



**ART** Autorità  
di Regolazione  
dei Trasporti

*courtesy translation - only the Italian text is authentic*

## RULES OF PROCEDURE

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for the conduct of sanctioning proceedings falling under the remit of the Authority

# ART

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## TITLE I — DEFINITIONS AND SCOPE

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### Art. 1 — Definitions

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1. Under these rules of procedure, the following terms and expressions shall have the following meaning:
  - a) 'Authority': the Transport Regulation Authority;
  - b) 'Board': the collegial body of the Authority;
  - c) 'Offices': the offices composing the Authority's structure, pursuant to the existing rules on the organisation and functioning of the Authority;
  - d) 'Office': the competent Office, pursuant to article 3 of these rules of procedure;
  - e) 'decree establishing the Authority': Decree-Law No. 201 of 6 December 2011, converted, with amendments, into Law No. 214 of 22 December 2011, as amended, establishing the Authority under article 37;
  - f) 'institutional website': the Authority's institutional website, available at [www.autorita-trasporti.it](http://www.autorita-trasporti.it).

### Art. 2 — Scope

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1. These rules of procedure lay down the general rules governing the exercise of the power of the Authority to impose sanctions in the areas under its jurisdiction. This shall be without prejudice to the rules contained in regulations concerning the exercise of the Authority's sanctioning power in specific sanctioning areas falling within its competence. In any case, where, on account of the connection between them, several infringements are prosecuted in the context of a single proceeding, these rules shall apply if at least one of them falls within its scope.
2. These rules of procedure further regulate, within the framework of all sanctioning proceedings initiated by the Authority, the proceeding for the adoption of precautionary measures, as well as the sub-proceeding for the assessment of commitments.
3. The Authority exercises the power to impose sanctions also of its own motion.

## TITLE II — GENERAL RULES

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### Art. 3 — Conferral of powers

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1. The powers of inquiry in the proceedings referred to in these rules of procedure are exercised by the office in charge of Surveillance and Enforcement, in compliance with the principle of separation between the Office's inquiry responsibilities and the Board's decision-making functions.

## Art. 4 — Pre-inquiry stage

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1. The Offices shall obtain any necessary information for the purpose of the proposal to initiate the sanctioning proceeding, if any, including through access and inspections, requests for information and documents, surveys, complaints, requests, and reports as governed by the provisions in force, including through the cooperation of other Government bodies.

## Art. 5 — Precautionary measures

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1. Under extraordinary circumstances, where the Board finds that reasons of necessity and urgency so require in order to safeguard competition and protect the users' interests against the risk of serious and irreparable damage, it may adopt temporary precautionary measures, pursuant to Article 37 (3) (f) of the decree establishing the Authority.

2. Where necessary, the adoption of precautionary measures may also anticipate the initiation of the sanctioning proceeding.

3. The decision to adopt precautionary measures shall contain the deadline of their effectiveness. If, at the expiry of the deadline, the precautionary measures referred to in paragraph 1 are still needed, they may be renewed based on a reasoned decision.

4. The precautionary measure shall automatically cease where, within 30 days of its adoption, the sanctioning proceeding is not initiated; in the cases referred to in this paragraph, the measure may not be extended or renewed.

5. The addressee of the precautionary measure may submit a reasoned request for review and may renew it in the cases referred to under paragraph 3.

## Art. 6 — Initiation of the proceeding

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1. When the Board finds, based on the information gathered by the Offices following the activities referred to in Article 4, that the conditions for a sanctioning action are met, it decides to initiate the proceeding.

2. By a decision of the Board, the head of the Office, who acts based on his/her own knowledge and evaluation, may be delegated to initiate sanctioning proceedings with reference to specific cases identified for that purpose.

3. The initiation of the proceeding shall include:

(a) the person or persons against whom the proceeding is brought;

(b) the reference to the rules that are assumed to be infringed and to the corresponding sanctions;

(c) a short description of the disputed facts;

(d) a statement of the rights of participation and of the deadlines of the proceeding starting from the communication of the decision to initiate the proceeding, in accordance with Article 8, as well as, in the cases of application of the simplified procedure, with the option referred to in Article 7 (2);

(e) the appointment of the person in charge of the proceeding, including his/her contact information, and the Office where to access the records of the proceeding;

(f) the decision to initiate the proceeding shall be notified to the person against whom the proceeding is brought, communicated to any interested third parties, and published on the institutional website.

