

# Industrial Software Homologation: Theory and case study

Analysis of the European tachograph technology with EU transport  
Regulations 3821/85, 799/2016, and 561/06 and their consequences  
for Europeans citizens

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# 1 Introduction: dangerous software

## EXECUTIVE SUMMARY

Industrial software always contains mistakes and errors. This can lead to disastrous consequences, huge losses and casualties. Worldwide there is no standard way to homologate software. Europe can become leader in this field and in this introduction we put forward a revolutionary proposal. We see how not applying our proposal leads to unworkable situations in the best and disasters in the worst case scenarios.

Next, we focus on a case study: the tachograph. The tachograph is a device to measure driving activities for road transportation. European regulations stipulate in a detailed fashion how tachographs should behave. In the remainder of this document it is shown how tachographs exhibit many of the aforementioned problems.

## 1.1 Software contains errors

Industrial software always contains mistakes and errors. Most of the times, these errors go by unnoticed. But sometimes the outcome is disastrous. A classical example is the explosion of the Ariane 5 launcher in 1996 due to a software error. Media reports indicated that the amount lost was half a billion dollars – uninsured. This is a costly software error.



Figure 1.1: On June 4, 1996, the maiden flight of the European Ariane 5 launcher crashed about 40 seconds after takeoff.

The list of severe incidents due to software errors is long and very worrying including casualties, severe damage and civil right violations. In subsection 1.6 we include some further examples.

Various professions which come with serious responsibility –like medical doctor or lawyer– are severely regulated and controlled by the state authorities. However, anybody can call him or



herself a programmer.

Notwithstanding this, regulators are trying to impose some quality control on critical software. Thus, there are standards around on how to develop software. They consist of lengthy documents that listen to poetic names like DO-178B (ED-12B), DO-178C or DO-333.

These current standards, however, are mainly based on imposing many sanity checks in the programming process on the one hand, and on what is called dynamic testing on the other hand: test your program on many samples for which you know how your program should behave and compare this to how the program actually does behave. By abiding to these standards, the amount of average errors goes significantly down as we can see in the following table.

industry	fault density Error for Kloc
Automotive	3
Aviation	1
Shuttle	0.1
Traditional	200
Agile	22

<http://leanagilepartners.com/publications.html>

Figure 1.2: This table shows the average amount of errors per Kloc, that is per thousand (Kilo) lines of code.

As we see in the table above, skilled (agile) programmers with a university background typically make around 22 errors per thousand lines of code. Applying all the involved current state-of-the-art standards to programming we see that there are relatively very few errors in the code, about one error per ten thousand lines of code. But, how do we know this error is not fatal? A typical medium-sized industrial program module can be in the order of a million lines of code. This leaves us with around a hundred errors.

The important message to learn is:

With the state-of-the-art quality standards for software development **there will always remain some errors in the code.**

The question begs itself:

**Is there really no way to obtain zero errors?** Here we mean really zero, not zero comma something. No, a round zero, **NO ERRORS AT ALL.**

In the next section we see how, in a certain sense, this can indeed be accomplished.

As we said, in the next section we see how, in a certain sense, this can indeed be accomplished. The techniques that we will expose are powerful enough to guarantee zero errors. Since the

technique is young and much under development Europe still has a chance to fully invest in it and become the undisputed world leader in what we call *software verification*.

## 1.2 Towards software homologation: zero error software

The main question is:

how can we be **a hundred percent sure** that our software does not contain errors?

In this section we present a new technique where all errors of a certain kind will be eliminated with hundred percent certainty. This is a revolutionary and abysmal change with respect to conventional programming.

Before giving out our answer, we would like to encourage the reader to reflect on a basic question: how and when can we be hundred percent sure of some knowledge? Is it possible to know something for sure? And if so, in what situations can we have hundred percent certainty that what we state is really true?

Remember, we want to know that some software always does what it should do, for any of the infinitely many possible inputs. So, we cannot check them all one by one. Pray, how can we be hundred percent sure that our software is correct? Please do ponder on this question before looking at our solution.

## Homologation through Formal Verification

It may be clear that testing a software can never guarantee that the software always works well: there are simply too many possible different inputs and they cannot all be tested for.

Our standpoint is: **only mathematical proof can provide full certainty.** In particular, only mathematical proof can provide full certainty that a program always does what it should do.

In the past decades very deep mathematical theory and machinery has been developed to do what is needed to truly homologate software: to mathematically prove correctness of the program. This process is called *Formal Verification*.

Thus, Formal Verification of software provides us with a mathematical proof ( $\Delta$ ) that the technical specifications ( $\Sigma$ ) are followed exactly by the implemented code ( $\Pi$ ). It implies that the resulting software is bug-free.

**FORMALLY VERIFIED SOFTWARE** consists of three components.

**First**, there is a Technical Specification ( $\Sigma$ ) in a precise formal mathematical language that tells with mathematical precision and rigor what the software should do. It is completely unambiguous in the strict mathematical sense.

**Second**, there is a software ( $\Pi$ ) that executes according to the specification.

The **third and key ingredient** to formally verified software is a **mathematical PROOF/DEMONSTRATION** ( $\Delta$ ) that the software ( $\Pi$ ) does exactly what the specification ( $\Sigma$ ) says it should do.

Thus, Formal Verification delivers a triple ( $\Delta, \Sigma, \Pi$ ). **The proof ( $\Delta$ ) replaces and outperforms Dynamic Testing** and is the only reasonable base for Real Homologation.

**This proof ( $\Delta$ ) guarantees that:**

- (i) **ZERO** bugs will appear in the resulting code and also
- (ii) that the given specification is exactly reproduced by the code.

When we have a triple ( $\Delta, \Sigma, \Pi$ ) as above, we call  $\Pi$  a **HOMOLOGATED SOFTWARE**.

An additional strength of this process is that one uses computers to check that the proof is indeed a proof and does not contain any error. Given that this single checking program is correct, we can truly assert that all programs developed using formal verification **HAVE ZERO ERRORS**. In particular, the program will exactly follow the specification and programs will be as good as their specifications are. It is thus of utmost importance to have good specifications.

In particular, the specification itself must fulfil the following requirements for *decent design*:

## DECENT DESIGN REQUIREMENTS

- **Type1 in Decent Design:** A specification must follow the following *logical-mathematical principles* and in particular should be *consistent*: no contradictions are entailed. A desirable additional property is *completeness*: the system will decide all situations
- **Type2 in Decent Design:** It must respect *computational limits* (not exceeding available computation time and memory).
- **Type3 in Decent Design:** It must follow *physical laws*.

As we shall see, many of the decent design requirements are often violated.

### 1.3 Illogical software specifications

Consider the following rule concerning a 20th century regulation for railway in Kansas:

"When two trains approach each other at a crossing, both shall come to a full stop and neither shall start up again until the other has gone."



Figure 1.3: Railway crossings naturally give rise to critical situations. Here software better not fail. As a matter of fact, the railway industry is one of the first to apply methods of formal verification.

Clearly this regulation violates Type 1 requirements on decent design. If Kansas policy makers hired a software company to develop this law in a digital-automatic environment, the company would find the deadlock and should try to implement one of the following decisions:

1. **Follow the law** and have the trains stop forever.

2. **Self-fix:** For example by giving preference to a train on one side.

Consider: This solution would mean that the software would be breaking the law. Moreover, the software engineers would be legislating at their will (consciously or otherwise).

3. **Engage with the policy makers to amend the law**, assuming that they understand basic mathematical properties. In this particular case, they should be able to grasp the inconsistency of the law with simple requirements on operability.

We will extrapolate and carry this case over to a more complex technology in order and show under close analysis that this undesirable situation is being experienced today within European Union regulations.

## 1.4 Computer says: Jail

Imagine the following situation. You walk on the street, and a police officer stops you. She asks to see your ID card and passes it by a scanner upon which she says:

"I am very sorry but I have to imprison you immediately since your perbonculation number is way over 23."



Apparently, the scanner looked at the ID card, performed some computations and concluded a severe infraction: a perbonculation number that is substantially bigger than 23.

Any citizen would respond by asking:

"But, what are you talking about? What *is* my perbonculation number? How the heck is that defined? How could your scanner compute it?"

In this situation the absurdity is clear: there is no such thing as a perbonculation number, it is nowhere defined and it is thus clear that the scanner outputted an arbitrary number and there are no grounds to go to jail. However, something quite similar happens in European road transportation every day as we shall see.

We could see the absurdity of the above situation since it is evident that perbonculation is undefined. However, things get more dangerous when we replace the word "perbonculation" with some other word that appeals to intuitions and vague ideas from common knowledge so that it *seems* that it is defined but actually it is not. We see this in our next example.

In this next example, there is no need to use our imagination since it happens on a daily basis within the European Union.

A police officer stops a truck-driver and passes a scanner by the tachograph (a sort of black box of a truck that registers all sorts of activities) of the truck. Upon looking on her scanner she says:

"I am very sorry but I have to imprison you immediately since your daily driving time is over twelve hours."

The venom is in the fact that *daily driving time* appeals to intuitions stored in our common knowledge: we have an idea what a day is and what driving is. However, it turns out that daily driving time is **NOWHERE FORMALLY DEFINED**. So, how then can a scanner compute it?

We shall see in the remainder of this document that this problem is dangerous and very important. We can mathematically prove (see Section 3) that one and the same driver file can give different outcomes depending on the definition of daily driving time. In particular, we shall see an example where one definition of daily driving time will tell you that you have been resting for the past twelve hours while another definition will tell you that you have been driving straight for the past twelve hours. Both definitions of daily driving time are very natural and acceptable.

We have a big problem indeed!

One may argue that this is a FORMALLY VERIFIED SOFTWARE condition 3 violation. But actually, using the technique of formal verification disallows vaguely or non defined concepts. This is due to the fact that the specification language only allows for full and mathematically precise and unambiguous definitions.

## 1.5 Tachographs: this document



In the remaining sections of this document we will study the tachograph for European road transportation. The vehicle files that store and interpret the driver and vehicle activities are generated by a completely automated process. The software that generates the tachograph files is proprietary whence the source code cannot be read. Thus, **NOBODY CAN CHECK THE CORRECTNESS OF THE TACHOGRAPH TECHNIQUE AND SOFTWARE**. However, tachographs are of critical importance in European law enforcement:

On the basis of the tachograph files alone, police officers take important actions, like

- Penalisation with fines (which entails millions in losses for particular truck drivers and companies);
- Withdrawal of drivers' licenses;
- Incarceration.

So, tachographs are decisive in important legal decision taking. It is like the above: "Computer says: jail". Now, it is known that tachographs make mistakes from time to time. Figure 1.4 below nicely illustrates how police offices do accept both the decisiveness of tachograph data on the one hand and the fallibility of tachograph data on the other hand.

Großkrut, am 09.04.2016

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An die  
Bezirkshauptmannschaft  
Gänserndorf

Stellungnahme zu 

Zu den Einspruchsangaben wird wie folgt Stellunggenommen.

Die Auswertung der Lenk- und Ruhezeiten erfolgt durch das DAFO-Systemprogramm, automatisch. Die Übertretungen und die schwere der Übertretungen werden durch das Programm ausgeworfen und dürfen durch den Bearbeiter nur unter besonderen Umständen korrigiert werden (z.B. Vorlage handschriftliche Bestätigungen durch den Lenker). Die wöchentliche Ruhezeit muss nach spätestens 6 aufeinanderfolgenden 24 Stundenzeiträumen erfolgen. Die letzte wöchentliche Ruhezeit des Angezeigten endete am 08.02.2016 um 02:05 Uhr. Bis spätestens 14.02.2016 um 02:05 Uhr hätte er eine neuerliche wöchentliche Ruhezeit beginnen müssen. Tatsächlich begann der Angezeigte seine wöchentliche Ruhezeit erst um 09:49 Uhr.

Der in der Anzeige angeführte ist Wert von 14:40 Stunden ergibt sich daraus, dass das Auswertungsprogramm, die längste, in diesem Zeitraum eingehaltene Ruhezeit als Wochenendruhezeit heranziehen muss.

Figure 1.4: Note from Austrian Police where they admit that the tachograph output data represent the basis of any accusation. Moreover, they admit extreme situations in which the output data has to be inspected by drawing upon manual records, that means, basically, that this output is not trusted even by the agents of the law. Actually, Police officers around Europe have to deal with the responsibility of believing those dubious proofs.

The point we wish to make in this document is that it is unacceptable that non-homologated software is sending people to jail. Even more so since we *know for sure* that this software is making many mistakes.

A similar situation occurs with software that performs DNA sequencing. On the basis of this software people are sent to jail or even sentenced to death. In three cases, judges from USA and Australia have petitioned to make the software open to the public from proprietary DNA comparing software, due to some unreliable results<sup>1</sup>: STRmix (granted), FST (granted), TrueAllele (still proprietary).

<sup>1</sup>The court references are respectively: DPP v Tuite (Ruling No 3) , Supreme court of Victoria, at Melbourne, Australia; United States of America v Kevin Johnson, United States District Court Southern District of New York, at New York City. 15 Cr. 565 (VEC); Case No. F071640 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA - FIFTH APPELLATE DISTRICT The People of the State of California, Plaintiff and Appellee, v. Billy Ray Johnson, Defendant and Appellant.



Society is becoming every day more aware that the ‘Computer says: jail’ scenario is simply unacceptable.

Also in Spain, this awareness is making it to the court-rooms. In Figure 1.5 below, we expose the example of a recent sentence from a Spanish court: N. Sentence: 30/2019, CONTENCIOSO/ADMTVO court. N. 4 of Valladolid (Spain) in which **the court dismisses any legal action against the defendant** for the fact that **the software in charge of data extraction has no homologation and is not verified**.



infracción imputada y sancionada en cuanto que no se han incumplido los tiempos de descanso semanales.

En segundo lugar considera que los hechos denunciados no están suficientemente probados a efectos de poderlos considerar constitutivos de la infracción sancionada. En este apartado señala que el tacógrafo del que se han obtenido datos tiene una programación o configuración de fábrica que adolece de errores y que hace que sus resultados no sean fiables ni ciertos. No se trata de una avería o de un mal funcionamiento sino de errores de fabricación, configuración y/o programación llamando la atención sobre la falta de homologación del tacógrafo y, especialmente, del software utilizado dentro del mismo. A lo anterior añade que no consta, y por lo tanto falta, la homologación del software utilizado por las autoridades para obtener y procesar los datos registrados en el tacógrafo.

Se acepta lo alegado por la parte demandante en lo que se refiere a la ausencia de prueba de cargo suficiente respecto al software utilizado por la autoridad correspondiente para obtener los datos registrados en el tacógrafo por lo que, sin necesidad de analizar el resto de la fundamentación jurídica alegada, procede, y así se acuerda por medio de esta sentencia, estimar íntegramente lo pretendido por medio del presente recurso declarando nula, por no ser ajustada a derecho, la resolución impugnada así como la resolución sancionadora recurrida en alzada y reconociendo a la parte demandante el derecho a que se le devuelva el importe de la sanción que haya llegado a abonar siempre que quede acreditado suficientemente ese abono. Así resulta de lo que se va a indicar seguidamente.

Figure 1.5: N. Sentence: 30/2019, CONTENCIOSO/ADMTVO court. N. 4 of Valladolid (Spain). The two present paragraphs argue that the tachograph has internal mistakes, therefore, the output data can not be trusted. It puts special attention for the lack of homologation (of both tachograph and the software used by the authorities) and acquits the defendant of the entire accusation. This case will be analyzed in Section 20.

We think it is really unavoidable and necessary that sooner or later some form of mandatory software homologation will come in force. In this document we shall focus on European legislation for road transportation. In particular we shall perform analyses of parts of Regulations 3821/85 and 799/2016 and amendments thereof. As we shall see, both the law and the implementations contain various short-comings.



1. The technical specifications for tachograph in Reg. (3821/85 and 799/2016) are poorly defined and have inner deficiencies.
2. The software in charge of extracting and computing tachograph data, despite being regulated, is not verified or under any measure of control. This means that the data from which police officers and judges decide to punish drivers and companies, is potentially false.
3. The transport regulation 561/06 is totally disconnected from the logic of digital processes that have to compute it. Moreover, it shows a severe lack of consistency: It has been mathematically proven that 561/06 bears internal contradictions<sup>a</sup>. This makes it virtually impossible to convert the law into a computable system, therefore, this means that the regulation is not actually followed by the resulting software and the law is eventually written by the engineers.
4. In 3821/85 and 561/06 we can even find different possible interpretations (of the same rule) among languages due to wrong translations. Also, there are profound and undetected technical discrepancies in time measuring (UNIX / UTC) that can lead to distinct data evaluation results.

<sup>a</sup>B. JESPERSEN et al. *When logic lays down the law*, <https://arxiv.org/abs/1810.03002>, Barcelona 2018. Also, DEL CASTILLO TIERZ, J. *When the laws of logic meet the logic of laws*, <http://diposit.ub.edu/dspace/handle/2445/133778>. Master's thesis, Universitat de Barcelona, Barcelona, 2018.

**Engineers are, accidentally, the real lawmakers; Bugs, arbitrariness and wrong data are, in turn, a legal part of the accusation. Is that acceptable?**

The case we are going to develop in this document is an example of a broad problematic that concerns our societies **security** and our citizens **legal certainty**. In particular, in this document we are going to show:

- The **unjust legal consequences produced by deficient (unsafe) technology** which is responsible for applying a regulation that, in turn, is not adapted to technical complexity.
- A comprehensive, step by step explanation of the technical problems, adding evidence from real cases processed by Police Controller® from a **European legal services provider's** database, containing 1.282.687 driver files and 467.296 vehicles files.
- An integral proposal, based on Formal Verification of Software, to solve a critical situation concerning not only software-based legal proof systems, but also all kind of software-based systems that directly affect our society's security. **This proposal advocates a new and unavoidable paradigm: Software homologation through Formal Verification.**

## 1.6 Serious business

In this remaining subsection of the introduction we show some more examples where software errors had disastrous consequences. The impatient reader can skip this subsection and only

come back to it when referenced to.

### **Millions in losses: Schiaparelli case.**

In October 2016, Europe's Mars Schiaparelli lander crashed in the surface of Mars due to a software glitch. The Inertial Measurement Unit detected a "larger than expected" angular pitch rate, which triggered a "saturation" alert. The software was programmed in such a way that **it could not accept all potentially possible physical data**. This caused a delusion to the parachute activation device before time, causing at last the destruction of the space probe and the loss of millions of Euros invested by ESA.

Non-formally verified software, poorly defined specifications, all types of bugs and lack of consistency in data processes are actually causing damage and millions in losses. Take into account examples of big failed projects such as Europe's Mars Schiaparelli crash (2016); disasters in Ariane launch programs (destruction of Ariane 5 (1996) and rockets coming out of their orbit (2018); disastrous financial algorithms like Knight Capital's *Power Peg* (2012); and a large etcetera that includes all kinds of software. All these cases are examples of avoidable tragedies caused by internal software malfunctions and wrong verification (see Section 12 as an example of this kind of irregularities).

### **Boeing 737 Max-8:**

A more tragic example of improper verification on different levels are the air plane crashes of Boeing Model 737 Max-8 series in Indonesia and Adis Abeba.

The Boeing 737 Max-8 is an airplane developed on the Boeing 737 NGT basis, which is currently still working for airlines all around the world. Due the size of the new turbines, these had to be set up in front of the wings. This lead to a different behavior of the air plane movements, especially when climbing. Boeing 737 8-Max has a higher probability of stalling, which happens when there is a wrong reaction of the pilots in front of a possible crash.

To support the pilots flying the airplane, a software called "MCAS" was implemented into the Boeing 737 Max-8. In case the software detects that the air plane is close to stalling, "MCAS" automatically lowers the front part of the air plane to prevent it from stalling.

One major problem of the "MCAS"-system was that the software only used the information of one single sensor in order to take the decision of whether the air plane was close to stalling, thus to start the automatised reaction on this.

A second problem was that the pilots who are always supposed to be able to outvote the software of an airplane, were not able to do so. The pilots were trying to pull-up the nose, but the software "MCAS" was pulling the nose down again. It even blocked the pilots commands. After the crash in Indonesia, Boeing advised the pilots to use the manual trimming of the airplane to change the flight status into nose-up again and to restart the "MCAS" computer. Although the pilots of the flight that crashed nearby Adis Abeba followed this emergency procedure, the air plane crashed. It seems already verified that it was impossible for the pilots to gain back the complete control of the airplane and to restart the system.

Why is this a good example of improper verification? Airborne industry is one of the branches frequently monitored and checked world wide. Also, the final product of industries like Boeing, needs to undergo a large amount of tests to receive the permit to fly.

Included among this large amount of tests, there are, evidently, also software tests. With nowadays information, we know that those tests were not properly followed. (E.g., at least 2 information sources for critical flight systems, overruling of the system by the pilot etc.)

Shuttle and airborne industry are precisely the industrial sectors that invest the most for the security of their software by exhaustively applying all kind of dynamic testing techniques to verify its reliability (take as an example *DO-178-B* / *ED-12B*) and, despite all efforts, every year we end up with examples of internal malfunctions that lead to economical or even human catastrophes. We will see that the nature of those problems is also found in tachograph technology, where the result is not a visible crash of a rocket or a plane but the execution of court cases based on unverified and often times wrong data. **Should we consider that this represents something to worry about?**

## 2 In which circumstances do we deem software that is not following the law illegal? An introductory case.

### EXECUTIVE SUMMARY

This first case will show a simple example that, despite not having legal consequences, signals a dangerous problem: sometimes legal software does not compute what has been established by the law.

### 2.1 Driver Card

The first case we present appears to be simple and irrelevant at first sight, but a closer look will help us illustrate that in some cases the software implementation of the tachograph and the driver card (the personal card that records each driver's activity) does not follow what the regulations state, which means that the software is breaking the law.

#### What does the law state?

Regulations 3821/85 and 799/2016 state that the card holder's preferred language shall appear as two lower-case letters:

2.64. Language (2.88, 799/2016)

Code identifying a language.

`L a n g u a g e : : = I A 5 S t r i n g ( S I Z E ( 2 ) )`

Value assignment: Two-letter lower-case coding according to ISO 639.

#### How does the actual data behave?

Although the law is very clear on how this variable must be stored, we have come across driver cards that do not respect this format: in particular, driver cards from Latvia, Slovakia and Russia. In these cases, the two-letter code indicating the card holder's preferred language is in upper-case letters, instead of lower-case ones (Figure 2.1).

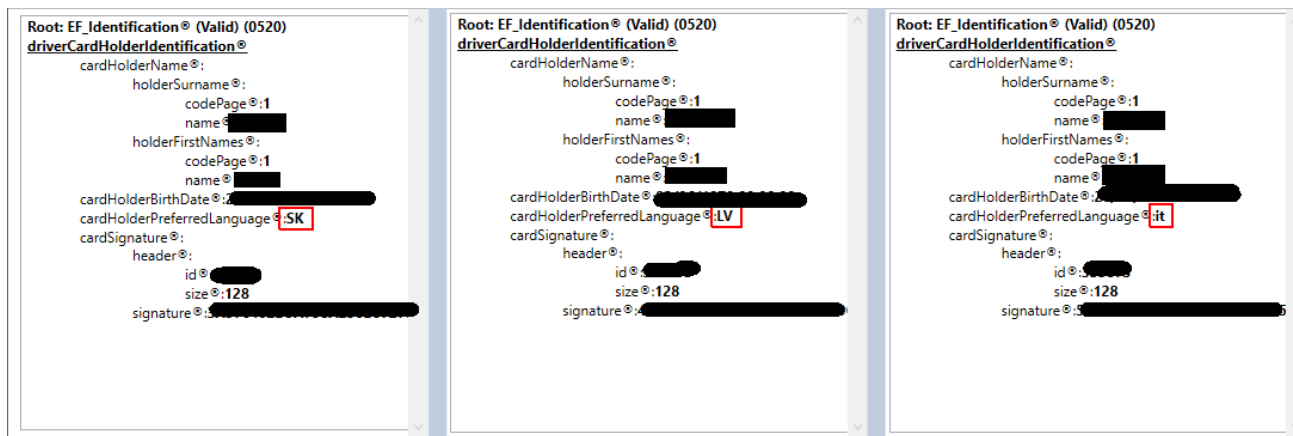


Figure 2.1: Module EF\_Identification of three different driver cards. The different instances of the variable `cardHolderPreferredLanguage` are upper-case in the first two cases (SK, LV) and lower-case in the latter (it).

The database used to elaborate this document contained:

- 1415 driver files from Latvia,
- 1677 driver files from Russia, and
- 2084 driver files from Slovakia.

All of them showed the same irregularity. In the case of Russia however, the problem seems to be solved already and new driver cards store the `cardHolderPreferredLanguage` information in lower-case letters, as the law stipulates.

At first stage, Police Controller® engineers took the decision of not processing these kind of files (as long as they do not comply with the law), so in a police control, they would appear as “not processed files”. Taking into account that police officers need to do their job en route, and the only way to do it is by taking wrong/illegal data as valid input, Police Controller® software (as well as all software dealing with this data) had to take the path of solution 2 expressed in the Kansas Railway problem: Violate the law and process the files.

## Causes of the problem - INTEROPERABILITY TEST

First we must talk about the interoperability test. The interoperability test is performed to new driver cards (in an independent laboratory) to both ensure correct communication between these and the tachographs, and check that they are written in the correct format and contain all the necessary nodes and information.

The test supposedly performs an analysis of all the Elementary Files<sup>2</sup>, one of which is EF\_Identification, which in turn contains the Card Holder Identification node, where the card holder preferred language is stored. However, it still considers driver cards from Latvia and Slovakia valid, in spite of them not strictly following the specification.

Authorities and developers only provide one way to verify that the software works according to Regulation 3821/85: the interoperability test. This is dramatic, because this test allows invalid driver cards and tachograph data, as we proved above! **If the interoperability test makes**

<sup>2</sup>Article 8.2. Digital Tachograph, Equipment Type Approval Interoperability Test Specification Version 2.3

**these kinds of mistakes, it is impossible to ensure the safety of this technology.** Should then, the interoperability test also be tested?

The problem we are facing can be caused by the following:

- The software for the driver card does not follow the regulation in the specified instances of the problem.
- The interoperability test is wrong.
- The lack of homologation protocols means that this failure is not detected by any mechanism.

Some questions arise here, to be answered by TACHOnet<sup>a</sup>:

- **Are the driver cards described above legal or illegal?**
- Should software producers be fined for not following the technical specifications?
- Must the tachograph accept data that does not follow the specifications laid out in the regulations? Should the software developers for police authorities accept them as valid when the reading is done?
- How can we trust the Interoperability test if it is incapable of detecting a malfunction like the present one? How can we rely on the software?

---

<sup>a</sup>For the proper implementation of the regulations concerning the tachograph, it is essential that every driver holds only one valid driver card. Therefore, Member States must ensure the uniqueness of the driver card they issue by sharing information with the other Member States. The TACHOnet is a telematic network in operation across the EU that allows automated sharing of information between Member States.

## Legal consequences

**This case is not negligible from a technical point of view.** Despite the fact that storing a variable in the wrong format may have no direct or penal consequences, it is nonetheless a violation of the regulation. Why do tachographs accept these cards, and why do they successfully pass the interoperability test?

This situation allows us to ask the following questions: can we overlook the technical specifications about the format of the **Language** variable given by the law? If so, what other articles or aspects of the law can be regarded ‘of little importance’ and hence disregarded as well? Where do we draw the line of what must be strictly followed and what is flexible? If we can’t overlook that, then why do the interoperability tests and the tachographs regard these cards as valid? The validation mechanism must be failing.

**What does software not following the technical specifications imply?** Understanding the answer to this question is basic:

1. When software does not follow a technical specification, it is not fulfilling its desired purpose: it does not work as it was intended to.
2. If software based on a regulation does not follow the technical specification, it is breaking the law.
3. Therefore, either we don't accept cards, devices and software that do not follow the regulations, or we have to write another regulation in order to specify what parts of the current regulations we can ignore.

What can not be sustained, from a technical and legal point of view, is the current state of affairs.

## 2.2 Tachograph

Consider now Figure 2.2, where some vehicle card data from a Stoneridge tachograph is presented. Note that the value for `monthYear` is clearly erroneous. This must be a software mistake.

```
Raiz: VuCard®
TREP05_Technical_Data®
  signatureValidation®:valid
  vuCalibrations®:7

signature®: [REDACTED]
...
vuIdentification®:
vuManufacturerName®:
  codePage®:1
  name®:Stoneridge Electronics
vuManufacturerAddress®:
  codePage®:1
  dirección®: [REDACTED]
vuPartNumber®:0000900208/05R11
vuSerialNumber®:
  serialNumber®:5938
  monthYear®:0000
  tipo®:6
  manufacturerCode®:162
vuSoftwareIdentification®:
  vuSoftwareVersion®:E7V7
```

Figure 2.2: Vehicle card data from the node `TREP05_Technical_Data`, showing an obvious technical mistake with the value `monthYear`. This wrong configuration passes unnoticed by software and tests despite its physical impossibility.

The question remains the same: how is it possible that basic data like `monthYear` can be wrong and still pass all kind of controls? Where is limit of acceptable inconsistency?

## Conclusion

In both cases presented above, Police Controller® rejected the driver card and was incapable of processing the tachograph data. In order for it to read the files, it was necessary to stretch the limits of admissibility to unacceptable points, breaking the technical specifications stated in the regulation.

**We conclude that there is no strict enough control of the data or of the programs that read it. Is this acceptable? How can we use such dubious data as legal evidence?**



### 3 Fine of 1 650 € for driving 12h53min in Spain, just reading the printed ticket as proof

**EXECUTIVE SUMMARY** In the present section we will show the case of a driver who received a severe monetary fine for having exceeded the permitted daily driving period. The fine was issued on the basis of the printed tachograph ticket. The fine was rebutted in court and the case was won.

A main error is that the law does not tell us how to compute the central notion of *driving time* in an interval. The notion seems intuitively clear but there are various essentially different possibilities. Furthermore, we introduce a rudimentary version of so-called *Cut Theory* according to which the law should stipulate how to deal with erroneous or absent data.

We want this document to be as self-contained as possible. To this end, we include a full copy of the fine and the sentence at the end of this section. For now, to remind us that we are talking serious business, here we include an excerpt of the fine.

HECHO DENUNCIADO		
Efectuar una conducción diaria de 12 horas y 53 minutos en la Jornada de conducción iniciada a las 5'39 h. hasta las 20'35 h. (UTC) del día 12/01/11. Computada sobre 10 horas. Se adjunta ticket 24 horas de tarjeta del conductor fecha 12/01/11.		
PRECEPTO INFRINGIDO	PRECEPTO SANCIONADOR	IMPORTE SANCIÓN
141.6 Ley 16/1987 y 198.6 Reglamento 1211/1990	Artículo 143.1.f) Ley 16/1987	1.650,00 euros
6.1 Reglamento (CE) 561/2006		

Figure 3.1: Excerpt of a fine for a daily driving period of 12h53min.

Police officers often rely on the printed ticket of the tachograph as evidence of illegal behavior. However, these tickets are neither always correct nor complete as we shall reveal below.



Figure 3.2: Printed ticket attached with the fine. As can be seen, it indicates a daily driving period of 12h 53min.

```

activityDailyRecord® (411) -> 08/01/2011 00:00:00
activityDailyRecord® (412) -> 09/01/2011 00:00:00
activityDailyRecord® (413) -> 10/01/2011 00:00:00
activityDailyRecord® (414) -> 11/01/2011 00:00:00
activityDailyRecord® (415) -> 12/01/2011 00:00:00
  activityChangeInfo® (1) -> 00:00, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (2) -> 05:39, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (3) -> 10:40, WORK®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (4) -> 10:45, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (5) -> 10:47, WORK®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (6) -> 10:51, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (7) -> 10:52, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (8) -> 11:37, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (9) -> 12:02, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (10) -> 12:05, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (11) -> 12:28, WORK®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (12) -> 12:40, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (13) -> 13:00, WORK®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (14) -> 13:01, WORK®, NOT INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (15) -> 13:05, WORK®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (16) -> 13:06, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (17) -> 15:57, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (18) -> 16:43, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (19) -> 20:28, WORK®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (20) -> 20:30, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (21) -> 20:35, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
activityDailyRecord® (416) -> 13/01/2011 00:00:00
activityDailyRecord® (417) -> 14/01/2011 00:00:00
activityDailyRecord® (418) -> 15/01/2011 00:00:00

```

Figure 3.3: Data from EF Driver\_Activity\_Data.

The same information appears on the back of the printed ticket from the tachograph:

12.01.2011 672			
1			
A E /	497	787 km	
h	00:00	05:39	05h39 *
o	05:39	10:40	05h01
x	10:40	10:45	00h05
o	10:45	10:47	00h02
x	10:47	10:51	00h04
o	10:51	10:52	00h01
h	10:52	11:37	00h45
o	11:37	12:02	00h25
h	12:02	12:05	00h03
o	12:05	12:28	00h23
x	12:28	12:40	00h12
o	12:40	13:00	00h20
x	13:00	13:01	00h01
?			
	13:01	13:05	00h04
1			
x	13:05	13:06	00h01
o	13:06	15:57	02h51
h	15:57	16:43	00h46
o	16:43	20:28	03h45
x	20:28	20:30	00h02
o	20:30	20:35	00h05
h	20:35	00:00	03h25 *
	498	403 km	616 km

Figure 3.4: Data appearing in the printed ticket.

If we examine the EF\_Driver\_Activity\_Data module from the driver card to contrast this information, we observe the following:

On 12/Jan/2011, there are driving activities on the following intervals:

[05 : 39, 10 : 40]	→	Duration: 5h1min
[10 : 45, 10 : 47]	→	Duration: 0h2min
[10 : 51, 10 : 52]	→	Duration: 0h1min
[11 : 37, 12 : 02]	→	Duration: 0h25min
[12 : 05, 12 : 28]	→	Duration: 0h23min
[12 : 40, 13 : 00]	→	Duration: 0h20min
[13 : 06, 15 : 57]	→	Duration: 2h51min
[16 : 43, 20 : 28]	→	Duration: 3h45min
[20 : 30, 20 : 35]	→	Duration: 0h5min

If we add up the whole duration, we obtain a total driving time of 12h53min, as the printed ticket stated. Did we compute the driving time correctly? Let us ask ourselves even a more basic question:

### **WHAT IS DRIVING TIME *duration in an interval?***

Close investigation of the legal texts reveals that there is no definition of driving time *duration in an interval* in 3821/85 or in 799/2016. How can that be possible? Driving time is the central notion of the tachograph business. How has the tachograph calculated the daily driving time without a proper definition? Times and intervals given as consecutive minutes have been added up. This seems intuitive but other options are possible, like adding up times and intervals with precision at the level of seconds. The legal consequences of using different options will be different as we shall see.

It is curious and ironic to see how the law is very precise on the format in which the total driving duration should be given:

#### 11.5 Activity totals (from a card)

Total driving duration, distance travelled  
Total working and availability duration  
Total resting and unknown duration  
Total duration of crew activities

@ hhmm x xxx km  
x hhmm @ hhmm  
h hhmm ? hhmm  
@@ hhmm

Figure 3.5: Article 11.5 of Appendix 4 from 3821/85.

But, how is the *total driving duration* computed? Where is it specified? Not in 3821/85, neither in 561/2016. The answer is **total driving duration is NOWHERE DEFINED**. Then, how did the tachograph calculate the total driving time duration from a driver file?

### **AGAIN: WHAT IS DRIVING TIME *duration in an interval?***

We must conclude that driving time duration in an interval is NOWHERE precisely defined. It rather appeals to some intuition but there are various possible ways to compute it. Yet programmers have to compute driving time duration in an interval in all kinds of legal software. Can the output of such programs then be used as legal evidence?

At this moment, this seems to be a problem of FORMALLY VERIFIED SOFTWARE condition 3, that is to say, the software  $\Pi$  of the tachograph has definition for driving time duration that does not exist in technical specification  $\Sigma$ .

We have to take into account that a tachograph is not a device to put a seal on a log-file of undisputed physical measurements, **it is a device used to calculate drivers' driving time**.

Let us look a bit closer into the details of the tachograph data. It then turns out that there has been a power supply interruption as the next piece of evidence shows in Figure 3.6.

```

Root: cardEventRecords®
cardEventRecord® (3)
  eventType®:8 - Power supply interruption®
  eventBeginTime®:12/01/2011 05:58:01
  eventEndTime®:12/01/2011 10:40:37
  eventVehicleRegistration®:
    vehicleRegistrationNation®:E
    vehicleRegistrationNumber®:
      codePage®:1
      vehicleRegNumber®:

```

Figure 3.6: Data from EF Events\_Data. There was a *Power supply interruption* event on the day of the fine that took place while the longest driving period was happening (between 05:39 and 10:40) and this is properly recorded in the driver card.

#### CONCLUSION:

With this new information, can we say that driving time has a duration of 12h53min? The tachograph was out of power from 05:58:01 until 10:40:37 on 12/Jan/2011. Therefore, every change of activity occurring between those times was not recorded. The driver could have stopped driving at some point during that interval and there would be no record of it. In fact, we know that the vehicle was in a workshop in Zaragoza on that date and the first driving activity was from the parking to inside the premises. With all this taken into account, there is no reliable way of guaranteeing that the driver was actually driving from 05:39 to 10:40 and hence the fine should not be imposed.

**More on driving time duration within an interval: another case** In the above case we have seen that driving time duration within an interval is a delicate issue:

- nowhere is it specified how to compute it (e.g. using the labels of the seconds, using the labels of the minutes, or otherwise);
- it is not specified how wrong or missing data (like a power supply interruption) is to affect driving time.

However, the question of driving time duration within an interval is much more complex than just these two issues. In another file of another driver at another date, we observe the following:

```

_activityChangeInfo® (36) -> 16:54, WORK®, INSERTED®, SINGLE®, DRIVER®
_activityChangeInfo® (37) -> 17:01, DRIVING®, INSERTED®, SINGLE®, DRIVER®
_activityChangeInfo® (38) -> 17:11, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®

```

According to the driver activity data, the driving time lasts 10 minutes (from 17:01 until 17:11). However, if we look at the vehicle record, we see that in fact, the card was removed at 17:11:34.

vehicleRecord® (146) -> 20/06/2008 01:40:33 - 20/06/2008 17:11:34, 5175FXK, KM: 80238 - 81032

According to this, then, the driving time lasts 10 minutes and 34 seconds. This inconsistency is due to the lack of a proper definition of the driving time. To mitigate this, **Police Controller®**

allows users to select their preferred definition of driving time, since there is none in the law:

Police Controller® is offering 4 different driving duration definition to be used in all the calculation.



The screenshot shows a software interface with two main sections. The first section, titled "Activities' duration", contains two radio button options: "Use seconds" (which is unchecked) and "Use minutes" (which is checked). The second section, titled "Driving activities", contains two radio button options: "Driving with speeding events" (which is unchecked) and "Driving from driving activities" (which is checked).

Figure 3.7: Screenshot from Police Controller®.

## ***CUT THEORY***

In this section we will give the rudimentary beginnings of what we call **Cut theory**. This theory recognizes that the 4 possible activities of the driver (*DRIVING*, *BREAK/REST*, *WORK* and *AVAILABLE*) are incompatible with the input of 3821/85 since for example, and as we have seen, we may have unknown data at certain moments of time. Recall that something similar happened with the Schiaparelli satellite: it crashed on its landing on Mars on 2016 since the program did not know what to do with the input data, as there were no specifications for the observed values.

To solve this problem, we can create a new driver activity called *NO DATA*. This activity will be assigned to periods where no information is recorded, for instance, during a power supply interruption event. It is the proper way to solve a problem that had its origin in the technical specifications but it implies that the software engineers are acting as the law makers. Another option is to automatically assign these periods of *NO DATA* to *REST*, to avoid unjust fines such as the one presented.

Thus, similar to self-fix decisions in the Kansas Railway Law that we saw in the introduction of this document, we propose to add the new activity type *NO DATA*. Observe that our proposed fix

1. is not legal, but
2. avoids the violation of citizens legal certainty by giving real specifications.

The *NO DATA* activity is not only appearing in the “switch off-on” situations: there is a more complex theory and we will try to explain it in examples that occur later in this document.

If we set the periods of *NO DATA* to *REST* in Police Controller® we still get a problem, since the problematic period is detected as *DRIVING* again:



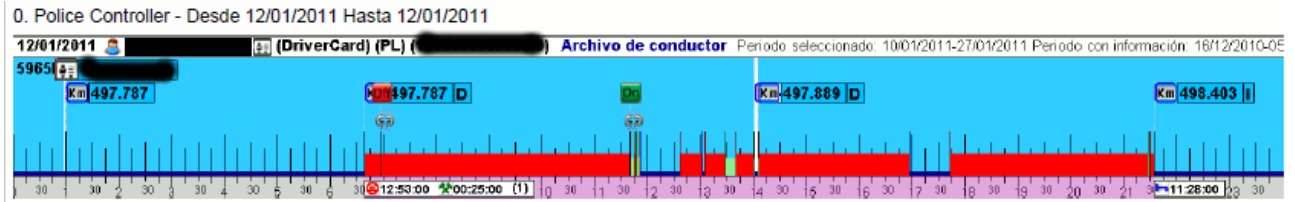


Figure 3.8: Screenshot from Police Controller®. The driving periods are colored red.

In the Screenshot we can see that there is DRIVING between switch OFF and ON in the Police Controller®, even when we have NO DATA configured as REST, what is wrong here?

Amazingly we have a second mistake in the technology. Let us see what happened. We have the following activity recorded in the tachograph:

activityChangeInfo (3) -> 10:40, WORK°, INSERTED°, SINGLE°, DRIVER°

And this is the time when it was switched on:

eventEndTime: 12/01/2011 10:40:37

Then, even the fact that this WORK activity is physically impossible, it is recorded.

What has to be done with this activity? Delete it? Police Controller® decided to stop being the lawmaker at this point.

**There is activity when the tachograph is switched off:**

**This problem concerns the different time resolutions that the tachograph uses: activities are stored in minutes and events in seconds (which is consistent with Reg. 3821/85 but absolutely inconsistent from a mathematical point of view). Here we can see some inconsistent data that is derived from this implementation. We see that the *power supply interruption* event ended at 10:40:37, but there is a change of activity (from *driving* to *work*) before, at 10:40. How has the tachograph recorded something while it was out of power? This breaks condition of Type3 in Decent Design.**

What is behind these problems?

1. No definition of driving time duration: These are problems of FORMALLY VERIFIED SOFTWARE condition 3.
2. Activities and information coming from 561/2016 and 3821/85 are not compatible (like the case of Schiaparelli): These are problems of **Type1** in Decent Design.
3. All the nodes are strictly in seconds except for the driving time in the Driver Activity node, which is in minutes. These are problems of **Type1** in Decent Design.
4. We obtain physically impossible values. These are problems of **Type3** in Decent Design.

With all this taken into account, we must conclude that **homologation is not possible** under these circumstances. This **creates monsters, huge monsters**<sup>3</sup>. This is very dangerous and appears in many of the vehicle files analyzed.

<sup>3</sup>Especially in a module called TREP03 which shall be discussed later in this document.



Gobierno de Navarra  
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Transportes y Comunicaciones

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S A L I D A	

CD   
  
Ctra. Nacional 232, Km. 271'100  
50690 Pedrola  
Zaragoza

El Director del Servicio de Ordenación y Gestión de Transportes ha dictado la siguiente Resolución:

"RESOLUCIÓN (P.S.T.) de del Director del Servicio de Ordenación y Gestión de Transportes del Departamento de Obras Públicas, Transportes y Comunicaciones, por la que se acuerda la incoación del procedimiento sancionador, expediente nº , a

En el citado Servicio se ha recibido el boletín de denuncia extendido por guardia civil de tráfico con fecha al vehículo matrícula en el punto km 12,100 de la carretera PA-30, por el hecho de efectuar una conducción diaria de 12 horas y 53 minutos en la jornada de conducción iniciada a las 5'39 h. hasta las 20'35 h. (UTC) del día 12/01/11. Computada sobre 10 horas. Se adjunta ticket 24 horas de tarjeta del conductor fecha 12/01/11.

En uso de las facultades conferidas por la Disposición Adicional 2ª del Decreto Foral 47/2006, de 24 de febrero, por el que se establece la estructura orgánica del Departamento de Obras Públicas, Transportes y Comunicaciones,

#### RESUELVO:

1º.- Incoar procedimiento sancionador por presunta infracción de la normativa en materia de transportes terrestres a con NIF/CIF como consecuencia de la denuncia recogida en la parte expositiva.

2º.- Nombrar instructora del procedimiento a comunicando al interesado que puede proponer su recusación por las causas previstas en el artículo 29 de la Ley 30/1992, de 26 de noviembre.

ENTRADA

04 MAR 2011

GUINETHUCK

RECIBIDA

04 MAR 2011

ENTRADA





3º.- Notificar la presente resolución al interesado, informándole de que dentro del plazo de 15 días hábiles desde el día siguiente a la notificación de la presente resolución de Incoación, podrá presentar alegaciones o pagar la sanción con una reducción del 25% sobre la sanción inicialmente propuesta; este pago equivaldrá a la terminación del procedimiento, de acuerdo con lo previsto en el artículo 146.3 de la Ley 16/1987, de 30 de julio.

4º.- Informar al interesado de que se podrá prescindir del trámite de notificación de la propuesta de resolución, en el supuesto de que no presente alegaciones o en caso de que la resolución sancionadora confirme los cargos por no constar en el procedimiento ni ser tenidas en cuenta otras alegaciones, conforme a lo previsto en el artículo 212 del Real Decreto 1211/1990.

Asimismo, se le comunica que el plazo máximo en que deberá notificarse la resolución del procedimiento sancionador será de un año, contado desde la fecha de la presente resolución, tal como establece el artículo 145 de la Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres.

Pamplona, [REDACTED] - El Director del Servicio de Ordenación y Gestión de Transportes, [REDACTED]"

Lo que comunico a Ud. a los efectos oportunos.

Pamplona, [REDACTED].

EL SECRETARIO GENERAL TÉCNICO



**Gobierno de Navarra**

Departamento de Obras Públicas,  
Transportes y Comunicaciones.

Secretaría General Técnica

[REDACTED]

[REDACTED]



Gobierno de Navarra  
Departamento de Obras Públicas,  
Transportes y Comunicaciones

Servicio de Ordenación  
y Gestión de Transportes  
Alfonso, 1 - 2ª planta  
31002 PAMPLONA  
Tlfno. 848 42 33 84  
Fax 848 21 20 42  
gestiontransportes@navarra.es

## PLIEGO DE CARGOS

NÚMERO DE EXPEDIENTE:

FECHA DE INCOACION:

### DATOS DE LA DENUNCIA

FECHA DENUNCIA:	HORA DENUNCIA:	CYTA/PTO.KM	MATRICULA
		PA-30/12,100	5985-FLX
DENUNCIANTE:		BOLETIN DE DENUNCIA	
Guardia Civil de Tráfico			
NOMBRE DEL DENUNCIADO:		NIF / QIF	
DOMICILIO	LOCALIDAD C.P.	PROVINCIA PAIS	
HECHO DENUNCIADO			
Efectuar una conducción diaria de 12 horas y 53 minutos en la jornada de conducción iniciada a las 6'39 h. hasta las 20'35 h. (UTC) del día 12/01/11. Computada sobre 10 horas. Se adjunta ticket 24 horas de tarjeta del conductor fecha 12/01/11.			
PRECEPTO INFRINGIDO	PRECEPTO SANCIONADOR	IMPORTE SANCIÓN	
141.6 Ley 18/1987 y 188.6 Reglamento 1211/1990	Artículo 143.1.f) Ley 18/1987	1.650,00 euros	
6.1 Reglamento (CE) 561/2006			

LA INSTRUCTORA,



Gobierno de Navarra  
Servicio de Ordenación y  
Gestión de Transportes

Inspección

Dentro del plazo de 15 días hábiles, desde el día siguiente a la notificación de la resolución de incoación, podrá presentar alegaciones o pagar la sanción con una reducción del 25% sobre la sanción inicialmente propuesta, haciendo uso de la carta de pago adjunta.





Gobierno de Navarra  
Departamento de Obras Públicas,  
Transportes y Comunicaciones

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y Gestión de Transportes  
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gestiontransportes@navarra.es

☎ 848-42.75.39

- El importe que figura en la celda "CANTIDAD A INGRESAR" deberá hacerse efectivo y/o por transferencia en la cuenta corriente número [REDACTED] a nombre del Servicio de Ordenación y Gestión de Transportes, abierla en Caja Navarra.
- **NOTA IMPORTANTE:** en el concepto del ingreso deberá hacerse constar la referencia del número del expediente sancionador que figura en la celda "CONCEPTO O MOTIVO".
- Existe también la posibilidad de realizar el pago con tarjeta bancaria, personándose con este documento en las oficinas del Servicio (C/ Yanguas y Miranda, nº 5).

### DATOS DEL PAGADOR

DOS APELLIDOS Y NOMBRE O RAZÓN SOCIAL		NIF/CIF
[REDACTED]		[REDACTED]
DOMICILIO		
[REDACTED]		
COD. POSTAL	POBLACIÓN	PROVINCIA
[REDACTED]	[REDACTED]	[REDACTED]
CONCEPTO O MOTIVO		
EXPEDIENTE SANCIONADOR Nº: [REDACTED]		
BOLETÍN DE DENUNCIA Nº: [REDACTED]		
VEHÍCULO MATRÍCULA: [REDACTED]		

<b>CANTIDAD A INGRESAR</b> <b>1.237,50 euros</b>
---

CON REDUCCIÓN DEL 25% (YA APLICADA) SI SE ABONA EN UN PLAZO DE 15 DÍAS





**Gobierno de Navarra**  
Departamento de Obras Públicas,  
Transportes y Comunicaciones

**RECIBIDO**  
26 ABO. 2011

Secretaría General Técnica  
San Ignacio, 3  
31002 PAMPLONA  
Tfno. 848 42 74 16

**848-42.75.39**

	Gobierno de Navarra
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[REDACTED]	[REDACTED]
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50690 Pedrola

Zaragoza

El Director del Servicio de Ordenación y Gestión de Transportes ha dictado la siguiente resolución:

"RESOLUCIÓN (P.S.T.) 5133/2011, de 22 de agosto, del Director del Servicio de Ordenación y Gestión de Transportes, por la que se sobresee el expediente sancionador incoado a [REDACTED]"

Con fecha [REDACTED], se notificó a [REDACTED], la incoación del expediente sancionador de referencia [REDACTED], como consecuencia de la denuncia formulada por la Guardia Civil de Tráfico al vehículo matrícula [REDACTED], el día [REDACTED] en el km. 12,100 de la carretera PA-30 por efectuar una conducción diaria de 12 horas y 53 minutos en la jornada de conducción iniciada a las 5'39 h. hasta las 20'35 h. (UTC) del día 12/01/11. Computada sobre 10 horas. Se adjunta ticket 24 horas de tarjeta del conductor fecha 12/01/11. En el pliego de cargos adjunto a dicha incoación se proponía una sanción de 1.650,00 euros.

Vista la propuesta de resolución de la instructora y analizadas las alegaciones presentadas, a la vista de las alegaciones aportadas y de la documentación obrante al expediente no ha quedado acreditado que se haya producido infracción a la normativa de transportes terrestres por carretera, por lo que procede decretar el sobreseimiento del procedimiento administrativo con el correspondiente archivo del expediente sancionador..

En virtud de lo dispuesto en la Ley 16/1987, de 30 julio, de Ordenación de los Transportes Terrestres y en el Real Decreto 1211/1990, de 28 de septiembre, por el que se aprueba su Reglamento de desarrollo y en uso de las facultades atribuidas por el Decreto Foral 47/2005, de 24 de febrero,

#### RESUELVO:

1º.- Sobreseer el expediente sancionador incoado a [REDACTED], con NIF/CIF número [REDACTED] y proceder a su archivo.

ENTRADA

06 SET. 2011

GUARETRUCK



2º.- Notificar la presente resolución a la Sección de Inspección y Junta Arbitral del Servicio de Ordenación y Gestión de Transportes y al interesado, haciéndole saber que contra la misma puede interponer recurso de alzada ante el Director General de Transportes en el plazo de un mes, a partir del recibo de la presente.

Pamplona, 22 de agosto de 2011.- El Director del Servicio de Ordenación y Gestión de Transportes, [REDACTED]

Lo que comunico a Vd. a los efectos oportunos.

Pamplona, 22 de agosto de 2011.

EL SECRETARIO GENERAL TÉCNICO



**Gobierno de Navarra**

Departamento de Obras Públicas,  
Transportes y Comunicaciones.

Secretaría General Técnica

[REDACTED]

[REDACTED]

## 4 Cut theory broken by authorities

### EXECUTIVE SUMMARY

In the this section we will show the case of new driver cards that contain activities registered previous to their issue date. This means that there is false information and a possible data contradiction when comparing the new and the old card.

A significant amount of the driver cards analyzed while elaborating this document contained the following irregularity: there were activities registered that supposedly took place before the card was issued.

As we mentioned in Section 3, **Cut theory** states that:

1. The four possible activities of a driver prescribed by Regulation 561/06 (*DRIVING*, *BREAK/REST*, *WORK*, and *AVAILABLE*) are incompatible with the input of real tachograph data.
2. During periods where no information is recorded, **Cut theory** suggests the creation of a new driver activity *NO DATA* or to automatically assign these periods to be *NO DATA* to *REST*.

As mentioned above, there is an irregularity in some driver cards: they contain activities from a date previous to the card's issuing date. This is another example of **Cut theory**: when an old driver card is replaced by a new one, the period of time between the last activity registered in the old card and the first activity registered in the new one is a period of *NO DATA*. But when this irregularity occurs, i.e., when there are activities registered before the issuing date of the card (that coincide with activities registered in the old one), the *NO DATA* interval is broken.

In Figures 4.1 and 4.2 we present the old driver card of a Spanish driver (card 0-0-1) and the activities registered there until 15/Feb/2016, respectively.

```
Root: EF_Identification® (Valid) (0520)
cardIdentification®
  cardIssuingMemberState®:E
  cardNumber®:
    ownerIdentification®:
    cardConsecutiveIndex®:0
    cardReplacementIndex®:0
    cardRenewalIndex®:1
  cardIssuingAuthorityName®:
    codePage®:1
    name®:
  cardIssueDate®:10/11/2011 00:00:00
  cardValidityBegin®:13/11/2011 00:00:00
  cardExpiryDate®:13/11/2016 00:00:00
```

Figure 4.1: EF\_Identification data of card 0-0-1 (the old card).



```

    ▸ activityDailyRecord® (306) -> 11/02/2016 00:00:00
    ▸ activityDailyRecord® (307) -> 12/02/2016 00:00:00
    ▸ activityDailyRecord® (308) -> 13/02/2016 00:00:00
    ▸ activityDailyRecord® (309) -> 14/02/2016 00:00:00
    ▲ activityDailyRecord® (310) -> 15/02/2016 00:00:00
        activityChangeInfo® (1) -> 00:00, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
        activityChangeInfo® (2) -> 07:26, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®
    cardSignature®
    ▸ EF_Vehicles_Used® (Valid) (0505)
    ▸ EF_Places® (Valid) (0506)
    ▸ EF_Current_Usage® (Valid) (0507)
    ▸ EF_Control_Activity_Data® (Valid) (0508)

```

Figure 4.2: EF\_Driver\_Activity\_Data data of card 0-0-1 (the old card).

This driver had a new card issued (card 0-1-1), with the information and registered activities shown in Figures 4.3 and 4.4, respectively.

```

Root: EF_Identification® (Valid) (0520)
cardIdentification®
    cardIssuingMemberState®:E
    cardNumber®:
        ownerIdentification® [REDACTED]
        cardConsecutiveIndex®:0
        cardReplacementIndex®:1
        cardRenewalIndex®:1
    cardIssuingAuthorityName®:
        codePage®:1
        name® [REDACTED]
    cardIssueDate®:24/02/2016 00:00:00
    cardValidityBegin®:13/11/2011 00:00:00
    cardExpiryDate®:13/11/2016 00:00:00

```

Figure 4.3: EF\_Identification data of card 0-1-1 (the new card).

```

    ▸ EF_Faults_Data® (Valid) (0503)
    ▲ EF_Driver_Activity_Data® (Valid) (0504)
        ▲ cardDriverActivity®
            ▲ cardActivityDailyRecords®
                validDataRange -> 352
                ▲ activityDailyRecord® (1) -> 03/02/2016 00:00:00
                    activityChangeInfo® (1) -> 00:00, BREAK/REST®, NOT INSERTED®, TEAM®, DRIVER®
                    activityChangeInfo® (2) -> 00:01, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®
                ▸ activityDailyRecord® (2) -> 02/03/2016 00:00:00
                ▸ activityDailyRecord® (3) -> 03/03/2016 00:00:00
                ▸ activityDailyRecord® (4) -> 04/03/2016 00:00:00
                ▸ activityDailyRecord® (5) -> 05/03/2016 00:00:00
                ▸ activityDailyRecord® (6) -> 08/03/2016 00:00:00

```

Figure 4.4: EF\_Driver\_Activity\_Data data of card 0-1-1 (the new card).

The `cardIssueDate` of the new card is 24/Feb/2016 00:00:00, but as we can see in Figure 4.4, there are activities registered on 03/Feb/2016. This may be due to the testing that is done on driver cards before they are issued (the interoperability test mentioned in Section 2, among others), but still, traces of this testing should not remain, and all recorded data that doesn't correspond to reality should be erased before deploying a card. The *BREAK/REST* registered on 03/Feb/2016 is **false** data.

Observe now the graphs of both cards concerning the same days in Figure 4.5. In the new card the activity is *REST*, whereas in the old card there are several different activities registered, one of which is *DRIVING*. The driver is **resting and driving at the same time**, depending on the card you check!

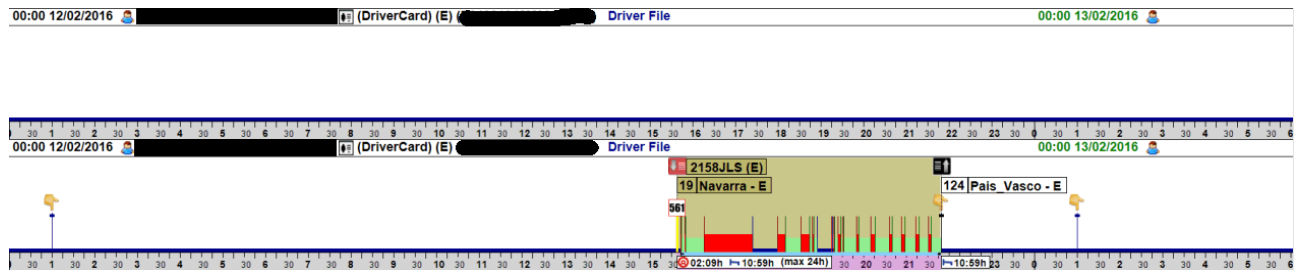


Figure 4.5: Driver activity from both cards: new card 0-1-1 (top graph) and old card 0-0-1 (bottom graph).

When combining the data from both cards, contradictory information can appear since there are days with recorded activities in both cards and these may not coincide. This is precisely what happens in the example shown.

