

New EU ruling on fines for breaching rules on the presentation of record sheets or digital data

The Court of Justice of the European Union has ruled on a question referred for a preliminary ruling by the Supreme Court of Cassation in Italy on the interpretation of Article 15(7) of the Regulation on Recording Equipment in Road Transport. The question was whether a driver of a vehicle should be able to present the record sheets for that day and the previous 28 days at the request of the supervisory authorities.



THE BACKGROUND OF THE CASE

The question referred for a preliminary ruling to the CJEU was raised in two cases before the Court of Florence (Italy) concerning facts back in 2013, which is why the legal focal point of the case is the Regulation on Recording Equipment in Road Transport. In 2014, this Regulation was replaced by the Tachograph Regulation- however, this is not relevant to the principle of the case.

The purpose of the reference for a preliminary ruling to the CJEU was to clarify whether Article 15(7) must be interpreted as providing, in the case of the driver of a vehicle, for a single overall conduct, with the consequence that, in the event of non-compliance with it, the driver commits a single infringement and must be subject to a single penalty, or whether that article, by applying consecutive sentencing, may lead to as many infringements and penalties as the number of days for which record sheets for the specified period (day in question and the preceding 28 days) cannot be presented.

THE INTERPRETATION BY THE CJEU

The CJEU held that Article 15(7) lays down only a single obligation covering the whole period and not several separate obligations for each of the days in question or for each of the corresponding record sheets. Therefore, failure to comply with the obligation imposed by Article 15(7) constitutes a single infringement consisting of the impossibility of presenting all or part of those 29 record sheets at the time of the inspection.

The CJEU, therefore, found that such an infringement should give rise to only a single penalty, which should be calculated based on the criteria laid down in Article 19 of the Regulation on Driving Time and Rest Periods. Said Regulation provides that the Member States must provide for penalties for infringements of the Regulation on Recording Equipment in Road Transport and the Regulation on Driving Time and Rest Periods, which must be effective and proportionate to the infringement.

As regards any infringement of Article 15(7) of the Regulation on Recording Equipment in Road Transport, the reasoning of the judgment state that the penalty should reflect the seriousness of the infringement, which increases in line with the number of record sheets which the driver cannot present since such an infringement prevents the effective monitoring of several days of drivers' working conditions and compliance with road safety for several days.

Although the penalty should reflect the extent of the seriousness of the infringement, including the number of missing record sheets, according to the CJEU, the supervisory authorities cannot simply arrange for the sentencing based on the principle of consecutive sentencing.

THE EU JUDGMENT IN A DANISH CONTEXT

In Denmark, according to point (2) of Section 118a (5) of the Danish Road Traffic Act, the fine for each infringement must be added when several infringements of the provisions of the regulations issued under Section 86a (1) have been committed. This includes the Regulation on Driving Time and Rest Periods, the Tachograph Regulation, and the Danish Executive Order on Driving Time and Rest Periods (principle of consecutive sentencing).

At present, the driver's obligation to present, at the request of the supervisory authority, record sheets for the day in question and the previous 28 days is provided for in Article 36 of the Tachograph Regulation.

According to Commission Regulation (EU) 2016/403 of 18 March 2016, an infringement of Article 36 of the Tachograph Regulation constitutes a very serious infringement (VSI), which according to the legislative preparatory works for the Danish Road Traffic Act, should be set at DKK 6,000 per infringement for the company.

If the decision of the CJEU is compared with Danish practice, it will therefore be important in the future that the police and the public prosecutor consider the failure to present the information under Article 36 of the Tachograph Regulation as one infringement covering the total period and calculate the fine on the basis of proportionality rather than accumulating the fine in line with the number of days when no record sheet can be presented. It may also be considered whether the decision of the CJEU also has a knock-on effect in other areas where Danish police and public prosecutors also accumulate tariff fines per infringement without regard to the total penalty.



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