## Art. 7 — Simplified procedure

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1. If the information gathered by the Offices sufficiently supports that the objection is well-founded, the decision to initiate the proceeding may also contain the amount of the penalty which could be imposed at the end of the procedure, including the payment of the reduced penalty that can terminate the proceeding, as provided for in paragraph 2. In this case, the notification of the decision to initiate the proceeding, shall be accompanied by the documents which show the contested infringement.
2. In the case referred to in paragraph 1, the person against whom the proceeding is brought, within the deadline of 30 days of notification of the decision to initiate the proceeding, may pay the reduced amount accounting for one third of the penalty specified in the above decision, waiving the further formalities of the proceeding. The payment of the reduced penalty terminates the sanctioning proceeding.
3. The decision to initiate the proceeding may provide that the termination of the proceeding by payment of the reduced penalty is conditional upon the cessation of the contested infringement.
4. If the proceeding is not terminated pursuant to paragraphs 2 and 3, it shall continue according to the ordinary procedure. At the outcome of the inquiries, when calculating the penalty pursuant to the provisions of Article 25, the Board may depart from the quantification anticipated in the decision to initiate the action if, during the proceedings, sufficient evidence is found that justifies such departure.

## Art. 8 — Rights of participation and procedural deadlines

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1. Both the person against whom the proceeding is brought, and the third parties concerned may have access to the records of the proceeding.
2. Within thirty days of the notification of the decision to initiate the proceeding, the person against whom the proceeding is brought, may also send statements of defence and documents to the person in charge of the proceeding and request to be heard before the Office.
3. Within sixty days of the notification of the decision to initiate the proceedings, the person against whom the proceeding is brought, may also submit proposals for commitments aimed at removing the contested infringement.
4. Within thirty days of the notification of the decision to initiate the proceeding or, in absence thereof, within sixty days of its publication on the institutional website, the third parties concerned may submit written pleadings and documents to the person in charge of the proceedings, and request to be heard before the Office. Interested parties who wish to preserve the confidentiality or secrecy of the information provided shall, under penalty of forfeiture, state this requirement by giving adequate reasons and expressly specifying the confidential parts thereof.
5. In the cases referred to in paragraph 4, the person in charge of the proceedings shall forward the documents received or the minutes of the hearing to the person against whom the proceeding is brought, granting a time limit not exceeding thirty days for the submission of his/her observations and counterarguments.
6. Following the communication of the preliminary findings referred to in Article 20, the person against whom the proceeding is brought may, no later than twenty days of the notification of such communication, submit a rejoinder and replication and request to be heard before the Board.
7. The time limit for the conclusion of the proceedings is 180 days, starting from the notification of the decision to initiate the proceeding to the person against whom the proceeding is brought.

8. The Board may, where circumstances so require, set other time limits than those provided for in the preceding paragraphs.

## Art. 9 — Suspension of procedural deadlines

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1. The time limits referred to in these rules of procedure shall be suspended:

- (a) in the case of a hearing before the Office or the Board, from the date on which the hearing is convened until it is held;
- (b) where the Office requests preliminary inquiries pursuant to Article 10, from the date of the request until the receipt of the reply or the expiry of the indicated deadline; the same shall apply also to requests for information and documents pursuant to Article 21, and to requests for information and documents pursuant to Article 15, with regard to the time-limit referred to in Article 16 (1);
- (c) in case of requests for expert opinions or advice, from the appointment of the expert or advisor until the receipt of the expert report or advice;
- d) in the case of transmission of documents pursuant to article 8 (5), from the transmission of such documents until the receipt of the observations and counterarguments, or the expiry of the indicated deadline; this provision shall also apply in the case of transmission of documents pursuant to article 10 (4);
- (e) from the communication of the preliminary findings until the receipt of the rejoinder and replication or of the request for a hearing, or until the expiry of the indicated deadline;
- (f) in the case of the inspections referred to in Article 12, from the date of the decision authorising the inspection until the inspection is carried out; for the purposes of this Article only, a refusal to submit to an inspection shall be treated as a performed inspection;
- (g) when it becomes apparent during a hearing that it is necessary to obtain documentation, pursuant to Article 11 (6), the suspension of the deadlines shall be extended until the date of receipt of the requested documentation or until the expiry of the indicated deadline.