In the file we examined above, the difference between the date of the first activity recorded and the card issue date is of approximately a month. However, we have found files with more than one year of difference between both dates, as the following examples of driver cards from Germany (Figure 4.6) and the Netherlands (Figure 4.7) show.

```

Root: EF_Identification® (Valid) (0520)
  cardIdentification®
    cardIssuingMemberState®:D
    cardNumber®:
      ownerIdentification®:
      cardConsecutiveIndex®:0
      cardReplacementIndex®:0
      cardRenewalIndex®:2
    cardIssuingAuthorityName®:
      codePage®:1
      name®:
    cardIssueDate®:16/12/2015 05:41:04
    cardValidityBegin®:04/01/2012 00:00:00
    cardExpiryDate®:03/01/2017 23:59:59
  EF_Driver_Activity_Data® (Valid) (0504)
    cardDriverActivity®
      cardActivityDailyRecords®
        validDataRange -> 11572
        activityDailyRecord® (1) -> 04/01/2012 00:00:00
        activityDailyRecord® (2) -> 28/11/2015 00:00:00
        activityDailyRecord® (3) -> 29/11/2015 00:00:00
        activityDailyRecord® (4) -> 30/11/2015 00:00:00
        activityDailyRecord® (5) -> 01/12/2015 00:00:00
        activityDailyRecord® (6) -> 02/12/2015 00:00:00

```

Figure 4.6: EF\_Identification and EF\_Driver\_Activity\_Data data from a driver card issued in Germany.

In this German driver card (Figure 4.6), the card issue date is 16/Dec/2015, but there are activities recorded not only some days before that, but also on 04/Jan/2012!





Figure 4.7: EF\_Identification and EF\_Driver\_Activity\_Data data from a driver card issued in the Netherlands.

In this Dutch driver card (Figure 4.7), the card issue date is 27/Oct/2017, but there are activities recorded on 21/Nov/2013.

This situation breaks the **Cut theory** tool Police Controller® uses to make sense of *NO DATA* intervals.

This is a violation of **Type3** in Decent Design. We found this irregularity in a few of the files examined, as can be seen in Table 4.1.

Table 4.1: Number of files with the irregularity discussed in this section, and average difference of days between the first activity recorded by a card and the card's issue date (in this order), per country.

Country	Number of files	Average difference (days)
Spain	3248	248
Lithuania	2305	123
Belarus	1409	108
Italy	1040	19
Netherlands	932	46
Romania	702	1197
Portugal	643	64
Ukraine	575	364
Bulgaria	494	44
Poland	488	45
Germany	273	20
Slovakia	69	14
Latvia	67	262

Table 4.1: (continued)

Czech Republic	59	11
Belgium	53	13
Russia	46	5
Hungary	32	9
Moldova	30	567
Slovenia	29	13
France	17	9
Croatia	15	14
United Kingdom	9	13
Ireland	4	194
Greece	3	9
Serbia	3	11
Norway	2	16
Estonia	2	9
Austria	1	4
Sweden	1	22
Turkey	1	3
Georgia	1	12

Taking into account what we have exposed above, it is clear that no detailed analysis of driver cards is performed before they are issued. Were this the case, this kind of irregularities would not be so frequent. Furthermore, tachographs do not check whether new driver cards are of the expected format or if there are any inconsistencies. As we have seen in Section 2, there are other cases where non-valid driver cards are also accepted by the tachographs.

We must add that when data from old and new cards conflict (due to there being activities registered on the same dates), most `ddd` files interpreting software do not know how to behave or which data to believe. Therefore, a manual reading of both files is needed to understand where the conflict is. This is a complex process to automate.

Should files that contain an obvious internal contradiction be accepted or rejected?

## 5 Driving for 36h and 12 minutes in Germany: 6 555 € fine and 10 000 € bail

**EXECUTIVE SUMMARY** This case is analogous to the one presented in Section 3. A driver received a severe sanction for exceeding the allowed daily driving period. However, a careful analysis of the driver file reveals that we are actually facing a new instance of what we called *Cut Theory* in Section 3. There was a power supply interruption while this allegedly long driving period took place, and hence the data was not properly recorded. Since the law fails to recognize periods where no information is recorded by the tachograph, this is not detected unless a deep analysis of the files is performed. When the situation was presented in court, the case was cancelled.

The fine partially shown on Figure 5.1 charges the driver 10 000 € for, among other things, having driven a total of 36 hours and 12 minutes between 04/Nov/2013 03:41 and 06/Nov/2013 02:12. The complete fine and court sentence can be found at the end of this section.

<b>Bußgeldbescheid</b> (Mehrfertigung)	
Das Bundesamt hat wegen der auf Seite 2 genannten Ordnungswidrigkeit gegen Sie gemäß § 65 Gesetz über Ordnungswidrigkeiten (OWiG) einen Bußgeldbescheid mit der nachstehenden Geldbuße festgesetzt. Außerdem haben Sie die Kosten des Verfahrens zu tragen (§§ 105, 107 OWiG).	
Geldbuße:	6555,00 EUR
Gebühr:	327,75 EUR
Zustellungskosten:	0,00 EUR
Auslagen:	0,00 EUR
Übersetzungskosten:	0,00 EUR
Gesamt:	6882,75 EUR
./. Sicherheitsleistung	10000,00 EUR
Zu Ihren Gunsten:	3117,25 EUR
Die gezahlte Sicherheitsleistung liegt über dem Gesamtbetrag. Sofern keine fälligen Forderungen des Bundesamtes gegen Sie bestehen, werden wir den überzahlten Betrag zu Ihren Gunsten überweisen. Bitte teilen Sie uns für den Fall der Rückerstattung Ihre Kontoverbindung mit (vgl. Anlage zum Bußgeldbescheid).	

Figure 5.1: Excerpt of a monetary imposition of 10 000 €.

If we look at the data from the driver card, we find the following information:

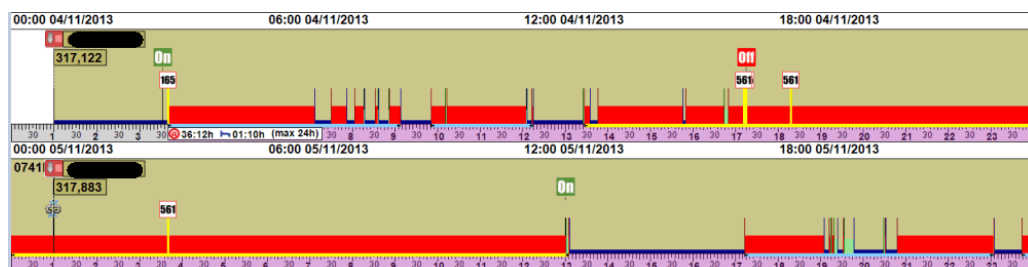


Figure 5.2: Driving status of the driver between 04/Nov/2013 and 06/Nov/2013.

```

activityChangeInfo® (28) -> 15:45, WORK®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (29) -> 15:51, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityDailyRecord® (241) -> 05/11/2013 00:00:00
activityChangeInfo® (1) -> 00:00, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (2) -> 12:02, WORK®, INSERTED®, SINGLE®, DRIVER®

```

Figure 5.3: Data from EF Driver\_Activity\_Data.

```

Root: cardEventRecords®
cardEventRecord® (5)
  eventType®:8 - Power supply interruption®
  eventBeginTime®:04/11/2013 16:16:46
  eventEndTime®:05/11/2013 12:01:57
  eventVehicleRegistration®:
    vehicleRegistrationNation®:E
    vehicleRegistrationNumber®:
      codePage®:1
      vehicleRegNumber®:

```

Figure 5.4: Data from EF Events\_Data.

As we can see in Figure 5.3, the EF Driver\_Activity\_Data module recorded driving activity between 04/Nov/2013 15:51 and 05/Nov/2013 12:02, with a total duration of 20h and 11 minutes. If a recording of driving for more than 20h straight isn't enough indication of a mistake from the tachograph, the EF Events\_Data module confirms it: a *Power supply interruption* event took place between 04/Nov/2013 16:16:46 and 05/Nov/2013 12:01:57. This means that the information from the EF Driver\_Activity\_Data during that period cannot be fully trusted and, therefore, that the fine is ill-founded.

We find another instance of *Cut theory*: the law should either recognize a new driver status *NO DATA* to be assigned to periods with no reliable information (such as the one presented here), or state that those periods should be automatically set to *REST*, to avoid unfair fines.

As we have already mentioned in Section 3, Police Controller® allows the user to automatically assign the periods with *NO DATA* to *REST*. The result of such a substitution can be seen in Figure 5.5.

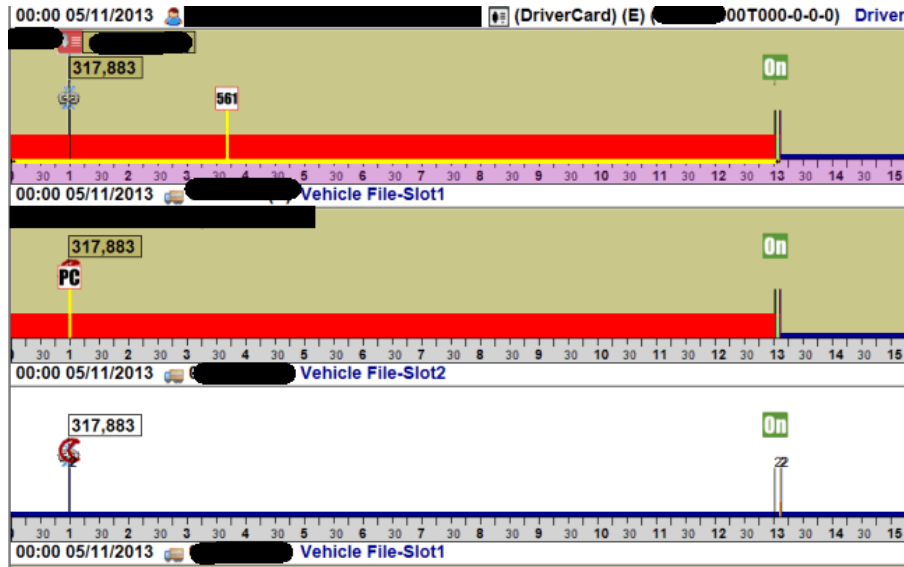


Figure 5.5: Data recorded by the driver card and the vehicle on both slots after having replaced *NO DATA* with *REST*.

Although we have set the *NO DATA* period to *REST*, the Police Controller® software still detects driving (red line) between the OFF and ON indicators. Why does this happen? It turns out that a false event was recorded in the middle of the power supply interruption (see Figure 5.6).

activityChangeInfo® (1) -> 00:00, DRIVING®, INSERTED®, SINGLE®, DRIVER®

Figure 5.6: False event.

The law stipulates<sup>4</sup> that a driving status should be recorded each day at 00:00 containing the same information as the last driver status of the day before. However, how could this happen while the tachograph was out of power? Bear in mind that this driving status is from 05/Nov/2013 00:00, and that the tachograph was switched on again on the same day at 12:01:57. Does it make any sense?

For the reasons explained in Section 3, in this case we have problems of **Type1** in Decent Design, **Type3** in Decent Design and FORMALLY VERIFIED SOFTWARE condition 3.

<sup>4</sup>Articles 5.2.5. of 3821/85 and 4.5.3.1.9. of 799/2016.



Bundesamt  
für Güterverkehr

Bundesamt für Güterverkehr • Winzererstr. 52 • 80797 München

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Hausanschrift  
Winzererstr. 52, 80797 München

Telefon 0 049 (0)89 12603-224  
Fax: 0 049 (0)89 12603-255

#### Bußgeldverfahren

- Mitteilung über die Zustellung an den Verteidiger

Anlagen: - Bußgeldbescheid (Mehrfertigung)

Sehr geehrter Herr

hiermit erhalten Sie eine Mehrfertigung des gegen Sie erlassenen Bußgeldbescheides. Der Bußgeldbescheid wurde nach § 51 Abs. 3 des Gesetzes über Ordnungswidrigkeiten dem von Ihnen benannten Verteidiger, Herrn Rechtsanwalt Stefan Arretz, zugestellt.

Im Auftrag

- automatisiert erstellt, ohne Unterschrift gültig -





Bundesamt  
für Güterverkehr

Bundesamt für Güterverkehr • Winzererstr. 52 • 80797 München

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geboren am [REDACTED] in  
beschäftigt im Unternehmen [REDACTED]

### Bußgeldbescheid

(Mehrfertigung)

Das Bundesamt hat wegen der auf Seite 2 genannten Ordnungswidrigkeit gegen Sie gemäß § 65 Gesetz über Ordnungswidrigkeiten (OWiG) einen Bußgeldbescheid mit der nachstehenden Geldbuße festgesetzt. Außerdem haben Sie die Kosten des Verfahrens zu tragen (§§ 105, 107 OWiG).

Geldbuße:	6555,00 EUR
Gebühr:	327,75 EUR
Zustellungskosten:	0,00 EUR
Auslagen:	0,00 EUR
Übersetzungskosten:	0,00 EUR
Gesamt:	6882,75 EUR
./.. Sicherheitsleistung	10000,00 EUR
Zu Ihren Gunsten:	3117,25 EUR

Die gezahlte Sicherheitsleistung liegt über dem Gesamtbetrag. Sofern keine fälligen Forderungen des Bundesamtes gegen Sie bestehen, werden wir den überzahlten Betrag zu Ihren Gunsten überweisen. Bitte teilen Sie uns für den Fall der Rückerstattung Ihre Kontoverbindung mit (vgl. Anlage zum Bußgeldbescheid).

Kontrolltag: [REDACTED] Uhrzeit: [REDACTED]  
Kontrollort: BAB A13, km 50.4 - [REDACTED]  
Fahrtrichtung: Berlin  
Kontrolle durch: Verkehrspolizei / Sügru  
Amtl. Kennzeichen: [REDACTED] / [REDACTED]  
Zulässiges Gesamtgewicht: 40000 kg  
Fahrt von: Spanien  
Fahrt nach: Deutschland  
Befördertes Gut: [REDACTED]

01. Sie haben die zulässige wöchentliche Lenkzeit von 56 Stunden nicht eingehalten. Auf einer Fahrt von --- nach --- in der Kalenderwoche 45/2013 (04.11.2013, 03:41 Uhr bis 10.11.2013, 13:34 Uhr) betrug die gesamte Lenkzeit insgesamt 65 Stunden 19 Minuten. Die Überschreitung der wöchentlichen Lenkzeit betrug 9 Stunden 19 Minuten.

- Ordnungswidrigkeit nach § 8 a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 6 Absatz 2 Verordnung (EG) Nr. 561/2006 -

Gemäß VO (EG) 561/2006, Artikel 6 Absatz 2 darf die wöchentliche Lenkzeit des Kraftfahrers im gewerblichen Güterkraftverkehr 56 Stunden nicht überschreiten. Dies darf nicht dazu führen, dass die in der Richtlinie 2002/15/EG festgelegte wöchentliche Höchstarbeitszeit überschritten wird.

Diese Vorschrift haben Sie bei der Durchführung Ihrer Fahrten in der beanstandeten Woche nicht beachtet.

02. Sie haben die zulässige tägliche Lenkzeit von 10 Stunden nicht eingehalten. Auf einer Fahrt von --- nach --- betrug die gesamte Lenkzeit zwischen zwei aufeinander folgenden Ruhezeiten ab 04.11.2013, 03:41 Uhr bis 06.11.2013, 02:12 Uhr insgesamt 36 Stunden 12 Minuten. Die Überschreitung betrug 26 Stunden 12 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 6 Absatz 1 Verordnung (EG) Nr. 561/2006 -

In Artikel 6 der VO (EG) Nr. 561/2006 ist eine höchstzulässige tägliche Lenkzeit von 9 Stunden vorgesehen, die zweimal in der Woche auf 10 Stunden verlängert werden darf.

03. Sie haben die Lenkdauer nicht zu dem vorgeschriebenen Zeitpunkt unterbrochen. Auf einer Fahrt von --- nach --- erfolgte nach spätestens 4,5 Stunden Lenkdauer keine vorgeschriebene Unterbrechung von mindestens 45 Minuten. Die Lenkdauer betrug ab 04.11.2013, 13:28 Uhr bis 05.11.2013, 13:07 Uhr, insgesamt 23 Stunden 28 Minuten. Die Überschreitung betrug 18 Stunden 44 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 7 Satz 1 Verordnung (EG) Nr. 561/2006 -

Gemäß Artikel 7 der VO (EG) 561/2006 hat ein im gewerblichen, grenzüberschreitenden Güterkraftverkehr eingesetzter Kraftfahrer nach einer Lenkdauer von längstens 4 Stunden 30 Minuten eine Fahrtunterbrechung von wenigstens 45 Minuten einzulegen.

Diese eine Unterbrechung kann durch eine mindestens 15-minütige Lenkunterbrechung, gefolgt von einer Unterbrechung von mindestens 30 Minuten ersetzt werden. Diese Unterbrechungen sind in die Lenkzeit so einzufügen, dass aber die Gesamtlenkdauer von 4 Stunden 30 Minuten nicht überschritten werden.

[REDACTED]



Von dieser Gelegenheit haben Sie keinen Gebrauch gemacht. Damit war nach Aktenlage zu entscheiden.

Der Umfang der Lenkzeitüberschreitungen bzw. der Ruhezeitverkürzungen zeigt, dass Sie sich bewusst über die genannten Sozialvorschriften hinweggesetzt haben. Sie haben die Ordnungswidrigkeiten vorsätzlich begangen.

Die Geldbuße wurde auf der Grundlage der Richtsätze des von den Behörden des Bundes und der Länder einheitlich angewendeten Bußgeldkataloges bemessen.

Die angegebenen Auslagen sind Postgebühren für die Zustellung des Bußgeldbescheides. Sie werden nach § 107 Abs. 3 Nr. 2 OWiG erhoben.

#### **Beweismittel:**

Zeugnis des PK Kubitz, zu laden über Verkehrspolizei / Sügru, Karl-Marx-Str. 137, 03205 Calau.

- Auswertung der Daten Ihrer Fahrerkarte und der Daten des Massenspeicher des Kontrollgerätes (Stand der Daten: 01.12.2013)

#### **Rechtsbehelfsbelehrung:**

Dieser Bußgeldbescheid wird rechtskräftig und vollstreckbar, wenn Sie nicht innerhalb von **2 Wochen** nach seiner Zustellung schriftlich oder zur Niederschrift bei dem Bundesamt für Güterverkehr, Winzererstr. 52, 80797 München, **Einspruch in deutscher Sprache** einlegen. Maßgebend für die Fristwahrung ist der Eingang des Einspruchs bei dem Bundesamt und nicht die Absendung mit der Post.

Wird Einspruch eingelegt, überprüft zunächst das Bundesamt den Bußgeldbescheid. Ergibt die Prüfung bei zulässigem Einspruch keine Änderung, so entscheidet über die Beschuldigung das Amtsgericht in Köln im Urteils- oder Beschlussverfahren. Sowohl das Bundesamt als auch das Gericht können von der im Bußgeldbescheid getroffenen Entscheidung auch zu Ihrem Nachteil abweichen.

#### **Información sobre los recursos procedentes:**

La presente resolución de multa administrativa causará ejecutoria si no interpone **recurso en lengua alemana** por escrito, o dictado para su transcripción, en el plazo de **dos semanas** desde el momento de su notificación, ante la Dirección federal de tráfico de mercancías (Bundesamt für Güterverkehr), Winzererstr. 52, 80797 München.

A efectos del plazo se considera la entrada en la Dirección federal de tráfico de mercancías, y no la entrega en correos.

Si se interpone recurso, la Oficina federal analizará primero la resolución de multa administrativa. De presentarse el recurso correctamente y no haber ningún cambio tras su revisión, decidirá sobre la inculpación el Juzgado local de Colonia en el procedimiento de sentencia o auto. Tanto la Oficina federal como el Juzgado pueden divergir también en su contra de la decisión adoptada en la resolución de multa administrativa.

Im Auftrag  
[REDACTED]



Dieser Verpflichtung sind Sie nicht nachgekommen.

04. Sie haben die vorgeschriebene Mindestdauer der reduzierten wöchentlichen Ruhezeit von mindestens 24 Std. nicht eingehalten. Ihre reduzierte wöchentliche Ruhezeit betrug ab 08.11.2013, 17:23 Uhr bis 09.11.2013, 12:18 Uhr nur 18 Stunden 55 Minuten. Die Verkürzung betrug 5 Stunden 05 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 8 Absatz 6 in Verbindung mit Artikel 4 Buchstabe h Verordnung (EG) Nr. 561 / 2006 -

Die vorgeschriebene, regelmäßige, wöchentliche Ruhezeit beträgt gem. Artikel 8 der VO (EWG) 561/2006 mindestens 45 Stunden. Zulässig ist eine Verkürzung der wöchentlichen Ruhezeit auf mindestens 36 Stunden am Standort des Kraftfahrzeuges bzw. am Wohnort des Kraftfahrers. Außerhalb dieser Orte, also auf der Tour ist eine Verkürzung der wöchentlichen Ruhezeit auf mindesten 24 Stunden zulässig. Die Verkürzung der regelmäßigen, wöchentlichen Ruhezeit ist in jedem Fall durch eine zusammenhängende, der Verkürzung gleichwertigen Ruhezeit auszugleichen, die vor Ende der die betreffende Woche folgenden dritten Woche zu nehmen ist.

In zwei aufeinanderfolgenden Wochen hat der Kraftfahrer eine regelmäßige wöchentliche Ruhezeit (mindestens 45 Stunden) und eine verkürzte wöchentliche Ruhezeit (mindestens 24 Stunden) einzulegen.

05. Sie haben die zulässige tägliche Lenkzeit von 10 Stunden nicht eingehalten. Auf einer Fahrt von --- nach --- betrug die gesamte Lenkzeit zwischen zwei aufeinander folgenden Ruhezeiten ab 14.11.2013, 06:09 Uhr bis 15.11.2013, 03:23 Uhr insgesamt 16 Stunden 40 Minuten. Die Überschreitung betrug 6 Stunden 40 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 6 Absatz 1 Verordnung (EG) Nr. 561/2006 -

In Artikel 6 der VO (EG) Nr. 561/2006 ist eine höchstzulässige tägliche Lenkzeit von 9 Stunden vorgesehen, die zweimal in der Woche auf 10 Stunden verlängert werden darf.

06. Sie haben die Lenkdauer nicht zu dem vorgeschriebenen Zeitpunkt unterbrochen. Auf einer Fahrt von --- nach --- erfolgte nach spätestens 4,5 Stunden Lenkdauer keine vorgeschriebene Unterbrechung von mindestens 45 Minuten. Die Lenkdauer betrug ab 14.11.2013, 15:10 Uhr bis 15.11.2013, 03:23 Uhr, insgesamt 10 Stunden 22 Minuten. Die Überschreitung betrug 5 Stunden 52 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 7 Satz 1 Verordnung (EG) Nr. 561/2006 -

Gemäß Artikel 7 der VO (EG) 561/2006 hat ein im gewerblichen, grenzüberschreitenden Güterkraftverkehr eingesetzter Kraftfahrer nach einer Lenkdauer von längstens 4 Stunden 30 Minuten eine Fahrtunterbrechung von wenigstens 45 Minuten einzulegen.

Diese eine Unterbrechung kann durch eine mindestens 15-minütige Lenkunterbrechung, gefolgt von einer Unterbrechung von mindestens 30 Minuten ersetzt werden. Diese Unterbrechungen sind in die Lenkzeit so einzufügen, dass aber die Gesamtlenkdauer von 4 Stunden 30 Minuten nicht überschritten werden.

Dieser Verpflichtung sind Sie nicht nachgekommen.



07. Sie haben die zulässige Gesamtlenkzeit innerhalb eines Zeitraumes von zwei aufeinander folgenden Wochen von 90 Stunden nicht eingehalten. Auf einer Fahrt von --- nach --- betrug die gesamte Lenkzeit ab 04.11.2013, 03:41 Uhr bis 17.11.2013, 18:24 Uhr insgesamt 119 Stunden 51 Minuten. Die Überschreitung betrug 29 Stunden 51 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 6 Absatz 1 Satz 1, Absatz 3 Verordnung (EG) Nr. 561/2006 -

Gemäß Artikel 6 Absatz 3 der VO (EG) 561/2006 darf die summierte Gesamtlenkzeit während zwei aufeinanderfolgender Wochen 90 Stunden nicht überschreiten. Diese Verpflichtung haben Sie als eigenverantwortlich handelnder Kraftfahrer bei Ihren Fahrten nicht beachtet.

Geldbuße zu den Ordnungswidrigkeiten von 01. bis 07.: 4.335,00 EURO

08. Sie haben die vorgeschriebene Minstdauer der regelmäßigen wöchentlichen Ruhezeit von mindestens 45 Std. nicht eingehalten. Ihre wöchentliche Ruhezeit betrug ab 18.11.2013, 14:42 Uhr bis 15.11.2013, 05:58 Uhr nur 15 Stunden 16 Minuten. Die Verkürzung betrug 29 Stunden 44 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 8 Absatz 6 in Verbindung mit Art 4 Buchstabe h VO (EG) Nr. 561 / 2006 -

Die vorgeschriebene, regelmäßige, wöchentliche Ruhezeit beträgt gem. Artikel 8 der VO (EWG) 561/2006 mindestens 45 Stunden. Zulässig ist eine Verkürzung der wöchentlichen Ruhezeit auf mindestens 36 Stunden am Standort des Kraftfahrzeuges bzw. am Wohnort des Kraftfahrers. Außerhalb dieser Orte, also auf der Tour ist eine Verkürzung der wöchentlichen Ruhezeit auf mindesten 24 Stunden zulässig. Die Verkürzung der regelmäßigen, wöchentlichen Ruhezeit ist in jedem Fall durch eine zusammenhängende, der Verkürzung gleichwertigen Ruhezeit auszugleichen, die vor Ende der die betreffende Woche folgenden dritten Woche zu nehmen ist.

In zwei aufeinanderfolgenden Wochen hat der Kraftfahrer eine regelmäßige wöchentliche Ruhezeit (mindestens 45 Stunden) und eine verkürzte wöchentliche Ruhezeit (mindestens 24 Stunden) einzulegen.

Eine verkürzte Ruhezeit von 25 Stunden 13 Minuten wurde bereits in der der beanstandeten Woche vorausgegangen Woche in Anspruch genommen.

09. Sie haben die zulässige tägliche Lenkzeit von 10 Stunden nicht eingehalten. Auf einer Fahrt von --- nach -- betrug die gesamte Lenkzeit zwischen zwei aufeinander folgenden Ruhezeiten ab 21.11.2013, 04:55 Uhr bis 21.11.2013, 20:11 Uhr insgesamt 10 Stunden 30 Minuten. Die Überschreitung betrug 30 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 6 Absatz 1 Verordnung (EG) Nr. 561/2006 -

In Artikel 6 der VO (EG) Nr. 561/2006 ist eine höchstzulässige tägliche Lenkzeit von 9 Stunden vorgesehen, die zweimal in der Woche auf 10 Stunden verlängert werden darf.



10. Sie haben die Tagesruhezeit von mind. 11 Stunden nicht vollständig innerhalb des Zeitraums von 24 Stunden eingehalten. Der 24-Stunden-Zeitraum begann ab 21.11.2013, 04:55 Uhr. Auf einer Fahrt von --- nach --- betrug die Ruhezeit ab 21.11.2013, 20:11 Uhr bis 22.11.2013, 06:54 Uhr insgesamt 10 Stunden 43 Minuten. Die Ruhezeit innerhalb des 24-Stunden-Zeitraums betrug nur 8 Stunden 44 Minuten.

Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 8 Absatz 2 Satz 1, Absatz 4 Verordnung (EG) Nr. 561/2006 -

Die Verkürzung der vorgeschriebenen Tagesruhezeit innerhalb des 24-Std.-Zeitraums betrug somit 2 Stunden 16 Minuten.

Als Kraftfahrer sind Sie verpflichtet, innerhalb eines Zeitraumes von 24 Stunden eine tägliche Ruhezeit von mindestens 11 zusammenhängenden Stunden einzulegen. Höchstens dreimal pro Woche dürfen Sie die vorgenannte Ruhezeit auf nicht weniger als 9 zusammenhängende Stunden verkürzen, wenn bis zum Ende der folgenden Woche eine entsprechende Ruhezeit zum Ausgleich gewährt wird.

In der damals laufenden Woche (seit der letzten, vorangegangenen wöchentlichen Ruhezeit) hatten Sie die Möglichkeit zum Verkürzen der täglichen Ruhezeit auf mindestens 9 Stunden innerhalb des 24-Std.-Zeitraums bereits dreimal in Anspruch genommen (s. auch VO (EG) 561/2006 Artikel 8 Absatz 2 und Absatz 4). Für die Berechnung der Verkürzung der vorgeschriebenen Ruhezeit war deshalb von einer vorgeschriebenen Ruhezeit von mindestens 11 Stunden innerhalb des 24-Std.-Zeitraums auszugehen.

11. Sie haben die Tagesruhezeit von mind. 11 Stunden nicht eingehalten. Auf einer Fahrt von --- nach --- betrug die Ruhezeit ab 22.11.2013, 20:13 Uhr bis 23.11.2013, 06:11 Uhr nur 9 Stunden 58 Minuten. Die Verkürzung betrug 1 Stunde 02 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 8 Absatz 2 Satz 1, Absatz 4 Verordnung (EG) Nr. 561/2006 -

Als Kraftfahrer sind Sie verpflichtet, innerhalb eines Zeitraumes von 24 Stunden eine tägliche Ruhezeit von mindestens 11 zusammenhängenden Stunden einzulegen. Höchstens dreimal pro Woche dürfen Sie die vorgenannte Ruhezeit auf nicht weniger als 9 zusammenhängende Stunden verkürzen, wenn bis zum Ende der folgenden Woche eine entsprechende Ruhezeit zum Ausgleich gewährt wird.

In der damals laufenden Woche (seit der letzten, vorangegangenen wöchentlichen Ruhezeit) hatten Sie die Möglichkeit zum Verkürzen der täglichen Ruhezeit auf mindestens 9 Stunden innerhalb des 24-Std.-Zeitraums bereits viermal in Anspruch genommen (s. auch VO (EG) 561/2006 Artikel 8 Absatz 2 und Absatz 4). Für die Berechnung der Verkürzung der vorgeschriebenen Ruhezeit war deshalb von einer vorgeschriebenen Ruhezeit von mindestens 11 Stunden innerhalb des 24-Std.-Zeitraums auszugehen.

12. Sie haben die Tagesruhezeit von mind. 9 Stunden nicht vollständig innerhalb des Zeitraums von 24 Stunden eingehalten. Der 24-Stunden-Zeitraum begann ab 26.11.2013, 05:57 Uhr. Auf einer Fahrt von --- nach --- betrug die Ruhezeit ab 26.11.2013, 22:54 Uhr bis 27.11.2013, 07:59 Uhr insgesamt 9 Stunden 05 Minuten. Die Ruhezeit innerhalb des 24-Stunden-Zeitraums betrug nur 7 Stunden 03 Minuten.

Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 8 Absatz 2 Satz 1, Absatz 4 Verordnung (EG) Nr. 561/2006 -

Die Verkürzung der vorgeschriebenen Tagesruhezeit innerhalb des 24-Std.-Zeitraums betrug [REDACTED]



Als Kraftfahrer sind Sie verpflichtet, innerhalb eines Zeitraumes von 24 Stunden eine tägliche Ruhezeit von mindestens 11 zusammenhängenden Stunden einzulegen. Höchstens dreimal pro Woche dürfen Sie die vorgenannte Ruhezeit auf nicht weniger als 9 zusammenhängende Stunden verkürzen, wenn bis zum Ende der folgenden Woche eine entsprechende Ruhezeit zum Ausgleich gewährt wird.

13. Sie haben die vorgeschriebene Mindestdauer der regelmäßigen wöchentlichen Ruhezeit von mindestens 45 Std. nicht eingehalten. Ihre wöchentliche Ruhezeit betrug ab 27.11.2013, 21:00 Uhr bis 28.11.2013, 20:33 Uhr nur 23 Stunden 33 Minuten. Die Verkürzung betrug 21 Stunden 27 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 8 Absatz 6 in Verbindung mit Art 4 Buchstabe h VO (EG) Nr. 561 / 2006 -

Die vorgeschriebene, regelmäßige, wöchentliche Ruhezeit beträgt gem. Artikel 8 der VO (EWG) 561/2006 mindestens 45 Stunden. Zulässig ist eine Verkürzung der wöchentlichen Ruhezeit auf mindestens 36 Stunden am Standort des Kraftfahrzeuges bzw. am Wohnort des Kraftfahrers. Außerhalb dieser Orte, also auf der Tour ist eine Verkürzung der wöchentlichen Ruhezeit auf mindesten 24 Stunden zulässig. Die Verkürzung der regelmäßigen, wöchentlichen Ruhezeit ist in jedem Fall durch eine zusammenhängende, der Verkürzung gleichwertigen Ruhezeit auszugleichen, die vor Ende der die betreffende Woche folgenden dritten Woche zu nehmen ist.

In zwei aufeinanderfolgenden Wochen hat der Kraftfahrer eine regelmäßige wöchentliche Ruhezeit (mindestens 45 Stunden) und eine verkürzte wöchentliche Ruhezeit (mindestens 24 Stunden) einzulegen.

Eine verkürzte Ruhezeit von 24 Stunden 18 Minuten wurde bereits in der der beanstandeten Woche vorausgegangenen Woche in Anspruch genommen.

14. Sie haben die zulässige Gesamtlenkzeit innerhalb eines Zeitraumes von zwei aufeinander folgenden Wochen von 90 Stunden nicht eingehalten. Auf einer Fahrt von --- nach --- betrug die gesamte Lenkzeit ab 18.11.2013, 07:11 Uhr bis 01.12.2013, 11:21 Uhr insgesamt 93 Stunden 39 Minuten. Die Überschreitung betrug 3 Stunden 39 Minuten.

- Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz - Artikel 6 Absatz 1 Satz 1, Absatz 3 Verordnung (EG) Nr. 561/2006 -

Gemäß Artikel 6 Absatz 3 der VO (EG) 561/2006 darf die summierte Gesamtlenkzeit während zwei aufeinanderfolgender Wochen 90 Stunden nicht überschreiten. Diese Verpflichtung haben Sie als eigenverantwortlich handelnder Kraftfahrer bei Ihren Fahrten nicht beachtet.

Geldbuße zu den Ordnungswidrigkeiten von 08. bis 14.: 2.220,00 EURO

Zwischen den Ordnungswidrigkeiten von 01. bis 07. und von 08. bis 14. besteht Tateinheit (§ 19 OWiG). Zwischen den Ordnungswidrigkeiten zu 07. und 08. besteht Tatmehrheit (§ 20 OWiG).

Mit der Anhörung vom 17.02.2014 wurde Ihnen Gelegenheit gegeben, sich zur Sache zu äußern.

Angabe der Bankverbindung  
**Bank Information**

Die Zahlstelle des BAG erstattet Ihnen, vorbehaltlich anderer offener Forderungen, einen Betrag i.H.v. 3117,25 EUR.

**The accounting office of the Bundesamt für Güterverkehr (Federal Office for Goods Transport) hereby refunds the amount of 3117,25 EUR, subject to other accounts receivable.**

Nachfolgende Angaben zur Bankverbindung sind unbedingt auszufüllen.

**The following bank information must be provided.**

Bitte teilen Sie uns diese innerhalb von 4 Wochen mit.

**You are kindly requested to provide the requested information within 4 weeks.**

Rückantwort/**For your response**  
Kassenzeichen/reference number:

Verwahrkassenzeichen:

Vollständiger Bankname/  
**Full Name of Bank**

Ort Bank/  
**City Bank**

IBAN/Kontonummer/  
**Account-No.**

**Wichtig !** Name und Adresse  
des Kontoinhabers  
**Important ! Name/Address**  
**of Account Owner**

**Wichtig !**  
**Important ! S.W.I.F.T.-Code**

Bitte fragen Sie bei Ihrer Bank nach dem SWIFT-CODE/BIC (Rückzahlung ohne SWIFT/BIC und IBAN nicht möglich).

**Ask for your bank's SWIFT-CODE/BIC (No refund is possible without SWIFT/BIC and IBAN)**

Rückantwort an/  
**Reply to:**

**Oder/or FAX an/to: +49 221 5776-3391**

Bundesamt für Güterverkehr  
- Zahlstelle -  
Postfach 19 01 80  
50498 Köln





Bundesamt  
für Güterverkehr

24. MAYO 2017

7307

Datum  
Gz.

Postanschrift  
Telefon  
Telefax  
E-Mail  
Internet

Hausanschrift  
Winzererstr. 52, 80797 München

bearbeitet von

Tel : 0 049 (0)89 12603-224  
Fax: 0 049 (0)89 12603-255

Bundesamt für Güterverkehr • Winzererstr. 52 • 80797 München

### Rücknahmebescheid

Az.: Ale  
Bußgeldbescheid des Bundesamtes für Güterverkehr gegen Herrn

Einspruch vom

Sehr geehrter Herr

ich nehme den Bußgeldbescheid gegen Herrn vom  
Kassenzeichen, hiermit zurück. Das Verfahren habe ich eingestellt.

Die geleistete Ist-Zahlung wird erstattet.

### Kostenbescheid

Die Kosten des Verfahrens trägt das Bundesamt für Güterverkehr. Seine notwendigen Auslagen hat Ihr Mandant selbst zu tragen (§ 105 Abs. 1 OWiG i.V.m. §§ 467 a Abs. 1 Satz 2, 467 Abs. 4 StPO).

### Rechtsbehelfsbelehrung

Gegen diesen Bescheid kann gemäß § 108 Abs. 1 OWiG Antrag auf gerichtliche Entscheidung nach § 62 OWiG gestellt werden. Der Antrag ist innerhalb von zwei Wochen nach Zustellung dieses Bescheides schriftlich oder zur Niederschrift bei der Bußgeldbehörde zu stellen.

Im Auftrag

- automatisiert erstellt, ohne Unterschrift gültig -

# 6 Diving with card not inserted for 0h00min: a 600 £ fine

## EXECUTIVE SUMMARY

In this section we will present the case of a driver fined for, among others, driving with no driver card inserted for a total of 0h00min. This nonsense is not the only problem present in the case: in fact, the date of the “infraction” that appears on the printed ticket does not correspond with any information stored in the vehicle file. Instead, the vehicle file registered another period of driving with no card that does not appear in the printed ticket. To sum this up, the printed ticket and the vehicle file contain different pieces of information, although both of them were generated by the same tachograph. The case was presented to court but it was not cancelled.

Consider the excerpt of a fine presented in Figure 6.1. In this section we will focus on the first charge: card removal.

Offences - For offence codes see reverse of form					
EU/AETR Code	ERRU	Time(s) and date(s)	EU/AETR Code	ERRU	Time(s) and date(s)
		27-12-2016 18:29			28-12-2016 04:08
Use of vehicle prohibited until		Time	Date	OR <input type="checkbox"/> No prohibition of use applied	
12. Comments -					
Driver has removed driver card to drive onto ferry 28/12/16 interrupting a 9 hour daily rest period. Given fines for insufficient					
daily rest/ drive no card total £600					

Figure 6.1: Excerpt of the fine, indicating the infractions and the monetary sanction.

The fine includes the printed ticket from the tachograph as evidence of the driver’s illegal behavior, which is partially shown here in Figure 6.2. The infraction is that of driving with no card inserted. The total duration of the infraction is 00h00min.

```
-----
! 01 28/12/2016 05:50
! 04 ( 1) 00h00
! ---
-----
```

Figure 6.2: Fragment of the ticket attached to the fine, showing the infraction of driving with no card inserted on 28/Dec/2016 05:50 for a total of 00h00min.

It makes no sense to be fined for committing an infraction for 0h00min, and this is a violation of **Type3** in Decent Design. But leaving this problem aside, note that this infraction is not even recorded in the TREP02 or TREP03 modules. In fact, according to the vehicle file (Figure 6.3), at 05:50 (the supposed time of the fine) the driver was on a *BREAK/REST*.



```

vuActivityDailyData®
  activityChangeInfo® (1) -> 00:00, AVAILABILITY®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (2) -> 00:00, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (3) -> 03:38, BREAK/REST®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (4) -> 03:38, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (5) -> 03:45, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (6) -> 03:45, AVAILABILITY®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (7) -> 04:01, BREAK/REST®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (8) -> 04:01, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (9) -> 04:06, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (10) -> 04:06, AVAILABILITY®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (11) -> 04:08, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (12) -> 04:08, BREAK/REST®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (13) -> 06:34, DRIVING®, NOT INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (14) -> 06:34, AVAILABILITY®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (15) -> 06:37, WORK®, NOT INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (16) -> 06:38, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (17) -> 06:38, BREAK/REST®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (18) -> 13:08, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (19) -> 13:10, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (20) -> 13:10, AVAILABILITY®, NOT INSERTED®, SINGLE®, CO-DRIVER®
  activityChangeInfo® (21) -> 13:14, WORK®, INSERTED®, SINGLE®, DRIVER®

```

Figure 6.3: TREP02 data.

However, between 06:34 and 06:37 on that day, the driver is driving without an appropriate card. Why didn't the printed ticket output this infraction? Why did it print a nonexistent infraction of no duration instead? This is more evidence of the unreliability of printed tickets.

People need to analyze the driver and vehicle files to check for irregularities before issuing a fine (until these problems are fixed, and bugs and internal mistakes are avoided). The *driving without an appropriate card* event happening from 06:34:30 to 06:38:01 (lasting 3 minutes and 31 seconds) has been properly recorded in TREP03 (Figure 6.4).

```

Root: TREP03 Events and Faults® (valid)
  vuEventRecord® (7)
    faultType®:4 - Driving without an appropriate card®
    faultRecordPurpose®:The longest event for one of the last 10 days of occurrence
    faultBeginTime®:28/12/2016 06:34:30
    faultEndTime®:28/12/2016 06:38:01
    cardNumberDriverSlotBegin®:
      cardType®:Empty®
      cardIssuingMemberState®:UNK
      cardNumber®:
        ownerIdentification®:
        cardConsecutiveIndex®:
        cardReplacementIndex®:
        cardRenewalIndex®:
    cardNumberCo-driverSlotBegin®:
      cardType®:Empty®
      cardIssuingMemberState®:UNK
      cardNumber®:
        ownerIdentification®:
        cardConsecutiveIndex®:
        cardReplacementIndex®:

```

Figure 6.4: TREPO3 data.

But the presumed event that took place on 28/12/2016 05:50 is nowhere to be found in the vehicle file (which was downloaded 6 days after the fine was issued). The information managed by the police could not be presented as evidence, as long as the tachograph overwrote the information in TREP03 node.

Therefore:

1. The printed ticket from the tachograph is accepted as evidence when its information is not reliable. With this information we cannot prove anything, because the vehicle file

contradicts the ticket. What documents are sufficient to fine someone? Is the ticket enough?

2. Does it make sense to have an infraction such as *driving without an appropriate card* with a duration of 00h00min? This is a violation of **Type3** in Decent Design, as we have mentioned above.
3. Police officers confuse “driving” and “movement”. According to “the rule of the minute” a truck can drive from Lisbon to Moscow recording only “rest”, as we will show in 15.
4. We know that TREP02 was not in “driving” activity during minute 5h50min (this part was not overwritten), it seems that TREP03 recorded “driving with card not inserted” at 5h50min, yet we have not a proof of that, only a ticket. This leads to a contradiction.
5. In the middle of all this data chaos, instead of realizing that the base of the proofs could be potentially wrong, police officers decided to take one interpretation (among lots of possibilities), and fine the driver for “driving with card not inserted”.

Here we run into a problem regarding **legal certainty**. In many occasions, the only evidence for placing a fine comes from a printed ticket that, as we have shown several times in this document, is unreliable. The vehicle file or driver card on which that fine is based is hardly ever examined for irregularities in the data registered, or for confirmation of what the printed ticket states. What should be a normal procedure to confirm that an infraction is actually being committed is scarcely done. However, the careful inspection we are advocating for could also be avoided if the software from tachographs was formally verified. That would make this kind of mistakes very rare (or even nonexistent).

In this case, the infraction indicated by the printed ticket is not registered in the vehicle file we examined. There is the possibility that it was there at the moment of the fine, and then was overwritten, since our file was only downloaded six days after the control. To avoid the situation of dealing with different files that contain different information, one would expect the police to send the **ddd** files on which the fine is based to the accused driver, for him to be able to verify the infraction and prepare their defense. However, this is seldom the case.

Table 6.1 describes how different countries deal with this issue.

Table 6.1: Behavior of different countries regarding whether they provide the original file as evidence (by default or after request). Red countries never send files at all, whereas green countries do so after request.

Country	Is the file sent by default?	Is the file sent on request?
<b>Spain</b>	<b>No.</b> Usually a printed list of the activities of the driver or a printed ticket is sent instead.	<b>No.</b> Their answer is that the company should store the files for one year.
<b>France</b>	<b>No.</b> A summary of the fines with graphics from the driver and vehicle files is sent if the cause of the fine is driving without an inserted card or tachograph fraud.	<b>No.</b> The law forbids police officers to keep digital <b>ddd</b> files.
<b>Belgium</b>	<b>No.</b> In most cases, a PDF with a summary of the infractions and with graphics is sent. This is done for driver files, but not for vehicle files.	<b>No.</b> The court hardly ever sends further documents and files or even graphics.

Table 6.1: (continued)

<b>Netherlands</b>	<b>No.</b> Only a copy of the ticket or a graphic is given.	<b>No.</b> Only a copy of the ticket or a graphic is given.
<b>Portugal</b>	<b>No.</b> Only the printed ticket is sent.	<b>No.</b>
<b>Poland</b>	<b>No.</b>	<b>No.</b>
<b>Italy</b>	<b>No.</b>	<b>No.</b>
<b>Czech Republic</b>	<b>No.</b>	<b>No.</b>
<b>Slovakia</b>	<b>No.</b>	<b>No.</b>
<b>United Kingdom</b>	<b>No.</b>	<b>Depends.</b> The driver files and vehicle files are subject to the rules of evidence. If a case is challenged before the courts, the prosecution will disclose its evidence to the defendant before the court hearing. If a case is not challenged in the courts, there is no obligation to provide the files.
<b>Denmark</b>	<b>No.</b>	<b>No.</b>
<b>Norway</b>	<b>No.</b>	Not enough information to tell.
<b>Sweden</b>	<b>No.</b>	Not enough information to tell.
<b>Germany</b>	<b>No.</b>	<b>Yes.</b>
<b>Austria</b>	<b>No.</b>	<b>Yes.</b>
<b>Switzerland</b>	<b>No.</b>	They claim they do, but we have not confirmed it yet.
<b>Hungary</b>	<b>No.</b>	They claim they do, but we have not confirmed it yet.

The situation gets worse in some countries. In Belgium and Denmark, for instance, drivers are forced to plead guilty whether or not they want to and are bound to sign documents that forfeit the right to a legal defense. In some other countries, they get at least a 30% discount if they do, like Italy and Spain.



Cheshire  
Constabulary

Cheshire Constabulary, Central Ticket Office,  
PO Box 266, Winsford, CW7 9FN

## CHESHIRE CONSTABULARY ROADSIDE DEPOSIT

Officer use only  
NOTICE TYPE

Please tick (✓)

NON-ENDORSABLE	45	<input checked="" type="checkbox"/>
ENDORSABLE	40	<input type="checkbox"/>

Amount

£ 300

### PENALTY REFERENCE NUMBER

Force Code Notice Type Source Code

8 DIGIT NUMBER

Penalty Code

007

45

3

[REDACTED]

60

### PART 3

### DRIVER COPY

TITLE

MR

SURNAME

[REDACTED]

FORENAMES

[REDACTED]

DATE OF BIRTH (ddmm/yyyy)

[REDACTED]

ADDRESS

[REDACTED]

POSTCODE

[REDACTED]

COUNTRY

SPAIN

DATE OF OFFENCE LOCATION

On [REDACTED] 20 [REDACTED]

OFFENCE TIME at [REDACTED] hrs

[REDACTED] you were driving/using

VEHICLE REG.

[REDACTED]

VEHICLE MAKE

[REDACTED]

MODEL

[REDACTED]

when the offence indicated below was committed

OFFENCE CODE

[REDACTED]

BRIEF WORDING

[REDACTED]

### FINANCIAL PENALTY DEPOSIT (METHOD OF PAYMENT)

#### 1) Payment by cash ☐

£50 and over

£20 Notes

£10 Notes

£5 Notes

Coins

Total £

#### 2) AUTHORIZATION TO TAKE PAYMENT

Name of Authoriser

[REDACTED]

Card payment authorisation code

[REDACTED]

### CONFIRMATION OF DRIVER DETAILS

I acknowledge the above details are accurate and correct.

DATE On

[REDACTED] 20 [REDACTED]

TIME at

[REDACTED] hrs



**Cheshire  
Constabulary**

Cheshire Constabulary, Central Ticket Office,  
PO Box 266, Winsford, CW7 9FN

## CHESHIRE CONSTABULARY ROADSIDE DEPOSIT

Officer use only  
NOTICE TYPE

Please tick (✓)

NON-ENDORSABLE	45	<input checked="" type="checkbox"/>	Amount
ENDORSABLE	40	<input type="checkbox"/>	£ 300

### PENALTY REFERENCE NUMBER

Force Code	Notice Type	Source Code	8 DIGIT NUMBER	Penalty Code
007	45	3	[REDACTED]	60

### PART 4 COURT HEARING REQUEST

TITLE MR SURNAME [REDACTED]

FORENAMES [REDACTED]

DATE OF BIRTH (ddmmYYYY) 2 11 83

GENDER: M ☒ F ☐

ADDRESS [REDACTED]

POSTCODE [REDACTED]

COUNTRY SPAIN

Signed \_\_\_\_\_

**SEND THE COMPLETED FORM TO:  
CHESHIRE CONSTABULARY, CENTRAL TICKET OFFICE,  
PO BOX 266, WINSFORD, CW7 9FN**

You will receive a summons which will inform you of the Court at which the case will be heard and the date and time set for the Hearing. If you fail to correctly complete this form it cannot be accepted.



**Cheshire  
Constabulary**

Cheshire Constabulary, Central Ticket Office,  
PO Box 266, Winsford, CW7 9FN

## CHESHIRE CONSTABULARY ROADSIDE DEPOSIT

Officer use only  
NOTICE TYPE

Please tick (✓)

NON-ENDORSABLE	45	<input checked="" type="checkbox"/>	Amount
ENDORSABLE	40	<input type="checkbox"/>	£ 300

### PENALTY REFERENCE NUMBER

Force Code	Notice Type	Source Code	8 DIGIT NUMBER	Penal Code
007	45	3	[REDACTED]	60

### PART 3 DRIVER COPY

TITLE MR SURNAME [REDACTED]

FORENAMES [REDACTED]

DATE OF BIRTH (ddmmYYYY) [REDACTED]

ADDRESS [REDACTED]

POSTCODE [REDACTED]

COUNTRY SPAIN

DATE OF OFFENCE On 20 OFFENCE TIME at 11:45

LOCATION 44 SOUTH SANDHAFEN

you were driving/using [REDACTED]

VEHICLE REG. [REDACTED]

VEHICLE MAKE [REDACTED]

MODEL [REDACTED]

when the offence indicated below was committed

OFFENCE CODE [REDACTED] BRIEF WORDING [REDACTED]

### FINANCIAL PENALTY DEPOSIT (METHOD OF PAYMENT)

1) Payment by cash ☐

£50 and over	
£20 Notes	
£10 Notes	
£5 Notes	
Coins	
Total £	

### 2) AUTHORISATION TO TAKE PAYMENT

Name of Authoriser [REDACTED]

Card payment authorisation code [REDACTED]

### CONFIRMATION OF DRIVER DETAILS

I acknowledge the above details are accurate and correct.

DATE On 20 TIME at [REDACTED] hi





Cheshire  
Constabulary

Cheshire Constabulary, Central Ticket Office,  
PO Box 266, Winsford, CW7 9FN

## CHESHIRE CONSTABULARY ROADSIDE DEPOSIT

Officer use only  
NOTICE TYPE

Please tick (✓)

NON-ENDORSABLE	45	<input checked="" type="checkbox"/>	Amount £ 300
ENDORSABLE	40	<input type="checkbox"/>	

### PENALTY REFERENCE NUMBER

Force Code	Notice Type	Source Code	8 DIGIT NUMBER	Penalty Code
007	45	3	[REDACTED]	60

### PART 4 COURT HEARING REQUEST

TITLE	MR	SURNAME	[REDACTED]
FORENAMES			
[REDACTED]			
DATE OF BIRTH (ddmm/yyyy)		[REDACTED]	
GENDER:	M <input checked="" type="checkbox"/> F <input type="checkbox"/>	2 13	
ADDRESS			
[REDACTED]			
POSTCODE		[REDACTED]	
COUNTRY	UNITED KINGDOM		

Signed \_\_\_\_\_

**SEND THE COMPLETED FORM TO:  
CHESHIRE CONSTABULARY, CENTRAL TICKET OFFICE,  
PO BOX 266, WINSFORD, CW7 9FN**

You will receive a summons which will inform you of the Court at which the case will be heard and the date and time set for the Hearing. If you fail to correctly complete this form it cannot be accepted.

<b>Name, contact address and telephone numbers of the control authority</b> <div style="background-color: black; height: 15px; width: 100%;"></div> Cheshire Police Commercial Vehicle Unit Oakmere Road, Winsford, Cheshire <div style="background-color: black; height: 15px; width: 100%;"></div>		<b>Roadside Check Form</b> Driving and Rest Time EU Regulations 561/2006 and 165/2014 AETR Agreement		<b>11. Result of Check</b> <input type="checkbox"/> Further enquiries <input checked="" type="checkbox"/> Report / fine <input type="checkbox"/> Warning <input type="checkbox"/> Prohibition of use <input type="checkbox"/> No infringement	
<b>Place of roadside check</b>					
13. Area code of enforcement authority CHESHIRE - 07		13. Enforcement officer identity: <div style="background-color: black; height: 15px; width: 100%;"></div>		1. Place of control – Location and road number: M6 Motorway, South bound, Sandbach,	
				2. Date: <div style="background-color: black; height: 15px; width: 100%;"></div>	
				3. Time: <div style="background-color: black; height: 15px; width: 100%;"></div>	
Road type <input checked="" type="checkbox"/> Motorway <input type="checkbox"/> National (trunk) road <input type="checkbox"/> Other road type					
<b>Vehicle</b>					
4. Vehicle registration number <div style="background-color: black; height: 15px; width: 100%;"></div>	6. Vehicle type/group:	Maximum permissible weight:	8. Nationality:	5. Trailer vehicle registration number:	6. Vehicle type/group:
					Maximum permissible weight:
					Nationality:
<b>Operator</b>					
7. Name: <div style="background-color: black; height: 15px; width: 100%;"></div>			Nationality: E	Address: <div style="background-color: black; height: 15px; width: 100%;"></div>	
Number of the Community licence, if available:				Phone:	
<b>Driver</b>					
9. Name: <div style="background-color: black; height: 15px; width: 100%;"></div>		Date of Birth: <div style="background-color: black; height: 15px; width: 100%;"></div>		Nationality: E	Address:
				Phone:	
Driver card number: E21969135H000002					
Employer – if different from section 7:				Nationality:	Address and phone number:
<b>Transport type</b>			<b>Tachograph type</b>		<b>Rule</b>
<input type="checkbox"/> National carriage <input type="checkbox"/> International carriage			<input checked="" type="checkbox"/> Carriage of goods <input type="checkbox"/> Carriage of passengers		<input checked="" type="checkbox"/> EU Journey <input type="checkbox"/> AETR <input type="checkbox"/> National / other
			<input checked="" type="checkbox"/> Digital tachograph <input type="checkbox"/> Analogue tachograph		
<b>Period for which data have been analysed</b>					
From	Date	Time	To	Date	Time
	01-12-2016			29-12-2016	
					Number of days checked 29
Odometer reading					
<b>Offences - For offence codes see reverse of form</b>					
EU/AETR Code	ERRU	Time(s) and date(s)	EU/AETR Code	ERRU	Time(s) and date(s)
<div style="background-color: black; height: 15px; width: 100%;"></div>		27-12-2016 18:29	<div style="background-color: black; height: 15px; width: 100%;"></div>		28-12-2016 04:08
Use of vehicle prohibited until			Time	Date	OR <input type="checkbox"/> No prohibition of use applied
12. Comments - Driver has removed driver card to drive onto ferry 28/12/16 interrupting a 9 hour daily rest period. Given fines for insufficient daily rest/ drive no card total £600					
May be continued on page 2					
<b>Data downloaded or charts taken from driver and/or vehicle</b>					
Receipt given for:	<input type="checkbox"/> Number of tachograph charts	<input type="checkbox"/> Number of printout	<input type="checkbox"/> Digital data from vehicle	Digital data from driver card	<input type="checkbox"/> Other (specify above)
13. Controller's signature <div style="background-color: black; height: 15px; width: 100%;"></div>			Driver's signature <div style="background-color: black; height: 15px; width: 100%;"></div>		

\* Numbered boxes follow protocol set out in Directive 2000/30 EU  
 Instructions on routing of copies of form (for national use as required):  
 Page 1 - driver; Page 2 - prosecution file.

Areas shaded in green are obligatory fields.

Page 1  
 North West Motorway Police Group  
 Commercial Vehicle Unit  
 Cheshire Constabulary HQ  
 Clemonds Hey  
 Oakmere Road  
 Winsford



▼ 29/12/2016 08:51 (UTC)

24h▼

○ [REDACTED]

○ [REDACTED]  
09/10/2021

A Y [REDACTED]  
E [REDACTED]

B Stoneridge Electronics  
[REDACTED]

T [REDACTED]  
T E / A 3 5 1 8 0 3 8  
T 27/11/2015

○ [REDACTED]  
29/12/2016 66

A E / [REDACTED]  
566 651 km  
h 00:00 07h20  
h 07:20 01h29  
h 08:49 00h02  
566 740 km; 89 km  
Σ

● 07:18 UK  
566 651 km  
○ 01h29 89 km  
× 00h00 00h00  
h 07h22 ? 00h00  
○○ 00h00

! x [REDACTED]  
! x A  
! 02 20/12/2016 07:31  
! 04 ( 3) 00h07

! 01 21/12/2016 09:29  
! 04 ( 4) 00h02

! 01 22/12/2016 20:02  
! 04 ( 1) 00h01

! 01 24/12/2016 10:20  
! 04 ( 1) 00h00

! 01 28/12/2016 05:50  
! 04 ( 1) 00h00

● [REDACTED] UK  
[REDACTED]

○ .....



## 7 25 000 DKK fine and driving license suspended in Denmark

### EXECUTIVE SUMMARY

On 15/Apr/2015, a fine involving a monetary penalty (for both the driver and the transport company) and a conditional suspension of the driving license was issued in Denmark. The driver was accused of violating the daily rest period imposed by Regulation 561/06 and for driving without an appropriate driver card for two minutes (between 09:09 and 09:11 on that day).<sup>a</sup>

When the vehicle file was analyzed<sup>b</sup>, some irregularities were found concerning the information contained in TREP02 (where the driver activity data is stored) and TREP03 (where the events and faults are stored) modules. The data of both modules contradicted each other and the storage rules of events stipulated by the law were not respected. The case was brought to court and canceled.

<sup>a</sup>Fine available at the end of the chapter

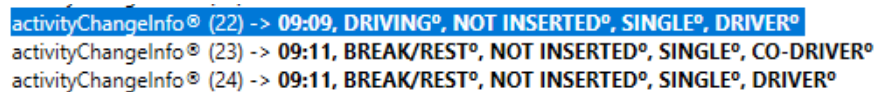
<sup>b</sup>File downloaded on 08/May/2015 with verified digital signatures.

There are three main irregularities present in the analyzed vehicle file, which we analyze in the following subsections.

### 7.1 Information stored in TREP02 but not in TREP03

The driver activity data of the vehicle file keeps record of any changes in the driving status, slot number, card status, activity, and date and time of change. If there is an entry with *activity = driving* and *card status = not inserted* in TREP02, we expect this information to be also stored in TREP03, as long as it is **the longest event over the last 10 days** or **one of the five longest events over the last 365 days** (as Articles 12.8 of Regulation 3821/85 and 3.12.8 of Regulation 799/2016 indicate).

