

RULES OF PROCEDURE

Sanctioning proceeding for infringements of the provisions of Regulation (EU) No. 1177/2010 of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004

1 December 2022

ART

ART SANCTIONING PROCEEDING FOR INFRINGEMENTS OF THE PROVISIONS OF REGULATION (EU) NO. 1177/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING THE RIGHTS OF PASSENGERS WHEN TRAVELLING BY SEA AND INLAND WATERWAY

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Art. 1 - Definitions

- a) “Decree establishing the Authority”: Decree-Law No. 201 of 6 December 2011, as converted with amendments into Law No. 214 of 22 December 2011, as amended by Article 36 of Decree-Law No. 1 of 24 January 2012, as converted with amendments into Law No. 27 of 24 March 2012, establishing the Transport Regulation Authority;
- b) “Regulation” means Regulation (EU) No. 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004;
- c) “Legislative decree” means legislative decree No. 129 of 29 July 2015 laying down ‘Rules on sanctioning proceedings for infringements of the provisions of Regulation (EU) No. 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004’;
- d) “Authority” means the Transport Regulation Authority, established by Article 37 of Decree-Law No. 201 of 6 December 2011, as converted with amendments into Law No. 214 of 22 December 2011, as amended by Article 36 of Decree-Law No. 1 of 24 January 2012, converted with amendments into Law No. 27 of 24 March 2012;
- e) “Board” means the collegial body of the Authority;
- f) “Offices” means the Authority’s organisational units, as referred to in Article 13 of the Rules on the Authority’s organisation and operation adopted by ART Decision No. 1 of 16 October 2013;
- g) “carrier” means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by passenger services or cruises to the general public;
- h) “Union carrier” means a carrier established within the territory of a Member State or offering transport by passenger services operated to or from the territory of a Member State;
- i) “performing carrier” means a person, other than the carrier, who actually performs the carriage, wholly or partially;
- j) “passenger service” means a commercial passenger transport service by sea or inland waterways operated according to a published timetable;
- k) “integrated services” means interconnected transport services within a determined geographical area with a single information service, ticketing scheme and timetable;
- l) “inland waterway” means a natural or artificial navigable inland body of water, or system of interconnected bodies of water, used for transport, such as lakes, rivers or canals or any combination of these;
- m) “port” means a place or a geographical area made up of such improvement works and facilities as to permit the reception of ships from which passengers regularly embark or disembark;
- n) “port terminal” means a terminal, staffed by a carrier or a terminal operator, in a port with facilities, such as check-in, ticket counters or lounges, and staff for the embarkation or disembarkation of passengers travelling on passenger services or on a cruise;
- o) “ship” means a vessel used for navigation at sea or on inland waterways;
- p) “transport contract” means a contract of carriage between a carrier and a passenger for the provision of one or more passenger services or cruises;
- q) “ticket” means a valid document or other evidence of a transport contract;
- r) “ticket vendor” means any retailer concluding transport contracts on behalf of a carrier;

- s) “travel agent” means any retailer acting on behalf of a passenger or a tour operator for the conclusion of transport contracts;
- t) “tour operator” means an organiser or retailer, other than a carrier, within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- u) “terminal operator” means a private or public body in the territory of a Member State responsible for the administration and management of a port terminal;
- v) “cruise” means a transport service by sea or inland waterway, operated exclusively for the purpose of pleasure or recreation, supplemented by accommodation and other facilities, exceeding two overnight stays on board;
- w) “shipping incident” means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;
- x) “regular services” means services which provide for the carriage of passengers by sea and inland waterway at specified intervals along specified routes, passengers being embarked and disembarked at predetermined stopping points;
- y) “undertaking” means the persons referred to under g), h), i), r), s), t), u) concerned with the notice of initiation of the penalty proceedings under these rules;
- z) “SiTe” means the computerised complaint handling system to be adopted under Article 3 (5) of the legislative decree;
- aa) “Rules on sanctioning proceedings” means the rules for the conduct of penalty proceedings adopted by the Authority by Decision No 15/2014 of 27 February 2014.

