

# **Focus on employers' new obligation to report the identity of employees who commit road traffic offenses**

**Since January 1, 2017, employers have the obligation to report to the competent authorities the identity of employees who commit certain types of road traffic offenses whilst driving a company car, failing which penalties will be applied.**

**How is this new rule enforced in practice and what are the actual implications of this new obligation?**

## **The new reporting obligation introduced by the reform**

Before the reform brought about by the Law of November 18, 2016<sup>[1]</sup>, employers used to pay the fines imposed in connection with road traffic offenses committed by their employees driving a company car. Employees thus remained unpunished as they escaped the loss of points on their driving license and did not have to pay any fine.

Article L. 121-6 of the French Road Rules and Regulations henceforth imposes on employers the obligation to report the identity of employees who commit the road traffic offenses targeted by the reform whilst driving a company car.

Employers are released from this obligation only in case of force majeure, theft of the company car or car number plate cloning.

As such, employees become liable for road traffic offenses, as listed hereafter, committed during their business travels and now assume the criminal consequences of their driving behavior.

## **The road traffic offenses targeted by the reform**

Article L.121-6 of the French Road Rules and Regulations targets exclusively the offenses recorded “*as per the terms stated in Article L.139-9 [of said Rules and Regulations]*”, i.e. offenses recorded “*by or from automated control devices*”. Based on these provisions, it seems that the obligation to report does not apply to road traffic offenses recorded by an officer in a handwritten traffic ticket.

In addition, Implementing Decree of December 28, 2016<sup>[2]</sup> provides an exhaustive list of the relevant offenses<sup>[3]</sup>, such as exceeding the maximum allowed speed limits, not complying with traffic signs requiring vehicles to stop, or using a hand-held phone.

### **The procedure**

The employer has the obligation to report to the *Agence Nationale du Traitement Automatisé des Infractions* (National Agency for Automated Offence Processing or “ANTAI”) the identity and address of the employee who was driving the car.

The employer has 45 days from the date of dispatch or delivery of the traffic ticket to report the identity of the employee (i) by registered letter, return receipt requested, together with the form annexed to the traffic ticket, or (ii) directly online on the website [www.antai.fr](http://www.antai.fr).

### **Penalty for non-compliance**

If the employer fails to report the identity of the employee, it must not only pay the fine imposed for the offense committed by its employee but it is also liable to the payment of a fine for so-called class 4th offenses (i.e. a fine up to 750 euros for an employer who is a natural person and 3,750 euros for an employer that is a legal entity).

In its written opinion dated February 15, 2018<sup>[4]</sup>, the French Ministry of Justice specified that, in accordance with the principle of criminal liability of legal persons for offenses committed for their benefit by any of their bodies or representatives, the ticket for failing to report the identity of the driver ought to be sent to legal entities.

As such, the employer that is a legal entity has every interest in reporting the identity of employees who commit road traffic offenses whilst driving a company car since the financial penalty incurred can be quite heavy, especially in case of multiple non-reportings, and entail heavy costs for medium- and small-businesses.

### **The shortcomings of the reform**

The purpose of the reform is to improve road safety and increase the accountability of employees driving

company cars.

It is perhaps regrettable, however, that employers have not been given more time to adapt to the new rules. It may indeed have allowed companies that make company cars available for a collective use by their employees to implement a system to clearly identify the various drivers.

Worst, the reforms seems to impose on the employer the obligation to report the identity of the road traffic offender exclusively during the 45-day timeline, not after the expiry thereof.

Indeed, based on applicable provisions, once this 45-day timeline has lapsed, it seems that the employer may no longer regularize the situation and must simply pay the fine without having to report the identity of the road traffic offender.

As a result, if the obligation to report the identity of the road traffic offender vanishes once the fine has been paid, this implies that employers retain the possibility to choose not to report the identity of an employee, for example if the latter risks losing his/her driving license.

In other words, it seems that the twin goals of improving road safety and increasing the accountability of employees driving company cars has not been fully achieved yet.

[1] Law n° 2016-1547 of November 18, 2016 for the modernization of justice in the 21<sup>st</sup> century.

[2] Decree n° 2016-1955 of December 28, 2016 concerning the implementation of the provisions set forth in Articles L.121-3 and L.130-9 of the French Road Rules and Regulations.

[3] Exceeding the maximum allowed speed limits; not complying with traffic signs requiring vehicles to stop; using a hand-held phone; not wearing a seatbelt; over speeding; using lanes and road surfaces reserved for certain categories of vehicles; not complying with safety distances; crossing or driving on a white lane; not complying with rules governing overtaking; driving in a reserved lane; stopping, parking or driving on hard shoulders; driving with no insurance certificate; and, for two-wheeled vehicles, not wearing an approved helmet.

[4] Written question n°01091 asked by Mr. Jean Louis Masson (Moselle - NI) published in the Official Journal of the Senate dated August 31, 2017, page 2746, and Response from the Ministry of Justice published in the Official Journal of the Senate dated February 15, 2018, page 679.

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