



ART Autorità
di Regolazione
dei Trasporti

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RULES OF PROCEDURE

for the conduct of sanctioning proceedings falling under the remit of the
Authority

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TITLE I — DEFINITIONS AND SCOPE

Art. 1 — Definitions

1. Under these Rules of procedure, the following terms and expressions shall have the following meaning:
 - a) 'Authority': the Transport Regulation Authority;
 - b) 'Board': the collegial body of the Authority;
 - c) "Secretary-General": the Secretary-General of the Authority;
 - d) 'Offices': the offices composing the Authority's structure, as referred to in Article 13 of the Rules on the organisation and functioning of the Authority, adopted by Decision No. 1 of 16 October 2013;
 - e) 'decree establishing the Authority': Article 37 of Decree-Law No. 201 of 6 December 2011, converted, with amendments, into Law No. 214 of 22 December 2011 and amended by Article 36 of Decree-Law No. 1 of 24 January 2012, converted, with amendments, into Law No. 27 of 24 March 2012, establishing the Authority;
 - f) 'website': the Authority's institutional website, which is available at www.autorita-trasporti.it.

Art. 2 — Scope

1. These Rules of procedure shall govern the exercise of the power by the Authority to impose sanctions in the cases provided for by the decree establishing the Authority and by other legislative provisions.
2. These Rules of procedure further regulate the procedural requirements for the assessment of commitments made in the context of a sanctioning proceeding.
3. The Authority exercises the power to impose sanctions of its own motion.

TITLE II — PRE-INQUIRY AND INQUIRY STAGES

Art. 3 — Conferral of powers

1. The powers of inquiry for sanctioning proceedings are exercised by the office in charge of Surveillance and Enforcement.

Art. 4 — Pre-inquiry stage

1. The Offices shall obtain any necessary information for the initiation of the sanctioning proceeding, if any, including through access and inspections, requests for information and documents, surveys, complaints, requests, and reports as governed by the provisions in force, including through the cooperation of other Government bodies.

Art. 5 — Inquiry stage

1. When the Board finds, based on the information gathered by the office following the activities referred to in Article 4, that the conditions for a sanctioning action are met, it decides to initiate the proceeding.
2. The initiation of the proceeding shall be communicated to the party and/or parties concerned and shall specify:
 - a) subject-matter of the proceeding and sanctions which may be imposed upon its conclusion, up to the maximum payable amount;
 - b) mandatory 30-day deadline for transmission of pleadings and documents;
 - c) mandatory deadline by which the party and/or parties concerned may request to be heard by the office;
 - d) deadline for the conclusion of the proceeding, up to a maximum of 180 days, starting from the notification of initiation of the procedure;
 - e) office where the documents of the proceeding may be accessed;
 - f) person in charge of the proceeding, together with the relevant contact details.
3. In case of a request for a hearing referred to in paragraph 2 (c), the deadline for the conclusion of the proceeding referred to in paragraph 2 (d) shall be suspended from the date on which the hearing is convened until the date on which it is held.
4. In the inquiry stage the office may request documents, information and/or clarifications on the ongoing proceeding to the party and/or parties concerned, as well as to any other entity.
5. Where it is necessary to obtain information or additional elements for the evaluation, the person in charge of the proceeding may request the persons holding information and documents that are useful for the inquiry to provide such information or documents. The request for further inquiry shall be made in writing and contain:
 - a) mandatory deadline not exceeding 30 days within which the requested information shall be provided, with the warning that, in accordance with the provisions of Article 37 (3) (l) (1) of the decree establishing the Authority, failure to reply or transmission of untrue information will lead to the initiation of a further penalty proceeding;
 - b) where information is requested from parties other than the parties to the proceeding, the request for information shall also contain the details of the person in charge of the proceeding to whom requests for clarification or information may be addressed.
6. Where the request for further inquiries leads to significant new developments, these shall be communicated to the parties to the proceeding without delay and in any event within a period not exceeding 30 days, by allowing the party and/or parties to the proceedings a period not exceeding 15 days to put forward their counterarguments, if any.
7. The deadline of the proceeding referred to under paragraph 2 (d) shall be suspended from the date of the request for further inquiries referred to in the preceding paragraph until the documents requested have been received in full or the time allowed to present supplementary documentation has expired without effect. It shall also be suspended until receipt of the counterarguments by the party and/or parties or until any period allowed for the presentation of counterarguments has expired without any being presented.
8. Where undertakings that are subject to an inspection refuse to provide, or provide incomplete records, or where they refuse to provide or provide incorrect, misleading, or incomplete clarifications, the Authority may impose a penalty of up to one per cent of the turnover of the undertaking concerned.

