Commission Regulation (EU) 2016/403 of 18 March 2016 supplementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator, and amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION REGULATION (EU) 2016/403

of 18 March 2016

supplementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator, and amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC[(1)], and in particular Article 6(2) thereof,

Having regard to Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC[(2)], and in particular Article 9(3) thereof,

Whereas:

(1) The Commission is required by Article 6(2)(b) of Regulation (EC) No 1071/2009 to draw up a list of categories, types and degrees of seriousness of serious infringements of Union rules, which in addition to those set out in Annex IV to that Regulation, may lead to the loss of good repute of the road transport undertaking or the transport manager.

(2) To this end, the Commission should define the degree of seriousness of infringements by reference to the risk of fatalities or serious injuries and should provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious.

(3) The list of categories, types and degrees of seriousness of serious infringements to be established should contain infringements of the Union rules relating to the areas outlined in Article 6(1)(b) of Regulation (EC) No 1071/2009.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) 2016/403. (See end of Document for details)*

(4) Member States should take into account information on those infringements when setting priorities for the checks targeting undertakings which are classified as posing increased risk, as required by Article 12(1) of Regulation (EC) No 1071/2009.

(5) The measures to be adopted are necessary to ensure transparency, fairness and legal certainty in appraising the seriousness of infringements and their implications for good repute of the transport undertaking or the transport manager.

(6) However, it is the responsibility of the Member State's competent authority to carry out a complete national administrative procedure to determine whether a loss of good repute would constitute a proportionate response in an individual case. Such a national examination procedure should include, where appropriate, checks at the premises of the undertaking concerned. In assessing the good repute Member States should consider the conduct of the undertaking, of its managers and of any other relevant person.

(7) The harmonised categorisation of serious infringements should provide the basis for extending the national risk rating system established by each Member State pursuant to Article 9 of Directive 2006/22/EC, in order to cover all serious infringements of the Union road transport rules, indicated in Article 6(1)(b) of Regulation (EC) No 1071/2009, which may affect the good repute of the transport undertaking or the transport manager.

(8) Article 16(2) of Regulation (EC) No 1071/2009 also provides that Member States should include those serious infringements in the national electronic register of road transport undertakings on 1 January 2016 at the latest. The harmonised categorisation of infringements is thus an important step forward ensuring fair competition between undertakings, more harmonised enforcement and an effective functioning of the European Register of Road Transport Undertaking system of exchange of information.

(9) In the interest of transparency and fair competition a common method should be established for the calculation of a frequency of occurrence beyond which repeated infringements shall be regarded as more serious by the competent authority of the Member State of establishment. Such repeated infringements may lead to launching the national administrative procedure, which, subject to the discretion of the competent authority, may result in the loss of good repute by a transport operator.

(10) As a general rule, the frequency should be determined by taking into account the seriousness of the infringement, the time and the average number of drivers. It shall be seen as the maximum threshold, whilst leaving Member States a possibility to apply lower thresholds, as envisaged in their national administrative procedure for assessing good repute.

(11) To ensure the legal consistency and transparency it is also necessary to amend Annex III to Directive 2006/22/EC by changing the level of seriousness of certain infringements set out therein in accordance with the list of most serious infringements set out in Annex IV to Regulation (EC) No 1071/2009.

(12) The list of categories, types and degrees of seriousness of serious infringements has been determined in consultation with Member States and the Union stakeholders, where

the assessment of the level of seriousness has been based on best practice and experience in the enforcement of the relevant legislative provisions in Member States. The most serious infringements established in Annex IV to Regulation (EC) No 1071/2009 constituted the reference upper threshold for the assessment of the level of seriousness of other relevant infringements.

(13) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Road Transport set up by Article 18(1) of Council Regulation (EEC) No 3821/85[(3)],

HAS ADOPTED THIS REGULATION:

Article 1

1 This Regulation establishes a common list of categories, types and degrees of serious infringements of the Union rules in the commercial road transport, as laid down in Annex I to this Regulation, which, in addition to those set out in Annex IV to Regulation (EC) No 1071/2009, may lead to the loss of good repute of a road transport operator.

2 This Regulation provides for the maximum frequency of occurrence beyond which repeated serious infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager, as laid down in Annex II.

3 Member States shall take into account information on the serious infringements referred to in paragraphs 1 and 2 when carrying out the national administrative procedure on assessing good repute.

Article 2

Annex III to Directive 2006/22/EC is amended as set out in Annex III to this Regulation.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2017.

This Regulation shall be binding in its entirety and directly applicable in Member States.

Done at Brussels, 18 March 2016.

For the Commission

The President

Jean-Claude JUNCKER

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) 2016/403. (See end of Document for details)*

ANNEX I

Categorisation of serious infringements(referred to in Article 1)

The following tables contain categories and types of serious infringements against the Union rules in commercial road transport, divided into three categories of seriousness according to their potential to create a risk of fatalities or serious injuries.

1. **Groups of infringements against Regulation (EC) No 561/2006 of the European Parliament and of the Council[4](Driving and resting time)**

No	LEGAL BASIS	TYPE OF INFRINGEMENT		LEVEL OF SERIOUSNESS[a]		
				MSI	VSI	SI
Crew						
1.	Article 5.1	Not respecting minimum ages for conductors				X
Driving periods						
2.	Article 6.1	Exceed daily driving time of 9h if possibilities to extend to 10h not allowed	10h ≤ … < 11h			X
3.			11h ≤ …		X	
4.		Exceed daily driving time of 9h by 50 % or more without taking a break or without any rest of at least 4,5 hours	13h30 ≤ … and no break/rest	X		
5.		Exceed extended daily driving time of 10h if extension allowed	11h ≤ … < 12h			X
6.			12h ≤ …		X	
7.		Exceed daily driving	15h ≤ … and no break/rest	X		

a MSI = most serious infringements/VSI = very serious infringement/SI = serious infringement.

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		time of 10h by 50 % or more without taking a break of or without any rest of at least 4,5 hours				
8.	Article 6.2	Exceed weekly driving time	60h ≤ … < 65h			X
9.			65h ≤ … < 70		X	
10.		Exceed weekly driving time by 25 % or more	70h ≤ …	X		
11.	Article 6.3	Exceed maximum total driving time during 2 consecutive weeks	100h ≤ … < 105h			X
12.			105h ≤ … < 112h30		X	
13.		Exceed maximum total driving time during 2 consecutive weeks by 25 % or more	112h30≤ …	X		
Breaks						
14.	Article 7	Exceed uninterrupted driving time of 4,5 hours before taking the break	5h ≤ … < 6h			X
15.			6h ≤ …		X	
Rest Periods						

a MSI = most serious infringements/VSI = very serious infringement/SI = serious infringement.