € Possible fine up to 1,200 € (<i>perception immédiate</i>) (offender/ person inciting)	No specific sanction. Administrative fine up to500 BGN (driver)	Same as above	Same as above	Same as above
26.Not using correct sheet or driver card not in the correct slot (multimanning	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € Possible fine up to	Administrative fine up to1,500 BGN (driver)	Same as above	Same as above	Same as above

)		1,200 € (<i>perception immédiate</i>) (offender/ person inciting)				
27.Incorrect use of switch mechanism	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60 000 Possible fine up to 50 € (<i>perception immédiate</i>) (offender/ person inciting)	Administrative fine up to 500 BGN (driver)	Same as above	Same as above	Same as above
28.Surname missing on record sheet	Same as above	No specific sanction Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 €	Administrative fine up to 100 BGN (driver)	Same as above	Same as above	Same as above

		Possible fine up to 1,200 € (<i>perception immédiate</i>) (offender/ person inciting)				
29. Name missing on record sheet	Same as above	Same as above	Administrative Fine up to 100 BGN (driver)	Same as above	Same as above	Same as above
30. Refuse to be checked	Same as above	No specific sanction. Criminal sanction Imprisonment: 8 days to 6 months and/or a fine 300 €-60,000 € Possible fine up to 2,400 € (<i>perception immédiate</i>) (offender/ person inciting)	Administrative Fine up to 5,000 BGN (undertaking)	Same as above	No specific sanction	No specific sanction

31.Unable to produce records of current day	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € Possible fine up to 1,600 € (perception immediate) (offender/ person inciting)	Administrative fine up to 1,500 BGN (driver)	Same as above	No specific sanction Administrative sanction Fine of up to 10,000 CZK. Disqualification ranging from six months to one year (driver).	No specific sanction Criminal sanction Fine (3,000 DKK for the driver and DKK 6,000 for the owner) or imprisonment (of maximum four months).
32.Unable to produce records of previous 28 days	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € (offender/ person inciting)	Same as above	Same as above	Same as above	Same as above
33.Unable to	Same as above	No specific sanction	Same as above	Same as above	Same as above	Same as above

<p>produce records of the driver card if the driver holds one</p>		<p>Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 €- 6000 € (offender/ person inciting)</p>				
<p>34.Unable to produce manual records and printouts made during the current day and the previous 28 days</p>	<p>Same as above</p>	<p>No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 €- 60,000 € (offender/ person inciting)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>
<p>35.Unable to produce driver card</p>	<p>Same as above</p>	<p>No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>

		300 €- 60,000 € Possible fine up to 1,200 € (perception immediate) (offender/ person inciting)				
36.Inable to produce print outs made during the current week and the previous 28 days	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € 60,000 € (offender/ person inciting)	Same as above	Same as above	Same as above	Same as above
37.Falsify, suppress,	Same as above	No specific sanction.	Administrative fine up to 5,000 BGN	Same as above	No specific	No specific

<p>destroy data recorded on record sheets, stored in the recording equipment or on the driver card or print outs from the recording equipment</p>		<p>Criminal sanction</p> <p>Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 €</p> <p>Possible fine up to 2,400 € (<i>perception immédiate</i>)</p> <p>(offender/ person inciting)</p>	<p>(transport undertaking)</p> <p>Up to 1,500 (driver)</p>		<p>sanction</p> <p>Possible applicability of criminal sanction</p> <p>Prison sentence of up to three years.</p> <p>Disqualification.</p>	<p>sanction</p> <p>Criminal sanction²⁵</p> <p>Fine or imprisonment up to 4 months.</p> <p>Administrative sanction</p> <p>Withdrawal of the card by the police.</p>
<p>38.Manipulation of recording equipment, record sheet or driver card which may result in data</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative Fine of up to 100,000 CZK. (transport undertaking)</p>	<p>Same as above</p>

²⁵ Please note that forgery and fraud are separately criminalized according to the general rules of the Danish Penal Code. The penalty ranges from fine to imprisonment of up to 6 years in severe cases.

and/or printouts information being falsified						
39. Manipulation device that could be used to falsify data and/or printouts present on vehicle switch/wire...)	Same as above	Same as above.	Same as above	Same as above	No specific sanction Administrative fine of up to 100,000 CZK (transport undertaking).	Same as above
40. Not repaired by an approved fitter or workshop	Same as above	No specific sanction. Criminal sanction Imprisonment: 8 days to 6 months and/or a fine 300 €- 60,000 € Possible fine up to 1600 € (perception immediate)	Administrative fine up to 3,000 BGN (transport undertaking)	Same as above	No specific sanction	No specific sanction Criminal sanction Fine or imprisonment (of maximum four months) (any person)

		(offender/ person inciting)				Police may issue a prohibition against the use of the truck in question.
41. Driver not marking all information for the periods of time which are no longer recorded while recording equipment is unserviceable or malfunctioning	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60,000 € Possible fine up to 600 € (perception immediate (offender/ person inciting)	Administrative fine up to 1,500 BGN (driver)	Same as above	No specific sanction Administrative sanction Fine of up to 10,000 € Disqualification ranging from six months to one year (driver).	No specific sanction Criminal sanction Fine or imprisonment (of maximum four months) (driver)
42. Driver card number and/or name and/or driving license number	Same as above	No specific sanction. Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 € - 60 000 €	Same as above	Same as above	Same as above	Same as above

missing on temporary sheet		Possible fine up to 1200 € (<i>perception immédiate</i>) (offender/ person inciting)				
43. Lost or theft of driver card not formally declared to the competent Authority of the Member State where the theft occurred	Same as above	No specific sanction Criminal sanction Imprisonment:8 days to 6 months and/or a fine 300 €- 60 000 € Possible fine up to 1,200 € (<i>perception immediate</i>) (offender/ person inciting)	Administrative fine up to 1,500 BGN (driver)	Same as above	No specific sanction	No specific sanction Criminal sanction Fine or in case of a repeat offender imprisonment up to 18 months

Sanctions						
Very serious infringements of EU rules foreseen in Annex III of Directive 2006/22/EC	ESTONIA ²⁶	FINLAND	FRANCE	GERMANY	GREECE	HUNGARY
1. Driving more than 11 h per day if the daily time is 9 h	No specific sanction Misdemeanour sanction A fine up to 800 € (driver)	No specific sanction Criminal sanction: fine no further specified (various operators: driver, employer, employer's representative)	Criminal sanction Fine up to 1,500 € This amount can be increased to 3,000 € (driver and other operators that might be held liable) in the case of a	No specific sanction Administrative sanction Fine of up to 15,000 € (undertaking) Fine of up to 5,000 € (driver)	No specific sanction Administrative sanction Fine €300 to €600 plus removal of the vehicle's registration document and number-plates for a period of one month (driver , transport	No specific sanction Administrative sanction Fine up to 1,041 € (Driver) ²⁷ .

²⁶ For undertakings the sanctions for VSI are the following: natural persons - up to 800 €; legal persons – up to 3,200.

²⁷ For the liability of the undertaking see Hungarian Country Report.

			<p>persistent offender and Additional penalties possible.</p> <p>The maximum amount of a fine applicable to legal persons is five times that applicable to natural persons.</p>		undertaking)	
<p>2. Driving more than 12 h per day if the daily driving time can be extended to 10</p>	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
<p>3. Driving more than 70 h a week</p>	<p>No specific sanction</p> <p>Misdemeanour</p>	Same as above	Same as above	Same as above	Same as above	Same as above

	sanction A fine up to 400 € (driver)					
4. Driving more than 112 h and a half in two weeks	No specific sanction Misdemeanour sanction A fine up to 400 € (driver)	Same as above				
5. Exceed uninterrupted driving time of more than 6 h	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
6. Insufficient daily rest period of less than 8,30 h if reduced daily rest period not allowed	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
7. Insufficient	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above

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	Same as above					
9. Insufficient daily rest period of less than 7 h multi-manning	Same as above					
10. Insufficient reduced weekly resting period of less than 20 h	Same as above					
11. Insufficient	Same as above					

<p>weekly resting period of less than 36 h if reduced weekly resting period not allowed</p>						
<p>12 Link between wage and distance travelled or amount of goods carried</p>	<p>No specific sanction Misdemeanour sanction For transport undertakings a fine up to 800 € (natural person) or up to 3,200 € (legal person).</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction Administrative sanction Fine up to €600 Plus removal of the vehicle's registration document and number-plates for a period of one month (driver, transport undertaking)</p>	<p>No specific sanction Administrative sanction Fine up to 1,388 € (transporter)</p>
<p>13 No type approved recording equipment</p>	<p>No specific sanction Misdemeanor sanction</p>	<p>Same as above</p>	<p>Criminal sanction Fine up to 30.000 €</p>	<p>Same as above</p>	<p>No specific sanction Administrative sanction Fine of up to - 1,000 € - 4,000 € plus removal</p>	<p>Administrative sanction Fine in the amount of approximately 35 € up to approximately 2,082 €</p>

installed and used	<p>Fine up to 400 €-1,200 € depending on the specific violation (driver).</p> <p>For transport undertakings a fine up to 800 € (natural persons) or up to 3,200 € (legal person).</p>		<p>1 year prison (Misdemeanour)</p> <p>Administrative sanction</p> <p>Compulsory immobilisation of the vehicle until the situation is regularised (various operators)</p>		<p>of the vehicle's registration document and number-plates for a period of six months (driver, transport undertaking)</p>	(driver)
14. Recording equipment not correctly functioning (for example: recording equipment not properly inspected, calibrated and	Same as above	Same as above	Same as above	Same as above	Same as above	<p>Administrative sanction</p> <p>Fine up to 1,041 € (driver)</p>

sealed)						
15. Recording equipment improperly used (not using a valid driver card, voluntary abuse,...)	Same as above	Same as above	Criminal sanction Fine up to 3750 € (6 months prison (Misdemeanour) (various operators)	Same as above	No specific sanction Administrative sanction Fine up to 600 € Plus removal of the vehicle's registration document and number-plates for a period of one month (driver, transport undertaking)	Administrative sanction Fine up to 1,388 € (driver)
16. Undertaking not keeping record sheets, printouts and downloaded data	No specific sanction For transport undertakings a fine up to 800 € (natural persons) or up to 3,200 € (legal person).	Same as above	Criminal sanction Fine up to 3750 € (6 months prison)	Same as above	Same as above	Same as above
17. Driver holding more than one	No specific sanction	Same as above	Criminal sanction	No specific sanction	No specific sanction	Administrative sanction Fine up to 1,388 €

valid driver card	<p>Misdemeanor sanction</p> <p>Fine up to 400 € (driver).For transport undertakings a fine up to 400 €(natural persons) or up to 3,200 € (legal person)</p> <p>Criminal sanction</p> <p>In case of forging relevant documents a pecuniary punishment or up to one year of imprisonment (natural person)</p>		<p>Fine up to 3750 € (6 months prison (Misdemeanour) (various operators)</p>	<p>Administrative sanction</p> <p>Fine of up to 5,000 €</p>	<p>Administrative sanction</p> <p>Fine of up to - 1,000 € - 4,000 € plus removal of the vehicle's registration document and number-plates for a period of six months</p> <p>(driver, transport undertaking)</p>	<p>(driver)</p>
18. Use of different driving card than the valid one	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine up to €600</p> <p>Plus removal of the</p>	<p>Same as above</p>

					vehicle's registration document and number-plates for a period of one month (driver, transport undertaking)	
19. Use of defective or expired driver card	Same as above	Same as above	Same as above	Same as above	Same as above	Administrative sanction Fine up to € 694 (driver)
20. Recorded and stored data not available for at least 365 days	No specific sanction No specific sanction For transport undertakings a fine up to 800 € (natural persons) or up to 3,200 € (legal person)	Same as above	Criminal sanction Fine up to 3750 € (6 months prison) (various operators)	No specific sanction Administrative sanction Fine of up to 15,000 € (undertaking)	No specific sanction Administrative sanction Fine of up to 600 € Plus removal of the vehicle's registration document and number-plates for a period of one month (transport undertaking)	Administrative sanction Fine up to 1,388 €
21. Use dirty damaged sheets or	No specific sanction	Same as above	Criminal sanction fine up	No specific sanction	No specific sanction Administrative sanction	Administrative sanction fine up to 1,041 € (driver)

driver cards and data not legible	<p>Misdemeanor sanction</p> <p>Fine up to 400 € (driver).</p> <p>For transport undertakings a fine up to 400 € (natural persons) or up to 3,200 € (legal person)</p>		<p>to 1,500 € (driver and other operators)</p>	<p>Administrative sanction</p> <p>Fine of up to 5,000 € (driver)</p>	<p>300 €-600€</p> <p>Plus removal of the vehicle's registration document and number-plates for a period of one month</p> <p>(driver, transport undertaking)</p>	
22. Incorrect use of record sheets/driver cards	Same as above	Same as above	Same as above	Same as above	Same as above	<p>Administrative sanction</p> <p>Fine up to 347 € (driver)</p>
23.Unauthorized withdrawal of sheets or driver card which has an impact on the record of relevant data	Same as above	Same as above	Same as above	Same as above	Same as above	<p>Administrative sanction</p> <p>Fine up to 1,388 € (driver)</p>

24. Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
25. Not using manual input when required to do so	No specific sanction Misdemeanor sanction Fine up to 400 €(driver).	Same as above				
26. Not using correct sheet or driver card not in the correct slot (multimanning)	No specific sanction Misdemeanor sanction Fine up to 400 € (driver)	Same as above	Same as above	Same as above	Same as above	Administrative sanction Fine up to 1,388 € (driver)

27. Incorrect use of switch mechanism	Same as above	No specific sanction Administrative sanction Natural persons - up to 400 € Legal persons – up to 3,200 € Same as above	Same as above	Same as above	Same as above	Administrative sanction Fine up to 1,041€ (driver)
28. Surname missing on record sheet	Same as above	Same as above	Same as above	Same as above	Same as above	Administrative sanction Fine up to 694 € (driver)
29. Name missing on record sheet	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
30. Refuse to be checked	No specific sanction Misdemeanour sanction Fine up to 1,200 € or detention	Same as above	Criminal sanction Fine up to 3750 € (6 months prison) (various operators)	Same as above	No specific sanction Administrative sanction Fine of up to - 1,000 € - €4,000 plus removal of the vehicle's registration document	Administrative sanction Fine up to 1,388 € (driver)

	(driver)				and number-plates for a period of six months (driver, transport undertaking)	
31.Unable to produce records of current day	Same as above	Same as above	Criminal sanction fine up to 1,500 € (driver and other operators)	Same as above	No specific sanction Administrative sanction €300 -600€ Plus removal of the vehicle's registration document and number-plates for a period of one month (driver, transport undertaking)	Same as above
32.Unable to produce records of previous 28 days	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
33.Unable to produce records	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above

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	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
35.Unable to produce driver card	Same as above	Same as above	Criminal sanction fine up to 1,500 € (driver and other operators)	Same as above	Same as above	Same as above
36.Inable to produce print outs made during the current week and the previous 28 days	Same as above	Same as above	Criminal sanction fine up to 1,500 € (driver and other operators)	Same as above	Same as above	Same as above

<p>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</p>	<p>No specific sanction</p> <p>Misdemeanor sanction</p> <p>Fine up to 400-1200 € depending on the specific violation (driver).</p> <p>For transport undertakings a fine up to 400 € (natural persons) or up to 3,200 € (legal person)</p> <p>Criminal sanction</p> <p>In case of forging relevant documents a pecuniary punishment or up to one year of imprisonment (natural person).</p>	<p>Same as above</p>	<p>Criminal sanction</p> <p>Fine up to 30.000 €</p> <p>1 year prison (Misdemeanour)</p> <p>Administrative sanction</p> <p>Compulsory immobilisation of the vehicle until the situation is regularised (various operators)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine of up to 15,000 € for Carrier (Unternehmer); fine of up to 5,000 € for Driver, Owner of a repair shop, Fitter (Installateur)</p>	<p>No specific infringement</p> <p>Administrative sanction</p> <p>Fine 1,00 € -4,000 € plus removal of the vehicle's registration document and number-plates for a period of six months</p> <p>Criminal sanction possible: imprisonment of at least three months and of up to 10 years (driver, transport undertaking)</p>	<p>Administrative sanction</p> <p>Fine approximately 2,082 € (driver)</p>
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38. Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified	Same as above	Same as above	Same as above	Same as above	Same as above	Administrative sanction Fine 2,775 € (driver)
39. Manipulation device that could be used to falsify data and/or printouts information present on vehicle switch/wire...)	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
40. Not repaired by an approved fitter or workshop	Same as above	Same as above	Criminal sanction fine up to 1,500 € (driver and other operators)	No specific sanction. Administrative sanction Fine of up to €	No specific sanction Administrative sanction 300 € -600 € plus removal of the vehicle's registration	Administrative sanction Fine of up to 1,388 € (driver)

				15,000 €	document and number-plates for a period of one month (driver, transport undertaking)	
41. Driver not marking all information for the periods of time which are no longer recorded while recording equipment is unserviceable or malfunctioning	Same as above	Same as above	Same as above	No specific sanction Administrative sanction Fine of up to 5,000 € (driver)	Same as above	Administrative sanction Fine of up to 1,041 € (driver)
42. Driver card number and/or name and/or driving license number missing on temporary sheet	Same as above	Same as above	Same as above	Same as above	Same as above	Administrative sanction Fine of up to 694 € (driver)

43. Lost or theft of driver card not formally declared to the competent Authority of the Member State where the theft occurred	Same as above	Administrative sanction Fine of up to 1,041 € (driver)				
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Sanctions ²⁸								
Very serious infringements of EU rules foreseen in Annex III of Directive 2006/22/EC	IRELAND	ITALY	LATVIA 1 LVL = 1,43691 €; 1 € = 0,695937)	LITHANIA	LUXEMBOURG	MALTA	NETHERLANDS	POLAND ²⁹ (1 PLN = 0,244513 €; 1€ = 4,08976 PLN)
1. Driving more than 11 h per day if the daily time is 9 h	No specific sanction Criminal sanction Up to 3 months	No specific sanction Administrative sanction Fine 400 € -	Administrative sanction Fine 50 € -100€ (driver) 150 €-300 €	No specific sanction Administrative sanction Fine from €87 up	Specific criminal sanction Imprisonment from 8 days to 5	No specific sanction Criminal sanction	Administrative sanction Fine 550 € 100 €	No specific sanction Criminal sanction for the driver and for

²⁸ The expression “No specific sanction” means that the sanction for a very serious infringement is to be found in the sanction system of a Member State, and that the Member state does not foresee sanctions that apply only to very serious infringement and thus tailored to the gravity of such infringements. However, the expression “No specific sanction” does not imply that national law does not foresee a sanction for the infringements listed in Annex III of the Directive 2006/22/EC.

²⁹ Please see Polish National Report for the sanctions possibly applicable in general to the transport manager and the undertaking. However, for some specific infringements we have specified also the fines applicable to the latter.

	imprisonment Fine from 1,000 € up to 2,000 € (driver)	1,600 € (driver, transport undertaking)	(undertaking)	to €290 (driver)	years And/or a fine from € 251.- to € 25,000 And immobilization of the vehicle until compliance with the provisions (driver undertaking)	Fine 58.23€ And/or Administrative sanction Fine not exceeding 3,000 €+ One penalty point for every 10€ or part thereof imposed by way of fine + Penalty of 350€ and corresponding penalty points. (driver, undertaking)	or each additional hour with a maximum of 1,350 €. (employer, self- employed)	the manager of the undertaking The value of the fine is proportionate to the no of hours in excess Administrative sanction for the undertaking The value of the fine is proportionate to the no of hours in excess
2. Driving more than 12	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above

h per day if the daily driving time can be extended to 10								
3. Driving more than 70 h a week	Same as above	Same as above	Same as above	No specific sanction Administrative sanction Fine €87 - €145 (driver)	Same as above	Same as above	Administrative sanction Fine 550 €	Same as above
4. Driving more than 112 h and a half in two weeks	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
5. Exceed uninterrupted driving time of more than 6 h	Same as above	No specific sanction Administrative sanction Fine from 155 € up to 620 €	Same as above	No specific sanction Administrative sanction Fine €58 - €290 (driver)	Same as above	Same as above	Administrative sanction Fine 550 € plus 100 for each additional hour	Same as above

		Increaseable of 1/3 from 22 p.m and 7 p.m (driver, transport undertaking).					with a maximum of 1,950 € (employer, self-employed)	
6. Insufficient daily rest period of less than 8,30 h if reduced daily rest period not allowed	Same as above	No specific sanction Administrative sanction Fine 400 € - 1,600 € (driver, transport undertaking)	Same as above	No specific sanction Administrative sanction Fine from €58 up to €290 (driver)	Same as above	Same as above	Administrative sanction Fine 550 € plus 100 € for each additional missing hour	Same as above
7. Insufficient reduced daily rest period of less than 7 h if reduced daily rest period is allowed	Same as above	No specific sanction Administrative sanction Fine 400 € - 1,600 € (driver, transport undertaking)	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above

		undertaking)						
8. Insufficient split daily rest period of less than 3 h + 7h	Same as above	No specific sanction Administrative sanction Fine 400 € - 1,600 € (driver, transport undertaking)	Same as above	No specific sanction Administrative sanction Fine from €29 up to €58 (driver)	A fine of € 250 (driver, undertaking)	Same as above	Administrative sanction Fine 200 € (employer, self-employed)	Same as above
9. Insufficient daily rest period of less than 7 h multi-manning	Same as above	Same as above	Same as above	No specific sanction Administrative sanction From €58 up to €290 (driver)	The VSI on multi-manning are insufficient daily rest period of less than 9 h for multi-manning And of less than 8 h - ... <6H Imprisonment from 8 days to 5 years	Same as above	Administrative sanction Fine 550 € plus 100 € for each additional hour (employer, self-employed)	Same as above

					And/or a fine from € 251.- to € 25,000 (driver, undertaking)			
10. Insufficient reduced weekly resting period of less than 20 h	Same as above	Same as above	Same as above	No specific sanction Administrative sanction Fine from €15 up to €29 (driver)	The VSI is Insufficient reduced weekly resting period of less than 24h - ... < 20h Same as above (driver, undertaking)	Same as above	Administrative sanction Fine 550 € plus 100 € for each additional hour with a maximum of 1.000 € (employer, self-employed)	Same as above
11. Insufficient weekly resting period of less than 36 h if	Same as above	Same as above	Same as above	No specific sanction Administrative	Same as above	Same as above	Same as above (employer, self-employed)	Same as above

reduced weekly resting period not allowed				sanction Fine from €15 up to €29 (driver)				
12 Link between wage and distance travelled or amount of goods carried	Same as above	No specific sanction Fine 307 € 1,228 € (transport undertaking)	Administrative sanction Fine 100 LVL -1,000 (undertaking)	No specific sanction Administrative sanction Fine from €15 up to €29 (driver)	Same as above (undertaking)	Same as above	Administrative sanction Fine 1,100 € (employer)	No specific sanction Criminal sanction 2,000 PLN (= 490,506 €) (various operators)
13 No type approved recording equipment installed and used	No specific sanction. Criminal sanction Imprisonment for up to but not exceeding 6 months. Fine	No specific sanction. Administrative sanction Fine 798 € - 3,194 € Suspension of the driving	Administrative sanction Fine 200 LVL - 400 LVL (driver) Fine 500 LVL - 1 000 LVL (undertaking)	No specific sanction. Administrative sanction Fine up to €290 (driver) Fine up to €869 (the	Same as above (Driver, Owner, Holder of the vehicle)	No specific sanction Criminal sanction Fine 58.23€ (driver, transport undertaking)	Administrative sanction Fine 2,200 € (employer, self-employed)	No specific sanction Criminal sanction for the driver and for the manager of the undertaking up to 2,000

	up to but not exceeding 1,000 £ (any person)	license from 15 days up to 3 months (driver) ³⁰		head of undertaking)				PLN. Administrative sanction for the undertaking up to 5,000 PLN
14. Recording equipment not correctly functioning (for example: recording equipment not properly inspected calibrated and sealed)	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above Or 200 € (concerning inspections)	Same as above
15. Recording equipment improperly used (not using	Same as above	Same as above	Administrative sanction Fine 50 LVL-100 LVL (driver)	No specific sanction. Administrative	Same as above (driver, employer)	Same as above	Administrative sanction Fine 2,200 €	Same as above

