

FREQUENTLY ASKED QUESTIONS

RELATING TO THE IMPLEMENTATION OF ERRU (Electronic Register of Road Transport Undertakings), Regulation (EC) No 1071/2009

No.	QUESTION	ANSWER
1	What does <i>duly completed administrative procedure carried out in an appropriate and timely manner</i> mean? (1071/2009/EC, Article 6§2a)	This provision ensures that the essential procedural rights, such as the right of defence, information on charges, legal advice and, if appropriate, legal aid are granted to the transport manager or the transport undertaking concerned. The investigation should be carried out independently. The duration of the administrative procedure should be reasonable and the latter should include a right of appeal of the decision taken. .
2	How can the <i>appropriateness to carry out a check at the premises</i> (1071/2009/EC, Article 6§2a) be determined?	The purpose of the procedure referred to in Article 6 (2) a) is to determine if, due to specific circumstances, the loss of good repute would constitute a disproportionate response in a given situation. A check at the premises can help clarify if there are any such specific circumstances, for instance: whether an infringement was committed deliberately, the general behaviour towards compliance/non-compliance with relevant EU legislation, mitigating actions undertaken, risk rating of the company, if the penalty imposed was challenged in the host Member State and appeal procedures are pending. It is however a matter of discretion for the competent national authority to weigh negative factors against positive ones and balance the assessment.
3	Does the expiry of an EU licence imply that it immediately loses its validity?	Point 5 of Annex IV does not offer any flexibility: carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence is considered as one of the most serious infringements. Therefore a transport undertaking whose EU licence has expired is not allowed to perform transport operations until this licence is duly renewed. Any such infringement should be recorded in the national register.
4	May a settlement out of court impose a penalty for the most serious or serious infringements of EU rules?	Yes, provided that such settlement foresees a renunciation to the right of appeal. The out of court settlement gives to the penalty imposed by the competent authority its final character.
5	Which serious infringements of EU rules apply to the transport manager and which to the undertaking? Are the most serious infringements (Annex IV) committed by the driver taken into consideration in the assessment of the good repute of the carrier for	In the absence of EU specific provisions in this regard, it is a matter of national (criminal and/or administrative) law to determine the active subject of infringements to the road transport legislation. Article 6.1 of Regulation (EC) No 1071/2009 provides that when assessing the good repute of an undertaking the Member State should assess the undertaking itself, the transport manager and any other relevant person as may be determined by the Member State . Most infringements

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	<p>whom this driver works?</p>	<p>listed in Annex IV are by their nature committed by drivers. For instance, in the case of breach of EU rules on driving times, breaks and rest periods established by Regulation (EC) No 561/2006, the transport undertaking is liable for infringements committed by drivers (Article 10.3) unless Member State's competent authorities establish that there is an evidence that the undertaking cannot be reasonably held responsible, e.g. the transport undertaking complied with requirements of Article 10.2 of this Regulation to organise the work of drivers, to properly instruct them, to check compliance with the Regulation's provisions. Such a principle of responsibility of the undertaking for the illegal acts of the driver could be applied in the same way to other infringements referred to in Annex IV when assessing the good repute of the undertaking.</p>
<p>6</p>	<p>If the transport manager holds an "old" certificate (i. e. issued before the entry into force of Directive 96/26/EC modified by Directive 98/76/EC and thus not "standardized"), how the obligation set out in Article 21 of Regulation (EC) N° 1071/2009/EC can be fulfilled?</p> <p>How it is possible to verify in the ERRU system the persons who would like to work as a transport manager but who are exempted from examinations according to Article 9 of Regulation (EC) No 1071/2009?</p>	<p>According to Article 21 (2) of Regulation (EC) No 1071/2009, a certificate issued before the entry into force of this Regulation is deemed to be equivalent to the new type of certificate set out in Annex III.</p> <p>The Regulation provides in its Article 9 that persons who provide proof that they have continuously managed a road haulage undertaking or a road passenger transport undertaking for a period of 10 years before 4 December 2009 may be exempted from the necessary examination. Member States may deliver to such persons certificates of professional competence set out in Annex III.</p> <p>The old type certificates in circulation which are provided with a serial number can be checked in the ERRU thanks to this number.</p> <p>For the old type certificates in circulation that do not include a serial number the word "Unknown" should be encoded in the electronic register and in the relevant ERRU communication. The same procedure should apply to transport managers exempted from the obligation to hold any certificate in accordance with Article 9. It would still be possible to verify the good repute of a transport manager through other search criteria.</p>
<p>7</p>	<p>May administrative sanctions be included in the national registers? May such sanctions be pronounced instead of penal sanctions?</p>	<p>The inclusion in the national registers connected to the ERRU concerns the infringements committed and not the sanctions. The sanctions can be of an administrative nature.</p>

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8	Should the results of administrative checks be included in the ERRU?	Yes. For example the result of the check at the premises of an undertaking (Article 6(2) a) will be included in the national electronic register in the box entitled "Reason why loss of good repute is a disproportionate response"
9	How should the Member States deal with the case of illegal transport without an EU licence? (if a company holds no licence, it cannot be revoked and the transport manager cannot be declared unfit)	National sanctions applicable to such undertakings may be very high and dissuasive. However Regulation (EC) No 1071/2009 does not provide that such cases should be recorded in the ERRU.
10	What should a transport manager do to fulfil the condition set out in Article 4 (1) a) of the Regulation requiring him to <i>effectively and continuously manage the transport activities of the undertaking</i> ?	Such an effective and continuous management implies a direct and real (not fictitious) involvement in the activities of the transport undertaking. The transport manager should exercise his usual responsibilities e.g. as regards the instructions to be given to drivers.
11	Is there any legal relation between point 1 of Annex IV of Regulation 1071/2009 and Regulation 561/2006?	Yes. Point 1 a) of Annex IV refers to the driving periods mentioned in Article 6 (2) and (3) of Regulation 561/2006. Point 1b) refers to the daily driving time mentioned in Article 6 (1) of Regulation 561/2006.
12	What is understood by "core statistics" in the meaning of Article 26 (1) d) of the Regulation?	At least the following information should be part of the "core statistics": <ul style="list-style-type: none"> - Number of transport undertakings - Number of Community/EU licences and number of certified true copies - Number of serious infringements (how many in the Member State of establishment and how many in other Member States) - Number of unfit persons.
13	Should the infringements for which a court decision is pending be recorded in the national register?	Article 16 (2) of the Regulation specifies the type of data that should <u>at least</u> be contained in the national register, and leaves it to the national authorities to include further information. The inclusion of infringements for which a court decision is pending would give the authorities a better view on the overall compliance of the undertaking with the applicable rules /legislation. Therefore the national authorities should be encouraged to include them in the national register. However, a decision on the loss of good repute of an undertaking should not be based on this type of infringements due to the legal uncertainty involved.

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