

# Law office Grimme & Partner



## Special-NEWSLETTER #1/2018

### European Court of Justice (ECJ) decides:

#### **Drivers may spend their weekend rest period out of truck only**

According to the German Bundesamt für Güterverkehr (i.e. "Federal Office for Transport Affairs" (BAG)), truck drivers already haven't been allowed to spend their so-called "weekly rest period", i.e. the period of at least 45 hours of leisure time after 6 days of driving, in their trucks in the past. Drivers usually take this break on weekends because of driving bans and spend this time in the vehicle on rest areas, for example.

According to the BAG, the inadmissibility of this acting should result from an interpretation of EU Regulation No. 561/2006. However, this view has been controversial so far, not only in Germany, but also in the other European member states. In Germany, violations of the law have also not been punished so far as known, especially for lack of mention in a table of fines and capacities

This will now change:

In 2017, Germany made changes to the German Fahrerpersonalgesetz ("Driving Personnel Act" (FPersG)) which have been in force since 25 May 2017. According to the catalogue of fines, a driver is subject to a fine of up to 60 euros per each hour of the weekly rest period spent in the truck. However, the consequences for the forwarder are even more serious: they are subject to fines of up to 180 euros per hour spent in trucks. In addition, the driver may be prohibited from continuing its journey until the rest period has been fully recovered at a suitable place.

A significant reason for this implementation of the regulation by the German legislature at this time is probably a recent lawsuit before the European Court of Justice (ECJ): There, a Belgian transport company had complained in proceedings against the Belgian State about the legality of the fine of EUR 1,800 imposed in a Belgian decree for the overnight stay of the driver in a truck during the weekly rest period. In its judgment of 20 December

2017 (Case C-102/16), the ECJ has now confirmed the legal opinion that the regular weekly rest period of at least 45 hours may not be taken in the vehicle. This is justified by the improvement of drivers' working conditions and road safety.

The court has granted the EU member states a margin of discretion in determining appropriate sanctions. However, the fines imposed must be similar to those already applicable to similar violations of national law. It can be assumed that the new provisions in the catalogue of fines for the FPersG will correspond to this. The actual fines, e. g. if the driver card is not inserted or the mass memory of the truck is not downloaded, are based on hourly rates at a corresponding level and also provide for the forwarder to pay a multiple of the fine imposed on the driver.

The law does not specify exactly how suitable sleeping accommodation must be. Certainly, these requirements will be met when staying overnight in hotels, motels and guesthouses. Other rooms in existing buildings, e. g. rented apartments or living containers, are also generally considered a suitable sleeping accommodation.

Since the BAG can at least be expected to carry out selective checks in the future, forwarder should be prepared to adapt to the new situation, not least within their framework of scheduling.

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