³⁰ For the sanctions applicable to transport undertakings see Italian Country Report.

a valid driver card, voluntary abuse,...)			Fine 150 LVL-300 LVL (undertaking)	sanction From €29 up to €58 (driver) From €72 up to €145 (the head of undertaking)			(Employer) 1,100 € (Driver)	
16.Undertaking not keeping record sheets, printouts and downloaded data	Possible application of sanction same as above	No specific sanction Administrative sanction Fine from € 45,00 to € 88,00 for each infringement (undertaking)	Administrative sanction Fine 100 LVL-1000 LVL	No specific sanction. Administrative sanction Fine from €58 up to €579 (the head of undertaking)	Same as above (undertaking)	Same as above	Administrative sanction Fine 4,400€ (undertaking)	No specific sanction Administrative sanction for the undertaking up to 5,000 PNL
17. Driver holding more than one valid driver card	Same as above	No specific sanction Administrative sanction	Administrative sanction Fine 200 LVL-400 LVL (driver)	No specific sanction. Administrative sanction	Same as above (driver)	Same as above – note however, that holding more	Administrative sanction Fine 550 € (driver)	No specific sanction Criminal sanction for the

		Possible application of fine from 798 € up to 3,194 € Suspension of the driving license from 15 days up to 3 months (driver)	Fine 500 LVL-1,000 LVL (undertaking)	Fine from €29 up to €58 (driver) – fine from €72 up to €145 (the head of undertaking)		than one valid driver card is not contemplated as a specific offence. Hence, a criminal sanction will only be imposed if the holding of more than one card was the result of another offence under the law, such as, for e.g. the giving of false declarations.		driver and for the manager of the undertaking up to 2,000 PNL Administrative sanction for the undertaking in the amount of PLN 1,000.00 (approximately 283 €).
18. Use of different	Same as above	Same as above	Same as above	No specific sanction.	Same as above	Same as above	Administrative sanction	Same as above

<p>driving card than the valid one</p>				<p>Administrative sanction</p> <p>Fine from €145 up to €290 (driver)</p>			<p>Fine 1,300 € (undertaking)</p> <p>550 € (driver)</p>	
<p>19. Use of defective or expired driver card</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Administrative sanction</p> <p>Fine 100 LVL-200 LVL (driver)</p> <p>Fine 300 LVL-500 LVL (undertaking)</p>	<p>No specific sanction.</p> <p>Administrative sanction</p> <p>Fine from €29 up to €58 (driver) – fine from €72 up to €145 (the head of undertaking)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Administrative sanction</p> <p>Fine 550 € (driver)</p>	<p>No specific sanction.</p> <p>Criminal sanction for the driver in the amount of PLN 500.00 (approximately 121 €).</p> <p>Administrative sanction for the undertaking in the amount of PLN 1,000.00 (approximately 283 €).</p>

<p>20. Recorded and stored data not available for at least 365 days</p>	<p>Same as above</p>	<p>No specific sanction Administrative sanction Fine from € 45,00 to € 88,00 for each infringement (undertaking)</p>	<p>Administrative sanction Fine 100 LVL - 1,000 LVL (undertaking)</p>	<p>No specific sanction. Administrative sanction Fine from €145 up to €290 (driver)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Administrative sanction Fine 4,400 € (Employer / self-employed person)</p>	<p>No specific sanction. Administrative sanction for the undertaking in the amount of PLN 300.00 (approximately 72 €).</p>
<p>21. Use dirty damaged sheets or driver cards and data not legible</p>	<p>Same as above</p>	<p>No specific sanction Administrative sanction Fine from 48 € up to 94 € (driver)</p>	<p>Administrative sanction Fine 100 LVL - 200 LVL (driver) Fine 300 LVL – 500 LVL (undertaking)</p>	<p>No specific sanction. Administrative sanction Fine from €29 up to €58 (driver) From €72 up to €145 (the head of undertaking)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Administrative sanction € 550 (driver)</p>	<p>No specific sanction. Criminal sanction for the driver in the amount of PLN 200.00 (approximately 48 €). Administrative sanction for the undertaking in the amount of</p>

								PLN 300.00 (approximately 72 €) for each sheet.
22. Incorrect use of record sheets/driver cards	Same as above	From 48 € up to 94 € (driver)	Same as above	Same as above	Same as above	Same as above	Same as above	No specific sanction Criminal sanction for the driver 1,000 PNL
23. Unauthorized withdrawal of sheets or driver card which has an impact on the record of relevant data	Same as above	No specific sanction Administrative sanction From 767 € up to 3,068 € (driver)	Same as above	Same as above	Same as above	Same as above	Same as above	No specific sanction Criminal sanction for the driver 2,000 PNL
24. Record sheet or driver card used to cover a period	Same as above	No specific sanction Administrative	Same as above	No specific sanction. Administrative sanction Fine	Same as above	Same as above – note however that this specific	Same as above	No specific sanction Criminal sanction Fine up

<p>longer than that for which it is intended and data is lost</p>		<p>sanction From 48 € up to 94 € (driver)</p>		<p>from €145 up to €290 (driver)</p>		<p>offence is not contemplated in our law. therefore, another offence would need to have been committed, for e.g. in this case, the driver would need to request a replacement of the card within 7 days. failure to do so would result in an offence punishable with the penalty above specified.</p>		<p>to 1,000 PNL</p>
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<p>25. Not using manual input when required to do so</p>	Same as above	Same as above	Same as above	<p>No specific sanction.</p> <p>Administrative sanction</p> <p>From €29 up to €58 (driver)</p> <p>Fine from €72 up to €145 (the head of undertaking)</p>	Same as above when there is an impact on data recorded	Same as above	Same as above	<p>No specific sanction.</p> <p>Criminal sanction for the driver in the amount of PLN 100.00 (approximately 24 €) for each day.</p>
<p>26. Not using correct sheet or driver card not in the correct slot (multi-manning)</p>	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above	<p>Administrative sanction</p> <p>Fine 1,100 € (driver)</p>	<p>No specific sanction.</p> <p>Criminal sanction for the driver in the amount of PLN 200.00 (approximately 48 €).</p> <p>Administrative</p>

								sanction for the undertaking in the amount of PLN 100.00 (approximately 24 €) for each sheet (maximum value of a fine: PLN 1,000.00 (approximately 243 €)).
27. Incorrect use of switch mechanism	Same as above	Same as above	Same as above	No specific sanction. Administrative sanction From €15 up to €29 (driver)	Same as above when there is an impact on data recorded	Same as above	Administrative sanction Fine 550 € (driver)	No specific sanction. Criminal sanction for the driver in the amount of PLN 200.00 (approximately 48 €). Administrative sanction for the undertaking in

								the amount of PLN 100.00 (approximately 24 €) for each sheet (maximum value of a fine: PLN 1,000.00 (approximately 243 €).
28. Surname missing on record sheet	Same as above	No specific sanction Administrative sanction From 48 € up to 94 € (driver)	Same as above	No specific sanction. Administrative sanction From €29 up to €58 (driver) From €72 up to €145 (the head of undertaking)	Same as above	Same as above	Administrative sanction Fine 550 € (driver)	No specific sanction. Criminal sanction for the driver in the amount of PLN 50.00 (approximately 12 €). Administrative sanction for the undertaking in the amount of PLN 50.00

								(approximately 12 €).
29. Name missing on record sheet	Same as above	No specific sanction Administrative sanction From 48 € up to 94 € (driver)	Same as above	No specific sanction. Administrative sanction From €29 up to €58 (driver) From €72 up to €145 (the head of undertaking)	Same as above	Same as above	Administrative sanction Fine 550 € (driver)	Same as above
30. Refuse to be checked	Same as above	Same as above	Administrative sanction Fine 100 LVL – 500 LVL (natural person) Fine 1,000 LVL -5,000 LVL (legal person)	No specific sanction. Administrative sanction From €15 up to €29 (offender)	Same as above	Same as above	Administrative sanction Fine 4,400 € (employer, self-employed)	No specific sanction. Criminal sanction for the driver – imprisonment for up to 30 days or a fine of up to PLN 5,000.00

								(approximately 1216 €). Administrative sanction for the undertaking (if the control is performed in the undertaking) in the amount of PLN 10,000.00 (approximately 2,432 €).
31. Unable to produce records of current day	Same as above	Same as above	Administrative sanction Fine 100 LVL-200 LVL (driver) Fin 150 LVL-300 LVL (undertaking)	Administrative sanction Fine from €145 up to €290 (driver)	Same as above	Same as above	Administrative sanction Fine 550 € (driver)	No specific sanction. Criminal sanction for the driver in the amount of PLN 2,000.00 (approximately 486 €).

32. Unable to produce records of previous 28 days	Same as above	Same as above (driver)	Same as above					
33. Unable to produce records of the driver card if the driver holds one	Same as above	Same as above	Same as above					
34. Unable to produce manual records and printouts made during the current day and the previous 28 days	Same as above	Same as above – note however that Maltese law refers to the obligation to produce manual records and printouts made during the	Same as above	Same as above				

						current week and the previous fifteen days (not 28 days)		
35. Unable to produce driver card	Same as above	No specific sanction Administrative sanction From 798 € up to 3,194 € (driver)	Administrative sanction Fine 200 LVL-400 LVL (driver) Fine 500 LVL - 1,000 LVL (undertaking)	Same as above	Same as above	Same as above	Administrative sanction Fine 1,300 € 550 € (driver) (questionable interpretation)	No specific sanction. Criminal sanction for the driver in the amount of PLN 500.00 (approximately 121 €).

36. Unable to produce print outs made during the current week and the previous 28 days	Same as above	No specific sanction Administrative sanction From 48 € up to 94 € (driver)	Administrative sanction Fine 100 LVL - 200 LVL (driver) Fine 150 LVL - 300 LVL (undertaking)	Same as above	Same as above	Same as above	Administrative sanction Fine 550 € (driver)	No specific sanction. Criminal sanction for the driver in the amount of PLN 2,000.00 (approximately 486 €).
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	Same as above	No specific sanction Administrative sanction Fine around 1,400 €- 6,000 € (driver)	Administrative sanction Fine 200 LVL- 400 LVL (driver) Fine 500 LVL - 1 000 LVL (undertaking)	No specific sanction Administrative fine from €290 up to €579 (driver) From €579 up to €1158 (the head of undertaking)	Same as above (driver or transport operator)	Same as above	Administrative sanction Fine 1,300 € - 550 € Employer / (self-employed employee)	No specific sanction Administrative sanction for the undertaking 5,000 PNL

38. Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified	Same as above	Same as above	Same as above	No specific sanction Administrative fine from €145 up to €579 (driver) From €724 up to €1,448 (the head of undertaking)	Same as above	Same as above	Same as above	No specific sanction. Criminal sanction for the driver in the amount of PLN 2,000.00 (approximately 486 €).
39. Manipulation device that could be used to falsify data and/or printouts information present on vehicle switch/wire)	Same as above	Same as above.	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above

40. Not repaired by an approved fitter or workshop	Same as above	No specific sanction. Possible application of administrative sanction From 767 € up to 3,068 € (driver)	Administrative sanction Fine 300 LVL – 500 LVL (undertaking)	No specific sanction Administrative fine from €15 up to €29 (driver)	Same as above (undertaking)	Same as above	Administrative sanction Fine 2,200 € (Employer / self-employed person)	No specific sanction
41. Driver not marking all information for the periods of time which are no longer recorded while recording equipment is unserviceable or malfunctioning	Same as above	No specific sanction Administrative sanction From 48 € up to 94 € (driver)	Administrative sanction Fine LVL 100-200 (driver) LVL 300-500 (undertaking)	No specific sanction Administrative fine from €29 up to €58 (driver) Fine from €72 up to €145 (the head of undertaking)	Same as above (undertaking s, driver)	Same as above	Administrative sanction Fine 550 € (driver)	No specific sanction
42. Driver card number	Same as above	No specific sanction	Administrative sanction	Same as above	Same as above	Same as above	Same as above	No specific sanction.

