

**RULES ON PENALTY PROCEEDINGS FOR INFRINGEMENTS
OF THE PROVISIONS OF REGULATION (EU) NO 181/2011
AMENDING REGULATION (EC) NO 2006/2004,
CONCERNING THE RIGHTS OF PASSENGERS
IN BUS AND COACH TRANSPORT**

ARTICLE 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”: Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004;
- c) “legislative decree”: legislative decree No 169 of 4 November 2014 laying down Rules on penalties for infringements of the provisions of Regulation (EU) No 181/2011 and amending Regulation (EC) No 2006/2004, concerning the rights of passengers in bus and coach transport;
- d) “Authority”: 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, as converted with amendments into Law No 27 of 24 March 2012;
- e) “carrier”: a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by regular or occasional services to the general public;
- f) “performing carrier”: a natural or legal person other than the carrier, who actually performs the carriage wholly or partially;
- g) “terminal”: a staffed terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight, equipped with facilities such as a check-in counter, waiting room or ticket office;
- h) “bus stop”: any point other than a terminal where, according to the specified route, a regular service is scheduled to stop for passengers to board or alight;
- i) “terminal managing body”: a public or private entity which is responsible for the management of a designated terminal;
- j) “tour operator”: an organiser or retailer, other than the carrier, within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- k) “travel agent”: any intermediary acting on behalf of a passenger for the conclusion of transport contracts;

- l) ‘ticket vendor’ means any intermediary concluding transport contracts on behalf of a carrier;
- m) “undertaking”: the person referred to in letters e), f), i), j), k) and l) concerned with the notice of initiation of penalty proceedings under these rules;
- n) “regular services”: services which provide for the carriage of passengers by bus or coach at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;
- o) ‘occasional services’: services which do not fall within the definition of regular services and the main characteristic of which is the carriage by bus or coach of groups of passengers constituted on the initiative of the customer or the carrier himself;
- p) “Board”: collegial body of the Authority;
- q) “Offices”: 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;
- r) “SiTe”: computerised complaint handling system to be adopted under Article 3 (5) of the legislative decree;
- s) “Rules on penalties”: rules for the conduct of penalty proceedings adopted by the Authority by Decision No 15/2014 of 27 February 2014.

ARTICLE 2

SCOPE

1. These rules 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 related measures. Further, these rules govern the procedural arrangements for the adoption of provisional remedies and the evaluation of the commitments referred to in Article 37 (3) (f) of the decree establishing the Authority with reference to the rights of passengers in bus and coach transport.
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.

ARTICLE 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. To be admissible, complaints shall be lodged by completing the form provided in Annex A to these rules.

2. To be accepted, complaints shall be sent by registered letter or by certified email to the following address: pec@pec.autorita-trasporti.it or by regular email to the following address: reclami.bus@autorita-trasporti.it. As soon as the SiTe system enters into operation, complaints shall be preferably sent through this system.

3. Complaints to the Authority may be pursued only where they have been already lodged with the undertaking or where, after the complaint has been filed to the undertaking, ninety days have expired without any action taken.

4. Where the complaints are inadmissible or not pursuable as referred to under (1), (2) and (3) of this Article, they may be lodged again in accordance with the terms and procedures provided for in this article.

5. 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.

ARTICLE 4

PRELIMINARY EXAMINATION

1. For the purpose of verification of the complaints lodged, the Authority may request information and documents to all parties involved and may order inspections, also with the purpose of checking the compliance with service charters.

2. The Head of the competent Office may pool together the complaints which are likely to be verified and handled jointly. Where the cases which are regarded as inadmissible or not pursuable are not immediately dismissed, with a brief statement of reasons, the Head of the competent Office may propose to the Board:

- a) the dismissal for reasons other than those referred to in article 3 (1), (2) and (3);
- b) the initiation of the proceedings by drafting the statement of objections referred to in following article 5 (1).

ARTICLE 5

INITIATION OF PROCEEDINGS AND ALLEGATION OF INFRINGEMENT

1. Where the Board, based on the information collected by the Office as a result of the activities referred to in Article 4, recognizes the existence of conditions for the adoption of measures imposing penalties, it makes the decision about the initiation of the proceedings and appoints the person in charge of the proceedings.

