



Enforcement of the ERRU policy rule - an ESTA Briefing

What is ERRU?

ERRU is a European digital network of interconnected national registers containing all licence holders and transport managers.

The ERRU operates as a company "rating" register and includes a penalty points system.

Under the new system, every violation of road transport law will attract a number of penalty points. If a company exceeds its points limit - set according to the size of the company - it risks having its licence suspended or revoked.

In addition, the legislation also applies to individual transport managers.

The long list of potential offences includes violations of the rules on driving and rest times, tachographs, working times, weight and dimensions, the technical condition of the vehicle, speed limits, driver competence and the transport of dangerous goods by road.

Why is this an issue now?

The ERRU register was created by the European Commission to allow a better exchange of information between member states, so that the authorities can monitor whether road transport companies are complying with the rules.

The ERRU legislation came into being in 2012 under EU Regulation 1071/2009 which was intended to create stronger common rules for the road transport industry.

It stipulates that a transport company and the transport manager may lose their "good repute" or approved status if serious breaches of applicable road transport legislation have been committed anywhere within the EU.

The practical introduction of the new rules was delayed as some EU member states were unprepared, but they have now come into force as of March 1 this year.

In the Netherlands, the Dutch authority ILT started recording Europe-wide penalty points from April 1.

ESTA is currently trying to establish the situation in all EU member states.

ERRU's objectives

ERRU is intended to lead to a harmonized and more effective method for assessing road transport operators. It should lead to more effective enforcement and to the exclusion of regular offenders.

Loss of approved status can result in suspension or revocation of a company's operating licence and/or declaration of unfitness for the transport manager.

A full description of the ERRU register and its operation can be found on:

https://ec.europa.eu/transport/modes/road/rules-governing-access-profession/european-register-road-transport-undertakings-erru_en



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From April 1 in all EU countries, ERRU violations - if they have become irrevocable - will count towards the assessment of the reliability or rating requirement for transport companies. In the official language of the European Commission this could lead to the loss of a road transport operator's "good repute".

What to do?

ESTA advises companies and their transport managers to make sure all drivers know which violations now also affect the company and/or the transport manager.

In addition, it is wise to consider how ERRU violations can be prevented.

ESTA has a number of tips for this:

- As a management board and as a (transport) manager, be well aware of ERRU regulations.
- Make sure that the list of ERRU violations is brought to the attention of your company's employees periodically. Please see: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0403&rid=1>
- Organize meetings within your company to discuss ERRU regulations.
- Be open to questions about ERRU from drivers within your company.
- Keep control of business processes and compliance with the rules.
- Make agreements with your clients regarding ERRU and ensure your clients understand the regulations and their impact.

ESTA realises that it will not always be possible to prevent ERRU violations. If an alleged violation does happen, transport operators should make sure that they keep the documents regarding the ERRU violation - and not pay any fine locally - in order to have the option of contesting it at a later stage. If you pay the fine on the spot, the violation becomes irrevocable and cannot later be contested.

FAQs - frequently asked questions

A list of frequently asked questions on ERRU can be found here:

<https://ec.europa.eu/transport/sites/transport/files/modes/road/access/doc/faq-on-erru.pdf>

Explaining its thinking, the European Commission said: "Undertakings that do not respect the rules when operating abroad will face the consequences in the member state where they are based. This creates fairer competition conditions in the road transport market."



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How will ERRU work in practice ?

Below we have outlined the practical working of ERRU and listed a number of FAQ's related to the systems' practical implementation. In order to keep this section readable it is written from the perspective of a Dutch transport company operating in the EU. For your own national perspective you would have to substitute the terms 'ILT' and 'NIWO' for your local inspection and enforcing organisations commissioned with the control on ERRU. (Please refer to annex A for the list.)

ERRU is a European digital network of interconnected national registers containing all licence holders and transport managers who have committed irrevocable violations within the EU in the field of transport legislation. The violations noted by the controlling authorities in any EU member state are registered into the ERRU register of the member state the offender originates from.

ERRU: which violations count now?

The list of violations included in the register is laid down in Annex to the (EU Regulation 2016/403), including the classification in terms of seriousness of the offence, and this list is also reflected in the policy rules. The relationship between the different gravity classes is also fixed. The violations concern, among other things, the driving and rest time legislation, tachograph regulation and licence requirements, but also cover, for example, the legislation regarding measures and weights and hazardous substances. The gravity of the offence has been determined by the European Commission in the light of the possible risk of death or serious injury.

Please see: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0403&rid=1>

Penalty policy

The penalty points are assigned to the violations, according to the fixed ratio established by the Regulation. The most serious category of violations (MSI = Most Serious Infringements) receives 9 penalty points, the middle category VSI = Very Serious Infringements) receives 3 and the lowest category (SI = Serious Infringements) 1 point.