The data concerning the accusation of driving without an appropriate card for two minutes is properly recorded on the TREP02 module, as can be seen in Figure 7.1



```
activityChangeInfo® (22) -> 09:09, DRIVING®, NOT INSERTED®, SINGLE®, DRIVER®  
activityChangeInfo® (23) -> 09:11, BREAK/REST®, NOT INSERTED®, SINGLE®, CO-DRIVER®  
activityChangeInfo® (24) -> 09:11, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®
```

Figure 7.1: TREP02 module of the vehicle file. The image shows a fragment of the driver's activity on 15/04/2015, the day of the infraction. From 09:09 to 09:11 there is a driving activity with *cardStatus = not inserted*.

However, this information does not appear in TREP03, despite being the longest event in one of the previous 10 days. This is a violation of the storage rules stipulated in Regulations 3821/85 and 799/2016.

## 7.2 Event stored in TREP03 but not in TREP02

If we continue analyzing the file beyond the information relative to the accusation, we see other irregularities. For instance, five days later, on 20/Apr/2015, another *Driving without an appropriate card* event is stored in TREP03, as can be seen in Figure 7.2.

```
Root: TREP03 Events and Faults® (valid)
vuEventRecord® (5)
  faultType®:4 - Driving without an appropriate card®
  faultRecordPurpose®:The_longest_event_for_one_of_the_last_10_days_of_occurrence
  faultBeginTime®:20/04/2015 19:08:23
  faultEndTime®:20/04/2015 19:11:05
  cardNumberDriverSlotBegin®:
    cardType®:Empty®
    cardIssuingMemberState®:UNK
    cardNumber®:
      ownerIdentification®:
        cardConsecutiveIndex®:
          cardReplacementIndex®:
            cardRenewalIndex®:
  cardNumberCo-driverSlotBegin®:
    cardType®:Empty®
    cardIssuingMemberState®:UNK
    cardNumber®:
      ownerIdentification®:
```

Figure 7.2: TREP03 module of the vehicle file. As we can see, on 20/Apr/2015 there is a *Driving without an appropriate card* event between 19:08:23 and 19:11:05.

We would expect this information to be also present in TREP02 but this is not the case. There is no entry in TREP02 with values *activity = driving* and *cardStatus = not inserted* on the same date (Figure 7.3)

```
activityChangeInfo® (63) -> 16:11, BREAK/REST®, NOT INSERTED®, SINGLE®, CO-DRIVER®
activityChangeInfo® (64) -> 19:08, AVAILABILITY®, NOT INSERTED®, SINGLE®, CO-DRIVER®
activityChangeInfo® (65) -> 19:09, WORK®, NOT INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (66) -> 19:13, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®
```

Figure 7.3: TREP02 module of the vehicle file. On 20/Apr/2015 the driver was working between 19:09 and 19:13, so he could not have been driving without an appropriate card.

We conclude that the data in TREP03 contradicts the data in TREP02 and there is no way to know which one is right and which one is wrong.

## 7.3 Information stored in TREP02 and TREP03 but with different durations

On 28/Apr/2015 another *Driving without an appropriate card* event is stored in TREP03 of the same driver (see Figure 7.4).

```

Root: TREP03 Events and Faults® (valid)
vuEventRecord® (6)
  faultType®:4 - Driving without an appropriate card®
  faultRecordPurpose®:The longest event for one of the last 10 days of occurrence
  faultBeginTime®:28/04/2015 20:31:54
  faultEndTime®:28/04/2015 20:37:57
  cardNumberDriverSlotBegin®:
    cardType®:Empty®
    cardIssuingMemberState®:UNK
    cardNumber®:
      ownerIdentification®:
      cardConsecutiveIndex®:
      cardReplacementIndex®:
      cardRenewalIndex®:
  cardNumberCo-driverSlotBegin®:
    cardType®:Empty®
    cardIssuingMemberState®:UNK
    cardNumber®:
      ownerIdentification®:
      cardConsecutiveIndex®:

```

Figure 7.4: TREP03 module of the vehicle file. On 28/Apr/2015 there is a *Driving without an appropriate card* event between 20:31:54 and 20:37:57.

As we can see, according to TREP03, the event had a duration of 6 minutes and 3 seconds. But the data in TREP02 contradicts this (see Figure 7.5).

```

activityChangeInfo® (62) -> 20:32, WORK®, NOT INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (63) -> 20:34, DRIVING®, NOT INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (64) -> 20:36, WORK®, NOT INSERTED®, SINGLE®, DRIVER®

```

Figure 7.5: TREP02 module of the vehicle file. On 28/Apr/2015 there is a driving activity with *cardStatus = not inserted* between 20:34 and 20:36.

TREP02 also records a period of driving with no card, but it is only of 2 minutes. Again, we have no way of knowing which of the two modules (if any) contains the correct information.

## Conclusion

The vehicle file in which the fine was based is full of inconsistencies between TREP02 and TREP03 modules. Can this file be trusted? Which information should we trust if both modules display different facts? **A fine with such severe sanctions should not be based on a file with dubious and contradictory information.**

There is an even worse future scenario. According to a new regulation coming in force, the data stored in TREP03 will be directly sent to police officers, with no need of a road control.

Furthermore, the tachograph does not strictly follow the regulation. In this case, this is due to not storing the *Driving without an appropriate card* event when it should have had. **It is either caused by a malfunction of the tachograph or by a mistake in the code. The fact is that it is not behaving as it would if the regulation was thoroughly followed. This cannot be permitted when sanctions such as this one are involved.**

This is a problem of FORMALLY VERIFIED SOFTWARE condition 3, since the regulation is not being thoroughly followed. The contradictory information stored in tachographs might be

caused by an internal bug or poorly designed code. As in other cases, formal verified software implemented in tachographs could avoid these kind of problems.



11. 08. 2015 15:00



11. 08. 2015 15:00

### Indkaldelse til retsmøde

Anklagemyndigheden har anmodet om et retsmøde i en sag mod Dem. Sagen drejer sig om overtrædelse af Bekg. [redacted]. Kopi af anklagemyndighedens anmodning vedlægges.

Retten indkalder Dem til at møde i

[redacted]

Når man møder i retten, kan adgang være betinget af, at man lader det tøj, som man har på, visitere og medbragte effekter undersøge.

Er De forhindret i at møde, f.eks. på grund af sygdom, skal De hurtigst muligt give retten besked. Retten kan kræve lægeerklæring eller andet bevis for gyldigt fravær.

De kan vælge at sende en anden person, der har skriftlig fuldmagt fra Dem, og som har kendskab til sagen.

Hvis De udebliver fra retsmødet uden at sende en anden og ikke har givet retten besked om en gyldig grund, kan De dømmes efter anklageskriftet.

Retsmødet bortfalder, hvis De vedtager eller betaler bøden hos politiet. De kan endvidere vedtage evt. erstatning. Politiets tlfnr. er: 33 14 14 48 - Regnskabsafdelingen.

Hvis De har spørgsmål, er De velkommen til at kontakte retten.

Med venlig hilsen

[redacted]  
kontorfuldmægtig

**Anklageskrift**  
**Sag uden domsmænd**

Dato:

Journalnr.:

Sagsbehandler:

tiltales ved Københavns Byret med påstand om bødestraf for overtrædelse af

1.

**Justitsministeriets bekendtgørelse nr. 328 af 28. marts 2007 § 14 jf. § 13 jfr. § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 artikel 8, stk. 2, jf. artikel 4, litra g),**

ved som arbejdsgiver at have været ansvarlig for at [REDACTED] den 14. april 2015 kl. 1748 utc tid og 24 timer frem under kørsel med lastbil [REDACTED] havde undladt at afholde en regulær daglig hviletid på mindst 3 timer og 9 timer, da det længste hvil på 2 timer og 42 minutter og 4 timer 58 minutter blev påbegyndt den 15. marts 2015 kl. 0449 og afsluttet kl. 0731 og påbegyndt kl. 0911 og afsluttet kl. 1409, hvilket udgjorde en overtrædelse på 36 %.

2.

**Justitsministeriets bekendtgørelse nr. 328 af 28. marts 2007 § 14 jfr. § 13 jf. § 11, nr. 2, jfr. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 artikel 7,**

ved som arbejdsgiver at have været ansvarlig for at [REDACTED] den 6. maj 2015 fra kl. 1953 utc tid til den 7. maj 2015 kl. 0114 under kørsel med lastbil [REDACTED] havde undladt at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, hvilket medførte en køretid på 4 timer og 58 minutter, som udgjorde en overtrædelse af reglerne om køretiden på 10 %.



# Anklageskrift

## Sag uden domsmænd

Dato:

Journalnr.:

3.

Justitsministeriets bekendtgørelse nr. 328 af 28. marts 2007 § 14 jfr. § 13 jf. § 12, stk. 1, nr. 3, litra c, jfr. Rådets forordning (EØF) nr. 3821/85 artikel 15, stk. 2, ved som arbejdsgiver at have været ansvarlig for at [REDACTED] den 15. april 2015 fra kl. 0909 utc tid til kl. 0911 utc tid førte lastbil [REDACTED], der var udstyret med et digitalt kontrolapparat ad en strækning i Sverige, uden at anvende førerkort i kontrolapparatet.

Der tages forbehold for vidneførsel, idet de faktiske omstændigheder forudsættes erkendt.

Der bedes tilsiges hollandsk tolk til retsmødet.

Sagen forventes at vare 1 time.

Sagens dokumenter vedlægges.

[REDACTED]

## **Ingen straffesag mod virksomheden**

Jeg har i dag besluttet at opgive sigtelsen mod virksomheden for i 2 tilfælde perioden fra den 14. april 2015 til den 6. maj 2015, at have overtrådt reglerne om køre- og hviletid, ved at være ansvarlig for, at chauffør [REDACTED] i 2 tilfælde undlod, at afholde tilstrækkelig daglig hviletid samt at han undlod at afbryde kørslen i mindst 45 min. efter 4 ½ times kørsel. Det betyder, at der ikke bliver nogen straffesag.

### **Begrundelse**

Begrundelsen for min afgørelse er, at vanskelighederne, omkostningerne eller den tid, det vil kræve at gennemføre sagen, ikke står i rimeligt forhold til sagens betydning og den straf, som jeg forventer, at virksomheden ville blive idømt, hvis retten fandt Den skyldig.

Jeg har særligt lagt vægt på de helt konkrete omstændigheder oplysninger der er i sagen, herunder at der skal indhentes eksternt erklæring vedrørende takografen.

Jeg kan henvise til telefonsamtale den 9. oktober 2018 med [REDACTED]

Det indbetalte beløb i sagen vil blive tilbagebetalt til indbetaler.

### **Lovgrundlag**

- Sagen drejer sig om bekendtgørelse om køre- og hviletidsbestemmelser i vejtransport §§ 11, 12 og 14 (straf ved overtrædelse),
- Europa-Parlamentets og Rådets køre- og hviletidsforordning artikel 7 og 8 samt

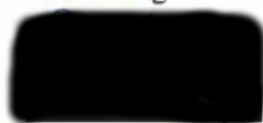
- Europa-Parlamentets og Rådets forordning om takografer og kontrolapparater inden for vejtransport artikel 33 (virksomheders ansvar).
- Min afgørelse er truffet efter reglerne i retsplejelovens § 721, stk. 1, nr. 3 (vanskeligheder mv. står ikke i forhold til forventet straf).

### Omgørelse

Statsadvokaten kan – indtil 2 måneder efter datoen for denne afgørelse – bestemme, at straffesagen skal fortsætte. Det kan f.eks. ske på baggrund af en klage. Det står i retsplejelovens § 724, stk. 2, som er vedlagt.

Har De spørgsmål, er De velkommen til at kontakte Midt- og Vestsjællands Politi.

Med venlig hilsen

A black rectangular box redacting the signature of the Special Prosecutor.

Specialanklager

**Retsplejelovens § 724, stk. 2**

**§ 724, stk. 2.** Er der truffet afgørelse om påtaleopgivelse eller tiltalefrafald, kan strafforfølgning mod den, der har været sigtet, kun fortsættes efter den overordnede anklagemyndigheds bestemmelse, hvis meddelelse er forkyndt for den pågældende inden 2 måneder fra afgørelsens dato, medmindre sigtedes forhold har hindret rettidig forkyndelse eller betingelserne for genoptagelse efter § 975 er til stede.

## 8 355 000 DKK fine and jail time in Denmark

### EXECUTIVE SUMMARY

In the present section, we present the case of a driver fined with very severe sanctions for, among others, driving without an appropriate driver card for 37 minutes. If we look at the vehicle file, we find that the infraction is properly recorded in TREP02. However, the information stored in TREP03 contradicts this data: according to it, the alleged infraction takes place a few minutes later and has a shorter duration.

This problem comes from the lack of a proper definition for **driving time** in the regulations (see Section 3) and the incompatibility between activities recorded with a resolution of minutes and events recorded with a resolution of seconds. This incompatibility leads to contradictory data and there is no way to know which one is the “real” one (if any). When this case was brought to court, the monetary charge was reduced by 50%.

The sanctions for the mentioned accusation include:

1. 30 days of conditional prison for the driver;
2. 253 000 DKK (reduced to 125 000 DKK) for the company;
3. 102 000 DKK (reduced to 50 000 DKK) for the driver.

Excerpts of the fine can be found in Figure 8.1. Both the full fine and the sentence are printed at the end of this section.

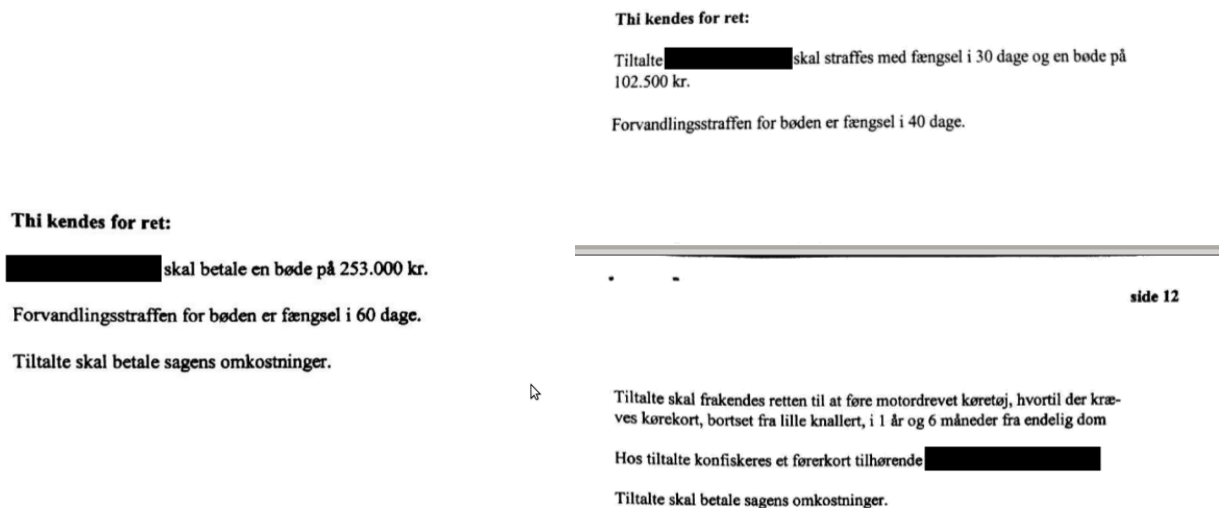


Figure 8.1: Excerpt of the fine.

One of the charges was *driving without an appropriate card* between 19:56 and 20:33 on 29/Oct/2014. The transgression lasted for 37 minutes, and the total distance traveled was 44 km.

When we check the data from the vehicle file, we see in TREP02 that there was driving activity with card not inserted during the exact period of the accusation (see Figure 8.2),

and in TREP03 that *Driving without an appropriate card* was registered between 20:04:09 and 20:22:29 (see Figure 8.3).

```
activityChangeInfo® (40) -> 18:40, WORK®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (41) -> 18:55, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (42) -> 19:56, DRIVING®, NOT INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (43) -> 20:33, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo® (44) -> 00:00, AVAILABILITY®, NOT INSERTED®, SINGLE®, CO-DRIVER®
```

Figure 8.2: TREP02 module of the vehicle file on 29/Oct/2014.

```
Root: TREP03 Events and Faults® (valid)
vuEventRecord® (6)
  faultType®:4 - Driving without an appropriate card®
  faultRecordPurpose®:The longest event for one of the last 10 days of occurrence
  faultBeginTime®:29/10/2014 20:04:09
  faultEndTime®:29/10/2014 20:22:29
  cardNumberDriverSlotBegin®:
    cardType®:255®
    cardIssuingMemberState®:WLD
    cardNumber®:
      ownerIdentification®:yyyyyyyyyyyyyy
      cardConsecutiveIndex®:y
      cardReplacementIndex®:y
      cardRenewalIndex®:y
  cardNumberCo-driverSlotBegin®:
    cardType®:255®
    cardIssuingMemberState®:WLD
    cardNumber®:
      ownerIdentification®:yyyyyyyyyyyyyy
      cardConsecutiveIndex®:y
      cardReplacementIndex®:y
```

Figure 8.3: TREP03 module of the vehicle file on 29/Oct/2014.

Some important anomalies show up here:

1. First of all, the **events do not coincide in TREP02 and TREP03**, they have been calculated differently and **contain contradictory information**.
2. The data from TREP02 has a resolution of minutes whereas the data from TREP03 is registered in seconds. Thus, we are faced with two different ways of computing driving time. But those are not specified in the regulation, so we don't know how they were computed. **What is Driving Time in seconds? How is it calculated?** If the law does not clarify this, then the programmers are the ones making that decision: they are (accidentally) making legal decisions.

A tachograph is a device essentially designed to compute driving times. Then, how is it possible that we don't have a proper definition of "driving time"? How is it possible that, depending on the way you compute it, you end up with different results? This is certainly not a desirable feature of tachographs.

Another question is pertinent here: should authorities be able to fine someone if they have contradictory information on the same infraction? Which piece of data should they trust?

The absence of a proper definition of *driving time* in the law is a problem of FORMALLY VERIFIED SOFTWARE condition 3, while the difference of time resolutions in TREP02 and TREP03 is a problem of **Type1** in Decent Design.





Strafferetten  
Kolding Åpark 11, Postboks  
836  
6000 Kolding  
Man.-fre. 8.30-15.00  
tlf. 99 68 68 80  
straffe.kol@domstol.dk

[www.domstol.dk/kolding](http://www.domstol.dk/kolding)

Sagen mod

Den 27. april 2015

	Ifølge aftale
	I henhold til telefonsamtale af
	Tilbagesendes med tak for lån
	Ring venligst herom til
X	Til orientering
	Til godkendelse
	Deres udtalelse udbedes
	Til underskrift
	Ønskes retur
	Kvittering udbedes

Med venlig hilsen

kontorfuldmægtig

Den 14. april 2015 kl. 09.00 blev retten sat i retssal 7 af dommer [REDACTED]

[REDACTED] med domsmændene [REDACTED] og [REDACTED]

Retsmødet var offentligt. Reglerne i retsplejelovens §§ 66, stk. 2, og 91 er overholdt.

[REDACTED]

Anklagemyndigheden  
mod

[REDACTED]

og

[REDACTED]

Anklagemyndigheden  
mod

[REDACTED]

Kst. senioranklager [REDACTED] var mødt for anklagemyndigheden.

Der blev fremlagt anklageskrift mod [REDACTED] af 5. januar 2015 med bilag samt tillægsanklageskrift mod samme af 13. januar 2015 med bilag.

Der blev fremlagt anklageskrift mod [REDACTED] af 5. januar 2015 med bilag - sag uden domsmænd

Sagerne mod [REDACTED] blev behandlet sammen, idet alene sagen mod [REDACTED] blev behandlet med domsmænd

Advokat [REDACTED] var mødt som beskikket forsvarer for [REDACTED]

[REDACTED] var mødt som repræsentant for [REDACTED]

Som hollandsk tolk medvirkede [REDACTED]

[REDACTED] var mødt og bekræftede navn og fødselsdato.

Tiltalte blev gjort bekendt med, at han ikke havde pligt til at udtale sig.

Anklageskriftet blev læst op.

Tiltalte [REDACTED] erkendte sig skyldig i forhold 1 og 2 men nægtede sig i øvrigt skyldig.

[REDACTED] var mødt og bekræftede navn og fødselsdato.

Tiltalte blev gjort bekendt med, at han ikke havde pligt til at udtale sig.

Anklageskriftet blev læst op.

Tiltalte [REDACTED] erkendte sig skyldig i forhold 27 men nægtede sig i øvrigt skyldig.

Anklageren tilkendegav, at sagen mod virksomheden [REDACTED] bortfalder, idet sagen føres mod [REDACTED] personligt.

Der blev afgivet forklaring af de tiltalte [REDACTED] samt vidneforklaring af på [REDACTED], der var gjort bekendt med vidnepligten og vidneansvaret.

Forklaringerne blev lyddoptaget.

Forsvareren advokat [REDACTED] anmodede om, at den af forsvareren indhentede erklæring fra [REDACTED] - bilag B og C fremlægges i sagen som bevis for, at tachografen ikke er konstrueret sådan, at den ikke kan anvendes som bevis i sagen.

Anklageren protesterede mod fremlæggelse af bilag B og C, idet der som besluttet på retsmødet den 14. januar 2015 er foranlediget undersøgelse af tachografen ved det uafhængige firma [REDACTED] - sagens forhold 1, bilag 22. Anklageren henviste herunder til [REDACTED]

Efter votering afsagdes

## **KENDELSE:**

Der er i overensstemmelse med beslutningen på retsmødet den 14. januar 2015 i sagen af politiet indhentet en erklæring fra [REDACTED], der er en privat uafhængig virksomhed med speciale indenfor fejlfinding og reparation af teknisk udstyr, herunder blandt andet fartskrivere.

Efter det foreliggende må [REDACTED] anses for at have tilstrække-

lig sagkundskab til at foretage den undersøgelse af tachografen, som det blev besluttet i retsmødet den 14. januar 2015. Endvidere har [REDACTED] haft rådighed over tilstrækkelige oplysninger til brug for udfærdigelsen af erklæringen.

Under de omstændigheder kan der ikke ske fremlæggelse af den af forsvareren indhentede erklæring, der angiveligt er udfærdiget af [REDACTED]

#### **Derfor bestemmes:**

Bilag B og C tillades ikke fremlagt.

Dokumentation fandt sted.

Sagerne blev procederet.

Anklageren påstod i begge sager de tiltalte dømt efter anklageskriftet.

Forsvareren, advokat [REDACTED], påstod for tiltalte [REDACTED] frifindelse i det ikke erkendte omfang og i øvrigt rettens mildeste dom.

[REDACTED] påstod for [REDACTED] frifindelse i det ikke erkendte omfang og i øvrigt rettens mildeste dom.

De tiltalte havde lejlighed til at udtale sig.

Sagerne optaget til dom der afsiges den [REDACTED] uden afholdelse af retsmøde.

De tiltalte blev gjort bekendt med tidspunktet for domsafsigelse og reglerne om anke.

Sagen udsat

Retten hævet.

[REDACTED]  
dommer

**D O M**

afsagt den [REDACTED]

Anklagemyndigheden  
mod  
[REDACTED]

Der har medvirket domsmænd ved behandlingen af denne sag.

Anklageskrift er modtaget den [REDACTED]  
Tillægsanklageskrift er dateret den [REDACTED]

Sagen er hovedforhandlet samtidig med rettens [REDACTED], anklagemyndigheden mod [REDACTED] - sag uden domsmænd.

[REDACTED] er tiltalt for overtrædelse af

1a.

**straffelovens § 174 - personelfalsk,**  
ved den 16. november 2014 kl. 10.21 til den 17. november 2014 kl. 17.32  
under kørsel med lastbil [REDACTED] blandt andet gennem [REDACTED]  
at have gjort brug af et ægte dokument som vedrørende en anden person end  
den, hvem det virkelig angår, eller på anden mod dokumentets bestemmelse  
stridende måde, idet han anvendte førerkort tilhørende [REDACTED]  
[REDACTED],

1b.

**bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf.  
Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen)  
artikel 14, stk. 4, litra a,**  
ved den 16. november 2014 kl. 10.21 til den 17. november 2014 kl. 17.32  
under kørsel med lastbil [REDACTED] blandt andet gennem [REDACTED]  
at have gjort brug af et andet førerkort end hans eget personlige førerkort,  
idet han anvendte førerkort tilhørende [REDACTED],

2.

**bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf.  
Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen)**

**artikel 15, stk. 2,**

ved den 29. oktober 2014 kl. 19.56 til kl. 20.33 at have ført stor lastbil [REDACTED]  
[REDACTED], der var udstyret med et digitalt kontrolapparat ad ukendt strækning på Fællesskabets område over en strækning på 44 kilometer uden at anvende førerkort i kontrolapparatet,

3.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 7 - pause,**

ved den 29. oktober 2014 fra kl. 15.27 til den 30. oktober kl. 00.18 under kørsel med stor lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have undladt at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af en pause på 54 minutter efter en køretid på 8 timer og 17 minutter, hvilket udgjorde en overtrædelse 84 %. Indenfor køretiden på 8 timer og 17 minutter blev der ikke afholdt lovlige pauser,

4.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 7 - pause,**

ved den 3. november 2014 kl. 19.16 til den 4. november 2014 kl. 05.38 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have undladt at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af et hvil, efter en køretid på 9 timer og 38 minutter, hvilket udgjorde en overtrædelse af reglerne om køretiden på 114 %. Indenfor køretiden på 9 timer og 38 minutter blev der afholdt følgende lovlige pause: 15 minutter,

5.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 6 – kumuleret køretid,**

ved den 3. november 2014 fra kl. 12.26 til den 4. november 2014 kl. 05.38 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have haft en samlet køretid mellem 2 daglige hviletider på ikke under 13 timer og 44 minutter mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 37 %,

6.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt**



**hvil,**

ved den 3. november 2014 kl. 12.26 og 24 timer frem, under kørsel med lastbil [REDACTED], at have undladt at afholde en reduceret daglig hviletid på mindst 9 sammenhængende timer, da det længste hvil på 6 timer blev påbegyndt den 4. november 2014 kl. 05.38 og afsluttet kl. 11.38, hvilket udgjorde en overtrædelse på 33 %,

7.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre-hviletidsforordningen) artikel 6 – kumuleret køretid,**

ved den 5. november 2014 kl. 09.44 til den 6. november 2014 kl. 12.00 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have haft en samlet køretid mellem 2 daglige hviletider på ikke under 13 timer og 36 minutter mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 36 %,

8.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre-hviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil,**

ved den 5. november 2014 kl. 09.44 og 24 timer frem, under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have undladt at afholde en reduceret daglig hviletid på mindst 9 sammenhængende timer, da det længste hvil på 3 timer og 20 minutter, blev påbegyndt den 5. november 2014 kl. 23.07 og afsluttet den 6. november 2014 kl. 02.27, hvilket udgjorde en overtrædelse på 62 %,

9.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre-hviletidsforordningen) artikel 6 – kumuleret køretid,**

ved den 10. november 2014 kl. 12.05 til den 11. november 2014 kl. 04.38 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have haft en samlet køretid mellem 2 daglige hviletider på ikke under 12 timer og 58 minutter mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 29 %,

10.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre-hviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil,**

ved den 10. november 2014 kl. 12.05 og 24 timer frem, under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have undladt at afholde en reduceret daglig hviletid på mindst 9 sammenhængende timer, da den længst opnåelige hviletid højst kunne blive på 7 timer og 27 minutter, idet hvilet først blev påbegyndt den 11. november 2014 kl. 04.38 og 24-timers perioden udløb kl. 12.05, hvilket udgjorde en overtrædelse på 17 %,

11.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 7 - pause,**

ved den 10. november 2014 fra kl. 20.56 til den 11. november kl. 04.38, under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have undladt at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af et hvil efter en køretid på 6 timer og 43 minutter, hvilket udgjorde en overtrædelse af reglerne om køretiden på 49 %. Indenfor køretiden på 6 timer og 49 minutter blev der afholdt følgende lovlige pause: 11 minutter,

12.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil,**

ved den 11. november 2014 kl. 14.36 og 24 timer frem under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have undladt at afholde en regulær daglig hviletid på mindst 3 timer og 9 timer, da de længste hvil på 3 timer samt 4 timer og 2 minutter blev påbegyndt den 11. november 2014 kl. 16.43 og afsluttet kl. 19.45, og påbegyndt igen den 12. november 2014 kl. 05.00 og afsluttet kl. 09.02, hvilket udgjorde en overtrædelse på 41 %,

13.

**bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 7 - pause,**

ved den 11. november 2014 fra kl. 21.39 til den 12. november 2014 kl. 05.00, under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have undladt at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af et hvil efter en køretid på 7 timer og 15 minutter, hvilket udgjorde en overtrædelse af reglerne om køretiden på 61 %. Indenfor køretiden på 7 timer og 15 minutter blev der ikke afholdt lovlige pauser,

14.

bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 6 – kumuleret køretid, ved fra den 11. november 2014 kl. 14.36 til den 13. november 2014 kl. 04.32 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have haft en samlet kumuleret køretid mellem to hviletider, på ikke under 25 timer og 45 minutter mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 157 %,

15.

bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 7 - pause, ved den 12. november 2014 fra kl. 15.34 til den 13. november 2014 kl. 04.32 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have undladt at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af et hvil, efter en køretid på 11 timer og 14 minutter, hvilket udgjorde en overtrædelse af reglerne om køretiden på 149 %. Indenfor køretiden på 11 timer og 14 minutter blev der afholdt følgende lovlige pause: 18 minutter,

16.

bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 6 – kumuleret køretid, ved den 15. november 2014 fra kl. 10.46 til den 16. november 2014 kl. 02.43 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have haft en samlet køretid mellem 2 daglige hviletider på ikke under 12 timer og 3 minutter, mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 20 %,

00001342012\_

17.

bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (kørehviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil,

ved den 15. november 2014 kl. 10.46 og 24 timer frem under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have undladt at afholde en reduceret daglig hviletid på mindst 9 sammenhængende timer, da det længste hvil på 7 timer og 38 minutter blev påbegyndt den 16. november 2014 kl. 02.43 og afsluttet kl. 10.21, hvilket udgjorde en overtrædelse på 15 %,

18.

bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 15, stk. 5a,

ved den 11. november 2014, kl. 01.14 som fører af lastbil [REDACTED] at have indtastet Holland som begyndelsessted i tacografen, selvom køretøjet befandt sig i Danmark,

19.

bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 15, stk. 5a,

ved den 13. november 2014 kl. 02.56 som fører af lastbil [REDACTED] at have indtastet Holland som begyndelsessted i tacografen, selvom køretøjet befandt sig i Danmark,

20.

bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 15, stk. 5a,

ved den 13. november 2014 kl. 13.57 som fører af lastbil [REDACTED] at have indtastet Holland som begyndelsessted i tacografen, selvom køretøjet befandt sig i Danmark,

21.

bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 15, stk. 5a,

ved den 16. november 2014 kl. 10.14 som fører af lastbil [REDACTED] at have indtastet Holland som begyndelsessted, selvom køretøjet befandt sig i Danmark,

22 a.

**straffelovens § 174 - personelfalsk,**

ved den 4. november 2014 kl. 01.28 til kl. 05.38 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have gjort brug af et ægte dokument som vedrørende en anden person end den, hvem det virkelig angår, eller på anden mod dokumentets bestemmelse stridende måde, idet han anvendte førerkort tilhørende [redacted],

22 b.

**bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra a,**

ved den 4. november 2014 kl. 01.28 til kl. 05.38 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have gjort brug af et andet førerkort end hans eget personlige førerkort, idet han anvendte førerkort tilhørende [redacted],

23 a.

**straffelovens § 174 - personelfalsk,**

ved den 5. november 2014 kl. 22.45 til den 6. november 2014 kl. 07.48 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have gjort brug af et ægte dokument som vedrørende en anden person end den, hvem det virkelig angår, eller på anden mod dokumentets bestemmelse stridende måde, idet han anvendte førerkort tilhørende [redacted],

23 b.

**bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra a,**

ved den 5. november 2014 kl. 22.45 til den 6. november 2014 kl. 07.48 under kørsel med lastbil [redacted] blandt andet gennem [redacted] at have gjort brug af et andet førerkort end hans eget personlige førerkort, idet han anvendte førerkort tilhørende [redacted]

24 a.

**straffelovens § 174 - personelfalsk,**

ved den 11. november 2014 kl. 01.21 til den 12. november 2014 kl. 00.22 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område at have gjort brug af et ægte dokument som vedrørende en anden person end den, hvem det virkelig angår, eller på anden mod dokumentets bestemmelse stridende måde, idet han anvendte førerkort tilhørende [redacted]



[REDACTED]

24 b.

bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra a, ved den 11. november 2014 kl. 01.21 til den 12. november 2014 kl. 00.22 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af et andet førerkort end hans eget personlige førerkort, idet han anvendte førerkort tilhørende [REDACTED]

25 a.

straffelovens § 174 - personelfalsk, ved den 12. november 2014 kl. 12.35 til kl. 20.56 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af et ægte dokument som vedrørende en anden person end den, hvem det virkelig angår, eller på anden mod dokumentets bestemmelse stridende måde, idet han anvendte førerkort tilhørende [REDACTED]

25 b.

bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra a, ved den 12. november 2014 kl. 12.35 til kl. 20.56 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af et andet førerkort end hans eget personlige førerkort, idet han anvendte førerkort tilhørende [REDACTED]

26 a.

straffelovens § 174 - personelfalsk, ved den 13. november 2014 kl. 02.57 til kl. 13.57 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af et ægte dokument som vedrørende en anden person end den, hvem det virkelig angår, eller på anden mod dokumentets bestemmelse stridende måde, idet han anvendte førerkort tilhørende [REDACTED],

26 b.

bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra a, ved den 13. november 2014 kl. 02.57 til kl. 13.57 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af et andet førerkort end hans eget personlige førerkort, idet han anvendte



fører kort tilhørende [REDACTED]

27 a.

**straffelovens § 174 - personelfalsk,**

ved den 14. november 2014 kl. 09.33 til kl. 11.49 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af et ægte dokument som vedrørende en anden person end den, hvem det virkelig angår, eller på anden mod dokumentets bestemmelse stridende måde, idet han anvendte fører kort tilhørende [REDACTED],

27 b.

**bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra a,**

ved den 14. november 2014 kl. 09.33 til kl. 11.49 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af et andet fører kort end hans eget personlige fører kort, idet han anvendte fører kort tilhørende [REDACTED],

28 a.

**straffelovens § 174 - personelfalsk,**

ved den 15. november 2014 kl. 10.46 til kl. 17.41 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af ægte dokument som vedrørende en anden person end den, hvem det virkelig angår, eller på anden mod dokumentets stridende måde, idet han anvendte fører kort tilhørende [REDACTED]

28 b.

**bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf.**

**Rådets forordning (EØF) nr. 3821/85 artikel 14, stk. 4, litra a,**

ved den 15. november 2014 kl. 10.46 til kl. 17.41 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have gjort brug af et andet fører kort end hans egen personlige fører kort, idet han anvendte fører kort tilhørende [REDACTED]

Alle tider er angivet i UTC-tid.

### **Påstande**

Anklagemyndigheden har nedlagt påstand om ubetinget fængselsstraf og bøde.

Anklagemyndigheden har påstået konfiskation af et fører kort udstedt til [REDACTED]  
[REDACTED] hos tiltalte, jf. straffelovens § 75, stk. 2.

Anklagemyndigheden har nedlagt påstand om ubetinget frakendelse af førerretten i medfør af færdselslovens § 126, stk. 1, nr. 7, jf. § 125, stk. 1, nr. 6 og nr. 7.

Tiltalte har erkendt sig skyldig i forhold 1 og 2 men i øvrigt nægtet sig skyldig.

Tiltalte har ikke haft bemærkninger til den nedlagte konfiskationspåstand.

### **Sagens oplysninger**

Der er afgivet forklaring af tiltalte [REDACTED] og tiltalte i sagen [REDACTED] 2015, [REDACTED], samt af vidnet pa. [REDACTED]

Forklaringerne er lydoptaget og gengives ikke i dommen.

Af erklæring fra [REDACTED] fremgår, at det i sagen omhandlede kontrolapparat har fået udført 2 års kontrol inden for de sidste 24 måneder, er i lovlig stand og har været monteret i køretøjet fra det var nyt. Kontrolapparatet er kalibreret korrekt, fungerer korrekt og er retvisende.

Der er under sagen fremlagt timesedler og fragtbreve udfyldt og underskrevet af tiltalte [REDACTED]

Tiltalte [REDACTED] er ikke tidligere straffet.

Tiltalte [REDACTED] har om sine personlige forhold forklaret, at han er uddannet som og gennem de sidste 10 år har arbejdet som chauffør. Han tjener årligt 30.000 euro brutto.

### **Rettens begrundelse og afgørelse**

Tiltalte blev den 17. november 2014 kl. 18.32 ubestridt standset af politiet under kørsel med lastbil [REDACTED]. Politiet konstaterede, at tiltalte, der var alene i lastbilen, under denne kørsel anvendte et førerkort tilhørende [REDACTED], og tiltalte har erkendt, at han uberettiget brugte dette førerkort for derigennem at kunne køre tilbage til Holland uden at holde de foreskrevne pauser.

Politiet har ved undersøgelsen af kontrolapparatet kunne konstatere, at [REDACTED] førerkort ligeledes har været anvendt i de i forhold 22a, 23a, 24a, 25a, 26a, 27a og 28 a nævnte tidspunkter. Det fremgår af de af tiltalte ubestridt udfyldte og underskrevne timesedler, at han har ført bilen i alle de tilfælde, hvor [REDACTED] førerkort var isat i kontrolapparatet. Tiltaltes forklaring om, at han udfyldte timesedlerne således, for derigennem at få udbetalt mere i løn, forkastes som utroværdig også under

hensyn til hans erkendelse i forhold 1b og sin erkendelse til politirapport, som han har underskrevet. I den forbindelse har retten forkastet tiltaltes forklaring om, at han ikke, før han underskrev politirapporten, fik hele rapporten oversat af den tolk, der var til stede under afhøringen, idet retten har lagt vægt på vidnet på. [redacted] troværdige forklaring om rapportens tilblivelse, hvorefter at hele rapporten blev oversat af tolken, inden tiltalte underskrev denne.

I forhold 18 - 21 foreligger der fragtbreve ubestridt underskrevet af tiltalte, hvorefter tiltalte har afleveret gods forskellige steder i Danmark, hvor Holland var indtastet som begyndelsessted i kontrolapparatet. Idet tiltaltes forklaring om, at hans underskrift på fragtbrevene i ingen af tilfældene var ensbetydende med, at det var ham, der afleverede godset, forkastes som utroværdig, findes det godtgjort, at tiltalte har foretaget de pågældende fejlindtastninger.

På den baggrund, og idet kontrolapparatets udvisende lægges til grund for alle kørslerne, er det bevist, at tiltalte er skyldig i alle forholdene.

Straffen fastsættes til fængsel i 30 dage og en bøde på 102.500 kr., jf. straffelovens § 174, bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85, artikel 14, stk. 4, litra a, og artikel 15, stk. 2 og stk. 5a, og bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2 og nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 artikel 6, 7 samt forordningens artikel 8, stk. 2, jf. artikel 4, litra g).

Forvandlingsstraffen for bøden fastsættes som nedenfor bestemt.

Tiltalte frakendes retten til at føre motordrevet køretøj, hvortil der kræves kørekort, bortset fra lille knallert, i 1 år og 6 måneder fra endelig dom, jf. færdselslovens § 126, stk. 1, nr. 7, jf. § 125, stk. 1, nr. 6 og nr. 7, jf. § 128.

Retten har ved førerretsfrakendelsen lagt vægt på antallet af overtrædelser der hver i sær ville medføre betinget frakendelse af førerretten men også på tiltaltes forhold herunder, at han ikke tidligere er straffet.

Retten tager påstanden om konfiskation til følge, jf. straffelovens § 75, stk. 2.

#### **Thi kendes for ret:**

Tiltalte [redacted] skal straffes med fængsel i 30 dage og en bøde på 102.500 kr.

Forvandlingsstraffen for bøden er fængsel i 40 dage.

Tiltalte skal frakendes retten til at føre motordrevet køretøj, hvortil der kræves kørekort, bortset fra lille knallert, i 1 år og 6 måneder fra endelig dom

Hos tiltalte konfiskeres et førerkort tilhørende [REDACTED]

Tiltalte skal betale sagens omkostninger.

[REDACTED]  
dommer

**DOM**

afsagt den 21. april 2015.

Rettens nr. [REDACTED]

Politiets nr. [REDACTED]

Anklagemyndigheden  
mod [REDACTED]

cpr-nummer 171177-ABLM

Anklageskrift er modtaget den 7. januar 2015.

Sagen er hovedforhandlet samtidig med rettens nr. [REDACTED], anklagemyndigheden mod [REDACTED] - sag med domsmænd.

[REDACTED] er tiltalt for overtrædelse af

1.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 15, stk. 2,**

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 29. oktober 2014 kl. 19.56 til kl. 20.33 førte stor lastbil [REDACTED] der var udstyret med et digitalt kontrolapparat ad ukendt strækning på Fællesskabets område over en strækning på 44 kilometer uden at anvende førerkort i kontrolapparatet,

2.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 7 - pause,**

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 29. oktober 2014 fra kl. 15.27 til den 30. oktober 2014 kl. 00.18 under kørsel med stor lastbil [REDACTED] ad ukendt strækning på Fællesskabets område undlod at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af en pause på 54 minutter efter en køretid på 8 timer og 17 minutter, hvilket udgjorde en overtrædelse af reglerne om køretiden på 84 %. Indenfor køretiden på 8 timer og 17 minutter blev der ikke afholdt lovlige pauser,

3.



bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 6, stk. 1 – kumuleret køretid,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 3. november 2014 kl. 12.26 til den 4. november 2014 kl. 05.38 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område havde en samlet køretid mellem 2 daglige hviletider på ikke under 13 timer og 44 minutter mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 37 %,

4.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 3. november 2014 kl. 12.26 og 24 timer frem, under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område undlod at afholde en reduceret daglig hviletid på mindst 9 sammenhængende timer, da det længste hvil på 6 timer blev påbegyndt den 4. november 2014 kl. 05.38 og afsluttet kl. 11.38 UTC, hvilket udgjorde en overtrædelse på 33 %,

5.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 7 - pause,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 3. november 2014 kl. 19.16 til den 4. november 2014 kl. 05.38 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område undlod at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af et hvil efter en køretid på 9 timer og 38 minutter, hvilket udgjorde en overtrædelse af reglerne om køretiden på 114 %. Indenfor køretiden på 9 timer og 38 minutter blev der afholdt følgende lovlige pause: 15 minutter,

6.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 6, stk. 1 – kumuleret køretid,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 5. november 2014 kl. 09.44 til den 6. november 2014 kl. 12.00 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område havde en samlet køretid mellem 2 daglige hviletider på ikke under 13 timer og 36 minutter, mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 36 %,

7.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil, ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 5. november 2014 kl. 09.44 og 24 timer frem, under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område undlod at afholde en reduceret daglig hviletid på mindst 9 sammenhængende timer, da det længste hvil på 3 timer og 20 minutter, blev påbegyndt den 5. november 2014 kl. 23.07 og afsluttet den 6. november 2014 kl. 02.27, hvilket udgjorde en overtrædelse på 62 %,

8.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 6, stk. 1 – kumuleret køretid, ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 10. november 2014 fra kl. 12.05 til den 11. november 2014 kl. 04.38 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område havde en samlet køretid mellem 2 daglige hviletider på ikke under 12 timer og 58 minutter, mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 29 %,

9.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil, ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 10. november 2014 kl. 12.05 og 24 timer frem under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område undlod at afholde en reduceret daglig hviletid på mindst 9 sammenhængende timer, da det længste hvil på 7 timer og 27 minutter blev påbegyndt den 11. november 2014 kl. 04.38 og 24-timers perioden udløb kl. 12.05, hvilket udgjorde en overtrædelse på 17 %,

10.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 7 - pause, ved den 10. november 2014 kl. 20.56 til den 11. november 2014 kl. 04.38 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have undladt at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af et hvil, efter en køretid på 6 timer og 43 minutter, hvilket udgjorde en overtrædelse af reglerne om

køretiden på 49 %. Indenfor køretiden på 6 timer og 43 minutter blev der afholdt følgende lovlige pause: 11 minutter,

11.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 6, stk. 1 – kumuleret køretid,**  
ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 11. november 2014 kl. 14.36 til den 13. november 2014 kl. 04.32 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område havde en samlet kumuleret køretid mellem 2 daglige hviletider på ikke under 25 timer og 45 minutter, mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 157 %,

12.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 7 - pause,**  
ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 11. november 2014 kl. 21.39 til den 12. november 2014, kl. 05.00 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område at have undladt at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af et hvil, efter en køretid på 7 timer og 15 minutter, hvilket udgjorde en overtrædelse af reglerne om køretiden på 61 %. Indenfor køretiden på 7 timer og 15 minutter blev der ikke afholdt lovlige pauser,

13.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil,**  
ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 11. november 2014 kl. 14.36 og 24 timer frem under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område undlod at afholde en regulær opdelt daglig hviletid på mindst 3 timer og 9 timer, da de længste hvil på 3 timer og 4 timer og 2 minutter blev påbegyndt den 11. november 2014 kl. 16.43 og afsluttet kl. 19.45, og påbegyndt igen den 12. november 2014 kl. 05.00 og afsluttet kl. 09.02, hvilket udgjorde en overtrædelse på 41 %,

14.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 7 - pause,**

ved som arbejdsgiver at være ansvarlig for, at chauffør [redacted] den 12. november 2014 kl. 15.34 til den 13. november 2014 kl. 04.32 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område undlod at afbryde kørslen i mindst 45 minutter efter 4 ½ times kørsel, idet kørslen først blev afbrudt af et hvil, efter en køretid på 11 timer og 14 minutter, hvilket udgjorde en overtrædelse af reglerne om køretiden på 149 %. Indenfor køretiden på 11 timer og 149 minutter blev der afholdt følgende lovlige pause: 18 minutter,

15.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 2, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 6, stk. 1 – kumuleret køretid, ved som arbejdsgiver at være ansvarlig for, at chauffør [redacted] den 15. november 2014 kl. 10.46 til den 16. november 2014 kl. 02.43 under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område havde en samlet køretid mellem 2 daglige hviletider på ikke under 12 timer og 3 minutter mod højst tilladt 10 timer, hvilket udgjorde en overtrædelse på 20 %,

16.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 11, nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 (køre- hviletidsforordningen) artikel 8, stk. 2, jf. artikel 4, litra g) – dagligt hvil, ved som arbejdsgiver at være ansvarlig for, at chauffør [redacted] den 15. november 2014 kl. 10.46 og 24 timer frem, under kørsel med lastbil [redacted] ad ukendt strækning på Fællesskabets område undlod at afholde en reduceret daglig hviletid på mindst 9 sammenhængende timer, da det længste hvil på 7 timer og 38 minutter blev påbegyndt den 16. november 2014 kl. 02.43 og afsluttet kl. 10.21, hvilket udgjorde en overtrædelse på 15 %,

17.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3 c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 15. nr. 5a, ved som arbejdsgiver at være ansvarlig for, at chauffør [redacted] den 11. november 2014 kl. 01.14 som fører af lastbil [redacted], indtastede Holland som begyndelsessted i tacografen, selvom køretøjet befandt sig i Danmark,

18.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3 c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen)



**artikel 15. nr. 5a,**

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 13. november 2014 kl. 02.56 som fører af lastbil [REDACTED], indtastede Holland som begyndelsessted i tacografen, selvom køretøjet befandt sig i Danmark,

19.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3 c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 15. nr. 5a,**

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 13. november 2014 kl. 13.57 som fører af lastbil [REDACTED], indtastede Holland som begyndelsessted i tacografen, selvom køretøjet befandt sig i Danmark,

20.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3 c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 15. nr. 5a,**

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 16. november 2014 kl. 10.14 som fører af lastbil [REDACTED], indtastede Holland som begyndelsessted i tacografen, selvom køretøjet befandt sig i Danmark,

21.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra, a,**

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 4. november 2014 kl. 01.28 til kl. 05.38 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område, benyttede et andet førerkort end hans eget personlige førerkort, idet han benyttede [REDACTED]

22.

**bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra, a,**

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 5. november 2014 kl. 22.45 til 6. november 2014 kl. 07.48 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område, benyttede et andet førerkort end hans eget personlige førerkort, idet han benyttede [REDACTED] førerkort,



23.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra, a,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 11. november 2014 kl. 01.21 til den 12. november 2014 kl. 00.22 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område, benyttede et andet førerkort end hans eget personlige førerkort, idet han benyttede [REDACTED] førerkort,

24.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra, a,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 12. november 2014 kl. 12.35 til kl. 20.56 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område, benyttede et andet førerkort end hans eget personlige førerkort, idet han benyttede [REDACTED] førerkort,

25.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra, a,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 13. november 2014 kl. 02.57 til kl. 13.57 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område, benyttede et andet førerkort end hans eget personlige førerkort, idet han benyttede [REDACTED] førerkort,

26.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen) artikel 14, stk. 4, litra, a,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 14. november 2014 kl. 09.33 til kl. 11.49 under kørsel med lastbil [REDACTED] ad ukendt strækning på Fællesskabets område, benyttede et andet førerkort end hans eget personlige førerkort, idet han benyttede [REDACTED] førerkort,

27.

bekendtgørelse nr. 328 af 28. marts 2007 § 13, jf. § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85 (kontrolapparatforordningen)

gen) artikel 14, stk. 4, litra, a,

ved som arbejdsgiver at være ansvarlig for, at chauffør [REDACTED] den 16. november 2014 kl. 10.21 til den 17. november 2014 kl. 17.32 under kørsel med lastbil [REDACTED] blandt andet gennem Kolding Retskreds, benyttede et andet førerkort end hans eget personlige førerkort, idet han benyttede [REDACTED] førerkort.

Alle tider er angivet i UTC-tid.

### **Påstande**

Anklagemyndigheden har nedlagt påstand om bøde

Tiltalte har erkendt sig skyldig i forhold 27 men i øvrigt nægtet sig skyldig.

### **Sagens oplysninger**

Der er afgivet forklaring af tiltalte [REDACTED] og tiltalte i sagen 3-33/2015, [REDACTED] samt af vidnet på [REDACTED]

Forklaringerne er lyddoptaget og gengives ikke i dommen.

Af erklæring fra [REDACTED] fremgår, at det i sagen omhandlede kontrolapparat har fået udført 2 års kontrol inden for de sidste 24 måneder, er i lovlig stand og har været monteret i køretøjet fra det var nyt. Kontrolapparatet er kalibreret korrekt, fungerer korrekt og er retvisende.

Der er under sagen fremlagt timesedler og fragtbreve udfyldt og underskrevet af tiltalte [REDACTED]

Tiltalte er ikke tidligere straffet.

### **Rettens begrundelse og afgørelse**

I sagen 3-33/2015 er [REDACTED] fundet skyldig i samtlige de kørsler, som tiltalte i henhold til arbejdsgiveransvaret er tiltalt for under denne sag. Det er derfor bevist, at tiltalte er skyldig i alle forholdene.

Straffen fastsættes til en bøde på 253.000 kr., jf. bekendtgørelse nr. 328 af 28. marts 2007 § 12, stk. 1, nr. 3, litra c, jf. Rådets forordning (EØF) nr. 3821/85, artikel 14, stk. 4, litra a, og artikel 15, stk. 2 og stk. 5a, og bekendtgørelse nr. 328 af 28. marts 2007 § 11, nr. 2 og nr. 3, jf. Europa-Parlamentets og Rådets forordning (EF) nr. 561/2006 artikel 6, 7 samt forordningens artikel 8, stk. 2, jf. artikel 4, litra g).

Forvandlingsstraffen fastsættes som nedenfor bestemt.

**Thi kendes for ret:**

[REDACTED] skal betale en bøde på 253.000 kr.

Forvandlingsstraffen for bøden er fængsel i 60 dage.

Tiltalte skal betale sagens omkostninger.

[REDACTED]  
[REDACTED]

## 9 The problem of having two different activities during the same minute. Fine of 4 600 € for driving 28h10min.

### EXECUTIVE SUMMARY

In this section, we will illustrate what happens when two activities are registered during the same minute. The tachograph may confuse the order of the activities, and this can lead to registering false data. This problem may occur due to the resolution with which activities are registered: in minutes, rather than seconds. It may also occur due to the requirement to automatically create a new driving status every day at midnight with the same characteristics of the previous one. These problems are not negligible: a driver received an unjust 4 600 € sanction because of them. When the case was brought to court and this problematic was explained, the sanction got canceled.

Before presenting the example, we pose some questions:

- Is there a violation of the regulation if two different activities happen to be in the same calendar minute?
- Does it make sense to have activities with no duration?

On 31/Mar/2009, a driver received a monetary sanction for not having had the required daily rest period between 06/Mar/2009 11:21 (end of the previous daily rest period) and 07/Mar/2009 20:53 (beginning of the following rest period) and having driven a total of 28h and 10min in this interval. In Figure 9.1 we see an excerpt of the fine (the complete fine, along with the court sentence, can be found at the end of this section).

Zigora / Sanção	Avanço / Precepção / Sanção
**4.600,00** euros	Artº 201 y 88. ROTT-RO.1211/90-28-C8 Artº 143-146 LOTF 16/87 DE 30-07
Señalado/Pointa Hecho Denunciado	INCUMPLIMIENTO DEL HORARIO DE CONDUCCION EN JORNADA 4-03-09 SEGUN REGISTROS DE TACOGRAFO DIGITAL INSTALADO EN EL VEHICULO; INICIA CONDUCCION A LAS 11.21 H. DE DIA 4-03-09 Y FINALIZA A LAS 20.53 H. DE DIA 7-3-09 TRAS UNA CONDUCCION DE 28.10 H. SIN DESCANSO DIARIO.-

Figure 9.1: Excerpt of the fine, indicating a penalty of 4 600 €.

We examine the *Driver activity data* stored in the driver card on the critical dates. Relevant excerpts can be found in Figures 9.2 and 9.3.

As we can see in Figure 9.2, there are two events registered on 07/Mar/2009 00:00. The first, with *activity DRIVING* is the **driver status at 00:00** that the law requires, copying the last activity from the previous day (which is registered at 22:05). However, in this case the driver also changed the driving status to *BREAK/REST* at 00:00, which resulted with the tachograph registering two events on the same date and time. This violates the requirement **Type3** in Decent Design, since two activities cannot happen at the exact same moment.

This irregularity is very frequent in driver cards: **out of the 1 282 687 analyzed, 44.71% of them contained this irregularity.**

In this case, we have to take into account that when different activities are assigned to the same minute, it is impossible to know in what order different software will output them. In

```

activityChangeInfo ® (2) -> 11:21, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (3) -> 12:12, WORK®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (4) -> 12:16, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (5) -> 13:22, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (6) -> 14:23, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (7) -> 16:54, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (8) -> 17:24, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (9) -> 19:06, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (10) -> 19:37, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (11) -> 21:38, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (12) -> 22:05, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityDailyRecord ® (354) -> 07/03/2009 00:00:00
activityChangeInfo ® (1) -> 00:00, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (2) -> 00:00, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (3) -> 09:06, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (4) -> 13:12, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (5) -> 15:12, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (6) -> 19:28, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (7) -> 20:15, DRIVING®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (8) -> 20:51, WORK®, INSERTED®, SINGLE®, DRIVER®
activityChangeInfo ® (9) -> 20:53, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®

```

Figure 9.2: EF\_Driver\_Activity\_Data.

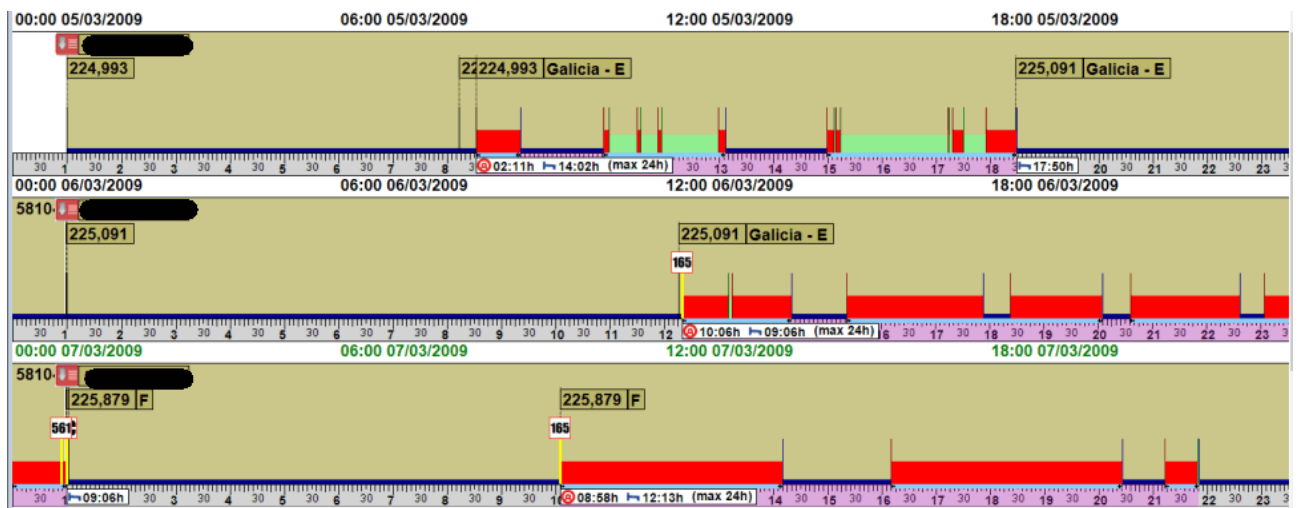


Figure 9.3: Graphic made with the data in EF\_Driver\_Activity\_Data.



this case, the program used by the police officers changed their order, and this is the reason why a driving period of 28h10min was registered.

Furthermore, in this case the irregularity caused an unjustified fine being issued. In Figure 9.2 (from Police Controller®), the *DRIVING* activity is listed before the *BREAK/REST*. From there we can infer that the driver had its daily rest period from 00:00 to 09:06 on 07/Mar/2009.

But there is another problem in this case, a problem of mathematical consistency, that is a violation of **Type1** in Decent Design. Articles 4 (Paragraph 039) of Regulation 3821/85 and 3.4 (Paragraph 50) of Regulation 799/2016 stipulate that *This function* [the one that computes the driver's activities] *shall output activity changes to the recording functions at a resolution of one minute*. But at the same time, the variable **TimeReal**, as is defined in Appendix 1 of both regulations (see Figure 9.4), stipulates that tachographs should store dates with the resolution of one second!

#### 2.162. **TimeReal**

Code for a combined date and time field, where the date and time are expressed as seconds past 00h.00m.00s. on 1 January 1970 GMT.

```
TimeReal{INTEGER:TimeRealRange} ::= INTEGER(0..TimeRealRange)
```

**Value assignment — Octet Aligned:** Number of seconds since midnight 1 January 1970 GMT.

The max. possible date/time is in the year 2106.

Figure 9.4: Article 2.162 of Regulation 799/2016, which coincides with article 2.110 of Regulation 3821/85.

Tachographs do not really register the driver's activities in minutes, but in seconds. There is a part of the law dedicated to stipulating how to manage and transform the activities registered in seconds to assign a single activity to each minute.