<p>and/or name and/or driving license number missing on temporary sheet</p>		<p>Administrative sanction From 48 € up to 94 € (driver)</p>	<p>Fine 50 LVL - 100 LVL (driver) Fine 150 LVL - 300 LVL (undertaking)</p>					<p>Criminal sanction for the driver in the amount of PLN 50.00 (approximately 12 €) for lack of each datum. Administrative sanction for the undertaking in the amount of PLN 50.00 (approximately 12 €) for lack of each datum.</p>
<p>43. Lost or theft of driver card not formally declared to the competent</p>	<p>Same as above</p>	<p>Possible application of sanction same as above (driver)</p>	<p>Administrative sanction Fine 100 LVL - 200 LVL (driver)</p>	<p>No specific sanction Administrative fine from €15 up to €29</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p>

authorized of the Member State where the theft occurred				(driver)				
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Very serious infringements of EU rules foreseen in Annex III of Directive 2006/22/EC	PORTUGAL	ROMANIA (1 RON = 0.218808 €; 1 € = 4.57022 RON)	SLOVENIA	SLOVACCHIA	SPAIN	SWEDEN (1 SEK = 0.116160 €; 1 € = 8.60880 SEK)	UK	NORTHERN IRELAND (See UK)
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<p>1. Driving more than 11 h per day if the daily time is 9 h</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver and the undertaking</p> <p>Fine from € 2.040 up to € 61,200</p>	<p>Administrative sanction</p> <p>Fine between RON 4,000 and RON 8,000 (≈ between € 920 and 1,840) (undertaking)</p>	<p>No specific sanction</p> <p>Administrative sanction Fine up to 600 € (driver) 800-1,250 € (undertaking)</p> <p>300 € (Responsible person of the undertaking)</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver</p> <p>Fine of up to approx. 1,660 €</p> <p>Prohibition of activity of up to 2 years (even cumulatively).</p> <p>Or criminal sanction</p> <p>Imprisonment of up to 2 years.</p>	<p>Administrative sanction for the undertaking up to 4,600 €</p> <p>Up to 6,000 € (if previously sanctioned)</p> <p>Vehicle's immobilisation</p>	<p>No specific sanction</p> <p>Administrative sanction From 1,000 to 4,000 SEK (driving more than 9 h) (driver, employer)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>£200 (-Driver - any other person)</p> <p>Or</p> <p>Criminal sanction fine not exceeding level 4 (£2,500)</p>	
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2. Driving more than 12 h per day if the daily driving time can be extended to 10	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above (driving more than 10 h)	Same as above	
3. Driving more than 70 h a week	Same as above	Same as above	No specific sanction Administrative sanction Fine 150 € (driver) 800-1.250 € (undertaking) 300 € (responsible person of the undertaking)	Same as above	Same as above	Same as above (driving more than 56 h)	Same as above	

4. Driving more than 112 h and a half in two weeks	Same as above	Same as above (driving more than 90 h)	Same as above					
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<p>5. Exceed uninterrupted driving time of more than 6 h</p>	<p>Same as above</p>	<p>Same as above Exceeding of the 6 hours permitted driving time with more than 1h30min – same as above; exceeding with a period between 30 min and 1h and 30 min - Fine between RON 3,000 and RON 6,000 (≈ between € 690 and € 1,380) and not qualified as very serious infringement.</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above (more than 4.5 h)</p>	<p>Same as above</p>	
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6. Insufficient daily rest period of less than 8,30 h if reduced daily rest period not allowed	Same as above	Same as above point 1	Same as above	Same as above	Same as above	Same as above (less than 11 h)	Same as above	
7. Insufficient reduced daily rest period of less than 7 h if reduced daily rest period is allowed	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above (less than 9 h)	Same as above	
8. Insufficient split daily rest period of less than 3 h + 7h	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above (less than 3+9)	Same as above	

9. Insufficient daily rest period of less than 7 h multi-manning	Same as above (less than 9 h)	Same as above						
10. Insufficient reduced weekly resting period of less than 20 h	Same as above (less than 24 h)	Same as above						
11. Insufficient weekly resting period of less than 36 h if reduced weekly resting period not allowed	Same as above (less than 45 h)	Same as above						

<p>12 Link between wage and distance travelled or amount of goods carried</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine 800-1.250 € (undertaking)</p> <p>(300 € Responsible person of the undertaking)</p>	<p>No specific sanction</p> <p>Administrative sanction for the undertaking</p> <p>Fine between approx. 1,660 € and 16,597 €.</p> <p>By another infringement within 12 months a fine between 6,638 € and 33,194€</p> <p>Administrative sanction for the natural person</p> <p>A fine of up to approx. € 1660.</p>	<p>No specific sanction</p>	<p>4,000 SEK (undertaking)</p>	<p>No specific sanction</p>	
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<p>13 No type approved recording equipment installed and used</p>	<p>Administrative sanction for the transport undertaking</p> <p>From €1.200 up to €3,600 (singular person)</p> <p>From €1.200 up to €6,000 (legal person)</p> <p>Fine from € 600 up to €1,800 (driver)</p>	<p>Administrative sanction fine between RON 8,000 and RON 16,000 (≈ between € 1,830 and € 3,660) (transport undertaking)</p>	<p>No specific sanction</p> <p>Administrative sanction fine 1,600-3,300 € (undertaking)</p> <p>300-600 € (responsible person)³¹</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver</p> <p>Fine of up to approx 1,660 €.</p> <p>Prohibition of activity for up to 2 years (even cumulatively)</p> <p>Or Criminal sanction</p> <p>Imprisonment of up to 2 years³².</p> <p>Administrative sanction for employer.</p> <p>Fine between € 1,660 and 16,597.207</p>	<p>Administrative sanction for the undertaking</p> <p>Fines between 4,601 € to 6,000 € /from 6,001 € to 18,000 € in case of recidivism</p>	<p>Same as above (drivers, employer)</p>	<p>No specific sanction</p> <p>Administrative sanction £ 200</p> <p>Or criminal sanction</p> <p>£5000 (driver, undertaking)</p>	
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³¹ For the liability of the drivers see Slovenia Country Report.

14. Recording equipment not correctly functioning (for example: recording equipment not properly inspected calibrated and sealed)	Same as above	Same as above	No specific sanction Administrative sanction Fine 800-2,000 € (Undertaking)	Same as above	Administrative sanction for the undertaking fines between 1,501 € -2000 € (up to 3,300 € if recidivism)	Same as above	Same as above	
15. Recording equipment improperly used (not using a valid driver card, voluntary abuse,...)	Same as above	Fine between RON 4,000 and 8,000 (≈ between € 920 and 1,840) (Driver)	Same as above	Same as above	Same as above	Same as above	Same as above	

³² For the liability of the undertaking see Slovakian Country Report.

<p>16. Undertaking not keeping record sheets, printouts and downloaded data</p>	<p>Administrative sanction for the transport undertaking</p> <p>From €1.200 up to €3,600 (singular person)</p> <p>From €1.200 up to €6,000 (legal person)</p>	<p>Administrative sanction - Fine between RON 8,000 and RON 16,000 (≈ between € 1,830 and € 3,660) (undertaking)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine 400-2,900 € (undertaking)</p> <p>400 € (Responsible person)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine between approx. 1,660 € and 16,596 €.</p> <p>By another infringement within 12 months a fine between 16,597 € and 33,194 €</p>	<p>Administrative sanction for the undertaking</p> <p>finances up to 6,000 € (up to 18,000 € if recidivism)</p>	<p>Same as above (professional/undertaking)</p>	<p>No specific sanction</p> <p>Criminal sanctions</p> <p>Fine up to exceeding £ 5,000</p>	
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<p>17. Driver holding more than one valid driver card</p>	<p>Administrative sanction Fine from € 600 up to €1,800 (driver)</p>	<p>Administrative sanction - Fine between RON 4,000 and 8,000 (≈ between € 920 and 1,840) (driver)</p>	<p>No specific sanction Administrative sanction Fine 800-2,000 € (Undertaking)</p>	<p>specific sanction Administrative sanction for the driver Fine of up to approx 1,660 € Prohibition of activity for up to 2 years (This even cumulatively) Or Criminal sanction Imprisonment of up to 2 years</p>	<p>Same as above</p>	<p>Same as above (driver, employer)</p>	<p>No specific sanction Administrative sanction Fine of £200 Or criminal sanction Fine up to £5000 (driver, undertaking)</p>	
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18. Use of different driving card than the valid one	Same as above							
19. Use of defective or expired driver card	Same as above	No specific sanction Administrative sanction (driver, undertaking) Fine of £ 60 Or criminal sanction Fine up to £5000						

<p>20. Recorded and stored data not available for at least 365 days</p>	<p>Administrative sanction for the transport undertaking</p> <p>From €1.200 up to €3,600 (singular person)</p>	<p>Administrative sanction fine between RON 8,000 and RON 16,000 (≈ between € 1,830 and € 3,660) (transport undertaking)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine 400-2,900 € (undertaking)</p> <p>400 € (responsible person)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine between approx. € 1,660 and 16,596 €.</p> <p>By another infringement within 12 months a fine between 16,597 € and 33,194 € (undertaking).</p>	<p>Same as above</p>	<p>Fine 4000 SEK</p> <p>20,000 SEK (undertaking)</p>	<p>No specific sanction</p> <p>Criminal sanction</p> <p>Fine not exceeding £5000 (undertaking)</p>	
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<p>21. Use dirty sheets or driver cards and data not legible</p>	<p>Administrative sanction fine from € 600-€1,800 (driver)</p> <p>Administrative sanction for the transport undertaking</p> <p>From €1.200 up to €3,600 (singular person)</p>	<p>Administrative sanction</p> <p>Fine between RON 4,000 and 8,000 (driver)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine 800-2,000 € (Undertaking)</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver</p> <p>Fine of up to approx 996 €</p> <p>Prohibition of activity for up to 1 year (This even cumulatively)</p> <p>Or Criminal sanction</p> <p>Imprisonment of up to 2 years</p>	<p>Administrative sanction for the undertaking</p> <p>Administrative fines up to 3,300 € (up to 4,600 € if recidivism)</p>	<p>4,000 SEK (driver, employer)</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine of £200</p> <p>Or criminal sanction</p> <p>Fine up to £5000 (driver, undertaking)</p>	
<p>22. Incorrect use of record sheets/driver cards</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	

<p>23. Unauthorized withdrawal of sheets or driver card which has an impact on the record of relevant data</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver</p> <p>Fine of up to approx 1,657 €</p> <p>Prohibition of activity for up to 2 years (This even cumulatively)</p> <p>Or Criminal sanction</p> <p>Imprisonment of up to 2 years</p> <p>Administrative sanction for the natural person</p> <p>A fine of up to approx. € 1660.</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine of £120</p> <p>Or criminal sanction</p> <p>Fine up to £5000 (driver, undertaking)</p>	
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<p>24. Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver</p> <p>Fine of up to approx 996 €</p> <p>Prohibition of activity for up to 1 year (This even cumulatively)</p> <p>Or Criminal sanction</p> <p>Imprisonment of up to 2 years</p>	<p>Administrative sanction for the undertaking</p> <p>Administrative fines up to 2,000 € (up to 3,300 € if recidivism)</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine of £200</p> <p>Or criminal sanction</p> <p>Fine up to £5000 (driver, undertaking)</p>	
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<p>25. Not using manual input when required to do so</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction Administrative sanction for the driver Fine of up to approx. 498 €.</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction Administrative sanction Fine of £120 Or criminal sanction Fine up to £5000 (driver, undertaking)</p>	
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<p>26. Not using correct sheet or driver card not in the correct slot (multimanning)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver</p> <p>Fine of up to approx 1,660 €</p> <p>Prohibition of activity for up to 2 years (This even cumulatively)</p> <p>Or Criminal sanction</p> <p>Imprisonment of up to 2 years</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>	
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27. Incorrect use of switch mechanism	Same as above	Same as above	Same as above	Same as above	Administrative sanction for the undertaking Fine up to 2,000 € (up to 3,300 € if recidivism)	Same as above	Same as above	
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28. Surname missing on record sheet	Same as above	Same as above	Same as above	No specific sanction Administrative sanction for the driver Fine of up to approx 996 € Prohibition of activity for up to 1 year (This even cumulatively) Or Criminal sanction Imprisonment of up to 2 years	Administrative sanction for the undertaking fine up to 4,600 € (6,000 € if recidivism)	1,000-4,000 SEK (driver, employer)	No specific sanction	
29. Name missing on record sheet	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above	No specific sanction	

