

ROAD GOODS CARRIERS' HANDBOOK

Administrative and/or penal sanctions against foreign carriers in case of missing or non complying documents accompanying an international road transport operation

SPAIN

Information provided by: **Asociación del Transporte Internacional por Carretera (ASTIC), Spain (Situation – October 2013)**

1. ENFORCING AUTHORITIES

In Spain¹, foreign road vehicles may be checked by:

- * transport inspecting agent from the Transport Ministry (in Spanish, “de Fomento”);
- * transport inspecting agent from the Regional Government;
- * highway police agent (belonging to the “Guardia Civil”, Ministry of Home Affairs);
- * national police officer (“Policía nacional”, Ministry of Home Affairs);
- * police officer from the Regional Government (« Mossos d’Esquadra » in Catalonia, « Ertzaintza » in the Basque region, etc.) ;
- * delegate of the Regional Government in each province (art. 55.2 of the Law on Immigration and art. 95 of the Immigration Regulation).

2. SANCTIONS IN CASE OF MISSING OR NON-COMPLYING DOCUMENTS

2.1 Foreign carrier’s documents

2.1.1 EU Licence, ECMT Authorisation, Bilateral or Transit Transport Authorisation

- person(s) sanctioned: carrier (art. 138.1.a/ of LIT)
- sanctions: Fine of € 6,000². Art. 140.1 of LIT (driving description)
Art. 143.1.i of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: vehicle immobilisation if the fine is not paid on the spot (art. 146.4 of LIT)

^{1/} LIT = Law n° 16/1987 of 30.07.1987 on inland transport, version modified by Law n° 9/2013 of 4.7.2013

ITR = Inland Transport Regulation, approved by Royal Decree n° 1211/1990 of 28.09.1990, version modified by Law n° 9/2013 of 4.7.2013. This ITR is currently under review to adapt it to Law n° 9/2013 of 4.7.2013

LAP = Law n° 30/1992 of 26.11.1992 on administrative procedure, amended by Law n° 4/1999 of 13.01.1999

LAD = Law n° 29/1998 of 13.07.1998 on administrative disputes

HC = Highway Code of 2.03.1990, last amended by Law 17/2012 of 27 December 2012

PC = Penal Code, approved by Law 10/1995 of 23 November 1995

Any document specifying a sanction must indicate a competent body and time-limit for appeal (art. 58.2 of LAP). Foreign carriers (including nationals of EU Member States) must first deposit an amount corresponding to the fine or provide a guarantee of a third party (legal basis: art. 146.4 of LIT, art. 216 of ITR, Royal Decree 1772/1994 of 05.08.1994, HC art. 67.4).

² In LIT, the amount of fines is expressed as a range (minimum-maximum). For simplicity, we report only the maximum amount.

2.1.2 ADR permit

- person(s) sanctioned: carrier and loader (articles 138. 1a/ and 140.15.19 of LIT)
- sanctions: in the most serious cases, prison sentence from 6 months to 2 years (art. 348 and art. 349 of PC) and fine of € 6,000: art. 140.15.9 of LIT (driving description), art. 143.1.i of LIT (sanction amount)
- compromise settlement: in case of an administrative procedure only: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: vehicle immobilisation in case of danger (art. 143.4.a of LIT and art. 70.1 of HC)

2.2 **Driver's Documents (foreign vehicle)**

2.2.1 Proof of ID

- person(s) sanctioned: driver (articles 4.1 and 25 of the Law on Immigration and art. 4,1 of Immigration Regulation)
- sanctions: Fine of € 6,010.12 (articles 4.1; 25; 53, a and 55,1, b of the Law on Immigration n° 4 of 11.01.2000 in its version adopted by Law n° 8 of 22.12.2000 and art. 4.1 of Immigration Regulation, approved by Royal Decree n° 864 of 20.07.2001)
- compromise settlement: none foreseen
- other measures: expulsion from national territory (art. 57 and following of the Law on Immigration and articles 115-119 of Immigration Regulation)

2.2.2 Driving permit³

- person(s) sanctioned: driver
- sanctions: Fine of € 1,500
Art. 65.5 j of HC (driving description)
Art. 67.2 of HC (sanction amount) and impossibility to obtain the permit for 2 years
- compromise settlement: fine reduced by 50 % if paid on the spot (art. 74.3.c/ and art. 80.a/ of HC)
- other measures: reduction of points in the permit⁴

2.2.3 AETR record sheet, tachograph discs

- person(s) sanctioned: carrier (art. 138.1.a/ of LIT, art. 193 of ITR). Exempt in some cases: art. 138.4 of LIT
- sanctions: Fine of € 4,000 : art. 140.21 or 22 of LIT (driving description)
Art. 143.1.h of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: vehicle immobilisation in a serious case (art. 70.1 of HC)

2.2.4 ADR training certificate

- person(s) sanctioned: employer (art. 141.5 *in fine* h/ of LIT)
- sanctions: Fine of € 1,000. Art. 141.5.18 of LIT (driving description)
Art. 143.1.f of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: none foreseen

³ In Spain there is the "points" system on driving permit: Law 17/2005 of 19 July 2005 (and art.60, 4-6 of HC).

