



## **CORTE HOW TO #6**

# **Risk Rate Road Transport Undertakings**

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## HISTORY AND EVOLUTION OF RISK RATING SYSTEM FOR ROAD TRANSPORT UNDERTAKINGS

### Old Risk Rating System –

- Introduced on 01 April 2007 by [Directive 2006/22/EC](#).
- Allowed Member States to develop national formulas using separate methods.
- **Should not be used anymore** as it has been replaced by a new system.

### New Risk Rating System –

- Introduced by [Commission Implementing Regulation \(EU\) 2022/695](#).
- Provides a common formula so that all Members States use a single method across EU.
- **Should be used from 23 May 2022**.

**25 October 2024** onwards Member States are obligated to share the **new risk rating as per the common formula** also during roadside checks via ERRU.

## COMMON RISK RATING FORMULA

$$R = \left( \frac{\sum_i \frac{n_{i_{MSI}} \times v_{MSI} + n_{i_{VSI}} \times v_{VSI} + n_{i_{SI}} \times v_{SI} + n_{i_{MI}} \times v_{MI}}{N_i}}{r} \right) \times g$$

Where:

R = the undertaking's overall risk rating

n = number of infringements of a given type per individual check (all types of controls).

i = individual check

v = weighted score according to type/seriousness of infringement (MI/SI/VSI/MSI)

MSI = most serious infringement

VSI = very serious infringement

SI = serious infringement

MI = minor infringement

N = number of vehicles controlled during an individual check

r = total number of checks on the undertaking

g = weighting for the use of the smart tachograph pursuant to Chapter II of Regulation (EU) No 165/2014

- The period of time during which an infringement is counted in the formula shall be 2 years.
- Transport operators shall be classified into the following risk bands based on their score:
  - operators on which no checks were performed (grey band)
  - 0-100 points: low-risk operators (green band)
  - 101-200 points: medium-risk operators (amber band)
  - 201 points or more: high risk operators (red band)
- The weighted score of an individual check ('i') shall be calculated by applying the following weighting factors ('v') according to the type of infringement: MI = 1; SI = 10; VSI = 30; and MSI = 90.
- An undertakings' final risk rating shall take into account the total number of checks carried out ('r'), both at the roadside and at its premises, including those checks where no infringements were detected.
- Checks where no infringements are detected shall be recorded with zero points.
- The weighted score of an individual check shall take into account all the vehicles checked ('N').
- The date of infringement that is taken into account in the common formula is deemed the date on which the infringement has become definitive, i.e. no longer subject to review. Infringements shall be counted only once in the formula.
- If a check at a transport undertaking's premises establishes that its whole fleet is equipped with the smart tachograph pursuant to Chapter II of Regulation (EU) No 165/2014, its final score shall be multiplied by a factor of 0,9 ('g').

KEY POINTS	
<b>Date from which new risk rating and risk band are to be shared during roadside checks via ERRU</b>	<p>No later than <b>25 October 2024</b></p> <p>See Article 16 (2) subparagraph 4 of <a href="#">Regulation 1071/2009</a>, which refers to <a href="#">Commission Implementing Regulation (EU) 2023/2381</a> that came into force on 25 October 2023.</p>
<b>Infringements to be taken into account for risk rating calculation.</b>	<p>⇒ <b>EU law Infringements</b> related to driving &amp; rest time and tachographs. These are listed in Annex III of <a href="#">Directive 2006/22/EC</a> (this annex has been updated by <a href="#">Commission Delegated Directive (EU) 2024/846</a>)</p> <p style="text-align: center;"><b>+</b></p> <p>⇒ <b>EU law Infringements</b> related to rules on – working time, weight &amp; dimension, periodic roadworthiness tests &amp; technical roadside inspection, speed limitation devices, initial qualification and periodic training of drivers, driving licences requirements, transport of dangerous goods by road, access to the international road haulage market, access to the market for coach and bus services, animal transport, law applicable to contractual obligations (Rome I), and posting of workers in road transport. These are <u>Listed in Groups 3 to 14 of Annex 1 of the <a href="#">Commission Regulation (EU) 2016/403</a></u> (this is an implementing act adopted as per Article 6(2a) of <a href="#">Regulation (EC) No 1071/2009</a>)</p>