<p>30. Refuse to be checked</p>	<p>Same as above</p>	<p>Administrative sanction</p> <p>Fine between RON 4,000 and RON 8,000 (≈ between € 920 and 1,840)</p> <p>(driver)</p>	<p>Same as above</p>	<p>Administrative sanction for the driver</p> <p>Fine of up to approx. 1,660 €.</p> <p>Prohibition of activity of up to 2 years (even cumulatively).</p> <p>Or criminal sanction</p> <p>Imprisonment of up to 2 years.</p>	<p>Administrative sanction for the undertaking</p> <p>finest up to 6000 € (up to 18,000 € if recidivism)</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Criminal sanction for the driver</p> <p>£1,000</p>	
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<p>31. Unable to produce records of current day</p>	<p>Same as above</p>	<p>Administrative sanction</p> <p>Fine between RON 4,000 and 8,000 (≈ between € 920 and 1,840)</p> <p>(Undertaking)</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver</p> <p>Fine of up to approx 996 €</p> <p>Prohibition of activity for up to 1 years (This even cumulatively)</p> <p>Or Criminal sanction</p> <p>Imprisonment of up to 2 years</p>	<p>Administrative sanction for the undertaking</p> <p>finest up to 3,300 € (up to 4,600 € if recidivism)</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Criminal sanction for the driver and the undertaking</p> <p>Fine up to £2500</p>	
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32. Unable to produce records of previous 28 days	Same as above	Fine between RON 8,000 and RON 16,000 (≈ between € 1,830 and € 3,660) (Undertaking)	Same as above					
33. Unable to produce records of the driver card if the driver holds one	Same as above	Fine between RON 4,000 and RON 8,000 (≈ between € 920 and 1,840) (driver)	Same as above					

<p>34. Unable to produce manual records and printouts made during the current day and the previous 28 days</p>	<p>Same as above</p>	<p>Fine between RON 8,000 and RON 16,000 (≈ between € 1,830 and € 3,660) (Undertaking</p>	<p>Same as above</p>					
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35. Unable to produce driver card	Same as above	Same as above 33	Same as above	Same as above	Administrative action for the undertaking fines up to 3,300 € (up to 4,600 € if recidivism)	Same as above	No specific sanction Administrative sanction £ 200 Or criminal sanction £5000 (driver, undertaking)	
36. Unable to produce print outs made during the current week and the previous 28 days	Same as above	Same as above 34	Same as above	Same as above	Same as above	Same as above	No specific sanction Criminal sanction for the driver and the undertaking Fine up to £2500	

<p>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</p>	<p>Administrative sanction for the transport undertaking</p> <p>From €1.200 up to €3,600 (singular person)</p> <p>Administrative sanction fine from € 600-€1,800 (driver.)</p>	<p>Criminal sanction for forgery</p> <p>Imprisonment from 3 months to 3 years</p> <p>Or</p> <p>Fine between RON 8,000 and RON 16,000 (≈ between € 1,830 and € 3,660) for the rest (undertaking)</p>	<p>Same as above</p>	<p>Fine of up to approx. 1,660 €</p> <p>Or criminal sanction</p> <p>Imprisonment of up to 3 years (driver).</p>	<p>Administrative action for the undertaking fines up to 6,000 € (up to 18,000 € if recidivism)</p>	<p>No sanction. Possible criminal sanction (according to the Swedish Transport Agency): forgery (imprisonment of up to 2 years).</p>	<p>No specific sanction</p> <p>Criminal sanction for any person found guilty</p> <p>Fine £5000</p> <p>Or imprisonment of a term not exceeding 2 years.</p>	
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38. Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified	Same as above	Same as above Fine between RON 4,000 and 8,000 (≈ between € 920 and 1,840) (driver)	Same as above	Same as above	Administrative action for the undertaking fines up to 6,000 € (up to 18,000 € if recidivism)	Same as above	Same as above	
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<p>39. Manipulation device that could be used to falsify data and/or printouts information present on vehicle switch/wire...)</p>	<p>Same as above</p>	<p>Same as above (driver) Fine between RON 8,000 and 12,000 (≈ between € 1,830 and 2,750) (Driver)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Administrative action for the undertaking fines up to 6,000 € (up to 18,000 € if recidivism)</p>	<p>No sanction. Possible criminal sanction (according to the Swedish Transport Agency): Attempted forgery or preparation of forgery (imprisonment of up to 2 years).</p>	<p>Same as above</p>	
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<p>40. Not repaired by an approved fitter or workshop</p>	<p>Administrative sanction for the transport undertaking</p> <p>From €1.200 up to €3,600 (singular person)</p>	<p>Administrative sanction</p> <p>Fine between RON 8,000 and 12,000 (≈ between € 1,830 and 2,750)</p> <p>(Fitter/workshop)</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction for the undertaking</p> <p>Fine of up to approx. 1,660 € and 16,597 €.</p> <p>By another infringement within 12 months a fine between 16,597 € and 33,194 €</p>	<p>Not covered</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>Fine of £120</p> <p>Or criminal sanction</p> <p>Fine up to £5000 (driver, undertaking)</p>	
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<p>41. Driver not marking all information for the periods of time which are no longer recorded while recording equipment is unserviceable or malfunctioning</p>	<p>Administrative sanction fine from € 600-€1,800 (driver.)</p> <p>Administrative sanction for the transport undertaking</p> <p>From €1.200 up to €3,600 (singular person)</p>	<p>Administrative sanction</p> <p>Fine between RON 4,000 and 8,000 (≈ between € 920 and 1,840)</p> <p>(Driver)</p>	<p>Same as above</p>	<p>Administrative sanction for the driver</p> <p>Fine of up to approx 996 €</p> <p>Prohibition of activity for up to 1 years (This even cumulatively)</p> <p>Or Criminal sanction</p> <p>Imprisonment of up to 2 years</p>	<p>Administrative action for the undertaking fines up to 2,000 € (up to 3,300 € if recidivism)</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction</p> <p>£200 (driver, undertaking)</p> <p>Or</p> <p>Criminal sanction Fine up to £5000</p>	
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42. Driver card number and/or name and/or driving license number missing on temporary sheet	Same as above	Same as above	Same as above	Same as above	Administrative action for the undertaking fines up to 1,500 € (up to 2,000 € if recidivism)	Same as above	Same as above	
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<p>43. Lost or theft of driver card not formally declared to the competent authorized of the Member State where the theft occurred</p>	<p>Same as above (driver)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>No specific sanction</p> <p>Administrative sanction for the driver</p> <p>Fine of up to approx. 1,660 €</p> <p>Prohibition of activity for up to 2 years (This even cumulatively)</p> <p>Or criminal sanction</p> <p>Imprisonment of up to 2 years.</p>	<p>Administrative action for the undertaking fines up to 4,600 € (up to 6,000 € if recidivism)</p>	<p>Same as above</p>	<p>No specific sanction</p>	
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33 LEGAL SCOPE FOR HARMONIZATION OF SANCTIONS AT THE EU LEVEL IN RESPECT OF INFRINGEMENTS/OFFENCES AGAINST THE ROAD TRANSPORT LEGISLATION

33.1 Introduction

As explained before 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”) definition 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.

Notably, the analysis carried out aimed at answering to the following questions.

- if the TFEU is to be interpreted in the sense that the EU could deal only with serious offences, whilst less serious offences belong to the exclusive competence of the Member States;
- if the TFEU is to be interpreted in the sense that the EU could deal only with offences with a cross-border dimension or of transnational relevance, while the Member States should have exclusive competence with offences whose impact is domestic (the legal order of the Member State concerned);
- if the TFEU should be interpreted in the sense that the EU law could approximate only the substantive elements of the offences (*actus reus and mens rea*) and the related criminal sanctions and not provisions on criminal procedure, as the investigative powers and techniques and related procedural safeguards;

- 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 should be the criteria for defining a criminal offence in relation to the legal interest to be protected;
- 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;
- what type and level of sanctions would be necessary and the most efficient way to ensure better compliance with the legislation.

This Chapter contains the main findings of the analysis carried out.

Firstly, it contains an analysis of the relevant legal background. In particular, it explains the scope of Article 83, Paragraph 2 with the aim of defining the competences of the EU in the area of criminal law and of identifying the conditions that need to be met in order to justify the adoption of EU approximating measures in the area of criminal law.

Further, the Study identifies also sanctions and levels of sanctions that could be considered substantially criminal in nature in the transport sector pursuant to the ECHR case law, and therefore important for the elaboration of EU law pursuant to Article 6 (3) TEU (general principles of EU law).

Secondly, based on the findings of the comparative analysis of the sanctions systems of the Member States of the EU (see Chapters 32 and Chapters 3-32 of this Study), it elaborates on the necessity to adopt criminal measures at EU level in the area of commercial road transport, i.e. on the justification of an EU action with criminal law content.

Thirdly, based on the analysis of the scope of Article 83, Paragraph 2 and on the main findings of the analysis of the effectiveness of Member States' sanctioning

systems carried out in the Chapters 3-32 of this Study, it will come up with answers to the questions raised above.

33.2 The legal background

The main, and maybe, exclusive legal basis in the TFEU is Article 83(2) that states the following:

“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 empowers the EU legislator to adopt provisions in the field of substantive criminal³³ law setting minimum rules concerning the definition of criminal offences and sanctions in areas to be identified.

A similar provision did not exist in the previous EU treaties and therefore it was unclear if and to which extent there was a legal base under EC law to prescribe criminal law obligations in relation to harmonized EC policies. Only with the ECJ-ruling in case C-176/03³⁴ on criminal enforcement of the environmental protection the Court of Justice confirmed a functional competence to prescribe criminal offences and criminal sanctions under EC law, this means proportionate to the necessity to achieve the objective of the EC policy in question. However, the ECJ in case C-440/05³⁵ on

³³ 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.

³⁴ Judgment of 13 September 2005, Commission / Council, C-176/03, ECR 2005, page I-7879.

³⁵ Judgment of 23 October 2007, Commission / Council, C-440/05, ECR 2007, page I-9097.

criminal enforcement of ship source pollution ruled that the type and the level of criminal sanctions could only be dealt with under third pillar law, thus by framework decision.

The late ruling of the Court of Justice on the functional criminal law harmonization under EC law explains why so few directives have been approved, before the coming into force of the Lisbon Treaty, on criminal law enforcement in relation to harmonized EC policies. The examples are:

- Directive 2008/99/EC on the protection of the environment through criminal law³⁶.
- Directive 2009/123/EC amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements³⁷.
- Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals³⁸.

On the other hand, the third pillar provisions under the Treaty of Maastricht and the Treaty of Amsterdam were mainly aimed at tackling serious crime and not aimed primarily at the enforcement of harmonized EC policies. Reason why very few framework decisions deal with these areas. A good example is however:

- Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro³⁹.

In reality the prescription of enforcement duties linked to harmonized EU policies have mostly been done through directives and regulations imposing upon the Member States administrative enforcement duties, including definition of administrative infringements, administrative measures and sanctions and procedural administrative provisions, including provisions on powers of administrative investigations. A good

³⁶ OJ L 328/28 of 6 December 2008.

³⁷ OJ L 280/52 of 27 October 2009.

³⁸ OJ L 168/24 of 30 June 2009.

³⁹ OJ L 140/1 of 14 June 2000.

example is Directive 2003/6/EC on insider dealing and market manipulation (market abuse)⁴⁰.

The legal framework changed completely with the coming into force of the Lisbon Treaty and the abolishment of the pillar-structure. When it comes to criminal law approximation of harmonised EU policies, as the one on commercial transport, Article 83 (2) has become the main reference.