The fact that tachographs are allowed to register two activities at the same time leads to inconsistencies or wrong interpretations of the driver's activity. If the time resolution was in seconds instead of minutes, this might have been avoided, for instance if the midnight activity was registered at 00:00:00 and the change to *BREAK/REST* at 00:00:13.

Due to the flaws of the regulation and the behavior of different **ddd** file readers, a fine is unfairly given to a driver that did not break the law. This should not be allowed to happen.

As we have shown in this document, irregular files are not an exception, so every fine must be supported by the evidence found in the vehicle file and/or driver file. If they contain some kind of irregularity, the data cannot be trusted.

**ASUNTO:**

Notificación de iniciación de expediente

	<b>MINISTERIO DEL INTERIOR</b>
	Jefatura Provincial de Tráfico de BURGOS
Segovia, 10 09004-BURGOS	

1. FECHA DENUNCIA HORA		N. EXPEDIENTE
2. PRECEPTO INFRINGIDO		
Artículo 39.8	REGLAMENTO GENERAL DE CIRCULACIÓN	Importe total multa 480.00 EUR
		Pendiente de pago 480.00 EUR

**INFORMACIÓN:**

LA MULTA PUEDE ABONARLA POR UNO DE LOS SIGUIENTES MEDIOS:

- a) En cualquier oficina bancaria de la entidad legalmente autorizada, actualmente SCH, presentando esta notificación.
- b) Enviando GIRO POSTAL a esta Jefatura, anotando en el epígrafe 'TEXTO' del Talón para destinatario el NÚMERO DE EXPEDIENTE y la FECHA DE LA DENUNCIA arriba indicados.

**3. LUGAR**Vía  
N-120 P. Km.:136 sentido:LOGROÑO (BURGOS)**4. HECHO QUE SE NOTIFICA****CIRCULAR CON EL VEHICULO RESEÑADO EN UN TRAMO RESTRINGIDO CARECIENDO DE LA AUTORIZACION ESPECIAL CORRESPONDIENTE. -INCUMPLE LA RESOLUCION DE RESTRICCIONES A LA CIRCULACION DE LA DGT DE FECHA 020209 (BOE 36). SEMIRREMOLQUE****5. DATOS VEHICULO**Matrícula...:  
Clase.....: TRACTOR  
Marca.....: VOLVO  
Modelo.....: FH 42 B3 4**6. DATOS DEL INTERESADO**

Se ha formulado contra Vd. la denuncia que en el margen superior se expresa, por cuyo motivo se ha iniciado el expediente sancionador bajo el número que también se indica, siendo el órgano instructor del procedimiento la Unidad de Sanciones de la Jefatura Provincial de Tráfico y el órgano competente para su resolución el Jefe Provincial de Tráfico, de conformidad con lo dispuesto en el artículo 68.1 del Texto Articulado de la Ley sobre Tráfico, Circulación de Vehículos a Motor y Seguridad Vial aprobado por Real Decreto Legislativo 339/1990, de 2 de marzo, lo que se le notifica haciéndole saber el derecho que le asiste, de conformidad con el artículo 12 del Reglamento del Procedimiento Sancionador, aprobado por Real Decreto 320/1994, de 25 de febrero, de alegar por escrito ante la Jefatura Provincial de Tráfico de BURGOS, Segovia, 10 09004 BURGOS, con aportación o proposición de las pruebas que considere oportunas, dentro de los QUINCE DIAS HABILES siguientes al de la recepción de la presente notificación, lo que en su defensa estime conveniente.

La multa, cuyo importe se consigna en el recuadro correspondiente, podrá abonarse con carácter voluntario dentro del plazo de 30 días naturales siguientes a la recepción de la presente notificación, con una reducción del 30% de su cuantía, siendo la cantidad a abonar con tal reducción de 316.00 euros, y ello llevará consigo la renuncia a formular alegaciones, conforme a lo dispuesto en los artículos 87.1 y 77.2 de la mencionada Ley, y la terminación del procedimiento sin necesidad de dictar resolución expresa, sin perjuicio de la posibilidad de interponer los recursos correspondientes.

De no pagar en la forma indicada, ni efectuar alegaciones en el plazo antes citado, la iniciación del procedimiento será considerada propuesta de resolución, según señala el artículo 13.2 del Reglamento del procedimiento para el ejercicio de la potestad sancionadora, aprobado por Real Decreto 1398/1993, de 4 de agosto, con los efectos previstos en los artículos 18 y 19 de la citada norma.

Este expediente caducará al año de su iniciación salvo que concurren causas de suspensión (artículo 81.2 del Texto Articulado de la Ley sobre Tráfico, Circulación de Vehículos a Motor y Seguridad Vial, aprobado por Real Decreto Legislativo 339/1990, de 2 de marzo).

Recibido 22/05/2009.

EL JEFE DE LA UNIDAD DE SANCIONES



Recibido

22/05/2009

Arabako  
Foru AldundiaHerrilen eta Gerraio Salla  
Gerraio ZerbitzuaDiputación  
Foral de ÁlavaDepartamento de Obras Públicas y  
Transportes  
Servicio de Transportes

Expedientea / Expediente	Bolumena / Bolumen	Martxula / Matrícula
	511.631	
Inbide / Vértice	Kateg. / Categ.	Alto / Remolque
ARTICULADO	N3	
Eguna / Fecha	Ordua / Hora	Bidea / Vía
		A-1
		83,2
Hautatzen ari den artikulua / Artículo presc. infringido		
140.20-143.1.h LOTT/ART. 6.1 RCR. 861/2006		
Zigorra / Sanción		Arau Zigorra / Presc. Sanción
**4.600,00** euros		Art. 201 y SS. LOTT-RO.1211/96-28-C9 Art. 143-146 LOTT 16/87 DE 30-07

ALAVA

Salauskidetzaren  
Mahaia Denuntziatzailea

INCUMPLIMIENTO DEL HORARIO DE CONDUCCIÓN EN JORNADA 5-03-09 SEGUN REGISTROS DE TACOGRAFO DIGITAL INSTALADO EN EL VEHICULO; INICIA CONDUCCION A LAS 11.21 H. DE DIA 5-03-09 Y FINALIZA A LAS 20.53 H. DE DIA 7-3-09 TRAS UNA CONDUCCION DE 26.10 H. SIN DESCANSO DIARIO.-

Erakunde Salatzilea / Institución Denunciante

ERTZAINTZA (Nº AGENTE: [REDACTED])

Goiko aldean adierasten den salakete egin da zure aurka. Arrazoi horregatik, honako zigor espediente honi hasiera eman zaio. Horren berri ematen zaizu, jakinaraziz Arabako Foru Aldundiaren Erregistro Orokorrean (Probintzia Plazako 5. x. an 01001 VITORIA-GASTEIZ) HAMABOST LANEGUNEKO epean egokitatzat jotzen dituzun alegazioak eta frogak idatziz aurkatzeko eskubidea duzula.

Halaber, adierasten zaizu, 16/1987 Legearen 146.3 artikuluan ezarritakoa aplikatuz, zigor espedientearen hasieran jakinarazpen honetatik hamabost eguneko epean zigorra ordeintzekotan, 435eko murrisketa izango duzula. Kasu horretan, haren zenbatekoa \*\*3.450,00\*\* euros izango da.

Zigor ebaspena eman baino lehenago ordeinketa egitekotan, horrek prozeduraren amaiera skarriko du berekin, aipatutako 16/1987 Legean ezarritakoaren arabera. Hala ere, prozedura ebaspen espreu batekin bukatu izan balitz jarri zenitzakeen helegite berberak aurkeztu ahal izango dituzu.

Se ha formulado contra usted la denuncia que en el margen superior se expresa, por cuyo motivo se ha iniciado el presente expediente sancionador. Lo que se le notifica haciéndole saber el derecho que le asista de presentar por escrito en Registro General de la Diputación Foral de Álava C/Plaza de la Provincia, nº 5, 01001 VITORIA-GASTEIZ en plazo de QUINCE DIAS HABILES las alegaciones y pruebas que estime convenientes.

Asimismo se le comunica que, en aplicación de lo previsto en el artículo 146.3 de la Ley 16/1987, el pago de la sanción en el plazo de quince días desde esta notificación de inicio del expediente sancionador reducirá la misma en un 25%, siendo en este caso su importe \*\*3.450,00\*\* euros.

El pago realizado con anterioridad a que se dicte la resolución sancionadora, de conformidad con lo previsto en la citada Ley 16/1987, equivaldrá a la terminación del procedimiento. No obstante, usted podrá interponer idénticos recursos a los que le hubieran correspondido en el caso de que el procedimiento hubiese terminado mediante resolución expresa.

Vitoria-Gasteiz, 2009 (e)ko Maiatz 15a

Vitoria-Gasteiz, 15 de Mayo de 2009

Bideratzailea / La Instructora

ZEURE IDAZKI GUZTIAN ADIERAZI EZAZU BETI ESPEDIENTE ZK. Zigorren zenbatekoa Arabako Foru Aldundiaren [REDACTED] zk.ko kontu korrenterako transferentzia bidez ordaindu ahal izango da.

EN TODOS SUS ESCRITOS HAGA CONSTAR SIEMPRE EL Nº DE EXPEDIENTE. El importe de la sanción podrá ser abonado mediante transferencia bancaria a la c/c nº [REDACTED] Titularidad de la Diputación Foral de Álava.



Arabako  
Foru Aldundia

Herrilan eta Garraio Sola  
Garraio Zerbitzua



Diputación  
Foral de Álava

Departamento de Obras Públicas y  
Transportes  
Servicio de Transportes

Expediente/Expediente: [REDACTED]

12230 profesional zenbakia duen ERTZAINTZA  
31/03/2009 egindako salaketa ikusirik.

Egitateak lurberako garraioen legeriaren haupena  
izan litekeela kontutan hartur.

Ahustuaren 8ko 186/07 Foru Dekretuaren bidez  
Garraio Zerbitzuzburuari esleitutako eskumenez baliatuz,

EBATZI DUT

[REDACTED] egindako  
salaketari buruzko zigor-espedientea irekitzea.

[REDACTED] funtzionarioa espediente  
konetarako bideratzailerik izendatzea. Izendatua ezetsi ahal  
izango da Administrazio Publikoen Lege Araubiduari eta  
Administrazio Jardunbide Arruntari buruzko azaroaren 26ko  
30/92 Legearen 29. artikuluan ezarritakoaren arabera.

Espedientean interesa dutenak jakinaraztea  
espediente hori ebazteko ahalmena Arabako Foru Aldundiko  
Herrilan eta Garraio zuzendaritza dagokiola.

Aditzera ematen da, 16/1987 Legearen 146.2  
artikuluan xedatutakoaren arabera, espedientearen ebazpen  
espresuaren jakinarazpena urtebeteko epean egingo dela,  
arabaki honen datarik kontatzen hasita, esleituari egotz  
dakiokoen errazoi batengatik prozedura gelditu ezean  
(30/92 Legearen 44.2 artikulua "in fine", 4/99 Legeak  
eman dion idazkeraren arabera), edo espedientea  
ordainketarekin bukatu ezean, horrek espedientearen  
amara baltakar berekin, 16/1997 Legearen 146.2  
artikuluan xedatutakoaren arabera.

Vista la denuncia formulada en fecha 31/03/2009  
por ERTZAINTZA, n.º profesional [REDACTED]

Considerando que los hechos pudieran ser  
constitutivos de infracción a la legislación de  
transportes terrestres:

En ejercicio de las competencias atribuidas a la  
Jefe del Servicio de Transportes por Decreto Foral n.º  
186/07, de 8 de agosto.

RESUELVO

la iniciación de expediente sancionador sobre la  
denuncia formulada a [REDACTED]

El nombramiento de Instructor para este expediente  
a la funcionaria Dña. [REDACTED] que podrá ser  
objeto de recusación conforme a lo previsto en el  
artículo 29 de la Ley 30/92, de 26 de noviembre, de  
Régimen Jurídico de las Administraciones Públicas y del  
Procedimiento Administrativo Común.

Notifíquese a los interesados en el expediente que  
la competencia para la resolución del mismo corresponde a  
la Directora de Obras Públicas y Transportes de la Excm.  
Diputación Foral de Álava.

Se significa que, de conformidad con lo dispuesto  
en el artículo 146.2 de la Ley 16/1987, la notificación  
de la resolución expresa del expediente se producirá en  
el plazo de un año contado desde la fecha de este  
acuerdo, salvo que el procedimiento se paralice por causa  
imputable al denunciado (artículo 44.2 "in fine" de la  
Ley 30/92, según redacción de la Ley 4/99), o salvo que  
el expediente finalice mediante el pago que equivale a la  
terminación del mismo según lo dispuesto en el artículo  
146.3 de la citada Ley 16/1987.

Vitoria-Gasteiz, 2009 (a)ko Maiatz 15a

Vitoria-Gasteiz, 15 de Mayo de 2009

Garraio Zerbitzuzburua / Jefe del Servicio de Transportes





Arabako Foru Aldundia  
Diputación Foral de Álava

Departamento de Obras Públicas y  
Transportes

*Recibido*

*23/06/2010*

El Diputado Foral Titular del Departamento de Obras Públicas y Transportes, se ha servido dictar con fecha [REDACTED], la siguiente Orden Foral [REDACTED].

"Servicio de Transportes  
Nº Expte. : [REDACTED]"

**Estimar el recurso de alzada interpuesto por [REDACTED]  
contra la resolución que le impuso una sanción en materia de transporte.**

[REDACTED], interpuso con fecha 23/04/2010 un recurso de alzada contra la resolución sancionadora dictada en el expediente [REDACTED], por la que se le impuso una multa de \*\*4.600,00\*\* euros, por infracción MUY GRAVE cometida al incumplir el horario de conducción en jornada 6-03-09 según registros de tacógrafo digital instalado en el vehículo; inicia conducción a las 11:21 h. de día 6-03-09 y finaliza a las 20:53 h. de día 7-3-09 tras una conducción de 28:10 h. sin descanso diario. (Fecha denuncia: [REDACTED], Matrícula: [REDACTED]).

Se fundamenta el recurso cuestionando el examen que se ha hecho de los archivos digitales, como resultado de un diseño del sistema que ocasionalmente puede dar lugar a resultados inasumibles, como en el caso que se examina. El problema deriva de que, conforme a lo establecido en el Reglamento (CEE) Nº 3821/85, relativo al aparato de control en el sector de los transportes por carretera, el tacógrafo registra sobre la base de minutos, pero en el mismo minuto se pueden registrar dos actividades distintas de las cuatro registrables distintas. Al no fraccionar las actividades en segundos, el tacógrafo no reconoce el orden en que una y otra se desarrollan en el mismo minuto, por lo que cabe que atribuya una de las dos actividades al espacio temporal que entonces se inicia, cuando en realidad ésa es aquélla que en ese preciso momento finalizó. Precisamente es lo que ha sucedido en este caso: el sistema puede reflejar la actividad que se inicia como descanso o como conducción, pero, por el diseño que se cuestiona, ha decidido computarlo como conducción, cuando por un criterio de razón es inasumible.

Y se alega que es inasumible porque resulta imposible que se produzca una conducción ininterrumpida de quince horas y seis minutos sin un solo segundo de pausa, y, por el contrario, los datos registrados serían plenamente aceptables y lógicos si se consideran como hechos producidos que al finalizar a las 23:59 horas su actividad el conductor inició su descanso y que a las 9:06 del siguiente comenzó su trabajo con el vehículo.

También invoca como argumento para su recurso la caducidad producida por el transcurso de más de un año entre la fecha de la denuncia, 31/03/2009, y aquélla otra, 23/04/2010, en que le fue notificada la imposición de la sanción, en los términos que resultan de la sentencia del Tribunal Supremo de 4 de junio de 2004.





Concluye instando que se disponga el archivo del expediente.

En respuesta a lo anterior, y comenzando por el motivo de la caducidad, ha de decirse que la interpretación en que ha querido sustentarse el recurso ha quedado totalmente superada con la modificación legislativa introducida por la Ley 29/2003, de 8 de octubre. Debe significarse, en primer término, que el artículo 146 de la Ley 16/1987, de 30 de julio, tras la modificación operada por la Ley 29/2003, de 8 de octubre, presenta el siguiente contenido: "2. *El procedimiento para la imposición de las sanciones previstas en la presente Ley se ajustará a las normas específicas que reglamentariamente se establezcan, y en lo no previsto por éstas, se estará a lo establecido en la Ley 39/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.- Con objeto de establecer la posible existencia de alguno de los supuestos de reincidencia o habitualidad en la conducta infractora contemplados en este capítulo, la tramitación de todo procedimiento sancionador por la comisión de las infracciones tipificadas en esta Ley deberá incluir expresamente la consulta al Registro General de Transportistas y de Empresas de Actividades Auxiliares y Complementarias del Transporte que permita conocer si existen sanciones previas que determinen dicha reincidencia o habitualidad.- El plazo máximo en que deberá notificarse la apertura del procedimiento sancionador será de un año, contado desde la fecha de iniciación del procedimiento.- El procedimiento para la imposición de las sanciones previstas en esta Ley se iniciará de oficio por acuerdo del órgano competente, bien por propia iniciativa o como consecuencia de orden superior, a petición razonada de otros órganos o por denuncia.- Los órganos de las distintas Administraciones públicas competentes para sancionar las infracciones previstas en esta Ley comunicarán al Registro General de Transportistas y de Empresas de Actividades Auxiliares y Complementarias del Transporte a que hace referencia el artículo 53 las sanciones que impongan, con objeto de que se realice la pertinente anotación, en el plazo máximo de 30 días, contados desde la resolución sancionadora que ponga fin a la vía Administrativa*".

Esta norma introduce en dicho precepto una regla que estaba ausente en el mismo en la redacción anterior sobre la cual se dictaron sentencias del Tribunal Supremo, como la alegada, y que viene a establecer, ya sin duda, que la única forma de incoación en esta materia, a diferencia de la que se produce en la de tráfico y seguridad vial, es la que coincide con la Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, que hace coincidir la fecha del cómputo del plazo para la resolución de los procedimientos administrativos iniciados de oficio, como acontece en el caso de los procedimientos sancionadores, con "la fecha del acuerdo de iniciación". Queda claro, pues, que la Ley liga inmediatamente la caducidad que regula al momento de incoación que también regula inmediatamente y a renglón seguido, y toda vez que el procedimiento sancionador se iniciará de oficio por acuerdo del órgano competente, aunque dicho acuerdo pueda estar motivado por orden superior, petición razonada, propia iniciativa o denuncia, y siendo indiscutible que el agente de la autoridad, salvo habilitación expresa, y en materia de transportes (al contrario de lo que sí ocurre en materia de tráfico -ex artículo 10.1 del Real Decreto 320/1994, de 25 de febrero, por el que se aprueba el Reglamento del Procedimiento Sancionador en materia de Tráfico, Circulación de Vehículos a Motor y Seguridad Vial) no aparece prevista tal habilitación desde el punto de vista normativo, con lo que no es el agente un órgano competente para la incoación del procedimiento, no cabiendo entender tal cosa ni en la letra ni en el espíritu de la Ley. Quien es órgano competente, no es otro que la Jefatura del Servicio de Transportes de la Diputación Foral de Álava, resultando imposible, como ya quedó dicho, apreciar tal condición en los agentes de la autoridad denunciantes, y tal autoridad dispuso iniciar el procedimiento el 15/05/2009, con lo que no ha transcurrido el espacio previsto para que haya de admitirse la pretendida caducidad.



Volviendo al primero de los motivos del recurso, y sin perjuicio de que en su ámbito interno la reclamante haya de instruir adecuadamente a sus empleados en el uso correcto del tacógrafo, no cabe sino admitir el argumento que se ha expuesto, porque resulta inasumible el resultado que se desprendería de dar por ciertos los registros en los términos en que se ha hecho al imponer la sanción.

Visto el informe jurídico del Técnico-Letrado del Servicio de Transportes, con relación al recurso de alzada interpuesto contra la resolución de este expediente sancionador.

En virtud del ejercicio de las competencias que me corresponden, de conformidad con lo dispuesto en el Decreto Foral 186/07, del Diputado General, de 8 de Agosto,

### DISPONGO

Estimar el recurso de alzada interpuesto por [REDACTED], con fecha [REDACTED], contra la resolución sancionadora dictada en el expediente [REDACTED], por la que se le impuso una multa de \*\*4.600,00\*\* euros, por presunta infracción muy grave cometida al incumplir el horario de conducción en jornada 6-03-09 según registros de tacógrafo digital instalado en el vehículo, dejando sin efecto alguno la sanción recurrida."

Contra esta resolución que pone fin a la vía administrativa podrá interponer recurso contencioso-administrativo, en el plazo de dos meses a contar del día siguiente al de la notificación, ante el Juzgado Contencioso-Administrativo competente.

Lo que comunico a Vd. a los efectos oportunos.

Vitoria-Gasteiz a 17 de junio de 2010

[REDACTED]  
Fdo: [REDACTED]  
Jefa del Servicio de Transportes

## 10 The unbelievable “card not inserted” event in driver cards.

**EXECUTIVE SUMMARY** In this section we will show that Regulations 3821/85 and 799/2016 allow a paradoxical combination of driver status: the recording of driving activity with no driver card inserted. A driver card which is not inserted can not possibly record that it has been not inserted. The decisions that have to be taken by software developers under these circumstances could try to be logical and fair, but do logical and fair decisions comply with the law?

Let us consider the following situation concerning data status. Imagine the combination:

```
activity = Driving
cardstatus = Not inserted
vehicleguidance = Single
slot = Slot 1
```

This combination complies with the data range and is not forbidden in a driver file by the regulation. But we should ask ourselves: what does this theoretically possible data status mean, exactly? Take into account that this would be a situation in which, at the moment in which the card was inserted, it memorized the fact that it was not inserted and driving. This is a physical paradox, since it is physically impossible to be inserted and not inserted at the same time.

Now let’s see what Police Controller® says about a case like this. We begin by finding a driver file where this kind of failure occurs, depicted in Figure 10.1.


	Driving - Not Inserted in Driver File	Date 08/09/2016 19:02:00 [Drive] [Removed] [Single] [DriverSlot]
	Driving - Not Inserted in Driver File	Date 09/09/2016 00:00:00 [Drive] [Removed] [Single] [DriverSlot]

Figure 10.1: Node Details/Failures of a driver file where the card is not inserted as seen in Police Controller®.

If we interpret *DRIVING* with card not inserted as *DRIVING*, we obtain the graphic of Figure 10.2, which shows an enormous driving period.

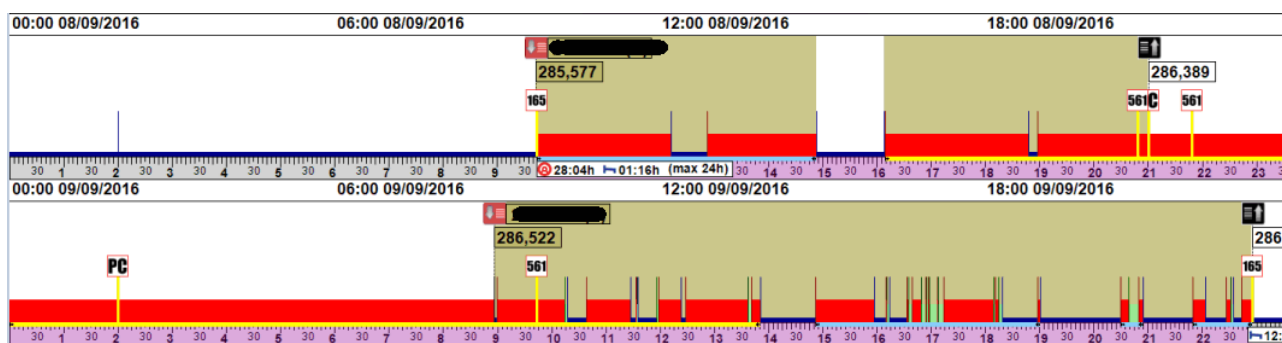


Figure 10.2: Node Single Graphics of the driver file above as seen in Police Controller®, showing an unbelievably long driving period.



By checking the driver activity (Figure 10.3), we see that there are two instances of [*DRIVING*, not inserted].

```

▷ activityDailyRecord® (86) -> 07/09/2016 00:00:00
▲ activityDailyRecord® (87) -> 08/09/2016 00:00:00
  activityChangeInfo® (1) -> 00:00, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (2) -> 07:43, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (3) -> 07:44, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (4) -> 10:13, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (5) -> 10:53, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (6) -> 12:54, BREAK/REST®, NOT INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (7) -> 14:09, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (8) -> 14:10, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (9) -> 16:49, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (10) -> 16:59, DRIVING®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (11) -> 19:02, DRIVING®, NOT INSERTED®, SINGLE®, DRIVER®
▲ activityDailyRecord® (88) -> 09/09/2016 00:00:00
  activityChangeInfo® (1) -> 00:00, DRIVING®, NOT INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (2) -> 06:57, BREAK/REST®, INSERTED®, SINGLE®, DRIVER®
  activityChangeInfo® (3) -> 07:00, DRIVING®, INSERTED®, SINGLE®, DRIVER®

```

Figure 10.3: Node *EF\_Driver\_Activity\_Data* of the driver file above as seen in Police Controller®, showing two instances of [*DRIVING*, not inserted].

If instead we interpret these periods of paradoxical data status as periods of *NO DATA*, which is the suggested driver status introduced in Section 3, the long period of driving shown in Figure 10.2 is now no longer there, as can be seen in Figure 10.4.

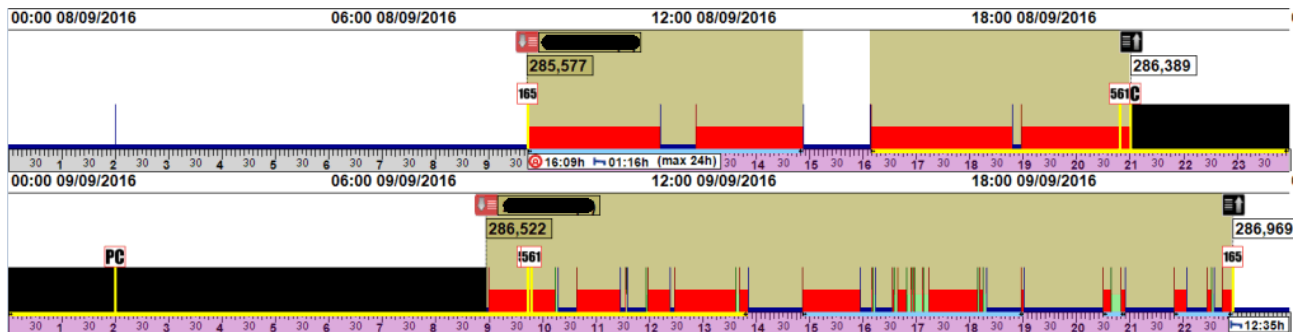


Figure 10.4: Node *Single Graphics* of the driver file above with *NO DATA* instead of [*DRIVING*, not inserted] as seen in the Police Controller®, showing reasonable driving periods.

Of course, *NO DATA* is not a valid status in Regulations 3821/85 and 561/06. An alternative is to interpret the impossible value as *REST*. The result of doing so can be seen in Figure 10.5.

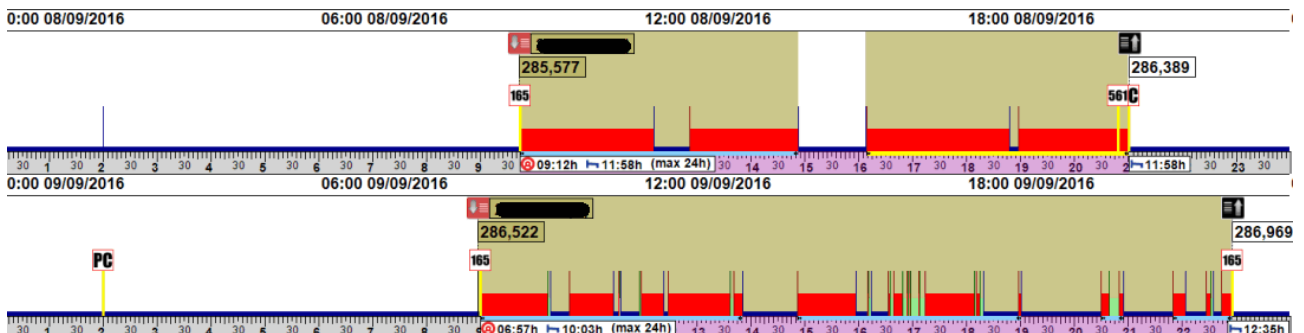


Figure 10.5: Node *Single Graphics* of the driver file above with *REST* instead of [*DRIVING*, not inserted] as seen in the Police Controller®, showing reasonable driving periods.

We end this section with some questions:

1. If the combination [*DRIVING*, not inserted] is considered correct (as it is by the regulations), should we fine drivers when it occurs?
2. If the combination is considered a serious mistake and instead we change the activity to *NO DATA* or *REST*, are we violating the regulation?
3. How does other software written to compute information on driver activity handle situations such as this one, where there are physically impossible values?

Be aware that data analysis from an extensive european legal service provider's database showed that 4.73 % of the files have this kind of combination.

This is a problem of **Type3** in Decent Design. It is also the most compelling evidence that **Type3** is necessary in the list of requirements.



## 11 Over speeding in TREP03 in less than 60 seconds, the simplest and easiest case of verification

**EXECUTIVE SUMMARY** In the present case, we will show that the rules for triggering and storing the *Over speeding* event stipulated by the law are in some cases ignored by tachographs. This implies a violation of the regulation.

In Sections I of Regulation 3821/85 and 1 of 799/2016, the precise definition of *Over speeding* is given (in (bb) and (hh) respectively).

(hh) 'over speeding' means:

exceeding the authorised speed of the vehicle, defined as any period of more than 60 seconds during which the vehicle's measured speed exceeds the limit for setting the speed limitation device laid down in Council Directive 92/6/EEC <sup>(1)</sup>, as last amended;

Figure 11.1: Article 9.7 of Regulation 3821/85

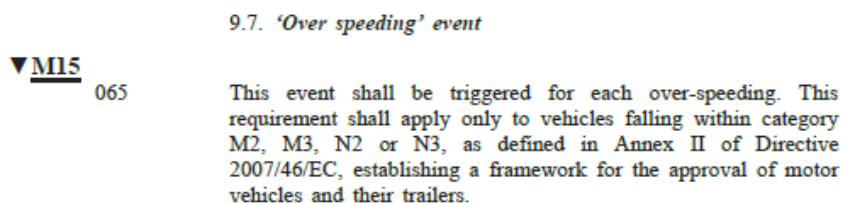


Figure 11.2: Council Directive 92/6/EEC (1)

The maximum authorized speed for trucks is 90 km/h.

We have encountered vehicle files where the *Over speeding* event is triggered and stored in the tachograph's TREP03 module while the vehicle exceeds the authorized speed for a period of 3 or 4 seconds. According to the regulation, this event should not be stored, since it is not a period of more than 60 seconds, therefore, it does not fit into the definition of *Over speeding* given by the law.

```

Root: TREP03 Events and Faults® (valid)
vuOverSpeedingEventRecord® (11)
  eventType®:7 - Speeding®
  eventRecordPurpose®:One_of_the_5_most_serious_events_over_the_last_365_days
  eventBeginTime®:12/04/2016 12:03:53
  eventEndTime®:12/04/2016 12:03:56
  maxSpeedValue®:93
  averageSpeedValue®:92
  cardNumberDriverSlotBegin®:
    cardType®:Driver Card®
    cardIssuingMemberState®:E
    cardNumber®:
      ownerIdentification®:
      cardConsecutiveIndex®:0
      cardReplacementIndex®:0
      cardRenewalIndex®:0
  similarEventsNumber®:0

```

Figure 11.3: Data from TREP03 module of the vehicle file. It recorded an *Over speeding* event on 12/Apr/2016 from 12:03:53 until 12:03:56. The *Over speeding* event lasts only 3 seconds.

#### C - EXAMPLES WHERE THE TACHOGRAPH DOES NOT MEET THE SPECIFICATIONS SET OUT IN THE REGULATIONS:

-(TREP03) 12/04/2016 12:03:53-12/04/2016 12:03:56 Interval:00:00:03. Speed Average:92. One of the 5 most serious events over the last 365 days.

Figure 11.4: Screenshot of module **Kalamua** from Police Controller®, which detects the incompatibility between what the tachograph actually does and what the law stipulates.

Big data processed by a european legal service provider's database shows **extensive** instances of this kind of mistake. This is a violation of FORMALLY VERIFIED SOFTWARE condition 3. According to the new regulation coming into force, the information in TREP03 will be sent automatically to police officers via wireless technology, with no need for road control. This is a dangerous situation, since as we have shown, tachographs do register infractions in TREP03 that should not have been considered so, according to the regulation.

## 12 Big divergences between TREP03 and TREP04 in Over speeding

**EXECUTIVE SUMMARY** In the present case, we will show that the trigger and storage rules for the *Over speeding* event stipulated by the law are in some cases ignored by tachographs.

The law says:

3.12.8	<i>Events data</i>	For the purpose of this subparagraph, time shall be recorded with a resolution of 1 second.	
(117) The recording equipment shall record and store in its data memory the following data for each event detected according to the following storage rules:			
Over speeding (1)	<ul style="list-style-type: none"> <li>— the most serious event for each of the 10 last days of occurrence (i.e. the one with the highest average speed),</li> <li>— the 5 most serious events over the last 365 days.</li> <li>— the first event having occurred after the last calibration</li> </ul>	<ul style="list-style-type: none"> <li>— date and time of beginning of event,</li> <li>— date and time of end of event,</li> <li>— maximum speed measured during the event,</li> <li>— arithmetic average speed measured during the event,</li> <li>— card type, number, issuing Member State and generation of the driver card (if applicable),</li> <li>— number of similar events that day.</li> </ul>	

Figure 12.1: Article 12.8. of 3821/85

Can we guarantee that the tachograph does this correctly in TREP03? Not at all. In fact, in many vehicle files, the *Over speeding* event storage rules do not seem to follow the regulation. There are *Over speeding* events registered in the TREP03 module, which leads us to expect that they must meet one of the three conditions given by articles 12.8. and 3.12.8 of 3821/85 and 799/2016. As we will show, this is not always the case. Moreover, comparing this data with the one stored in TREP04 module (where detailed speed of the vehicle is stored) we encounter more serious events (even occurring in the same day) that have not been stored in TREP03 (in spite of being **the most serious events for one of the 10 last days of occurrence or one of the 5 most serious events over the last 365 days**), violating what the law stipulates. Besides, we also see that the information in TREP03 and in TREP04 is sometimes in mutual contradiction.

The following fragments of data from two different vehicle files can serve as an example to illustrate this problem. In the first example, Figure 12.2, we can observe that the tachograph has selected a particular *Over speeding* event registered in TREP03 as one of the most serious events for one of the last 10 days of occurrence:

```

Root: TREP03 Events and Faults® (valid)
vuOverSpeedingEventRecord® (9)
  eventType®:7 - Speeding®
  eventRecordPurpose®:The_most_serious_event_for_one_of_the_last_10_days_of_occurrence
  eventBeginTime®:08/06/2015 06:12:31
  eventEndTime®:08/06/2015 06:12:35
  maxSpeedValue®:94
  averageSpeedValue®:92
  cardNumberDriverSlotBegin®:
    cardType®:Driver Card®
    cardIssuingMemberState®:E
    cardNumber®:
      ownerIdentification®:
      cardConsecutiveIndex®:0
      cardReplacementIndex®:0
      cardRenewalIndex®:0
  similarEventsNumber®:1

```

Figure 12.2: Data from TREP03 module of the vehicle file. It recorded an *Over speeding* event on 08/Jun/2015 from 06:12:31 until 06:12:35.

The problem is twofold: not only does the event last only four seconds, and therefore should not be considered an *Over speeding* event (since the law establishes a minimum of 60 seconds of exceeding the speed limit in order for it to be considered *Over speeding*), but also there is an apparent arbitrariness of the tachograph in selecting this event as the most serious of the day, since it is inconsistent with the data recorded in TREP04 as we shall see.

If we analyse the data stored in TREP04, we can observe that there had been other *Over speeding* infractions committed that same day, some of them being more serious than the one the tachograph regarded as the worst one. Police Controller® is able to detect the irregularity of selecting this particular event as the most serious, and shows different counterexamples of over speeding during the same day that are worse than the one in Figure 12.2:

```

-(TREP04) 08/06/2015 21:49:00 (60 sec). Speed Average: 93. (Max:99)
-(TREP04) 08/06/2015 21:56:00 (60 sec). Speed Average: 95. (Max:102)
-(TREP04) 08/06/2015 22:04:00 (60 sec). Speed Average: 94. (Max:102)
-(TREP04) 08/06/2015 22:09:00 (60 sec). Speed Average: 93. (Max:97)
-(TREP04) 08/06/2015 22:21:00 (60 sec). Speed Average: 93. Max:98)
-(TREP04) 08/06/2015 22:31:00 (60 sec). Speed Average: 95. (Max:100)
-(TREP04) 08/06/2015 22:47:00 (60 sec). Speed Average: 94. (Max:99)
-(TREP04) 08/06/2015 22:53:00 (60 sec). Speed Average: 98. (Max:107)
-(TREP04) 08/06/2015 22:54:00 (60 sec). Speed Average: 95. (Max:104)
-(TREP04) 08/06/2015 23:22:00 (60 sec). Speed Average: 94. (Max:101)
-(TREP04) 08/06/2015 23:33:00 (60 sec). Speed Average: 93. (Max:96)
-(TREP04) 08/06/2015 23:44:00 (60 sec). Speed Average: 93. (Max:97)
-(TREP04) 08/06/2015 23:51:00 (60 sec). Speed Average: 93. (Max:100)

```

Figure 12.3: Screenshot from Police Controller® where different *Over speeding* events more severe than the one regarded by the tachograph as the most serious.

As we can see in Figure 12.3, at 22:53:00 on the same day, there was an *Over speeding* event with an average speed of 98 km/h and a maximum speed of 107 km/h. In the figure below, Figure 12.4, we can see the detailed speed of this minute:

```

speedBlockBeginDate® ->
08/06/2015 22:53:00
(Max:107) (Avarage:97.7)
second 0 :90 second 20 :94 second 40 :105
second 1 :90 second 21 :94 second 41 :106
second 2 :90 second 22 :95 second 42 :106
second 3 :90 second 23 :95 second 43 :107
second 4 :90 second 24 :96 second 44 :107
second 5 :91 second 25 :96 second 45 :107
second 6 :91 second 26 :97 second 46 :107
second 7 :91 second 27 :98 second 47 :107
second 8 :91 second 28 :98 second 48 :107
second 9 :91 second 29 :99 second 49 :107
second 10 :91 second 30 :100 second 50 :107
second 11 :91 second 31 :100 second 51 :106
second 12 :91 second 32 :101 second 52 :103
second 13 :91 second 33 :101 second 53 :101
second 14 :91 second 34 :102 second 54 :100
second 15 :92 second 35 :102 second 55 :99
second 16 :92 second 36 :103 second 56 :98
second 17 :92 second 37 :103 second 57 :94
second 18 :93 second 38 :104 second 58 :92
second 19 :93 second 39 :105 second 59 :91

```

Figure 12.4: Data from TREP04 of the vehicle file.

Why has the tachograph not stored this event on TREP03? Why has it stored an *Over speeding* infraction with a smaller maximum speed value and average speed value if it is not the most severe of the day? **This constitutes a violation of FORMALLY VERIFIED SOFTWARE condition 3.**

In the second file displayed in Figure 12.5, we see that the tachograph has stored the following *Over speeding* event as one of the 5 most serious events over the last 365 days:

```

Root: TREP03 Events and Faults® (valid)
vuOverSpeedingEventRecord® (3)
  eventType®:7 - Speeding®
  eventRecordPurpose®:One_of_the_5_most_serious_events_over_the_last_365_days
  eventBeginTime®:18/07/2008 22:52:50
  eventEndTime®:18/07/2008 22:53:50
  maxSpeedValue®:104
  averageSpeedValue®:95
  cardNumberDriverSlotBegin®:
    cardType®:Driver Card®
    cardIssuingMemberState®:P
    cardNumber®:
      ownerIdentification®:
      cardConsecutiveIndex®:0
      cardReplacementIndex®:0
      cardRenewalIndex®:0
  similarEventsNumber®:1

```

Figure 12.5: Data from TREP03 module of the vehicle file. It recorded an *Over speeding* event on 12/Jul/2008 from 22:52:50 until 22:53:50.

As we can see in the image, during that period the `maxSpeedValue` was 104 km/h, whereas the `averageSpeedValue` is set at 95 km/h. However, by looking through the TREP04 module, where the said speed data is stored, we encounter the following:



```

speedBlockBeginDate® ->
24/07/2008 05:24:53
(Max:109) (Avarage:95.82)
second 0 :88 second 20 :94 second 40 :107
second 1 :88 second 21 :95 second 41 :106
second 2 :89 second 22 :96 second 42 :104
second 3 :89 second 23 :98 second 43 :103
second 4 :90 second 24 :99 second 44 :102
second 5 :90 second 25 :100 second 45 :100
second 6 :90 second 26 :101 second 46 :98
second 7 :90 second 27 :102 second 47 :94
second 8 :90 second 28 :103 second 48 :92
second 9 :91 second 29 :104 second 49 :90
second 10 :90 second 30 :105 second 50 :89
second 11 :91 second 31 :106 second 51 :88
second 12 :91 second 32 :107 second 52 :87
second 13 :91 second 33 :108 second 53 :87
second 14 :91 second 34 :109 second 54 :86
second 15 :91 second 35 :109 second 55 :87
second 16 :92 second 36 :109 second 56 :87
second 17 :92 second 37 :108 second 57 :87
second 18 :93 second 38 :108 second 58 :88
second 19 :94 second 39 :107 second 59 :88

```

Figure 12.6: Data from TREP04 module of the vehicle file. It shows the speed of the vehicle on each second from 24/Jul/2008 05:24:53 until 24/Jul/2008 05:25:53.

We can see that the maximum speed value reached 109 km/h and the average speed was of 95.82 km/h. On the same day a couple of minutes later, the maxim speed value reached 108 km/h and the average speed was of 97.72 km/h:

```

speedBlockBeginDate® ->
24/07/2008 05:26:53
(Max:108) (Avarage:97.72)
second 0 :101 second 20 :103 second 40 :93
second 1 :102 second 21 :102 second 41 :94
second 2 :103 second 22 :102 second 42 :94
second 3 :105 second 23 :101 second 43 :94
second 4 :105 second 24 :100 second 44 :94
second 5 :106 second 25 :99 second 45 :94
second 6 :106 second 26 :98 second 46 :94
second 7 :106 second 27 :97 second 47 :94
second 8 :107 second 28 :96 second 48 :93
second 9 :107 second 29 :95 second 49 :92
second 10 :107 second 30 :94 second 50 :91
second 11 :108 second 31 :93 second 51 :91
second 12 :108 second 32 :92 second 52 :90
second 13 :108 second 33 :92 second 53 :89
second 14 :107 second 34 :91 second 54 :89
second 15 :107 second 35 :90 second 55 :90
second 16 :106 second 36 :90 second 56 :90
second 17 :106 second 37 :91 second 57 :90
second 18 :105 second 38 :92 second 58 :91
second 19 :104 second 39 :93 second 59 :91

```

Figure 12.7: Data from TREP04 module of the vehicle file. It shows the speed of the vehicle on each second from 24/Jul/2008 05:26:53 until 24/Jul/2008 05:27:53.

Nevertheless, these two minutes of over speeding (Figure 12.6 and 12.7), undoubtedly more serious than the one from Figure 12.5, were not stored in the TREP03 module as one of the

most serious events over the last 365 days. This is properly detected by the **Kalamua** module of Police Controller ®.

These are only two examples, the file contains more cases of more severe *Over speeding* events than the one presented in Figure 12.5 that are not properly stored.

With all these problems in mind, the following questions are to be answered: Can these files be trusted? If the storage mechanism is failing can we rely on its other information? Can the police officers issue fines for something that the tachograph registered as an *Over speeding* event, even though the regulation does not regard it as such? These questions become even more relevant when we learn that a new policy is to be implemented where TREP03 information will be automatically sent to police officers. But if this information is sometimes contradictory with that found on TREP04, can we trust it?

The following fine imposed a sanction of 10.000€ to a driver in Beviliers on 14/Jun/2016 accused of tachograph manipulation. The only proof they had was the over speeding events registered in TREP03. A **europaean legal service provider** convinced the **court** that TREP03 could not be trusted (due to all its internal malfunctions) and the court took it into consideration and canceled the case (see the court resolution below).

TGI ALENCON

Numéro parquet : [REDACTED]

*Noté minitpar des Correctionnels Pénit. de la Cour d'Appel de  
CAEN, il a été validé ce qui suit*

DOSSIER [REDACTED]  
[REDACTED]  
[REDACTED]

N° [REDACTED]

CONTRADICTOIRE

**COUR D'APPEL DE CAEN  
CHAMBRE DES APPELS  
CORRECTIONNELS**

COMPOSITION DE LA COUR, lors des débats, du délibéré et au prononcé de l'arrêt,

Président : Monsieur [REDACTED]  
Conseillers : Monsieur [REDACTED]  
Monsieur [REDACTED]

MINISTÈRE PUBLIC : représenté aux débats et au prononcé de l'arrêt par  
Monsieur [REDACTED] Substitut Général

GREFFIER lors des débats et du prononcé : Madame [REDACTED]

Prononcé publiquement le [REDACTED] par la chambre des appels  
correctionnels.

**PARTIES EN CAUSE DEVANT LA COUR :**

[REDACTED] prise en la personne de son  
représentant légal  
[REDACTED]

Prévenue, non comparante, représentée par Maître [REDACTED], avocat  
au barreau d'ALENCON

**LE MINISTÈRE PUBLIC**

## **RAPPEL DE LA PROCÉDURE :**

### **LE JUGEMENT :**

Saisi de poursuites dirigées contre l'entreprise [REDACTED] :

- d'avoir entre SAINT GERAND (Morbihan) et BIVILLIERS (Orne), entre le 9 juin 2016 et le 13 juin 2016, en tout cas sur le territoire national et depuis temps non couvert par la prescription, conduit ou exploité un véhicule de transport routier de voyageurs ou de marchandises en falsifiant des documents ou des données électroniques, en fournissant de faux renseignements, en détériorant ou en employant irrégulièrement ou en modifiant des dispositifs destinés au contrôle prévus par l'article L. 3311-1 du code des transports ou en ne procédant pas à l'installation de ces dispositifs, en l'espèce en modifiant le dispositif destiné au contrôle des conditions de travail, l'analyse comparée de la carte conducteur et du chronotagrygraphe permettant d'établir que les excès de vitesse n'étaient pas enregistrés par l'appareil de contrôle ;

infraction prévue et réprimée par les articles L.3315-4 AL.1, L.3315-6, L.3311-1 2° du Code des transports, article 1 et 2 du décret 86-1130 du 17/10/1986, article 32 2° et article 2 2° A) du règlement de l'Union Européenne du 04/02/2014

Le T.G.I. d'ALENCON, par jugement contradictoire en date du [REDACTED], a rejeté l'exception de nullité soulevé par l'entreprise [REDACTED], l'a déclaré coupable de l'infraction susvisée et l'a condamnée au paiement d'une amende de 10 000 €.

### **LES APPELS :**

Appel a été interjeté par :

[REDACTED] PRIS EN LA PERSONNE DE SON  
REPRESENTANT LEGAL, le [REDACTED]  
M. le procureur de la République, le [REDACTED] contre [REDACTED]  
[REDACTED] EN LA PERSONNE DE SON REPRESENTANT LEGAL

## **DÉROULEMENT DES DÉBATS :**

L'affaire a été appelée en audience publique le [REDACTED] ;

Maître [REDACTED] a déposé des conclusions qui ont aussitôt été visées et versées au dossier ;

Monsieur le Président a constaté l'absence a donné lecture de leur casier judiciaire, des renseignements les concernant et du dispositif du jugement ;

Ont été entendus :

Monsieur le Conseiller [REDACTED], en son rapport ;

Monsieur [REDACTED], en ses réquisitions ;

Maître [REDACTED], avocat prévenu, en sa plaidoirie ;

Puis la Cour, après en avoir délibéré conformément à la Loi, a rendu en audience publique l'arrêt suivant :

## **MOTIFS :**

### **Sur la procédure.**

██████████ puis le ministère public sont appelants du jugement entrepris suivant déclarations enregistrées au greffe le ██████████

La société ██████████ agissant poursuites et diligences de son représentant légal domicilié au siège social mentionné en tête du présent arrêt est comparante à l'audience où elle est représentée par son avocat, dans les conditions prévues à l'article 411 alinéas 1 et 2 du code de procédure pénale.

Elle fait déposer des conclusions qui ont été régulièrement visées.

Il résulte de ce qui précède que les appels étant réguliers et recevables en la forme, il convient de statuer par arrêt contradictoire à l'égard de la société ██████████

Il sera rappelé sommairement à titre préliminaire que la poursuite est consécutive aux constatations faites ensuite du contrôle réalisé par un agent de la DREAL, le mardi 14 juin 2016 à Brionne (Orne), relatif notamment à un tracteur routier de marque MERCEDES conduit par ██████████, de nationalité ukrainienne, employé en qualité de chauffeur par l'entreprise ██████████ ayant son siège en Pologne.

Ainsi résulte-t-il du procès verbal établi par le contrôleur des transports terrestres que de la comparaison entre l'activité enregistrée sur la carte conducteur et celle contenue dans la mémoire de l'appareil de contrôle résultait la constatation de survitesses sur la période comprise entre le jeudi 9 juin 2016 à 6 heures 50 et le lundi 13 juin 2016 à 19 heures 40, allant bien au-delà de la vitesse de 90 km/h que le camion ne pouvait en principe pas dépasser en ce qu'il était équipé d'un limiteur de vitesse ne l'autorisant pas à dépasser ce seuil.

Cette distorsion était attribuée par l'auteur du procès verbal, à la lumière des informations recueillies auprès de la concession MERCEDES BENZ de Valframbert et de la station agréée chronotachygraphe numérique Best Drive, à une modification interne du chronotachygraphe permettant au véhicule de circuler à plus de 90 km/h, l'appareil modifiant ainsi les informations vitesse pour communiquer aux différents appareils reliés (boîtier de gestion du moteur du tracteur et appareil MERCEDES Fleet Board) une information erronée (vitesse moindre).

### **Sur les exceptions de nullité**

L'appelante demande avant toute défense au fond que le jugement entrepris soit infirmé en ce qu'il n'a pas été fait droit aux exceptions de nullité de la procédure qu'elle avait fait valoir devant le premier juge et qu'elle reprend devant la cour.

Elle demande ainsi à la cour, aux termes de ses écritures, que la procédure soit annulée.

Elle fait valoir en premier lieu que la procédure est irrégulière en ce que ██████████, de nationalité ukrainienne, aurait été entendu en polonais par le truchement de l'un de ses employés, n'ayant pas la qualité d'interprète assermenté, sans que soient établies ses connaissances tant de la langue ukrainienne que de la langue française.



Elle soutient encore qu'aucune déclaration de [REDACTED] n'a été recueillie, de telle sorte que le droit de se taire ne lui a pas été notifié et qu'il n'est pas avéré qu'il comprenait ce qui lui était reproché.

Elle relève enfin qu'aucun document n'a été remis à [REDACTED] en langue ukrainienne l'informant de ses droits et qu'il n'est pas établi qu'il ait reçu notification des faits relevés à son encontre.

Pour peu satisfaisantes qu'aient été les conditions dans lesquelles [REDACTED] a été entendu, force est de constater :

- que l'argumentation telle que ci-dessus rappelée concerne exclusivement le salarié de la prévenue, alors qu'il résulte des dispositions de l'article L. 3315-6 du code des transports que sauf le cas où il est établi que les infractions commises résultent du fait personnel du préposé, seule est engagée la responsabilité pénale du transporteur auquel incombe l'obligation de prendre toutes les dispositions pour faire respecter par ses préposés les dispositions du règlement CE n° 561/2006 du 15 mars 2006 et du règlement UE n° 165 / 2014 du 4 février 2014, identifiées aux termes du procès verbal comme étant les dispositions dont les constatations établissent qu'elles auraient été violées,

- que les déclarations du chauffeur, telles qu'évoquées dans le procès verbal de la DREAL, sont dépourvues de tout intérêt quant à la preuve de l'infraction pouvant être relevée à l'encontre de l'employeur dès lors qu'elles se résument à la constatation que [REDACTED] déclare ne pas être au courant des modifications de son chronotachygraphe, énonciation sans portée au regard de l'appréciation de la responsabilité pénale de l'employeur.

- que l'absence d'audition de la prévenue ou de son représentant légal ne constitue pas une cause de nullité de la procédure, dès lors qu'une telle audition peut tout aussi bien intervenir dans le cadre de l'audience, possibilité de s'expliquer sur les faits objet de la poursuite que la prévenue a méconnue, ayant fait le choix de comparaître par voie de représentation tant en première instance qu'en cause d'appel.

Les exceptions de nullité seront dès lors rejetées, le jugement entrepris devant être infirmé de ce chef en ce qu'il est énoncé en son dispositif que le tribunal a rejeté l'exception de nullité, alors qu'il était saisi, comme la cour l'est aujourd'hui, de plusieurs exceptions.

#### **Sur la culpabilité.**

Il est fait grief à la prévenue d'une modification du dispositif destiné au contrôle des conditions de travail, s'agissant d'une modification de ce qui est désigné au procès-verbal de la DREAL comme étant la modification d'un "appareil".

Il résulte effectivement des énonciations de ce procès-verbal qu'il a été constaté que l'appareil de contrôle comportait deux trous percés sur "le côté" et que la tôle de protection supérieure présentait des déformations sur les pattes qui assuraient la sécurité du dit appareil, outre que les pattes de la tôle de la protection supérieure avaient été forcées, ce dont l'agent verbalisateur déduit que l'appareil a été ouvert pour accéder aux différents composants électroniques, affirmant plus loin que l'explication des survitesses est due à une modification des composants électroniques qui composent l'appareil.

S'il est certain que les constatations faites par le contrôleur des transports font foi jusqu'à preuve contraire, cette portée probante s'attache à ce qu'il a effectivement constaté, soit les anomalies ci-dessus décrites affectant le boîtier de l'appareil.

Mais ces anomalies ne font pas la preuve en elles-mêmes de la modification objet de la poursuite et c'est en vain que l'on recherche dans la procédure ce qu'auraient été matériellement les modifications objet de la poursuite, s'agissant nécessairement de modifications de circuits électroniques qui n'ont fait l'objet d'aucune analyse.

Le procès-verbal se contente en effet de constater d'une part l'existence d'une anomalie symptôme, soit celle des survitesses, et des incohérences entre l'activité enregistrée sur la carte conducteur et celle contenue dans la mémoire de l'appareil de contrôle, d'autre part celle d'anomalies matérielles affectant "l'appareil", et ne fait qu'affirmer un lien de cause à effet entre ce qui se devrait se déduire de l'existence de ces anomalies matérielles et les incohérences ci-dessus mentionnées, sans qu'un élément ne vienne établir l'exactitude de cette hypothèse, alors même que les techniciens auxquels il a été fait appel au cours de l'enquête, soit celui de la concession MERCEDES-BENZ de Valframbert et celui de la station agréée chronotachygraphe numérique Best Drive, ont pour l'un convenu qu'il ne pouvait expliquer les raisons des survitesses, et pour l'autre dit qu'il ne comprenait pas dès lors que "sur sa valise technique, il n'apparaît aucun dépassement et aucune anomalie".

En réalité, la preuve de l'infraction ne pouvait être acquise que par un examen technique du matériel concerné, aux fins de rechercher si les anomalies matérielles l'affectant étaient en relation avec des modifications non décrites dans la procédure qui auraient eu pour effet les incohérences relevées entre les données de la carte conducteur et celles du chronotachygraphe, vérification d'autant plus nécessaire qu'il ne peut être exclu que ces incohérences, tenues pour être constitutives d'indices probants de la modification objet de la poursuite, puissent avoir une origine autre, notamment technique.

Cet examen technique ne pouvant plus être réalisé en raison du démontage de l'appareil et de son remplacement à neuf intervenus avant la levée de l'immobilisation du véhicule, un mois après le contrôle de celui-ci, la cour n'est pas en mesure d'ordonner utilement les investigations complémentaires qui auraient été seules de nature à établir si l'infraction objet de la poursuite avait été effectivement commise, le jugement entrepris devant dès lors être infirmé, alors qu'au surplus il encourait les critiques d'avoir retenu la responsabilité pénale d'une "entreprise", entité non susceptible de constituer une personne morale, et cela sans avoir aucunement recherché, malgré les exigences de l'article 121-2 du code pénal, quel était l'identité de la personne physique agissant en qualité d'organe ou de représentant de la personne morale, qui était auteur du comportement fautif en cause.

**Par ces motifs,**

la cour,


statuant publiquement, après débats tenus publiquement, contradictoirement à l'égard de la prévenue, et en dernier ressort,

reçoit la prévenue et le ministère public en leurs appels respectifs ;

infirmé le jugement entrepris ;

rejette les exceptions de nullité ;

renvoie la prévenue des fins de la poursuite.

- Magistrat rédacteur : 

LE GREFFIER 

LE PRÉSIDENT 

## 13 Activity time discrepancies between slot1 and slot2

**EXECUTIVE SUMMARY** In this chapter we expose a major and unacceptable failure in tachographs: The registration of a single event at different times, depending on the slot/driver card that is analyzed. This case shows us the severity of the currently known errors in the technology and can only make us fear for potential errors that have not yet manifested themselves.

We are facing the strange problem of having one activity that affects both driver and co-driver (recorded in `slot1`, `slot2` respectively) but is shown in different times. Belgium Federal Police suggested that this could be a case of tachograph manipulation.

The experts from a european legal service provider carried out exhaustive tests on techniques applied to all kind of tachographs looking for evidence of manipulation (and hence illegality). They didn't find any proof or evidence that could lead to this conclusion. Moreover, it was shown that this data behavior always happens, with or without manipulation.

As it turns out, sometimes one slot registers the event after the other, with each slot registering the event independently. Let us consider the following case analyzed by the **Kalamua** tool from Police Controller® where `slot2` is 1 minute faster than `slot1`:

09:18	Driving Inserted Single Driver °	Availability NotInserted Single Co-driver°
09:26	Break/Rest Inserted Single Driver°	
09:27		Break/Rest NotInserted Single Co-driver°
10:01		Availability NotInserted Single Co-driver°
10:02	Driving Inserted Single Driver °	
10:04	Break/Rest Inserted Single Driver°	

Figure 13.1: Data from the **Kalamua** tool.

Or this case in which `slot1` is 15 minutes faster than `slot2`

18:31	Driving Inserted Single Driver °	Availability NotInserted Single Co-driver°
19:21	Break/Rest Inserted Single Driver°	
19:36		Break/Rest NotInserted Single Co-driver°

Figure 13.2: Data from the **Kalamua** tool.

This mistake in data behavior is directly affecting the definition of driving time duration. If the driving time is computed as the difference between one driving activity and the next registered activity, and if this change of activity occurs at different times at slot 1 and slot 2, then we might conclude that the data from slot 1 is not correct and/or neither is the data from slot 2.

It is also a serious problem that exposes the lack of control in the tachograph processes. Who is responsible of this erratic and unjustified data behavior?

The data we encounter here violates physical coherence, since an event that is happening in a given time is recorded in different moments. Thus it is a problem of **Type3** in Decent Design.

