

LEGAL ASPECTS OF THE ROAD AND RAILWAY TRANSPORT MONITORING SYSTEM OF "SENSITIVE GOODS" IN POLAND

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Abstract

The article analyses monitoring system for the road and railway transport of goods. The aim of the monitoring system is to protect lawful trade in goods considered as "sensitive", such as liquid fuels, fully denatured alcohol or dried tobacco. The monitoring system for the transport of goods is another tool in a fight against dishonest entities acting illegally and against tax evasions. It diminishes the level of income losses when collecting taxes which are the most relevant for the state budget. It shall also increase the effectiveness of controls in high-risk areas. New regulations impose on a car or train driver an obligation to possess a GPS tracker (smartphone, tablet, laptop), which uses satellite positioning technology and software made available by the head of the Polish National Revenue Administration.

Key words: monitoring system, road and rail transport, "sensitive goods"

Introduction

The monitoring system for the transport of goods has been launched on the basis of the provisions of the Act of 9th March 2017 on the monitoring system for the road and railway transport of goods (Journal of Laws of 2018, item 2332, hereinafter: Act on the transport of goods). Pursuant to the act, business entities are obliged to report to the register of declarations SENT carriages of the so-called "sensitive" goods, made on public roads and the railway network. The most important changes in the Act on the transport of goods were introduced by the Act of June 15th, 2018 amending the Act on the monitoring system for the road and railway transport of goods (Journal of Laws of 2018, item 1539) – in force from October 1st, 2018 (hereinafter: Act of Change). The Act on the transport of goods was notified to the European Commission on August 8th, 2017 under the number 2017/372/PL, in accordance with the Regulation of the Council of Ministers of December 23rd, 2002 on the manner of functioning of the national system of notification of norms and legal acts (Journal of Laws of 2002, item 2039 and of 2004 item 597) which implements the Directive (EU) 2015/1535 of the European Parliament and of the European Council of September 9th, 2015, laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification)(Journal of Laws UE L 241, from 17.09.2015, p. 1). Under the Act on Change, changes were introduced to the monitoring system of the transport, consisting in the obligation to provide geolocation data on transport means carrying the so-called sensitive goods. (MUSOLF, 2018).

The scope of the Act's regulations

The Act on the transport of goods defines the rules of the monitoring system for the transport of goods and responsibility for the violation of duties related to the transport of goods of the dispatching entity, the receiving entity, the carrier and the driver of the means of transport. The Act makes it possible to link the circulation shown in the invoices with control of the actual movement of goods. As a consequence, in addition to limiting of tax losses, it is also possible to limit the illegal trade of the so-called sensitive goods. The catalogue of sensitive goods covered by the monitoring system includes, according to the Combined Nomenclature (CN) (Act of December 6th, 2008 on excise duty, 2008), among others: 1) not marked with excise marks – uncontaminated ethyl alcohol of alcoholic strength by volume of 80% vol. or higher, ethyl alcohol and other spirits of any power, contaminated 2) oils and other products of high temperature distillation of coal tar 3) petroleum oils and oils obtained from bituminous minerals; waste oils 4) methanol (methyl alcohol) 5) polycarboxylic acids 6) lubricating preparations 7) anti-corrosive preparations 8) solvents and diluents containing ethyl alcohol 9) antifreeze agents containing alcohol 10) biodiesel and its mixtures 11) vegetable oils. The monitoring system applies to the transport of such goods if the gross weight of the shipment exceeds 500 kg or its volume exceeds 500 litres. In addition, the monitoring system covers dried tobacco not marked with excise marks, regardless

of its quantity in the shipment; medicinal products, foods for particular nutritional uses, medical devices and other goods in respect of which there is a reasonable probability of occurrence of violations of tax law provisions regarding VAT and excise tax, which may cause (due to the scale or frequency of trade in these goods) significant losses in collection of these taxes. What is more, the minister competent for public finance may, by way of a regulation, broaden the catalogue of sensitive goods. The legislator also provided for a number of exemptions from the obligation to monitor transport. For example, the monitoring system does not cover the carriage of goods: carried by postal operators in parcels; goods placed under the customs procedure of transit, storage, temporary admission, processing, export or re-export; transported as part of the suspension of excise duty procedure with the usage of the national telecommunications and information system EMCS, used to handle the movement of excise goods; carriage of goods that is not related to the performance of activities subject to tax on goods and services, if the transported goods are accompanied by a document confirming the warehouse transfer issued by the sender of goods and the transport performed by domestic and foreign military units as well as the state units, e.g. Police, Central Anticorruption Bureau, Intelligence Agency etc.