⁴ Idem

2.2.5 Document from employer certifying driver's employment

- person(s) sanctioned: carrier (art. 138.1.a/ of LIT)
- sanctions: Fine of € 800. Art. 141.9 of LIT (driving description)
Art. 143.1.e of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: none foreseen

2.3 **Foreign vehicle's documents⁵**

2.3.1 Registration certificate (grey card)

- person(s) sanctioned: carrier (art. 69.1 of HC)
- sanctions: Fine of € 500: art. 65.5.I of HC (driving description)
- compromise settlement: fine reduced by 50% if paid on the spot (art. 74.3.c/ and art. 80.a/ of HC)
- other measures: vehicle immobilisation (articles 61.5 of HC; articles 1.2 and 26.1.a/ of the Vehicle Regulation, approved by Royal Decree 2822/1998 of 23.12.1998, or carriers of other countries:art.67.4 of HC)

2.3.2 Regular technical inspection

- person(s) sanctioned: carrier (art. 69.1 of HC)
- sanctions: Fine of € 500 (art. 65.5.II of HC)
- compromise settlement: fine reduced by 50% if paid on the spot (art. 74.3.c/ and 80,a/ of HC)
- other measures: vehicle immobilisation (articles 1.2 and 26.1.b/ of Vehicle Regulation, approved by Royal Decree 2822/1998 of 23.12.1998)

2.3.3 ECMT technical certificate

- person(s) sanctioned: none foreseen
- sanctions: none foreseen
- compromise settlement: none foreseen
- other measures: none foreseen

2.3.4 Compulsory nationality plate

- person(s) sanctioned: carrier (art. 69.1 of HC)
- sanctions: Fine of € 200
Articles 50.2 and 3 of Vehicle Regulation, approved by Royal Decree 2822/1998 of 23.12.1998, and art. 65.4.p/ of HC (description of the offense)
Art. 67.1 of HC (sanction amount)
- compromise settlement: fine reduced by 50% if paid on the spot (articles 67.4, 74.3.c/ and 80,a) of HC)
- other measures: vehicle immobilisation (art. 1.2 of Vehicle Regulation, approved by Royal Decree 2822/1998 of 23.12.1998)

2.3.5 ADR certificate of approval

- person(s) sanctioned: carrier (art 138.1.a/ of LIT)

⁵ Foreign carriers (including nationals of EU Member States) must first deposit an amount corresponding to the fine (legal basis: art. 146.4 of LIT, art. 216 of ITR, Royal Decree 1772/1994 of 05.08.1994, HC art. 67.4).

- sanctions: Fine of € 6,000. Art. 140.15.3 of LIT, art. 19 and art. 35.1 of Royal Decree 2115 of 2.10.1998 (driving description), Art. 143.1.i of LIT (sanction amount)
- compromise settlement: reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: vehicle immobilisation in case of serious risk (art.84.1 of HC)

2.3.6 ATP certificate of compliance

- person(s) sanctioned: carrier and sender (articles 138.1.a/ and 141.21 of LIT)
- sanctions: Fine of € 600
Art. 141.21 of LIT (driving description)
Art. 143.1.d/ of LIT (sanction amount)
- compromise settlement: fine reduced by 30% if paid on the spot (art. 146.3 of LIT)
- other measures: none foreseen

2.3.7 Hired vehicles

- person(s) sanctioned: vehicle hirer out or user (art. 138.1.b of LIT)
- sanctions: Fine of € 300
Art. 142.9 of LIT (driving description)
Art.143.1.b of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: none foreseen

2.4 **Transport documents on board foreign vehicles⁶**

2.4.1 Consignment note / CMR international consignment note

- person(s) sanctioned: carrier or sender (art. 138.1.a/ of LIT and Transport Ministry decision n° FOM/2861/2012 of 13 December 2012 – “document control” –)
- sanctions: Fine of € 600. Art. 141.17 of LIT and Transport Ministry decision n° FOM/2861/2012 of 13 December 2012, art. 2.2 (driving description), art. 143.1.d of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: none foreseen

2.4.2 Loading list (groupage)

Document not compulsory

2.4.3 ADR transport document, consignor's declaration, ADR security instructions

- person(s) sanctioned: carrier and sender (art. 138.1.a/ and c/ of LIT, according to the case, and art. 140,15.19.c of LIT)
- sanctions: Fine of € 6,000. Art. 140.15.8 of LIT and art. 35.1 of Royal Decree 2115 of 2.10.1998 (driving description), art. 143.1.i of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: vehicle immobilisation in case of serious risk (art. 84.1 of HC)

2.4.4 Container packing certificate

- person(s) sanctioned: none foreseen
- sanctions: none foreseen
- compromise settlement: none foreseen

⁶ Foreign carriers (including nationals of EU Member States) must first deposit an amount corresponding to the fine (legal basis: art. 146.4 of LIT, art. 216 of ITR, Royal Decree 1772/1994 of 05.08.1994, HC art. 67.4).