## 14 The definition of driving time: specific software analysis through different versions

**EXECUTIVE SUMMARY** The problem concerning the present case affects the computation of driving time in tachographs. In the present section we analyse how different versions and models of tachographs compute driving and calculate speed according to the inputs they receive and expose the inconsistencies that derive from the method they follow, and show that regulations are not strictly followed regarding the measurement of movement.

We also consider two conditions the law stipulates for a minute to be regarded as driving. The law seems to indicate an order in which these conditions are to be applied, but this order is not respected by tachographs. The order stipulated by the law is itself problematic and leads to undesirable consequences<sup>a</sup> which might be the reason why software developers decided to invert it, even though in doing so they were taking legal decisions and thus acted as lawmakers. Finally, we will see that the description of these conditions contains significant changes among different translations of the regulations, yielding different versions of what is to be enforced.

<sup>a</sup>This is analysed in a forthcoming publication: *To drive or not to drive*, TranJus workingpapers series of the University of Barcelona, 2019.

As we mentioned in other sections, the regulations do not give a specific definition of what *driving time* is or how it should be measured in an interval. However, it does give some indications on how to compute it:

019            The speed measurement function shall also provide the information whether the vehicle is moving or stopped. The vehicle shall be considered as moving as soon as the function detects more than 1 imp/sec for at least five seconds from the motion sensor, otherwise the vehicle shall be considered as stopped.

Figure 14.1: Article 2 [paragraph 019] of 3821/85, equivalent to article 3.2 [paragraph 24] of 799/2016.

### 3. Time measurement

027            The time measurement function shall measure permanently and digitally provide UTC date and time.

Figure 14.2: Article 3 [paragraph 027] of 3821/85, equivalent to article 3.3 [paragraph 38] of 799/2016.



▼ <u>M7</u>	039	This function shall output activity changes to the recording functions at a resolution of one minute.
▼ <u>M15</u>	<hr/>	
	041	Given a calendar minute, if DRIVING is registered as the activity of both the immediately preceding and immediately succeeding minute, the whole minute shall be regarded as DRIVING.
	042	Given a calendar minute that is not regarded as DRIVING according to the previous requirement 041, the whole minute shall be regarded to be of the same type of activity as the longest continuous activity within the minute (or the latest of equally long activities).

Figure 14.3: Article 3 [paragraphs 039, 041 and 042] of 3821/85, equivalent to article 3.4 [paragraph 50, 51 and 52] of 799/2016.

The question of whether we can translate these sentences into a mathematical algorithm that specifically calculates driving time is relevant in this case. It is not always possible to translate sentences from natural language to a formal language because of the inner complexity of the former.

In this case, there is a relevant flaw in the regulation: *movement* and *driving time* are defined separately but are not identified. Can we conclude that they are the same? This should be made clear in the law. Also, movement is not clearly defined: when does it start, exactly? (At second number 5? At second number 6?)

Regarding driving time, the concept is used in the regulations before a proper definition is given. Moreover, the precise meaning of paragraphs 41 and 42 of 3821/85 depends on the translation of the regulation one is looking at, since different translations imply different interpretations of the same article. The differences between translations are outlined in Table 14.1.

Table 14.1: Differences between the translations of Requirements 41 and 42.

	Requirement 41	Requirement 42
GER	Wird zu irgendeinem Zeitpunkt <b>innerhalb der unmittelbar der Kalenderminute</b> vorausgehenden und nachfolgenden Minute die Tätigkeit LENKEN registriert, gilt die gesamte Minute als LENK-Zeit.	<b>Für eine Kalenderminute</b> , die aufgrund der vorstehenden Randnummer 041 nicht als LENK-Zeit gilt, wird die Tätigkeit angesetzt, die als längste Tätigkeit innerhalb der Minute ausgeführt wurde (oder bei gleichlangen Tätigkeiten diejenige, die zuletzt ausgeführt wurde).



Table 14.1: (continued)

ENG	Given <b>a calendar minute</b> , if DRIVING is registered as the activity of both the immediately preceding and immediately succeeding minute, the whole minute shall be regarded as DRIVING.	Given <b>a calendar minute</b> that is not regarded as DRIVING according to the previous requirement 041, the whole minute shall be regarded to be of the same type of activity as the longest continuous activity within the minute (or the latest of equally long activities).
POL	<b>W danej minucie zegarowej</b> , jeżeli PROWADZENIE jest zarejestrowane jako czynność w minucie bezpośrednio ją poprzedzającej i następującej bezpośrednio po niej, to cała ta minuta liczy się jako PROWADZENIE.	<b>W danej minucie zegarowej</b> , nietraktowanej jako PROWADZENIE zgodnie z poprzednim wymaganiem 041, cała taka minuta liczy się jako jedna czynność, która trwała najdłużej w ciągu tej minuty (lub była późniejsza w przypadku czynności o jednakowym czasie trwania).
FR	Étant donné <b>une minute calendrier</b> , si la CONDUITE est enregistrée comme activité tant au cours de la minute qui précède que de la minute qui suit immédiatement, la minute entière est comptabilisée comme de la CONDUITE.	Étant donné <b>une minute calendrier</b> non considérée comme activité de CONDUITE en application de l'exigence 041, la minute entière sera considérée comme relevant de la même activité que l'activité continue la plus longue survenue dans la minute (ou de la plus récente en cas de plusieurs activités de même durée).
IT	Dato <b>un intervallo di un minuto</b> , se GUIDA è registrata come attività del minuto immediatamente precedente e del minuto immediatamente successivo, l'intero minuto viene considerato come GUIDA.	<b>Dato un intervallo di un minuto</b> non considerato come GUIDA in base al precedente requisito 041, l'intero minuto viene considerato come attività dello stesso tipo di quella continua di maggiore durata verificatasi entro tale minuto (o, nel caso di più attività di pari durata, dell'ultima di esse).
ESP	A partir de <b>un minuto cualquiera</b> , si se registra alguna actividad de CONDUCCIÓN en los minutos inmediatamente anterior y posterior, se considerará que todo el minuto es de actividad de CONDUCCIÓN.	Dado <b>un minuto cualquiera</b> que no se considere de CONDUCCIÓN con arreglo a la condición 041 antes mencionada, se considerará que todo el minuto será de un mismo tipo de actividad, concretamente la que haya tenido lugar de forma continuada y durante más tiempo durante ese minuto (en caso de haber dos actividades de la misma duración, la que se haya producido en último lugar).

As we can see, depending on the translation, conditions 41 and 42 change their meaning: it is not the same to do the computing of driving time only on calendar minutes or on any minute whatsoever. This can significantly change the result of such computations.

Tachographs are devices essentially designed to compute driving time. However, as we have indicated, the law does not give a proper definition of driving time, so programmers must figure out how to compute it. Because of this, in designing the tachograph software they make a particular interpretation of the law and go beyond the written text by implementing their own judgement. That is exactly what we mean by **programmers acting as lawmakers**. This is caused by the lack of clarification and precision in the regulation: if it were sufficiently clear, there would be no need for the software engineers to implement something that the regulation is not specifically saying.

Nevertheless, we can do reverse engineering in order to figure out the algorithm that the tachograph is using to compute driving time. This can be done by sending a concrete number of impulses to the tachograph in a particular interval of time and then checking what the tachograph is registering. In order to explain the experiment we carried out to do this analysis, we must first mention a relevant mathematical relation (independent of 3821/85).

The characteristic coefficient of a vehicle ( $W$ ) indicates the number of impulses the sensor must send to register 1 km. The regulation establishes particular speed measurement tolerances for vehicles with characteristic coefficients between 4.000 imp/km and 25.000 imp/km. Using the simple conversion algorithm

$$1 \text{ imp/sec} = \frac{3600}{W} \text{ km/h},$$

we can calculate at what speed (in km/h) a vehicle (which has a characteristic coefficient  $W$  and is receiving 1 imp/sec) is moving. Thus, when a vehicle with  $W = 4000$  imp/km is receiving 1 imp/sec, it will be moving at 0.9 km/h; if  $W = 25.000$ , under the same conditions it will have a speed of 0.144 km/h.

By sending 1 imp/sec to different models of tachographs we obtained the results shown in the tables below (the *Actual Speed* is calculated according to the formula given above). Observe that the rounding each tachograph uses to compute the speed as a whole number might be different depending on the model and version. Having the speed registered in TREP04, we can then create our own driving time definition with this data and compare it with the driving time recorded in TREP02.

**Note:** Before proceeding to show the results, we mention one important point. When carrying out the experiment, we detected another infraction of the law performed by tachographs: the regulation specifies that the vehicle will consider movement as soon as **more than 1 imp/sec** is detected for at least 5 seconds. Here only 1 imp/sec was sent to the vehicles and movement was already detected. Moreover, it is not clear what *as soon as the function detects more than 1 imp/sec* means: does it imply that if 61 impulses per minute (1.016 imp/sec) are detected this is already considered movement? Or does it imply that at least 2 impulses per (single) second are needed? This implies a violation of FORMALLY VERIFIED SOFTWARE condition 3.

We can now proceed to show the results of the testing performed when we are sending a constant 1 impulse per second:

Tachograph continental -vuSoftwareVersion <sup>®</sup> : 2039					
$W$	Actual speed	Speed on screen	Speed on TREP04	Activity on screen	Activity on TREP02
4.500	0.8 km/h	0	0	driving	driving
8.500	0.42 km/h	0	0	driving	driving

Tachograph continental -vuSoftwareVersion <sup>®</sup> : 3037					
W	Actual speed	Speed on screen	Speed on TREP04	Activity on screen	Activity on TREP02
4.500	0.8 km/h	1	1	driving	driving
7.500	0.48 km/h	1	1	driving	driving

Tachograph stoneridge SE 5000-vuSoftwareVersion <sup>®</sup> : P5HM					
W	Actual speed	Speed on screen	Speed on TREP04	Activity on screen	Activity on TREP02
4.500	0.8 km/h	-	1	driving	driving
8.570	0.42 km/h	-	0	driving	driving

Tachograph stoneridge SE 5000-vuSoftwareVersion <sup>®</sup> : P8KS					
W	Actual speed	Speed on screen	Speed on TREP04	Activity on screen	Activity on TREP02
6.000	0.6 km/h	-	1	driving	driving
7.500	0.48 km/h	-	0	driving	driving

The conclusions we can establish from these results are the following:

1. Different tachographs register speed differently. In these cases, the speed measurement is done with a resolution of 1 km/h. The way of computing the speed is different in each case, even with the same characteristic coefficient (and thus, the same speed when receiving 1 imp/sec). Continental 3037 and Stoneridge P8KS store different speeds in TREP04 when  $W = 7.500$ . If two vehicles are moving at the same speed, why does the speed stored by the tachograph differ? How can it depend on the model of the tachograph they are using? This is probably caused by the rounding (from decimal to integer) each tachograph model has implemented, so in order to obtain unified data, the law must be clear on how it must be computed and not allow this kind of divergences to take place.
2. Continental tachographs changed algorithms between versions 2039 and 3039. In the former, it appears that a rounding down was being applied to the calculation of speed. In 3039 they appear to do the opposite, that is, rounding up. This implies that in version 2039, **there can be movement with speed = 0 km/h**, which is absurd and constitutes a violation of **Type3** in Decent Design.
3. Stoneridge tachographs did not change their algorithm and perform a standard rounding. This implies that it may also occur that **there can be movement with speed = 0 km/h**, which is a violation of **Type3** in Decent Design. Note that this happens only when the vehicle is receiving 1 imp/sec and  $W > 7200$ , since when  $W = 7200$  imp/km this implies moving at 0.5 km/h.

Hence, from the results obtained of the testing performed in Continental - version 3037 and any Stoneridge version that satisfies  $W \leq 7200$  (since otherwise it can occur that there exists movement with a speed of 0 km/h, which is absurd), we can do reverse analysis and compute our own driving time from the speed recorded. Note that in version 3037 and any Stoneridge with  $W \leq 7200$ , to receive 1 imp/sec is equivalent to be moving at 1 km/h. According to this reverse analysis, we can conclude that tachographs actually do the following:

1. After 5 seconds receiving 1 imp/sec, they consider that the driving status has started; we call this the ‘provisional driving status’.

2. The moment they stop detecting any impulse per second, the system changes to ‘provisional no driving status’.
3. After that, the system makes a list in seconds of provisional status of *driving* and *not driving*.
4. The system (that works in UNIX, as we will show in the following section) decides for each interval if it should be regarded as ‘real driving’ according to condition 42.
5. Condition 41 is applied to the (yet) undecided minutes.

This procedure is what tachographs do when computing driving time. If we apply this algorithm to the data stored in TREP04, we can obtain 99.5% of the times the same values as the ones stored in TREP02 in the tachograph. **But this procedure is not the one that the law states. The law specifies two conditions (41 and 42) on which a calendar minute shall be regarded as driving in spite of the vehicle not moving for a few seconds. The software of the tachograph obeys these two conditions but in an inverse order, which significantly changes the calculation of driving times.** They should apply condition 41 and, after that, apply condition 42. Instead, condition 42 is applied first.

It might be possible that the software engineers in charge of designing the tachograph code thought it was inconsistent to apply condition 41 before condition 42, and consider it more logical to apply condition 42 first. If this were the case, it would be voluntary violation of the law, because a change in the order is far from negligible; on the contrary, it significantly changes the tachograph output.

We were able to conclude that the order performed by the tachograph is 42-41 instead of the 41-42 stipulated by the law with the following experiment: within a period of three minutes we sent impulses to the tachograph alternating intervals of 1 impulse/second with intervals of 0 impulse/second in the following way (before and after the tachograph was not receiving any other stimulus, it detected no impulses):

Interval	Impulses sent
[0 : 00, 0 : 40]	1 impulse / second
[0 : 40, 1 : 00]	0 impulse / second
[1 : 00, 2 : 00]	0 impulse / second
[2 : 00, 2 : 40]	1 impulse / second
[2 : 40, 3 : 00]	0 impulse / second

The data registered by the tachograph within these 3 minutes was to be found in TREP02, where the driver activities are stored. If tachographs were correctly following the regulation, this would be the expected data in TREP02:

#### Expected data

[0 : 00, 1 : 00] → *driving*  
 [1 : 00, 2 : 00] → *work*<sup>5</sup>  
 [2 : 00, 3 : 00] → *driving*

Condition 41 cannot be applied to any of the three minutes (no minute is regarded as driving or at least none is full movement, and we have no definition for that) and condition 42 is applied to the first and the third minute: since driving (moving) is the longest continuous activity within the minute, both minutes are regarded as driving.<sup>6</sup>

<sup>5</sup>According to condition 37/48, When the vehicle stops, WORK shall be selected automatically for the driver.

<sup>6</sup>Note that here we use the English version of condition 41 “as THE activity” in English instead of “ALGUNA actividad” in Spanish which should be translated as “ANY activity” in English.

However, this is not the output we obtained. On the contrary, this is what TREP02 stored:

**Obtained data**

$[0 : 00, 3 : 00] \rightarrow \textit{driving}$

This data coincides with the one we would have obtained if conditions 41 and 42 were applied in an inverse order. If condition 42 is applied first, the first and the third minutes are regarded as driving, since it is the longest continuous activity within the minute. But then, if we apply condition 41, the second minute is also regarded as driving, since driving is registered as the activity of both its preceding and succeeding minute. Hence, all three minutes are regarded as driving.

In the next section, we perform an in-depth analysis of the exact consequences of applying conditions 41 and 42 in the correct order stipulated by the regulations.

**These tests were performed on Continental 4.0 software version 40.42 (second generation tachograph) and the results were the same as with the 3.0. Furthermore, Time Real also works in UNIX calendar.**



## 15 The Unix vs. UTC problem

### EXECUTIVE SUMMARY

After deep analysis and investigation of tachograph technology, we have discovered a disturbing problem regarding time measurement: all the data coming from the tachograph is computed under the Unix standard, while the law specifically requires the UTC standard. This seemingly innocuous fact has the potential to generate problems of large proportions, which we illustrate below.

We start by reminding the reader of some notions.

- **Coordinated Universal Time**, or **UTC**, is the main standard through which the world regulates clocks and time. It strives to agree with solar time as much as possible, which means that it is adjusted with **leap seconds** from time to time.
- A **leap second** is an extra second occasionally added to UTC. As of April 2019, 27 leap seconds have been inserted since 1970.
- **Unix** time (also known as POSIX time, or UNIX Epoch time) is a system for describing a point in time. It describes each point as the number of seconds elapsed since January 1st 1970 00:00:00 UTC (the **epoch**) *minus leap seconds*. Every day is treated as if it contains exactly 86 400 seconds, including the days when a leap second is introduced. It is used widely in Unix-like and other operating systems and file formats. However, Unix time is not a true representation of UTC, as a leap second in UTC shares the same Unix time as the second which came before it.

Consider now the following facts, which, when taken together, yields a disturbing picture.

1. Regulations (EEC) No 3821/85 and (EU) 799/2016 stipulate that time is to be measured in UTC (Figure 15.1).

### 3. Time measurement

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The time measurement function shall measure permanently and digitally provide UTC date and time.

Figure 15.1: Article 2 of Appendix 1 of Regulation 3821/85, equivalent to Article 2 of Appendix 1 of Regulation 799/201.

2. All tachograph analysis programs, without exception, use Microsoft DateTime technology to convert integer TimeReal numbers recorded in the vehicle files to UTC formatted time. (This was accepted about software used to fine drivers by the German BAG in a court hearing on 08/Feb/2019.)

However, Microsoft states in its software's documentation that no leap seconds are considered (see Figure 15.2). Hence, it clearly does not follow the UTC standard.

3. Formal Vindications S.L. developed a short-term solution for the problem mentioned above: a tool to convert TimeReal to UTC and UTC to TimeReal, as it is defined in Regulations 3821/85 and 799/2016, with the same functionality as Microsoft's. The goal is to formally verify this patch, something that Microsoft will never do.

Time values are measured in 100-nanosecond units called ticks. A particular date is the number of ticks since 12:00 midnight, January 1, 0001 A.D. (C.E.) in the [GregorianCalendar](#) calendar. The number excludes ticks that would be added by leap seconds. For example, a ticks value of 312413760000000000L represents the date Friday, January 01, 0100 12:00:00 midnight. A [DateTime](#) value is always expressed in the context of an explicit or default calendar.

Figure 15.2: Fragment from Microsoft’s time library technical specifications.

We can offer this tool as open source and for free, because **we are receiving funding from the European Union** to develop the software homologation concept.

4. Proving that tachographs do not work in UTC is easy. Tachographs violate the **ActivityChangeInfo** requirement. To demonstrate this, anyone can verify that the “activity-changeinfo – currentdatetime” comes as integer multiplies of 60 in all tachograph models and versions. Therefore it is impossible to be in UTC at XX:00.

```

PC - LEAP
[TimeReal: 1510827094] [Leap: 16/11/2017 10:11:7] [No Leap: 16/11/2017 10:11:34] [Unix Time: 16/11/2017 10:11:34]
[TimeReal: 1510827094] [Leap: 16/11/2017 10:11:7] [No Leap: 16/11/2017 10:11:34] [Unix Time: 16/11/2017 10:11:34]
[1] INFO Loading Activities [PControlReader] [03/04/2019 - 0:40:13] [es-ES]
[TimeReal: 1510876800] [Leap: 16/11/2017 23:59:33] [No Leap: 17/11/2017 0:0:0] [Unix Time: 17/11/2017 0:00:00]
[TimeReal: 1637366400] [Leap: 19/11/2021 23:59:33] [No Leap: 20/11/2021 0:0:0] [Unix Time: 20/11/2021 0:00:00]
[TimeReal: 1510860372] [Leap: 16/11/2017 19:25:45] [No Leap: 16/11/2017 19:26:12] [Unix Time: 16/11/2017 19:26:12]
[TimeReal: 1510878395] [Leap: 17/11/2017 0:26:8] [No Leap: 17/11/2017 0:26:35] [Unix Time: 17/11/2017 0:26:35]
[TimeReal: 1510860355] [Leap: 16/11/2017 19:25:28] [No Leap: 16/11/2017 19:25:55] [Unix Time: 16/11/2017 19:25:55]
[TimeReal: 1511136000] [Leap: 19/11/2017 23:59:33] [No Leap: 20/11/2017 0:0:0] [Unix Time: 20/11/2017 0:00:00]
[TimeReal: 1510860372] [Leap: 16/11/2017 19:25:45] [No Leap: 16/11/2017 19:26:12] [Unix Time: 16/11/2017 19:26:12]
[TimeReal: 1510878407] [Leap: 17/11/2017 0:26:20] [No Leap: 17/11/2017 0:26:47] [Unix Time: 17/11/2017 0:26:47]
[TimeReal: 1510860346] [Leap: 16/11/2017 19:25:19] [No Leap: 16/11/2017 19:25:46] [Unix Time: 16/11/2017 19:25:46]
[TimeReal: 1511136000] [Leap: 19/11/2017 23:59:33] [No Leap: 20/11/2017 0:0:0] [Unix Time: 20/11/2017 0:00:00]
[TimeReal: 1510911069] [Leap: 17/11/2017 9:30:42] [No Leap: 17/11/2017 9:31:9] [Unix Time: 17/11/2017 9:31:09]
[TimeReal: 1510957877] [Leap: 17/11/2017 22:30:50] [No Leap: 17/11/2017 22:31:17] [Unix Time: 17/11/2017 22:31:17]
[TimeReal: 1510878407] [Leap: 17/11/2017 0:26:20] [No Leap: 17/11/2017 0:26:47] [Unix Time: 17/11/2017 0:26:47]
[TimeReal: 1637366400] [Leap: 19/11/2021 23:59:33] [No Leap: 20/11/2021 0:0:0] [Unix Time: 20/11/2021 0:00:00]
[TimeReal: 1510911069] [Leap: 17/11/2017 9:30:42] [No Leap: 17/11/2017 9:31:9] [Unix Time: 17/11/2017 9:31:09]
[TimeReal: 1510957889] [Leap: 17/11/2017 22:31:2] [No Leap: 17/11/2017 22:31:29] [Unix Time: 17/11/2017 22:31:29]
[TimeReal: 1510878395] [Leap: 17/11/2017 0:26:8] [No Leap: 17/11/2017 0:26:35] [Unix Time: 17/11/2017 0:26:35]
[TimeReal: 1637366400] [Leap: 19/11/2021 23:59:33] [No Leap: 20/11/2021 0:0:0] [Unix Time: 20/11/2021 0:00:00]
[TimeReal: 1510957909] [Leap: 17/11/2017 22:31:22] [No Leap: 17/11/2017 22:31:49] [Unix Time: 17/11/2017 22:31:49]
[TimeReal: 4294967295] [Leap: 7/2/2106 6:27:48] [No Leap: 7/2/2106 6:28:15] [Unix Time: 07/02/2106 6:28:15]
[TimeReal: 1510957889] [Leap: 17/11/2017 22:31:2] [No Leap: 17/11/2017 22:31:29] [Unix Time: 17/11/2017 22:31:29]
[TimeReal: 1511136000] [Leap: 19/11/2017 23:59:33] [No Leap: 20/11/2017 0:0:0] [Unix Time: 20/11/2017 0:00:00]
[TimeReal: 1510957909] [Leap: 17/11/2017 22:31:22] [No Leap: 17/11/2017 22:31:49] [Unix Time: 17/11/2017 22:31:49]

```

Figure 15.3: Screenshot from Police Controller®

Figure 15.3 shows the patch developed by Formal Vindications S.L. in action:

- (a) The first column, **TimeReal**, shows the integer number in the vehicle file.
  - (b) In the second column, **Leap**, the integer number is converted to UTC with the verified software developed at *Universitat de Barcelona*.
  - (c) On the other hand, the third column, **No Leap**, has the integer number converted to Unix with the verified software developed at *Universitat de Barcelona*.
  - (d) Finally, the fourth column, **Unix Time**, prints the integer number converted to Unix by Microsoft. **As we can see in Figure 15.3, columns 3 and 4 coincide.**
5. Does the Unix vs. UTC issue mean that there is a 26 to 27 second delay on the time measured by tachographs? Are there further consequences? **Yes. Unfortunately, there are vast consequences.**

Let us now recall Requirements (41) and (42), printed in Figure 15.5. They were already mentioned in Section 14, and state how to obtain the activities performed at each minute given the activities performed at each second.

## 2.1. ActivityChangeInfo

This data type enables to code, within a two bytes word, a slot status at 00.00 and/or a driver status at 00.00 and/or changes of activity and/or changes of driving status and/or changes of card status for a driver or a co-driver. This data type is related to requirements 084, 109a, 199 and 219.

ActivityChangeInfo ::= OCTET STRING (SIZE(2))

Figure 15.4: Article 2.1 of Appendix 1 of Regulation 3821/85, equivalent to Article 2.1 of Appendix 1 of Regulation 799/2016.

- |     |   |
|-----|---|
| 041 | Given a calendar minute, if DRIVING is registered as the activity of both the immediately preceding and immediately succeeding minute, the whole minute shall be regarded as DRIVING.   |
| 042 | Given a calendar minute that is not regarded as DRIVING according to the previous requirement 041, the whole minute shall be regarded to be of the same type of activity as the longest continuous activity within the minute (or the latest of equally long activities). |

Figure 15.5: Article 3, Paragraphs 041 and 042 of Regulation 3821/85, equivalent to Article 3.4, Paragraphs 51 and 52 of Regulation 799/2016.

Note that “calendar minute” is not used in all the translations of the Regulations, at least not in the Spanish and Italian ones. If we built a tachograph using the “calendar minute” interval, we will obtain different results than if we compute the data using UTC or Unix.

By running extensive tests, we concluded that the following tachograph models have this problem:

- Continental with Software 3037;
- Stoneridge with any software version from P5HM if  $W < 7200$ .

For other tachograph models we can not prove this with full certainty, because they have bigger problems: they can be moving with speed 0, as we have shown in Section 14.

We took 8 different vehicle files from the devices listed above as a sample (4 Stoneridge and 4 Continental) and we reproduced the driving time using speed, in Unix and in Unix+27 seconds. In order to do that, we followed the following steps:

1. We used the translator from TREP04 to TREP02 described above using a Unix representation, but with Condition 41 first, followed by Condition 42. We then matched the activities in TREP02 (in the real file) with the ones from TREP04 of the same file.
2. Then, we used our translator from TREP04 to TREP02 again, but this time calculating the time intervals as Unix+27 seconds, and maintaining Conditions 41 and 42 in this order. This is not exactly the same as doing it in UTC, but it is equivalent.<sup>7</sup>

---

<sup>7</sup>The reason why we are not able to do it properly is explained in Section 16. **This is irrelevant** at this stage because we have proved a theorem about it, which will be shown later (see **The Black Hole Theorem of European digital tachographs** below and Example 4 of Section 16).

We have to take into account that **order is paramount in mathematics**. The results are summarized in Table 15.1.

Table 15.1: Results of the experiment described above.

<b>Tachograph device</b>	<b>Vehicle File Number</b>	<b>Calendar</b>	<b>Total number of minutes in which the file activities don't match our calculations (out of 1440 minutes)</b>
Stoneridge	1	Unix	23
Stoneridge	1	Unix+27	96
Stoneridge	2	Unix	25
Stoneridge	2	Unix+27	48
Stoneridge	3	Unix	30
Stoneridge	3	Unix+27	65
Stoneridge	4	Unix	29
Stoneridge	4	Unix+27	108
Continental	1	Unix	25
Continental	1	Unix+27	67
Continental	2	Unix	22
Continental	2	Unix+27	69
Continental	3	Unix	33
Continental	3	Unix+27	74
Continental	4	Unix	22
Continental	4	Unix+27	82

In the case of the Continental tachograph, there were two mistakes:

1. It was in Unix;
2. Even being in Unix, 00:00 did not equate with midnight.

This incredible output blew up all of our theory when we did the simulation Unix+27.

1. In all cases the algorithm calculates driving time with the same time logic that all tachographs use (Unix), but in the order stipulated by the law (41-42). **The discrepancy could be in up to 33 minutes out of 1440**, that is to say, **about half an hour in a 24 hour period, or a potential error percentage of 2.1%**. When the order is inverted (42-41), the results from our simulation and TREP02 are fairly similar.
2. When we use the calendar minute defined in UTC the difference can be huge in some cases, when there were many “stops and goes”. **The discrepancy could be in up to 108 minutes out of 1440**, that is to say, **nearly 2 hours in a 24 hour period, or a potential error percentage of 8.33%**.

With this study **we can conclude that ALL FINES concerning “driving time” are put in doubt**, specially the weekly and biweekly ones.

A team of mathematicians is studying the regular behavior of driving time when comparing Unix with UTC.

These conclusions are supported by leading independent experts consulted by the German courts.

## The *Black Hole Theorem* of European digital tachographs

### Introduction: The black hole of the tachograph

In 1915 Einstein published his theory of General Relativity, which radically changed our understanding of the universe. Later, in 1916, Karl Schwarzschild found the first solution to Einstein's relativity equations. In this solution there was an abnormality which was not initially understood; today it is commonly known as a black hole. For an imaginary observer in a black hole, time would run as normal. For another observer at a safe distance from the black hole, in a sense, classical time vanishes in and near the black hole.

In analogy with this we claim that tachographs also have their own solution with a black hole. Below we exhibit a possible driver file where driving time vanishes: according to an observer using one clock, the truck is driving, according to the very same observer but using a different clock that runs a couple of seconds later with respect to the first, the truck is at rest.

### The theorem

In a forthcoming publication, we provided a mathematical proof that the same recording of activities at the resolution of seconds gives totally different results if we consider calendar minutes in UTC or in Unix. In the example shown in Figure 15.6, for instance, the tachograph in Unix records that the driver has been driving all the time, while in UTC it would record resting all the time.

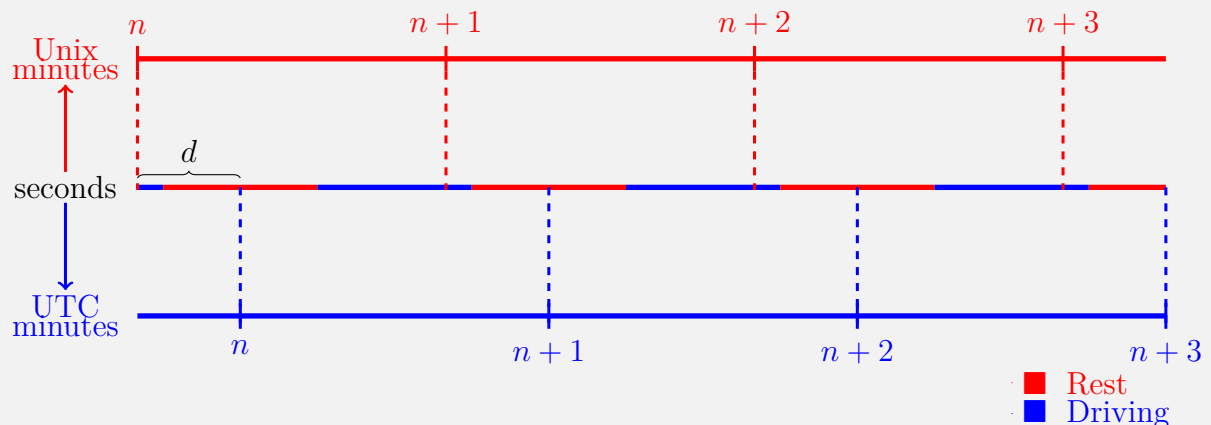


Figure 15.6: A case where the same activities recorded in seconds yield opposite results depending on the use of the UTC or Unix calendars.

The above figure should be sufficient to explain how the 'black hole' appears. For the interested reader we include a technical break-down of the interval.



## Special solution

0.  $T$  is a period of time made of several intervals of consecutive minutes after 1 January 2017, where the difference between UTC and UNIX is 27 seconds (as of the time of writing, 1 April 2019).
1. If a driver drives in a way that in each interval of a minute for the period  $T$  is the following: first he makes a 27 second block of REST, then a 30 seconds block of DRIVING and lastly a 3 second block of REST, each seconds is counted in TimeReal format.
2. If TimeReal is considered UNIX and the minutes calendar minutes in UNIX, according to the Rules of Paragraphs 41-42 of Regulation 3821/85 (51-52 799/2016), the tachograph should record DRIVING for each minute and consequently the whole  $T$  period.
3. If TimeReal is considered UTC and the minutes calendar minutes in UTC, according to the Rules of Paragraphs 41-42 of Regulation 3821/85 (51-52 799/2016), the tachograph should record REST for each interval of calendar minute in UTC equivalent to UNIX, and consequently the whole  $T$  period.

For the 27 second difference to the last calendar minutes of UTC of  $T$  there will be information missing, this is filled with a block of 27 seconds of REST.

General solution.

4. The way of driving described in Point 1 is not the only form of driving which complies with the rules in points 2-3. There are countless driving styles which comply with Rules 2-3 and the number of solutions depends on the length of  $T$ . And if this result can be reproduced for any period between 1970 to 2019.
5.  $M$  is any single UNIX calendar minute, if  $M$  is considered DRIVING we cannot DECIDE if it will be REST or DRIVING in the equivalent UTC calendar minute, unless there are speed registers from the same time periods and the tachographs fitted apply the round-up algorithms, described earlier, to translate the impulses into speed. Then we can DECIDE.
6. As a consequence of Point 5, we cannot DECIDE if a single minute of time from a driver or vehicle file which records DRIVING (in the activities recorded in node TREP02 in the vehicle file and ActivityDailyRecord in the driver file and recorded in UNIX) should be recorded as REST or DRIVING in the equivalent calendar minutes in UTC, unless the speed registers are available and the tachographs fitted apply the round-up algorithms to translate the impulses into speed. In that case we could DECIDE.

## 16 Physically impossible values: a fine of 7.500 Euro

### EXECUTIVE SUMMARY

In this section, we will present several violations of **Type3** in Decent Design: physically impossible values computed and registered by tachographs. Most of the times these impossible values do not lead to actual fines, but sometimes they do. We shall see an obviously erroneous fine of 7.500 issued by the German police due to recording impossible physical data.

Some of the data stored by tachographs is meant to record changes of states which are defined in a legal framework. For instance, a tachograph could record a change of country, the change from resting to being available, and so on. Additionally, another indispensable job that the tachograph performs is to track and represent **physical events** in the **physical world**. While the border between countries is agreed upon by people, the physical laws governing space and time are independent from our deliberation. In this section we explore cases where the values that the tachographs have recorded cannot be understood as representing physical events, or even worse, they represent violations of the laws of physics.

### Example 1.

The first example consists of a driver file downloaded in January 2007. If we look at the module EF\_Vehicles\_Used we find some nonsense dates, shown in Figure 16.1.

```
vehicleRecord® (117) -> 30/12/2006 00:00:00 - 30/12/2006 02:17:23, ██████████ KM: 204338 - 204515
vehicleRecord® (118) -> 03/01/2007 07:49:52 - 03/01/2007 15:40:47, ██████████ KM: 204515 - 204958
vehicleRecord® (119) -> 16/04/2004 20:58:49 - 06/12/2015 10:44:40, È%$vA€æ~`fF~ Cp:68?, KM: 1689856 - 4344249
vehicleRecord® (120) -> 19/11/2050 18:43:21 - 28/06/2042 21:05:18, €À@Q!.,@ Cp:65?, KM: 6428691 - 2908820
vehicleRecord® (121) -> 01/01/1970 00:00:00 - 01/01/1970 00:00:00, 0BFÁkxUD, KM: 0 - 0
vehicleRecord® (122) -> 20/05/2040 19:07:25 - 16/07/1976 21:26:46, á«cpÈÄ`XH`Èb€ Cp:36?, KM: 8572355 - 10929969
vehicleRecord® (123) -> 29/12/2048 10:49:38 - 11/04/2017 03:17:52, F~"6@²fy'b Cp:213?, KM: 6987928 - 14166110
vehicleRecord® (124) -> 09/09/2010 11:47:50 - 09/07/2024 19:31:46, €" 'hÄ`vh€ Cp:132?, KM: 8477254 - 9542033
vehicleRecord® (125) -> 18/02/1970 13:11:30 - 28/02/2004 05:00:00, €DP`J Cp:16?, KM: 36870 - 25
vehicleRecord® (126) -> 04/08/1983 20:31:16 - 25/05/2047 20:20:41, ~"v dNG9;ji Cp:41?, KM: 2163712 - 4473166
vehicleRecord® (127) -> 27/11/2046 17:48:54 - 11/05/2047 07:37:16, rd"l" @vNñd Cp:128?, KM: 9887900 - 14967918
vehicleRecord® (128) -> 03/09/2005 13:24:22 - 04/12/2072 00:16:36, €V !€" B/Æ™ Cp:128?, KM: 9522758 - 8493829
vehicleRecord® (129) -> 01/01/1970 00:00:00 - 01/01/1970 00:00:00, $%#@#,&€, KM: 0 - 0
vehicleRecord® (130) -> 06/10/2007 23:58:32 - 05/01/1970 06:24:20, bsl!$MC, KM: 12854272 - 16644
vehicleRecord® (131) -> 04/12/2082 08:02:34 - 04/01/2009 16:14:16, !i%HbLc\ \reX Cp:154?, KM: 572508 - 6434186
vehicleRecord® (132) -> 07/04/1979 04:51:04 - 19/03/1970 12:02:32, P%ø€ä"Ñ™RD Cp:98?, KM: 4479129 - 15623325
vehicleRecord® (133) -> 19/10/2051 06:04:20 - 21/06/2040 02:32:36, &F%ø&. Å.8F Cp:153?, KM: 6301209 - 12148836
vehicleRecord® (134) -> 05/04/1990 17:27:28 - 30/04/1975 06:56:00, AL;c², KM: 5328960 - 9998624
vehicleRecord® (135) -> 01/01/1970 00:00:00 - 01/01/1970 00:00:00, , KM: 0 - 0
vehicleRecord® (136) -> 01/01/1970 00:00:02 - 01/01/1970 00:00:00, B 8@", KM: 16 - 2048
vehicleRecord® (137) -> 01/01/1970 00:00:00 - 01/01/1970 00:00:00, ` , KM: 0 - 0
vehicleRecord® (138) -> 01/01/1970 00:00:32 - 30/01/1971 19:24:51, ", KM: 9216 - 1114146
vehicleRecord® (139) -> 24/01/1971 08:50:08 - 01/01/1970 00:00:00, , KM: 1050624 - 2129920
vehicleRecord® (140) -> 01/01/1970 00:00:00 - 18/02/1970 13:05:04, , KM: 0 - 0
vehicleRecord® (141) -> 06/08/1971 17:42:56 - 20/07/1970 10:31:28, "€ Cp:24?, KM: 2490899 - 1574400
vehicleRecord® (142) -> 24/01/1971 08:46:24 - 22/04/1989 08:13:54, AP, KM: 9437184 - 65536
vehicleRecord® (143) -> 25/01/1970 06:32:32 - 12/11/1970 17:36:18, @@@, KM: 524288 - 5132
vehicleRecord® (144) -> 01/01/1970 02:16:32 - 01/01/1970 00:00:00, @, KM: 16 - 0
vehicleRecord® (145) -> 01/01/1970 00:00:00 - 01/01/1970 00:00:00, @@", KM: 0 - 0
```

Figure 16.1: Fragment of the module EF\_Vehicles\_Used of the mentioned driver card.

### Example 2.

In the second example, we present the TREP05 module of a vehicle file (which contains the technical data of the vehicle), particularly the vuCalibrationRecord, as shown in Figure 16.2. The unexplained values are shown in Figure 16.3.

```

Root: vuCalibrationData®
vuCalibrationRecord® (4)
  calibrationPurpose®:periodic inspection®
  workshopName®:
    codePage®:1
    name®:
  workshopAddress®:
    codePage®:1
    address®:
  workshopCardNumber®:
    cardType®:Workshop Card®
    cardIssuingMemberState®:LT
    cardNumber®:
      ownerIdentification®:
      cardConsecutiveIndex®:0
      cardReplacementIndex®:0
      cardRenewalIndex®:1
  workshopCardExpiryDate®:23/06/2019 00:00:00
  vehicleIdentificationNumber®:
  vehicleRegistrationIdentification®:
    vehicleRegistrationNation®:LT
    vehicleRegistrationNumber®:
      codePage®:1
      vehicleRegNumber®:
  wVehicleCharacteristicConstant®:5612
  kConstantOfRecordingEquipment®:5612
  lTyreCircumference®:25128
  tyreSize®:315/70R22.5
  authorisedSpeed®:90
  oldOdometerValue®:2754
  newOdometerValue®:16777215
  oldTimeValue®:14/08/2018 06:28:24
  newTimeValue®:07/02/2106 06:28:15
  nextCalibrationDate®:14/08/2020 06:00:00

```

Figure 16.2: Data stored in TREP05 of the vehicle file.

```

newOdometerValue®:16777215
newTimeValue®:07/02/2106 06:28:15

```

Figure 16.3: Fragment of the data in TREP05.

In both cases we receive the value “11111111111111111111111111111111”. According to the regulation (Figure 16.4), the default value for unknown or not applicable content is a number of “FF” bytes.

## 2. DATA TYPE DEFINITIONS

For any of the following data types, the default value for an ‘unknown’ or a ‘not applicable’ content will consist in filling the data element with ‘FF’-Bytes.

Figure 16.4: Article 2 of Appendix 1 of Regulation 3821/85, equivalent to Article 2 of Appendix 1 of Regulation 799/2016.

We could interpret the values obtained (for `OdometerShort` and `TimeReal`) as:

1. unknown; or
2. the variable’s maximum value (for `OdometerShort`, this is 16777215; for `TimeReal`, it is 07/02/2106 06:28:15 in Unix and 07/02/2106 06:27:48 in current UTC).

But these values should not be unknown according to the law. This is a **common mistake**. In Figure 16.5 we present proof that the regulation states that it is compulsory to set the `newOdometerValue` with a minimum value of 1 km in any calibration. Hence the value of `newtimeValue` must be known.

	<b>5. Measurement of errors</b>
259	The measurement of errors on installation and during use shall be carried out under the following conditions, which are to be regarded as constituting standard test conditions: <ul style="list-style-type: none"><li>— vehicle unladen, in normal running order,</li><li>— tyre pressures in accordance with the manufacturer's instructions,</li><li>— tyre wear, within the limits allowed by national law,</li><li>— vehicle movement:<ul style="list-style-type: none"><li>— the vehicle shall advance under its own engine power in a straight line on level ground and at a speed of <math>50 \pm 5</math> km/h. The measuring distance shall be at least 1 000 m,</li></ul></li><li>— provided that it is of comparable accuracy, alternative methods, such as a suitable test bench, may also be used for the test.</li></ul>

Figure 16.5: Article 5 of Regulation 3821/85, equivalent to Article 6.5 of Regulation 799/2016.

Upon seeing this example we can reach the following conclusion: Under the assumption that the tachograph is correctly following the specifications in the regulation, then it is recording physically impossible values. This would constitute a violation of **Type3** in Decent Design.

This problem is not negligible and might have severe consequences. At the end of the section, we include a fine of 7500€ issued by German BAG for “not downloading the digital data of the vehicle in the last 90 days, according to regulation 581/2010, Article 1”. This accusation was based on the information of a file downloaded by police officers during a road control. The corresponding information can be found in the TREP01 module of the vehicle file. In Figure 16.6, we can see this information both in the vehicle file downloaded by BAG on the day of the control and in the vehicle file downloaded by the company 64 days earlier:

	A-Files downloaded by German BAG on the road the day of the control	File B-Files downloaded by the company
1-Download date of the file in UNIX time	_TREP01_Overview* _signatureValidation*: valid _signature*: .... _vuControlActivities*: 13 _vuCompanyLocks*: 9 _vehicleIdentificationNumber*: [REDACTED] _currentDateTime*: 09/02/2017 22:34:53	_TREP01_Overview* _signatureValidation*: valid _signature*: _vuControlActivities*: 13 _vuCompanyLocks*: 9 _vehicleIdentificationNumber*: [REDACTED] _currentDateTime*: 07/12/2016 07:22:30
2-Vehicle	_vehicleRegistrationIdentification* _vehicleRegistrationNation*: RUS _vehicleRegistrationNumber*: _codePage*: 1 _vehicleRegNumber*: [REDACTED]	_vehicleRegistrationIdentification* _vehicleRegistrationNation*: RUS _vehicleRegistrationNumber*: _codePage*: 1 _vehicleRegNumber*: [REDACTED]
3-Max period downloadable at that moment	_vuDownloadablePeriod* _minDownloadableTime*: 01/02/2016 00:00:00 _maxDownloadableTime*: 09/02/2017 22:33:27	_vuDownloadablePeriod* _minDownloadableTime*: 29/11/2015 00:00:00 _maxDownloadableTime*: 07/12/2016 07:18:00
4-Slot status when the file was downloaded	_cardSlotsStatus* _cardSlot1Status*: Control Card* _cardSlot2Status*: Empty*	_cardSlotsStatus* _cardSlot1Status*: Driver Card* _cardSlot2Status*: Company Card*
5-Number of times the tachograph was locked	_vuCompanyLocksData* _vuCompanyLocksRecord* (1) _vuCompanyLocksRecord* (2) _vuCompanyLocksRecord* (3) _vuCompanyLocksRecord* (4) _vuCompanyLocksRecord* (5) _vuCompanyLocksRecord* (6) _vuCompanyLocksRecord* (7) _vuCompanyLocksRecord* (8) _vuCompanyLocksRecord* (9)	_vuCompanyLocksData* _vuCompanyLocksRecord* (1) _vuCompanyLocksRecord* (2) _vuCompanyLocksRecord* (3) _vuCompanyLocksRecord* (4) _vuCompanyLocksRecord* (5) _vuCompanyLocksRecord* (6) _vuCompanyLocksRecord* (7) _vuCompanyLocksRecord* (8) _vuCompanyLocksRecord* (9)
6-Last lock by	_vuCompanyLocksRecord* (9) _lockInTime*: 31/07/2016 18:33:49 _lockOutTime*: 07/02/2106 06:28:15 _companyName*: _codePage*: 1 _name*: OOO [REDACTED] _companyAddress*: _codePage*: 1 _address*: [REDACTED] _companyCardNumber*: _cardType*: Company Card* _cardIssuingMemberState*: RUS _cardNumber*: _ownerIdentification*: [REDACTED] _cardConsecutiveIndex*: 2 _cardReplacementIndex*: 0 _cardRenewalIndex*: 0	_vuCompanyLocksRecord* (9) _lockInTime*: 31/07/2016 18:33:49 _lockOutTime*: 07/02/2106 06:28:15 _companyName*: _codePage*: 1 _name*: OOO [REDACTED] _companyAddress*: _codePage*: 1 _address*: [REDACTED] _companyCardNumber*: _cardType*: Company Card* _cardIssuingMemberState*: RUS _cardNumber*: _ownerIdentification*: [REDACTED] _cardConsecutiveIndex*: 2 _cardReplacementIndex*: 0 _cardRenewalIndex*: 0
7-Details of the previous download of the file (before this one)	_vuDownloadActivityData* _downloadingTime*: 07/02/2106 06:28:15 _fullCardNumber*: _cardType*: Company Card* _cardIssuingMemberState*: RUS _cardNumber*: _ownerIdentification*: [REDACTED] _cardConsecutiveIndex*: 1 _cardReplacementIndex*: 0 _cardRenewalIndex*: 0 _companyOrWorkshopName*: _codePage*: 1 _name*: OO [REDACTED]	_vuDownloadActivityData* _downloadingTime*: 19/11/2016 23:26:12 _fullCardNumber*: _cardType*: Company Card* _cardIssuingMemberState*: RUS _cardNumber*: _ownerIdentification*: [REDACTED] _cardConsecutiveIndex*: 2 _cardReplacementIndex*: 0 _cardRenewalIndex*: 0 _companyOrWorkshopName*: _codePage*: 1 _name*: OO [REDACTED]

Figure 16.6: Information stored in TREP01 as seen in Police Controller®.

From this, we can notice that, as seen in Row 4-*Slot-status when the file was downloaded*, on the one hand *File B* was downloaded with a Company Card inserted in Slot 2 on 07/Dec/2016 07:22:30 (UNIX time), while on the other hand, *File A* was downloaded using a Control Card in slot 1 on 09/Feb/2017 22:34:53 (UNIX time). The difference between both dates adds up to exactly 64 days, 15 hours, 12 minutes and 23 seconds, so it is not surpassing the maximum of



90 days stipulated by Article 1 of Regulation 581/2020. Why then, was the company fined for not downloading the file for more than 90 days?

By observing the previous download of the file (Row 7 *Details of the previous download of the file* of Figure 16.6), we see that the `downloadingTime` is set to 07/02/2106 06:28:15. The software used by the BAG police interpreted this as “never downloaded before”. With no interference from any software, just by reading the plain data, we can see that the file was in fact downloaded by the Company, with identification RUP0000000229-1-0-0 (RUS) and on the already mentioned date, 07/02/2106, 06:28:15, which is the bit value "1111...1111" mentioned above in this example. This information is contradictory: if the tachograph indicates that the file was downloaded, this must have happened in a moment of time from the past, not from the future. This cannot indicate an unknown value, hence it is, on the contrary, a mistake, a physically impossible value.

But we proved that it was also downloaded in December, which is not saved on the file downloaded by the police in `vuDownloadActivityData®`, so then, supposedly, it was saved in another download later, but with a mistake in recording.

To sum up, the software used by the BAG did an “intelligent interpretation” of the data, instead of merely displaying its actual values: this, along with the physical impossibility of values like the ones shown in this example, is what lead to the unjust fine.

This case has been brought to court by lawyers from a european legal services provider and it is expected to be success-fully settled in the light of this evidence.

### Example 3.

Here we have another example. As seen in Figures 16.7, 16.8 and 16.9, a driver card registered as issuing date 27/10/2017 at time 00:00:00, while the card's validity had begun by 21/11/2013, also at 00:00:00.

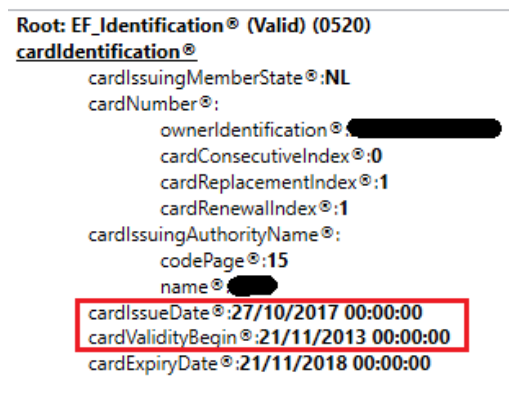


Figure 16.7: Data stored in EF\_Identification of the driver card.

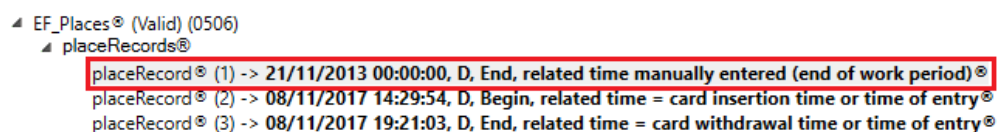


Figure 16.8: Data stored in EF\_Places of the driver card.

```

  EF_Driver_Activity_Data® (Valid) (0504)
    cardDriverActivity®
      cardActivityDailyRecords®
        validDataRange -> 1930
        activityDailyRecord® (1) -> 21/11/2013 00:00:00
          activityChangeInfo® (1) -> 00:00, BREAK/REST®, NOT INSERTED®, TEAM®, DRIVER®
        activityDailyRecord® (2) -> 11/10/2017 00:00:00
          activityChangeInfo® (1) -> 00:00, BREAK/REST®, NOT INSERTED®, TEAM®, DRIVER®
        activityDailyRecord® (3) -> 12/10/2017 00:00:00
        activityDailyRecord® (4) -> 13/10/2017 00:00:00

```

Figure 16.9: Data stored in EF\_Driver\_Activity\_Data of the driver card.

As we can see, the card contains activities that, if correct, took place before the card issuing date. Again, interpreting this data as representing actual physical events implies temporal loops, or other kinds of impossible constructions. So, what does this data mean, since it is indeed physically impossible?

#### Example 4.

Out last example is from a vehicle file. See Figures 16.10 and 16.11.

```

  VuCard®
    TREP01_Overview® (valid)
    TREP02_Activities® 01/10/2018 23:59:59 KM: 9 (valid)
    TREP02_Activities® 02/10/2018 23:59:59 KM: 9 (valid)
    TREP02_Activities® 03/10/2018 23:59:59 KM: 9 (valid)
    TREP02_Activities® 04/10/2018 23:59:59 KM: 9 (valid)
    TREP02_Activities® 05/10/2018 23:59:59 KM: 9 (valid)
    TREP02_Activities® 06/10/2018 23:59:59 KM: 9 (valid)
    TREP02_Activities® 07/10/2018 23:59:59 KM: 9 (valid)
    TREP02_Activities® 08/10/2018 23:59:59 KM: 10 (valid)
    TREP02_Activities® 09/10/2018 23:59:59 KM: 10 (valid)

```

Figure 16.10: Data stored in the TREP02 module of the vehicle file.

```

Root: VuCard®
TREP02_Activities® 01/10/2018 23:59:59 KM: 9
  signatureValidation®:valid
  currentDateTime®:01/10/2018 23:59:59
  odoMeterValueMidnight®:9
  vuCardInsertionsWithdrawals®:1
  vuActivityChanges®:12
  vuPlaceDailyWorkPeriods®:1
  vuSpecificConditions®:0
  signature®:

```

Figure 16.11: Data stored in the TREP02 module of the vehicle file.

This data must be set at 00:00 according to the regulation (see Figure 16.12), not at 23:59:59.

Information, stored in a VU, related to changes of activity and/or changes of driving status and/or changes of card status for a given calendar day (requirement 084) and to slots status at 00.00 that day.

Figure 16.12: Article 2.115 of Appendix 1 of Regulation 3821/85, equivalent to Article 2.170 of Appendix 1 of Regulation 799/2016.

This mistake has two implications:

1. **TimeReal** is not in UTC, even though it should be;
2. Although it is in Unix time, it does not work properly under this standard.

This is not a negligible mistake, even though we are talking about only one second. This means that the day is different and leads to different kinds of problems, since the **activityChangeInfo** is registered in minutes. What happens is that when there is a new **activityChangeInfo** entry, we must decide in which day to add the minutes.

If the current time is 15/Jan/2019 23:59:59, should we add the minutes to 15/Jan/2019 or to 16/Jan/2019? Police Controller® adds them to 16/Jan/2019, but is this correct? Besides, this solution does not allow a full use of the UTC system.

**All the vehicle files in our big repository of files have at least one value which is not physically possible.**



Bundesamt  
für Güterverkehr

Bz. Nr.

20 FEB 2018

Datum  
Gz.

05.02.2018

Postanschrift: Postfach 80 04 53, 99030 Erfurt  
Telefon: 0 049 (0)361 66489-0  
Telefax: 0 049 (0)361 66489-66  
E-Mail: bag-erfurt@bag.bund.de  
Internet: [www.bag.bund.de](http://www.bag.bund.de)

Hausanschrift  
Bahnhofstr. 37, 99084 Erfurt

Teil: 0 049 (0)361 66489-60  
Fax: 0 049 (0)361 66489-66

Bundesamt für Güterverkehr • Bahnhofstr. 37 • 99084 Erfurt



Personen mit Auto der Kategorie



geboren am in

Beförderer:

### Bußgeldbescheid

Das Bundesamt hat wegen der auf Seite 2 genannten Ordnungswidrigkeit gegen Sie gemäß § 65 Gesetz über Ordnungswidrigkeiten (OWiG) einen Bußgeldbescheid mit der nachstehenden Geldbuße festgesetzt. Außerdem haben Sie die Kosten des Verfahrens zu tragen (§§ 105, 107 OWiG).

Geldbuße:	7500,00 EUR
Gebühr:	375,00 EUR
Zustellungskosten:	3,50 EUR
Auslagen:	0,00 EUR
Übersetzungskosten:	0,00 EUR
Gesamt:	7878,50 EUR
Sie haben zu zahlen:	7878,50 EUR

Sie werden gebeten, den oben genannten Betrag **spätestens 2 Wochen** nach Rechtskraft dieses Bußgeldbescheides unter Angabe des **Kassenzelchens** an das  
**Bundesamt für Güterverkehr -Zahlstelle-**

Swift (BIC):

oder

Postbank Köln

Swift (BIC):

zu zahlen. Als Zahlungsmittel werden keine Schecks akzeptiert.

Wir bitten zu beachten, dass die Banken für die Überweisung Gebühren und Spesen berechnen. Dies darf nicht dazu führen, dass bei dem Bundesamt ein niedrigerer Betrag als der von Ihnen zu zahlende eingeht.

Sollte es Ihnen nicht möglich sein, den Betrag innerhalb dieser Frist zu bezahlen, so werden Sie gebeten, dies unter Darlegung Ihrer wirtschaftlichen Verhältnisse mitzuteilen.

Wenn Sie den Betrag innerhalb dieser Frist nicht einzahlen und auch nicht mitteilen, dass es Ihnen nicht möglich ist, den Betrag zu zahlen, müssen Sie damit rechnen, dass er **zwangsweise** beigetrieben wird. Zudem kann das Amtsgericht Köln gegen Sie Erzwingungshaft bis zu einer Dauer von 6 Wochen anordnen.



Kontrolltag: 09.02.2017 Uhrzeit: 23:40  
Kontrollort: Barschützer Str. 6, 02625 Baulzen  
Fahrtrichtung:  
Abschnitt: Fa. Wobst  
Kontrolle durch: APR-Autobahnpolizeirevier (OL-NSL)  
Amtl. Kennzeichen: [REDACTED]  
Zulässiges Gesamtgewicht: 40000 kg  
Fahrt von: [REDACTED]  
Fahrt nach: [REDACTED]  
Befördertes Gut:

Sie haben nicht sichergestellt, dass die in § 2 Abs. 5 Satz. 1 oder 2 FPersV genannten Daten innerhalb der gesetzlichen Frist kopiert werden.

- Ordnungswidrigkeit nach § 8 Abs. 1 Nr. 1 Buchstabe a Fahrpersonalgesetz - § 2 Abs. 5 Satz 1 oder 2, § 21 Abs. 1 Nr. 5 Fahrpersonalverordnung

Bei der Kontrolle wurde festgestellt, dass kein Download vom Massenspeicher durchgeführt wurde.

Mit der Anhörung vom 22.12.2017 wurde Ihnen Gelegenheit gegeben, sich zur Sache zu äußern. Von dieser Gelegenheit haben Sie keinen Gebrauch gemacht. Damit war nach Aktenlage zu entscheiden.

Als Geschäftsführer eines Unternehmens, das grenzüberschreitenden Güterkraftverkehr durchführt, sind Ihnen die einschlägigen gesetzlichen Bestimmungen und Verordnungen bekannt. Für deren Einhaltung sind Sie verantwortlich.

Grenzüberschreitenden gewerblichen Güterkraftverkehr können Sie nur in dem Umfang betreiben, in dem die betreffende Verkehrsrechtsordnung nicht verletzt wird.

Der Unternehmer hat sicherzustellen, dass alle Daten aus dem Massenspeicher des Kontrollgerätes spätestens alle 3 Monate zur Speicherung im Betrieb kopiert werden.

Ihrer berufsbezogenen Pflicht sind Sie nicht mit hinreichender Sorgfalt nachgekommen.

Dies ist eine besonders massive Verletzung der Überwachungspflicht des Unternehmers. Ohne den regelmäßigen und fristgerechten Download der Daten aus dem Massenspeicher des Fahrtenschreibers und von der Fahrerkarte fehlt dem Unternehmer bereits die Grundvoraussetzung, seine Fahrer hinsichtlich der Einhaltung der Lenk- und Ruhezeiten sowie der ordnungsgemäßen Benutzung des Fahrtenschreibers zu überwachen.

Sie haben die Ordnungswidrigkeit fahrlässig begangen.