Art. 2 - Scope

1. These rules of procedure shall apply, in compliance with the relevant current legislation, to the proceedings for the assessment of infringements and the imposition of penalties within the Authority’s remit pursuant to the legislative decree and for the adoption of the related measures.
2. The Authority may assess infringements for non-compliance, with respect to one or more events, related to individual users or user groups and for systematic and *erga omnes* non-compliance of the undertaking.
3. The Authority shall ensure the proper implementation of the Regulation and carries out monitoring and inquiries on the services referred to in the Regulation. The Authority investigates and evaluates the complaints filed to it in the second instance for the purpose of imposing penalties and may take account of complaints and reports received also for exercising its powers referred to in Article 37 of the decree establishing the Authority.
4. In exercising the powers referred to in the legislative decree, the Authority may also act in accordance with Regulation No 2006/2004 and in accordance with Article 27 of the Regulation. To this end, it may exchange information with other national enforcement bodies referred to in Article 25 (1) of the Regulation on their work and decision-making principles and practices to the extent necessary for the coherent application of the Regulation.

Art. 3 - Submission of complaints to the Authority

1. The Authority may assess infringements and impose penalties falling within its remit on its own initiative or as a result of complaints lodged by passengers, including through associations representing their interests, where expressly delegated to do so.
2. Complaints shall be lodged, under penalty of inadmissibility, through the SiTe system or, alternatively, by completing the form provided in Annex A to these rules of procedure, that shall be sent according to the procedures under paragraph 5. The fields marked with a star (*) are mandatory requirements and, if they are not filled in, the complaints are inadmissible.
3. Complaints to the Authority are inadmissible if they are lacking the mandatory requirements for the identification of the person filing the complaint or if the complaint contains general reported cases involving unsubstantiated facts; complaints are likewise inadmissible if they are not accompanied by the documentation specified as mandatory in the complaint form.
4. Complaint forms shall include any confidentiality requirements and the claimant is required to submit a non-confidential version of the complaint, which is assessed by the Authority.
5. The complaint form, together with the mandatory documents, shall be sent to the Authority by registered letter with acknowledgement of receipt or by certified email to the following address pec@pec.autorita-trasporti.it in pdf format only.
6. Complaints to the Authority may be pursued only: a) where a complaint has been already lodged with the undertaking or, if it has been already lodged, sixty days have expired from its submission without any action taken; b) where the complaint to the undertaking has been submitted after sixty days from the date on which the service has been provided or should have been provided.
7. The provisions of this article shall also apply to the complaints concerning regional and local regular services forwarded by the competent regional structures referred to in Article 3 (6) of the legislative decree and identified by decree of the Minister of Infrastructure and Transport.

Art. 4 - Preliminary examination

1. For the purpose of verification of the complaints lodged and initiation of any sanctioning proceeding, the Authority may request information and documents to any parties involved, either private or public, and may order inspections.
2. The Head of the competent Office may pool together the complaints which are likely to be verified and handled jointly.
3. The Head of the competent Office provides for the immediate dismissal of the complaint where it is regarded as not eligible, admissible, or acceptable as referred to in article 3 (2), (3), (5) and (6), as well as where the Regulation and the legislative decree are not applicable and where the complaint is clearly unfounded due to manifest absence of substantive requirements.
4. Where complaints are regarded as not eligible, admissible, or acceptable by the Authority, passengers may resubmit the complaint in full. Further, the Authority may carry out on its own initiative further examinations for the purpose of assessing whether to initiate inquiries on the case at issue.
5. Where complaints or reported cases are not immediately dismissed pursuant to paragraph 3, with a brief statement of reasons, and, based on further examinations, the matters of fact and/or law have proved inadequate to justify additional inquiries, the Head of the competent Office shall alternatively:
 - a) propose to the Board the dismissal of the complaint;

b) where the necessary conditions are met, propose to the Board the initiation of a sanctioning proceeding by drafting the statement of objections referred to in article 5 (1).

