

## Q&A - loading, unloading, waiting times

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The document is merely indicative and in no case does it imply interpretation with legal effects. It is only applicable provided in the regulations in force at any time.

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### **Q1. What date did it come into effect?**

Entered into force 2 September 2022

### **Q2. Is the name of the Regulation *Law 16/1987, of July 30, on Land Transport Regulation*, correct?**

The Law 16/87 is the general Transport law, or LOTT (law of ordination of land transport). The ban has been introduced in a Royal Decree-Law (the RDL 3/2022) that modifies the 16/1987 Law, another modification in the RDL 14/2022, that also modifies the 16/1987 law. This prohibition is found in the Thirteenth Additional Provision of the Land Transport Law (LOTT).

### **Q3. Is there a provision in this new law that states that all companies operating in Spain who require product to be loaded or unloaded are required by law to adhere to this, and cannot force or insisted transport companies or their drivers to load / unload / move product, inside the trailer?**

Yes. The participation of drivers in load and unload of the goods is banned, with some exemptions. Therefore, any company that carries out a transport activity in Spanish territory -whether the company is Spanish or foreign- is subject to the prohibition.

The *Additional provision 13 of the Law 16/1987* (unofficial translation, by Google):

1. Drivers of goods transport vehicles with a maximum authorized mass of more than 7.5 tons may not participate in loading or unloading operations of goods or their supports, packages, containers or cages, except in the following cases:

- a) Transport of removals and furniture storage.
- b) Transportation in tank vehicles.
- c) Transport of aggregates or carried out in tipping vehicles or equipped with a crane or other devices inherent to the vehicle intended to carry out loading and unloading operations.
- d) Transport in vehicle carriers and tow trucks for roadside assistance.
- e) Transport of split-load transport between the distribution center and the point of sale, parcel services and any other similar services that involve the collection or distribution of shipments of merchandise consisting of a small number of packages that can be easily handled by one person.

For the purposes of this letter, the transport of split-load transport shall be understood as that in which prior handling, grouping, classification, or other similar operations are necessary.

A driver may participate in the unloading of split-load transport between a distribution center and the point of sale, provided that said activity does not affect his daily rest period or, as the case may be, provided that it is carried out within his daily working day and provided that this allows the driver to return to your usual work center or their place of residence.

However, the driver may participate in the loading and unloading of fractional cargo transport between a distribution center and the point of sale, or between the point of sale and a distribution center provided that, in addition to the above condition, said activity is carried out within the framework of a contract of duration equal to or greater than one year between the shipper and the carrier.

f) Transport of live animals, at the control posts approved in accordance with community regulations, without prejudice to the responsibilities established in the regulations on the protection of animals during transport.

g) Cases in which the regulations governing certain types of transport specifically establish something else in relation to the participation of the driver.

h) The assumptions that are established by regulation, provided that the safety of the driver is guaranteed.

2. The provisions of the previous section will apply to all loading and unloading operations carried out in Spanish territory.

#### **Q4. What are the different regulations?**

The prohibition of loading and unloading in Spanish territory is intended to protect professional drivers and is therefore included in an administrative regulation with a corresponding fine.

Then, there is a commercial regulation (very similar to the CMR Convention) which includes the possibility of agreeing that loading and unloading operations be carried out by the carrier. This regulation indicates [that when it is the carrier who carries out the loading and unloading operations, this service must be charged separately, in addition to the fact that the agreement must be in writing and agreed before the vehicle is made available for the loading of the goods.](#)

#### **Q5. Does it apply to all HGV drivers or only those contracted by a Spanish company and working in Spain, or does it apply to any HGV driver irrespective of where they are contracted or how long they may be in Spain performing their duties?**

That applies for all the loading or unloadings in the territory of Spain, independently of the nationality of the hauler, the driver or the shipper, or terms of their agreements or the labour law applicable.

#### **Q6. Does the ban apply to any handling of product only from the staging area to the back door (just inside) / or back door to the staging area, OR, does it also include any handling / moving of product within the trailer (e.g. customer**

**puts product at back door and driver is required to move it into place inside the trailer?**

Regarding this question the interpretation of haulers and shippers associations differ. An official interpretation from the Transport ministry, should come next month, as the ministry technicians stated.

**Q7. Are there any exceptions to the ban in which the driver may be permitted to handle/move customer product (e.g. agreement between transport company and customer, collective agreement, etc.)**

No, the exemptions are not based in collective or contractual agreements, but in the nature of the operations.