Art. 6 — Simplified procedure

1. Without prejudice to the rights of the parties to be heard and to defend their interests, the Board reserves the right, if the information gathered by the offices sufficiently supports that the objection is well-founded, to determine, already in the decision to initiate the penalty proceeding, the amount of the penalty which could be imposed at the end of the procedure. In this case, the notification of the decision to initiate the proceeding, shall be accompanied by the documents underpinning the objection.
2. In the cases referred to in paragraph 1, the addressee of the final decision, within 30 days of notification of the decision to initiate the sanctioning proceeding, may waive the further formalities of the proceeding and pay a reduced penalty accounting for one third of the penalty determined in the decision to initiate the proceeding, subject to the constraints laid down in Article 14. The reduced payment terminates the penalty proceeding.

Art. 7 — Rights of participants in the proceeding

1. The parties involved in the proceeding may:
 - a) submit written pleadings and documents, counterarguments, and opinions, including in the hearings before the office;
 - b) access the documents relating to the proceeding.
2. Participants in the proceeding may submit written pleadings and documents no later than 60 days after notification of the decision to initiate the proceeding or in the absence of its publication.
3. *(repealed)* ⁽¹⁾
4. In the hearing before the office, the person in charge of the proceeding or, in his or her place, the director of the office makes to the parties any requests and questions which are considered necessary and/or useful for completing the inquiries. It then invites the party and/or parties convened to provide clarifications and explain their position on the ongoing proceeding. Legal representatives or persons with appropriate power of attorney are entitled to intervene on behalf of the party and/or parties.
5. Minutes of the hearing shall be prepared and signed by the person in charge of the proceeding or by another official delegated by the director of the competent organisational unit, and by the representative and/or attorney of the party and/or parties. A copy of the minutes shall be provided to the party and/or to the parties interviewed.

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⁽¹⁾ Paragraph repealed by Decision No. 57/2015.

TITLE III — REGULATION OF COMMITMENTS

Art. 8 — Proposal of commitments and inquiry

1. Under penalty of forfeiture, within sixty days of the notification of initiation of the proceeding by which the Authority intends to adopt a decision to terminate an infringement pursuant to Article 37(3)(f) of the decree establishing it, the parties may submit commitments to remove the objections raised, which

the Authority may decide to make mandatory, thus closing the proceeding without establishing the infringement.

2. To be eligible, the proposal of commitments, which may be drafted in accordance with the format published on the Authority's website, shall be drawn up in writing, sent to the Authority's certified e-mail address, and detail the obligations that the operator is willing to assume, the expected costs and the related timing of implementation. The notice of non-eligibility is made by the person in charge of the proceeding.
3. The timely submission of the proposal of commitments interrupts the statutory time-limits of the proceeding until notification of the non-eligibility declaration by the person in charge of the proceeding or until the date of notification of the non-eligibility measure or of the final decision referred to in Article 9.
4. The submission of the proposed commitments shall be communicated to participants other than the proposing entity.
5. Interested parties may submit their written comments on the proposed commitments within 30 days from the date of publication of the commitments on the Authority's website, in accordance with the procedures referred to in paragraph 2. The comments referred to in this paragraph shall, as a rule, be submitted by electronic means.
6. After expiry of the deadline for submission of the comments referred to in paragraph 5, the comments received are published on the Authority's website by the person in charge of the proceeding. Participants in the proceedings who wish to protect the confidentiality or secrecy of the information provided shall submit an appropriately reasoned request.
7. Within 30 days of the publication referred to in paragraph 6, the undertaking proposing the commitments may represent in writing its position on the comments submitted by third parties and, where appropriate, introduce minor amendments to the commitments. Where necessary, the person in charge of the proceeding may request the parties concerned to provide further useful information for the assessment of the commitments.
8. The Authority shall report the comments referred to in paragraphs 5 et seq. in the final decision.

