

# SURVEY ON ADMINISTRATIVE/FINANCIAL/PENAL SANCTIONS IN CASE OF NON-COMPLIANCE WITH DRIVER RECORDS, TACHOGRAPH AND REST PERIOD REGULATIONS FOR INTERNATIONAL ROAD TRANSPORT OPERATIONS

## BELGIUM

### I. DEFINITION OF OFFENCES

In Belgium, there is no classification of offences according to their seriousness. However, the amounts of fines paid on the spot (see "Sanctions" section below) vary according to the seriousness of the offence.

### II. PERSONS SANCTIONED

#### **A. Driver**

Infringements of regulations governing driving and rest times and the tachograph are punished by penal sanctions, i.e. a prison sentence and/or a fine.

Article 2, § 4 of the Law of 18 February 1969 on implementing measures for international treaties and acts in the field of sea, road, rail or inland waterway transport (*Loi du 18 février 1969 relative aux mesures d'exécution des traités et actes internationaux en matière de transport par mer, par route, par chemin de fer ou par voie navigable*) specifies that infringements of decrees implementing this law carry a prison sentence from 8 days to 6 months and/or a fine from 50 to 10,000 francs (currently € 50 to € 10,000, multiplied by a 5.5 tithe, i.e. € 275 to € 55 000).

If a driver (worker) commits an infringement while carrying out his/her employment contract, in principle he/she is personally liable and must therefore serve the prison sentence in person. In principle, drivers are also liable for payment of the penal fine. However, derogation from this principle exists.

#### **B. Company**

Article 2, § 4 of the Law of 18 February 1969 on implementing measures for international treaties and acts in the field of sea, road, rail or inland waterway transport specifies that the persons held civilly liable for damages and costs according to Article 1384 of the Civil Code are also liable for payment of the fine.

According to Article 1384, § 4 of the Civil Code, employers have civil liability for their workers. Employers are therefore also liable for payment of fines incurred by their workers while carrying out their employment contract.

#### **C. Joint liability (driver + company)?**

Can both the company and the driver be sanctioned together?

Article 5, § 2 of the *Penal Code* specifies that if the body corporate (company) is held penally liable for an offence committed by the natural person identified (the driver), sanctions apply:

- either to the person who committed the most serious offence, provided that the natural person did not do so deliberately (no criminal intent). In that case, joint liability is excluded.
- or both the body corporate and the identified natural person provided that the latter committed the offence deliberately (with criminal intent). In that case, joint liability is possible.

In addition, one should refer to Article 50bis of the *Penal Code*. According to this article, the party with civil liability is not obliged to pay the fine if both the body corporate (with civil liability) and the natural person are sentenced for the same offence.

Example:

*A driver has exceeded his/her daily driving time. He/she argues his/her case before a judge and is sentenced to pay a fine. His/her employer (the body corporate) is also sentenced for having encouraged the driver to work overtime in order to serve more customers. In that case, the employer is not obliged to pay the fine imposed on the driver.*

### **III. SANCTIONS**

#### **A. Verbal warning**

There is no verbal warning system in Belgium. Belgian enforcing agents may naturally issue only a verbal warning in case of very minor offences. However, there are no official guidelines in this field.

#### **B. Endorsements against the driver (driving licence)**

Driving licences with points do not exist in Belgium. Offences for which a specific driver has been sentenced are therefore not recorded in a database used to deliver the licences.

#### **C. Licence withdrawal**

Belgian legislation does not foresee any possibility of withdrawing a driver's licence for non-compliance with driver records, tachograph and driving and rest time regulations.

#### **D. Vehicle immobilisation**

The vehicle driven by someone having committed several infringements of Articles 6, 7 and 8 of Regulation 561/2006 may be immobilised at the offender's costs and risks until the cause of the offence has been remedied, in particular in order to oblige the driver to observe a daily rest period. The vehicle of an offender not domiciled in Belgium is immobilised until payment of the fine (either on the spot or in the form of a deposit).

#### **E. Disqualification for transport manager**

The English version of the survey refers to "licence withdrawal". We assumed that the French version also refers to the withdrawal of the road haulier licence.

Companies wishing to pursue or actually pursuing the occupation of goods transport operator by road are bound to meet the criteria governing good repute, professional competence and financial standing. A company may obtain its haulier licence provided that it meets all 3 requirements.

Companies meet the **good repute requirement** provided that neither the natural person (if the company is a natural person), nor the persons appointed to manage the company's affairs (if the company is a body corporate) have incurred - either in Belgium or abroad - a serious penal sentence for certain offences, among which are infringements of provisions governing driving and rest times and use of the tachograph.

Good repute is attested by a certificate of good character.

The road haulier licence is **withdrawn** by the Minister 3 months after having notified the company concerned that it no longer meets the good repute requirement.

