THE MORE FAVORABLE CONTRAVENTION LAW IN THE CONTEXT OF RO-E-TRANSPORT: CHALLENGES AND CRITICAL CONSIDERATIONS

Narcisa-Victoria DĂRĂBAN*

Abstract

The year 2024 was an extremely dynamic one regarding the changes made to the GEO no. 41/2022, which establishes the national system for monitoring road freight transport, RO-e-transport, particularly concerning the sanctioning regime.

The achievement of the system's goal to monitor the transport of goods, prevent tax evasion, increase tax and fee collection, and combat illicit trade, led tax control authorities, encouraged by the regulatory framework, to adopt an abusive approach in terms of the contravention sanctions imposed.

Courts across the country have been dealing with complaints based on GEO no. 41/2022, with petitioners criticizing the sanctions applied in terms of their proportionality. From the concept of the more favorable contravening law to decontraventionalisation and constitutional exceptions, judicial discussions have been, and continue to be, extensive, sparked by the application and adherence to the rules imposed by the RO-e-transport system.

This article aims to review the main modifications to art. 13 of GEO no. 41/2022, which regulates contraventions related to the monitoring of road freight transport under RO-e-Transport, provide an analysis of the current judicial practice, and offer critical considerations regarding the applicable regulatory framework.

Keywords: *more favorable law, transport, contravention, complementary, sanction, goods.*

1. Introduction

The Romanian legislator has made and continues to make efforts to align with the digitalization era. In this regard, several normative acts, orders, and implementation norms have been adopted in recent years, integrating technology into the process of law enforcement.

One such normative act is GEO no. 41/2022, published on April 8, 2022[1], which aimed to implement and operationalize an IT system for monitoring the transportation of goods by interconnecting with the systems owned by the Ministry of Finance (RO e-Invoice and Traffic Control). The goal was to increase the collection rate of taxes and duties owed to the state budget, as well as to prevent and combat illicit trade, tax evasion, and fraud.

Through this legal framework, the legislator sought to create an obligation to declare in the RO e-Transport System data regarding the sender and recipient, the name, characteristics, quantities, and value of the transported goods, the loading and unloading locations, details about the transport vehicle used, and the generation of a UIT code[2].

2. Content

According to art. 11 of GEO no. 41/2022, users required to generate the UIT code[3] may perform this operation electronically up to three calendar days before the declared start date of the transport, but no later than the moment the vehicle reaches the road border crossing point upon entering Romania or the import location, or the actual movement of the vehicle, as applicable. The UIT code is valid for five calendaristic days.

* PhD Candidate, Faculty of Law, „Nicolae Titulescu" University of Bucharest (e-mail: daraban.narcisa@gmail.com).

[1] Published in the Official Gazette of Romania no. 356/11.04.2022.

[2] Art. 2 point 11 defines the UIT code as „the unique code generated by the RO eTransport System through which the data related to a batch of goods is identified".

[3] The transport management software application is available in the Virtual Private Space IT system, in accordance with Order no. 1337/1268/2024 approving the Procedure for the use and operation of the national system for monitoring the transport of goods RO e-Transport, published in the Official Gazette of Romania no. 597/27.06.2024.

Additionally, art. 1 para. (4) of Order no. 1337/1268/2024, which approves the Procedure for the Use and Operation of the National System for Monitoring Goods Transport (RO e-Transport)[4], states that the categories of road vehicles subject to monitoring in the RO e-Transport System are those with a maximum permissible technical mass of at least 2.5 tons, loaded with goods exceeding a gross total mass of 500 kg or a total value exceeding 10,000 RON, related to at least one batch of transported goods.

To enforce this ordinance, Order no. 802/2022 of the President of the National Agency for Fiscal Administration (ANAF)[5] was issued. This order details which goods are considered high fiscal risk goods, making them subject to the obligation of UIT code generation. Among the eight categories of goods listed in the order are vegetables and fruits, construction materials (stone, cement, lime), clothing and metals (iron, steel).

