

Most important amendments introduced under the Act of 10 May 2018 amending the Act on monitoring systems for the carriage of goods by road and certain other acts (Journal of Laws item 1039).

On 18 April 2017 the road monitoring system was launched pursuant to the provisions of the Act of 9 March 2017 *on monitoring systems for the carriage of goods*. Consequently, economic operators were obligated to notify the carriage of so-called “sensitive” goods by public roads to the SENT record of notifications. This obligation relates to the carriage of fuel, alcohol fully denatured, dried tobacco and plant oils.

Under the Act of 10 May 2018 *amending the Act on monitoring systems for the carriage of goods by road and certain other acts*, hereinafter referred to as the “amending act”, changes were introduced in the monitoring system, the most significant of which are presented below. The entry into force of the new regulations – 14 June 2018.

Act of 9 March 2017 on monitoring systems for the carriage of goods by road and rail (Journal of Laws item 708 and of 2018 item 138, 1000 and 1039).

Changes introduced in the monitoring system of the for the carriage of goods by road and rail:

Carriage of goods performed by rail

The monitoring system also covers carriage of goods performed via the national railway network. At the same time, the carriage of goods specified in the Act requires a notification of the carriage, its supplementing and updating. In the case of the carriage of goods from the territory of one Member State to the territory of another Member State or a third country, the carrier shall be responsible for making the notification. In the notifications concerning the carriage of goods by rail, the carrier shall be bound to indicate, among others, train number and the number of a railway vehicle without traction, i.e. a carriage. In the case of goods carried by rail, the goods may be seized at the site of goods delivery to the territory of the Republic of Poland. A rail means of transport will not be seized, contrary to a road means of transport which may be seized including the goods (Article 2(9), Article 5(4)(2), Article 6(3)(2), Article 7(2)(2), Article 16(1b)).

Defining the type of goods only on the basis of CN

The classification of the type of goods in accordance with the Polish Classification of Goods and Services (PKWiU) was waived, retaining only the application the Combined Nomenclature (CN). The type of goods is defined based on the classification under one heading of the CN referred to in Article 3(1) of the Act of 6 December 2008 on excise tax. It allows to avoid any doubts which classification should be used in relation to specific goods (Article 2(10)).

A single notification for various goods

In the case of carriage from one consignor to one consignee, to one delivery address, using one means of transport, the notification may comprise various types of goods, i.e. goods four-digit CN codes, e.g. 2710 and 3403, unless the quantity of each of them exceeds 500 kg or 500 l. Previously in such a case a separate notification was made for each type of goods (Article 2(16)).

Export of medicines covered under the monitoring system

The monitoring system covered export outside the territory of the Republic of Poland of medicinal products, foodstuffs intended for particular nutritional uses and medical products defined in the notice of the Minister of Health concerning the list of those products which are exposed to the risk of lack of availability on the territory of the Republic of Poland. It refers, in particular, specialised or modern medicines, particularly life-saving medicines. If it is disclosed during the inspection of the carriage of medicines covered by the monitoring system that the carriage of these goods takes place without the relevant notification to the Chief Pharmaceutical Inspector or the carriage takes place prior to the lapse of the deadline permitting an objection against the intended export or disposal of such medicines, or the carriage is performed against such objection – the obligatory seizure of the goods shall take place. The

goods sized or the road means of transport including the goods are sent to the pharmaceutical wholesaler with whom the Chief Pharmaceutical Inspector concluded the agreement for guarding and storage of those goods. On the other hand, the documents of the inspection performed are provided to the Chief Pharmaceutical Inspector. The provisions concerning the storage and guarding the medicines seized, fees for such activities as well as forfeiture, sale or destruction of medicines are set forth in Chapter 2c of the Act of 6 September 2001 – Pharmaceutical Law (Article 3(2)(3a), Article 16(1a), Article 16(2a), Article 16(7-8), Article 17(6)).

Goods of heading CN 2905 and 3824 only if they are excise products

Two types of goods classified to CN 2905 and 3824 codes were specified. The monitoring system covered the transport of goods under the above indicated codes if such goods are specified in Annex no. 1 to the Act of 6 December 2008 on excise tax, provided that the designation of such goods is not important. This will facilitate the interpretation of the provisions in the scope of goods whose carriage should be reported to the register (Article 3(2a)).

A train driver shall not be liable for offence

The provisions concerning the obligation to refuse commencement of the carriage of goods in the case if the reference number, a document replacing the notification including the confirmation of its receipt or a document confirming the warehouse transfer has not been received, shall apply only to drivers of vehicles. At the same time, the fine for the lack of one these documents shall be imposed on drivers of cars. A train driver shall not be liable for such offence (Article 10(4), Article 32(1)).