6. The dismissal of the case shall be communicated to the party that lodged the complaint.

Art. 5 - Initiation of proceedings and allegation of infringement

1. Where, based on the information collected by the Office as a result of the activities referred to in Article 4, and having assessed the information available or made available by any parties concerned, the Board recognizes the existence of conditions for the adoption of measures imposing penalties, it makes the decision about the initiation of the proceeding.

2. The person in charge of the proceeding is the Head of Surveillance and Enforcement or the officer appointed by the Head for such purpose.

3. The statement of objections, whereby the sanctioning proceeding is initiated, shall be served to the undertaking according to the procedures referred to in Article 14 of Law No. 689 of 24 November 1981; the Authority shall inform the claimants thereof. In the event of a large number of complainants, the initiation of the proceeding is announced through publication on the Authority's website.

4. The statement of objections contains:

- a) summary of the facts;
- b) indication of the alleged infringement;
- c) indication of the person in charge of the proceeding;
- d) amount of penalty which could be imposed as a result of the proceeding;
- e) Office to which statements of defence, documents and commitment proposals may be addressed, and where files may be accessed;
- f) deadline by which the parties concerned may exercise the rights referred to as under e);
- g) deadline for completing the sanctioning proceeding as from the notification of the statement of objections.

5. Where the assessed infringement is still in place, the statement of objections also includes the formal notice to terminate the infringement within thirty days at the latest; the compliance with the notice to terminate the infringement or non-compliance therewith are in any case assessed pursuant to the law also for the purpose of the penalties to be imposed upon conclusion of the proceeding.

6. The statement of objections may include the proposal for simplified procedure referred to in article 6 of the rules on sanctioning proceedings.

Art. 6 - Time-limits for proceedings

1. The time-limit for the adoption of the final measure is 180 days from the date of notification of the statement of objections referred to in Article 5.

2. The time-limits are suspended in the cases provided for under article 9 of the rules on sanctioning proceedings.

Art. 7 - Inquiries

1. Where it is necessary to obtain information or further background information, the person in charge of the proceeding may request information and documents that are useful for the inquiries to the persons who hold them, including through hearings. Where it is necessary to provide for expert's reports and/or professional advice, the person in charge of the proceedings may submit proposals to the Board to that effect.
2. The request for information and documents referred to in paragraph 1 shall include:
 - a) facts and circumstances for which clarifications are sought;
 - b) purpose of the request;
 - c) time-limits for receiving replies or sending documents;
 - d) procedures to supply the information and person in charge of the proceedings;
 - e) applicable penalties, if any.

Art. 8 - Participation in the proceedings

1. The undertaking receiving the notice of initiation of the sanctioning proceeding shall send written comments and documents within 30 days from the date of notification of the statement of objections.
2. The undertaking concerned with the notice of initiation of the sanctioning proceeding may request, by separate application, to have access to the files of the proceedings.
3. The undertaking concerned with the notice of initiation of the sanctioning proceeding may request, by separate application, to be heard with respect to the objections raised. The hearing is communicated at least with a 7-day notice and is held before the person in charge of the proceeding. If the undertaking requests so, it may be represented by its legal representative or special attorney duly informed about the facts. The minutes of the hearing are drawn up and signed by the person in charge of the proceeding or other officer appointed by the Head of the Office, as well as by the representative and/or attorney of the party concerned. A copy of the minutes is delivered to the party.
4. Parties that have lodged the complaint, persons representing public or private interests, as well as holders of collective interest organized in associations or committees, which might be directly and immediately adversely concerned by the facts for which the proceeding was initiated or by the measure which might be adopted as a result of the proceeding, are entitled to have access to the files and take part in the proceeding, by submitting written statements, documents, arguments and opinions by means of an appropriate application including:
 - a) first name, surname, name or corporate name, residence, permanent address or registered place of business of the applicant as well as telephone numbers, e-mail address and fax number;
 - b) adequate reasons in relation to the interest to intervene, including with specific reference to the contribution which may be brought by the applicant to the inquiries.
5. Having assessed that the participation request is valid and complete, the person in charge of the proceeding, considering any confidentiality requirements, provides access to the files of the proceeding and communicates the possibility of submitting written briefs, documents, deductions, and opinions.