In 2024, discussions took place regarding expanding this list[6] to include products covered by Order no. 12/2022, which establishes high fiscal risk products traded in B2B relationships. A public consultation project was published[7] proposing to merge the two orders, with the new provisions set to come into force on July 1, 2024.

Despite the project being available on ANAF's website until May 17, 2024, the consultation deadline, the order was neither amended nor supplemented.

Considering the particularities of this entire legal framework and the crucial importance of compliance, the legislator established a distinct sanctioning framework for this ordinance, which stipulates that violations of the ordinance constitute contraventional offenses, and the violation of the obligation to declare data in the RO e-Transport system for international goods transport, making them identifiable via the UIT code, constitutes a contravention and is liable to a fine ranging from 10,000 RON to 50,000 RON for individuals or from 20,000 RON to 100,000 RON for legal entities, along with the confiscation of undeclared goods.

Furthermore, art. 14 para. (2) of GEO no. 41/2022 states that the provisions of GO no. 2/2001 on the legal regime of contraventions apply to the offenses covered by this legal framework.

The discussions that this paper aims to initiate and analyze focus strictly on the sanctioning regime of offenses that constitute or have constituted contraventions, particularly regarding the complementary sanction of confiscation.

Thus, upon the entry into force of GEO no. 41/2022, art. 13 stipulated that the complementary sanction of confiscation was imposed regardless of the type or severity of the offense, the amount of the fine, or the circumstances, as long as there was a violation of the ordinance. This effectively made confiscation a fixed sanction.

As a result, numerous situations arose in which enforcement officers issued reports for violations of art. 13 of GEO no. 41/2022, applying the primary sanction of a warning alongside the complementary sanction of confiscation, sometimes leading to confiscations worth hundreds of thousands of euros.

For a better understand of the legal framework and its amendments, a brief chronological analysis is necessary.

In its initial form, art. 13 para. (2) of GEO no. 41/2022, established the sanctioning regime for the offenses listed in paragraph 1, stated: „The contraventions provided in para. (1) letters a) and b) are punishable by a fine ranging from 10,000 RON to 50,000 RON for individuals or from 20,000 RON to 100,000 RON for legal entities, as well as the confiscation of the value of undeclared goods."

Subsequently, on December 14, 2023, through GEO no. 115/2023[8], art. LXXIV point 21, a new article – art. 131 – was introduced after art. 13 of GEO no. 41/2022. It introduced new contraventions [failure to comply with art. 9 para. (3); failure of the transport vehicle driver to comply with art. 83; and failure of the transport operator to comply with art. 82] while maintaining the sanctioning regime.

Additionally, through art. LXXV of the same GEO no. 115/2023, it was established that the new provisions would take effect on July 1, 2024, at which time art. 13 of GEO no. 41/2022 would be repealed.

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[4] *https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF_1337_2024.pdf*, accessed on 01.03.2025.

[5] *https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF_802_2022.pdf*, accessed on 01.03.2025.

[6] The request to expand the list arose as a result of requests made by the National Sanitary Veterinary and Food Safety Authority (for edible products of animal origin), as well as control actions carried out by the General Directorate of Fiscal Anti-Fraud (regarding tobacco, fuels, and soap).

[7] *https://e-consultare.gov.ro/w/2024/04/proiect-de-ordin-pentru-modificarea-si-completarea-anexei-la-ordinul-nr-802-2022-privind-stabilirea-bunurilor-cu-risc-fiscal-ridicat-transportate-rutier-care-fac-obiectul-monitorizarii-prin-sistemul/*, accessed on 02.03.2025.

[8] Published in the Official Gazette of Romania no. 1139/15.12.2023.

As a result of a wave of contravention complaints targeting this regulation, filed due to its almost devastating impact on the economic stability of small transport companies and freight forwarding houses, GEO no. 43/2024 was adopted on April 30, 2024, amending and supplementing certain normative acts[9]. This ordinance introduced a new paragraph, (2^1), within art. 13 and 13^1, which provided an exception stating that the complementary sanction of confiscation would not apply in cases where violations were established through subsequent verifications after the completion of road transport operations, provided that the transported goods were recorded in the supporting documents forming the basis of accounting records, as well as in the accounting of the users concerned, during the relevant period.