When a predetermined penalty point limit is reached, the reliability status is jeopardised and a procedure is started that can ultimately lead to a loss of approved status, and with that of the transport permit and the suitability of the transport manager. The level of the limit value is determined by the size of the company, measured in the number of certified transport licence copies. For the transport manager who works for several companies, the number licence copies of the different companies are added together to determine the penalty point limit value.



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In the table below you will find the established limit values:

| Number of licence copies | Penalty point limit value |
|--------------------------|---|
| 1 | 18 |
| 2-10 | 27 |
| 11-20 | 36 |
| 21-50 | 45 |
| 51-100 | 54 |
| 101-500 | 54 + 0,4 * (number of licences – 100) |
| 501 and over | 230 + 0,20 * (number of licences – 500) |

Committed an ERRU offence?

The first step is that registration will only follow when the violation has become irrevocable. It is therefore wise to check carefully whether there are grounds for objection. When a settlement is accepted, the fact is irrevocable! In the event of an objection procedure, quite some time may elapse between the moment of the violation and its becoming irrevocable. This is important in view of the expiring of penalty points after two years.

ILT procedure: culpability test

Upon the first recording of an irrevocable violation in ERRU a notification by ILT to the company will follow. From that moment on, the company can check via the NIWO business counter how many penalty points there are. Penalty points remain for 2 years, after which they expire. The penalty point limit value may not be exceeded within a period of 2 years.

When 50% of the penalty point limit value is reached, another notification will be sent via the ILT. When 100% of the limit value is exceeded, the ILT initiates an investigation. In doing so, it is checked whether there is culpability. The ILT reports separately with regard to the transport company and the transport manager and subsequently advises the NIWO.

NIWO procedure: proportionality test

The NIWO then checks if the ILT investigation has been conducted with due care and the proportionality of the sanction. The intention of sanctioning is communicated to the transport company and transport manager and they are given the opportunity to submit their views. After that, the NIWO takes a decision. Possible sanctions include withdrawal or suspension of the transport licence and declaration of unfitness of the transport manager. If the permit is withdrawn, a rehabilitation period of 2 years applies. The transport manager will have to regain his professional competence. As long as he is unfit, he cannot work as a transport manager in any EU country.



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Avoid violations

Any offence that earns penalty points carries a potential risk to the approved company status. It is therefore more important than ever to keep control over compliance with the rules and to take corrective action when this is not done sufficiently.

Below are some tips:

- Check whether there are grounds for objection to the violation; do not accept and pay a transaction proposal if there are grounds for objection!
- Keep records of the facts, circumstances and communications surrounding the violation, especially if they point in the direction of non-culpability. Also think of emails and WhatsApp messages. Do not forget that the transport company and the transport manager are given a separate assessment.
- Does your transport manager work for several companies? Make an agreement about keeping you informed on the ERRU status. Incidentally, if the transport manager loses his reliability, but the company does not, the company is given 6 months to hire a new transport manager.
- Systematically and regularly check the technical condition of the vehicle fleet and required legal documents, such as validity of driving licenses, MOT, code 95, driver cards, validity of transport licence certificates. Make sure that the extension of these documents is done well in time (and certainly in the event of expected obstacles that could lead to delays such as medical examinations)
- Inform your clients about ERRU consequences with regard to non-compliance, such as overloading, and prevent these events as much as possible through proper agreements and procedures.
- Analyse which violations are frequently committed, e.g. against driving and rest times and tachograph use, and take and document corrective measures.
- Make employees aware of the correct procedures, for example on how to operate the tachograph properly. Many problems can be prevented with regular training and behavioural analysis. Also document your training efforts and instructions to personnel. Once the violation has been established, there are a number of moments in the process where the relevant facts and circumstances can be demonstrated to the ILT and the NIWO:
 - During the ILT investigation
 - When submitting the opinion to the NIWO
 - By lodging an objection against the NIWO decision (and possibly an appeal).

For a schematic overview of the ERRU procedure please refer to annex B.

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Frequently Asked Questions

What exactly happens if a violation has been committed that is classified as an ERRU fact, when do I first notice something about ERRU?

Initially, a penalty is imposed. The penalty is only irrevocable if it is accepted/ settled or the period of objection/appeal has passed. If the penalty is final, it will be entered in the ERRU register. At the first entry in the register, the carrier and transport manager will receive a notification from the ILT and the points will be visible in the NIWO business counter register. The next notification from the ILT will be when 50% of the penalty points limit value has been reached.

Are only ERRU facts taken into account that appear as a result of roadside stops or can these facts also appear as a result of a company audit by the ILT?