From an institutional-legal point of view, Article 83(2) is part of Title V on the area of Freedom, Security and Justice. This means that directives under Article 83(2) have to contribute also to a high level of security in the area of Freedom, Security and Justice, in line with the objectives of Article 3(2) of the Treaty on the European Union:

“2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”

On the other hand Article 83(2) has also a bridge function between the area of Freedom, Security and Justice and the harmonised EU policies. This means the criminal law approximation must also be functional to the objectives of that concrete policy, i.e. in our case commercial transport (Title VI TFEU, Arts. 91 e.f.). In fact, Article 4 TFEU clearly pins out that both the Freedom, Security and Justice and the Transport Policies are areas of shared competence between the EU and the Member States under the TFEU.

From an institutional-legal standpoint Article 83, Paragraph 2 TFEU 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 essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures.

On the other hand such clause does not list specific offences, but makes the fulfillment of certain legal criteria a precondition for the adoption of criminal law

⁴⁰ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96, 12 April 2003, pages 16–25.

measures at EU level. It does neither contain specific references or provisions on type or level of criminal sanctions.

There are however EU policy sources from which we can derive guidance:

- Council conclusions on the approach to apply regarding approximation of Penalties (2002).
- Council conclusions on model provisions, guiding the Council's criminal law negotiations (2009).
- Commission communication: Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law (2011)⁴¹.

As recognized by the Commission in a recent Communication, Article 83, Paragraph 2 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 harmonisation measures. The Commission underlines that Article 83 (2) aims at strengthening mutual trust, ensuring effective enforcement and coherence and consistency in European criminal law itself. In the same Communication the Commission acknowledges that harmonization of criminal law is a sensitive issue as national systems are still very different in respect to aspects such as sanction types and levels as well as the classification of certain conducts as an administrative infringement or criminal offence.

There are no doubts that EU action in the area of criminal law has an added value when it comes to offences having a cross border dimension.

There are also few doubts that EU action has an added value when it is proven necessary in order to ensure the implementation of European Union policies. This happens for example when the means of enforcement adopted by Member States are not appropriate and do not ensure a correct implementation of EU measures.

⁴¹ 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.

However, the Commission itself in the above Communication has clarified that EU criminal measures should be consistent and coherent and do not have to undermine the respect of the principles of the Lisbon Treaty, and notably the principle of acceptance of diversity enshrined in Article 67, Paragraph 1 of the TFEU.

Beside Article 83(2) it might be worthwhile to consider if there is any possibility to approximate/harmonise criminal law based on a substantive policy basis in the TFEU. For transport policy we could think about Article 91(c-d):

“Article 91

(ex Article 71 TEC)

1. For the purpose of implementing Article 90, and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

((c) measures to improve transport safety;

(d) any other appropriate provisions”.

In the legal doctrine opinions are divided upon this possibility, but it seems that at least the Commission does not see as Article 83(2) as an exclusive legal basis, as it had submitted a proposal for a regulation on criminal protection of the financial interest of the EU, based on Article 325 TFEU and not on Article 83(2) TFEU.

The advantage of this approach is that the full community method does apply. This means that there are no opting-in and opting-out mechanism for certain States with special status under the Title IV TFEU. For the transport policy, this could be an important argument, as it is for the financial interest of the EU.

33.3 Which principles should guide the EU criminal law legislation in general and criminal law enforcement of harmonised EU policies in particular?

33.3.1 Guidance by the Council conclusions

Already in 2002 the Council does agree on an approach regarding approximation of penalties⁴². The Council elaborates a dual approach. In some cases, the Council states, that it may be sufficient to stipulate that the Member States shall provide that the offences concerned are punishable by effective, proportionate and dissuasive penalties and leave it to each Member State to determine the level and type of the penalties. In other cases, the Council accepts the need for going further and agrees to establish a system of 4 penalty levels to be used in legislation:

Level 1: Penalties of a maximum of at least between 1 and 3 years of imprisonment.

Level 2: Penalties of a maximum of at least between 2 and 5 years of imprisonment.

Level 3: Penalties of a maximum of at least between 5 and 10 years of imprisonment.

Level 4: Penalties of a maximum of at least 10 years of imprisonment (cases where very serious penalties are required). In practice the streamlining of the criminal law harmonization through minimum requirements for the maximum level of the penalties to be provided by national law in respect of specified offences has not been very successful and insufficient to elaborate a common approach of criminal law enforcement in the EU legislation.

This is certainly the reason why the Council adopted in 2009 conclusions on model provisions⁴³, guiding the Council's criminal law deliberations. The Council was aiming at the following advantages: a/ guidelines and model provisions would facilitate negotiations by leaving room to focus on the substance of the specific provisions; b/ increased coherence would facilitate the transposition of EU provisions in national law

⁴² Doc. 914/02 DROIPEN 33, <http://eurocrim.jura.uni-tuebingen.de/cms/en/doc/1304.pdf>

⁴³ <http://eurocrim.jura.uni-tuebingen.de/cms/en/doc/1156.pdf>

and c/ legal interpretation would be facilitated when new criminal legislation is drafted in accordance with agreed guidelines which build on common elements. The main aim is however that the model provisions should guide future work of the Council on legislative initiatives that may include criminal provisions.

The Council's model provisions do integrate the 2002 conclusions on penalties. Moreover the model provisions do refer explicitly to the Lisbon Treaty: "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, as under Article 83(2) of the Lisbon Treaty, it should follow the practice of setting the minimum level of maximum penalty".

The conclusions on model provisions of 2009 are dealing with both the need for criminal provisions as with the structure of criminal provisions itself. Concerning the necessity test the conclusions insist that criminal law enforcement should be introduced only when it is considered essential for the protection of the legal interest, and, as a rule, be used only as a last resort. This double test (essential for the protection of the legal interest and *ultima ratio/ultimum remedium*) is further concretized by insisting on proportionality and subsidiarity. Criminal law provisions should address clearly defined and delimited conduct (*lex certa*), which cannot be addressed effectively by less severe measures. These criteria are applied in the model provisions to two areas:

- 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;
- or 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.

Finally, when defining such a need, a final impact assessment should take into account the expected added value of criminal provision compared to other enforcement measures, how serious and/or widespread and frequent the harmful conduct is and the impact on existing criminal provisions in EU legislation and on different legal systems with the EU. It is clear that these criteria of assessment of the need for criminal provisions contain general principles of criminal law and criminal policy issues and are

addressed at the two substantive areas under Article 83 TFEU, the euro-offences under Article 83 (1) and the criminal law enforcement of harmonised EU policies under Article 83 (2).

The second part of the model provisions are dealing with the structure of criminal provisions as such. The model provision's scheme is addressing *actus reus*, *mens rea*, inciting\aiding\ abetting and attempt, penalties, liability of legal persons and penalties against legal persons.

Concerning the definition of the *actus reus* following criteria are put forward: *lex certa*, foreseeability, conduct that causes actual harm or seriously threatens the right or essential interest to be protected. Abstracted danger to the protected right or interest is only possible if appropriate for the protection of interest of right. Concerning the *mens rea* element, as a general rule EU criminal legislation should only deal with intentionally committed conduct. However, negligence can be included when particularly appropriated for the protection of the interest or right. Strict liability is excluded explicitly. Concerning inciting, aiding and abetting, the model provisions impose the criminalization, following the criminalization of the main offence. When dealing with attempt the model rules are rather cautious. They refer to a necessary and proportionality test and to consideration of the different regimes under national law.

When it comes to penalties, the model rules provide for two regimes (let us call them model A and B). In some cases it can be sufficient to provide for effective, proportionate and dissuasive criminal penalties and leave it to each Member State to determine the level of the penalties (model A). In other cases there may be a need for going further in the approximation of the levels of penalties (model B). In these cases the Council conclusions of 2002 on penalties do apply. It is striking that the model provisions under model B do not deal with the type of criminal sanctions. When criminal law harmonisation under Article 83(2) is at stake, it will certainly not be sufficient to limit the harmonization to deprivation of liberty.

Finally, the model provisions contain extended provisions on liability of legal persons and penalties against legal persons. They introduce the obligation to ensure that a legal person can be held liable for criminal offences, but without imposing a criminal liability scheme. Attribution of liability is based on benefit for the legal person and

attribution of (vicarious) liability of natural persons to the legal persons. A specific provision is dealing with the liability for lack of supervision or control, but also in this case there must be benefit for the legal person. The liability of legal persons shall not exclude criminal liability of the natural persons. Liability of legal persons is prescribed for entities having legal personality, except for states or public bodies in the exercise of state authority and for public international organizations. When it comes to penalties against legal persons, the model provisions do prescribe a list of different penalties (as exclusion of public benefits, judicial winding-up, placing under judicial supervision, fines). However, these penalties of a criminal or non-criminal nature must meet the standard of effective, proportionate and dissuasive penalties. It is astonishing that the model provisions contain very detailed provisions on liability of legal persons, but stick to the practice under the Maastricht and Amsterdam Treaty and avoid the possibility of mandatory criminal liability in some areas of substantive criminal law.

33.3.2 Guidance by the Commission's Communication

In the mentioned Communication of the Commission it is dealing with the question which principles should guide EU criminal law legislation. The Communication refers to general principles as subsidiarity and respect for fundamental rights, referring explicitly to the EU Charter of Fundamental Rights and the ECHR, but not referring to article 6 (3) of the TEU, and thus not referring explicitly to fundamental rights as guaranteed by the ECHR and 'as they result from the constitutional traditions common to the Member States. However, it is impossible to elaborate a criminal policy that would not take into account the constitutional traditions common to the Member States, as they are a direct source for the general principles of EU law under article 6(3) TEU.

Pursuant to Article 67 of the TFEU: *"The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal*

systems and traditions of the Member States”. The provisions of this Article are deemed to define the objectives of EU criminal law⁴⁴.

Article 67 requires that in general criminal legislation needs to be respectful of fundamental rights. Relevant provisions are contained in the Charter of Fundamental Rights of the European Union⁴⁵ (hereinafter, “the Charter”). Such rights are:

1. The right to an effective remedy and to a fair trial (Article 47).
2. Presumption of innocence and right of defence (Article 48).
3. Principles of legality and proportionality of criminal offences and penalties (Article 49).
4. The right not to be tried or punished twice in criminal proceedings for the same criminal offence (Article 50).

While the principles enshrined in Articles 47, 48 and 50 of the Charter pertain more to the aspects of procedural criminal law, the principle enshrined in Article 49 provides guidance in the phase of shaping criminal legislation.

Another principle of foremost importance applying to EU criminal law concerns respect for different legal systems and traditions.

EU criminalization should also comply with the principle of subsidiarity and proportionality pursuant to Article 5 TEU.

On this respect it should be noted that pursuant to Article 69 of the TFUE national parliaments shall ensure that proposals and initiatives in this area comply with the principle of subsidiarity.

After the reference to the general principles, the Commission follows the two-step approach of the Council’s model provisions.

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

⁴⁴ A. HORVÁTHOVA, *EU Criminal Law and The Treaty of Lisbon – Where Shall We Go Now?*, November 2010, Available at SSRN: <http://ssrn.com/abstract=1836754> or <http://dx.doi.org/10.2139/ssrn.1836754>.

⁴⁵ OJ 2010/C 83/02.

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’ sanctions regimes achieve the desired result and difficulties faced by national authorities implementing EU law on the ground.

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

The text refers also to the concept of “minimum rules” and excludes full harmonisation, but underlines at the same time the need for legal certainty. The requirements for legal certainty are however not the same as for national criminal law legislation, as the directive has to be implemented in national law and cannot create or aggravate criminal liability as such. 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.

These minimum rules are related to the Treaty objectives, including equivalent protection and common provisions when dealing with cross-border crime or enforcement of EU policies. This means that the concept of minimum rules is functional to the objectives of the Treaty and not an autonomous criterion. Regarding the sanctions the Commission is referring both to the type of sanctions as to the level of sanctions (taking into account aggravating or mitigating circumstances) that should be implemented in national law. The choice of sanctions must be evidence-driven and submitted to the necessity and proportionality test. Interesting is that the Commission insist on tailoring the sanctions to the offence, which has consequences for the choice of type of sanctions and consequences for the choice for criminal liability for legal

persons. It thus becomes clear that the Commission does not exclude criminal liability of legal persons and criminal sanctions for legal persons of the competence under Article 83(2) TFEU. Finally, the minimum rules can also include provisions on jurisdiction, as well other aspects that are considered part essential for the effective application of the legal provision.