All these legislative changes culminated on November 21, 2024, with the adoption of GEO no. 129/2024[10], which established that the complementary measure of confiscating the value of undeclared goods would be applied progressively, depending on the number of contraventions committed. As a result, para. (2) of art. 13^1 was modified, and para. (2^1) of art. 13^1 was repealed.

Among other modifications, five new paragraphs were introduced in art. 13^1 of GEO no. 41/2022, stipulating that if an economic operator commits a first offense, the sanction of confiscation cannot be applied. Confiscation would become applicable only from the second recorded contravention.

Under a gradual assessment approach, the new provisions stipulated that if an economic operator commits a second contravention, the confiscation would amount to 15% of the value of undeclared goods. If a third contravention occurs, the confiscation would be 50% of the value of undeclared goods, while a fourth contravention would lead to 100% confiscation of the value of undeclared goods.

Additionally, para. (9) of art. 13^1 maintained the exemption from the application of confiscation when violations were established through subsequent verifications after the completion of road transport operations, provided that the transported goods were recorded in supporting accounting documents.

To implement these legal provisions, the National Center for Financial Information was required to provide enforcement officers[11] with an electronic registry for centralized tracking of the sanctions applied under this emergency ordinance.

Thus, it can be stated that the Romanian legislator was responsive to objective criticisms regarding the disproportionality of art. 13 and introduced conditions for the application of confiscation measures.

These legislative changes have not gone unnoticed in court practice. Given the principle of the retroactive application of the more favorable contravention law, as enshrined in art. 15 para. (2) of the Romanian Constitution[12], courts have started to annul reports of contravention findings and sanctioning decisions regarding the complementary sanction of confiscating the value of undeclared goods.

Considering this legislative evolution and the fact that the failure to generate a UIT code constitutes a contravention, it is relevant to note that, according to the ECtHR, a contravention may be regarded as a „criminal charge". As a result, for all contraventions under judicial review after April 30, 2024, the principle of applying the more favorable law will prevail.

In this context, the notion of a more favorable contravention law is found in art. 12 of GO no. 2/2001 on the legal regime of contraventions, which states: „(1) If an act is no longer considered a contravention under a new normative act, it will no longer be sanctioned, even if it was committed before the new normative act came into force. (2) If the sanction provided in the new normative act is lighter, the more favorable sanction will be applied. If the new normative act provides for a harsher sanction, the contravention committed before its entry into force will be sanctioned according to the provisions of the normative act in force at the time of its commission." Additionally, art. 14 of GEO no. 41/2022[13] expressly states that its provisions are supplemented by the general legal framework for contraventions. Analyzing art. 12 of GO no. 2/2001, two distinct situations emerge: decontraventionalisation of the offense[14] and the application of a more lenient sanction.

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[9] Published in the Official Gazette of Romania no. 409/30.04.2024.

[10] Published in the Official Gazette o Romania no. 1124/11.11.2024.

[11] According to art. 14 para. (1) of GEO no. 41/2022, persons authorized within the ANAF, the Romanian Customs Authority, as well as police officers and agents within the Romanian Police, have the status of constables for violations provided by the ordinance.

[12] According to this text: „The law applies only for the future, with the exception of the more favorable criminal or contravention law".

[13] Published in the Official Gazette of Romania no. 410/25.07.2001.

[14] We agree with the authors who propose this term instead of the term „decriminalization" – see, in this regard, M. Ursuța, *Decontravenționalizarea și aplicarea legii contravenționale mai favorabile. Aspecte teoretice și practice*, in Dreptul no. 8/2020, Union of Jurists of Romania, Bucharest, 2020, pp. 100-101.

