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REPORT

from: General Secretariat of the Council
to: Council

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Subject: Proposal for a Directive of the European Parliament and of the Council
facilitating cross-border enforcement in the field of road safety
- *Conclusion on the political agreement*

Introduction

1. On 19 March 2008, the Commission presented a proposal aiming at facilitating the sanctioning of certain traffic offences committed in a Member State with a vehicle registered in another one by setting up a system for the exchange of relevant data between Member States.
2. Intensive discussions took place under French Presidency during the second semester of 2008. The majority of delegations welcomed the proposal although expressing concerns about the legal basis for the directive. The Council Legal Service in a written opinion shared this concern (doc. 12015/08).

3. At the TTE Council of October 2008, 15 Ministers privileged a 3rd pillar solution. At the TTE Council of 9 December 2008, Ministers agreed that Council preparatory bodies should continue working to find a solution (doc. 16942/1/08).

Discussion within the Council bodies

4. The Working Party on Land Transport resumed the examination of this proposal, from July 2010, based on new Belgian Presidency proposals, in particular on the legal basis (art 87(2) of TFEU). On 22 September 2010, the Permanent Representatives Committee confirmed the agreement on the same legal basis. The Commission reserved its position on this issue.
5. The Belgian Presidency presented a draft compromise for the Permanent Representatives Committee's consideration on 24 November 2010.

Issues examined by Coreper

6. Legal basis

- The Permanent Representatives Committee's examined the question of the choice of the legal basis applicable to the proposed directive and agreed that the right legal basis was Article 87(2) TFEU, and not Article 91(1)(c) TFEU as indicated in the initial Commission proposal. The Commission has not been able to endorse this change of legal basis yet. However, the Commission has indicated that it would not stand in the way of such an unanimous agreement.

- The issue of the change of legal basis is also closely linked to the opt-in of IE and UK. Indeed, because of the legal basis Article 87(2) TFEU, IE and UK may decide whether they want to take part in the adoption and application of the proposed directive. According to Article 3 of Protocol n° 21 annexed to the TEU and the TFEU, these delegations will have three months to notify the Council of such a decision from the date of the presentation of the Commission proposal. However, as this proposal was presented in 2008 - before the entry into force of the Lisbon Treaty - and is based on a different legal basis, that provision could not apply. The Lisbon Treaty does not provide for a solution under such circumstances. Accordingly, for the above procedural reasons, a final political agreement can only be reached once the necessary three-month period for reflection has been completed.

7. Scope - Procedure for the exchange of information between Member States - Information letter on the road safety related traffic offence (Articles 4 and 4a)

- At Coreper, DE expressed its concerns related to the cases where the identity of the real driver of the vehicle which committed the offence cannot be clearly determined and, as a consequence, the owner/holder of the vehicle is considered to be liable. Such solution would violate the German constitutional principle of "no punishment without guilt". As DE insists on complementing Article 4(1) with a sentence which would help them solve that internal legal order issue, the Belgian Presidency proposed to add a subparagraph to paragraph 1a.

8. Data protection (Article 6)

Commission has a reservation on the above article as it would like a specific reference to Directive 95/46/EC to be inserted.

9. Taking into account some of the above comments made by delegations at Coreper meeting and in order to reach a consensus, the Presidency decided to provide a new draft text (see Annex).

Other outstanding issues

10. UK has a Parliamentary scrutiny reservation on the annexed text.
DE and ES have a general scrutiny reservation on the annexed text.
CZ, ES, PT and UK have expressed worries about the possible financial implications of the above proposed directive.

Conclusion

11. The Council is therefore invited to examine the remaining outstanding issues and to conclude on the political agreement at its meeting on 2 December 2010.

Draft Presidency compromise

Proposal for a Directive of the European Parliament and of the Council facilitating the cross-border exchange of information on road safety related traffic offences

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 87(2) thereof,

Having regard to the proposal from the European Commission,
Having regard to the opinion of the European Data Protection Supervisor¹,
Acting in accordance with the ordinary legislative procedure²,

WHEREAS:

- (1) The Union is pursuing a policy to improve road safety with the objective of reducing fatalities, injuries and material damage. An important element of that policy is the consistent enforcement of sanctions for road traffic offences whenever they are committed in the Union and which considerably jeopardize road safety.