Informing the carrier of the inspection of the goods at a specific place

In the case it is found as a result of the analysis of the data in the register that the carriage of goods indicated in the notification is associated with an increased risk, a possibility to call a carrier to submit the vehicle for inspection at a specified time and place has been provided. In the case of carriage by road, this will mean a place of delivery of the goods or a customs branch of the customs and tax control office nearest to the place of ending transport on the territory of the Republic of Poland. In the case of carriage by rail, this will mean a place of delivery. A carrier should notify the National Revenue Administration (NRA) body indicated in the notice of the scheduled delivery of the goods to such place. The failure of a dispatching entity or a receiving entity to submit the notice to the carrier shall result in imposing a fine of PLN 20 thousand on such a dispatching entity or receiving entity. The failure of the carrier to submit the goods to the place of delivery or the place of ending transport on the territory of the Republic of Poland shall result in imposing a fine of PLN 100 thousand on such a carrier (Article 12a, Article 21(2a), Article 22a).

Removal of customs seals

In order to remove customs seals, a carrier shall be bound to present a means of transport to the NRA body indicated in the inspection protocol on the end date of the carriage of the goods, at the place of delivery or the place of ending transport on the territory of the Republic of Poland. To that end, the carrier shall notify such NRA body by phone of the delivery of the goods to such a place. The failure to perform these obligations shall result in imposing a fine of PLN 20 thousand on the carrier (Article 15(3), Article 22(1)(3)).

Gross value of goods as a basis for assessing the level of the fine

In the case of failure of a dispatching entity or a receiving entity to notify the carriage of the goods, the gross value of the goods carried shall form the basis for assessing the level of the fine imposed on such entities (the fine is imposed at a level of 46% of the gross value of the goods). Prior to the amendment to the regulations, it was the net value (Article 21(1) and (2)).

Change in the level of a fine for the carrier's failure to supplement the notification

The level of a fine imposed on a carrier for its failure to supplement the notification earlier made by a dispatching entity or a receiving entity has been increased to PLN 10 thousand (Article 22(2)).

Penal sanction for the failure to deliver notified goods

In the case of the carrier's failure to deliver notified goods to the place of delivery or the place of ending transport on the territory of the Republic of Poland, a fine of PLN 100 thousand will be imposed on it, unless an entity which has purchased or holds such goods is found, or the place of ending transport on the territory of the Republic of Poland has not been determined. The aim is to limit a possibility of "fictitious" export of goods, e.g. under the transit across Poland (Article 22a).

A lower fine if the amount of tax payable has not been reduced

In the case if the goods are carried from the tax warehouse and both the excise tax and the value added tax due have been paid by a dispatching entity, whereas the irregularities disclosed result from a manifest error and relate to data other than those referring to the goods (except for the registration number of a road means of transport), a fine of PLN 2 thousand, instead of PLN 10 thousand shall be imposed on a dispatching entity, a receiving entity or a carrier (Article 24(1a)).

Lack of fine if the amount of tax payable has not been reduced

In the case if infringements arising from this Act have been found during the tax proceedings, the tax inspection or the customs and tax control and, at the same time, it has been found that the value added tax and the excise payable have not been reduced, no fines shall be imposed (no administrative proceedings concerning imposing of a fine shall be initiated). The limitation of a possibility to impose the said fines shall not apply to the disclosure of irregularities in the course of so-called roadside inspection. Whereas the case of failure to settle the receivables of the State Treasury after performing the carriage of goods (lack of roadside inspection) can be referred to as an unintentional omission of the obligations imposed, in the case of irregularities detected in the course of the roadside inspection such certainty does not exist. This provision shall not apply to carriers. The provision shall be applied retroactively, also under administrative proceedings (Article 30(4)-(5)).

Transitional Provisions

1. With respect to the carriage of goods commenced and not completed prior to the day of entry into force of the amending Act, the current provisions shall apply (Article 10 of the amending Act).
2. **Application of more appropriate provisions in the case of irregularities in the course of pending proceedings.** With respect to proceedings concerning imposing of fines, initiated and not terminated by the day of entry into force of the amending Act, the new provisions contained in Article 24(1a) and Article 30(4) first sentence shall apply. In the case it has been found that the amounts of value added tax and excise tax payable have not been reduced, such proceedings shall be discontinued (Article 12 of the amending Act).
3. **Assessment of the value of the goods.** While assessing the level of the fines imposed, referred to in Article 21 (1) and (2) for the events occurring or found prior to the day of entry into force of the provisions of the amending Act, the net value of the goods carried shall be applied (Article 13 of the amending Act).
4. **A lower fine for the failure to supplement the notification by a carrier.** In the case of a carrier's failure to supplement the notification, for the events occurring or found prior to the day of entry into force of the provisions of the amending Act, the current provisions of Article 22(2) shall apply, i.e. a fine of PLN 5000 shall be imposed (Article 13a of the amending Act).
5. **Implementing provisions.** The regulations issued on the basis of Article 3(11) (goods), Article 11 (goods), Article 9(7) (notification) and Article 13(8)(documenting the inspection) shall remain in force over a period not longer than 3 months of the day of entry into force of the amending Act (Article 17 of the amending Act).
6. **Lack of fine for carriage by rail in the transitional period.** By 31 July 2018, in the case of infringement of the regulations, no fines will be imposed on the carriage of goods on the national railway network (Article 19 of the amending Act).
7. **Entry into force.** The amending Act shall enter into force after the lapse of 14 days of the date of its promulgation, except the provision regarding the announcement of maximum rates of fees which shall enter into force as of 1 June 2018.