Regarding the first thesis of the analyzed article, we note that if the law states that an act is no longer considered a contravention under a new normative act, it is no longer punishable, even if it was committed before the new normative act came into force (the situation of decontraventionalisation).

Decontraventionalisation produces effects for the future starting from the moment the new normative act comes into force; therefore, the effects produced under the previous legal framework cease from the date the new normative act is issued[15].

As for the notion of decriminalization of contraventions, legal doctrine is not unified, with different opinions being expressed regarding the underlying situation that constitutes this hypothesis. In this respect, some authors consider that this institution applies when the old law has no equivalent in the new one[16], while other authors argue that it refers both to the absence of a corresponding incrimination and to the modification of the incrimination's content[17]. The latter opinion is the most widely spread and embraced by both practitioners and theorists.

The second thesis of art. 12 of GO no. 2/2001 provides that if the sanction stipulated in the new normative act is lighter, the more favorable sanction will be applied. Conversely, if the new normative act imposes a harsher sanction, the contravention committed before its entry into force will be sanctioned according to the provisions in force at the time of its commission (the principle of the more favorable contravention law)[18].

Both practice and doctrine consistently hold that the more favorable law applies retroactively if the change in legislation occurred between the time of the contravention and the full execution of the sanction. There is no interest, in terms of this institution, in situations where the sanction has already been executed[19].

It is important to mention that the assessment of the more favorable contraventional law will be carried out based on the legal and judicial individualization criteria of complementary sanctions. This involves considering the conditions for determining contraventions, liability conditions, and contraventional sanctions, as well as clauses for mitigation or aggravation of sanctions and the methods for their execution[20].

When analyzing the applicability of the more favorable contraventional law, it is extremely important for the legal practitioner conducting the comparison to choose one of the two conflicting laws in its entirety, without combining elements from both, thereby creating a lex tertia. As such, it is prohibited to select the main sanction from one law and the complementary sanction from another.

In applying these legal texts and previously, courts across the country[21] have started to enforce art. 15 para. (2) of the Romanian Constitution and art. 12 para. (2) of GO no. 2/2001.

Furthermore, courts took into account Decision no. 112/2014[22], in which the Constitutional Court explicitly referred to the consequence of non-enforcement of a contravention sanction when the sanction has been repealed: „The Court has ruled that the effects of the new law apply to all contravention sanctions imposed and

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[15] M.A. Hotca, *Regimul juridic al contravențiilor. Comentarii și explicații*, 4th ed., C.H. Beck Publishing House, Bucharest, 2009, p. 229.

[16] V. Dongoroz, *Drept penal*, Bucharest Publishing House, 1939, p. 83.

[17] C. Barbu, *Aplicarea legii penale în spațiu și timp*, Științifică Publishing House, Bucharest, 1972, p. 200.

[18] A. Tabacu, *Despre aplicarea legii contravenționale mai favorabile*, in Revista Română de Jurisprudență no. 3/2022, Universul Juridic Premium no. 8/2024, available online at: *https://lege5.ro/Gratuit/ge2tinrxhezts/despre-aplicarea-legii-contraventionale-mai-favorabile*, accessed on 03.03.2025.

[19] O. Podaru, R. Chiriță, I. Păsculeț, *Regimul juridic al contravențiior. O.G. nr. 2/2001 comentată*, 4th ed., Hamangiu Publishing House, Bucharest, 2019, p. 148.

[20] M.A. Hotca, *op. cit.*, p. 234.

[21] Through sent. no. 810/2025, pronounced by the Court of Sector 2 Bucharest (available at: *https://www.rejust.ro/juris/98e5d3964*, accessed on 04.03.2025), the court held that the petitioner was a first-time offender, and that art. 13^1 para. $(2)^1$ of GEO no. 41/2022 was repealed. The complementary sanction of confiscation applies only under the conditions regulated in paragraphs 5-9 of the legal act, thereby removing the complementary sanction of confiscating the sum of 84,652 lei. Similarly, the Court of Timișoara, through sent. no. 1349/2025 (available at: *https://www.rejust.ro/juris/7283e57de*, accessed on 04.03.2025), applied the new form of the provisions of art. 13^1 para. $(2)^1$ of GEO no. 41/2022, which constitutes a more favorable contravention law, holding that the sanction applicable for the contravention found in the petitioner's case is only the fine, thus removing the complementary sanction of confiscating the value of the undeclared goods, specifically the sum of 119,300 lei.