## TITLE III — THE INQUIRY STAGE

### Article 10 – Preliminary inquiries

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1. The person in charge of the proceeding may request, including through hearings, information and documents from any person who may hold them, in order to obtain useful evidence for the preliminary inquiries.
2. If the person in charge of the proceeding deems it necessary to order expert reports or advice, he/she shall submit this requirement to the Board, that will deliver its opinion thereupon.
3. The requests for preliminary inquiries shall be made in writing and shall indicate:
  - (a) the facts and circumstances in respect of which the information or documents are requested;
  - (b) the purpose of the request;

- (c) the deadline for the submission of a reply, to be determined in an appropriate manner having regard to the urgency of the case and the nature, quantity and quality of the requested information, taking into account the time needed for its preparation;
  - (d) the way the information is to be provided and, if the request is addressed to a person who is not the addressee of the notice of the decision to initiate the proceeding, the person in charge of the proceeding;
  - e) the notice that the sanctions provided for by the laws in force may be imposed in the event of inaccurate, misleading, incomplete information or information provided after the deadline.
4. If the inquiry made to a third party reveals significant new information, the person in charge of the proceeding shall communicate such information to the person against whom the proceeding is brought, granting a period not exceeding thirty days to submit observations and counterarguments.

## Article 11 – Hearings before the Office

1. The hearing shall be convened in writing by the person in charge of the proceeding at least with a seven days' notice.
2. The parties heard shall appear in the person of the legal representative or duly authorised person; persons with knowledge of the facts, advisers and advocates are allowed to attend.
3. Minutes of the hearing shall be drawn up and signed by the person in charge of the proceeding, the person in charge of taking the minutes, and the party heard. A copy of the minutes shall be provided to the latter.
4. During the hearing, the person in charge of the proceeding shall submit to the parties concerned the requests and questions that are considered useful to complete the inquiries.
5. The party heard may also present defences, clarifications, and explain his or her position on the proceeding in progress. He/she may also submit documents during the hearing, which shall be recorded in the minutes, or reserve the right to submit documents.
6. If the party heard has reserved the right to submit documents or the person in charge of the proceeding deems it necessary to request the submission of documents, a time limit not exceeding thirty days is granted.
7. In the cases referred to in paragraph 6, the minutes shall record the documents to be submitted and the deadline for submission.
8. For the sole purpose of supporting the minutes, a magnetic or computer recording of the hearing may be provided for by the Authority.
9. The person in charge of the proceeding may be replaced by his/her delegate.

## Article 12 – Inspections

1. To obtain information, the Board may order inspections of the regulated entities by means of access to facilities, means of transport and offices.
2. The procedures to carry out the inspections and the safeguards for the persons subjected to inspection shall be governed by the relevant rules of procedure.



## TITLE IV — THE SUB-PROCEEDING FOR COMMITMENTS

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### Art. 13 — Commitment proposal

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1. The person against whom the proceeding is brought, is entitled to propose appropriate commitments to remove the infringements contested in the decision to initiate the proceeding.
2. The submission of a commitment proposal determines the interruption of the sanctioning procedure and the opening of the sub-proceeding for commitments under this title.
3. Under penalty of voidness, the commitment proposal shall be made in writing; for this purpose, the proposing entity may fill in the appropriate format published on the institutional website. The proposal shall be sent to the Authority's certified e-mail address.
4. In the event of confidentiality or secrecy requirements, the proposing entity shall, under penalty of forfeiture, state such requirements in the proposal, giving adequate reasons and expressly specifying the confidential parts thereof.
5. The submission of the commitment proposal shall be communicated to the concerned parties other than the proposing entity.
6. Where several objections have been raised in the decision to initiate the proceeding and the commitment proposal does not address all the contested infringements, the proceeding shall continue with regard to those objections that are not addressed in the commitment proposal.

### Art. 14 — Non-eligibility

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1. A commitment proposal shall be deemed to be not eligible if:
  - (a) it does not contain details of the obligations that the operator is willing to undertake;
  - (b) it does not indicate the expected costs and the timeframe for implementation of the proposed commitments.
2. The non-eligibility shall be declared by the person in charge of the proceeding.

### Art. 15 — Requests for clarification

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1. The person in charge of the proceeding may request the proposing entity, including through a hearing, to provide information, clarifications, and documents to better clarify the content of the proposed commitments or obtain useful evidence to assess their eligibility.

### Art. 16 — Determination of eligibility

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1. The decision on the eligibility or non-eligibility of the commitment proposal shall be adopted by the Board, after consulting the person in charge of the proceeding, within forty-five days of the date of

submission of the proposal and shall be communicated to the proposing entity and to all parties involved in the proceeding.

