

## ***Bijlage 6: English summary***

---

### **Study**

Pro Facto, the bureau for study on public administration and legal advice situated in Groningen, has examined the sanctioning of fare dodgers under the authority of the Research and Documentation Centre of the Dutch Ministry of Justice. The subject of study was not the prevention of fare dodging, but the sanctioning. The formulation of the problem is as follows:

*'Which legal instrument is advisable and feasible in order to sanction fare dodgers in public transport, after the (partial) introduction of the closed boarding regimen in 2008 and what can be learned from other (European) countries?'*

### **ET/BTS**

At the moment, closed and open boarding regimens are used alongside each other in public transport. A closed boarding regimen means tickets will always be inspected before or at entering the vehicle. Both the underground railway system and the major part of the bus system use this regimen. The regimen in the tram system differs per conveyer. Furthermore, regular use is made of boarding inspections, by closing off the platforms and inspecting tickets at the entrance (closed boarding).

From 2008 the ET/BTS-system will be expected to have been introduced in public transport. ET (Electronic Ticketing) is an electronic card, also referred to as chip card. BTS ('Controlled Entrance Stations') comprises the placement of entrance gates at stations. At the complete introduction of both systems, the entire public transportation will be provided with a closed boarding regimen. However, in practise there will never be a closed boarding regimen. The expectations of conveyers about ET/BTS vary. In general, the expectation is shared that the percentage of fare dodgers will become smaller, but notorious fare dodgers will never disappear.

## Sanctioning

The Transportation Act 2000 (Wp 2000) and the Transportation Decree 2000 (Bp 2000) contain the foundations for sanctioning fare dodgers. On this basis, conveyers can take the following measures in the event a passenger is caught travelling without a ticket:

### *Measure 1: no fine or summons, but other 'measures'*

On the basis of article 32 of Wp 2000, conveyers are authorized – proviso approved by the concession granter – to introduce tickets themselves. These tickets can, among other things, be used for passengers who travel without a ticket. Even when this ticket is (substantially) more expensive than a regular ticket, this is not a case of fining or sanctioning. The fare dodger is not served a summons.

### *Measure 2: right to claim (postponement of payment)*

In the case a fare dodger is not willing or able (not able to pay cash) to buy a ticket as meant by measure 1 in situ or in the case the transport company does not offer this possibility, the generally applied sanction is to 'impose a fine'. Article 48, paragraph 2 Bp 2000 lays down that when a valid ticket is lacking, the passenger is *indebted* an amount determined by the minister. This is referred to as a Postponement of Payment (UVB). Currently this amount is €35 plus the fare.

### *Measure 3: collecting right to claim*

On grounds of article 48, paragraph 5 of the Transportation Decree 2000, conveyers are obliged to grant the passenger a week time to pay the fare and the imposed advance – which means the, by the minister determined amount of € 35.

If the passenger does not pay within this period, the conveyer will grant him another opportunity to pay; this time the amount due will be increased with administration charges. These charges are determined by the minister and currently amount to € 10.

### *Measure 4: prosecution*

If the imposed UVB is not settled, criminal prosecution may take place. The foundation for this can be found in article 101 Wp 2000, in which it is determined that in that case it is considered an offence.

To sum up, these are the measures taken by the conveyers that are involved in this study when a passenger does not have a ticket:

| Conveyer      | Measures taken in case of fare dodging                                     | Collection?                               |
|---------------|--|---|
| RET           | Always UVB (€ 35) plus serving of a summons (pv)                           | Collection agency                         |
| NS            | Ticket for train fare (until 1/10/05).                                     | Collection agency                         |
| HTM           | Inspection ticket (€ 20). If not paid, UVB (€ 35) plus pv.                 | Collection agency                         |
| Connexion     | In number of areas: trip ticket (€ 20). If not paid, UVB (€ 35) plus pv.   | Collection agency                         |
| BBA           | UVB (€ 35). Relatively leniently applied (no zero tolerance)               | Collection agency                         |
| Syntus        | UVB (€ 35). Relatively leniently applied (no zero tolerance)               | CJIB (Central Judicial Collection Agency) |
| GVB Amsterdam | Increased fare to the value of UVB (€ 35), no pv. If not paid, UVB and pv. | Collection agency                         |
| NoordNed      | UVB (€ 35) plus pv. zero tolerance policy                                  | No  |

NoordNed and Ns have carried out an experiment with travel injunctions for fare dodgers. This experiment was successful. They had good experiences with this experiment and the travel injunction has been approved by the judge. Thus, a travel injunction can be laid on a fare dodger on the basis of the Transportation Act 2000. Instructions have been compiled for the public transportation companies for travel and residing injunctions in public transport by the Directorate-General of the ministry of Justice.