Through sent. no. 4979/2024, pronounced by the Court of Cluj-Napoca (available at: *https://www.rejust.ro/juris/98gg238g7*, accessed on 04.03.2025), the court noted the exception to the rule of confiscation, stating that confiscation does not apply in cases where findings result from checks carried out after the completion of the road transport of goods, when these were recorded in the supporting documents that form the basis of the accounting entries, as well as in the users' accounting records. As a result of applying the more favorable contravention law, the court removed the complementary sanction of confiscating the sum of 164,003 lei.

For more analysis focused on judicial practice in the field, see C.F. Costaș, *Și dacă uit să emit UIT în sistemul RO eTransport, se aplică legea penală mai favorabilă*, available at: *https://www.juridice.ro/758129/si-daca-uit-sa-emit-uit-in-sistemul-ro-etransport-se-aplica-legea-penala-mai-favorabila.html*, accessed on 04.03.2025.

[22] Published in the Official Gazette of Romania no. 309/25.04.2014.

not yet executed by the date of its entry into force. Limiting the application of the new law, which no longer stipulates or sanctions the offense, only to the situation of not imposing the sanction would amount to distorting the legislator's intent regarding the effects of the decriminalizing law on sanctions that were imposed and not executed before the new act entered into force, in the sense that such sanctions shall no longer be enforced".

Additionally, CCR dec. no. 228/2007[23] must also be considered. Regarding the provisions of art. 12 para. (1) of GO no. 2/2001, the Court ruled that: „The phrase 'shall no longer be sanctioned' must be understood to mean that, upon the entry into force of the law that no longer classifies the act as a contravention, contravention sanctions shall no longer be applied. In the case of sanctions already imposed but still in the process of enforcement at the time of the new law's entry into force, such sanctions shall no longer be enforced".[24]

Despite the correct rulings[25] granting partial approval of contravention complaints, some court justifications are rather brief, as courts find themselves confused about which legal concept applies in the given case – whether it is decriminalization or the application of a more favorable law.

For example, in sent. no. 220/2025, dated January 23, 2025, issued by the Târgu Mureș District Court, the following reasoning was provided: „Considering that between the time the sanction was imposed and the time of its enforcement, decriminalization has occurred regarding the application of the complementary sanction for the scenario under review." A similar argument appears in sent. no. 224/2025, dated February 11, 2025, issued by the Sighișoara District Court[26].

We believe that, in light of the new legal provisions, the legislative amendment constitutes a more favorable contravention law regarding the complementary sanction. This does not, in any way, pertain to a law decontraventionalisation the act itself, as the amendments have only established a more lenient sanctioning regime for offenders in concrete terms, rather than eliminating the contravention defined under the previous law[27].

Moreover, it is important to emphasize that the mechanisms for applying these two legal concepts are different. In the case of decontraventionalisation, the court no longer conducts a judicial examination of the facts presented for trial. Conversely, in the case of the application of a more favorable law, before reaching such a conclusion, the court must verify both the legality of the contravention report and whether the material legal conditions for holding the offender accountable are met. Only after completing these two steps can the court „soften" the sanctioning regime[28].

Even though courts have issued correct rulings in the cases before them – regardless of the reasoning provided – judicial practice reveals that enforcement officers frequently fail to give effect to the provisions concerning cases in which confiscation of goods should not be applied. For instance, during post-transport inspections, enforcement officers often disregard the fact that the transported goods were recorded in the economic operators' accounting records. In an outright absurd manner, they argue that the new legal amendments should not be applied on the grounds that the contravention was identified and sanctioned at the time of transport, at the Border Crossing Point when entering Romania, rather than afterward, at a later date, in the context where the contested contravention report was issued following an ex post facto audit, based on documents submitted by the contravener (import customs declaration, invoices, and receipt notes) and queries made in ANAF's specific databases (fiscnet.ro/NEXUS), concerning transports that had taken place five months before the audit[29].