Art. 9 — Eligibility and verification of commitments

1. After consulting the person in charge of the proceeding, the Board takes a decision, if the necessary conditions are met, concerning the eligibility of the proposal of commitments, and orders its publication on the Authority's website, according to procedures which take into consideration any confidentiality requirements. The adoption of this measure makes the proposed commitments irrevocable.
2. After consulting the person in charge of the proceedings, the Board declares the offer of commitments referred to in Article 8 as non-eligible and decides accordingly in the following cases:
 - a) if the offer is generic or presented for delaying purposes;
 - b) if the conduct challenged has not ceased;
 - c) in all cases where the commitments are overtly unnecessary for the most effective pursuit of the interests protected by the provisions which are assumed to be infringed;
 - d) if the measures under the proposal of commitments are also not appropriate to restore the balance of interests prior to the infringement or to eliminate, at least in part, any immediate and direct consequences of the infringement;
 - e) if the proposed commitments consist merely in the fulfilment of the breached obligation;

- f) if the Authority, depending on the seriousness of the challenged infringement or on the previous sanctioning measures, from which it may be concluded that the person concerned is particularly prone to commit administrative offences falling within the Authority's remit, considers it should proceed to establish the infringement.
3. The decision on the eligibility of the commitments shall be communicated to the party proposing the commitments and to the parties involved in the proceedings within 45 days of the date of submission of the proposal of commitments. In case of non-eligibility, the Board orders the rejection of the proposed commitments and the continuation of the penalty proceeding.
4. In the event of an assessment of the eligibility of the commitments, following the inquiries referred to in Article 8 (5) et seq., the Authority, by the decision on the eligibility and approval of the commitments, shall make these binding on the proposing entity, thereby closing the sanctioning procedure without establishing any infringement, except as provided for in paragraph 7 below.
5. The final measure shall be communicated to the parties to the proceedings and published on the Authority's website, according to procedures that consider any need for confidentiality of data and information.
6. If the undertaking violates the commitments undertaken or if the final decision of approval referred to in paragraph 4 is based on incomplete, incorrect, or misleading information provided by the proposing entity, the Authority reopens the penalty proceeding in accordance with the ordinary procedures and initiates a further penalty proceeding following the above-mentioned infringement.
7. Following the procedure referred to in paragraph 6, the Authority may impose an administrative fine of up to 10 % of the turnover of the non-compliant undertaking.

TITLE IV — DECISION-MAKING STAGE

Art. 10 — Conclusion of the inquiry stage

1. At the end of the inquiry stage, having assessed the documents relevant to the proceeding, the office may:
- a) propose the Board to dismiss the proceeding if it considers that the factual and/or legal prerequisites for imposing penalties are not met;
 - b) subject to a decision of the Board, inform the parties of the findings of the inquiries if, on the contrary, it considers that the conditions for imposing sanctions are met. The communication of the findings of the inquiries, which shall summarise the outcome of the proceeding and cannot anticipate the calculation of the penalty, shall provide for a mandatory time-limit not exceeding 20 days, for the receipt of further defensive pleadings.
2. The end of the proceeding referred to in Article 5 (2) (d) shall be suspended from the receipt of the communication of the findings of the inquiries referred to in paragraph 1 (b) of this Article until the submission of any pleadings or until the 20-day period has expired without effect.

Art. 11 — Final hearing before the Board

1. The final hearing shall take place before the Board on the date which is communicated to the applicants with at least 10 days' notice.
2. The hearing of the applicants by the Board may take place separately or jointly. In the latter case, account shall be taken of any confidentiality requirements that may have been expressed by the applicants.
3. The parties entitled thereto may participate through their legal representative or attorney holding appropriate proof of the power representation. They may be assisted by confidential advisers, but the exercise of this power shall not imply a postponement of the hearing.
4. Minutes of the hearing are drawn up and, for the only purpose of supporting accounting in the minutes, the Authority may provide for magnetic and/or computer recording. A copy of the minutes is placed on the case-file.