The register concerns all violations that in any way led to an irrevocable sanction and are mentioned in the ERRU Regulation, regardless of where they were noted.

Who will inform you when you have an ERRU violation abroad?

The foreign justice or judicial authority imposes the sanction, but does not inform you. If this leads to an irrevocable fine / conviction, it becomes an ERRU registration, of which you will be informed by the ILT only if it concerns a first violation. You will thereafter receive the next notification from the ILT when 50% of the limit value has been reached. In the meantime, you can always consult the NIWO business counter for the actual status of the penalty points.

What will be the date of the ERRU sanction when there is an appeal procedure about the violation? The date the violation was committed or the date the violation became irrevocable?

The date on which the conviction for an ERRU violation becomes final is decisive for the penalty points. In case of a transaction, the sanction becomes irrevocable from the payment date of the transaction proposal. Two years after the date of the sanction / conviction becoming final, the penalty points for that same ERRU offense will lapse.

Is the UK still part of the ERRU?

It is unclear after Brexit to what extent the UK will remain participant of ERRU. This will depend on future developments of the "Trade and Transport agreement" between the UK and the EU.

Is Switzerland part of ERRU?

Switzerland is not an EU Member State and does not participate in ERRU.

As a transport company or transport manager, can I appeal against the ILT report?

No that is not possible. During the investigation you can provide relevant facts and circumstances to the ILT. However, the ILT's conclusion is a recommendation to the NIWO, and is not a decision subject to objection and appeal. The ILT report goes to the NIWO and the NIWO takes a decision. Objections and appeals are possible against the decision of the NIWO

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What effect has a in-company audit in which errors are found, on the registration in ERRU?

If during an in-company audit ERRU violations are noted leading to an irrevocable sanction, this will result in penalty points being attributed to the transport manager and the transport company where the check took place. Incidentally, only the most serious violations are fined during a first company inspection.

What about that 2-year term exactly? Do points expire after 2 years? What is the start date for the 2 years?

For each sanction, the 2-year period starts on the day that the violation has become irrevocable. Then it will also be included in the penalty point register. The penalty point limit value may not be exceeded within a period of 2 years. When the first penalty points are cancelled, the next 2 year period therefore starts at the time of insertion of the 2nd irrevocable offense.

A driver from my company was fined abroad and paid on the spot. Will I still get penalty points in the Netherlands?

Yes, if the violation has been designated as an ERRU fact, and a transaction proposal is accepted, the objection is no longer open and the sanction is irrevocable. In that case, penalty points are awarded to the transport company and the transport manager in NL. If an objection is still open, the points will only be issued if the violation is maintained after all legal remedies (objection / appeal) have been exhausted.

Is it clear to the transport manager / company how many "ERRU points" have been registered?

Yes, they can view this via the NIWO entrepreneurs 'counter, provided they receive the log-in details from the company or can log in to the NIWO's entrepreneurs' counter via an authorization.

Is it possible that only the transport company or transport manager will receive penalty points? Or is this always in combination?

The points are attributed to both the transportation manager and the transportation company where the ERRU violation was committed. If the transport manager works for several transport companies, then, in addition to the transport manager, only the transport company where the ERRU violation was committed will receive the penalty points.

Can third parties (accountants, other companies) view the penalty point balance of a company?

No, this is not possible for privacy reasons. Only those within the transport company who have the login code and the transport manager can view the balance of penalty via the NIWO business counter.

I am a transport manager at two transport companies. Which limit value applies to me?

The classification is made by cumulation of the different fleets. Example: Two companies, with the same transport manager, have 5 and 6 vehicles / transport licence copies respectively. The transport companies fall into category 2-10 and the transport manager will fall into category 11-20.



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What does it mean for the classification of my company if the first penalty points are allocated and then the number of vehicles / transport licences is increased. Does my company fall into a different category?

That depends on the number of penalty points achieved. Once the carrier has reached 50% of its minimum penalty points and the notification for this event has been sent, any expansion or reduction of the fleet will no longer affect the penalty point limit for that company.

Who is considered to be the transport manager? Will that be the person with the professional diploma? or could this also be an appointed manager?

The person who has the professional diploma is regarded as being the transport manager. This is also the person who is registered in the Trade Register at the Chamber of Commerce as an authorized representative / transport manager. This is also the person who is registered and registered with NIWO as a transport manager.

If I receive a Certificate of Good Conduct (VOG), do I meet the reliability requirement?

You meet the reliability requirement if, in addition to having a Certificate of Good Conduct, you also do not have an ERRU registration that exceeds the penalty point limit value. Hence the approved status follows from these 2 components.