This approach is debatable because the legal provision produces effects *ope legis* and these effects must be acknowledged either by the enforcement agent or by the court[30].

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[23] Published in the Official Gazette of Romania no. 283/27.04.2007.

[24] Prior to the issuance of this decision, legal doctrine expressed criticism regarding the legislative text, which explicitly referred solely to the imposition of the sanction, without addressing its enforcement. The interpretation rendered by the Constitutional Court was both long-awaited and strongly desired by legal practitioners—see, in this respect, O. Podaru, R. Chiriță, I. Păsculeț, *op. cit.*, p. 144.

[25] Given the recent changes, these cases have not yet been submitted to the judicial review court, and it remains to be seen what position ANAF will take in this context – whether or not it will exercise the right to appeal.

[26] Available at: *https://www.rejust.ro/juris/de82g3457*, accessed on 04.03.2025.

[27] If we analyze the legal texts in detail, we could even assert that new acts have actually been added, which are considered to be contraventions.

[28] M. Ursuța, *op. cit.*, p. 110.

[29] Case no. 1151/177/2024 pending before the Court of Aleșd, concerning a complementary sanction of confiscation of the sum of 490,760 lei.

[30] M. Ursuța, *op. cit.*, p. 109.

Beyond these considerations, in addition to issues regarding the application of the more favorable law—given the uncertainty of the legislative framework and without anticipating the numerous legislative changes—it is also important to mention that certain cases involved challenges to the constitutionality of art. 13 para. (2) of GEO no. 41/2022[31]. Petitioners argued that it restricted the right to property, as recognized by art. 44 of the Romanian Constitution and art. 1 of Protocol no. 1 of the ECHR, thereby violating the constitutional provisions set forth in art. 53 para. (1), and art. 115 para. (6) of the Romanian Constitution.

Thus, on November 6, 2023, case no. 2984D/2023[32] was registered before the Constitutional Court, referred by the Brașov District Court (case no. 6346/197/2023[33]). The court is set to analyze the provisions of art. 13 para. (2) of GEO no. 41/2022[34] in the version in force at the time of the offense, in relation to art. 21 para. (1), (2), and (3), art. 24 para. (1), art. 53, and art. 56 para. (2) of the Romanian Constitution, as well as art. 6 para. 1 ECHR. According to the information available on the Constitutional Court's website, the case is currently in the reporting phase. However, given the extensive legislative amendments that have taken place, we believe there is a high probability that the Constitutional Court may determine that there is no longer a basis for reviewing the exception and may dismiss it as inadmissible. Alternatively, the Court may find that there is no longer a conflict between the amended text and constitutional provisions.

Regardless of the Court's decision, we consider the arguments leading to this referral to be well-founded, as there have been multiple rulings from the constitutional court regarding the complementary sanction of asset confiscation. In dec. no. 661/2007[35], the Court ruled that: „The measure affects the very existence of the right to property, as it results in the owner's deprivation of their legally acquired asset."

Furthermore, in dec. no. 197/2019[36], the Court found that: „The measure of confiscation constitutes a deprivation of property, meaning a complete and definitive expropriation of an asset, with the owner no longer having the ability to exercise any of the attributes conferred by the property right they previously held. It is not merely a limitation of property rights."

Thus, in line with the Constitutional Court's consistent jurisprudence, the complementary sanction of confiscation, as provided for under the general contravention law (GO no. 2/2001), constitutes a measure depriving an individual of property. This measure involves the restriction of private property rights over a specific asset that was used, intended for use, or resulted from the commission of a contravention, and it must be applied to fulfill the preventive and educational purpose of contravention sanctions.