Art. 12 — Decision-making stage

1. Following the inquiries or hearing, if any, referred to in Article 11, the Authority shall adopt the final decision or request the office to carry out additional verifications, specifying the information to be obtained. In this case, the office shall proceed in accordance with the provisions of Article 5 (7) and (8).
2. The final decision includes the matters of fact and of law underpinning the decision, as well as the time-limit for appeal and the authority to appeal, within the meaning of Article 2 (25) of Law No. 481/1995.
3. The final decision shall be notified by the person in charge of the proceeding to the persons referred to in Article 5 (2) within the period laid down under (d) and shall be published on the Authority's website.

TITLE V — CALCULATION OF PENALTIES AND FINAL PROVISIONS

Art. 13 — Time limits for payment of sanctions

1. The pecuniary sanction shall be paid within 30 days of the date of notification of the final decision.
2. After expiry of the period referred to in paragraph 1, for a delay of less than six-months, interest on late payment shall be payable at the statutory rate.
3. In the event of further delay in performance, pursuant to Article 27 (6) of Law No. 689/1981, the amount due for the sanction imposed shall be increased by one tenth for each six-month period from the day following the expiry of the payment deadline until the date on which the receivables are transferred to the concessionaires for collection; in that case, the surcharge includes interest on late payment accrued in the same period.

Art. 14 — Criteria for determination of penalties

1. The penalties imposed by the Authority shall be calculated according to the criteria referred to under (2) and (3), and in any case within the limits set out in Article 2 (20) (c) of Law No. 481/1985, as well as under (4) and (5) of this Article and Articles 9 and 11 of these Rules of procedure.
2. The basic amount of the sanctions shall be determined by reference to the seriousness of the infringement.
3. The seriousness of the infringement may be inferred from:
 - a) nature of the interest protected by the infringed rule, seriousness of the unlawful conduct and conduct being likely to be detrimental to more than one interest;
 - b) duration of the infringement, its territorial extent, including by considering, where possible, the number of users/customers involved, and the other ways whereby the protected interests are harmed;
 - c) significance of any adverse effects on the market, users, final customers, or administrative action of the Authority;
 - d) undue economic and non-economic advantages achieved because of the infringement;
 - e) degree of the agent's guilt as derived, *inter alia*, from the absence of organisational and management models capable of preventing infringements of the same kind and from the attempt to conceal the infringement.
4. In the event of repetition of the infringement for which penalties were imposed, the Authority may order the suspension of the activity of the undertaking for up to six months or propose to the competent authority the suspension or withdrawal of the concession or authorisation, in accordance with Article 2 (20) (c) of Law No. 481/1985.
5. Without prejudice to the penalties provided for by law, administrative acts and contract terms, the Authority shall impose a pecuniary administrative penalty of up to 10% of the turnover of the undertaking concerned for non-compliance with the criteria for pricing and updating of tariffs, charges, tolls, fees and prices subject to administrative control, however described, for non-compliance with the criteria for accounting separation and unbundling of costs and revenues relevant to public service activities and for breach of the rules on access to networks and infrastructure or of the conditions imposed by the Authority, as well as for non-compliance with prescribed orders and measures.

Art. 15 — Communication

1. In the context of the proceeding governed by these Rules of procedure, communication, requests, counterarguments, and transmission of documents shall be forwarded to the Authority (or transmitted by the Authority with the exception referred to under (3) in the following manner:
 - a) certified e-mail;
 - b) registered post with acknowledgement of receipt;
 - c) hand-delivery against receipt.

Art. 16 — Professional secrecy

1. Any information obtained in the proceeding and in carrying out the activities referred to in Article 4 are covered by the obligation of professional secrecy and may be used only for the exercise of the powers conferred on the Authority by law, without prejudice to the notification, reporting and cooperation obligations laid down by law.

Art. 17 — Procedural safeguards

1. Except as otherwise expressly provided for in these Rules of procedure, reference is made to the provisions of Law No. 241 of 8 August 1990, where applicable, Law No. 481 of 14 November 1995 and Law No. 689 of 24 November 1981.

Art. 18 — Final provisions

1. This decision shall be published on the Authority's website and enter into force on the day of its publication.