**Q8. Does the ban allow for the driver to assist someone from the loading/unloading location to load/unload product into/out of the trailer?**

It depends on the kind of assistance. If the assistance is opening the door, or giving instructions or advice, is allowed. If the assistance is in some way collaborative or co-work, or share the burden is banned. What has been prohibited is the active participation of the driver in loading and unloading operations, so that mere assistance to the person carrying out these tasks should not, a priori, be prohibited.

**Q9. What fines, penalties can be levied for failure to comply for the transport company, driver, loading/unloading location, customer?**

The infringement can be found in Article 140.41 of the LOTT.

And the sanction can be found in article 143.1.i) of the same Law.

4001 to 6000 euros, liability for transport company, but also for shipper sender or consignee, in case of their intervention in the operation.

**Q10. Spain and Portugal the law is already applicable. But: it is possible to understand from the document in Annexe below that some laws in Spain are not yet applicable, mainly fines for delays ; are fines applicable? From the document in Annexe: "Confirm with other ministries the viability of including in the Law a sanctioning regime for non-compliance with the regulations governing loading and unloading operations regarding driver's participation." It seems there is no such provision applicable yet.**

In Spain there is already an infraction, with a corresponding penalty, for non-compliance with loading and unloading provisions.

This offence is found in *article 140.41 of the Ley de Ordenación del Transporte Terrestre (LOTT)*:

*"The carrying out of loading or unloading operations by the driver of the vehicle in contravention of the limitations applicable in accordance with the provisions of this law. It is presumed that the responsibility for this infringement corresponds both to the company under whose direction the driver of the vehicle acts, and to the shipper, consignor, intermediary and consignee who have intervened in the transport."*

And the infringement is in article 143.1.i) of the LOTT:

*"A fine of EUR 4 001 to 6 000 shall be imposed for the infringements referred to in points 1, 2, 3, 4, 4, 5, 6, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 37.1, 37.2 and 41 of Article 140."*

**Q11. From the document in Annexe: “*Transitional provisions of six months from the entry into force of the Law based on the training needs of the necessary personnel other than the driver*” – is this provision already applicable?**

The transitional period of 6 months for the entry into operation of the ban was from the entry into force of the Royal Decree-Law that approved this measure on 2 March 2022, so it has already passed, and the ban has been in operation since 2 September.

**Q12. From the document in Annexe: “*Compensation from 2 hours to 1 hour, both regarding loading as well as unloading*” – is it applicable? And does the study is finished?**

Compensation for taking more than 1 hour to carry out loading and unloading operations (called "paralización") is a measure that has been in the Spanish legal system for a long time, the only thing that has been achieved is that it has been reduced from 2 hours to 1 hour.

This is present in [Article 22 of Law 15/2009 on the Contract of Carriage](#).

The study that is being carried out in no way affects the application of the previous point; it is a study to find out for certain how these operations are working in Spain.

**Q13. From the document in Annexe: “*During the first semester of 2022, a study of loading and unloading times will be carried out in order to quantify the cost of inefficiencies in this area and define what regulatory measures may be necessary in this area.*”**

The study is a commitment given by the Administration to the National Committee and is currently at an early stage.

**Q14. From the document in Annexe: “*New legal provision that includes the creation of a standard for the certification of loading and unloading areas in relation to the services and conditions offered to professional drivers.*” Does it mean the provision is already applicable?**

The certificate for loading and unloading areas does not yet exist. This is one of the elements that is being worked on, but it has not been possible to make much progress because of all that has happened during this period.

**Q15. From the document in Annexe “*The carrying out of loading or unloading operations by the driver of the vehicle in contravention of the limitations applicable in accordance with the provisions of this law. It is presumed that the responsibility for this infringement corresponds both to the company under whose direction the driver of the vehicle acts, and to the shipper, consignor, intermediary and consignee who have intervened in the transport.*”**

Yes, the part “*the company under whose direction the driver of the vehicle acts,*” refers to the transport company the driver works for.

This prohibition applies not only to companies with professional drivers, but also to self-employed drivers.

The transport company is seen as a potential offender because it may have given orders to its drivers to circumvent the rule to be more competitive than other transport companies that do comply with the rule.

This is to avoid possible unfair competition between transport companies and because all this regulation is based on the protection of the driver when carrying out his work and therefore the company for which he works is responsible for what may happen to him.

But above all, and in the end, it is to prevent transport companies from offering this service illegally and competing badly with other companies.