A uniform practice of the Court would compel the legislator to more thoroughly analyze the intention behind introducing such a sanction into any legal framework.

Now, setting aside the multiple legislative amendments and the referral to the Constitutional Court, we believe that even if the legislator had not intervened regarding the complementary sanction of confiscation, the courts would still have been able to assess the proportionality of this sanction and order its removal based on art. 5 and art. 21 para. (3) of GO no. 2/2001. This is because HCCJ dec. no. 5/2021[37] – which states that a court handling a contravention complaint against a contravention report cannot examine the proportionality of this complementary sanction – applies only in the field of traffic law.

By interpreting dec. no. 5/2021 *per a contrario*, it follows that whenever a complementary sanction is applied outside the scope of traffic legislation, the court handling the contravention complaint has the authority to examine the proportionality of that complementary sanction.

Furthermore, a specialized article[38] correctly argues that, while the complementary sanction of suspending the right to drive for a certain period is straightforward, in the case of „confiscation of the equivalent value of transported goods", the initial version of the legal text lacked criteria: on one hand, there were no provisions for

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[31] Sent. no. 220/2025, pronounced by the Court of Târgu Mureș (available at: *https://www.rejust.ro/juris/393g26g68*, accessed on 04.03.2025), concerning the contravention sanction of confiscation of the sum of 224,730 lei.

[32] *https://dosare.ccr.ro/#/CautareDosare*, accessed on 05.03.2025.

[33] Despite this bold referral, on 13.03.2024, the Court of Brașov rejected the contravention complaint filed by the petitioner SC AFAMIA IMPORT EXPORT SRL as unfounded. The appeal stage (a legal remedy exercised by the petitioner, with the hearing scheduled before the Brașov Court of Appeal on 25.04.2025) will reassess the impact of the legislative changes on the case under judgment.

[34] Considering that the contravention complaint subject to the case pending before the Court of Brașov as the referring court was registered on 14.03.2023, the version of the legal text under review will be the initial one, which provided for confiscation as a fixed sanction.

[35] Published in the Official Gazette of Romania no. 525/02.08.2007.

[36] Published in the Official Gazette of Romania no. 438/03.06.2019.

[37] Published in the Official Gazette of Romania no. 608/18.06.2021.

[38] For details, see C. Vlad, A. Ciobanu, *Considerații critice asupra sistemului ro-transport*, available at: *https://www.profit.ro/legal/consideratii-critice-asupra-sistemului-ro-transport-21645648*, accessed on 04.03.2025.

applying this complementary sanction based on the severity of the offense, and on the other hand, there were no clear guidelines for determining the equivalent value of the goods, as their valuation was often arbitrarily established by the control authorities, frequently based on a commercial invoice that did not reflect the actual value of the goods (*e.g.*, manufacturing cost).

3. Conclusions

Overall, the sanctioning system introduced by GEO no. 41/2022 was weak, and the warning sanction, coupled with the mandatory confiscation of the equivalent value of undeclared goods, raised serious concerns.

It is commendable that the Romanian legislator intervened with amendments aimed at introducing greater proportionality in the application of sanctions. The introduction of the principle of gradual enforcement and the exemption of certain situations from sanctions represent significant steps toward a fairer legal framework. However, we believe that the successive amendments to this regulation, which attempted to address the initial deficiencies of the legal framework, were implemented too late and in a fragmented manner.

We hope that the experience of these amendments will serve as a lesson for future drafters of similar legal texts, encouraging them to conduct a thorough and comprehensive analysis of the affected environment before introducing such sanctions. Additionally, they should be prepared to intervene promptly and systematically if negative effects arise, thereby avoiding the creation of a rigid and inconsistent legal framework.

The legislator must remember that contravention norms should establish clear and objective criteria for applying the complementary sanction of confiscation, preventing discretionary valuation of goods and potential abuses by control authorities. This approach would ensure coherence and predictability in the sanctioning regime.

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