Für die festgestellte Ordnungswidrigkeit sind Sie als Geschäftsführer verantwortlich (§ 9 Abs. 1 OWiG).

Es war daher die Festsetzung einer Geldbuße gegen Sie erforderlich.

Die Geldbuße wurde auf der Grundlage der Richtsätze des von den Behörden des Bundes und der Länder einheitlich angewendeten Bußgeldkataloges bemessen.

Danach ist für die festgestellte Zuwiderhandlung bei fahrlässiger Begehungswese ein Bußgeldrichtsatz von 375,00 Euro je Woche und Fahrzeug im ersten Monat und 750,00 Euro für jeden weiteren Monat vorgesehen. Die festzusetzende Geldbuße ist im Übrigen durch den Regelgeldbußrahmen von 7.500,00 Euro bei Fahrlässigkeit begrenzt.

Die angegebenen Auslagen sind Postgebühren für die Zustellung des Bußgeldbescheides; sie



Seite 3 des Bußgeldbescheides. Gz: [REDACTED]  
werden nach § 107 Abs. 3 Nr. 2 OWiG erhoben.

Der Bußgeldbescheid gilt mit Erhalt des eingeschriebenen Schriftstückes als zugestellt.

**Beweismittel:**

[REDACTED], zu laden über APR Autobahnpolizeirevier (OL-NSL), [REDACTED]

CD-ROM

**Rechtsbehelfsbelehrung:**

Dieser Bußgeldbescheid wird rechtskräftig und vollstreckbar, wenn Sie nicht innerhalb von **2 Wochen** nach seiner Zustellung schriftlich oder zur Niederschrift bei der Bußgeldbehörde **Einspruch in deutscher Sprache** einlegen. Maßgebend für die Fristwahrung ist der Eingang des Einspruchs bei der Bußgeldbehörde und nicht die Absendung mit der Post. Wird Einspruch eingelegt, überprüft zunächst das Bundesamt den Bußgeldbescheid. Ergibt die Prüfung bei zulässigem Einspruch keine Änderung, so entscheidet über die Beschuldigung das Amtsgericht in Köln im Urteils- oder Beschlussverfahren. Sowohl das Bundesamt als auch das Gericht können von der im Bußgeldbescheid getroffenen Entscheidung auch zu Ihrem Nachteil abweichen.

**Разъяснение порядка обжалования:**

Данное решение о взимании денежного штрафа вступает в силу и подлежит исполнению, если Вы в течение **двух недель** после его доставки не **подадите возражение на немецком языке** в Федеральное ведомство грузовых перевозок [REDACTED] Bahnhofstr. 37, 99084 Erfurt, в письменной форме или в устной форме с занесением в протокол.

Для соблюдения срока необходимо, чтобы возражение не только было вовремя отослано по почте, но и в срок поступило в Федеральное ведомство.

При подаче возражения решение о взимании денежного штрафа сначала пересматривается Федеральным ведомством. Если при допуске возражения перепроверка не даст никаких изменений, решение по обвинению принимает Участковый суд г. Кёльна в порядке оглашения приговора или решения. Как Федеральное ведомство, так и суд могут изменить решение о взимании денежного штрафа в худшую для Вас сторону.

Im Auftrag

[REDACTED]  
- automatisch erstellt, ohne Unterschrift gültig -



Bundesamt  
für Güterverkehr

Bundesamt für Güterverkehr

- Zahlstelle -

Gläubiger-Identifikationsnummer

Mandatsreferenz:

Zahlung per Kreditkarte oder Lastschriftinzug

Sie können Ihre Zahlung als SEPA-Lastschrift oder per Kreditkartenzahlung leisten

Hierzu füllen Sie bitte dieses Formular entsprechend aus und senden es an die unten  
aufgeführte Adresse oder faxen es an +49 221 5776-3391

(If you want, you can make your payment by credit card - please fill out the form)

Kassenzeichen:

Aktenzeichen:

Zahlungspflichtiger:

, Direktor in der

Betrag: 7878,50 EUR

Gilt nur für ein Konto innerhalb von Deutschland

(Only if there is an existing account in Germany)

☐ **SEPA-Lastschrift (Bankinzug)**

Ich ermächtige das Bundesamt für Güterverkehr, einmalig eine Zahlung für das oben angegebene Kassenzeichen von meinem Konto mittels Lastschrift einzuziehen. Zugleich weise ich mein Kreditinstitut an, die vom Bundesamt für Güterverkehr auf mein Konto gezogene Lastschrift einzulösen.

Hinweis: Ich kann innerhalb von acht Wochen, beginnend mit dem Belastungsdatum, die Erstattung des belasteten Betrages verlangen. Es gelten dabei die mit meinem Kreditinstitut vereinbarten Bedingungen.

IBAN

BIC

DE

Name der Bank (name of the bank)

Datum (date)

Unterschrift (signature)

☐ **Kreditkarte (credit card)**

Art der Kreditkarte:

☐ VISA

☐ Euro-/Mastercard

☐ American Express

(credit card company)

Kreditkartennummer

(number of credit card)

Gültig bis

(valid dates)

Name des Kreditkarteninhabers

(name of the credit card holder)

Datum (date)

Unterschrift (signature)

Rückantwort an:

(reply to)

Oder (or) FAX an (to): +49 221 5776-3391

Bitte benutzen Sie den beige-  
fügten Vordruck für die Über-  
weisung des Betrages von  
Ihrem Konto. Sie erleichtern  
uns dadurch die Verbuchung  
Ihrer Zahlungseingänge ganz  
wesentlich.

Sie können diesen Vordruck  
auch zur Bereinigung des  
Betrages bei einem Kredit-  
institut benutzen.

Name und Sitz des Überweisenden Kreditinstituts		BIC
Angaben zum Zahlungsempfänger: Name, Vorname/Firma (max. 27 Stellen, bei maschineller Beschriftung max. 30 Stellen)		
IBAN		
BIC des Kreditinstituts/Zahlungsdienstleisters (9 oder 11 Stellen)		
		Betrag: Euro, Cent
Kunden-Referenznummer - Verwendungszweck, ggf. Name und Anschrift des Zahlers		
noch Verwendungszweck (zusätzlich max. 2 Zeilen à 27 Stellen, bei maschineller Beschriftung max. 2 Zeilen à 30 Stellen)		
Angaben zum Kontoinhaber/Zahler: Name, Vorname/Firma, Ort (max. 27 Stellen, ohne Straßen- oder Postleitzahlen)		
IBAN		
D E		

### SEPA-Überweisung/Zahlungsein

Name und Sitz des Überweisenden Kreditinstituts		BIC	Für Überweisungen in Deutschland, in andere EU-/EWR-Staaten und in die Schweiz in Euro.
Angaben zum Zahlungsempfänger: Name, Vorname/Firma (max. 27 Stellen, bei maschineller Beschriftung max. 30 Stellen)			
IBAN			
BIC des Kreditinstituts/Zahlungsdienstleisters (9 oder 11 Stellen)			
		Betrag: Euro, Cent	
Kunden-Referenznummer - Verwendungszweck, ggf. Name und Anschrift des Zahlers			
noch Verwendungszweck (zusätzlich max. 2 Zeilen à 27 Stellen, bei maschineller Beschriftung max. 2 Zeilen à 30 Stellen)			
Angaben zum Kontoinhaber/Zahler: Name, Vorname/Firma, Ort (max. 27 Stellen, ohne Straßen- oder Postleitzahlen)			
IBAN			
D E			
Datum	Unterschrift(en)		08

[REDACTED]

---

**Von:** [REDACTED]  
**Gesendet:** Mittwoch, [REDACTED]  
**An:** [REDACTED]  
**Cc:** [REDACTED]  
**Betreff:** Gz: [REDACTED]; Ihr Schreiben vom 28.01.2019 Auswertung der Daten-CD, Firma [REDACTED]  
**Anlagen:** SM03ERFUR19020612010.pdf; SM03ERFUR19020611590.pdf

Sehr geehrter Herr [REDACTED]

die Daten-CD wurde von mir nochmals ausgelesen und bewertet. Alle Datenlisten die sich mit TachoScan erstellen lassen wurden ausgedruckt und als E-Mail-Anhang vorab beigefügt.

Aus diesen Listen ist ersichtlich, dass die Firma keinen Daten-Download mit der Unternehmenskarte am Fahrzeug durchführte. Ein Datum wurde nicht in den Daten hinterlegt. Es ist ersichtlich das Lock-In durchgeführt wurde, letztmalig am 31.07.2016, 18:33. Auch aus dem Bericht Massenspeicherdaten (Ereignisse, Störungen und Geschwindigkeitsüberschreitungen) ist am 08.11.2016 lediglich als Ereignis Unterbrechung der Stromversorgung hinterlegt.

Die Daten der Fahrerkarte wurden durch die Firma heruntergeladen. Die Verstöße zu der Fahrerkarte sind Blatt 28 d. A. aufgeführt.

Ein Trep1 konnte beim Auslesen mit TachoScan nicht festgestellt werden. Des Weiteren gibt Herr Arretz bei „Root: vuDownload Activity Data, weder Kennzeichen des Fahrzeuges noch die Nummer der Unternehmerkarte an.

Der Vorgang wird Ihnen heute zurückgesendet. Alle Listen sind ausgedruckt angehängen.

Mit freundlichen Grüßen

[REDACTED]

---

Sachbereich 2 - Ordnungsrechtliche Verfahren  
Außenstelle Erfurt  
Bundesamt für Güterverkehr

Bahnhofstraße 37, 99084 Erfurt  
Telefon: (0361) 66489 - 60  
Fax: (0361) 66489 - 66  
E-Mail: [REDACTED]@bag.bund.de  
Internet: [www.bag.bund.de](http://www.bag.bund.de)

Informationen zum Datenschutz im BAG finden Sie auf [www.bag.bund.de](http://www.bag.bund.de) unter der Rubrik Datenschutz.



## 17 The time zone problem

### EXECUTIVE SUMMARY

There is no specification that stipulates how software should deal with changes between time zones. Software used by authorities to check **ddd** files and search for infractions show dates in local time. Due to this lack of specification, we need to ask the software engineer team of each program to know how this issue was solved. But if there is no specification telling us how to perform this conversion, can we guarantee that these different programs are working according to the regulation? **Whenever something is not specifically written in the regulation, the software engineers are ‘free’ to do what they want.**

The last problem of this document concerning the flaws and failures of the tachograph technology and its inadequacy with respect to Regulations 3821/85 and 799/2016 is related to the **incompatibility among different time zones**.

As we have seen in Section 15, tachographs measure time according to the Unix standard (even though Regulations 3821/85 and 799/2016 stipulate that it should be measured in UTC). Regulation 561/06, that regulates the working conditions of drivers, works according to the local time (which makes sense, since the drivers work in different local time zones). But a question arises here: **how should the translation from Unix or UTC into local time zones be brought about?**

Software engineers and lawmakers might be surprised to see this topic discussed here, but there are some issues that must be taken into account:

1. Which software is responsible for translating from **TimeReal** (integer number in Unix or UTC) into a concrete time zone? Microsoft Time (mentioned in Section 15), which does not even work in UTC? Is it verified? By whom?
2. When is the translation from Unix or UTC to a concrete time zone performed? Before the calculations? Or at the end, when all calculations are done and the fines are already issued? Depending on the answer, we may obtain different results. To see this, let us first consider the following set of activities as given in Table 17.1:

Table 17.1

23:30 27/10/2018	<i>BREAK/REST</i>	UTC
00:55 28/10/2018	<i>DRIVING</i>	UTC
01:05 28/10/2018	<i>BREAK/REST</i>	UTC
22:00 28/10/2018	<i>WORK</i>	UTC

Now, also assume we don’t have any of the instances outlined by **Cut theory** (see Section 3). If we define the driving time of an interval as the duration of the driving activity until the next non-driving activity, then we obtain the following situation:

[02:55, 03:05] → 10 minutes of driving in UTC

If we translate UTC time to the United Kingdom - Portugal Time Zone (UTC +0), (taking into account the **daylight saving time change** that took place on 28/Oct/2018) we obtain the results in Table 17.2:



Table 17.2

00:30 28/10/2018	<i>BREAK/REST</i>	UTC +0 local
01:05 28/10/2018	<i>BREAK/REST</i>	UTC +0 local
01:55 28/10/2018	<i>DRIVING</i>	UTC +0 local
22:00 28/10/2018	<i>WORK</i>	UTC +0 local

However, now if we use the same definition of driving time used above, we obtain:

$$[01:55, 22:00] \rightarrow 20 \text{ hours and } 5 \text{ minutes of driving in UTC +0}$$

In short, we have gone from a **10 minute long drive** to **20 hours and 5 minutes of driving**, a clear violation of the law.

We have to highlight that:

- There isn't a perfect and definitive solution for this problem, since the time change occurs at one point or another. This same driving time duration change can also happen when a driver moves from a country or region to another in a different time zone. Police Controller® notifies the user when this happens so that they are aware of this potential conflict.
- As we have mentioned in section 15, software developers in charge of designing the tachograph technology use Microsoft's time library to solve all problems related to time. However, this is not the perfect solution to many of the tachograph problems dealing with time, as we have shown in the present section and in section 15.
- Developers tend to fall into the same error: to think that Microsoft is the perfect solution for all issues concerning time management. As we have shown, it is not.

We have a proposal to solve this problem. Although it is not a perfect proposal, at least it guarantees the rights of drivers in cases involving fines and penalties

## 18 Notes about problems concerning Regulation 561/06

### EXECUTIVE SUMMARY

Having analyzed in depth some of the problems concerning Regulations 3821/85 and 799/2016 and the functioning of the tachograph in the previous sections, it is now time to focus our attention on Regulation 561/06. This law stipulates the acceptable working conditions of truck drivers: how many hours per day and week they are allowed to drive, how many hours per day and week they should rest, how the breaks must be divided, etc.

As we will see in this section and the following ones, the problems concerning this regulation are even worse than the ones in the functioning of the tachograph. In particular, in this section we will draw attention to the fact that **Regulation 561/06 cannot be computed and its definitions are problematic.**

We have shown the incredible problems concerning the technical specifications in Regulation 3821/85. We can say without doubt that those troubles are only anecdotal when compared with the catastrophic consequences of Regulation 561/06. Millions of euros in unjust fines are issued every year against truck drivers and truck companies due to inconsistencies in the application of this regulation. Therefore, the problems we talk about in these sections are far from negligible.

The main problem is that Regulation 561/06 is meant to be a quantitative law. **Regulation 561/06 has to be computed.** It needs to be translated into algorithms. While in Regulation 3821/85 the technical specifications are written in ISO style (a format that easily lends itself to a computable environment), there hasn't been any effort to articulate the Regulation 561/06 in a formal way.

The consequences are clear: it is impossible to be sure that the translation of Regulation 561/06 into algorithms is actually correct. What engineers have to do with this regulation is to implement in mathematical terms rules that can not be consistently translated into mathematics. This means that when engineers program Regulation 561/06, **they are creating a new law.**

Regulation 561/06 cannot be written in a formal way, and it cannot be written as software. The engineers writing the software intended to apply it are the real lawmakers! The resulting software is used by police officers, independently of it being verified or not. Finally, the software is the one that ultimately decides who is or is not guilty.

Take the note from the Austrian Police mentioned in the introduction (Section 1), where it is admitted that the calculation of driving time and rest is carried out automatically by the DKO System program. The program indicates the infringements and their severity. The police officer is not authorized to correct them except in extreme circumstances (if the driver has made manual annotations, for example).

Let us see some examples regarding dubious or problematic definitions that appear in Regulation 561/06.

#### **Example 1. The continuous driving time.**

The infringement of Article 7 (see Figure 18.1) is the cause of the majority of fines imposed on European drivers.

## Article 7

After a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes, unless he takes a rest period.

This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of the first paragraph.

Figure 18.1: Article 7 of Regulation 561/2006.

Millions of drivers have received fines for violating Article 7. We should also say that **we have found five absolutely different versions of Article 7 depending on which software was used by the police officers**. All of them thought they were acting according to the law, but reality demonstrates that there have been five different interpretations of this article.

This article can not be represented according to splitter theory, a mathematical framework to model quantitative laws. When a driver is stopped by police officers, he relies purely on luck regarding the software and interpretation the police is using to interpret and so implement Article 7. This is **pure legal arbitrariness**.

### Example 2. The definition of “multi-manning”.

The definition of multi-manning provided in Regulation 561/06 is printed here in Figure 18.2.

- (o) ‘multi-manning’ means the situation where, during each period of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, there are at least two drivers in the vehicle to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory;

Figure 18.2: Part of Article 4 of Regulation 561/2006.

Two problems arise in this definition:

- (a) Regulation 561/06 is trying to define driving and rest periods for a driver. In this article there no independent definition of multi-manning for a driver, which would lead the software engineer to understand that the terms “driving” and “rest” seem to have been created for the vehicle.
- (b) The definition of “multi-manning” refers to the concept of “multi-manning”. A concept can not be defined in terms of itself.

The paragraph reads “For the first hour of multi-manning the presence of another driver or drivers is optional ...”. However, of course, we could understand the text to mean not the concept of multi-manning, but to the mode set on the tachograph. But this is not less problematic than defining a concept in terms of itself (because the data on the tachograph is meant to represent a moment when the concept applies).

Nevertheless, assuming that this is the text’s intention, this raises another programmer’s nightmare. Since this paragraph belongs to an Article 4 whose express and explicit purpose is to define terms, we raise the following questions:

- Consider a single driver in multi-manning for more than a full hour, exceeding the optional period specified in the second part of the paragraph. Does this constitute an infraction, or is the previous hour-long period re-defined as driving as “single” instead “multi-manning”?
- If the previous data can be re-defined, can a single driver then re-activate the “multi-manning” mode, hoping that the other driver or drivers will embark within the following hour?

These issues are crucial. **Engineers must have a hard time working out an algorithm from a definition like this.** The point is that whatever they decide are adequate answers to these questions is unaided and independent from the Regulation or the law-drafting process itself. However, it is somehow meant to implement it. The engineers are not provided any disambiguation of what this text could mean.

## 19 French Black March

**EXECUTIVE SUMMARY** This example shows how by a change in the interpretation of the law, the authorities can generate an undesirable situation. From this we have learned how a regulation without clear computable premises can lead to a fiasco. As a result, some of the fines involved in this case have been retracted.

In March 2016, trucks driving with 2 drivers, that is, lawfully engaged in *multi-manning*, were unjustly fined in France. This was due to a recent new interpretation of Regulation 165/2014, made by OCTET, that considered that a change in the driving status from *DRIVING* to *AVAILABLE* did not interrupt the *continuous driving period* between two rests/breaks. This new interpretation had fatal consequences for trucks with two drivers alternating between driving and being available as copilot. During this period, a major european legal service provider paid on the road between 10/Mar/2016 and 20/Mar/2016 212.000€ in 27 fines. **Finally, on noticing such unexpected consequences of the recent sudden change in the interpretation of the law, OCTET retracted said new interpretation.**

Below, we can observe a particular fine that was delivered to a Dutch truck in Champigneulle on 12/Mar/2016 with the following charges:

- (a) 9.750€ for continuous driving time for one driver;
- (b) 6.000€ for continuous driving time for the second driver.

The Court finally canceled the fines on 31/Jan/2017 and 14.969€ (out of the total 15.750€) were recovered. The sentence along with the fine can be found attached at the end of this section.

Moreover, attached below, we have the following: (i) an example of a fine issued during the aforementioned period; (ii) the DREAL official document announcing that the new regulation 165/2014 did not change the interpretation of “Guidance Note 2” in team driving (while the application of the new interpretation was ongoing.)

Furthermore, a client of the same european legal services provider had another truck stopped on 09/Mar/2016 at the same location with the same fines:

- 11 cases for not resting 45min (750€ each);
- 2 exceeding continuous driving time (135€ each);
- 1 overtaking another vehicle (45€);
- 1 breaking security distance (45€).

TOTAL: 8.790€.

In this second fine the Tribunal canceled the driving time fines and set a bail for the last 2 fines (this sentence is also attached at the end of this section):

*Ordonnance penale* = 10.000€.

- (a) 5.000€ for overtaking another vehicle;
- (b) 5.000€ for breaking security distance.





Feuillet : .....

du carnet : .....

CACHET  
DU SERVICEFICHE  
D'IMMOBILISATION(ARTICLES : L234-1 (III) -  
L325-1 à L325-3 - - R325-9  
DU CODE DE LA ROUTE)A REMETTRE  
AU CONTREVENANT

CONDUCTEUR 9750€

CONVOYEUR 6000€

AGENTS VERBALISATEURS	NOM - QUALITÉ - AFFECTATION [REDACTED]		
INFRACTION	PGT CEE		
IMMOBILISATION	DATE - HEURE - LIEU 12/03/2016 à 09h26 Parking Leroy Merlin		
VÉHICULE	GENRE CAM	MARQUE DAF	TYPE FAN XF
	N° SÉRIE TYPE	N° IMMATRICULATION [REDACTED]	
	APPARTENANT À [REDACTED]	ADRESSE [REDACTED]	
	CONDUIT PAR [REDACTED]	ADRESSE [REDACTED]	
CERTIFICAT D'IMMATRICULATION	NUMÉRO [REDACTED]	DÉLIVRÉ LE 26/04/13	
	PAR PAYS BAS		
AUTORITÉ QUALIFIÉE POUR LEVER LA MESURE	NOM - QUALITÉ [REDACTED]	ADRESSE [REDACTED]	

Signature du contrevenant

Signature des agents verbalisateurs

A LIRE  
ATTENTIVEMENT

## Art. R. 325-2

L'immobilisation est l'obligation faite au conducteur ou au propriétaire d'un véhicule, dans les cas prévus au présent code, de maintenir ce véhicule sur place ou à proximité du lieu de constatation de l'infraction en se conformant aux règles relatives au stationnement. Pendant tout le temps de l'immobilisation, le véhicule demeure sous la garde juridique de son propriétaire ou de son conducteur.

## Art. R. 325-9

Lorsque l'infraction qui a motivé l'immobilisation n'a pas cessé au moment où l'agent quitte le lieu où le véhicule est immobilisé, l'agent saisit l'officier de police judiciaire territorialement compétent en lui remettant la carte grise du véhicule.

## Art. R. 325-11

Lorsque le conducteur ou l'accompagnateur de l'élève-conducteur n'a pas justifié de la cessation de l'infraction dans un délai de 48 heures, l'officier de police judiciaire peut transformer l'immobilisation en mise en fourrière. Dès la cessation de l'infraction, le véhicule peut circuler entre le lieu d'immobilisation et la résidence de l'autorité désignée pour lever la mesure sous couvert de la fiche d'immobilisation remise au conducteur.



**Bulletin de contrôle  
de réglementation  
encadrant les transports routiers**

CRS AUTOROUTIERE LORRAINE-ALSACE  
03, RUE DES BLANCHES TERRES

54250 CHAMPIGNEULLES  
54 Meurthe et Moselle

001001

Date du contrôle : 12/03/2016    Heure de début du contrôle : 09:25    Heure de fin du contrôle : 11:11    Contrôleur : [REDACTED]    Grade : Brigadier Chef  
Lieu du contrôle : Autre lieu : CHAMPIGNEULLES Voie : 03, RUE DES BLANCHES TERRES Dép. : 54

Entreprise contrôlée :

N° siren ou intracommunautaire :  
Licence (copie conforme) ou autorisation présentée : - Copie N°  
Type d'activité de cette entreprise : Transport de Marchandises - Public

Nature du déplacement à vide ou du transport :

Origine :

Destination :

Nature de la marchandise transportée ou du service effectué :

Conducteur au volant au moment du contrôle :

Prénom et Nom :

Date de naissance : 02/08/1953

Titulaire des formations :

Carte de chronotachygraphe n° : B000022412000001

Nationalité : Néerlandaise

Conducteur en attente lors du contrôle :

Prénom et Nom :

Date de naissance : 09/07/1969

Titulaire des formations :

Carte de chronotachygraphe n° : B000022420000001

Nationalité : Néerlandaise

Véhicule :

Genre :

Immatriculation : 85-BBS-5

Pays d'immatriculation : NL - Pays-Bas

Propriétaire :

Etendue des contrôles effectués :

Réglementation sur les temps de conduite et de repos de la période du 13/02/2016 au 12/03/2016

Type de tachygraphe : Numérique

☐ Réglementation fiscale (taxe à l'essieu)

☐ Réglementation des transports

☐ Code de la route avec/sans pesée du véhicule

☐ Transport des matières dangereuses

☐ Transport des animaux vivants

☐ Transport de déchets

☐ Réglementation du travail

☐ Formation professionnelle

Suite donnée au contrôle :

Infractions relevées par procédure [procès-verbal et/ou amende(s) forfaitaire(s)] :

NATINF :

Nombre :


Libellé :


27805	1 X	Conduite continue >= 6h (561-7) C5
27805	1 X	Conduite continue >= 6h (561-7) C5
27805	1 X	Conduite continue >= 6h (561-7) C5
27805	1 Y	Conduite continue >= 6h (561-7) C5
27805	1 X	Conduite continue >= 6h (561-7) C5
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27805	1 Y	Conduite continue >= 6h (561-7) C5
27805	1 Y	Conduite continue >= 6h (561-7) C5
27805	1 X	Conduite continue >= 6h (561-7) C5
27807	1 X	Repos journalier < 7h /9h (561-8-2) C5
7680	1 X	Emploi irrégulier du dispositif destiné au contrôle des conditions de travail - Transport routi

750€

3000€

Mesures prises en rapport avec les infractions relevées :

NATNF	CLASSE	INFRACTION	Nb	€
	C5	Dépassement d'au moins 1 heure et 30 minutes de la durée de conduite ininterrompue de 4 heures et 30 minutes- Transport routier CEE Article 7, article 4 D), article 2 1°, 2° Règlement du 15/03/2006. Article 3 § III.1, § II 2°d, art. 1 décret 2010-855 du 23 juillet 2010 Art. L. 3311-1 1°, art. L. 3315-6 C transports Art. 3 § III al. 1 décret 86-1130 du 17/10/1986 RCCE 165/2014 Art 34	04 X 750€	3000€

NATNF	CLASSE	INFRACTION	Nb	€
	C5	Dépassement d'au moins 1 heure et 30 minutes de la durée de conduite ininterrompue de 4 heures et 30 minutes- Transport routier CEE Article 7, article 4 D), article 2 1°, 2° Règlement du 15/03/2006. Article 3 § III.1, § II 2°d, art. 1 décret 2010-855 du 23 juillet 2010 Art. L. 3311-1 1°, art. 1. 3315-6 C transports Art. 3 § III al. 1 décret 86-1130 du 17/10/1986 RCCE 165/2014 Art 34	04 X 750€	3000€



MINISTÈRE DE L'ENVIRONNEMENT, DE L'ÉNERGIE ET DE LA MER

Direction générale des infrastructures, des  
transports et de la mer

Paris, le 15 JUIN 2016

Direction des services de transport  
Sous-direction des transports routiers  
Sous-direction du travail et des affaires sociale

Le directeur des services de transport

à

Bureau de l'organisation et de l'animation du  
contrôle des transports routiers

Mesdames et Messieurs les préfets de région  
Directions régionales de l'environnement, de  
l'aménagement et du logement

Affaire suivie par : [REDACTED]

**Objet :** Double équipage : dérogation applicable en matière de repos.  
**PJ :** Guidance note N°2

Selon l'article 7-1 du règlement (CE) 561/2006 du 20 mars 2006 *relatif à l'harmonisation de certaines dispositions de la législation sociale dans le domaine du transport par route* : « Après un temps de conduite de quatre heures et demie, un conducteur observe une pause ininterrompue d'au moins 45 minutes, à moins qu'il ne prenne un temps de repos ».

Toutefois, dans sa note d'orientation n°2, que vous trouverez en pièce jointe, la Commission avait précisé que, lors de conduite en équipage, pour le second membre d'équipage disponible pour la conduite, assis à côté du conducteur du véhicule et non occupé activement à assister celui-ci, **une période de 45 minutes de la période de disponibilité (au sens de la directive 2002/15/CE - art. 3b) de ce conducteur pouvait être considérée comme une pause**, puisque le tachygraphe numérique ne permet pas d'enregistrer une pause dans un véhicule en mouvement.

Il résulte d'échanges avec la Commission européenne que la position développée dans sa note d'orientation N°2, jusqu'à présent partagée entre les Etats-membres de l'Union Européenne, restait applicable afin d'assurer une mise en œuvre la plus uniforme possible des règles en vigueur.

En conséquence, aucune sanction ne doit donc être relevée à son encontre en raison de l'absence de pause dûment enregistrée sous le symbole « lit » du tachygraphe ; dans ce cas précis, l'utilisation du « carré barré » suffit à qualifier la pause obligatoire de 45 mn de ce conducteur.

Cette mesure d'assouplissement reste d'application stricte et ne s'étend pas au cas où l'opération de transport n'est effectuée que par un seul conducteur (simple équipage) ; dans cette hypothèse, de loin la plus fréquente, la pause ininterrompue de ce conducteur se traduit exclusivement par l'utilisation du symbole « lit », véhicule à l'arrêt.



Il a été porté à ma connaissance que certains services de contrôle avaient pu déduire des nouvelles dispositions du règlement 165/2014 du 4 février 2014 que l'interprétation donnée par la note d'orientation n°2 de la Commission devenait implicitement caduque, et qu'en conséquence, des procès-verbaux d'infraction avaient été dressés pour absence de prise de pause obligatoire par le second membre d'équipage.

Lorsque les entreprises ainsi verbalisées ont dû verser une consignation, les Parquets concernés doivent être informés rapidement de la position rappelée ci-dessus. Il pourra être prononcé un classement sans suite permettant à l'entreprise de demander le remboursement de la consignation auprès du Trésor Public.

Mes services restent à votre disposition pour toute question complémentaire.



**Copie :**

Ministère chargé de l'intérieur : [redacted]  
Ministère chargé des finances : [redacted]  
Ministère chargé du travail : [redacted]  
Ministère chargé de la justice : [redacted]  
DREAL : Chefs de service Transports routiers



**NOTE D'ORIENTATION N° 2**

**Objet:** Enregistrer le temps de conduite d'un conducteur jusqu'à un lieu qui n'est pas le lieu habituel de prise en charge ou de dépôt d'un véhicule entrant dans le champ du règlement (CE) n° 561/2006.

**Article 9 du règlement (CE) n° 561/2006.**

**Approche à suivre:**

Un conducteur, qui se rend à un endroit précis qui lui est indiqué par son employeur et qui est différent du lieu d'établissement de l'employeur, pour prendre en charge un «véhicule à tachygraphe», satisfait à une obligation vis à vis de son employeur et ne dispose, dès lors, pas librement de son temps.

Par conséquent, conformément à l'article 9, paragraphes 2 et 3:

- tout temps passé par un conducteur à destination ou au départ d'un lieu qui n'est pas celui de sa résidence habituelle ni celui de l'établissement de l'employeur et où il doit se rendre pour prendre en charge ou déposer un véhicule entrant dans le champ du règlement, indépendamment du fait que l'employeur ait donné des instructions sur le moment et les modalités de ce trajet ou qu'il ait laissé le conducteur en décider, devrait être comptabilisé comme temps de «disponibilité» ou d'«autre tâche», selon la législation nationale de l'État membre en cause;

et

- tout temps passé par un conducteur à conduire un véhicule qui n'entre pas dans le champ du règlement, à destination ou au départ d'un lieu qui n'est pas celui de son domicile ni de l'établissement de l'employeur et où il est censé prendre en charge ou déposer un véhicule qui entre dans le champ du règlement devrait être enregistré comme «autre tâche».

Le temps passé à voyager peut être considéré comme du «repos» ou une «pause» dans les trois cas suivants :

Le premier cas est celui d'un conducteur qui accompagne un véhicule qui est transporté par ferry ou train. Dans ce cas, le conducteur peut prendre un temps de repos ou de pause pour autant qu'il ait accès à une couchette (article 9, paragraphe 1).

Le deuxième cas est celui d'un conducteur qui n'accompagne pas de véhicule mais voyage en train ou en ferry à destination ou au départ d'un lieu où il va prendre en charge ou a déposé un véhicule entrant dans le champ du règlement (article 9, paragraphe 2), pour autant qu'il ait accès, sur ce navire ou ce train, à une couchette.

Le troisième cas est celui d'un véhicule avec plus d'un conducteur à bord. Lorsqu'un second membre d'équipage est disponible pour la conduite le cas échéant, est assis à côté du conducteur du véhicule et n'est pas occupé activement à assister le conducteur conduisant le véhicule, une période de 45 minutes de la «période de disponibilité» de ce membre d'équipage peut être considérée comme une «pause».

La nature du contrat de travail du conducteur ne change rien en l'espèce. Autrement dit, ces règles s'appliquent aussi bien aux conducteurs permanents qu'aux conducteurs employés par une entreprise de travail temporaire.

Dans le cas d'un «conducteur temporaire», il faut entendre par "établissement de l'employeur"

**LÉGISLATION SOCIALE DANS LES TRANSPORTS**

**Règlement (CE) n° 561/2006, directive 2006/22/CE, règlement (CEE) n° 3821/85**

l'établissement d'une entreprise qui fait appel aux services de ce conducteur pour une opération de transport routier («entreprise utilisatrice») et non le siège de l'«entreprise de travail temporaire».

**Remarque :** Cour de justice des Communautés européennes, affaires C-76/77 et C-297/99.



Tribunal de Police de Nancy  
Cité Judiciaire  
Rue du Gal Fabvier Case Off.27  
54035 NANCY CEDEX

## NOTIFICATION D'ORDONNANCE PENALE

Lettre recommandée avec demande d'avis de réception  
5ème classe

N° de PARQUET : [REDACTED]

N° MINOS : [REDACTED]

N° de bordereau : [REDACTED]

la [REDACTED]

PRISE EN LA PERSONNE DE SON REPRESENTANT  
LEGAL

Forme Juridique :

Raison Sociale :

SON REPRESENTANT LEGAL

N° de SIREN/SIRET :

Code APE :

SOCIETE DE [REDACTED]

Prévenue d'avoir du 16/02/2016 au 12/03/2016 à CHAMPIGNEULLES et sur le territoire national commis l'infraction suivante :  
avec le véhicule immatriculé [REDACTED] PRISE INSUFFISANTE SUPERIEURE A 2 HEURES DU TEMPS DE REPOS JOURNALIER  
DE 9 HEURES LORS DE CONDUITE EN EQUIPAGE - TRANSPORT ROUTIER COMMUNAUTAIRE en tout cas sur le territoire de  
la communauté européenne, la Suisse et les Etats parties à l'Espace Economique Européen (Code Natinf : 27809)  
Faits prévus et réprimés par ART.8, ART.4 G), ART.2 1°, 2° REGLT.CE DU 15/03/2006. ART.3 §III 2°, §II 3° C), ART.1 DECRET 86-  
1130 DU 17/10/1986. ART.L.3311-1 1°, ART.L.3315-6 C.TRANSPORTS., ART.3 §III AL.1 DECRET 86-1130 DU 17/10/1986.

### ORDONNANCE PENALE

Vu les réquisitions du Ministère Public en date du 20/10/2016

CONDAMNONS la [REDACTED]

PRISE EN LA PERSONNE DE SON REPRESENTANT  
LEGAL à :

- une amende contraventionnelle de SEPT CENT CINQUANTE EUROS (750 EUROS) à titre de peine principale ;

**La présente décision est assujettie à un droit fixe de procédure d'un montant de TRENTE-ET-UN EUROS (31 EUROS) ;**

Dit que, conformément aux articles 707-2 et 707-3 du code de procédure pénale, si le paiement du montant du droit fixe de procédure et/ou du montant de l'amende est effectué dans le délai d'un mois, à compter de la date d'envoi de la lettre recommandée de notification, ces montants seront diminués de 20 % dans la limite de 1500 €. En cas de recours contre cette décision, les sommes versées peuvent être restituées sur demande de l'intéressé.

Tribunal de Police de Nancy, le 31/01/2017  
Le Président [REDACTED]

Pour copie conforme  
Le Greffier en chef [REDACTED]

Talon à joindre au paiement ou en cas d'opposition	DETAIL DES CONDAMNATIONS	Nom et adresse du comptable du Trésor seul habilité à recevoir votre paiement
Tribunal de Police de Nancy N° de PARQUET : [REDACTED] N° OP : [REDACTED] AMD : [REDACTED] Du : [REDACTED] ETAT N° : [REDACTED] Trop perçu : 14 969,00 EUROS	Amende : 750,00 EUROS FGA : 0,00 EUROS Droit fixe : 31,00 EUROS TOTAL : 781,00 EUROS Consignation Versée : 15750 EUROS N° quittance : [REDACTED] NANCY	COMPTABLE DU TRESOR  Trésorerie de principale Essey les Nancy place de la République BP 50040 54271 ESSEY LES NANCY CEDEX

Madame, Monsieur,

Une contravention ayant été relevée contre vous, le Président du tribunal de police vous a condamné(e) au paiement d'une amende par une ordonnance pénale qui est reproduite au dos de cette lettre. Cette procédure simplifiée a été appliquée pour vous éviter une comparution devant le tribunal de police. Cette ordonnance pénale est assujettie à un droit fixe de procédure.

## PAIEMENT DE L'AMENDE ET DU DROIT FIXE DE PROCÉDURE

Vous voudrez bien payer la somme due – dans les 30 jours de la date d'envoi de la présente lettre (aucune prolongation de ce délai n'est possible) – au comptable du Trésor désigné au recto.

Votre paiement peut être fait :

- par carte bancaire ou en espèces, à la caisse du comptable. Dans ce cas, veuillez vous munir de la présente lettre ;
- par chèque bancaire ou postal adressé directement au comptable du Trésor (indiqué au recto) et libellé obligatoirement à l'ordre du « Trésor public » (n'envoyez pas votre chèque sans indiquer le bénéficiaire). Dans ce cas, veuillez soit coller le talon situé en bas de votre lettre d'envoi, soit rappeler, sur cette lettre, toutes les mentions de ce talon ;
- par mandat cash adressé directement au comptable du Trésor indiqué au recto. Dans ce cas, veuillez soit coller le talon ci-dessous sur la partie correspondante, soit y rappeler les mentions de ce talon.

## OPPOSITION

Si vous contestez la décision rendue, vous avez la possibilité de former opposition à l'ordonnance pénale dans un délai de 30 jours à compter de la date d'envoi de la présente lettre. *Dans ces cas, vous ne devez pas effectuer le paiement ci-dessus.* L'affaire sera en effet examinée par le tribunal.

Vous pouvez faire opposition :

- soit par lettre simple adressée à M. le Chef de greffe du tribunal de police mentionné sur cette lettre. Dans ce cas, veuillez soit joindre la présente ordonnance, soit coller le talon ci-dessous, ou rappeler toutes les mentions de ce talon ;
- soit, en vous présentant vous-même au greffe, *muni(e) de la présente ordonnance.*
- Vous pouvez également faire procéder à l'opposition par un avocat ou par une personne que vous aurez habilitée au moyen d'un pouvoir spécial établi sur papier libre.

Si vous usez de votre droit d'opposition, vous serez cité(e) à comparaître devant le tribunal de police qui jugera à nouveau l'affaire.

## POURSUITES

J'appelle votre attention sur le fait que si vous n'avez, dans les 30 jours, ni payé ni fait opposition, la condamnation prononcée deviendra définitive. Elle fera l'objet d'un recouvrement par les services du Trésor et sera susceptible d'entraîner des frais supplémentaires à votre charge.

Je vous prie d'agréer, Madame, Monsieur, l'expression de mes salutations distinguées.

Le Chef de greffe

TALON

à joindre

à votre paiement

ou en cas d'opposition





RELEVÉ DE CONDAMNATION PÉNALE

N° de Parquet : [REDACTED]  
N° MINOS : [REDACTED]  
N° AMD : [REDACTED]  
Forme juridique :  
Raison sociale :  
  
N° de SIREN/SIRET :  
Code APE :  
Demeurant :  
  
Type décision : Ordonnance Pénale  
Du [REDACTED]

Amende	750,00 EUROS
Droit Fixe Procédure	31,00 EUROS
Fonds de garantie	0,00 EUROS

**TOTAL 1 : 781,00 EUROS**

Consignation	15 750,00 EUROS
N° quittance (consignation)	G0149296 & G0149297 TRESORERIE NANCY

**TOTAL 2 : -14 969,00 EUROS**

Si vous effectuez votre paiement dans le délai d'un mois (voir la case cochée dans les modalités de paiement ci-dessous), vous pouvez diminuer le montant TOTAL (2) de 20% dans la limite de 1500 euros.

a été reconnu(e) coupable de :

PRISE INSUFFISANTE SUPERIEURE A 2 HEURES DU TEMPS DE REPOS JOURNALIER DE 9 HEURES LORS DE CONDUITE EN EQUIPAGE - TRANSPORT ROUTIER COMMUNAUTAIRE (Code Natinf : 27809) avec le véhicule immatriculé 85-BBS-5, du 16/02/2016 au 12/03/2016 à CHAMPIGNEULLES  
Faits prévus et réprimés par ART.8, ART.4 G), ART.2 1°, 2° REGLT.CE DU 15/03/2006. ART.3 §III 2°, §II 3° C), ART.1 DECRET 86-1130 DU 17/10/1986. ART.L.3311-1 1°, ART.L.3315-6 C.TRANSPORTS., ART.3 §III AL.1 DECRET 86-1130 DU 17/10/1986.

et condamné(e) à :

- une amende contraventionnelle de SEPT CENT CINQUANTE EUROS (750 EUROS) à titre de peine principale ;

ainsi qu'au paiement d'un droit fixe de procédure de TRENTE-ET-UN EUROS (31 EUROS) ;

Pour extrait conforme

Le Greffier en Chef,

MODALITES DE PAIEMENT

SI VOUS EFFECTUEZ VOTRE PAIEMENT DANS LE DELAI D'UN MOIS A COMPTER :

- |   |   |
|---|---|
| 1 <input type="checkbox"/> de la date à laquelle la décision a été prononcée,                             | 4 <input type="checkbox"/> de la date à laquelle la décision vous a été signifiée par huissier,   |
| 2 <input checked="" type="checkbox"/> de la date d'envoi de la lettre recommandée avec avis de réception, | 5 <input type="checkbox"/> de la date à laquelle la décision vous a été notifiée par un magistrat, le greffe ou le chef de l'établissement pénitentiaire. |
| 3 <input type="checkbox"/> de la notification par le Procureur de la République ou son délégué,           |   |
- Mettre une croix dans la case correspondante

ALORS VOUS BENEFICIEZ AUTOMATIQUEMENT D'UNE DIMINUTION LEGALE DE 20% DU MONTANT TOTAL A PAYER, DANS LA LIMITE DE 1500 EUROS (article 707-2 du code de procédure pénale).

IL VOUS APPARTIENT DE CALCULER CETTE DIMINUTION SUR LE MONTANT TOTAL A PAYER (TOTAL (2)).

Pour effectuer votre paiement, vous devez :

- soit envoyer par courrier le présent relevé de condamnation pénale accompagné d'un chèque, libellé à l'ordre du Trésor public, à l'adresse suivante : Trésorerie principale Essey les Nancy <sup>(1)</sup> place de la République [REDACTED]
- soit vous rendre soit dans cette Trésorerie ou dans la trésorerie la plus proche de votre domicile avec le présent relevé de condamnation pénale et un moyen de paiement (carte bancaire, chèque, espèces).

En plus, vous devez fournir obligatoirement :

- si la case 2 est cochée : la lettre recommandée portant la date d'envoi de celle-ci ;
- si la case 4 ou 5 est cochée : l'original ou la copie de l'acte de signification ou de notification faisant apparaître la date à laquelle celle-ci est effectuée.

A défaut de paiement dans le délai, le comptable du Trésor public vous adressera un avis avant poursuites pour la totalité de la somme due.

Si vous contestez la décision de condamnation après ce paiement, vous pouvez obtenir la restitution des sommes payées sur présentation d'une copie de l'acte d'appel ou d'opposition ou de pourvoi en cassation, à la trésorerie qui a pris en charge la condamnation pénale.  
Exemplaire du condamné

<sup>(1)</sup> Cette trésorerie est celle qui recouvre les amendes et condamnations pécuniaires dans le département. Toutefois, les amendes et condamnations pécuniaires peuvent être réglées dans tous les postes comptables.

Tribunal de Police de Nancy  
Cité Judiciaire  
Rue du Gal Fabvier Case Off.27  
54035 NANCY

Madame, Monsieur,

Une contravention ayant été relevée contre vous, le président du tribunal de police vous a condamné(e) au paiement d'une amende par une ordonnance pénale ci-jointe. Cette procédure simplifiée a été appliquée pour vous éviter une comparution devant le tribunal de police. Cette ordonnance pénale est assujettie à un droit fixe de procédure.

#### PAIEMENT DE L'AMENDE ET DU DROIT FIXE DE PROCEDURE

Vous voudrez bien payer la somme due dans les 30 jours de la date d'envoi de la présente lettre (aucune prolongation de ce délai n'est possible) au comptable du Trésor désigné sur l'ordonnance.

Votre paiement peut être fait :

- par carte bancaire ou en espèce, à la caisse du comptable. Dans ce cas, veuillez vous munir de la présente ordonnance ;
- par chèque bancaire ou postal adressé directement au comptable du Trésor (indiqué sur l'ordonnance) et libellé obligatoirement à l'ordre du « Trésor public » (n'envoyez pas votre chèque sans indiquer le bénéficiaire). Dans ce cas, veuillez soit coller le talon situé en bas de votre ordonnance, soit rappeler, sur cette lettre, toutes les mentions de ce talon ;
- par mandat cash adressé directement au comptable du Trésor indiqué sur l'ordonnance. Dans ce cas, veuillez soit coller le talon situé en bas de votre ordonnance sur la partie correspondante, soit y rappeler les mentions de ce talon.

#### EXECUTION D'UNE PEINE COMPLEMENTAIRE

Au-delà du délai de 30 jours ci-dessus indiqué, la condamnation du tribunal de police deviendra définitive.

Si vous avez été condamné(e), la ou les peines complémentaires désignées sur l'ordonnance pénale seront exécutées.

#### OPPOSITION

Si vous contestez la décision rendue, vous avez la possibilité de former opposition à l'ordonnance pénale dans un délai de 30 jours à compter du lendemain de la date d'envoi de la présente lettre. Dans ce cas, vous ne devez pas effectuer le paiement ci-dessus. L'affaire sera examinée par le tribunal de police.

Vous pouvez faire opposition :

- soit par lettre simple adressée à M. le chef de greffe du tribunal de police mentionné sur l'ordonnance. Dans ce cas, veuillez soit joindre la présente ordonnance, soit coller le talon situé en bas à gauche sur l'ordonnance pénale ou rappeler toutes les mentions de ce talon ;
- soit, en vous présentant vous-même au greffe, muni(e) de votre ordonnance pénale.
- Vous pouvez également faire procéder à l'opposition par un avocat ou par une personne que vous aurez habilité au moyen d'un pouvoir spécial établi sur papier libre.

Si vous usez de votre droit d'opposition, vous serez cité(e) à comparaître devant le tribunal de police qui jugera à nouveau l'affaire.

#### POURSUITES

J'appelle votre attention sur le fait que si vous n'avez, dans les 30 jours, ni payé ni fait opposition, la condamnation prononcée deviendra définitive. Elle fera l'objet d'un recouvrement par les services du Trésor et sera susceptible d'entraîner des frais supplémentaires à votre charge.

Je vous prie d'agréer, Madame, Monsieur, l'expression de mes salutations distinguées.

Le Chef de greffe



Banque de France  
1, Rue la Vrillière  
75001 PARIS

TRESORERIE  
D' ESSEY-LES-NANCY  
PL DE LA REPUBLIQUE  
54271 ESSEY LES NANCY CEDEX

Relevé d'Identité Bancaire (RIB) 050

RIB :

[REDACTED]

IBAN :

[REDACTED]

BIC :

[REDACTED]

Cour d'Appel de Nancy  
Tribunal de Grande Instance de Nancy

Le président

N° Parquet :

N° minute :

## Ordonnance pénale

Nous, [REDACTED] vice-président au Tribunal de Grande Instance de Nancy,

Vu l'article 495 et suivants du code de procédure pénale ;

Vu l'enquête réalisée par <Traduction absente pour la valeur de la donnée  
CASDO\_GENRE\_ELEMENT\_DE\_STRUCTURE> (PV n° [REDACTED]) à l'encontre de :

Entreprise [REDACTED]

demeurant : [REDACTED]

Prévenu

D'avoir à BOUXIERES AUX DAMES, le [REDACTED] en tout cas sur le territoire national et depuis temps non couvert par la prescription, omis de maintenir devant son véhicule une distance de sécurité suffisante pour pouvoir éviter une collision en cas de ralentissement brusque ou d'arrêt du véhicule le précédant, faits prévus par ART.R.412-12 §I, §II C.ROUTE. et réprimés par ART.R.412-12 §V C.ROUTE.

d'avoir à BOUXIERES AUX DAMES, le [REDACTED] en tout cas sur le territoire national et depuis temps non couvert par la prescription, effectué un dépassement malgré l'interdiction décidée par l'autorité investie du pouvoir de police, en l'espèce un véhicule lent sur une voie réservée, faits prévus par ART.R.414-14, ART.R.411-25 C.ROUTE. et réprimés par ART.R.414-14 C.ROUTE.

Vu les réquisitions du procureur de la République en date du 27 juillet 2017 ;

### SUR L'ACTION PUBLIQUE :

Attendu qu'il résulte de l'enquête de police judiciaire que les faits reprochés au prévenu sont établis et que les renseignements concernant sa personnalité et notamment ses charges et ses ressources sont suffisants pour permettre la détermination de la peine, qu'il n'apparaît pas nécessaire, compte tenu de la faible gravité des faits, de prononcer une peine d'emprisonnement ou une peine d'amende d'un montant supérieur à celui fixé à l'article 495-1 et que le recours à la procédure de l'ordonnance pénale n'est pas de nature à porter atteinte aux droits de la victime.

### PAR CES MOTIFS

### SUR L'ACTION PUBLIQUE :

Déclare le [REDACTED] coupable des faits qui lui sont reprochés ;



Pour les faits de conduite d'un véhicule sans laisser une distance de sécurité avec le véhicule qui précède commis le [REDACTED] à BOUXIERES AUX DAMES

Condamne le [REDACTED] au paiement d'une amende(s) contraventionnelle, à titre de peine principale de cinq mille euros (5000 euros) ;

Pour les faits de dépassement effectuée par le conducteur d'un véhicule malgré une interdiction signalée commis le [REDACTED] à BOUXIERES AUX DAMES

Condamne le [REDACTED] au paiement d'une amende(s) contraventionnelle, à titre de peine principale de cinq mille euros (5000 euros) ;

Dit que, conformément aux articles 707-2, 707-3 et R55-2 du code de procédure pénale, si le paiement de l'amende est effectué dans le délai d'un mois, à compter de la date d'envoi de la lettre recommandée de notification ou de la notification faite par le procureur de la République ou son délégué, le montant total dû sera diminué de 20% dans la limite de 1500 euros ;

En cas de recours contre cette décision, les sommes versées peuvent être restituées sur demande à l'intéressé ;

☒ Disons que conformément à l'article 800-1 du code de procédure pénale, la personne morale condamnée sera tenue au paiement des frais de justice exposés au cours de la procédure.

La présente décision est assujettie à un droit fixe de procédure d'un montant de 31 euros dont est redevable le condamné.

Fait le 12 mars 2018

Le Président

La présente ordonnance a été transmise à Monsieur le procureur de la République le [REDACTED]

Le greffier, [REDACTED]

La présente ordonnance a été notifiée à la personne condamnée

☐ Par lettre recommandée avec demande d'avis de réception le

22 MARS 2018

Le greffier, [REDACTED]



Pour copie certifiée conforme  
Le Greffier, [REDACTED]



**Cour d'Appel de Nancy  
Tribunal de Grande Instance de Nancy**

N° Parquet : [REDACTED]

N° de minute : [REDACTED]

**RELEVÉ DE CONDAMNATION PENALE**

le [REDACTED]  
adresse : [REDACTED]  
[REDACTED]  
type de décision : ordonnance  
[REDACTED]

a été reconnu coupable et condamné par le  
Tribunal de Grande Instance de Nancy pour :

Amende	: 10000 euros
Droit fixe de procédure	: 31 euros
Fonds de garantie	: 0 euros
TOTAL (1)	: 10031 euros
Consignation	: 8790 euros
N° de quittance	: [REDACTED]
TOTAL (2)	: 1241 euros

Si vous effectuez votre paiement dans le délai d'un mois (voir la case cochée dans les modalités de paiement ci-dessous), vous pouvez diminuer le montant 1241 euros de 20% dans la limite de 1500 euros.

à

- 6096 conduite d'un véhicule sans laisser une distance de sécurité avec le véhicule qui précède faits commis à BOUXIERES AUX DAMES le [REDACTED] prévus par ART.R.412-12 §I, §II C.ROUTE.et réprimés par ART.R.412-12 §V C.ROUTE.

1 Amende contraventionnelle de 5000 euros, à titre de peine principale

- 10097 dépassement effectué par le conducteur d'un véhicule malgré une interdiction signalée faits commis à BOUXIERES AUX DAMES le [REDACTED] prévus par ART.R.414-14, ART.R.411-25 C.ROUTE.et réprimés par ART.R.414-14 C.ROUTE.

1 Amende contraventionnelle de 5000 euros, à titre de peine principale

ainsi qu'au paiement d'un droit fixe de procédure d'un montant de 31 euros.

Pour extrait conforme, le greffier



Edité le [REDACTED]

## -----MODALITES DE PAIEMENT-----

Si vous effectuez votre paiement dans le délai d'un mois à compter :

- 1 ☐ de la date à laquelle la décision a été prononcée,
- 2 ☒ de la date d'envoi de la lettre recommandée avec avis de réception,
- 3 ☐ de la notification par le procureur de la République ou son délégué,
- 4 ☐ de la date à laquelle la décision vous a été signifiée par huissier,
- 5 ☐ de la date à laquelle la décision vous a été notifié par un magistrat, un greffier ou le chef de l'établissement pénitentiaire,

**Vous bénéficiez automatiquement d'une diminution légale de 20%** du montant total à payer, dans la limite de 1500 euros (*article 707-2 du code de procédure pénale*).

Il vous appartient de calculer cette diminution sur le montant restant à payer (total (2)).

Pour effectuer votre paiement, vous devez envoyer par courrier le présent relevé de condamnation pénale et un chèque, libellé à l'ordre du Trésor Public, à la Trésorerie de principale Essey les Nancy<sup>1</sup> place de la République [REDACTED], ou vous rendre dans cette trésorerie avec le présent relevé de condamnation pénale et un moyen de paiement (carte bancaire, chèque, espèces).

Vous devez impérativement vous présenter à cette trésorerie :

si la case 2 est cochée : avec la lettre recommandée portant la date d'envoi de celle-ci ;

si la case 4 ou 5 est cochée : avec l'original ou la copie de l'acte de signification faisant apparaître la date à laquelle celle-ci a été effectuée.

**A défaut de paiement dans le délai**, le comptable du Trésor public vous adressera un avis avant poursuites pour la totalité de la somme due.

Si vous contestez la décision de condamnation après ce paiement, vous pouvez obtenir la restitution des sommes payées sur présentation d'une copie de l'acte d'appel ou d'opposition ou de pourvoi en cassation, à la trésorerie qui a reçu le paiement.

Exemplaire

- ☒ **CONDAMNÉ**
- ☐ **COMPTABLE DU TRÉSOR**
- ☐ **COPIE DOSSIER**

1. La trésorerie est en principe celle qui recouvre les amendes et condamnations pécuniaires dans le département. Toutefois, les amendes et condamnations pécuniaires peuvent être réglées dans tous les postes comptables.

## NOTIFICATION D'UNE ORDONNANCE PÉNALE CONTRAVENTIONNELLE

Madame, Monsieur.

Une contravention ayant été relevée contre vous, le Président du Tribunal de Police vous a condamné(e) au paiement d'une amende par une ordonnance pénale. Cette procédure simplifiée a été appliquée pour vous éviter une comparution devant le tribunal de police. Cette ordonnance pénale est assujettie à un droit fixe de procédure.

### PAIEMENT DE L'AMENDE ET DU DROIT FIXE DE PROCÉDURE

Vous voudrez bien payer la somme due – dans les 30 jours de la date d'envoi de la présente lettre (aucune prolongation de ce délai n'est possible) – au comptable du Trésor désigné sur l'ordonnance.

Votre paiement peut être fait :

- Par carte bancaire ou en espèces, à la caisse du comptable. Dans ce cas, veuillez vous munir de la présente lettre.
- Par chèque bancaire ou postal adressé directement au comptable du Trésor et libellé obligatoirement à l'ordre du « Trésor Public » (N'ENVOYEZ PAS VOTRE CHEQUE SANS INDiquer LE BÉNÉFICIAIRE). Dans ce cas, veuillez soit coller le talon situé en bas de l'ordonnance, soit rappeler sur cette lettre toutes les mentions de ce talon.
- Par mandat cash adressé directement au comptable du Trésor indiqué. Dans ce cas, veuillez soit coller le talon sur la partie correspondante, soit y rappeler les mentions de ce talon.

### OPPOSITION

Si vous contestez la décision rendue, vous avez la possibilité de former opposition à l'ordonnance pénale dans un délai de 30 jours à compter de la date d'envoi de la présente lettre. Dans ces cas, vous ne devez pas effectuer le paiement ci dessus. L'affaire sera en effet examinée par le tribunal.

Vous pouvez faire opposition :

- soit par lettre simple adressée à M. Le Directeur de greffe du tribunal de police mentionné sur cette lettre. Dans ce cas, veuillez soit joindre la présente ordonnance, soit coller le talon, ou rappeler toutes les mentions de ce talon.
- soit, en vous présentant vous même au greffe, muni(e) de la présente ordonnance.
- vous pouvez également faire procéder à l'opposition par un avocat ou par personne que vous aurez habilitée au moyen d'un pouvoir spécial établi sur papier libre.

Si vous usez de votre droit d'opposition, vous serez cité(e) à comparaître devant le tribunal de police qui jugera à nouveau l'affaire.

### POURSUITES

J'appelle votre attention sur le fait que si vous n'avez, dans les 30 jours, ni payé ni fait opposition, la condamnation prononcée deviendra définitive. Elle fera l'objet d'un recouvrement par les services du Trésor et sera susceptible d'entraîner des frais supplémentaires à votre charge.

Je vous prie d'agréer, Madame, Monsieur, l'expression de mes salutations distinguées.

Pour le greffier,



## 20 Spanish fine for weekly rest period

**EXECUTIVE SUMMARY** In this section we present an example of a fine with a happy ending. In this case, a Spanish driver received a fine for not having rested enough within a week. However, depending on how the control period is selected and how the weekly rests are distributed, one can either conclude that a fine has to be issued or not. This shows that the law is non-local, which has some important consequences: the driver could be fined and not fined at the same time. The Tribunal of Valladolid acknowledged this fact, which, taken together with the lack of homologation of the software used by the police officers in charge of issuing the fine, lead to the withdrawal of the fine.