## Abroad

Other countries that are involved in this study are characterized by different approaches to fare dodging, both preventatively and repressively.

In *England*, where public transport is privatized, maximizing revenues plays an important role. Certain companies, like South Easter Trains, have introduced controlled entrance - by using entrance gates – to the platforms to maximize revenues.

In *Switzerland* the railways apply open entrance to the platforms in combination with traditionally intensive ticket control in the vehicles. By now, regional trains are often driver-only trains and ticket control takes place by means of teams that can be mobilized. Meanwhile, around Basel an experiment using chip cards and controlled entrance to the platforms is said to be in development. The urban transportation companies also know open entrance to the vehicles: tickets need to be purchased beforehand - ticket machines are situated at the stops.

*Denmark* knows open entrance to the platforms. The comparison is limited to the network of urban and regional trains around Copenhagen, the so-called S-trains, where ticket and devaluation machines are placed, just like in the case of the NS, at the entrance to the platforms. In the trains it is not possible to purchase tickets. There is no regular ticket controller. Mobile teams check if each passenger has a valid ticket.

*England* uses a combination of administrative and criminal law to sanction fare dodgers, while in *Switzerland* fare dodging is suppressed by frequent checks and a combination of administrative and criminal law. *Denmark* uses a combination of administrative, civil and criminal law.

### **Civil sanctioning**

Due to the free market system within the sector, public enterprises as well as private companies are, on the basis of granted concessions, active in public transportation. In the current system public transport is not conducted on the basis of legal obligations – which states a number of conditions - but on the basis of gained rights. It is not a matter of commissioning by the government, but of granting concessions. In the case of *granting concessions*, the relevant conveyor obtains in an auction the right of exploitation, for which this conveyor subsequently should be complete responsible.

This raises the question why the regulations related to the payments due (still) are part of the Bp 2000, in view of the introduced market system. If the principle of granting concessions is extended in principle, it is not consequent that the market system in public transportation did not lead to the right to determine a sanction policy (including the amount of fines) by the conveyors themselves.

From the point of view of the market system it is more consequent and, based on principles, fairer to allow conveyors, by means of civil law, to lay down their own sanction policy in their travel conditions. The travel conditions obviously need to be approved by the administrative body under which the conveyor is classified. Often this is a province or intermunicipal administrative body. This way a democratic examination does take place. It is also reasonable that the legislator determines a range, which sets the minimum and/or maximum prize of special tickets.

## **Criminal law as 'last resort'**

From the '*Nationaal Veiligheidsarrangement Spoorvervoer*' ('*National Safety arrangement Rail transport*') it emerges that the Public Prosecutor in principle does not want to prosecute fare dodgers anymore. Also in the viewpoint of the current government, criminal law should be regarded as the last resort. This point of view is a consequent of the consideration of the costs and benefits, but also of the fact that criminal law induces the use of (state) violence, during the investigation as well as during the punishment. The basic assumption that in an ordered, peaceful society the use of violence should be diminished as much as possible implies that the institutional use of violence should also be as limited as possible. Criminal law is therefore not a goal on its own, but the harshest legal remedy that the state can use when norms are violated.

This does of course not mean that fare dodging will be allowed. Non-paying fare dodgers can often be prosecuted for other offences besides fare dodging (article 70 Wp 2000). Often they commit other offence at the same time. Aggression or violence may play a role. Fare dodgers who are not able to identify themselves could be prosecuted for this fact.

A non-paying fare dodger who does not use violence, identifies himself neatly and also does not commit any other offences should not be left undisturbed. When fare dodgers from this category repeatedly do not pay the UVBs, prosecution could be an option (article 325a Criminal Code).