Prior to any decision to withdraw a domestic/Community haulier licence, the Minister must give the company concerned the possibility of arguing its case.

#### **F. Financial sanctions**

The amounts for payment on the spot or a deposit are set by royal decree and proportionate to the infringement (please see the attached overview of applicable amounts). For final fines set by a judge, the amounts are not related to the infringement – the judge may pronounce a final fine from € 275 to 55,000 for all infringements of the regulations governing driving and rest times and the tachograph.

#### **G. Penal sanctions**

Infringements of the regulations governing driving and rest times and the tachograph may be sanctioned by a prison sentence from 8 days to 6 months regardless of the offence established.

#### **IV. APPEALS PROCEDURE**

When an enforcing agent considers that infringements of Regulations 561/2006 and 3821/85 have been committed, there are two possibilities:

- a. payment of a fine on the spot;
- b. drawing up of a report, possibly together with payment of a deposit.

##### **A. On-the-spot payment**

According to Article 2 of the Law of 18 February 1969 on implementing measures for international treaties and acts in the field of sea, road, rail or inland waterway transport, when an infringement is established, a fine applies, to be paid either on the spot or within a deadline set by the King.

This is only possible if the offence did not cause any damage to third parties and provided that the offender agrees.

In principle, payment of this amount on the spot halts prosecution, except if the public prosecutor notifies the offender, within one month from the date of payment, that it intends to prosecute. This implies that on-the-spot payment leaves **no possibility to appeal**.

##### **B. Report**

If a report has been drawn up by an enforcing agent upon a road check or company inspection, the report is sent on to the labour inspector ("Auditeur du Travail") or to the public prosecutor with jurisdiction over the district where the offence was established. An opposition may be lodged with both these persons so as to dispute wrongly established offences or assert "mitigating circumstances".

The labour inspector or public prosecutor may then take one of three standpoints:

##### **1. Dismissal**

Case dismissed.

The labour inspector or public prosecutor are entitled to prosecute, but not obliged to do so. They assess whether prosecution is advisable and indicate the reason for their decision. As long as criminal proceedings are not time-barred, **the decision to dismiss the case may be reversed**. Dismissal of a case is only possible where the offence reported is not a criminal infringement or if it is considered insufficiently established. Exceptionally, and only in case of petty offences against Regulation 3821/85, such infringements may be dismissed for the sake of convenience.

##### **2. Amicable settlement**

The official denomination for payment of an amount to stop prosecution is E.A.P.S. (= "extinction de l'action publique contre paiement d'une somme"). The labour inspector or public prosecutor is not obliged to offer an amicable settlement and may decide to immediately serve summons. If the amount of the amicable settlement is paid within the set deadline, any further prosecution is excluded. Furthermore, no mention of this E.A.P.S. will be entered in the offender's criminal record.

##### **3. Summons**

The labour inspector or public prosecutor may also decide to refer the case to the competent court (police court in principle) by immediately summoning the offender, and possibly his/her employer, as the party with civil liability. A summons is generally served:

- for non-payment of the transactional agreement;
- as of the third offence within three years from the first infringement of one of the Regulations;
- in case of repeated offence further to a penal conviction;

- in case forging or use of forged documents is established, or more generally if fraudulent cooperation is established between the driver and employer.

In that case, the amount of the fine is set by the court. Infringements of regulations on driving and rest times or the tachograph may be sanctioned by a prison sentence from 8 days to 6 months and/or a fine from € 50 to 10,000. However, these amounts are multiplied by a 5.5 tithe. In concrete terms, the judge may pronounce a fine from minimum € 275 to maximum € 55,000.

### C. Period of limitation

Offences are divided into 3 groups:

- offences punished by a criminal sentence are crimes;
- offences punished by a prison sentence from eight days to five years are misdemeanours;
- offences punished by a prison sentence of one to eight days or a small fine are petty offences.

Infringements of regulations on driving and rest times are punished by a prison sentence from eight days to five years, and therefore considered as misdemeanours.

When the offence constitutes a misdemeanour, prosecution is time-barred after 5 years from the date when the offence was committed.

The period of limitation for prosecution may be **stopped** by judicial inquiry or legal proceedings. Such procedures start a new period of limitation of the same duration.

The period of limitation for prosecution is **suspended** when the law so foresees or if there is a legal obstacle to starting or pursuing prosecution.

There is no set deadline to prosecute for an offence.

The punishable acts must be prosecuted within a reasonable deadline, failing which the sentence may be reduced.

### D. Time limits for appeal

**Appeals** may be lodged against police court rulings.

The right to appeal is revoked if the appeal has not been lodged with the registry of the court having issued the ruling within **15 days** of the ruling or, in case of judgment by default, within 15 days following the date when the judgment was notified to the convicted party or to their home address.

Rulings by the Court of Appeal may be the subject of an **appeal in cassation** with 15 days following judgment.