¹ OJ C 310, 5.12.2008, p. 9.

² *Position of the European Parliament of 17 December 2008.*

- (2) However, due to a lack of appropriate procedures and notwithstanding existing possibilities under Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime³ and of Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA⁴ (the "Prüm Decisions"), sanctions in the form of financial penalties for certain road traffic offences are often not enforced if those offences are committed with a vehicle which is registered in a Member State other than the Member State where the offence took place. This Directive aims to ensure that even in such cases, the effectiveness of the investigation of road safety related traffic offences should nevertheless be ensured.
- (3) In order to improve road safety throughout the Union and to ensure equal treatment of drivers between resident and non-resident offenders, enforcement should be facilitated irrespective of the Member State of registration of the vehicle. To this end, a system of cross-border exchange of information should be put in place for certain identified road safety related traffic offences, regardless of their administrative or criminal nature under the law of the Member State concerned, permitting the Member State of offence access to vehicle registration data (VRD) of the Member State of registration.
- (4) A more efficient cross-border exchange of VRD and a simplified identification of road safety related traffic offenders may raise the deterrent effect and induce more cautious behaviour of the person driving a vehicle that is registered in another Member State than the Member State of offence thereby preventing casualties due to road traffic accidents.
- (5) The offences covered by this Directive are not subject to an homogeneous treatment in the Member States. Some Member States qualify such offences under national law as "administrative" offences while others qualify them as "criminal" offences. This Directive should apply regardless of the qualification of those offences under national law.

³ OJ L 210, 6.8.2008, p. 1.

⁴ OJ L 210, 6.8.2008, p. 12.

- (6) In the framework of the "Prüm Decisions", Member States grant each other access right to their VRD in order to improve the exchange of information and to speed up existing procedures. The provisions concerning the technical specifications and the availability of automated data exchange set out in the Prüm Decisions should as far as possible be taken on board in this Directive.
- (7) Advantage should be taken of the fact that the European Vehicle and Driving Licence Information System (Eucaris) software application, mandatory for the Member States under the Prüm decisions as regards VRD, provides for expeditious, secure and confidential exchange of specific VRD between Member States. This software application should therefore be the basis for the data exchange under this Directive. This software application should at the same time also facilitate the reporting by Member States to the Commission.
- (8) The scope of the Eucaris system is limited to the processes involved in the exchange of information between the national contact points in the Member States. Procedures and automated processes in which the information is to be used, are outside the scope of the system.
- (9) The Information Management Strategy for EU internal security aims at finding the most simple, easily traceable and cost-effective solution for data exchange.
- (10) Member States should be able to address the owner/holder of the vehicle concerned in order to keep him informed of the related procedures in the Member State of offence and the legal consequences under the jurisdiction of that Member State. In doing so, the Member States should consider sending the information concerning road safety related traffic offences in the language of the registration documents or the language most likely understood by the person concerned, to ensure that he has a clear understanding of which information is shared with him. This will allow him to respond to the information in an appropriate way, in particular by asking for more information, settling the fine or by exercising his rights of defence in case an error in the identification would have occurred. Further proceedings are covered by applicable legal instruments, including instruments on mutual assistance and on mutual recognition.

- (11) **Member States** should consider providing equivalent translation with respect to the information letter sent by the Member State of offence, as provided for in Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings⁵.
- (12) Closer cooperation between law enforcement authorities should go hand in hand with respect for fundamental rights, in particular the right to respect for privacy and to protection of personal data, to be guaranteed by special data protection arrangements which should take particular account of the specific nature of cross-border online access to databases. Such requirements are satisfied by the Prüm Decisions.
- (13) It should be possible for third countries to participate in the exchange of VRD provided that they have concluded an agreement with the EU to this effect. Such an agreement would have to provide for necessary provisions on data protection.
- (14) Nothing in this Directive should be understood as requiring the Member States to disregard any fundamental rights as enshrined in Article 6 of the Treaty on European Union.
- (15) [In accordance with Article 3 of the Protocol on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, these Member States have notified their wish to take part in the adoption and application of this Directive.]⁶
- (16) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

⁵ OJ L 280, 26.10.2010, p. 1.

⁶ Possibly to be inserted at a later stage.