2. The decision on the eligibility of the commitment proposal shall also provide for its publication on the institutional website, according to procedures that consider any confidentiality requirements, in order to carry out the public consultation referred to in Article 17.

3. The statement of eligibility makes the commitment proposal irrevocable.

4. A commitment proposal shall be declared non-eligible if:

(a) it is generic;

(b) it merely consists in the fulfilment of the infringed obligation;

(c) it is overtly unnecessary for the effective pursuit of the interests protected by the rule which is assumed to be infringed;

(d) the conduct challenged has not ceased;

(e) it is not appropriate to restore the balance of interests prior to the infringement or to eliminate, at least in part, any immediate and direct consequences of the infringement;

(f) the compliance with the confidentiality requirements expressed by the proposing entity, pursuant to Article 13 (4), would not allow the public consultation referred to in Article 17 to be usefully carried out;

g) depending on the seriousness of the challenged infringement or on the previous sanctioning measures, from which it may be concluded that the person concerned is particularly prone to commit administrative offences subject to the Authority's sanctioning powers, the Authority considers it should proceed to establish the infringement.

## Art. 17 — Public consultation

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1. Within thirty days of publication of the commitment proposal on the institutional website, any concerned party may submit comments.

2. Comments shall be submitted in writing, usually by electronic means.

3. Interested parties wishing to safeguard the confidentiality or secrecy of the information provided shall, under penalty of forfeiture, state this requirement in the comments, giving adequate reasons and expressly specifying the confidential parts.

4. Once the deadline for submitting the observations referred to in paragraph 1 has expired, the observations received shall be published on the institutional website by the person in charge of the proceeding. The proposing entity shall be informed of the publication.

5. Within thirty days of the publication referred to in paragraph 4, the proposing entity may submit counterarguments and introduce minor changes to the commitments.

6. If necessary, the person in charge of the proceeding may request the interested parties to provide further clarifications, information and evidence that is useful for the evaluation of the commitments; the proposing entity may introduce minor changes.

7. The Authority shall give account of the observations received in the decision referred to in Article 18.

8. The Board may, where circumstances so require, set other time limits than those provided for under paragraphs 1 and 5.

## Art. 18 — Termination of the sub-proceeding for commitments

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1. Where, also following the public consultation, the Board considers that the proposed commitments are appropriate to ensure the most effective pursuit of the interests protected by the rule which is assumed to be infringed, it shall declare them eligible and approve them. Otherwise, the commitment proposal shall be declared as non-eligible.
2. Commitments approved pursuant to paragraph 1 shall be made binding on the proposing entity.
3. The decision by which the commitment proposal is accepted shall also provide for the termination of the sanctioning proceeding without establishing any infringement.
4. The decision referred to in paragraph 3 shall be communicated to the parties to the proceeding and published on the institutional website, according to procedures that consider any need for confidentiality of data and information.
5. Should the enterprise infringe the commitments made or should the decision of eligibility be based on incomplete, incorrect, or misleading information provided by the proposing entity, the Authority shall restart the sanctioning proceeding according to the ordinary procedures and initiate a further sanctioning proceeding resulting from the aforesaid infringement.

## Art. 19 — Dismissal of the commitment proposal

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1. As a result of the statement of non-eligibility, inadmissibility, or non-acceptance, the commitment proposal is dismissed and the sanctioning proceeding shall continue.
2. Following the communication of the dismissal, the procedural time limits referred to in Article 8 shall start again, except for the provisions of paragraph 3 thereof.
3. If, following the dismissal of the commitment proposal, the person against whom the proceeding is brought, submits a further commitment proposal, the latter shall be declared barred from further proceeding by the person in charge thereof. The submission of a commitment proposal that is barred from further proceeding shall not start new time limits.
4. Where several objections have been raised in the decision to initiate the proceeding and the commitment proposal is only partially eligible, admissible, or acceptable, the commitment proposal is dismissed, in accordance with the preceding articles, with regard to the part that cannot be positively assessed. With respect to the objections under the dismissed commitments, the proceeding shall continue in accordance with the provisions of this article.

## TITLE V — THE DECISION-MAKING STAGE

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### Art. 20 — Conclusion of the inquiry stage

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1. At the end of the inquiry stage, having assessed the documents relevant to the proceeding, the Office may:

- a) propose the Board to dismiss the proceeding if it considers that the factual or legal prerequisites for imposing sanctions are not met;
  - b) subject to the authorisation of the Board, inform the parties of the findings of the inquiries if, on the contrary, it considers that the conditions for imposing sanctions are met.
2. The communication of the findings of the inquiries contains a short description of the outcome of the proceeding, without anticipating the calculation of the penalty, and informs the person against whom the proceeding is brought about the possible actions referred to under article 8 (6).