#### NOTE:

- The infringements to be taken into account for eREGISTERS/ERRU and for RISK RATING are the same. For NATIONAL eREGISTER/ERRU it is possible to include infringements that are **detected** but are not yet **definitive**, i.e. for which a court decision is still pending. However, for calculating RISK RATING only **definitive** infringements are to be considered.
- The infringements become **definitive** when they are no longer subject to review, and it is no longer possible to appeal the decision. (See European Commission's [Frequently asked questions relating to the implementation of ERRU](#) and [Commission Implementing Regulation \(EU\) 2022/695](#) establishing the common risk rating formula).
- **EU law Infringements** listed in Groups 3 to 14 of Annex 1 of the Commission Regulation (EU) 2016/403 **are to be taken into account** for Risk Rating. The legal basis for this is Article 12(1) of [Regulation \(EC\) No 1071/2009](#) and Recital 4 of [Commission Implementing Regulation \(EU\) 2022/695](#).
- **National law Infringements are not to be considered** for calculating the risk rating. Because categorization of severity of 'national law' infringements can vary in countries, and this can impact the comparability of risk ratings.

## **Legal Text and References:**

- Article 9 of Directive 2006/22/EC** – 1. Member States shall introduce a risk rating system for undertakings based on the relative number and gravity of any infringement of Regulation (EC) No 561/2006 or of Regulation (EU) No 165/2014 or of national provisions transposing Directive 2002/15/EC that an individual undertaking has committed. By 2 June 2021 the Commission shall, by means of implementing acts, establish a common formula for calculating the risk rating of an undertaking. That common formula shall take into account the number, gravity and frequency of occurrence of infringements and the results of controls where no infringement has been detected, as well as whether a road transport undertaking has been using the smart tachograph, pursuant to Chapter II of Regulation (EU) No 165/2014, on all its vehicles. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive. 2. Undertakings with a high risk rating shall be checked more closely and more often. The criteria and detailed rules for implementing such a system shall be discussed in the Committee referred to in Article 12, with a view to establishing a system for the exchange of information on best practices. 3. An initial list of infringements of Regulation (EC) No 561/2006 and Regulation (EU) No 165/2014 and their weighting of gravity is set out in Annex III. With a view to establishing or updating the weighting of gravity of infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014, the Commission is empowered to adopt delegated acts in accordance with Article 15a of this Directive to amend Annex III to take account of regulatory developments and road safety considerations. The category for the most serious infringements should include those in which failure to comply with the relevant provisions of Regulations (EC) No 561/2006 and (EU) No 165/2014 creates a serious risk of death or serious personal injury. 4. In order to facilitate targeted roadside checks, the data contained in the national risk rating system shall be accessible to all the competent control authorities of the Member State concerned at the time of control. 5. Member States shall make the information contained in their national risk rating system directly accessible through interoperable national electronic registers as referred to in Article 16 of Regulation (EC) No 1071/2009 to competent authorities of other Member States in accordance with Article 16(2) of that Regulation.
- Commission Implementing Regulation (EU) 2022/695** establishing the common risk rating formula.
- Annex III of Directive 2006/22/EC as updated by Commission Delegated Directive (EU) 2024/846** providing a list of Regulation 561 and 165 infringements and their gravity.
- Annex I of the Commission Regulation (EU) 2016/403** – Providing a list of infringements related to working time, weight & dimension, periodic roadworthiness tests & technical roadside inspection, speed limitation devices, initial qualification and periodic training of drivers, driving licences requirements, transport of dangerous goods by road, access to the international road haulage market, access to the market for coach and bus services, animal transport, law applicable to contractual obligations (Rome I), and posting of workers in road transport.
- Article 12.1 Regulation (EC) No 1071/2009** – Competent authorities shall regularly monitor whether undertakings which they have authorised to engage in the occupation of road transport operator continue to fulfil the requirements laid down in Article 3 of this Regulation. To that end, Member States shall carry out checks, including, where appropriate, on-site inspections at the premises of the undertaking concerned, targeting those undertakings which are classed as posing an increased risk. For that purpose, Member States shall extend the risk rating system established by them pursuant to Article 9 of Directive 2006/22/EC of the European Parliament and of the Council (2) to cover all infringements specified in Article 6 of this Regulation.
- Recital 4 of Commission Implementing Regulation (EU) 2022/69** – In establishing this formula, the Commission should take into account all infringements susceptible to affect the risk rating of the undertakings, which includes infringements of Regulation (EC) No 561/2006 of the European Parliament and of the Council, of Regulation (EU) No 165/2014 of the European Parliament and of the Council, of national provisions transposing Directive 2002/15/EC of the European Parliament and of the Council, and the infringements specified in Article 6 of Regulation (EC) No 1071/2009 of the European Parliament and of the Council.

***DISCLAIMER: This CORTE document consolidates existing knowledge and provides recommendations to support national authorities and the road transport community in harmonized enforcement of road transport rules. It remains for National Courts and ultimately the European Court of Justice to interpret the Law.***