What happens if my transport manager is declared unfit and my company can still retain its transport permit?

Then a new transport manager will have to be recruited. The transport company is given 6 months to do this.

If my permit is temporarily suspended, can I still drive?

No, professional goods transport may no longer be performed

What can I do if I disagree with a negative decision by the NIWO?

Before the NIWO announces its decision, you have the opportunity to express your point of view. After the decision, you can submit a notice of objection to the NIWO within 6 weeks of the decision. Justify why you disagree with the decision. An further appeal procedure is still open after this objection.

Suppose the NIWO does not impose a sanction. Do you start again with a clean slate?

If the NIWO decides not to impose a sanction because it would be disproportionate, then all penalty points to which the NIWO decision relates will be deleted. However, the registration system will keep the history and remember that the transport company / transport manager has already once exceeded the penalty point limit value. If the limit values are exceeded again, this is seen as a case of recidivism. In case of recidivism, a sanction will always be imposed by NIWO.



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Annex A: List of national registers of Road Transport Undertakings

Austria

<http://vur.bmvit.gv.at/pages/searchsimple.aspx>

Belgium

<https://es.mobilit.fgov.be/berru-pub/#/public?type=GOODS&language=NL>

Bulgaria

<https://rta.government.bg/images/Image/registri/mt.htm>

Czech Republic

<https://rpsd.mdcr.cz/undertaker/search?1>

Denmark

<http://ftv.trafikstyrelsen.dk/Vognsys/doSearch.jsp>

Estonia

<https://mtr.mkm.ee/>

Germany

http://www.bag.bund.de/DE/Navigation/Verkehrsunternehmensdatei/unternehmenssuchesuche_node.html

France

<http://www.developpement-durable.gouv.fr/liste-des-entreprises-inscrites-au-registre-electronique-national-des-entreprises-transport-route-et>

Greece

<http://www.yme.gr/index.php?getwhat=1&tid=1688>

Hungary

<https://www.kozlekedesihatosag.kormany.hu/hu/dokumentum/199091>
(of <http://www.nkh.gov.hu/web/kozuti-gepjarmu-kozlekedesi-hivatal/erru-regiszter>)

Ireland

<https://www.rtol.ie/rtol-online/search/licence>

Italy

<https://www.ilportaledellautomobilista.it/web/portale-automobilista/ricerca-impresе-trasporto-merci>

Latvia

<http://www.atd.lv/lv/licences>



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Lithuania

<https://keltra.vkti.gov.lt/kelappweb/web/InformacijaApieVezejus.jsp>

Netherlands

<https://ondernemersloket.niwo.nl/home/publicatie/zoek-vergunninghouders-2>

Poland - POLISH REGISTRY OF ROAD TRANSPORT UNDERTAKINGS

<https://kreptd.gitd.gov.pl/>

Portugal

<http://www.imt->

[ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/EmpresasLicenciadas/Paginas/EmpresasLicenciadas.aspx](http://www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/EmpresasLicenciadas/Paginas/EmpresasLicenciadas.aspx)

Then click on: Empresas de Transporte de Mercadorias - Nacional/Internacional e exclusivamente Nacional

Romania



<http://www.arr.ro/files/info-utile/transport%20marfa/marfuri.pdf>

Slovenia

<http://nerdcp.gov.si/javni/>

Slovakia

<https://www.jiscd.sk/en/register-of-road-transport-undertakings/>

Spain

<https://apps.fomento.gob.es/crgt/servlet/ServletController?modulo=datosconsulta&accion=inicio&lang=es&estilo=default>

Switzerland

<https://www.bav.admin.ch/bav/de/home/themen-a-z/verzeichnisse/unternehmerverzeichnis.html>

United Kingdom

<https://www.gov.uk/check-vehicle-operator-licence-applications>

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Annex B: ERRU penalty procedure

| Step | ERRU Occurance | Comment |
|------|---|--|
| 1 | Offence noted by police or inspectors | |
| 2 | Violation is irrevocable | Penalty points will lapse after 24 months |
| 3 | 50% of penalty threshold – notification by inspection | |
| 4 | 100% of penalty threshold – company investigation | Check on culpability |
| 5 | Advice of inspectors to the enforcers | As result of company inspection |
| 6 | Proportionality check by the enforcer | Is the penalty in line with the facts ? |
| 7 | Intention to sanction is communicated | |
| 8 | Company point of view | Can new facts be produced ? |
| 9 | Decision by the enforcer | |
| 10 | Objection and appeal procedures | |
| 11 | Transport permit revoked and/or transport manager declared unfit. | 1) Not allowed to execute transport in the EU for 2 years. 2) Not allowed to manage a transport company in the EU for 2 years |