#### Art. 21 — Further inquiries for sanctioning purposes

1. Where it is necessary to obtain documents, information, clarifications, or further useful evidence for the purpose of quantifying the penalty, the person in charge of the proceeding may request any person who may hold such information and documents to provide them. The provisions referred to under article 10 of these rules of procedure shall apply, *mutatis mutandis*, to such inquiries.

#### Art. 22 — Final hearing before the Board

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1. The final hearing shall take place before the Board on the date which is communicated to the applicants with at least ten days' notice.
2. The hearing of the applicants by the Board may take place separately or jointly. In the latter case, account shall be taken of any confidentiality requirements that may have been expressed by the applicants.
3. The parties entitled thereto may participate through their legal representative or attorney producing evidence of his/her power to act as a representative. They may be assisted by confidential advisers, but the exercise of this power shall not imply a postponement of the hearing.
4. The hearings before the Board shall be subject to the provisions of Article 11, *mutatis mutandis*.

#### Art. 23 — Final measure

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1. Following the inquiries or hearing, if any, referred to in Article 22, the Board shall adopt the final decision or request the office to carry out additional verifications, specifying the information to be obtained. In the latter case, the Board may extend the deadline for the conclusion of the proceeding and the Office, following the requested insights, shall proceed pursuant to the provisions of Article 20 of these rules of procedure.
2. The final decision includes the matters of fact and of law underpinning the decision, as well as the time-limit for appeal and the authority to appeal.
3. The final decision shall be notified by the person in charge of the proceeding to the person against whom the proceeding is brought, communicated to all parties in the proceeding and published on the institutional website.
4. Where there is evidence that the infringement is still ongoing, the final measure may also contain, in the cases provided for by the legislation in force, an order to cease the infringement and any appropriate

restoration measures. The power referred to in this paragraph is not terminated on the basis of the payment of the reduced penalty.

## TITLE VI — CALCULATION OF THE SANCTION

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### Art. 24 — Time limits for payment of sanctions

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1. The pecuniary sanction shall be paid within 30 days of the date of notification of the final decision.
2. After expiry of the period referred to in paragraph 1, for a delay of less than six-months, interest on late payment shall be payable at the statutory rate.
3. In the event of further delay in performance, pursuant to Article 27 (6) of Law No. 689/1981, the amount due for the sanction imposed shall be increased by one tenth for each six-month period from the day following the expiry of the payment deadline until the date on which the receivables are transferred to the concessionaires for collection; in that case, the surcharge includes interest on late payment accrued in the same period.

### Art. 25 — Quantification of sanctions

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1. The amount of the pecuniary administrative sanctions is established on the basis of the guidelines adopted by the Authority, within the legislative framework identified by the legislator and in accordance with the criteria referred to in article 11 of Law No 689/1981.

## TITLE VII — FINAL PROVISIONS

### Art. 26 — Communication

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1. In the context of the proceedings governed by these rules of procedure, all communications shall be transmitted to the Authority with one of the following procedures:
  - a) certified e-mail;
  - b) registered post with acknowledgement of receipt;
  - c) hand-delivery against receipt.
2. The Authority shall make the communications falling under its competence in the manner set forth in paragraph (1) (a) and (b).
3. In the event that, due to the large number of addressees or to the difficulty of finding them, it proves impossible or particularly burdensome to comply with the communication procedures set forth in paragraph 2, the Board may decide, in the deed to be notified, that the communication burden be discharged through publication on the institutional website alone, without prejudice to the possibility, as a supplementary measure and for the purpose of greater dissemination, of advertising in two national daily newspapers or in the Official Gazette within the limits of budget allocations.

## Art. 27 — Professional secrecy

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1. Any information obtained in relation to the proceedings referred to in these rules of procedure are covered by the obligation of professional secrecy and may be used only for the exercise of the powers conferred on the Authority by law, without prejudice to the notification, reporting and cooperation obligations laid down by law.

## Art. 28 — References

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1. Except as otherwise expressly provided for in these rules of procedure, reference is made to the provisions of Law No. 241 of 8 August 1990, where applicable, Law No. 481 of 14 November 1995 and Law No. 689 of 24 November 1981.