The Act on the transport of goods is one of the tools for sealing the tax regulations, it protects against illegal activities in the above-mentioned areas. The legislator clearly indicates that a large number of illegal activities in the indicated areas is a threat to fair competition (RÓŻYCKI, 2018). The Act on the transport of goods should protect legal trade in sensitive goods, facilitate the fight against organized crime, reduce the depletion of taxes in the key to the state budget, in particular – the tax on goods and services and excise duty. It should increase the effectiveness of controls in areas at risk of violating existing regulations. It is also important for domestic producers to limit the inflow of goods from other countries from which obliged entities do not pay any taxes (PARULSKI, ŚLIWINSKI, 2017)

The commented act aimed at introducing legal changes in the areas in which the most irregularities were found, where specialized criminal groups operating on the market of sensitive goods (alcohol, cigarettes, fuel) use falsified invoices and documents to extort undue tax returns and avoid paying taxes. Only linking the flow of documents with the actual flow of goods allowed for effective analysis of the schemes of activities of subjects involved in the transport of goods and facilitated the disclosure of transport of untaxed goods (RÓŻYCKI, 2018).

The Act on the transport of goods, despite the fact that it is a subsidiary regulation for the entire tax system, is neither a tax act nor has the nature of tax law provisions, therefore it is not permissible to issue tax law interpretations in the sense and in the manner of the Tax ordinance (MUSOLF, 2018).

Technical means for monitoring the transport of goods. Obligations of the carrier

Technical means for monitoring the transport of goods include:

- the register of declarations together with a module collecting and processing geolocation data, hereinafter referred to as: "SENT register";
- the locator – a telecommunications terminal device using satellite positioning and data transmission technologies, on which the software provided by the head of the Polish National Revenue Administration is installed, used to monitor the route of the carriage of goods;
- the external location system – is a system used by the carrier collecting geolocation data of the means of transport transmitted from the device installed in this means of transport using the satellite positioning and data transmission technologies, all these data are transferred to the register.

The SENT register is kept in the ICT system (Article 4 paragraph 2 of the Act on the transport of goods), this is an electronic register of notifications created especially for the purposes of implementing the Act on the monitoring system for the road and railway transport of goods. The register is kept by the head of the Polish National Revenue Administration, who is the administrator of data processed in the register, and it is him, who provides the software free of charge. The register collects data contained in applications, application supplements and their updates. Geolocation data from locators and external location systems are collected, including geographical coordinates of the location of transport means, error in satellite data transmission and the locator's number or the device's number, as well as data on the inspections carried out. In the case of a transport beginning on the territory of Poland, the dispatching entity, before the beginning of transport of goods, is obliged to send a notification to the register, get a reference number for this notification and provide this number to the carrier and the receiving entity (Article 5 of the Act on the transport of goods). Any activities consisting of: transmission, supplementation and updating of the application are effected via the Electronic Services Portal of the Customs Service, only after authentication.

The carrier prior to the commencement of transport of goods on the public road is obliged to: complete the notification with the carrier's data, including – name, surname or name, address of residence

or registered office; carrier tax identification number or the number by which the carrier is identified for the purposes of tax on goods and services or value added tax; registration numbers of the means of transport; effective carriage dispatch date; planned carriage end date; the number of the certificate, authorization or license of the carrier; delivery address of goods or point of delivery on domestic territory; the number of the shipping document accompanying the transported goods; the number of the locator or the individual number of the device transferring the geolocation data of the means of transport to the external location system used by the carrier. In case of transporting goods on the national railway network, the same basic data of the carrier as the above-mentioned are given and additionally: the train number, the number of the railway vehicle without a drive (Article 5 paragraph 4 of the Act on the transport of goods).

The carrier, during the whole route of transport of goods covered by the application, is obliged to ensure the transmission of current geolocation data of the means of transport covered by this application. For this purpose, the carrier must equip the means of transport with a locator, that is a telecommunications device (tablet, smartphone, laptop) using the satellite data transmission positioning technology with the installed SENT GEO application, which is used to monitor the route of the transport of goods. Such a locator must also be equipped with special software made available free of charge by the head of the Polish National Revenue Administration. If the carrier provides geolocation data to the register from an external location system, then it does not have to equip the means of transport with a locator. An external location system collects and transmits geolocation data of the means of transport from a device installed using satellite positioning and data transmissions. Regardless of which option the carrier chooses, whether it is the GPS locator or external location system, the tax office's objective remains the same – real-time supervision over the sensitive goods transport route.

Responsibilities of the driver of the means of transport equipped with a locator

If the means of transport is equipped with a locator, the driver is obliged to: 1) activate the locator before the commencement of the transport of goods, and in the case of several loading places within the territory of the country upon commencement of transport of goods from the first place of loading on the territory of the country. 2) turn off the locator not earlier than: the delivery of goods to the place of delivery of goods on the territory of the country, and in case of several places of delivery of goods on the territory of the country when the goods are delivered to the last place of delivery of goods on the territory of the country or in case when the transport of goods terminates on the territory of the country (Article 10 b of the Act on the transport of goods).

If the inefficiency of the locator or external location system lasting longer than one hour is detected, the driver is obliged to immediately stop at the nearest car park or in the nearest parking bay. The carriage of goods may be continued after:

1. restoring the efficiency of the locator or external location system, or
2. reloading goods into a means of transport equipped with a working locator or whose geolocation data is transferred to the register from an external location system, or
3. equipping the means of transport with a working locator, or
4. imposing official closures on the means of transport or goods or organizing a convoy.