Even if this is the case, what the law indicates is that the company is assumed to be in breach of the law, but when the sanctioning process is opened, the company will be able to argue and if it can prove that it has not given instructions to its driver to do so, and that it has given instructions that it cannot load or unload, it will probably be exonerated of guilt and not be fined. But it will be seen as time goes and when the first fines are issued in this matter.

**Q16. Are the fines paid on favour of the state? And for longer waiting times does f.ex. shipper pay compensation to the carrier? So f.ex. shipper pays compensation to carrier and also he pays fine to the state?**

Yes, fines are paid to the administration.

But in the case of waiting longer than necessary for the vehicle to be loaded or unloaded, it is not a fine paid to the administration, but the loading company must compensate the carrier who has made the vehicle available in due time and form.

Although this works like the above, it depends on whether Spanish law (*Law 15/2009*) applies or not. If it does apply, article 22 of this law indicates that after 1 hour from the time the vehicle is made available, the carrier has the right to claim compensation from the shipper for "paralysis" for each hour the vehicle is waiting, with a maximum of 10 hours per day. (The explanation is longer, for more information, please contact IRU). If the Spanish rule does not apply, it would be in accordance with the regulations that apply to the contract of carriage.

**Additionally, the Ministry of transport, mobility and urban agenda prepared a document with the frequently asked questions about the new regulation (Spanish):** [https://www.mitma.gob.es/recursos\\_mfom/comodin/recursos/faq\\_dggt\\_-\\_carga\\_y\\_descarga\\_cadena\\_tte.pdf](https://www.mitma.gob.es/recursos_mfom/comodin/recursos/faq_dggt_-_carga_y_descarga_cadena_tte.pdf)

## **Annexe**

### **Selected excerpts – Agreement between the industry and the Ministry of transport in Spain on loading, unloading, waiting times and more**

#### **LOADING AND UNLOADING**

- Modification of article 20 of Law 15/2009, of November 11, of the contract of land transport of goods:
  - Prohibiting the participation of the driver in the operations of loading and unloading the merchandise and any other related supports and elements other than the merchandise (pallets, boxes, cages, etc.) as a general rule.
  - The exceptions to the above general rule are: removals, tank transports, crane, transport of vehicles, parcels and the like, as well as, after a report from the CNTC (National Committee on Road Transport), any other type excepted in the general contracting conditions.
  - For these exceptions, reflect the price of loading and unloading on the invoice as a separate item from the price of transport.
- Confirm with other ministries the viability of including in the Law a sanctioning regime for non-compliance with the regulations governing loading and unloading operations regarding driver's participation.
- Transitional provisions of six months from the entry into force of the Law based on the training needs of the necessary personnel other than the driver.

#### **WAITING TIMES LOADING AND UNLOADING ZONES**

- Modification of article 22 of Law 15/2009, of November 11, of the contract of land transport of goods, reducing the waiting time from which one will be entitled to compensation from 2 hours to 1 hour, both regarding loading as well as unloading.
  - Analysis of the viability of including an additional provision in the Law that provides for the application by third parties of the reference criterion established in article 22.3 of the Law of the Contract of Land Transport of Goods for the calculation of the compensation to the carrier for damages caused that imply the stoppage of the vehicle for any cause not attributable to the carrier
- &
- During the first semester of 2022, a study of loading and unloading times will be carried out in order to quantify the cost of inefficiencies in this area and define what regulatory measures may be necessary in this area. As part of this study, analyse also the feasibility of the the responsibility of the recipient or the consignee of the merchandise for the compensation for stoppages.
  - Shall be analysed also the regulatory changes to be made so that the standard for loading and unloading areas is applied to newly built facilities.

#### **STANDARD FOR LOADING AND UNLOADING ZONES**

- New legal provision that includes the creation of a standard for the certification of loading and unloading areas in relation to the services and conditions offered to professional drivers.

#### **SAFE TRUCK PARKING AREAS**

- Announcement of EUR 20 million in aid for the adaptation and construction of safe truck parking areas
- CEF call for EUR 100 million euros for the adaptation and construction of safe truck parkings
- Ministry's commitment to promote aid among private initiative
- Plan for the conversion of winter truck parking areas into safe truck parking areas

#### **DRIVER SHORTAGE**

- Creation of a working group to analyse the situation and, within 9 months, make a proposal of possible measures to be implemented.

#### AID FOR TRAINING AND LEAVING THE PROFESSION

- Commitment to maintain current aid for training and leaving the profession during the current legislature.