Art. 9 - Conclusion of inquiries and adoption of sanctioning measures

1. Upon conclusion of the inquiries, if the person in charge of the proceeding considers that the conditions for imposing sanctions are met, he or she shall inform the parties of the outcome of the inquiries, upon prior authorisation of the Board. On the contrary, if the person in charge of the proceeding considers that the conditions for imposing sanctions are not met, he or she shall propose the Board to dismiss the case.
2. Following the communication of the preliminary findings referred to in paragraph 1, the party may, no later than twenty days of the notification of such communication, submit rejoinders and replications and request to be heard before the Board.
3. Upon conclusion of the inquiries or of any hearing before the Board, the latter shall adopt the final measure.
4. If further inquiries are deemed necessary, the Board shall re-address the case to the Head of Office specifying the nature and type of inquiries to be further carried out. In special cases, the request for further inquiries may be repeated, but no more than once. The request for further inquiries determines a further thirty-day extension of the period referred to in Article 6 (1). In this latter case, the person in charge of the proceeding, having carried out the further inquiries as indicated, shall act in accordance with paragraphs 1 and 2.
5. The measure imposing the penalty, properly substantiated, shall include the precise indication of the deadline to apply to the court of appeal and shall be notified by the person in charge of the proceeding to the undertaking concerned according to the procedures referred to in Article 14 of Law No 689 of 24 November 1981.

Art. 10 – Criteria for determination of penalties

1. The penalties imposed by the Authority under these rules shall be calculated on the basis of the criteria set out in Article 4 (3) of the legislative decree.

[Art. 11 - Provisional remedies] (deleted)

[Art. 12 – Commitments] (deleted)

Art. 13 – Notification and communication of measures

1. The notification of the sanctioning measures and adoption of the provisional remedies established by the Board and the communication of dismissals is carried out according to the procedures provided for by the rules on sanctioning proceedings.
2. The final decision shall be notified within 30 days of its adoption.

Art. 14 - Deadline for payment of penalties

1. Payment of the fines shall be made within thirty days of the date of notification of the final measure.

2. Upon expiry of the deadline referred to in paragraph 1, interest on late payment at the statutory rate shall be paid for delays of less than six months.

3. In case of further delay, in accordance with Article 27 (6) of Law No 689/1981, the amount due is increased by one tenth for each half-year with effect from the day following the expiry of the deadline for payment and until the day when the payment order is transmitted to the agency in charge of the collection; in this case the increase incorporates the interest on late payment accrued in the same period.

Art. 15 - Confidentiality

The information obtained in the course of the proceedings and in the conduct of the activities referred to in Article 4 shall be subject to confidentiality obligations and shall be used only for the exercise of the powers statutorily conferred upon the Authority, without prejudice to the obligations concerning reporting and cooperation provided for by law.

Art. 16 - Monitoring and inquiries. Request for information and inspections

1. The Authority may at any time, even on a regular basis, monitor the compliance with the rules concerning the rights of passengers when travelling by sea and inland waterway by the undertakings. To this end it may request to carry out inquiries.

2. The Authority may acquire information and documentation from carriers, port and port terminal managing bodies or any other interested parties and may carry out checks and inspections on carriers and port and port terminal managing bodies.

Art. 17 - Final provisions

1. In matters not expressly covered by these rules, reference is made to the principles of Law No 241 of 8 August 1990, where applicable, to Law No 481 of 14 November 1995, to the provisions of Chapter I, Sections I and II of Law No 689 of 24 November 1981, *mutatis mutandis*, as well as to the rules of procedure on sanctioning proceedings.

2. These rules shall enter into force from the day of their publication on the Authority's website.