A Spanish driver was fined on 25/Nov/2015 with a monetary sanction of 1500€ for the following reason: the reduction of the weekly rest period between 16:43 06/Nov/2015 and 16:43 12/Nov/2015. A weekly rest period of 25h03min (longer than 24h but shorter than 30h) was taken between 14:44 12/Nov/2015 and 15:47 13/Nov/2015 implying a reduction of more than 9h in the weekly rest times, as seen in Figures 20.1 and 20.2:

Hecho denunciado:

TRANSPORTE DE MERCANCIAS DESDE SAN JOSE DE LA RINCONADA HASTA DINAMARCA LLEVÁNDOSE A CABO EN EL MOMENTO DEL CONTROL, EN EL QUE SE CONSTATA QUE SE HA EFECTUADO UNA DISMINUCIÓN DEL TIEMPO DE DESCANSO SEMANAL, ENTRE LAS 16:43 HORAS DE FECHA 06/11/2015, Y LAS 16:43 HORAS DE FECHA 12/11/2015. DESCANSO REALIZADO 25:03 HORAS (IGUAL O SUPERIOR A 24 HORAS E INFERIOR A 30 HORAS), COMPRENDIDAS ENTRE LAS 14:44 HORAS DE FECHA 12/11/2015 Y LAS 15:47 HORAS DE FECHA 13/11/2015. ELLO SUPONE UNA DISMINUCIÓN SUPERIOR A 9 HORAS EN LOS TIEMPOS DE DESCANSO SEMANAL OBLIGATORIO. FALTA DE DESCANSO SEMANAL POR SER REDUCIDO Y CONSECUTIVO A OTRO DESCANSO SEMANAL REDUCIDO. SE APORTA COMO PRUEBA EL/LOS DISCO/S DIAGRAMA DEL PERIODO CITADO Y DEL DESCANSO SEMANALES REALIZADO ENTRE LAS JORNADAS 31-10-2015 Y EL 02-11-2015. Y EL DESCANSO REDUCIDO ANTERIOR AL DENUNCIADO REALIZADO ENTRE LAS JORNADAS 5/6-11-2015.

Figure 20.1: Excerpt of the fine describing the infraction

PRECEPTO SANCIONADOR: Art.143.1.g) LOTT.

POSIBLE SANCION: 1500.00 euros (Sanción accesoria: NINGUNA).

Figure 20.2: Excerpt of the fine indicating the total amount to be paid

The text of the fine shows the lack of mathematical arguments in the analysis of the software. Legally, the driver is able to select the week to which a weekly rest period is attributed to, so then there are two possibilities:

1. Apply the distribution theory to select the best possible distribution for the driver. This distribution affects all 4 weeks of the control in chain.
2. The fine becomes a non “local” fine: depending on how the biweek is calculated, the exact same driver activity data becomes either legal or illegal. We have, then, the paradoxical

situation in which a rule can output contradictory evaluations depending on how it is implemented.

In this case, since the control was on 25/Nov/2015, the software should have processed the following:

#### **Rest distribution among fortnights**

0-1	02/Nov/2015 - 16/Nov/2015	Max1: 45:0 (0)	Max2: 25:58 (7)
1-2	09/Nov/2015 - 23/Nov/2015	Max1: 45:3(15)	Max2: 40:21(19)
D(19) to compensate: 4:39			
2-3	16/Nov/2015 - 30/Nov/2015	Max1: 580:56(23)	Max2: 45:3(15)
D(19): Duration 4:39 / Compensated with L(23) / Duration: 535:56			

Regarding the *REST* period,

0-	02/Nov/2015 12:19:50	04/Nov/2015 09:20:00	45:0
7-	09/Nov/2015 13:06:00	10/Nov/2015 15:04:00	25:58
15-	16/Nov/2015 10:18:00	18/Nov/2015 07:21:00	45:3
19-	21/Nov/2015 11:41:00	23/Nov/2015 04:02:00	40:21
23-	26/Nov/2015 19:03:00	20/Dec/2015 23:59:59	580:56

For this distribution of weekly rest periods no fine can be imposed.

Recently, on 27/Feb/2019, the Tribunal of Valladolid, decided to cancel the fine. This was due to the fact that the Tribunal ultimately accepted the idea of the defense about the lack of homologation of the software used by the authorities in charge of issuing the fine. Hence, this entailed the lack of justification of the fine itself. This evidence was considered sufficient to cancel the fine: see Figure 20.3.





infracción imputada y sancionada en cuanto que no se han incumplido los tiempos de descanso semanales.

En segundo lugar considera que los hechos denunciados no están suficientemente probados a efectos de poderlos considerar constitutivos de la infracción sancionada. En este apartado señala que el tacógrafo del que se han obtenido datos tiene una programación o configuración de fábrica que adolece de errores y que hace que sus resultados no sean fiables ni ciertos. No se trata de una avería o de un mal funcionamiento sino de errores de fabricación, configuración y/o programación llamando la atención sobre la falta de homologación del tacógrafo y, especialmente, del software utilizado dentro del mismo. A lo anterior añade que no consta, y por lo tanto falta, la homologación del software utilizado por las autoridades para obtener y procesar los datos registrados en el tacógrafo.

Se acepta lo alegado por la parte demandante en lo que se refiere a la ausencia de prueba de cargo suficiente respecto al software utilizado por la autoridad correspondiente para obtener los datos registrados en el tacógrafo por lo que, sin necesidad de analizar el resto de la fundamentación jurídica alegada, procede, y así se acuerda por medio de esta sentencia, estimar integralmente lo pretendido por medio del presente recurso declarando nula, por no ser ajustada a derecho, la resolución impugnada así como la resolución sancionadora recurrida en alzada y reconociendo a la parte demandante el derecho a que se le devuelva el importe de la sanción que haya llegado a abonar siempre que quede acreditado suficientemente ese abono. Así resulta de lo que se va a indicar seguidamente.

Figure 20.3: Excerpt *N. Sentence: 30/2019, CONTENCIOSO/ADMTVO court. N. 4 of Valladolid (Spain)*. The two present paragraphs argue that the tachograph has internal mistakes, therefore, the output data cannot be trusted. It places special attention to the lack of homologation (of both tachograph and the software used by the authorities) and acquits the defendant of the entire accusation

We should take into account that these occurrences in Spain are also happening all over the European Union. In the table below, we show examples of fines from other countries of the EU regarding the same problem.

We must recognize that, regarding the weekly rest period,

- There can not be any fine not containing the distributions of the weekly rest among the different possibilities of the weeks of the whole period selected.
- The distribution is not local, and depends on the period selected.

Taking into account the complexity of this fine, here we will show how the different softwares used by police officers to fine drivers are dealing with this fact.

Legal Provider Fine ID	Text in original language	Translation into English	Country
12653	Prise insuffisante supérieure à 9 heures du temps de repos hebdomadaire normal de 45 heures.	Lack of at least 9 hours of the 45 hours normal weekly rest.	France

10693		en l'espèce, après son repos hebdomadaire réduit de 24 heures 21 prenant fin le 12 janvier 2014, et après une nouvelle série de 6 périodes maximum de 24 heures de travail, soit le 18/01/2014, Monsieur XXX n'a pris qu'un repos de 24 heures 02 au lieu de 45 heures	In this case, after a reduced weekly rest of 24 hours 21 which ended on the 12th of January 2014 and after 6 other periods of 24 hours of work, on the 18th of January 2014, Mister XXX just took a 24 hours 02 rest and not a 45 hours	Belgium
11154 against driver)	(Fine the)	Es wurde festgestellt, dass sie die regelmäßige wöchentliche Ruhepause von mindestens 45 Stunden nicht eingehalten haben. In der Zeit vom 12.10.2015, 00:00:00 Uhr bis 25.10.2015, 23:59:00 existiert keine ausreichende regelmäßige wöchentliche Ruhepause. In diesem Zeitraum wurde nur eine unzureichende wöchentliche Ruhezeit von 26 Stunden und 29 Minuten eingelegt. Dies stellt daher anhand des Anhanges III der Richtlinie 2006/22/EG i,d,g,F, einen sehr schwerwiegenden Verstoß dar.	It was detected that you did not take the regular weekly resting time of at least 45 hours. In the time spanning from 12.10.2015, 00:00:00 until 25.10.2015, 23:59:00 there does not exist a regular weekly resting time. In this time you only took an insufficient weekly rest of 26 hours and 29. Regarding the Annex III of the directive 2006/22/EG this is a very heavy infraction.	Austria
10374 against driver)	(Fine the)	In der Zeitspanne vom 01 Juni 2012 bis 8 Juni 2012, die vorgeschriebene wöchentliche Ruhezeit nicht eingehalten.	In the time period from 1 of June until 8 of June the weekly resting time was not taken.	Switzerland

ME-114672	<p>W dniu xxx o godzinie xxx w miejscowości xxx, został zatrzymany do kontroli samochód xxx o numerze rejestracyjnym xxx, którym kierowała załoga dwuosobowa tj. xxx i xxx. W toku kontroli ustalono, iż kierowcy pojazdem tym wykonywali międzynarodowy transport rzeczy na rzecz firmy „xxx”. Kierowcy okazali do kontroli m.in. karty kierowców z tachografu cyfrowego. Analiza zawartych na nich danych, po uwzględnieniu zdarzeń lub błędów w postaci: przerwa napięcia, wykazała, iż kierowcy w przyjętym okresie rozliczeniowym odebrali jedynie 24 godziny i 23 minuty nieprzerwanego odpoczynku tj. od godziny 07:47 dnia 18.08.2015 r. do godziny 08:10 dnia 19.08.2015 r. czasu UTC+2, podczas gdy w niniejszym przypadku kierowcy winni byli odebrać minimum 45 godzin nieprzerwanego odpoczynku. Oznacza to, iż kierowca skrócił tygodniowy czas odpoczynku o 20 godzin i 37 minut.</p>	<p>On xxx at xxx in xxx a truck with license plate xxx was stopped for a control. This truck was driven by 2 drivers, who were in team driving mode. During the inspection, the Police checked that the vehicle was making international transport of goods for the company xxx. The drivers were asked to show for inspection, among other documents, their digital driver cards. During analysis of the relevant files containing those cards, taking into account errors like break tension, it was discovered that in the analyzed period, the drivers took a weekly rest which continuously lasted only 24 hours and 23 minutes, from 07:47 a.m. on 18th of August of 2015 to 08:10 a.m. on 19th of August of 2015, whereas in this case the driver should take a minimum of 45 hours of uninterrupted rest. This means that the driver reduced 20 hours and 37 minutes from the weekly rest period.</p>	Poland
ME114691	Insufficient Weekly Rest, 2/8/2015	Insufficient Weekly Rest, 2/8/2015	UK
12134	Dva za sebou následující zkrácené týdenní	Two consecutive reduced weekly rest periods	Czech Republic



# Junta de Castilla y León

Delegación Territorial de VALLADOLID  
Servicio Territorial de Fomento

Ref.: [REDACTED]  
Sanciones: Expte. nº [REDACTED]



ASUNTO: Notificación del Acuerdo de Incoación y del Pliego de Cargos.- Expte. Sanción nº: [REDACTED]

El Jefe de Servicio Territorial de Fomento ha acordado la incoación de expediente de sanción contra [REDACTED] cuyo escrito se acompaña, en virtud de la siguiente denuncia:

Nombre del denunciado		Responsable como:	
[REDACTED]		TITULAR	
Agente denunciante:		Nº de boletín/Acta de inspección	
[REDACTED]		[REDACTED]	
Hecho denunciado:			
<p>[REDACTED] TRANSPORTE DE MERCANCIAS DESDE SAN JOSE DE LA RINCONADA HASTA DINAMARCA LLEVÁNDOSE A CABO EN EL MOMENTO DEL CONTROL, EN EL QUE SE CONSTATA QUE SE HA EFECTUADO UNA DISMINUCIÓN DEL TIEMPO DE DESCANSO SEMANAL, ENTRE LAS 16:43 HORAS DE FECHA 06/11/2015, Y LAS 16:43 HORAS DE FECHA 12/11/2015. DESCANSO REALIZADO 25:03 HORAS (IGUAL O SUPERIOR A 24 HORAS E INFERIOR A 30 HORAS), COMPRENDIDAS ENTRE LAS 14:44 HORAS DE FECHA 12/11/2015 Y LAS 15:47 HORAS DE FECHA 13/11/2015. ELLO SUPONE UNA DISMINUCIÓN SUPERIOR A 9 HORAS EN LOS TIEMPOS DE DESCANSO SEMANAL OBLIGATORIO. FALTA DE DESCANSO SEMANAL POR SER REDUCIDO Y CONSECUTIVO A OTRO DESCANSO SEMANAL REDUCIDO. SE APORTA COMO PRUEBA EL/LOS DISCO/S DIAGRAMA DEL PERIODO CITADO Y DEL DESCANSO SEMANALES REALIZADO ENTRE LAS JORNADAS 31-10-2015 Y EL 02-11-2015. Y EL DESCANSO REDUCIDO ANTERIOR AL DENUNCIADO REALIZADO ENTRE LAS JORNADAS 5/6-11-2015.</p>			
Matrícula Tractor	Matrícula SR	Con depósito:	<input type="checkbox"/> N <input type="checkbox"/>
[REDACTED]	[REDACTED]	Con Caución:	<input type="checkbox"/> N <input type="checkbox"/>
Fecha de la infracción:		Hora de la infracción:	
[REDACTED] noviembre de 2015		[REDACTED]	
Carretera y punto kilométrico			
[REDACTED]			

Los hechos expresados, que se le imputan, pueden ser constitutivos de la siguiente infracción:



Junta de  
Castilla y León

Delegación Territorial de VALLADOLID  
Servicio Territorial de Fomento

Ref.: Sección de Explotación e Inspección.  
Sanciones: Expte. nº [REDACTED]

PRECEPTO INFRINGIDO: Art. 140.37.6 LOTT

POSIBLE CALIFICACIÓN DE LA INFRACCIÓN: Muy Grave

PRECEPTO SANCIONADOR: Art.143.1.g) LOTT.

POSIBLE SANCION: 1500.00 euros (Sanción accesoria: NINGUNA).

Es competente para resolver este procedimiento sancionador el Delegado Territorial de la Junta de Castilla y León en VALLADOLID, de conformidad con lo dispuesto por los artículos 146.1 de la Ley 9/2013, de 4 de Julio (BOE de 5 de Julio), por la que se modifica la Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres, artículo 204 de su Reglamento aprobado por R.D. 1211/1990 de 28 de Septiembre (BOE de 8 de Octubre), modificado por R.D. 1772/1994 de 5 de Agosto (BOE de 20 de Agosto), así como en virtud de lo establecido en el artículo 70.1.8ª del Estatuto de Autonomía de Castilla y León y 43.2.d) de la Ley 3/2001 de 3 de julio de Gobierno y de la Administración de la Comunidad de Castilla y León, en relación con lo que dispone el artículo. 4 del Decreto 12/2012 de 29 de marzo, por que se desconcentran competencias en el titular de la Consejería de Fomento y Medio Ambiente, en los titulares de sus Órganos Directivos Centrales y en los de las Delegaciones Territoriales de la Junta de Castilla y León.

Se le hace saber que dispone de un plazo de 15 días contados desde el siguiente al de la recepción de la presente notificación para manifestar por escrito lo que a su derecho convenga, aportando o proponiendo las pruebas que, en su caso, estime procedentes.

Y que, de conformidad con lo dispuesto en el art. 146.3 de la Ley 9/2013, de 4 de julio por la que se modifica la Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres, en el supuesto en que el interesado decida voluntariamente hacer efectiva la sanción antes de que transcurran 30 días desde la notificación del Acuerdo de Incoación, que se acompaña, la cuantía pecuniaria de la sanción inicialmente propuesta se reducirá en un 30 %, por lo que en este caso el importe a ingresar se cifra en 1050.00 €. Si el ingreso se realiza una vez transcurrido el plazo indicado, se considerará un ingreso a cuenta del importe de la sanción pecuniaria que finalmente resulte.

Si desea hacer efectiva la sanción, en el plazo señalado en el párrafo anterior deberá ingresar su importe (puede hacerlo mediante transferencia bancaria) en la cuenta del Servicio Territorial de Fomento de VALLADOLID, nº IBAN [REDACTED], abierta en CAJA ESPAÑA DE INVERSIONES, C.A.M.P., indicando el concepto Expte.: [REDACTED], Sanción de Transportes, en cuyo caso, se dará por finalizado el procedimiento sancionador, dictándose la correspondiente resolución reconociendo el abono realizado, sin perjuicio de la posibilidad de interponer el pertinente Recurso de Alzada contra la misma.





# Junta de Castilla y León

Delegación Territorial de VALLADOLID  
Servicio Territorial de Fomento

Ref.: [REDACTED]  
Sanciones: Expte. nº [REDACTED]

A tenor de lo dispuesto en el Art. 12.3, de la Orden de 25 de Junio de 1998, de la Consejería de Economía y Hacienda, de desarrollo del Decreto 82/1994, 7 de Abril, por la que se regula la actividad recaudatoria de la Administración de la Comunidad de Castilla y León, se le informa que cuando el ingreso se efectúe por medio de transferencia se considerará el momento del pago la fecha en que haya sido abonado el importe correspondiente en la cuenta autorizada, quedando liberado desde ese momento el obligado al pago.

VALLADOLID a 07 de abril de 2016

EL/LA INSTRUCTOR/A.



Nota: LOTT ( Ley de Ordenación de los Transportes Terrestres).  
ROTT (Reglamento de Ordenación de los Transportes Terrestres).  
O.M. - Orden Ministerial.  
OOMM - Ordenes Ministeriales.  
LRJPAC - Ley de Régimen Jurídico de las Administraciones Públicas y Procedimiento Administrativo común ( L30/1992).  
CE - Constitución Española.  
R(CE) - Reglamento de la Comunidad Europea.



Junta de  
Castilla y León

Delegación Territorial de VALLADOLID  
Servicio Territorial de Fomento

Ref. [REDACTED]  
Sanciones: Expte. nº [REDACTED]

DATOS PARA ABONAR LA SANCIÓN ANTES DE QUE TRANSCURRAN 30 DÍAS, Y CON ELLO  
ACOGERSE A LA REDUCCIÓN DEL 30%.

DENUNCIADO:

[REDACTED]

BENEFICIARIO:

JUNTA DE CASTILLA Y LEÓN. SERVICIO TERRITORIAL DE FOMENTO DE VALLADOLID

CUENTA BANCARIA DE ABONO:

CAJA ESPAÑA DE INVERSIONES, C.A.M.P. Cuenta nº IBAN [REDACTED]

CONCEPTO:

Expte nº.: [REDACTED], Sanción de Transportes.

IMPORTE DE LA SANCIÓN: 1500.00 €

IMPORTE UNA VEZ REDUCIDO EL 30%: 1050.00 €



Junta de  
Castilla y León

Delegación Territorial de VALLADOLID  
Servicio Territorial de Fomento

Ref.: [REDACTED]  
Sanciones: Expte. nº [REDACTED]

**ASUNTO:** Acuerdo de Incoación sin depósito previo.

Habiendo tenido entrada en el Registro de esta Delegación Territorial, Servicio Territorial de Fomento, el/la siguiente denuncia:

Nombre del denunciado	Responsable como:		
[REDACTED]	TITULAR		
Agente denunciante:	Nº de boletín/Acta de inspección		
[REDACTED]	[REDACTED]		
Hecho denunciado:			
[REDACTED] TRANSPORTE DE MERCANCIAS DESDE SAN JOSE DE LA RINCONADA HASTA DINAMARCA LLEVÁNDOSE A CABO EN EL MOMENTO DEL CONTROL, EN EL QUE SE CONSTATA QUE SE HA EFECTUADO UNA DISMINUCIÓN DEL TIEMPO DE DESCANSO SEMANAL, ENTRE LAS 16:43 HORAS DE FECHA 06/11/2015, Y LAS 16:43 HORAS DE FECHA 12/11/2015. DESCANSO REALIZADO 25:03 HORAS (IGUAL O SUPERIOR A 24 HORAS E INFERIOR A 30 HORAS), COMPRENDIDAS ENTRE LAS 14:44 HORAS DE FECHA 12/11/2015 Y LAS 15:47 HORAS DE FECHA 13/11/2015. ELLO SUPONE UNA DISMINUCIÓN SUPERIOR A 9 HORAS EN LOS TIEMPOS DE DESCANSO SEMANAL OBLIGATORIO. FALTA DE DESCANSO SEMANAL POR SER REDUCIDO Y CONSECUTIVO A OTRO DESCANSO SEMANAL REDUCIDO. SE APORTA COMO PRUEBA EL/LOS DISCO/S DIAGRAMA DEL PERIODO CITADO Y DEL DESCANSO SEMANALES REALIZADO ENTRE LAS JORNADAS 31-10-2015 Y EL 02-11-2015. Y EL DESCANSO REDUCIDO ANTERIOR AL DENUNCIADO REALIZADO ENTRE LAS JORNADAS 5/6-11-2015.			
Matrícula Tractor	Matrícula SR	Con depósito:	<input type="checkbox"/> N
[REDACTED]	[REDACTED]	Con Caución:	<input type="checkbox"/> N
Fecha de la infracción:	Hora de la infracción:		
[REDACTED] de noviembre de 2015	[REDACTED]		
Carretera y punto kilométrico			
[REDACTED]			

De conformidad con lo dispuesto en el art. 4 del Decreto 12/2012 de 29 de marzo, por que se desconcentran competencias en el titular de la Consejería de Fomento y Medio Ambiente, en los titulares de sus Órganos Directivos Centrales y en los de las Delegaciones Territoriales de la Junta de Castilla y León y en la Resolución de 10 de abril de 2012 (BOCyL de 11 de abril de 2012), por la que se delegan determinadas competencias en el Jefe de Servicio Territorial de Fomento.

ACUERDO LA INCOACION DE EXPEDIENTE SANCIONADOR, contra el denunciado nombrando como INSTRUCTOR/A del mismo al Funcionario/a: [REDACTED] con Nº de Registro Personal [REDACTED] pudiéndose ser el mismo recusado de conformidad con lo establecido en los arts. 28 y 29 de la Ley 30/92 de 26 de noviembre, de RJAP y del PAC (BOE de 27 de noviembre).

A tenor de lo dispuesto en el art. 146, punto 2 de la Ley 9/2013, de 4 de julio, por la que se modifica la Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres, se comunica que el



# Junta de Castilla y León

Delegación Territorial de VALLADOLID  
Servicio Territorial de Fomento

Ref.: [REDACTED]  
Sanciones: Expte. nº [REDACTED]

plazo máximo de duración de este procedimiento es de 1 año, desde la fecha del presente acuerdo, y la falta de notificación de su resolución expresa al finalizar el plazo establecido originará la caducidad del mismo.

En el supuesto de no ser posible la notificación personal de la incoación de este expediente, se realizará mediante la publicación en boletín oficial, a tenor del artículo 59.5 de la Ley 30/1992, de 26 de noviembre, de RJAP y PAC.

De conformidad con lo dispuesto en el artículo 212 del Real Decreto 1211/1990, de 28 de septiembre, por el que se aprueba el ROTT (Reglamento de Ordenación de los Transportes Terrestres), se pone en su conocimiento que en el supuesto de no efectuar alegaciones al pliego de cargos del expediente arriba indicado y que ahora se notifica, la iniciación de este procedimiento sancionador podría ser considerada Propuesta de Resolución, pudiendo prescindirse de su notificación.

VALLADOLID a 07 de abril de 2016


EL/LA JEFE/A DEL SERVICIO TERRITORIAL



Fdo: [REDACTED]



VA-071453/2016

 <b>Junta de Castilla y León</b>	Origen [REDACTED]
	Destino [REDACTED]

<b>1. LUGAR Y FECHA DENUNCIA</b>		Boletín [REDACTED]
Fecha [REDACTED]	Hora [REDACTED]	

REGIMEN DEL TRANSPORTE: PUBLICO		
Via A62	Punto Km. 0133,000	Provincia VALLADOLID

INMOVILIZACION: NO	CODIGO: [REDACTED]
--------------------	--------------------

<b>2. HECHO DENUNCIADO</b>
TRANSPORTE DE MERCANCIAS DESDE [REDACTED] HASTA [REDACTED] LLEVÁNDOSE A CABO EN EL MOMENTO DEL CONTROL, EN EL QUE SE CONSTATA QUE SE HA EFECTUADO UNA DISMINUCIÓN DEL TIEMPO DE DESCANSO SEMANAL, ENTRE LAS 16:43 HORAS DE FECHA 06/11/2015, Y LAS 16:43 HORAS DE FECHA 12/11/2015. DESCANSO REALIZADO 25:03 HORAS (IGUAL O SUPERIOR A 24 HORAS E INFERIOR A 30 HORAS), COMPRENDIDAS ENTRE LAS 14:44 HORAS DE FECHA 12/11/2015 Y LAS 15:47 HORAS DE FECHA 13/11/2015. ELLO SUPONE UNA DISMINUCIÓN SUPERIOR A 9 HORAS EN LOS TIEMPOS DE DESCANSO SEMANAL OBLIGATORIO. FALTA DE DESCANSO SEMANAL POR SER REDUCIDO Y CONSECUTIVO A OTRO DESCANSO SEMANAL REDUCIDO. SE APORTA COMO PRUEBA EL/LOS DISCO/S DIAGRAMA DEL PERIODO CITADO Y DEL DESCANSO SEMANALES REALIZADO ENTRE LAS JORNADAS 31-10-2015 Y EL 02-11-2015. Y EL DESCANSO REDUCIDO ANTERIOR
<b>OBSERVACIONES:</b> realiza en el período de 144 horas un descanso de 25h y 58 minutos

<b>3. DATOS DEL VEHICULO</b>		
MATRÍCULA: [REDACTED]	Autorización Nº: [REDACTED]	
Semirremolque: [REDACTED]	Serie: [REDACTED]	
M.M.A.: [REDACTED]	<b>DATOS DENUNCIANTE</b> Unidad: [REDACTED] T.I.P.: [REDACTED]	<b>FIRMA DENUNCIANTE</b> [REDACTED]
Tara/Plazas: 0		

<b>4. DATOS DEL TITULAR</b>			
Nombre/Razón Social [REDACTED]		D.N.I./C.I.F./N.I.E./D.O.I. [REDACTED]	
Calle o plaza [REDACTED]			
C.P. [REDACTED]	Localidad [REDACTED]	Provincia [REDACTED]	País [REDACTED]

<b>5.</b>			
Nombre/Razón Social [REDACTED]		D.N.I./C.I.F./N.I.E./D.O.I. [REDACTED]	
Calle o plaza [REDACTED]			
C.P. [REDACTED]	Localidad [REDACTED]	Provincia [REDACTED]	País [REDACTED]

<b>6. DATOS DEL CONDUCTOR</b>	
Nombre [REDACTED]	Apellidos [REDACTED]
D.N.I./C.I.F./N.I.E./D.O.I. [REDACTED]	

<b>7. CALIFICACION</b>		País: ESPAÑA
Norma infringida ART. 140.37.6 LOTT	Sanción propuesta 1500 EUROS	
IF YOU ACCEPT A 30 % DISCOUNT IN THE PAYMENT OF THE FINE, THIS FACT WILL RESULT IN THE INITIATION OF THE SANCTION PROCEDURE, NOTIFICATION OF DENUNCIATION, AGREEMENT WITH THE CONTENTS OF THE CHARGE, GIVING UP MAKING CLAIMS, A WAIVER OF THE RIGHT TO PRESENT A DEFENCE AND CONCLUSION OF THE PROCEEDINGS, HOWEVER EXPRESS DECISION MUST BE ISSUED BY THE COMPETENT BODY.		

NOTA IMPORTANTE: NO PRESENTE ALEGACIONES O PLIEGO DE DESCARGOS HASTA QUE NO RECIBA LA NOTIFICACION DE DENUNCIA DEL ORGANO COMPETENTE.

DE ACUERDO CON LO DISPUESTO EN LA LEY 15/1999, DE 13 DE DICIEMBRE, DE PROTECCIÓN DE DATOS DE CARÁCTER PERSONAL, EL TRATAMIENTO DE LOS DATOS PERSONALES FACILITADOS Y RECOGIDOS EN ESTE BOLETÍN DE DENUNCIA SERÁ CONFORME A LOS REQUISITOS ESTABLECIDOS EN SU ARTÍCULO 5 CUMPLIENDO LA FINALIDAD PARA LOS QUE HAN SIDO RECABADOS.



## 21 Belgium Fine for weekly rest

**EXECUTIVE SUMMARY** On 27/May/18 various drivers of a Baltic company were fined approximately 17.000 € in total. Having taken their regular weekly rest of 45h in the cabin and not having properly performed the calibration of the tachograph, they had allegedly infringed Art 8 of Reg 561/06. The fine was not canceled, but the EU opened a file against Belgium authorities.

In Figure 21.1 we can see the charges imposed to each driver:

	3210 EURO	NORMAL WEEKLY REST IN THE CABIN + CONTROL DEVICE NOT CONFORM
	1320 EURO	CONTROL DEVICE NOT CONFORM
	1800 EURO	NORMAL WEEKLY REST IN THE CABIN
	1800 EURO	NORMAL WEEKLY REST IN THE CABIN
	1800 EURO	NORMAL WEEKLY REST IN THE CABIN
	1800 EURO	NORMAL WEEKLY REST IN THE CABIN
	1800 EURO	NORMAL WEEKLY REST IN THE CABIN
	1320 EURO	CONTROL DEVICE NOT CONFORM
	1800 EURO	NORMAL WEEKLY REST IN THE CABIN

Figure 21.1: Monetary sanctions and charges per driver

Without the drivers being fully aware or informed of the consequences, the fines were paid as “innings”. Though this amounts to an admission of guilt, no official report is produced and there is no right to appeal. A leading european legal services provider tried to open the cases and take them to court on the basis that the “Inning” was unfairly forced on the drivers by the Belgian police, in a foreign language, and furthermore that they did not understand the legal implications. To date, the Belgium authorities determined that the fines were final and not open to discussion. Neither the police or the Prosecutors will enter into further dialogue.

### 1. THE FINE PROCESS IN BELGIUM

**Consignment or Inning:** If an infraction is detected the driver is given the choice between:

1. Deciding to take his case to court, called “Consignment”. The authorities will write an official report. If the driver chooses consignment he must pay a court deposit immediately. If he is acquitted at court then the money is refunded; if convicted, the money is used to pay the fine, plus court costs.
2. Deciding not to go to court and immediately paying the fine, called an “Inning”. The authorities will not write an official report. If a driver chooses innings he or she is accepting the infraction and any possibility for a future court case is thereby excluded.

**Right to Interpreter:** The driver is entitled to an interpreter to ensure he or she understands the alleged infractions and the difference between consignment and inning.

### 2. THE CONTROL

On 27/May/18 the Belgium police controlled the drivers at a parking site near Rekkem.

The police marked the fines as Inning, a concept which was not explained to the drivers. No interpreters were provided. The fine paperwork is attached to this report.

If the drivers did sign it was because the police took advantage of their dominant position – the company needed its vehicles on the road as soon as possible, and often police officers refuse to release vehicles or to return paperwork until it is all signed. Furthermore, the company paid under the assumption they could later appeal to the Belgium courts.

### 3. AFTER THE FINES

The leading european legal services provider later instructed a Belgium lawyer to open the cases and appeal to court on the basis that Inning was unfairly forced upon the drivers without an interpreter present. Furthermore, on analysis of driver files and vehicle files, the majority of drivers were not taking their regular weekly rest of 45h, but their reduced weekly rest of at least 24h, which is perfectly legal. And three of them were forced to sign that they were responsible for the mistake in calibration of the tachograph. However, the truck is owned by the company, who is usually the responsible for the legal maintenance. Even so, in this situation, it is nevertheless defensible that the company was not responsible, since the calibrations could have been performed at the workshop agreed by Latvia. It seems then that at least some of the fines were incorrectly issued.

Moreover, **the Belgium automatic tachograph analysis software has not been homologated**. To attest to this fact, we have at least two cases in French jurisprudence (among others) where fines have been canceled because the police tried to rely upon evidence coming from their automatic download software, OCTET.

Art 6 of the European Convention on Human Rights also provides for the right to a fair hearing and the right to defend oneself. In order for the drivers to exercise these rights they require sufficient evidence of the breaches of law to allow them to offer a reasonable defense. In failing to provide such information the Belgium Police erred in its function of applying the law correctly.

A lawyer from the same legal services provider wrote to the Belgium Road Police, the Labour Prosecutor and the Prosecutor General's Office to get their official position on the case. No response was received for months until on 27.02.19 when a labor prosecutor from the Openbaar Ministerie responded that ***“all fines are final and therefore not open to discussion. Neither the police nor the Prosecutors will communicate this matter any further”***. A copy of the response is attached at the end of this section.

Now that we know the Belgian stance, we will make a formal complaint for breach of EU law to the European Commission and consult with our lawyer as to the next steps in the national courts in Belgium.

### 4. ANALYSIS OF THE TACHOGRAPH FILES

Our initial analysis for the fortnight of 14/May/2018 - 27/May/2018 is noted below in Figure 21.2:

Drivers	Files downloaded on	Analysis of the files
██████████	We have not files	
██████████	18/05/2018	Regular rest was 12/05/2018 14:27:00 14/05/2018 11:44:00 duration 45:17  HE WAS CAUGHT DOING THE REDUCED ONE IN THE CABIN , not the regular one
██████████	24/05/2018	Regular rest was 19/05/2018 5:24:00 22/05/2018 6:08:00 duration 72:44  HE WAS CAUGHT DOING THE REDUCED ONE IN THE CABIN, not the regular one
██████████	27/05/2018	Regular rest was 12/05/2018 9:29:59 14/05/2018 6:30:00 duration 45:0  HE WAS CAUGHT DOING THE REDUCED ONE IN THE CABIN, not the regular one
██████████	25/05/2018	Regular rest was 19/05/2018 14:55:00 22/05/2018 5:42:00 duration 62:47  HE WAS CAUGHT DOING THE REDUCED ONE IN THE CABIN, not the regular one
██████████	26/05/2018	Regular rest was 12/05/2018 8:44:00 14/05/2018 6:04:00 duration 45:20  HE WAS CAUGHT DOING THE REDUCED ONE IN THE CABIN, not the regular one
██████████	We have not files	
██████████	We have not files	

Figure 21.2: Relevant data from the each of the driver files

- ☐ wegverkeerswet en uitvoeringsbesluiten <sup>12</sup>
- ☐ wegvervoer <sup>13</sup>
- ☐ ADR vervoer <sup>14</sup>
- ☐ technische eisen bedrijfsvoertuigen <sup>15</sup>

Federale Politie  
Verkeerspost KORTRIJK  
President Kennedylaan 3  
8500 KORTRIJK  
t: 056/243140 f: 056/243141

Nr. formulier

PA

**STROOK C : AFSCHRIFT VOOR DE OVERTREDER**Plaats: Reckheim (nabij) E17 & Gent Datum:            Uur:           

**OVERTREDER** (in te vullen door de overtreder in geval van afwezigheid op het ogenblik van de vaststelling)

Straat, nr.:

Postcode :

Gemeente:

Land :

Nat.:

Gegevens van de werkgever :

## VOERTUIG

Merk : Volvo

Type :

Nummerplaat :

Nat.:

## AARD VAN DE INBREUK(EN)

Reglementering(en) + art.

Omschrijving van de overtreding

- Normal aneuploidie - untyp. (45n) von normal
- von 46n

Nr. P.V. in geval van consignatie

## TE BETALEN SOM – BETALINGSMODALITEITEN

Te betalen som <sup>10</sup>☐ Contante betaling (in euro)

☐ Bank- of kredietkaart

☐ Overschrijving of E-betaling

nr. gestructureerde mededeling

Naam van de verbalisant :

Handtekening:

IN TE VULLEN DOOR DE OVERTREDER

Betaalde som (in euro):

Naam:

Handtekening :

De betaling dooft de strafvordering uit, behalve als het Openbaar Ministerie u zijn intentie om strafrechtelijke vervolging voort te zetten heeft betekend. De niet-betaling van de inning kan een voorstel tot minnelijke schikking door het Openbaar Ministerie of een ingezonden brief van de bevoegde politierechtbank met zich meebrengen.

<sup>14</sup> het vakje dat van toepassing is aankruisen

7075 63 148

☒ Inning<sup>1)</sup>  
☐ Consignatie<sup>1)</sup>

☐ wegverkeerswet en uitvoeringsbesluiten<sup>1)</sup>  
☒ wegvervoer<sup>1)</sup>  
☐ ADR vervoer<sup>1)</sup>  
☐ technische eisen bedrijfsvoertuigen<sup>1)</sup>

Adres van de dienst die de vaststelling opmaakt  
**Federale Politie**  
Verkeerspost KORTRIJK  
President Kennedylaan 3  
8500 KORTRIJK  
t: 058/243140 f: 058/243141

Nr. boekje **PA** Nr. formulier **0**  
**STROOK C : AFSCHRIFT VOOR DE OVERTREDER**

Plaats: **Rekkem (parking) E17 + Gent** Datum: **29/05/2018** Uur: **11:17**

**OVERTREDER** (in te vullen door de overtreder in geval van afwezigheid op het ogenblik van de vaststelling)

Naam, voornaam: **[REDACTED]** Geboortedatum: **[REDACTED]**  
Straat, nr.: **[REDACTED]**  
Postcode: **[REDACTED]** Gemeente: **[REDACTED]**  
Land: **LV** Nat: **LV**  
Gegevens van de werkgever: **[REDACTED]**

Merk: **VOLVO**  
Nummerplaat: **[REDACTED]**

Reglementering(en) + art.  
**byl KB 10/17/00**  
**08**

Nr. PV. in geval van consignatie **/**

**TE BETAL**

Te betalen som<sup>1)</sup>  
☐ Contante betaling (in euro)  
☒ Bank- of kredietkaart  
☐ Overschrijving of E-betaling

Naam van de verballisant: **[REDACTED]**

**IN TE VULLEN DOOR DE OVERTREDER**  
Betaalde som (in euro): **[REDACTED]**  
Naam: **[REDACTED]**

De betaling dooft de strafvordering uit, behalve al  
De niet-betaling van de inning kan een voorstel in  
bevoegde politierechtbank met zich meebrengen

<sup>1)</sup> het vakje dat van toepassing is aankruisen

CE XENT TICKET

Terminal: **1** Merchant: **6**  
Period: **1** Transaction: **6**

**MAESTRO**

SALE  
Date: 29/05/2018 11:17

Auth. code: **[REDACTED]**

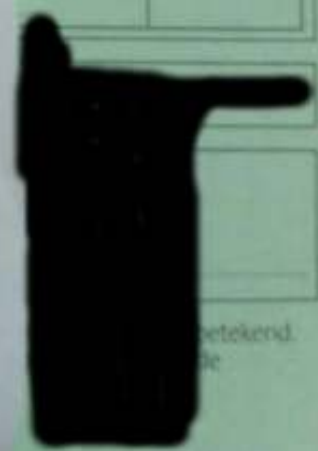
REF: **[REDACTED]**

WORLDLINE

Total: **1800,00 EUR**

Read-mode: Chip  
PIN OK

THANK YOU  
GOODBYE





E-GENE TILKET

Terminal  
Period: Merchant:  
Transaction:

Maestro

XXXXXXXXXXXX

SALE

Date:

Auth. code:

REF:

WORLDLINE

Total: 1800,00 EUR

Hand-  
P2N OKTHANK YOU  
GOODBYE

- ☐ wegverkeerswet en uitvoeringsbesluiten<sup>(1)</sup>  
☒ wegvervoer<sup>(2)</sup>  
☐ ADR vervoer<sup>(3)</sup>  
☐ technische eisen bedrijfsvoertuigen<sup>(4)</sup>

Nr. boekje

Nr. formulier

PA

STROOK C : AFSCHRIFT VOOR DE OVERTREDER

Datum:

Uur:

er in geval van afwezigheid op het ogenblik van de vaststelling)

Geboortedatum:

VOERTUIG

Type:

Nat.:

D VAN DE INBREUK(EN)

Omschrijving van de overtreding

c)8.  
niet wettelijke rusttijd van  
bord van het voertuig

Nr. P.V. in geval van consignatie

## TE BETALEN SOM - BETALINGSMODALITEITEN

Te betalen som<sup>(1)</sup>

- ☐ Contante betaling (in euro)  
☒ Bank- of kredietkaart  
☐ Overschrijving of E-betaling

nr. gestructureerde mededeling

Naam van de verbalisant:

Handtekening:

IN TE VULLEN DOOR DE OVERTREDER

Betaalde som (in euro):

Naam:

Handtekening:

De betaling door de strafvordering u t. behalve als het Openbaar Ministerie u zijn intentie om straf te eisen heeft betrekend.  
De niet-betaling van de inning kan een voorstel tot minnelijke schikking door het Openbaar Ministerie ingevolge de  
bevoegde politierechtbank met zich meebrengen.

\* het vakje dat van toepassing is aankruisen

# CONINKRIJK BELGIË

401550/18

CLIENT TICKET

Terminal: [redacted] Merchant: [redacted]  
Period: [redacted] Transaction: [redacted]

Debit MasterCard

XXXXXXXXXXXX

SALE Date: [redacted]

Auth. code: [redacted]

REF: [redacted]

WOR. DL TIME

Total: 1320,00 EUR

Read mode Chip  
PIN OK

THANK YOU  
GOODBYE

- ☐ wegverkeerswet en uitvoeringsbesluiten<sup>1)</sup>
- ☒ wegvervoer<sup>1)</sup>
- ☐ ADR vervoer<sup>1)</sup>
- ☐ technische eisen bedrijfsvoertuigen<sup>1)</sup>

Nr. boekje

Nr. formulier

PA

STROOK C : AFSCHRIFT VOOR DE OVERTREDER

Datum: [redacted] Uur: [redacted]

oder in geval van afwezigheid op het ogenblik van de vaststelling)

Geboortedatum: [redacted]

## VOERTUIG

Type: [redacted]  
Nat: [redacted]

## VAN DE INBREUK(EN)

Omschrijving van de overtreding

controle apparaat 1 gelyk niet conform

Nr. P.V. in geval van consignatie /

## TE BETALEN SOM - BETALINGSMODALITEITEN

Te betalen som<sup>1)</sup>

- ☐ Contante betaling (in euro)
- ☒ Bank- of kredietkaart
- ☐ Overschrijving of E-betaling

nr. gestructureerde mededeling

Naam van de verbalisant: [redacted]

Handt: [redacted]

IN TE VULLEN DOOR DE OVERTREDER

Betaalde som (in euro):

Naam: [redacted]

Handtekening: [redacted]

De betaling door de strafvordering uit, benaive als het Openbaar Ministerie u zijn intentie om strafrecht  
De niet-betaling van de inning kan een voorstel tot minnelijke schikking door het Openbaar Ministerie d  
bevoegde politierechtbank niet zich meebrengen.

<sup>1)</sup> het vakje dat van toepassing is aankruisen

You will have to present yourself at the following address to pay the fine:  
Lei deve venire a pagare la multa a l'indirizzo  
W celu zapłaćenia



SICS

KK 7855

11

FEDERALE WEGPOLITIE - POLICE FEDERALE DE LA ROUTE - FEDERAL HIGHWAY POLICE  
- FEDERALNA POLICJA DROGOWA - POLITIA FEDERALA - NEMZETI RENDORSEG



GEIMMOBILISEERD VOERTUIG -  
VEHICULE IMMOBILISE -  
IMMOBILIZED VEHICLE - VEICULO  
IMOBILIZZATO - WSTRZYMANE  
POJAZD - MASINA IMOBILIZATA -  
ELTOLATOTT ES IMOBILIZAT  
GEPKOCSI

U dient een boete te betalen van :  
Vous devez payer une amende de  
You will have to pay a fine of  
Lei deve pagare una multa di  
Pan musi zapłacić mandat w wysokości  
Trebuie să plătiți o amendă de euro  
Egy büntetést kell kifizessék. A büntetés mennyisége euro:

€ 1200 + € 1800 = € 3000

U bevindt zich momenteel te  
Vous vous situez à  
You are immobilized at  
Dove siete immobilizzato  
Pan znajduje się w tej chwili w  
Acum vă aflați la  
Most ezen a címen van

Woulbeke

U kan ons bereiken telefonisch van 8.00 tot 17.00hr op het volgende telefoonnummer:  
Vous pouvez nous contacter au numéro suivant de 8.00 hr jusqu'à 17.00hr:  
You can contact us on the following number from 8.00 hr until 17.00hr:

Lei può contattarci noi al numero dalle 8.00 fino alle 17.00 ore  
Pan može se čez telefonski z nami kontaktovati 8.00 do 17.00 pod sledećim brojem:  
Puteti se ne sunati până la ora 8.00 - 17.00 pentru informații suplimentare pe numărul de telefon:  
Ma, 8.00 - 17.00 óráig, telefonon keresztül kapcsolathat leghet a rendőrség, a következő telefonszámon:

Na 17.00hr kan u zich wenden tot het volgende telefoonnummer:	0032	101	(24hr/24hr)
Après 17.00hr vous pouvez nous contacter au numéro suivant	0032		(24hr/24hr)
After 17.00hr you can contact us on the number	0032		(24hr/24hr)
Dopo le 17.00 ore lei può contattare il numero	0032		(24/24 ore)
Po godzinie 17.00 należy się kierować pod następującym numerem	0032		(24/24)
Dupa ora 17.00 puteti sa sunati la numarul	0032		(24/24)
17.00ora után a következő számon leghet kapcsolathat a rendőrség:	0032		(24/24)

U dient uw boete op het volgende adres te komen betalen  
Vous devez venir payer votre amende à l'adresse suivante  
You will have to present yourself at the following address to pay the fee  
Lei deve venire a pagare la multa a l'indirizzo  
W celu zapłacenia kary jest pan zobowiązany stawić się pod następującym adresem  
Trebuie să veniți să plătiți amenda la adresa următoare  
A büntetést a következő címen kell kifizetni

WPR KORTRIJK  
P. Kennedylaan 3  
8500 Kortrijk  
Tel: 0032 56 243.146

(aankruisen wel van toepassing is - cochez l'unité concernée)

Na het betalen van de boete op bovenvermeld adres zal u terug in het bezit worden gesteld van uw boetedocumenten en van het bevestigingsbewijs.  
Après le paiement de l'amende à l'adresse sus-mentionnée, les documents de bord et la preuve de paiement vous seront remis.  
After you have paid the fine at the mentioned police station, you will receive your documents again together with a prove of payment.  
Dopo il pagamento a questo indirizzo i documenti e la prova del pagamento vi saranno dati di nuovo.  
Po zaplaceniu mandatu pod wymienionym adresem dorocznie zostaną panu przekazane dokumenty oraz potwierdzenie płatności.  
Dupa ce ati platit amenda la adresa mentionata, o sa obtineti documentele statului si bonul de plata (dovada de platire).  
Mután kifizette a büntetést ezen címen, a rendőrség vissza fogja adni önnek a gépkocsi irattal és a fizetési bizonyítékkal.



CONINKRIJK BELGIË

401548/18

CLIENT (FICHE)

Terminal Period: Merchant Transaction:

Maestro

XXXXXXXXXXXX

Safe Date:

Auth. code:

Ref:

UNIQUE ID

Total: 1800,00 EUR

Read mode: Chip PIN OK

THANK YOU  
GOODBYE

- ☐ wegverkeerswet en uitvoeringsbesluiten<sup>1)</sup>  
☐ wegvervoer<sup>1)</sup>  
☐ ADR vervoer<sup>1)</sup>  
☐ technische eisen bedrijfsvoertuigen<sup>1)</sup>

Nr. boekje: PA Nr. formulier:

STROOK C : AFSCHRIFT VOOR DE OVERTREDER

Datum: Uur:

overtreders in geval van afwezigheid op het ogenblik van de vaststelling)

Geboortedatum:

VOERTUIG

Type: Nat.:

ARD VAN DE INBREUK(EN)

Omschrijving van de overtreding

Wegverkeer wet (454) aan bord  
van stp

Nr. PV. in geval van consignatie

TE BETALEN SOM - BETALINGSMODALITEITEN

Te betalen som<sup>1)</sup>

- ☐ Contante betaling (in euro)  
☐ Bank- of kredietkaart  
☐ Overschrijving of E-betaling

€ 1800,-

nr. gestructureerde mededeling

Naam van de verbalisant:

Handtekening:

IN TE VULLEN DOOR DE OVERTREDER

Betaalde som (in euro):

€ 1800,-

Naam:

Handtekening:

De betaling dooft de strafvordering uit, behalve als het Openbaar Ministerie u zijn intentie om strafrechtelijk te vervolgen heeft beteken.  
 De niet-betaling van de inning kan een voorstel tot minnelijke schikking door het Openbaar Ministerie of een dagvaarding voor de  
 bevoegde politierechtbank met zich meebrengen.

<sup>1)</sup> het vakje dat van toepassing is aankruisen

# KONINKRIJK BELGIË

4019 31/18

☒ Inning <sup>1)</sup>  
☐ Consignatie <sup>2)</sup>

☐ wegverkeerswet en uitvoeringsbesluiten <sup>3)</sup>  
☒ wegvervoer <sup>4)</sup>  
☐ ADR vervoer <sup>5)</sup>  
☐ technische eisen bedrijfsvoertuigen <sup>6)</sup>

Adres van de dienst die de vaststelling opmaakt

**FEDERALE POLITIE**  
Verkeerspost KORTRIJK  
President Kennedylaan 7  
8500 KORTRIJK

Nr. boekje

Nr. formulier

PA

**STROOK C : AFSCHRIFT VOOR DE OVERTREDER**

Plaats : *REKWIET, 17 IL ANTWERPEN*

Datum : *[redacted]* Uur : *[redacted]*

**OVERTREDER** (in te vullen door de overtreder in geval van afwezigheid op het ogenblik van de vaststelling)

Naam, voornaam

Geboortedatum

Straat, nr. :

Postcode :

Gemeente :

Land :

UA

Nat :

UA

Gegevens van de werkgever :

OV, LV

## VOERTUIG

Merk :

*VOLVO*

Type :

*geleed vly*

Nummerplaat :

Nat. :

*LV*

## AARD VAN DE INBREUK(EN)

Reglementering(en) + art.

Omschrijving van de overtreding

*Bijlage 4B 11/07/2000 normale verkeerswet met aan boord van het voertuig*

*normale verkeerswet met aan boord van het voertuig*

Nr. P.V. in geval van consignatie

## TE BETALEN SOM – BETALINGSMODALITEITEN

Te betalen som <sup>1)</sup>

☐ Contante betaling (in euro)

☒ Bank- of kredietkaart

☐ Overschrijving of E-betaling

nr. gestructureerde mededeling

*- € 1800 -*

Naam van de verbalisant :

Handtekening :

IN TE VULLEN DOOR DE OVERTREDER

Betaalde som (in euro) :

*€ 1800*

Naam :

Handtekening :

De betaling dooft de strafvordering uit, behalve als het Openbaar Ministerie u zijn intentie om strafrechtelijk te vervolgen heeft betekend. De niet-betaling van de inning kan een voorstel tot minnelijke schikking door het Openbaar Ministerie of een dagvaarding voor de bevoegde politierechtbank met zich meebrengen.

<sup>1)</sup> het vakje dat van toepassing is aankruisen



CLIENT TICKET

Terminal: [REDACTED]  
Period: [REDACTED]

Merchant: [REDACTED]  
Transaction: [REDACTED]

MAESTRO

XXXXXXXXXXXXXXXXXXXX

SALE  
Date: [REDACTED]

Auth. code: [REDACTED]

REF: [REDACTED]

WORLDLINE

Total: 1800,00 EUR

Read-mode: Chip  
PIN OK

THANK YOU  
GOODBYE

☒ Inning<sup>(1)</sup>  
☐ Consignatie<sup>(1)</sup>

Adres van de dienst

Plaats: REKWIET

OVERTREDER (in t

Naam, voornaam :

Straat, nr. : 31

Postcode :

Land :

Gegevens van de wer

Merk : VO

Nummerplaat :

Reglementering(en)

Bijlage KB 19  
C) 8.

Nr. P.V. in geval van consi

Te betalen som<sup>(1)</sup>

☐ Contante betaling  
☒ Bank- of kredietkaa

hanksys  
1111111111

INKRUK BELGIË

601551/18

21

- ☐ wegverkeerswet en uitvoeringsbesluiten  
☐ wegvervoer  
☐ ADR vervoer  
☐ technische eisen bedrijfsvoertuigen

Adres van de dienst die de vaststelling opmaakt  
Federale Politie  
Verkeerspost KORTRIJK  
President Kennedylaan 3  
8500 KORTRIJK  
t: 056/243140 f: 056/243141

Nr. boekje  
PA  
Nr. formulier

STROOK C : AFSCHRIJF VOOR DE OVERTREDER

Plaats: *Rothem (België) E.L. 601* Datum: *11/11/00* Uur: *17.00*

OVERTREDER (in te vullen door de overtreder in geval van afwezigheid op het ogenblik van de vaststelling)  
Naam, voornaam: *[redacted]* Geboortedatum: *[redacted]*  
Straat, nr.: *[redacted]*  
Postcode: *[redacted]* Gemeente: *[redacted]*  
Land: *UA* Nat: *UA*  
Gegevens van de werkgever: *[redacted]*

VOERTUIG

Merk: *Volvo* Type: *[redacted]*  
Nummerplaat: *[redacted]* Nat: *LV*

AARD VAN DE INBREUK(EN)

Reglementering(en) + art.: *bijl 60151/100*  
Omschrijving van de overtreding: *- controle apparaat ythuis nt conform*  
Nr. PV in geval van consignatie: *1*

TE BETALEN SOM - BETALINGSMODALITEITEN

Te betalen som: *€ 1320,-*  
☐ Contante betaling (in euro)  
☐ Bank- of kredietkaart  
☐ Overschrijving of E-betaling nr. gestructureerde mededeling

Naam van de verbalisant: *[redacted]* Handtekening: *[redacted]*

IN TE VULLEN DOOR DE OVERTREDER  
Betaalde som (in euro): *€ 1320*  
Naam: *[redacted]* Handtekening: *[redacted]*

De betaling dooft de strafvordering uit, behalve als het Openbaar Ministerie u zijn intentie om strafrechtelijk te vervolgen heeft medegedeeld.  
De niet-betaling van de inning kan een voorstel tot minnelijke schikking door het Openbaar Ministerie of een dagvaarding voor de bevoegde politierechtbank met zich meebrengen.

\* het vakje dat van toepassing is - cochez l'unité concernée

Po godzinie 17.00 należy się kierowac pod następujący numer : 0032  
După ora 17.00 puteți să sunați la numărul : 0032  
17.00ora után a következo szamom lephet kapcsolatba a rendorseggel: 0032

U dient uw boete op het volgende adres te komen betalen  
Vous devez venir payer votre amende à l'adresse suivante  
You will have to present yourself at the following address to pay the fine  
Lei deve venire a pagare la multa a l'indirizzo  
W celu zaplacenía kary jest pan zobowiazany stawic sie pod następującym adresem  
Trebuie sa veniti sa platiti amenda la adresa urmatoarea  
A buntetest a kovetkezo cimén kell kifizetni

WPR KORTRIJK  
P. Kennedylaan 3  
8500 Kortrijk  
Tel : 00.32. 56.243.140

(aankruisen wat van toepassing is - cochez l'unité concernée)

Na het betalen van de boete op bovenvermeld adres zal u terug in het bezit worden gesteld van uw boorddocumenten en van het betalingsbewijs.  
Après le paiement de l'amende à l'adresse sus-mentionnée, les documents de bord et la preuve de paiement vous seront remis.  
After you have paid the fine at the mentioned police station, you will receive your documents again together with a prove of payment.  
Dopo il pagamento a questo indirizzo i documenti e la prova del pagamento vi saranno dati di nuovo.  
Po zaplaceniu mandatu pod wymienionym adresem doreczone zostane panu panské dokumenty oraz potwierdzenie platnicze.  
După ce ati platit amenda la adresa mentionata, o sa obtineti documentele masinii si bonul de plata (dovada de platire).  
Miután kifizette a buntetest ezen cimén, a rendorseg vissza fogja adni önnek a gépkocsi iratait és a fizetési bizonyítékot.

(24hr/24hr)  
(24hr/24hr)  
(24hr/24hr)  
(24/24 ora)  
(24/24)  
(24/24)  
(24/24)





KONINKRIJK BELGIË

☒ Inrning<sup>1)</sup>  
☐ Consignatie<sup>2)</sup>

☐ wegverkeerswet en uitvoeringsbesluiten<sup>3)</sup>  
☒ wegvervoer<sup>4)</sup>  
☐ ADR vervoer<sup>5)</sup>  
☐ technische eisen bedrijfsvoertuigen<sup>6)</sup>

Adres van de dienst die de vaststelling opmaakt

FEDERALE POLITIE  
Verkeerspost KORTRIJK  
President Kennedylaan 7  
8500 KORTRIJK

Nr. boekje

Nr. formulier

PA

STROOK C : AFSCHRIFT VOOR DE OVERTREDER

Plaats: *REUVEN, EPR ANTWERPEN*

Datum: *[redacted]*

Uur: *[redacted]*

OVERTREDER (in te vullen door de overtreder in geval van afwezigheid op het ogenblik van de vaststelling)

Naam, voornaam: *[redacted]*

Geboortedatum: *[redacted]*

Straat, nr.: *[redacted]*

Postcode: *[redacted]*

Gemeente: *KORTRIJK*

Land: *UA*

Nat.: *UA*

Gegevens van de werkgever: *[redacted]*

VOERTUIG

Merk: *VOLVO*

Type: *geleed op*

Nummerplaat: *[redacted]*

Nat.: *LV*

AARD VAN DE INBREUK(EN)

Reglementering(en) + art.

Omschrijving van de overtreding

*Bijlage 48 19/07/2000  
c) 8*

*namate wetgeving  
bord van het voertuig*

Nr. PV. in geval van consignatie

TE BETALEN SOM - BETALINGSMODALITEITEN

Te betalen som<sup>1)</sup>

☐ Contante betaling (in euro)  
☒ Bank- of kredietkaart  
☐ Overschrijving of E-betaling

nr. gestructureerde mededeling

Naam van de verbalisant: *[redacted]*

Handtekening: *[redacted]*

IN TE VULLEN DOOR DE OVERTREDER

Betaalde som (in euro): *[redacted]*

Naam: *[redacted]*

Handtekening: *[redacted]*

De betaling dooft de strafvordering uit, behalve als het Openbaar Ministerie u zijn intentie om strafrechtelijk te vervolgen heeft betekend. De niet-betaling van de inning kan een voorstel tot minnelijke schikking door het Openbaar Ministerie of een dagvaarding voor de bevoegde politierechtbank met zich meebrengen.