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.

33.3.3 Content of EU minimum rules on criminal law

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

Those elements are:

- The definition of the substantive element (*actus reus*) of the offences, *i.e.* the description of conduct (commission or omission) 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 moral element (*mens rea*) of the offence, dealing with the different fault elements: intent, recklessness, negligence.
- The definition of what should be considered as "aggravating" or "mitigating" circumstances, as part of the *actus reus* or for the determination of the sanction in a particular case.

- The legal character of the perpetrators, being only natural persons or also 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 or on judicial cooperation in criminal matters (MLA/MR).

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 conduct⁴⁶ (the so-called A model of the Council model provisions).
- EU criminal law can determine more specifically, which types and/or levels of sanctions Member States should provide for and apply, including provisions concerning asset confiscation. Such measures should be aimed at reducing the degree of variation between the national systems and at ensuring that all Member States' sanctions' systems comply with the principle of effectiveness, proportionality and dissuasiveness.

33.3.4 Possible areas that EU criminal law could cover

The EU policy areas where EU criminal law has been adopted and is required without doubt have been identified in the Communication. The Commission is dealing in depth with the choice of policy areas where EU criminal law might be needed. Criteria are lack of effective enforcement or significant differences among Member States leading to inconsistent application of EU rules. Still in that case the Commission will have to assess case-by-case the specific enforcement problems and the choice for

⁴⁶ Effective sanctions are sanctions suitable to achieve the desired goal, i.e. observance of the rules. Proportionate sanctions are those commensurate 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.

administrative and/or criminal enforcement. However, the Commission is already indicating in this Communication priority fields for criminal law harmonisation under Article 83(2). Mentioned are three selected areas:

- the financial sector, e.g. concerning market manipulation and insider trading⁴⁷;
- the fight against fraud affecting the financial interest of the EU;
- the protection of the euro against counterfeiting ;

The Commission mentions furthermore a set of areas (no exclusive list) in which criminal law enforcement might play a role:

- illegal economy and financial criminality;
- road transport⁴⁸;
- data protection⁴⁹;
- customs rules;
- environmental protection;
- fisheries policy;
- Internal market policies (counterfeiting, corruption, public procurement).

The assessment has to take into account a whole set of factors, including the seriousness and character of the breach and the efficiency of the enforcement system. The choice for administrative enforcement and or criminal enforcement is part of this assessment. The list of topics is not exclusive.

Road transport is thus considered as an harmonized policy area that might need the adoption of EU criminal law. However, the Commission needs to explore further the

⁴⁷ See ‘Communication on reinforcing sanctioning regimes in the financial sector’, COM (2010) 716 final of 8.12. 2010.

⁴⁸ See Commission Staff Working Paper SEC (2011) 391 of 28.03. 2011, accompanying the White Paper ‘Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system’, COM (2011) 144 of 28.03.2011.

⁴⁹ See the Communication ‘A comprehensive approach on personal data protection in the European Union’, COM (2010) 609 of 04.11.2010.

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.

Essential for this assessment is of course, also in the light of the proportionality and *ultimum remedium* test, if and to which extent the administrative enforcement scheme is not the most appropriate mechanism to deal with the problem. In other words, is there a real need to prescribe criminal law obligations for the effective applications of the EU policy in the road transport sector?

33.4 On the necessity of approximating infringements/offences and sanctions in the field of commercial road transport

The analysis carried out in the first 32 Chapters of this Study shows that most of the Member States' sanctions systems for infringements of EU rules on commercial

road transport should be considered to be not effective and that some of them have the potential to be effective.

On the other hand, most of the stakeholders tend to agree that overall enforcement of EU rules on road commercial transport has some flaws.

They tend to agree that guidelines are necessary in order to ensure a consistent interpretation of infringements of EU law across Member States.

They agree that training of enforcement officers is crucial, in order to ensure a consistent enforcement of EU rules.

Only one stakeholder agreed that an EU action aimed at approximating sanctions for infringements of EU rules would be crucial (reply by CEMT, Annex ES.3).

The authors of the Study note that the stakeholders' arguments concerning the necessity to improve the legal framework already in force in the EU by means of training of enforcement officers are grounded and relevant.

They agree that increasing sanctions for infringements of EU rules in the field of road commercial transport would not automatically ensure compliance with EU rules.

They also agree with the argument that increasing sanctions in an indiscriminate way could give the wrong message to transport operators, and could be rather an incentive to commit serious breaches, as the sanctions for such breaches would be similar to the ones applied to less serious infringement.

However, they note that the analysis of Member States' sanction systems shows that the differences in the levels of sanctions in the Member States are striking.

Such differences give the wrong message to operators about the extent to which the rules need to be respected.

To a certain extent they affect the achievement of the objectives pursued by the EU with the adoption of harmonizing measures in the field of commercial road transport: indeed if the infringement of the same rule is sanctioned 250 times more in a Member State than in another (respectively Germany and Malta), the same legal value of the relevant EU rule varies across Member State and we cannot speak of a similar

playing field or an equivalent enforcement in the internal market and in the area of freedom, security and justice.

In other words, it is straightforward that if in one Member State the amount of a penalty can be easily internalized as a cost, then the interest in complying with such rule is minimum or none.

On the other hand, if in a Member State the same infringement is sanctioned with a very high financial penalty or with another very severe sanction, then the operators could not easily internalize such cost in their business plan.

It follows that the impact on operators of the same EU rule is different, depending on the fact that a transport operator carries out its activity in one Member State or in another, or depending on the place where the infringement is detected.

Indeed, in one Member State compliance with the relevant EU rule can be avoided with minimum damage, in another one compliance is necessary as the threatened damage is big.

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.

The table below provides examples of the enormous differences between the sanctions applied by different Member States to the same infringements.

The infringements selected for this demonstration are two most serious infringements and one very serious infringement of EU law.

The analysis of the table below shows that the difference in the level of sanctions is not related to socio-economic differences, but to other factors such as, probably, the different perception on the seriousness of the infringements sanctioned across Member States.

Table 11

Sanctions

Member States

Most Serious Infringements

Infringement	Austria	Germany	Sweden	Lithuania	Cyprus	Latvia	Romania
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	Administrative sanction Monetary penalty from 1.453,- up to 7.267,- € (Entrepreneur) Monetary penalty up to 726,- € (Driver)	Administrative sanction Fine of up to € 15,000	Administrative sanction Fine from 1000 to 4000 SEK (€116-464)	Administrative sanction Administrative sanction Fine €217 - €290 (driver)	Administrative fine up to 2000 pound and or criminal sanction of imprisonment not exceeding six months	Administrative sanction Fine 50-100 (around 143 €) (driver) 150 (around 215€)-300 (around 430 €) (carrier)	Administrative sanction Fine between RON 4,000 (the equivalent of EUR 899) and RON 8,000 (the equivalent of EUR 1,798);

<p>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 (B)</p>	<p>Administrative sanction Monetary penalty from 110,- € up to 50.000 € (Danger category I and II, which might to a decision to immobilise the vehicle)</p>	<p>Criminal sanction Imprisonment for up to 5 years or fine (A) Administrative sanction Fine of up to € 1,000 (B)</p>	<p>Administrative sanction Driver Fine up to 4,000 SEK (464 €)</p>	<p>Administrative sanction Fine €290 - €579 (Consignor and the head of transport undertaking which provides transportation services) From €58 - €116 (driver) -from €116 - €232 (the head of undertaking which provides loading services or a loader) (A) Administrative sanction Fine from €116 up to €232 (consignor or the head of undertaking which provides loading services/loader or the head of undertaking which</p>	<p>Administrative fine not exceeding forty thousand pounds and/or criminal sanction of imprisonment not exceeding five years</p>	<p>Administrative sanction Fine LVL 250-500 (350-700 €)(carrier) Fine LVL 250-500 (consignor – a natural person) Fine LVL 1 000-5 000 (1,436-7,000€) (consignor – a legal person) (A) Fine LVL 300-500 (consignor – a natural person) Fine LVL 2 000-5 000 (2,800-7,000 €) (consignor – a legal person) (B) Possible application of criminal penalty. (B)</p>	<p>Administrative sanction Fine between RON 8,000 (the equivalent of EUR 1,798) and RON 10,000 (the equivalent of EUR 2,247).</p>
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Very Serious infringements

Infringement	Austria	Germany	Sweden	Lithuania	Cyprus	Latvia	Romania
Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified	Administrative sanction Fine from 300,- € up to 2.180 € (Employer) Monetary penalty from 300,- up to 5.000,- € (Driver and transport operator).	Administrative sanction Fine of up to € 15,000 for Carrier (<i>Unternehmer</i>); fine of up to € 5,000 for Driver.	Administrative sanction Fine from 1000 to 4000 SEK (€116-464)	Administrative fine from €145 up to €579 (driver) From €724 up to €1,448 (the head of undertaking)	Administrative fine up to 2000 pound and or criminal sanction of imprisonment not exceeding six months	Administrative sanction Fine LVL 200-400 (287 -574€) Fine LVL 500-1000 (718-1400€)	Fine between RON 4,000 and 8,000 (≈ between EUR 920 and 1,840) (driver)

The arguments above show according to the authors of this Study 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. Furthermore, the approximation is necessary in order to realize equivalent enforcement among the Member States in the internal market and in the area of freedom, security and justice.

This finding is confirmed by the analysis of the effectiveness of Member States sanctions' systems.

Most of the Member States' sanction systems have been found inconsistent, disproportionate and ineffective.

Few Member States' sanction systems have been found dissuasive and even fewer have been found possibly effective.

33.5 *Infringements of EU rules on commercial road transport that should be considered serious and could be qualified as criminal offences*

In the paragraph above we concluded that the adoption of an EU measures aimed at approximating sanctions in the field of commercial road transport is necessary in order to ensure a proper enforcement of EU rules in the field of commercial road transport.

However, such finding has to take into account that based on the interpretation of the TFEU provided by legal experts only serious infringements should be classified at EU level as criminal offences.

It is also common understanding that criminal law should be a last resort mean of control (*ultimum remedium-ultima ratio*)⁵⁰ and that infringements that should be

⁵⁰ 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.

classified as criminal offences are those infringements that affect the general interests of the society.

It follows that an EU criminal measure aimed at approximating sanctions in the field of commercial transport should cover only those infringements that should be considered serious enough to be qualified as criminal offences.

On this respect we notice that EU legislation contains already two lists of infringements that are qualified as very serious (Annex III of Directive 2006/22/EC) and most serious (Annex IV of Regulation (EC) No 1071/2009).

In the following section of this paragraph we will explain why we believe that such infringements should be qualified as criminal offences and sanctioned accordingly by the EU.

On the other hand, we exclude that infringements not covered by the above two lists should fall into the scope of an EU criminal measure, because it would be disproportionate to qualify them as criminal offences at EU level and we believe that tailored administrative sanctions may be effective in preventing the commission of such infringements.

33.5.1 On the necessity to adopt criminal sanctions for the very serious and most serious infringements of EU law and on the proportionality of such measure

In order to understand whether it is necessary to approximate sanctions for the very serious and most serious infringements of EU law, we have assessed whether they are not sanctioned consistently across the EU (A).

Secondly, in order to understand whether such an approach would be proportionate and respectful of Member States' legal traditions we have verified whether the above infringements are already sanctioned in most Member States with

See the MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION on an EU approach on criminal law (2010/2310 (INI)), page 4.

criminal sanctions or with administrative sanctions that should be classified as being of a criminal nature in the light of the case law of the ECHR (B).

Sub A. it has been pointed out that the level and classification of sanctions differ widely across Member States. The examples provided in the paragraph above show that the differences are enormous even between the sanction systems of Member States with similar socio-economic conditions.

It also shows that the differences do not depend on the qualification of the financial sanction as administrative or criminal.

The table below gives a further overview of such differences. A complete overview was given in Chapter 32.

