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EUROPEAN COMMISSION

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294 (6) of the Treaty on the Functioning of the European Union

concerning the

**Council's position at first reading on a proposal for a Directive of the European
Parliament and of the Council facilitating cross-border enforcement in the field of road
safety**

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1. BACKGROUND

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| Date of transmission of the proposal to the EP and the Council COM(2008) 151 final – 2008/0062(COD) | 19/03/2008 |
| Date of the opinion of the European Economic and Social Committee: | 17/09/2008 |
| Date of the opinion of the European Parliament, first reading: | 17/12/2008 |
| Date of adoption of the position of the Council: | 17/03/2011 |

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The objective of the Commission's proposal is to improve road safety by establishing a system of information exchange between the State of offence and the State of registration on the most serious road safety infringements. It serves to identify the vehicle owner who has committed an offence in a Member State other than the one where his vehicle is registered; the Member State of offence would then be in a position to prosecute and sanction him.

The offences covered by the proposal are speeding, non-use of a seatbelt, failing to stop at a red traffic light and drink-driving. These traffic offences are responsible for the greatest number of road accidents and fatalities.

The text also defines the exchange procedures (data, responsible authorities and network) and provides for a model notification letter that will be sent to the holder of the registration certificate. The Commission proposal covers the establishment of an EU network for this exchange of information, which would include the relevant interfaces with existing systems/networks.

3. COMMENTS ON THE COUNCIL'S POSITION

3.1 General comments on the Council's position

Regarding the substance of the Council's position, in general the text will facilitate the cross-border exchange of information on road safety traffic offences and can meet the Commission's main objectives in terms of ensuring a high level of protection for all road users in the EU. The adopted text contributes to the fulfilment of the new policy orientations on road safety adopted by the Commission for the period 2011-2020, more particularly as regards the strategic objective concerning the increased enforcement of traffic rules. It is expected to have a strong deterrent effect, by encouraging all drivers to respect traffic law.

The primary objective of the Commission's proposal was to establish an information exchange enabling the identification of the vehicle owner who has committed an offence in a Member State other than the one where his vehicle is registered. This objective has largely been achieved in the Council's position at first reading, although the architecture of the information exchange initially proposed by the Commission provided for the establishment of an EU network for the purpose of the Directive, which is not the case in the Council's position.

The second main objective followed by the Commission in its proposal is related to the follow-up given to the identification of the offender, once the information is available. This objective appears only partly met in the Council's position at first reading and the Commission believes that there is room for strengthening the text on this aspect, building upon the relevant EP amendments made in first reading.

With regard to the choice of the legal basis, the Commission considered that from a legal and institutional perspective the "police cooperation" legal basis (Article 87 paragraph 2) does not constitute the appropriate legal basis for this Directive. Against this background, the Commission entered a statement to the Council minutes reserving its right to use all legal means at its disposal (see point 4). The Commission also noted that there was unanimity in the Council on the "police cooperation" legal basis.

3.2 Detailed Commission comments

3.2.1 Substance of the Council's position

The Council decided to extend the list of offences covered by the Directive. In addition to the so-called "four killers" (speeding, non-use of a seatbelt, failing to stop at a red traffic light and drink-driving), the list now also includes other offences, such as driving under the influence of drugs. The Commission welcomes this expansion of the scope of the instrument.

As regards the mechanism for the exchange of information and the network to be used, the approach retained by the Council position derives from existing "police cooperation" instruments. More particularly, it builds upon the existing information exchange established in the context of the Prüm Decisions on cross-border cooperation in combating terrorism and

cross-border crime on vehicle registration data.¹ The Council proposed that the Member State of registration allows the Member State of offence access to the national vehicle registration database for the data relating to vehicles and to their holders. For this information exchange, the Council opted in its position for the replacement of the EU electronic network as initially proposed by the Commission by the direct use of already existing systems established under the Prüm Decisions.

While expressing a preference for the establishment of an EU electronic network along the lines of its proposal, the Commission showed however some flexibility on this issue and accepted that the exchange of information is carried out as far as possible using existing systems such as EUCARIS. The Commission considers indeed that the Council's approach on the information exchange mainly affects the technical modalities for the exchange of information and that it does not fundamentally reduce the main objective of the Directive.

Finally, the notification letter initially proposed by the Commission has been replaced in the Council position by an information letter (Article 4a), to be sent to the offender when the Member State of offence decides to proceed with the enforcement of the offence. The use of the template in annex to the Directive is left optional to Member States. The Commission can accept the Council's approach, provided that Member States inform the offender when it decides to proceed with the enforcement of the road safety offence.

Regarding data protection aspects, the Commission can accept that Decision 2008/977/JHA applies to the exchange of data related to criminal offences but insists on adding a reference to Directive 95/46/EC concerning the exchange of data related to administrative offences.

Finally, it has to be underlined that, while the Commission accepted most of the EP amendments in first reading since they were strengthening its initial proposal, the Council did not include any of them in its position.

3.2.2 Legal basis

The Commission would like to draw the attention of the European Parliament on the change of legal basis, which has been decided in the Council and on which the Commission has issued a statement (see declaration of the Commission under point 4), since this change represents a difficult precedent.

First of all, the proposed Directive has a clear road safety objective and falls therefore within the scope of Article 91 TFEU. In addition, the proposed Directive does not have any impact on the national classification of the relevant offences.

Besides, under Article 87 (2), three Member States enjoy a derogative regime on police cooperation ("opt-in" for UK and IE and "opt-out" for DK according respectively to Protocols 21 and 22 TFEU), which implies that potentially, three Member States would not be covered by the proposed Directive.

¹ Council Decision 2008/615/JHA of 23 June 2008 on the stepping-up of cross-border cooperation, particularly in combating terrorism and cross-border crime and of the Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA

In addition, the Commission believes that Article 87 (2) can cover only criminal traffic offences.

4. CONCLUSIONS/GENERAL OBSERVATIONS

While the Commission considers that several aspects of the Council's position do meet the main objectives of its initial proposal as explained above (see in particular part 3.2.1), the change of the legal basis has led the Commission to make the following statement:

"The Commission notes that there is unanimity within the Council on the draft Presidency compromise, including on the replacement of the legal basis proposed by the Commission, namely Article 91, paragraph 1c, TFEU by Article 87, paragraph 2, TFEU. While the Commission shares the view of the Council about the importance of pursuing the aims of the proposed Directive to improve road safety , it considers however from a legal and institutional perspective that Article 87, paragraph 2, TFEU does not constitute the appropriate legal basis and therefore reserves its right to use all legal means at its disposal. "

For the second reading, possible compromises should be explored in order to find appropriate solutions allowing to cover both administrative and criminal offences.