<sup>1)</sup> het vakje dat van toepassing is aankruisen



TRETI AKOV

RG 8026

(10) B

FEDERALE WEGPOLITIE - POLICE FEDERALE DE LA ROUTE - FEDERAL HIGHWAY POLICE  
- FEDERALE

KONINKRIJK BELGIË

40193218

☒ Innyng  
☐ Consignatie

☐ wegverkeerswet en uitvoeringsbesluiten  
☐ wegvervoer  
☐ ADR vervoer  
☐ technische eisen bedrijfsvoertuigen

Adres van de dienst die de vaststelling opmaakt  
**FEDERALE POLITIE**  
Verkeerspost KORTRIJK  
President Kennedylaan 7  
8500 KORTRIJK

Nr. boekje  
**PA**  
Nr. formulier

FT VOOR DE OVERTREDER

Plaats: *REKVEN, ENR*

Uur: *18*

OVERTREDER (in te vullen door)

CLIENT IDENT

ogenblik van de vaststelling)

Naam, voornaam: *[redacted]*  
Straat, nr.: *[redacted]*  
Postcode: *[redacted]*  
Land: *UA*  
Gegevens van de werkgever: *[redacted]*

Terminal: *[redacted]* Merchant: *[redacted]*  
Period: *[redacted]* Transaction: *[redacted]*

MAESTRO

Merk: *VOLVO*  
Nummerplaat: *UG*

XXXXXXXXXXXX

Reglementering(en) + art.  
*Bylage 40.1901/2008*

SALE  
Date: *[redacted]*  
Auth. code: *[redacted]*  
REF: *[redacted]*

Nr. PV. in geval van consignatie

Total: 1800,00 EUR

Te betalen som  
☐ Contante betaling (in euro)  
☐ Bank- of kredietkaart  
☐ Overschrijving of E-betaling

THANK YOU  
GOODBYE

Naam van de verbalisant: *[redacted]*

IN TE VULLEN DOOR DE OVERTREDER

Betaalde som (in euro): *1800*

Naam: *[redacted]* Handtekening: *[redacted]*

De betaling dooft de strafvordering uit behalve als het Openbaar Ministerie u zijn intentie om strafrechtelijk te vervolgen heeft betekend. De niet-betaling van de innsing kan een voorstel tot minnelijke schikking door het Openbaar Ministerie of een dagvaarding voor de bevoegde politierechtbank met zich meebringen.

het vakje dat van toepassing is aankruisen

P. Kennedylaan 3  
8500 Kortrijk  
Tel: 00.32. 56.243.140

l'unité concernée)



KONINKRIJK BELGIË

401928/18

☐ Inning<sup>1)</sup>  
☐ Consignatie<sup>1)</sup>

☐ wegverkeerswet en uitvoeringsbesluiten<sup>1)</sup>  
☒ wegvervoer<sup>1)</sup>  
☐ ADR vervoer<sup>1)</sup>  
☐ technische eisen bedrijfsvoertuigen<sup>1)</sup>

Adres van de dienst die de vaststelling opmaakt

FEDERALE POLITIE  
Verkeerspost KORTRIJK  
President Kennedylaan 7  
8500 KORTRIJK

Nr. boekje  
PA  
Nr. formulier

STROOK C : AFSCHRIFT VOOR DE OVERTREDER

Plaats : RENNEN, 1712 ANTWERPEN Datum : 2018 Uur : 17

OVERTREDER (in te vullen door de overtreder in geval van afwezigheid op het ogenblik van de vaststelling)

Naam, voornaam : [redacted] Geboortedatum : [redacted]  
Straat, nr. : [redacted]  
Postcode : [redacted] Gemeente : [redacted]  
Land : UA Nat : UA  
Gegevens van de werkgever : [redacted]

VOERTUIG

Merk : VOLVO Type : gelycelyk  
Nummerplaat : [redacted] Nat : LV

AARD VAN DE INBREUK(EN)

Reglementering(en) + art.	Omschrijving van de overtreding
<u>Bijlage 15 ADR 1500</u> <u>98 + 94</u>	<u>- normale verkeerswet van de aard van de</u> <u>- verkeerswet met conform - ijdig</u> <u>afgeleid</u>

Nr. PV. in geval van consignatie

TE BETALEN SOM - BETALINGSMODALITEITEN

Te betalen som<sup>1)</sup>

☐ Contante betaling (in euro)  
☒ Bank- of kredietkaart  
☐ Overschrijving of E-betaling

nr. gestructureerde mededeling

Naam van de verbalisant : [redacted] Handtekening : [redacted]

IN TE VULLEN DOOR DE OVERTREDER

Betaalde som (in euro) : 3120  
Naam : [redacted] Handtekening : [redacted]

De betaling heeft de strafprocedure uit het Openbaar Ministerie u zijn intentie om strafrechtelijk te vervolgen heeft betekend.  
De niet bevoegde minnelijke schikking door het Openbaar Ministerie of een dagvaarding voor de

<sup>1)</sup> het vakje dat van toepassing is aankruisen

(aankruisen wat van toepassing is)

Na het betalen van de boete op bovenvermeld adres zal u terug in het bezit worden gesteld van uw boorddocumenten en van het betalingsbewijs.

4hr/24hr)  
(24hr/24hr)  
(24hr/24hr)  
(24/24 ora)  
(24/24)  
(24/24)  
(24/24)

KONINKRIJK BELGIË

401928/18

ing  
nsignatie

- ☐ wegverkeerswet en uitvoeringsbesluiten<sup>(1)</sup>
- ☒ wegvervoer<sup>(1)</sup>
- ☐ ADR vervoer<sup>(1)</sup>
- ☐ technische eisen bedrijfsvoertuigen<sup>(1)</sup>

in de dienst die de vaststelling opmaakt

FEDERALE POLITIE

Verkeerspost KORTRIJK

President Kennedylaan 7

8500 KORTRIJK

Nr. boekje

PA

Nr. formulier

STROOK C : AFSCHRIFT VOOR DE OVERTREDER

Datum: Uur:

TREDER (in te vullen door de

voornaam:

nr.:

le:

Gen

ns van de werkgever:

erplaat:

glementering(en) + art.

in geval van consignatie

alen som<sup>(1)</sup>

ontante betaling (in euro)

ank- of kredietkaart

verschrijving of E-betaling

van de verbalisant:

VULLEN DOOR DE OVERTREDER

de som (in euro):

CLIENT TICKET

Terminal:  
Period:

Merchant:  
Transaction:

MAESTRO

40000000043060

XXXXXXXXXXXX3085

SALE

Date:

Auth. code:

REF:

WORLDLINE

Total:

3120,00 EUR

Read-mode: Chip

PIN OK

THANK YOU  
GOODBYE

Handtekening:



[REDACTED]

---

**De:** [REDACTED]  
**Enviado el:** miércoles, 27 de febrero de 2019 15:20  
**Para:** [REDACTED]  
**CC:** [REDACTED]  
**Asunto:** [REDACTED]

Geachte Meester,

Ik verwijs naar uw brieven in deze zaak.

De onmiddellijke inningen waarnaar u verwijst zijn alle definitief en derhalve niet vatbaar voor discussie. Noch de politie, noch mijn ambt zullen hier nog verder over communiceren.

Hoogachtend,

[REDACTED]



[REDACTED]  
**Substituut-arbeidsauditeur**

Tel [REDACTED]

Fax [REDACTED]

[www.om-mp.be](http://www.om-mp.be)

---

**Arbeidsauditoraat bij de arbeidsrechtbank Gent**  
Afdeling Gent en Oudenaarde



Gelieve deze mail uit respect voor het milieu enkel af te drukken als het echt noodzakelijk is.

De informatie opgenomen in dit bericht kan vertrouwelijk zijn en is uitsluitend bestemd voor de geadresseerde. Indien u dit bericht ten onrechte ontvangt, wordt u verzocht de inhoud niet te gebruiken of door te sturen, maar de afzender direct te informeren door het bericht terug te sturen.

De: [REDACTED]  
Enviado el: miércoles, 27 de febrero de 2019 15:20  
Para: [REDACTED]  
CC: [REDACTED]  
Asunto: [REDACTED]

Dear Master,

I refer to your letters in this case.

The immediate collections to which you refer are all final and therefore not open to discussion. Neither the police nor my office will communicate further about this.

Yours sincerely,

[REDACTED]



[REDACTED]  
**Substituut-arbeidsauditeur**

Tel. [REDACTED]

Fax [REDACTED]

[www.om-mp.be](http://www.om-mp.be)

---

**Arbeidsauditoraat bij de arbeidsrechtbank Gent**  
Afdeling Gent en Oudenaarde



Gelieve deze mail uit respect voor het milieu enkel af te drukken als het echt noodzakelijk is.  
De informatie opgenomen in dit bericht kan vertrouwelijk zijn en is uitsluitend bestemd voor de geadresseerde.  
Indien u dit bericht ten onrechte ontvangt, wordt u verzocht de inhoud niet te gebruiken of door te sturen, maar de afzender direct te informeren door het bericht terug te sturen.

Translation by Google translate





European  
Commission

Justice and Consumers

Ref. Ares[REDACTED]

Brussels, [REDACTED]



Dear Sir,

Thank you for your letter of 01/04/2019 ([REDACTED]), which has been registered as a complaint under reference number [REDACTED] (please quote this reference in any further correspondence).

The Commission's services will consider your complaint in the light of the applicable European Union law. You will be informed of the findings and of any steps taken concerning your complaint by [REDACTED]

You may opt for confidential or non-confidential treatment of your complaint. If you have not done so in the complaint form, the Commission's services will by default treat your complaint confidentially. If you choose non-confidential treatment, the Commission departments may disclose both your identity and any of the information submitted by you to the authorities of the Member State against which you have made your complaint. The disclosure of your identity by the Commission's services may in some cases be indispensable to the handling of the complaint.

Please note that, if the Commission decides to act following your complaint, including by launching a formal infringement procedure, its general aim is to ensure that Member State laws are compliant with EU law and correctly applied. The submission of a complaint to the Commission may thus not resolve your specific and individual situation. In order to obtain redress, including compensation if warranted, you should take action at national level in the Member State concerned. Submitting a complaint to the Commission does not suspend the time limits for starting legal action under national law. The Commission may also decide not to open formal infringement procedures, even if it considers that a breach of EU law has occurred.

You can find further information on infringement procedures for breaches of European Union law in the annex to this letter.

Yours faithfully,

[REDACTED]  
Head of Unit

Annex 1: Explanation of infringement procedures launched by the European Commission for breaches of European Union law

Annex 2: Specific privacy policy statement

## **Explanation of infringement procedures launched by the European Commission for breaches of European Union law**

### **1. Principles**

Each Member State is responsible for the transposition, application and implementation of European Union law in its internal legal system. Only national courts can, where appropriate, order a Member State to compensate individuals for infringements of European Union law attributable to it. They have the power to issue orders to administrative bodies and annul a national decision. Therefore, by using the means of redress available at national level (national administrative or judicial authorities) you should, as a rule, be able to assert your rights more directly and more personally than infringement procedures brought by the Commission could.

The European Commission is entrusted with the task of overseeing the application, implementation and enforcement of European Union law. Where a Member State fails to comply with European Union law, the Commission may initiate infringement procedures and if necessary, refer the case to the Court of Justice. It is up to the Commission to decide whether or not to act, and how to act, in response to a complaint concerning a breach of European Union law.

A breach of European Union law means the failure, either by action or omission, of a Member State to fulfil its obligations under the Treaties. Any breach of European Union law by an authority of a Member State, irrespective of the level of the authority involved (at central, regional or local level) is attributable to the Member State to which that authority belongs.

Anyone may lodge a complaint with the Commission free of charge against any Member State about any measure (law, regulation or administrative action) or the absence of such measure or practice which they consider incompatible with European Union law. You do not have to demonstrate a formal interest in bringing proceedings nor do you have to prove that you are principally and directly concerned by the infringement complained of. A complaint about a breach of European Union law has to relate to an infringement of European Union law by a Member State. It cannot therefore concern a private dispute.

### **2 Handling of your complaint by the Commission's services**

After examining the facts and in the light of the rules and priorities established by the Commission for opening and pursuing infringement procedures<sup>1</sup>, the Commission services will decide whether further action should be taken on your complaint.

It may be necessary to gather further information to determine the factual and legal situation of your case. If necessary, you will be asked to supply further information. Should the Commission contact the authorities of the Member State against which you have made your complaint, it will not disclose your identity unless you have given your express permission to do so (see below point 3).

If the Commission considers that there may be an infringement of European Union law which warrants the opening of an infringement procedure, it addresses a "letter of formal notice" to the Member State concerned, requesting it to submit its observations by a specified date.

In the light of the reply or absence of a reply from the Member State concerned, the Commission may decide to address a "reasoned opinion" to the Member State, calling on the Member State to comply with European Union law within a specified period.

The purpose of those formal contacts is to determine whether there is indeed an infringement of European Union law and, if so, to resolve the case at this stage without having to take it to the Court of Justice. The Commission may decide whether or not to pursue the infringement procedures any further.

<sup>1</sup> Communication from the Commission - EU law: Better results through better application



If the Commission brings the case before the Court of Justice of the European Union, it may take several years for the Court of Justice to hand down its judgment. Judgments of the Court of Justice differ from those of national courts. The Court of Justice delivers a judgment stating whether there has been an infringement of European Union law. The Court of Justice cannot annul a national provision which is incompatible with European Union law, nor force a national administration to respond to the request of an individual, nor order the Member State to pay damages to an individual adversely affected by an infringement of European Union law.

It is up to a Member State against which the Court of Justice has handed down its judgment to take whatever measures are necessary to comply with it, particularly to resolve the dispute which gave rise to the proceedings. If the Member State does not comply, the Commission may again bring the matter before the Court of Justice seeking to have financial sanctions imposed on the Member State until the latter puts an end to the infringement.

Following the examination of your complaint, the Commission may also decide not to open formal infringement procedures, even if it considers that a breach of EU law has occurred.<sup>2</sup>

### **3. Administrative procedures for the handling of your complaint**

After receiving your complaint, the Commission will:

- a. register your complaint (by assigning to it an official reference number, which should be quoted in any further correspondence) and acknowledge its receipt within 15 working days;
- b. assess your complaint with a view to arriving at a decision to issue a formal notice or to close the case within not more than one year. Where that time limit is exceeded, the Commission will inform you in writing of the status of the file;
- c. where appropriate, propose to transfer it to the most suitable problem-solving mechanism;
- d. inform you about progress on your complaint;
- e. not disclose your identity to the authorities of the Member State concerned, unless you have explicitly chosen non-confidential treatment of your complaint.

You are referred to the following Commission documents which explain the Commission's general approach to the management of correspondence and complaints:

- Code of good administrative behaviour for staff of the European Commission in their relations with the public, available on the EUR-Lex website (<http://eur-lex.europa.eu>) under its publication reference, Official Journal L 267, 20.10.2000, p. 63.
- Administrative procedures for the handling of relations with the complainant regarding the application of European Union law, Annex to the Commission Communication "EU law: Better results through better application", accessible on the EUR-Lex website (<http://eur-lex.europa.eu>) under the reference, [REDACTED]
- Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, available on the EUR-Lex website (<http://eur-lex.europa.eu>) under its publication reference, Official Journal L 8, 12.1.2001, p. 1.

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<sup>2</sup> Communication from the Commission - EU law: Better results through better application ([REDACTED])

### Specific privacy statement

#### CHAP (Complaints Handling / Accueil des Plaignants)

##### 1. The CHAP database

The CHAP database has been set up to manage complaints which the Commission receives about infringements of European Union law by Member States.

##### 2. Identity of the data controller

The controller of the processing is the head of unit SG-F3, 'Implementation and Enforcement of EU Law' in the Secretariat-General (SG), European Commission.

##### 3. Purpose

The purpose of collecting the information in the CHAP database is to enable the Commission to learn about infringements of European Union law and thus carry out its task under Article 17 of the Treaty on European Union to ensure that Member States apply the provisions of the Treaty and the measures taken under it.

##### 4. Information collected

The information collected includes the name and address of the complainant (natural person or legal entity<sup>1</sup>), their telephone and fax numbers and email address, their area of activity, their preferred language, and (where applicable) the name of their representative. The full text of the complaint may contain other personal data of a very diverse nature.

##### 5. Mandatory information

Certain information must be supplied in the CHAP database in order to allow the Commission to examine the complaint (your name and address, the national authority you are complaining about, national measure(s) which you think are in breach of EU law, previous action taken to solve the problem, your agreement for disclosing your personal to the national authorities you are lodging a complaint against).

##### 6. Data protection and storage

The personal information collected and all other relevant information are stored on the European Commission servers in the Data Centre in Luxembourg. The server operates under the Commission's decisions and provisions on security established by the Security Directorate for this kind of server and service. The processing of personal data by the European Commission is subject to the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.<sup>2</sup>

##### 7. Who has access to your information?

The information collected in the CHAP database is not accessible to anyone outside the Commission. Inside the Commission, access to the personal information is granted only through USER ID and

<sup>1</sup> Regulation (EC) No 45/2001 concerns the data protection of individuals. It does not apply to information concerning legal entities unless this information relates to an identified or identifiable natural person.

<sup>2</sup> OJ L 8, 12.1.2001, p.1.



password to a defined population of users of the CHAP database. The people who have access to CHAP are those in the SG and other Commission services dealing with the Commission mail or infringements.

#### 8. How long is the information kept?

When a person sends a complaint to the Commission, the personal information they give is stored in the CHAP database for three years following the date of closure of the case. After that period, the information enabling the person to be identified is kept in a form which no longer permits identification of the data subject, unless storage for a longer period is necessary for the purpose of the collection.

#### 9. Accessing, checking, correcting or deleting your information

You have no direct access to the information stored. Anyone who wishes to verify the personal information about them that is stored in the system, or who wishes to check, correct or delete such personal information, should write an email to [REDACTED] giving full details of their request. Such requests will be handled forthwith.

#### 10. Contact details

If you have any question or request, please contact the CHAP support team, operating under the responsibility of the controller, either by email to [REDACTED] or by letter to the Secretariat General (SG-F3), European Commission, B 1049 Brussels.

#### 11. Remedies with regard to the processing of personal data

Questions concerning the processing of your personal data can be addressed to the European Commission's Data Protection Officer, e-mail address: [REDACTED]

Complaints related to the processing of personal data by the European Commission can also be addressed to the European Data Protection Supervisor at the following address: Rue Wiertz 60 (MO 63), 1047 Brussels, Belgium, e-mail address: [REDACTED]. The European Data Protection Supervisor is responsible for monitoring and ensuring the application of the provisions of Regulation (EC) No 45/2001<sup>3</sup> and any other EU act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by an EU institution or body.

<sup>3</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Official Journal L 8, 12.1.2001, p. 1.

## 22 Driver definition: What is a driver digitally?

One other problem that concerns us is the lack of a proper definition of the term ‘driver’. What exactly is a driver? What are the characteristics in a driver card which uniquely identify it? In this section we try to make sense of this term and compare different possible characterizations of it.

Initially, we could come up with a definition of ‘driver’ based on the `HolderSurname`+`HolderFirstNames` variables. However, this definition has a specific limitation: many nodes of the vehicle digital information (for instance, `TREP03`) contain information about drivers, but not in terms of those variables.

To overcome this limitation, an alternative option is to make a definition based on the `OwnerIdentification®` node, which occurs in all the nodes where there is any driving activity. However, upon inspection, this has a clear limitation too: in our database there are plenty of driver files and vehicle files with the same `OwnerIdentification®`, despite belonging to different drivers working in different countries.

Finally we could consider defining the driver only as the module which has `CardType®` = driver. But we could also find a limitation with this definition: there are other kinds of cards (*workshop workers*, for instance) held by workers who can also drive, and hence the tachograph registers their driving activities in the vehicle file. This definition of ‘driver’ is therefore also rendered insufficient.

Each software used for reading and interpreting data from tachographs has its own definition of the ‘driver’. The definition given below is, in our opinion, the most complete and detailed definition of what a *digital driver* is. This should be included in any good technical specification (and is the one used by Police Controller®):

A “driver” is a person who performs the activities connected with driving the vehicle, regardless of the card being inserted (driver card, workshop or control). A “digital driver” is a driver who exists according to the digital information and it is defined as four different formatted number sections (short number, driver card or `CARDSHORT`), which result from: `CardType®`, `CardIssuingMemberState®`, `OwnerIdentification®` and `CardConsecutiveIndex®`. These are included in the nodes of the downloaded files, as shown below:

- **In driver files:** `CardIdentification®` (`HolderSurname` + `HolderFirstName` required).
- **From the vehicle files:**
  1. `VuCardInsertionwithdrawal®` (`HolderSurname` + `HolderFirstName` required).
  2. `VuOverSpeedingRecord®` (`HolderSurname` + `HolderFirstName` not required).
  3. `VuPlaceDailyRecord®` (`HolderSurname` + `HolderFirstName` not required).
  4. `VuFaultRecord®` (`HolderSurname` + `HolderFirstName` not required).
  5. `VuEventRecord®` (`HolderSurname` + `HolderFirstName` not required).

This implies that drivers with unknown name and surname can appear. In such cases, `HolderSurname` and `HolderFirstName` will have value ‘UNK’. This is always the case for the last four modules of the list above. In this situation, we assume that different values in the nodes `cardReplacementIndex®` and `cardRenewalIndex®` are not defining different drivers.

The model described is the one used by the software Police Controller®. However, there is still an unsolved problem with it. What does **CardConsecutiveIndex**® mean when applied to a driver? In all the files analysed for the elaboration of this document, we have encountered files with **CardType** = driver, but at the same time the value **CardConsecutiveIndex**® > 0. In the table below, we show how many drivers per country from our database contained this irregularity:

<b>CardIssuingMemberState</b>	<b>Nº of drivers</b>
Belgium	5
Spain	115
Estonia	4
France	1
Finland	1
Italy	102
Latvia	2
Poland	56
Romania	1
Slovakia	2
Switzerland	35
United Kingdom	444
Russian Federation	973

Some of these instances may simply be due to mistakes, since the number of drivers containing this irregularity is not significant compared to the amount of drivers of the country that satisfy **CardConsecutiveIndex**® = 0. However, in the last three countries analysed (Switzerland, UK and Russia) this does not appear to be a mistake, but the regular and consistent behaviour of those countries. The reason for which this appears in the **ddd** files of those countries has been asked for many times, specially to UK authorities. No answer or explanation has been obtained.

## 23 No legal defence in France

On 08/Feb/2010, a driver was fined 135 € nine times for violating various articles of Reg. 561/06 detected by French Police control software. These fines are of type “amendes forfaitaires”, for which there is no possible legal defence in France; the driver has no choice but to pay.

A leading european legal services provider filed a complaint to the DREAL (the ministerial transport agents authorised to issue fines) in order to request that these fines be reviewed.

In an email from 22/Jun/2010, the DREAL expressed their agreement with the same legal services provider: many of their fines did not proceed. However, they were never reimbursed.

This expedient was transferred to the European Commission which replied on 03/Aug/2010: they confirmed that control software is not present in the homologation protocols and, therefore, they are not regulated by European legislation.

Let us observe these documents in French.





MINISTÈRE DE L'ÉCOLOGIE, DE L'ÉNERGIE,  
DU DÉVELOPPEMENT DURABLE ET DE LA MER  
en charge des Technologies vertes et des Négociations sur le climat

La Défense, le [REDACTED]

Direction Générale des Infrastructures, des Transports et  
de la Mer

Direction des Services de Transport

Bureau de l'organisation et de l'animation du contrôle des transports  
routiers - TR4

Affaire suivie par : [REDACTED]

Tel. 01 40 81 17 63 - Fax. 01 40 81 10 66

Monsieur,

Par lettre du 14 avril 2010 vous m'avez fait part de plaintes de vos différents clients transporteurs routiers suite à des amendes infligées par le peloton de l'autoroute de gendarmerie de Dijon Crimolois. Vous précisez que des infractions ont été relevées suite à des erreurs du programme informatique OCTET.

Les infractions relevées appellent les observations suivantes :

Infraction n°1 : dépassement de la durée maximale de conduite journalière n'excédant pas 20% : L'infraction est contestée du fait de la répartition des 9h54 sur les journées du dimanche 17/01 et du lundi 18/01.

Le règlement CE n°561/2006 du 15 mars 2006 prévoit que la conduite journalière peut être prolongée à 10 heures maximum deux fois par semaine, la semaine étant définie à l'article 4 dudit règlement comme période allant du lundi 00h au dimanche 24h. Le dépassement de plus de 9 heures de conduite journalière n'étant pas encore constitué le dimanche soir à 24h, la contestation de l'infraction me semble justifiée.

Infraction n°2 : prise de repos journalier insuffisant mais de 6 heures au moins : L'infraction n'est pas caractérisée puisque l'article 8 §4 du règlement CE n°561/2006 du 15 mars 2006 offre la possibilité de prendre 3 repos journaliers réduits entre deux temps de repos hebdomadaire. Dans le cas présent, le conducteur n'a bénéficié que 2 fois de cette disposition entre ses deux repos hebdomadaires, donc la contestation de l'infraction paraît justifiée.

[REDACTED]  
à l'attention de Monsieur [REDACTED]

20305 IRUN (GIPUZKOA)

ESPAGNE

Présent  
pour  
l'avenir

## 24 Perspectives

After having performed a deep analysis of all the irregularities concerning tachographs and driver cards, we feel justified to summarise the following perspectives:

1. What has been analysed in this document is unfortunately not only happening in the tachograph technology, but in all sectors of the industry (for instance the Schiaparelli case, the Boeing failure, . . . , see the Introduction, Section 1).
2. The authorities must acknowledge the fact that it is mandatory to move from a “hardware homologation era” to a “software verification era”.
3. Formal verification translates into a huge mathematical development. However, there is still not enough industrial infrastructure to establish a standard for software homologation.
4. Formal Vindications S.L., a leading legal services provider and a team of scientists working at the *Uni-versitat de Barcelona (UB)* tied forces to develop knowledge around the concept of formal verification of software, particularly focused on the creation of formally verified software to check for infractions in driver cards according to 561/06.

Substantial advances have been made, in particular regarding an experimental intermediate language based on so-called *splitter algebra*. The idea is as follows. If we can reformulate a law and write it according to a restricted set of splitter algebra, we could obtain a formally verified and homologated software in a semi-automatic fashion. The following regulations have already been re-designed in splitter algebra:

- EU 561
  - USA 395
  - CANADA 313
  - MEXICO 2-087
  - BRASIL 9503
5. The informal technical specifications for this project have been already written (**Core-G-561**), but a big part of it is about avoiding and excluding inconsistent inputs from the tachograph. This represents a huge investment of time and tough decisions on data management.
  6. From our point of view, given the fact that the second generation of tachographs is coming in force, the EU could support and invest, for the first time in history, in the creation of a complete package of:
    - A formally verified triple (Technical Specification, Software, Proof/Certificate) for the tachograph.
    - A formally verified triple (Technical Specification, Software, Proof/Certificate) for 561/06, fully compatible with the tachograph input.

7. The arrival of the software homologation era is unstoppable and Europe has the possibility to become the leader in standardizing the concept of public homologation of software.

## 25 Appendix: A selection of European fines in which human intervention was needed to correct decisions produced by software

CASE NUMBER / FINE AMOUNT	ALLEGED INFRACTION / INTERPRETATION OF AUTHORITIES	INTERPRETATION	RESULT
<b>SPAIN</b>			
ME90868  Amount: €1,500	The company was fined for insufficient weekly rest from 8.04.2013 to 22.07.2013.  The Authorities alleged a breach of Article 8 of Regulation 561/2006 ("Regulation 561")	According to Article 8(6) of Regulation 561 (in relation with Article 4(i)) in two weeks the driver must make two regular weekly rests or one reduced weekly rest and one regular weekly rest.  In this case in the two week period there was a rest of 101h47m and of 38h18m, and between them six-24-hour-periods had not been exceeded.	The Authorities withdrew the requirement to pay €1,500 and closed the case.
ME98707  Amount: €1,001	The company was fined for excess of continuous driving on 05.04.2014 (from 05.37 to 13.16,UTC).  The Authorities considered that there was an infraction of the Art. 7 Regulation 561 – which provides that after a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes, unless he takes a rest period.	There is a way to distribute driving periods and breaks which avoids the infraction, so if this distribution exists and it complies with Regulation 561 it means that no fine can be imposed.	The Authorities and withdrew the requirement to pay €1,001 and closed the case.
ME98826  Amount: €1,001	The company was fined for insufficient weekly rest (from 01.04.2013 to 15.04.2013).  The Authorities alleged an infraction of Article 8 Regulation 561.	According to Article 8(6) of Regulation 561 (in relation with Article 4(i)) in two weeks the driver must make two regular weekly rests or one reduced weekly rest and one regular weekly rest.  In this case in the two week period there was a rest of 64h32m and a rest of 35h48m, and between them six-24 hour-periods hadn't been exceeded.	The Authorities withdrew the requirement to pay €1,001 and closed the case.
ME102008  Amount: €1,001	The company was fined for excess of continuous driving time on 16.11.2013 (from 14.05 to 21.41 UTC).  The Authorities alleged an infraction of Article 7 Regulation 561.	There is a way to distribute driving periods and breaks which avoids the infraction, so if this distribution exists and it complies with Regulation 561 it means that no fine can be imposed.	The Authorities withdrew the requirement to pay €1,001 and closed the case.
<b>POLAND</b>			
ME99521  Amount: 4,100 PLN	The fine was for insufficient weekly rest contrary to Article 8(6) of Regulation 561 between 00:00 10.03.2014 – 23:59 16.03.2014.  According to the authorities (multi –manning driving, 2 fines for both drivers) the drivers made weekly rest of 24:12 minutes when they should have taken minimum 45 hours weekly rest.	We argued that there was an error referring to calculation of 6 periods of 24 hours and an error in the application of the requirement to take a 45 hour rest.	The last instance administration cancelled the fine and returned it to the first instance. They did not admit that we were right directly.  The first instance administration decided that we were correct and cancelled this fine.
ME-102407  Amount: 4,100 PLN	The fine for reduced weekly rest contrary to Article 8(6) of Regulation 561 between 00:00 02.06.2014 – 23:59 08.06.2014.  The authorities alleged a reduction of 20:53 hours. (applying the criteria of obligatory 45 hours rest)  Another fine for reduction of weekly rest (the same driver and the same period). Again the authorities applied the criteria of obligatory 45 hours rest	We argued it was incorrect to use twice in one control period the criteria of 45 hours. And that 45h rests which they made before were not counted. The driver were resting even more. The infractions didn't exist.	The last instance administration cancelled the fine and returned it to the first instance, but they did not say that infractions did not exist.  In the end, the first instance administration decided that we had right and cancelled this fine.
<b>ITALY</b>			
ME 68107  Amount: 200 €	The driver was fined for insufficient daily rest contrary to Article 8(2) of Regulation 561  According to the Police, on 27.05.2011, the driver made a daily rest period of 8h18mins.	Following analysis of the rest periods, we observed that the daily rest was interrupted according to the Article 9 of Regulation 561.  The driver was accompanying a vehicle which was transported by ferry and for this reason he made a daily rest period in accordance with Article 9 of Regulation 561. In fact, by way of derogation from Article 8, the regular daily rest period could be interrupted not more than twice by other activities not exceeding one hour in total.	The judge accepted our appeal and cancelled the fine, ordering the repayment of the €200 bail
<b>HUNGARY</b>			
ME 84729  Amount: 1,000,000 HUF	The company was fined for their driver allegedly committing ten infractions. The driver had insufficient reduced daily rest periods of less than 9 hours in seven cases. He also exceeded the continuous driving time during two consecutive weeks in three cases.	We relied on the doctrine of "ne bis idem", meaning that no legal action can be instituted twice for the same cause.  We successfully defended the rights of our client and the authorities imposed a fine for insufficient daily rest and also for exceeding the accumulated driving time in the same case!	The authorities reduced the Fine to 670,000 HUF.



(10 cases grouped together)	According to the authorities there was a violation of Article 8 of Regulation 561 in ten cases.		
ME 91515 Amount: 910,000 HUF	<p>The company was fined for their driver allegedly committing four infractions.</p> <p>According to the authorities there were the following infringements of Regulation 561:</p> <ol style="list-style-type: none"> <li>1. insufficient split daily rest period of less than 3hs+9 hs.</li> <li>2. insufficient reduced daily rest period of less than 9 hours.</li> <li>3. insufficient weekly rest (less than 45 hours), where he was no longer allowed to have a reduced weekly rest period.</li> <li>4. excess fortnightly driving time (over 90 hours)</li> </ol>	<p>According to Article 4(i) a week lasts from Monday 00:00 to Sunday 24:00.</p> <p>According to the Regulation it is enough to make two weekly rests in two weeks. These weekly rests can be either two rests of at least 45 hours each, or one rest of at least 24 hours and another rest of at least 45 hours.</p> <p>In this case the driver made two rests of more than 45 hours in two weeks. The period that was taken into account by the police was May 13th to May 20th. This period can be included in two different blocks of two weeks. May 6<sup>th</sup> to May 20th and May 13th to May 27th. Therefore we argued that the fine was unjustifiable. Furthermore the authorities accused the driver of exceeding the fortnightly driving time. In regard to this part of the fine the authorities made their calculations using UTC time despite Regulation 3821/1985 Article 15(3) where it provides that drivers must ensure that time recorded on the record sheet agrees with the official time in the country of registration of the vehicle.</p>	The authorities withdrew the order to pay the fine and refunded 910,000 HUF along with the costs of initiating the court process.
<b>THE NETHERLANDS</b>			
MEU 6774 Amount: €1.200 (€850 + €550)	<p>The company was fined because its employees allegedly had an insufficient daily rest period of less than 9 hours, in a case of multi-manning. According to the police there was a rest period of less than 7 hours.</p> <p>The authorities alleged a violation of Article 8(5) of Regulation 561.</p>	<p>Following analysis of the digital files at the moment that the inspection took place, there still was a period left of 26 hours and 41 minutes in which the daily rest could easily have been taken.</p> <p>As such, we argued that there was no violation of insufficient daily rest by multi-manning. According to the tickets of the tachograph that the authorities provided and our analysis, both drivers had a break of 9h3m during the period of the 10.09.2013 from 07:57 UTC until 17:00 UTC. After that, they had a break of 9h55m during the period of 10.09.2013 from 22:10 UTC until 11.09.2013 at 08:05 UTC.</p> <p>So the drivers had to take their following break of 9 hours in the period of 30 hours between 11.09.2013 at 08:05 UTC and 12.09.2013 at 14:05 UTC.</p>	The authorities withdraw the order to pay fine and refunded the fine amount that was imposed.
		<p>The control was on 11.09.2013 at 11:24 UTC. The time between 11.09.2013 at 11:24 UTC and 12.09.2013 at 14:05 UTC is 26h41m.</p> <p>So the drivers still had 26h41m to take their daily rest period of 9 hours.</p>	
MEU 8680 Amount: €2,000	<p>The company was fined because its employee allegedly began a weekly rest period later than at the end of a six 24-hour period from the end of the previous weekly rest period.</p> <p>According to the authorities there was a violation of Article 8(8) of Regulation 561 (known as the rule of <math>6 \times 24 = 144</math>)</p> <p>Following the Police analysis of the tachograph digital file we found that both drivers had working activities from the 20.05.2014 at 01:40 until the moment of the inspection. They were on their 8th workday. In total they were already working for 177 hours and 14 minutes instead of the permitted 144 hours.</p> <p>Calculation: 144 (from 20.05.2014 at 01:40 until 26.05.2014 at 01:40) + 24 (from 26.05.2014 at 01:40 until 27.05.2014 at 01:40) + 9.14 (on 27.05.2014 at 01:40 until 10.54 hour) - 177 hour and 14 minutes in total.</p>	<p>Following analysis of the digital files we observed that the relevant total was 141 hours and 29 minutes, instead of the 144 hours that were recorded in the police report.</p> <p>According to the clients one cannot conclude on the basis of the data of the tachograph that the infringement in question was committed.</p> <p>The reason for this is that in relation to one driver there was a period of less than <math>6 \times 24 (=144)</math> between the end of his last weekly rest and the beginning of the following one.</p> <p>This driver ended his weekly rest on 20.05.2014 at 01:40 hour UTC and his following weekly rest period started on 25.05.2014 at 23:09 hour UTC. The total of this period is 141 hours and 29 minutes.</p>	The authorities withdrew the order to pay fine and refunded the total fine amount.
<b>CZECH REPUBLIC</b>			
MEU-9802 Amount: 15.000CZK	The company was fined for exceeding maximum of 3 reduced daily rest periods in between two weekly rest periods (Article 8(4) Regulation 561)	The period in which more than 3 reduced daily rest periods were taken was not interpreted correctly. We were able to show that there was not any infraction	The Authorities order the refund of the deposit and closed the case.
<b>DENMARK</b>			
MEU 8209 Amount: As the driver was also the owner of the company, only a	<p>The authorities alleged infractions of the following paragraphs of Article 8 of Regulation 561 :</p> <ol style="list-style-type: none"> <li>1. Article 4(G): insufficient reduced daily rest (total violation of 43%). The fine in Denmark is DKR 100-per. % for the driver and DKR 20, - per. % for the</li> </ol>	We argued that the insufficient daily rest was due to a boarding to the ferry. Article 9 (1) of Regulation 561/06 provides a derogation in these circumstances - a rest can be interrupted twice. The police officers on duty didn't take this into account and imposed the fine and the conditional suspension of the driving license for 3 years.	The authorities accepted our interpretation and cancelled the conditional suspension of the driving licence and reduced the fine

company fine of DKK 8,600 was issued.  If the hauler and driver were two different entities the fine would have been DKK 13,500.	transport company). Infraction date: 24.01.2014 at 08.42 (UTC) and 24 hours ahead.  Fine and conditional suspension of the driver's license for 3 years cf. Danish traffic act article 125	Article 9 was not taken under consideration, because the authorities meant that rest on both sides of the interruption mustn't be less than a regular daily rest of 11 consecutive hours. We argued that although the rest is less than 11 hours, the fairly exception must be taken under consideration. The lack of the rest from the 11 hours can be fined, but only after cumulating the rests on each side of the interruptions.	from a 43 % violation to a 14 % violation.
<b>FRANCE</b>			
MF7417  Amount: €1,215	Insufficient weekly rest contrary to Article 8(6) of Regulation 561.  Date: 01.28.2010 and 01.29.2010.	We argued that there was no fine because the "lack of weekly rest" registered by the police was compensated during the week after the control.	The French Department of Transports (DREAL) confirmed us that the fine was incorrectly issued.  By law, as the fine was paid on the roadside it was an acceptance of guilt and it is not possible to get the refund. In these cases you can request information from the police, but we cannot reopen the cases.
MF8784  Amount: €9,080	Excess of daily driving time (6 occasions) and insufficient daily rest (11 occasions)  Date period : 06.27.2011 to 07.22.2011	We argued that there was no fine because the police did not attached the summary of the case files and the OCTET system used by the police is not reliable	The Police Court of Nancy cancelled the fine, returning the full amount.  They also agreed that the OCTET system had not been verified and as such could not be relied upon.
MF9553  Amount: €1,020	Insufficient weekly rest contrary to Article 8(6) of 561 Regulation.  Date: 09.21.2012 and 09.22.2012.	We argued that there was no fine because in this period, the driver took 2 weekly rests: one of 45h41 and another one of 43h12. So he was able to compensate the 1h48 left by 14.10.2012, 10 days after the control. So the infraction didn't exist at the time of the control.	The Police Court of Nancy cancelled the fine, returning the full amount. Due to an abuse of the procedure by the authorities the Court was not able to investigate the materiality of the fines.
MF10507  Amount: €2,040	Lack of weekly rest and lack of daily rest. Date period : 02.02.2012 to 02.18.2012	We argued that there was no fine because the driver has the right to make a nine hours daily rest three times a week. The police did not provide any evidence to support the fine and the control was about "overlapped" weeks so the police did not take into account 24h period. Moreover, there was a problem with the calibration of the tachograph.	The Police Court of Nancy cancelled the fine, returning the full amount.
<b>GERMANY</b>			
MEU 8933  Amount: €1,106 paid as deposit	Insufficient weekly rest for the period 19-20.06.2014.  The program "Tachoplus" used by the Bavarian authorities does not recognize resting time without the card inserted.	We argued that resting time can be made with card not inserted.	The authorities canceled the fine.
MEU 6367  Amount: €2,835 paid as deposit	Insufficient regular weekly rest from 07.06.2014 and 08.06.2014, by 14:38h.	The Police program Tachoscan calculates only 24 / 45 / 24 / 45. It seems that they are not looking for the periods of weeks. Rest between Sunday and Monday can belong to one or the other week.  We successfully argued that the driver could make his regular weekly resting period after the control and then there would be no infraction.	The fine was reduced from €3,122 to €475 for less serious infractions.
MEU 8710  Amount: €1,000 paid as deposit	Insufficient regular weekly rest between 09.05.2014 and 11.05.2014, by 12:23 h.	The Police program Tachoscan calculates only 24 / 45 / 24 / 45. It seems that they are not looking for the periods of weeks. Rest between Sunday and Monday can belong to one or the other week.  We successfully argued that the driver could make his regular weekly resting period after the control and then there would be no infraction.	The fine was reduced from €999.95 to €0,00
MEU 8949  Amount: €400 paid as deposit	Insufficient regular weekly rest between 21.03.2014 and 22.03.2014, by of 9:02 h.	The Police program Tachoscan calculates only 24 / 45 / 24 / 45. It seems that they are not looking for the periods of weeks. Rest between Sunday and Monday can belong to one or the other week.  We successfully argued that the driver could make his regular weekly resting period	Offense was canceled. Fine was reduced from €822,50 to €150.  Fine was reclassified as less serious offence – that of not making weekly rest after 144 h.
<b>AUSTRIA</b>			

MEU 7778 Amount: €2,100	Several fines for insufficient daily resting time during the control period of 30.10.2013 until 30.11.2013.  Drivers were multi-manning. When they made their daily resting time SLOT 2 was marked as "availability" instead of "resting".	We argued that it was an old tachograph from the first generation and the tachograph always recorded availability for the second driver during the rest period of the first driver. No infraction was made.	The courts cancelled the fine and refunded €2,100.
<b>NORWAY</b>			
MEU 5873 Amount: 72,000 NOK. 12,000 NOK for the driver (6,000 each driver). 60,000 NOK for the transport company.	Insufficient weekly rest period in contravention of Article 8(6) of Regulation 561 of. Norwegian Criminal Act Article 48a.  Police argued that there was not one single regular weekly rest period of 45 hours within 16 days (04.02.2013 to 19.02.2013).	According to Article 8 of Regulation 561, a driver shall in any two consecutive weeks take at least: two regular weekly rest periods (45H) or one regular weekly rest period and one reduced weekly rest of period of at least 24 hours.  After analysis of the digital files, we found that a regular week rest of 58h and 51 min. was taken from 02.02.2013 – 04.02.2013 and another reduced weekly rest of 26h16m was taken from 17.02.2013 to 18.02.2013.  Within the period that was controlled, there was one regular and three reduced weekly rest. The regular rest was taken before the control period, but within the week and according to Article 8 a weekly rest period that falls in two weeks may be counted in either of the week. Due to this fact, the drivers have taken qualified weekly rest periods in both weeks.	The Prosecutor cancelled the company fine of 60,000 NOK for the transport company.  The Driver had already pleaded guilty by paying the fines on the roadside and the case had been closed.
<b>UK</b>			
Legal consultation to DVSA	Article 8.6 of Regulation 561 on weekly rest periods	One of the preambles of Regulation 561 is an acknowledgement that "effective and uniform enforcement of those provisions is desirable if their objectives are to be achieved and the application of the rules is not to be brought into disrepute."  However, it seems difficulties have been experienced by European enforcement agencies in interpreting weekly rest in accordance with Article 8.6 of Regulation 561/2006, in particular whether taking two consecutive reduced weekly rests is an infraction or not.  Owing this this, we sent the UK authorities a theoretical example to confirm their stance on the interpretation of weekly rest.	The DVSA confirmed that that you can take as many consecutive reduced weekly rests as you like, provided that in any two week period there is at least one Regular Weekly Rest of 45 hours and Reduced Weekly Rest of at least 24 hours (which must be later compensated for) and that the period of time between  weekly rests does not exceed six 24-hour periods.
6 complaints were grouped together by the authorities and dealt with in one case as they shared the same theme.  1. ME94960 (£200) 2. ME95593 (£300). 3. ME95814 (£100). 4. ME97253 (£100). 5. ME99848 (£300). 6. ME99334 (£100)	The cases were for the following these Regulation 561 themes 1. Exceed 90 HR Fortnightly Drive contrary to Article 6(3) Regulation 561, 30.11.2013 2. Insufficient Weekly Rest Period contrary to Article 8.6 Regulation 561, 09.01.2014 3. Exceed 90 HR Fortnightly Drive contrary to Article 6(3) Regulation 561, 07.12.2013 4. Exceed 90 HR Fortnightly Drive contrary to Article 6.3 Regulation 561, 16.02.2013 5. Insufficient Weekly Rest Period contrary to Article 8(6) Regulation 561, 16.04.2014 6. Exceed 90 HR Fortnightly Drive contrary to Article 6(3) Regulation 561, 07.12.2013	A lack of detailed information in the penalty notices was a big problem in the UK. It meant that we are often unable to accurately identify the nature of an alleged offence and thus cannot offer a proper defence, which is a fundamental breach of national and European legislation and human rights and also opens the door for authorities from different member states to fine the same infraction twice.  The minimum detail of information to be provided in penalty notices was not dealt with in Regulation 561/2006.  The DVSA argued that the format of the fixed penalty notices had been signed off by the government legal team as compliant.	The case was finally dealt with by an Independent Complaints Assessor, who concluded :  <i>"I am persuaded that this is a matter that the DVSA can properly be asked to investigate further. I therefore recommend that the DVSA consider...the level of detail provided [in its fixed penalty notices]."</i>  Going forward DVSA started to provide more complete information in their fixed penalty notices.
ME105002 Amount: £200	The driver was fined for insufficient daily rest on 16.10.2014 at 06:06 in contravention of Article 8(2) of Regulation 561. The alleged rest period was 9h17m.	One of the preambles of Regulation 561 was an acknowledgement that many road transport operations within the Community involve transport by ferry or by rail for part of the journey.  However, it seemed that Police enforcement software and/or enforcement officers were having difficulties applying these exceptions and in particular recalculating rest times talking into account interruptions for example caused by ferries journeys.  We argued that both of the daily rests taken on 13.10.2014 and 15.10.2014 satisfied the criteria of the ferry exception and were in fact Regular Daily Rests periods not Reduced Daily Rest Periods.	The Criminal Justice Department of Hampshire Constabulary decided to take no further action against the driver and provide a full refund.

		Consequently, we provided that when our client made a Reduced Daily Rest on 17.10.2014 from 06:44 to 18.10.14 at 06:44:00, this was in fact his second Reduced Daily Rest between 12.10.2014 and 17.10.2014 and not his fourth and therefore no infraction of Article 8(2) of Regulation 561 had been committed.	
ME127156, ME127157, ME127158:  Amount: £900 (£300 each infraction)	The DVSA alleged that the driver committed the following offences on 04.12.2016  1. Exceeding 10 hour driving time contrary to Article 6.1 of Regulation 561;  2. Insufficient daily rest in 24 hour period contrary to Article 8.2 of Regulation 561; and  3. Failing to use Tachograph Record Sheet or Driver Card contrary to Article 34(1) of EU Regulation 165/2016	Following analysis of the digital files, it seemed seem that the Driver had not driven more than 10 hours on 04.12.2016.  The calculation of the daily driving time for 04.12.2016 should start at the end of this rest period of at least seven hours uninterrupted, which is at 18.05 on 03.12.2016.  Between 8.05 on 03.12.2016 and the DVSA control at 05.52 on 04.12.2016 there was no evidence to suggest that the Driver has driven more than 10 hours. The Driver had driven between 7-8 hours.  Using the same logic the Driver had until 18.05 on 04.12.2016 to complete his daily rest. In between the time of the control at 05.52 on 4.12.2016 and 18.05 on 4.12.2016 the Driver had more than 12 hours available to complete his daily rest period of a minimum of 9 hours.  Furthermore, as a result of the prohibition imposed on the Driver he has in fact complied with Article 8.2 on 4.12.2016 in that he completed a reduced daily rest. In any event, with more than 12 hours left to take his daily rest on the day of the infraction, it was our argument that without the intervention of DVSA the driver would have still completed at least a 9 hour reduced daily rest.	DVSA withdraw the Fixed Penalty notices and issued a refund for £900.



## 26 Addendum: Incompatibility of tachograph file interpretation using UTC and Unix time

As of July 2024, new advances show that the incompatibility between UTC and Unix is absolute.

Tachographs represent moments in time using **TimeReal**, a format specified by Regulation 2016/799.

### 2.162. TimeReal

Code for a combined date and time field, where the date and time are expressed as seconds past 00h.00m.00s. on 1 January 1970 UTC.

**Value assignment** – Octet aligned: Number of seconds since midnight 1 January 1970 UTC.

The max. possible date/time is in the year 2106.

### Unix interpretation

For each day **driver files** contain a node named **activityDailyRecord**, which contains a **TimeReal** named **activityRecordDate** with the date of that day, and, among other information, a list of **ActivityChangeInfo**, namely the succession of activities performed by the driver. Each **ActivityChangeInfo** indicates its corresponding time as an offset: the number of minutes past midnight of that day (this saves memory).

```
CardActivityDailyRecord ::= SEQUENCE {  
    activityPreviousRecordLength    INTEGER(0..CardActivityLengthRange),  
    activityRecordLength            INTEGER(0..CardActivityLengthRange),  
    activityRecordDate              TimeReal,  
    activityDailyPresenceCounter    DailyPresenceCounter,  
    activityDayDistance             Distance,  
    activityChangeInfo              SET SIZE(1..1440) OF ActivityChangeInfo  
}
```

Figure 26.1: Format of **CardActivityDailyRecord** from the driver file, according to Regulation 2016/799.

Similarly, **vehicle files** contain the information about the activities of the day in TREP02 or TREP22. For every day vehicle files contain a **TimeReal**, named **currentDateTime** in **first generation** vehicles and **dateOfDayDownloaded** in **second generation** vehicles, and a list of the **ActivityChangeInfo**.

A first observation is that **activityRecordDate**, **currentDateTime** and **dateOfDayDownloaded** represent the day, but since they are a **TimeReal**, the date comes with a time. In Figure 26.2 and 26.3 there is an example for a driver file and a first generation vehicle file.

```

_EF_Driver_Activity_Data® (Valid) (0504)
_cardDriverActivity®
  _cardActivityDailyRecords®
    _validDataRange -> 9696
    _activityDailyRecord® (5) -> [1686009600]

_activityChangeInfo® (1) -> [0], BREAK/REST°, NOT INSERTED°, TEAM°, DRIVER°
_activityChangeInfo® (2) -> [959], BREAK/REST°, INSERTED°, SINGLE°, DRIVER°
_activityChangeInfo® (3) -> [961], BREAK/REST°, INSERTED°, TEAM°, DRIVER°
_activityChangeInfo® (4) -> [962], DRIVING°, INSERTED°, TEAM°, DRIVER°

```

Figure 26.2: Example of data from a driver file. The value 1686009600 corresponds to midnight, 2023-06-06 00:00:00 in Unix time.

```

_TREP02_Activities® [1644796800] KM: 502954 (valid)
_vuCardInsertionsWithdrawalsData®
_vuActivityDailyData®

_activityChangeInfo® (1) -> [0], BREAK/REST°, NOT INSERTED°, SINGLE°, CO-DRIVER°
_activityChangeInfo® (2) -> [0], BREAK/REST°, NOT INSERTED°, SINGLE°, DRIVER°
_activityChangeInfo® (3) -> [330], DRIVING°, INSERTED°, SINGLE°, DRIVER°

```

Figure 26.3: Example of data from a first generation vehicle. The value 1644796800 corresponds to midnight, 2022-02-14 00:00:00 in Unix time.

From this data, how to compute in what moment the change of activity happened? To answer this question, the following excerpt from Regulation 2016/799:

## 2.1. ActivityChangeInfo

This data type enables to code, within a two bytes word, a slot status at 00:00 and/or a driver status at 00:00 and/or changes of activity and/or changes of driving status and/or changes of card status for a driver or a co-driver. This data type is related to Annex 1C requirements 105, 266, 291, 320, 321, 343, and 344.

**Value assignment** — Octet Aligned: ‘scpaattttttttt’B (16 bits)

[...]

Time of the change: Number of minutes since 00h00 on the given day.

For example, the breakdown of one of the previous **ActivityChangeInfo** comes with the following data:

```

activityChangeInfo® (1)
-> 0
  value:24576
  slot:DRIVER°
  vehicleGuidance:TEAM°
  cardStatus:NOT INSERTED°
  activity:BREAK/REST°
  time:0

```

Figure 26.4: Detail of the structure **ActivityChangeInfo**. The field **time** gives the minute offset from midnight, in this case 0 because it is a change happening at midnight.

Therefore, at each **ActivityChangeInfo** we have a minute offset, where 0 means midnight and it adds up from there. But midnight from what day? From the date of that node.

The moment of the activity change is computed as “midnight moment” + “minute offset from midnight”.

<b>Root: cardActivityDailyRecords@</b> activityDailyRecord (5) -> [1686009600] activityPreviousRecordLength@:14 activityRecordLength@:56 activityRecordDate@:[1686009600] activityDailyPresenceCounter@:5 activityDayDistance@:207	<b>Root: VuCard@</b> <b>TREP02_Activities@ KM:</b> signatureValidation@:valid currentDateTime@:[1644796800] odoMeterValueMidnight@:502954 vuCardInsertionsWithdrawals@:1 vuActivityChanges@:47 vuPlaceDailyWorkPeriods@:2 vuSpecificConditions@:0 signature
---	--

Figure 26.5: More information on the examples above. Left: driver file. Right: first generation vehicle file.

In driver files and first generation vehicle files, the **TimeReal** value for **activityRecordDate** and **currentDateTime** always correspond to midnight in **Unix time**. For instance, figure 26.5 displays more information about the nodes in the driver file and first generation driver file from the example above.

Then the precise time of an **ActivityChangeInfo** can be computed as follows for **driver files**:

$$\text{ActivityChangeInfo}[\text{TimeReal}] = \text{activityRecordDate}[\text{TimeReal}] + \text{ActivityChangeInfo}[\text{minute offset}] \cdot 60.$$

Similarly, for **first generation vehicles**:

$$\text{ActivityChangeInfo}[\text{TimeReal}] = \text{currentDateTime}[\text{TimeReal}] + \text{ActivityChangeInfo}[\text{minute offset}] \cdot 60.$$

And for **second generation vehicles** as well, assuming the value of **dateOfDayDownloaded** corresponds to midnight:

$$\text{ActivityChangeInfo}[\text{TimeReal}] = \text{dateOfDayDownloaded}[\text{TimeReal}] + \text{ActivityChangeInfo}[\text{minute offset}] \cdot 60.$$

In the example from Figure 26.2, since the **TimeReal** of the day is 1686009600 (corresponding to 2023-06-06 00:00:00 in Unix time<sup>1</sup>), and the minute offset is 962, we get:

$$\text{ActivityChangeInfo}[\text{TimeReal}] = 1686009600 + 962 \cdot 60 = 1686067320,$$

which corresponds to 2023-06-06 16:02:00 in Unix time.

Now, what happens if the **TimeReal** of the day does not correspond to midnight? Then a correction is needed for the calculation, since the minute offset is expressed with respect to midnight.

This happens in practice with the Continental tachographs with software version 4 (observed in versions 4042, 4072, 4073, 4075, and 4126). The node **dateOfDayDownloaded** comes as the **TimeReal** of some date at 23:59:59, as the example in Figure 26.6 shows.

<sup>1</sup>Computed using <https://www.unixtimestamp.com/>

```

_TREP22_Activities® (Valid)
_signatureValidation®
_dateOfDayDownloadedRecordArray®
    _recordType -> 06
    _recordSize -> 4
    _noOfRecords -> 1
    _records®
        _dateOfDayDownloaded -> (1) [1676419199]

```

Figure 26.6: Example of data from a second generation vehicle, Continental software version 4. The value 1676419199 corresponds to 2023-02-14 23:59:59 in Unix time.

Thus the calculations change:

$$\begin{aligned}
 &\text{ActivityChangeInfo}[\text{TimeReal}] = \\
 &\quad \text{dateOfDayDownloaded}[\text{TimeReal}, \text{adjusted at midnight}] + \\
 &\quad \text{ActivityChangeInfo}[\text{minute offset}] \cdot 60.
 \end{aligned}$$

In the example, if `dateOfDayDownloaded` has value 1676419199, corresponding to 2023-02-14 23:59:59, 86399 seconds must be subtracted to obtain the value 1676332800, corresponding to 2023-02-14 00:00:00.

## UTC interpretation

The regulation stipulates time shall work in UTC. In the examples above, `TimeReal` values were interpreted as Unix time, but if they are interpreted as UTC values, the incompatibility will become clear.

The above example in Figure 26.2, 1686009600, which in Unix corresponds to 2023-06-06 00:00:00, in UTC corresponds to 2023-06-05 23:59:33 (the difference comes from 27 leap seconds). This conversion is done using the FV Time Manager<sup>2</sup>.

Thus, making the correction presented above, the time of the activity becomes:

$$\begin{aligned}
 &\text{ActivityChangeInfo}[\text{TimeReal}] = \\
 &\quad \text{ActivityRecordDate}[\text{TimeReal}, \text{adjusted at midnight}] + \\
 &\quad \text{ActivityChangeInfo}[\text{minute offset}] \cdot 60 = \\
 &\quad 1685923227 + 962 \cdot 60 = 1685980947,
 \end{aligned}$$

corresponding to 2023-06-05 16:02:00. That is, a day before the interpretation in Unix time!

This will happen in all driver files and most of the vehicle files, and shows that interpreting the data in Unix time or in UTC changes its meaning completely.

## CONCLUSIONS

When the value of `activityRecordDate`, `currentDateTime` or `dateOfDayDownloaded` corresponds to midnight in Unix, i.e. when it is a multiple of 86400, the interpretation in UTC for activities will **always** have a difference of 1 day.

<sup>2</sup>The FV Time Manager is a formally verified time converter that, unlike most options on the market, works in UTC. It can be used online at <https://formalv.com/TimeManager/FVTimeCalculation>.



# Glossary

**Type1 in Decent Design** A specification must follow the following *logical-mathematical principles* and in particular should be *consistent*: no contradictions are entailed. A desirable additional property is *completeness*: the system will decide all situations. 7, 26, 40, 71, 99

**Type2 in Decent Design** A specification must respect *computational limits* (not exceeding available computation time and memory). 7

**Type3 in Decent Design** A specification must follow *physical laws*. 7, 26, 36, 40, 51, 97, 108, 121, 126, 135, 137

**ddd file** File extension of the vehicle and driver files. In Spain, the extension of driver and vehicle files is `tgd`; in France, `v1b` and `c1b`. 37, 53, 99, 148, 209

**driver card** A tachograph card, issued by the authorities of a Member State to a particular driver, which identifies the driver and allows for the storage of driver activity data. 15, 22, 33, 38, 51, 53, 60, 70, 97, 106, 121, 135, 208

**driver file** File containing all the information stored in a driver card. 9, 16, 23, 38, 53, 99, 106, 133, 135, 185, 208

**dynamic testing** Currently, the best industrial standard known to increase the quality of written software. The technique is mainly based on a combination of imposing many sanity checks in the programming process on the one hand, and much sample testing on the other hand. 4

**FORMALLY VERIFIED SOFTWARE condition 3** There is a *mathematical proof* that the software does exactly what the specification says it should do. 9, 23, 26, 40, 62, 71, 110, 113, 125

**OCTET** French police computer applications that check the downloaded data from vehicle and driver cards. 153, 185

**Police Controller®** Software developed by a legal services provider that receives vehicle or driver files as input and outputs its information, automatically detects infractions of Reg. 561/06 and irregularities contained in such files. Unlike other softwares of the kind, it allows the user to choose between different options regarding the interpretation of data: how driving time must be computed, what to do with activities registered during a power supply interruption, what irregularities make a file unacceptable, etc. 12, 16, 19, 24, 36, 39, 99, 106, 110, 112, 121, 130, 138, 149, 208

**software verification** Software verification is a technique where you prove with mathematical rigor that the software complies with its specification. 5

**TREP01** Node of the vehicle file that stores information about the vehicle and the vehicle file. 137

**TREP02** Node of vehicle files that contains the drivers' activities record. 51, 60, 70, 125, 131, 140

**TREP03** Node of vehicle files that stores all the information relative to events and faults. 1, 26, 51, 60, 70, 109, 111

**TREP04** Node of vehicle files that stores information relative to the speed of the vehicle. 1, 111, 125, 131

**TREP05** Node of vehicle files that stores information relative to the technical data of the vehicle. 18, 135

**vehicle file** File containing allyes (glos 1) the information stored in a tachograph. Memory storage in tachographs is bigger than in driver cards and hence they contain more information. 9, 26, 51, 60, 70, 99, 109, 111, 129, 135, 185, 208