Table 12						
Sanctions						
Member States						
Most Serious Infringements						
Infringement	Austria	Germany	Sweden	Lithuania	Latvia	Romania
Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has	Administrative sanction. Monetary penalty. Fine up to 2.180 € or up to 3.600 € (recurrence)(Employer) Up to 5.000,- €; Or imprisonment in case of recurrence	Criminal sanction Imprisonment for up to 5 years or fine;	Administrative sanction Fine Employer driver 4000 SEK (464 €)	Administrative sanction In case of Fine up to €290 (driver)	Administrative sanction Fine LVL 200-400 (350-700€) (driver) Fine LVL 500-1 000 (718-1400	Criminal sanction Imprisonment up to five years

been obtained on the basis of false declarations and/or forged documents	(Driver and transport operator)					€) (carrier)	
Very Serious infringements							
Infringement	Austria	Germany	Sweden	Lithuania	Latvia	Romania	
No type approved recording equipment installed and used	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 500-1 000 (718-1400 €) (carrier)	Administrative sanction fine between RON 8,000 and RON 16,000 (≈ between EUR 1,830 and EUR 3,660) (transport undertaking)	

Sub B. We notice that the following Member States foresee for such infringements criminal sanctions or administrative sanctions that could be qualified as having a criminal nature, because of their punitive character.

Austria: in case of recidivism the penalties applied should be qualified as criminal in

<p>nature. In some cases as transport of dangerous goods the penalty reaches 50,000 € and therefore should be qualified as criminal in nature.</p>
<p>Belgium: the sanctions for infringements of EU rules are all possibly criminal in nature. The so called system of <i>perception immédiate</i> ensure the flexibility of the system (see the Belgian report).</p>
<p>Cyprus: criminal sanctions are possibly applicable to most of infringements of EU rules in the field of road commercial transport.</p>
<p>Czech Republic: administrative sanctions that could be qualified as criminal ones are applicable to most of the infringements of very serious and most serious infringements of EU law.</p>
<p>Denmark: criminal sanctions are applicable to most of infringements of EU rules in the field of road commercial transport.</p>
<p>Estonia: very serious and most serious infringements are sanctioned with criminal sanctions.</p>
<p>Finland: criminal sanctions are applicable to most of infringements of EU rules in the field of road commercial transport</p>
<p>France: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport</p>
<p>Germany: criminal sanctions or administrative sanctions which should 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.</p>
<p>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</p>

<p>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.</p>
<p>Ireland: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport</p>
<p>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</p>
<p>Latvia: criminal sanctions are foreseen for infringements such as engaging in entrepreneurial activities without an authorization.</p>
<p>Lithuania: criminal sanctions are foreseen for infringements such as engaging in entrepreneurial activities without an authorization.</p>
<p>Luxembourg: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport.</p>
<p>Malta: criminal sanctions are applicable to most of the infringements of EU rules in the field of road commercial transport.</p>
<p>Netherlands: criminal sanctions are possibly applicable to most of the infringements of EU rules in the field of road commercial transport</p>
<p>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.</p>
<p>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.</p>
<p>Romania: some most serious infringements are sanctioned with criminal sanctions, or</p>

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 road commercial 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 road commercial 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.

On the other hand, it would allow avoiding discrepancies to the extent that it would:

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

33.5.2 Criminal procedure and criminal investigations

Effective enforcement is of course not only dependent upon approximation of criminal offences and criminal sanctions, but does need also an equivalent playing field of investigative measures and guarantees.

The Treaty on the Functioning of the European Union did introduce a new legal basis for approximation in the field of criminal procedure. The main core of the Article reads as follows:

“2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament”

It becomes clear from the reading that there must be a link with a functional need to mutual recognition. In the transport field this might be the case when it comes to mutual recognition of financial penalties in the transport sector.

Another possibility would be to use Article 91 (c-d) that reads:

“Article 91

(ex Article 71 TEC)

1. *For the purpose of implementing Article 90, and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:*

((c) measures to improve transport safety;

(d) any other appropriate provisions”.

The substantive policy fields, as agriculture, financial services, transport, environment etc. do contain sufficient legal basis for the approximation of procedure and investigative tools in the framework of administrative law, as done for instance in the market abuse directive of 2003. It is however, as it stands, legally unclear if there is a legal basis outside Title IV on the area of freedom, security and justice, for harmonisation of criminal procedure.

33.6 Conclusions

The background described above allows providing replies to the issues addressed in this Study.

- On the question 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 Member States.

A first reading of the TFEU does not allow to conclude that the TFEU should be interpreted in the sense that the EU should deal only with serious crimes, as the text of Article 83, Paragraph 2 does not contain any reference to such a limit. On the contrary where the TFEU intended to limit the scope of EU criminal law to serious crimes it has foreseen such limit expressly (see Article 83, Paragraph 1)⁵¹. However, the Commission Communication makes clear that the seriousness and character of the breach of law should be taken into account by the EU legislator, when assessing the whether to adopt EU criminal law.

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”

⁵¹ See, G. HAKOPIAN, Criminalisation of EU Competition Law Enforcement – A possibility after Lisbon?, in *The Competition Market Law Review*, December 2012, Volume 7, Issue 1 pages 157-164.

(i.e. the Treaty establishing the European Community (“TEC”))⁵² and legislative proposals based on article 83, Paragraph 2 of the TFEU have addressed only serious offences⁵³. This opinion is shared also by experts of EU criminal law consulted. See Chapter 31.

The Authors of this Study suggest that in the light of Article 83(2) serious must be read in the light of functional to the purposes of the enforcement of the relevant policy.

This implies that the subsidiary and the proportionality test can only be achieved taking into account the objectives of the policy.

- On the question 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.

On this respect it is posited in agreement that if it is true that crimes with trans-border effect are more likely to need to be addressed by EU criminal law, it cannot be excluded that crimes that have an impact limited within national borders should only be addressed at national level. Notably, if different sanction systems hinder the objective pursued by the EU with the adoption of harmonized measures in a sector, the EU criminal law legislation might be deemed necessary. Such conclusion is consistent also with the text of Article 83, Paragraph 2 of the Treaty. Indeed, where the TFEU intended

⁵² 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.

⁵³ 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.

to limit the scope of EU criminal competences to crimes with cross – border effect it has specified this. See Article 83, Paragraph 1 of the TFEU:

“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”.

On the contrary, it is possible according to the authors of this Study to argue that pursuant to Article 83, Paragraph 2 the EU legislator should address crimes of “Union dimension”⁵⁴.

- On the question of whether the TFEU should be interpreted that EU law should cover only criminal offences and sanctions and not aspects of criminal procedure, as investigative powers.

Article 83, Paragraph 2 could not be the legal basis for the adoption of measures concerning criminal procedure or investigative powers. A basis could be Article 82 of the TFEU, but there must be a need in relation to the mutual recognition scheme. This could be built in through the mutual recognition of monetary penalties in the transport sector for instance.

- On the question whether the TFEU should be interpreted that 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.

⁵⁴ See, G. HAKOPIAN, Criminalisation of EU Competition Law Enforcement – A possibility after Lisbon?, in *The Competition Market Law Review*, December 2012, Volume 7, Issue 1 pages 157-164.

Based on the findings of this Study the answer to this question is positive.

As seen above EU law in general can cover the definition of the offences, i.e. the description of conduct considered to be criminal and the required *mens rea* level.

As to road transport legislation, the replies provided in the context of the Survey and the legal analysis carried out by national legal experts show that infringements of road transport legislation are not defined in a consistent way.

This affects legal certainty for all the operators in the transport value chain.

Such lack of consistency does not concern only minor infringements, but concerns in particular the most serious and very serious infringements of EU law, as defined respectively in Annex IV to Regulation (EC) No 1071/2009 and in Annex III to Directive 2006/22/EC. Indeed, in some Member States such infringements are defined clearly and consistently sanctioned. In other Member States they are not subject to specific sanctions. In other cases they are not defined, and therefore it is not clear which sanction would be applicable to them. Some examples are Spain, Italy, Cyprus.

The analysis carried out showed in particular that as the qualification of such infringements differs widely across Member States, also the level of severity of the sanctions does.

This in turn implies that committing the same infringements in two different Member States or simply being detected in two different Member States is subject to completely different consequences.

It is posited in agreement that such differences do not ensure an equivalent implementation, application and enforcement of EU measures in the field of road commercial transport.

In this context an EU action seem to be the only way to ensure effective enforcement of EU rules, as:

1. Member States' enforcement choices do not yield the desired result⁵⁵: most of Member States' sanction systems were found not effective.
2. Levels of enforcement remain uneven (see tables above comparing a sample of Member States' sanctions applicable to most serious and very serious infringements).

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.
- On the question whether it would be legally appropriate to establish *minimum* and *maximum* sanctions applicable to certain infringements classified as criminal offences.

The reply to this question is positive. Firstly, we note that in general EU criminal law can determine more specifically, which types and/or levels of sanctions are to be made applicable, including provisions concerning confiscation.

Secondly, in connection to the transport sector, we note the following.

⁵⁵ 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 3.

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 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, the analysis showed that the divergences in Member States’ sanction systems do not allow to achieve an affective level of enforcement of the EU rules in the field of commercial road transport.

In addition, most of the systems are neither proportionate nor consistent, and do not differentiate enough among minor infringements and more serious infringements, thus conveying to transport operators the wrong message on the severity of such infringements.

On the other end, fixing minimum levels 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 and most Member States foresee criminal sanctions in the range of the sanctions applicable in the commercial road transport sector.

- On the question concerning the type and level of sanctions that would be necessary and the most efficient way to ensure better compliance with the legislation.

The Survey and the legal analysis of the national sanction 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.
- On the question concerning what should be the criteria for defining a criminal offence.

As explained above, in the light of the case-law of the ECHR, the criteria to define criminal offences should be: (i) the classification of the infringement by the national legislation; (ii) the nature of the offence; and (iii) the nature and severity of the applied penalty.

Pursuant to such case law, the authors suggest that the EU should classify as criminal offences the infringements that have been classified already as particularly serious at EU level.

- On the question concerning what type of infringements should be classified as a criminal offence.

It is posited in agreement the infringements that should be qualified as criminal offences are the most serious and very serious infringements of EU law as listed in Annex IV to Regulation (EC) No 1071/2009 and in Annex III to Directive 2006/22/EC.

The authors of this Study believe that to limit the scope of EU criminal measures to the above list of infringements would be crucial in order to comply with the principle of proportionality.

In respect of less serious infringements it could be beneficial to opt for an administrative enforcement regime, with administrative sanctions. On this respect the Authors of this Study found that the Dutch sanction system could be considered as a best practice.

- On the question concerning what type and level of criminal sanctions should be imposed on such infringements classified as criminal offences.

The most appropriate sanctions would be financial penalties and measures such as confiscation.

In order to ensure consistency, an EU criminal measure should identify the appropriate level of sanctions for each category of infringements; by foreseeing that such level of sanctions have to be made at least available to the judges in each Member States⁵⁶.

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

⁵⁶ 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 8.

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	MOST SERIOUS
	Min	Min
Employee	1,000	2,000
Employer	10,000	20,000

We also notice that in order to be effective such sanctions have to be accompanied by sanctions such as confiscation of the vehicles and 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 legal persons, it could foresee the temporary disqualification from the practice of commercial activities.

For natural persons such as the driver, it could foresee a withdrawal of the driving license.

34 POLICY OPTIONS FOR IMPROVING THE ENFORCEMENT OF EU RULES ON COMMERCIAL ROAD TRANSPORT

34.1 Introduction

The analysis above showed 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 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 EU rules on commercial road transport.

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.

34.2 First policy option: non action

The 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.

As explained above the current divergences in MS enforcement practices affect 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 field 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' sanctions systems are not effective has a bearing on road safety.

34.3 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 should also 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 system.

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.

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, but only few MS have adopted specific sanctions for the MSI (eg. Germany) and the VSI (e.g. Luxembourg).

This in turn implies that in some MS, indeed, the same sanction would apply to the case where a driver has been driving uninterruptedly for 9 hours and 30 minutes (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 (serious infringement, 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 will 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 behaviours and business models.

34.4 Third policy option: approximation

A third policy option for the commercial road transport sector is 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 the maximum level of financial penalties 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 competition.
- 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 sanctions 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 cons, 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 such infringements 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 to 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 processes 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.