2. The statement of objections, whereby the penalty proceedings are initiated, shall be notified to the undertaking according to the procedures referred to in Article 14 of Law No. 689 of 24 November 1981 and contains a summary of the facts, the indication of the alleged infringement, the person in charge of the proceedings, the amount of penalty which could be imposed as a result of the proceedings, the Office to which written statements or justifications may be addressed and where files may be accessed in accordance with Article 9 (2), as well as the deadline by which the parties concerned may exercise these rights.
3. The statement of objections shall also include the indication of the deadline for completing the penalty proceedings as from the notification of the statement of objections.
4. Where the assessed infringement is still in place, the statement of objections also includes the formal notice to terminate the infringement within one month at the latest. In this case the terms set out in Article 7 (3) are considered to be extended for forty days.
5. The compliance with the notice to terminate the infringement or non-compliance therewith is in any case assessed pursuant to the law, also for the purpose of the penalties to be imposed upon conclusion of the proceedings.
6. The Authority may in any case take urgent interim measures as referred to in Article 10.
7. Every three months the Head of the competent Office shall submit to the Board a report on the proceedings which have been initiated or dismissed.

ARTICLE 6

TIME-LIMITS FOR PROCEEDINGS

1. The time-limit for the adoption of the final measure is 120 days from the date of notification of the statement of objections referred to in Article 5, without prejudice to the provisions of article 8.
2. Within 90 days the person in charge of the proceedings shall conclude the preliminary inquiries on the disputed facts and submit the files referred to in article 9 to the Board, which is competent for the imposition of penalties.
3. The time-limits are suspended where it is necessary to carry out further inquiries as referred to in Article 7.

ARTICLE 7

INQUIRIES

1. Where it is necessary to obtain information or further background information, the person in charge of the proceedings may propose to the Head of the Office to order expert's reports or request additional information and documents to the persons who hold such information or documents.
2. The Authority's request to the above-mentioned persons shall include:

- a. facts and circumstances which are asked to be clarified;
 - 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.
4. The suspension of the time-limits referred to in paragraph 3 of Article 6, which in any case may not exceed 60 days, applies:
- a. from the date of reference number of the request to the date of reference number of the document whereby the Authority receives the information or the additional background material;
 - b. from the date of reference number of the appointment of the expert to the date of reference number on which the Authority receives the expert's report.

ARTICLE 8

PARTICIPATION IN THE PROCEEDINGS

1. The undertaking receiving the notice of initiation of penalty proceedings 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 penalty proceedings may request, by separate application, to have access to the files of the proceedings.
3. The undertaking concerned with the notice of initiation of penalty proceedings 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 proceedings. 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 proceedings 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.

ARTICLE 9

CONCLUSION OF INQUIRIES AND ADOPTION OF MEASURES IMPOSING PENALTIES

1. The Head of the Office shall submit to the Board the draft measure together with a detailed report on the inquiries drawn up by the person in charge of the proceedings.
2. Having examined the report and evaluated the draft measure, the Board either adopts the penalty measure or provides for dismissal of the proceedings.

3. 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).

4. The measure imposing the penalty, properly substantiated, shall include the precise indication of the deadline to apply to the court of appeal and should be notified by the person in charge of the proceedings to the undertaking concerned according to the procedures referred to in Article 14 of Law No 689 of 24 November 1981.

ARTICLE 10

PROVISIONAL REMEDIES AND COMMITMENTS

1. In case of particular urgencies and upon assessment – after a brief review of the case - of the infringements referred to in article 2.1, which fall within its remit, the Authority may on its own initiative determine, by substantiated decision, the adoption of provisional remedies under article 37 (3) (f) of the decree establishing the Authority, even before initiating the penalty proceedings

2. The measure concerning the adoption of provisional remedies contains a sunset clause and can be neither renewed nor extended. The provisional remedies shall automatically terminate in the event of failure to initiate the penalty proceedings within 30 days of the adoption of such remedies.

3. Within 15 days of the notification of the measure concerning the adoption of provisional remedies, the recipient may submit a documented and substantiated request for review of the measure.

4. The provisions laid down in the rules on penalties shall apply to commitments.

ARTICLE 11

COMMUNICATION OF MEASURES

The competent office shall notify the measure imposing penalties adopted by the Board and shall communicate dismissals in accordance with the procedures provided for by law.

ARTICLE 12

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 up to 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.

ARTICLE 13

CRITERIA FOR DETERMINATION OF PENALTIES

The penalties imposed by the Authority under these rules shall be calculated on the basis of the criteria set out in Article 5 (3) of the legislative decree.

ARTICLE 14

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.

ARTICLE 15

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 in bus and coach transport. To this end it may request to carry out inquiries.
2. The Authority may acquire information and documentation from carriers, terminal managing bodies or any other interested parties and may carry out checks and inspections on carriers and terminal managing bodies.

ARTICLE 16

FINAL PROVISIONS

1. In matters not expressly covered by these rules, reference is made to the provisions of Law No 241 of 8 August 1990, Law No 481 of 14 November 1995 and Law No 689 of 24 November 1981, where applicable, and to the rules on penalties.
2. These rules shall enter into force from the day of their publication on the Authority's website.