- other measures: none foreseen

2.4.5 Transfrontier movement of waste document (Basle Convention)

- person(s) sanctioned: none foreseen
- sanctions: none foreseen
- compromise settlement: none foreseen
- other measures: none foreseen

2.5 **Excess load of foreign vehicle⁷**

- person(s) sanctioned: carrier and principal (art. 138.1.a/ and c/ of LIT)
- sanctions: According to the percentage of excess load: Fine of € 4,000 art. 140.23 of LIT (driving description), art. 143.1.h of LIT (sanction amount); fine of € 1,000 art. 141.2 of LIT (driving description), art. 143.1.f of LIT (sanction amount); fine of € 400 art. 142.2 of LIT (driving description), art. 143.1.c of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: vehicle immobilisation (art. 143.4.a/ of LIT)

2.6 **Third-party insurance**

- person(s) sanctioned: carrier (art. 1.1 of the Regulation on compulsory insurance for motor vehicles)
- sanctions: Fine of € 18,030.36 in case no insurance had been taken out (art. 636 of PC and art. 29.1, c/ of Regulation on compulsory insurance for motor vehicles)
Fine of € 60,10 in case of failure to immediately produce document (art. 22.1 of Regulation on compulsory insurance for motor vehicles)
- compromise settlement: none foreseen
- other measures: vehicle immobilisation (art. 29.1, a/ of Regulation on compulsory insurance for motor vehicles, and art. 84.1 of HC)

2.7 **Obligation to produce required documents**

- person(s) sanctioned: carrier (art. 138.1.a/ of LIT)
- sanctions: if any control is prohibited by the authority: fine of € 6,000. Art. 140.12 of LIT (driving description)
Art. 143.1.i of LIT (sanction amount)
in other cases: fine of € 1,000
Art. 141.4 of LIT (driving description)
Art. 143.1.f of LIT (sanction amount)
- compromise settlement: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: vehicle immobilisation in case of serious risk (art. 1.2 of Vehicle Regulation and art. 70.1 of HC)

2.8 **Obligation to submit to a decision to immobilise the vehicle**

- person(s) sanctioned: driver, carrier if he purposely imposed this disregard (articles 27-29 of PC and art. 138.1.a/ and 4 of LIT)
- sanctions: in most serious cases: fine of € 18,030,36 (art. 634 of PC)
in other cases: fine of € 6,000
Art. 140.12 of LIT (driving description)
Art. 143.1.i of LIT (sanction amount)

⁷ Foreign carriers (including nationals of EU Member States) must first deposit an amount corresponding to the fine (legal basis: art. 146.4 of LIT, art. 216 of ITR, Royal Decree 1772/1994 of 05.08.1994, HC art. 67.4).

- compromise settlement: only in case of an administrative procedure: fine reduced by 30 % if paid on the spot (art. 146.3 of LIT)
- other measures: none foreseen

3. APPEALS AGAINST SANCTIONS

3.1 Appeals against sanctions pronounced by enforcing agents (police, customs, other)

- authority with which the appeal should be lodged: line manager (art. 114.1 of LAP)
- time-limit to lodge an appeal: 1 month (art. 115.1 of LAP)

3.2 Appeals against sanctions pronounced by an authority reviewing fines (minor offences)

- authority with which the appeal should be lodged: line manager (art. 114.1 of LAP)
- time-limit to lodge an appeal: 1 month (art. 115.1 of LAP)

3.3 Appeals against sanctions pronounced by a court reviewing misdemeanours (serious offences subject to penal sanctions)

- authority with which the appeal should be lodged: « Tribunal Superior de Justicia » (a Tribunal in each Region): art. 486 bis a) of the Law of Criminal Procedure⁸
- time-limit to lodge an appeal: 10 days from the date of notification of the decision - art. 846 bis b) *idem*.

4. SANCTIONS IN CASE OF INCORRECT LOADING OR STOWAGE

- person(s) sanctioned: none foreseen
- sanctions: none foreseen
- compromise settlement: none foreseen
- other measures: none foreseen

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⁸ Law of 14 September 1882 (Nineteenth century) last amended by Law 13/2003 of 24 October 2003.