The new rules also provide very severe fines. For example, in the event of failure to deliver the declared goods to the place of delivery or place of transport within the country, a fine of 100 000 PLN may be imposed on the carrier unless the entity that purchased or possesses these goods has been established or the place of termination of carriage within the country has been established.

The basic objective of the amendment to the Act on the transport of goods is the decisive fight against crime and the sealing of the tax system. As a result of linking the circulation shown in the invoices and the control of the actual movement of goods, it becomes possible to reduce illegal trade in sensitive goods. The inclusion of rail transport to the monitoring limits the possibility of using this mode of transport to illegal transport of sensitive goods.

The direction of changes

As part of the statutory solutions, the register is provided, to which the notification obligation was imposed for three entities: the sending entity, the receiving entity and the carrier. According to the statutory definition, the sending entity is a natural person, a legal person or an organizational unit without legal personality, running a business activity, performing: 1. the supply of goods; entitled to dispose of goods as the owner, 2. intercommunity supply of goods, 3. export of goods.

The other entity referred to as the receiving entity is a natural person, a legal person or an organizational unit without legal personality, running a business activity, intercommunity acquisition of goods, import of goods or purchase of goods in the case of delivery of goods.

The third obliged entity is a carrier, being a natural person, a legal person or an organizational unit without legal personality, running a business activity, performing transport of goods.

A specific type of duties was imposed on each of these entities. The most important thing, however, is that all entities obliged to submit and complete the application should fulfil the obligation to update the data given in the application, this also means that any change in the actual state needs updating (e.g. date of commencement of transport).

Another element of sealing the freight transport system is the obligation to obtain advanced access to the Platform of Electronic Treasury and Services (PUESC – hereinafter Platform). This obligation does not apply to carriers. Pursuant to the Regulation of the Minister of Finance of 19th September 2018 regarding declarations of carriage of goods (Journal of Laws of 2018, item 1884) for the receiving entities and sending entities, the requirement of authentication on the Electronic Tax and Customs Services Platform was introduced. Authentication of the registered the user of PUESC in order to send, supplement or update the application consists of providing the user's identifier (login) and password (§ 5 section 1 of the Regulation) and additionally providing a unique 17-character identification number (§ 5 sections 2 and 3 of the Regulation), so called Id SISC of the entity. Obtaining the Id SISC (Tax Information System) of the entity is connected with obtaining an advanced level of access to the PUESC and requires submission of appropriate applications (e-Forms) using the e-Customer service. This obligation is in power from: from May 1st, 2019 and applies to sending and receiving entities that send or update applications in the SENT register and from 1st August 2019, this obligation applies to receiving entities that supplement applications for information on the receipt of goods. In order to obtain an advanced level of access to PUESC a natural person such as the owner, company's body, employee of the company authorized by the owner / body of the company or other authorized person who has the assumed account on the Platform should submit the following forms: 1. registration / update of the physical person's data – this will give the SISC Id to a natural person, 2. Registration / update of the entity data – it will give the Id SISC to the entity, 3. registration / update of the representation – this will result in the registration of a natural person as a representative of the entity.

Pursuant to the Regulation of the Minister of Finance of 2018 regarding declarations of the carriage of goods, additional fields were added enabling the entry of the locator number or the number of the device transmitting geolocation data of the means of transport and of the province and geographic coordinates of the place of loading of goods, delivery of goods, commencement and termination of carriage on the territory of the Republic of Poland.

One of the essential issues related to electronic transport control are the changes introduced by the amended Act of February 21st, 2019. on road transport (Journal of Laws No. 690) they are additionally related to the need to adapt national law to EU law, in particular to the Commission Implementing Regulation (EU) 2016/480 of 1st April 2016 laying down common rules for merging domestic electronic registers of road transport entrepreneurs (Official Journal of 2016, L 87, p. 4), amended by Commission Implementing Regulation (EU) 2017/1440 of 8 August 2017 establishing common rules for the connection of national electronic registers of road transport undertakings.

According to the Polish law, the National Register of Road Transport Entrepreneurs (hereinafter: KREPTD) will be extended with additional data, e.g. on the subject of vehicles covered by the authorization to engage in the profession of road transport operator, information on sanctions imposed, information about registration numbers and country of registration of the vehicle. KREPTD is an electronic database that is connected to the European Register of Road Transport Undertakings (ERRU). This combination of national registers enables rapid exchange of information between Member States. The KREPTD Registry uses information provided, among others, by provincial road transport inspectors, by the staroste, by voivodship police chiefs, Chief Border Guard Commander, Chief Labor Inspector, in the future it will be expanded with new functions, among others will be connected with the National Court Register (KRS) , with the Central Registration and Information on Business (CEIDG).

Conclusions

The aim of the introduced changes is the continuous striving to tighten the tax system, and the changes are aimed at renouncing the system of paper declarations. The proposed solutions will enable the use of IT tools to diminish bureaucracy in transport of goods, constitute an element of e-administration implementation.

However, the problem is to include a system of monitoring the transport of goods such as motor fuels and their derivatives, medicinal products (limiting the export of specialized and modern medicines mainly life-saving) foodstuffs for special nutritional purposes or medical products, threatened by the lack of availability in Poland in connection with their export abroad.

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