- (17) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁷, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, which will, as far as possible, illustrate the correlation between this Directive and their transposition measures, and to make them public.
- (18) Since the objectives of this Directive, namely to ensure a high level of protection for all road users in the Union by facilitating the cross-border exchange of information on road safety related traffic offences, where they are committed with a vehicle registered in a Member State other than the Member State where the offence took place, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

⁷ OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Objective

The Directive aims at ensuring a high level of protection for all road users in the Union by facilitating the cross-border exchange of information on road safety related traffic offences and thereby the enforcement of sanctions, where they are committed with a vehicle registered in a Member State other than the Member State where the offence took place.

Article 2
Scope

The Directive shall apply to the following road safety related traffic offences:

- (a) speeding;
- (b) non-use of a seat-belt;
- (c) failing to stop at a red traffic light;
- (d) drink-driving;
- (e) driving under the influence of drugs;
- (f) failing to wear a safety helmet;
- (g) use of a forbidden lane;
- (h) illegally using a cell phone or any other communication devices while driving.

Article 3
Definitions

For the purpose of this Directive the following definitions shall apply:

- (a) "vehicle" means any power-driven vehicle including motorcycles, which is normally used for carrying persons or goods by road;
- (b) "Member State of offence" means the Member State where the offence has been committed;
- (c) "Member State of registration" means the Member State where the vehicle with which the offence has been committed is registered;
- (d) "speeding" means exceeding speed limits in force in the Member State of offence for the road and type of vehicle concerned;
- (e) "non-use of a seat-belt" means failing to comply with the requirement to wear a seat-belt or use a child restraint in accordance with Council Directive 91/671/EEC⁸ and the law in the Member State of offence;
- (f) "failing to stop at a red traffic light" means the offence of driving through a red traffic light or any other relevant stop signal, as it is defined in the law of the Member State of offence;
- (g) "drink-driving" means driving while impaired by alcohol, as it is defined in the law of the Member State of offence;
- (h) "driving under the influence of drugs" means driving while impaired by drugs or other substances having a similar effect, as it is defined in the law of the Member State of offence;

⁸ Council Directive 91/671/EEC of 16 December 1991 on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3,5 tones (OJ L 373, 31.12.1991, p. 26).

- (i) "failing to wear a safety helmet" means **the offence of not wearing** a safety helmet, as it is defined in the law of the Member State of offence;
- (j) "use of a forbidden lane" means illegally using part of a road section (such as an emergency lane, public transport lane or temporary closed lane for reasons of congestion or road works), as it is defined in the law of the Member State of offence;
- (k) "illegally using a cell phone or any other communication devices while driving" means illegally using a cell phone or any other communication devices while driving, as it is defined in the law of the Member State of offence;
- (l) "national contact point" means a designated competent authority for the exchange of VRD;
- (m) "automated search" means an online access procedure for consulting the databases of one, several, or all of the participating countries;
- (n) "holder of the vehicle" means the person in whose name the vehicle is registered, as it is defined in the law of the Member State of registration.

Article 4

Procedure for the exchange of information between Member States

1. For the investigation of the road safety related traffic offences referred to in Article 2, the Member States shall allow other Member States' national contact points, as referred to in paragraph 2, access to the following national VRD, with the power to conduct automated searches:

- (a) data relating to vehicles; and
- (b) data relating to holders or owners of the vehicle.

The data elements of the data referred to in points a) and b) and which are necessary to conduct the search shall be in compliance with the requirements set out in Point 1.2.2 of Chapter 3 of the Annex to Council Decision 2008/616/JHA.

- 1a. Any searches in the form of outgoing requests shall be conducted by the national contact point of the Member State of offence with a full registration number.

Searches shall be conducted in compliance with the procedures as described in Chapter 3 of the Annex of the Council Decision 2008/616/JHA.

The Member State of offence shall, under this Directive, only use the data obtained for the purpose of investigating who is the person responsible, under national law, for a road safety related traffic offence.

2. For the purposes of the supply of data as referred to in paragraph 1, each Member State shall designate a national contact point for incoming requests. The powers of the national contact points shall be governed by the applicable law of the Member State concerned.

3. Member States shall take all necessary measures to ensure that the exchange of information is carried out by interoperable electronic means and to ensure that this exchange of information is conducted in a cost efficient and secure manner, as far as possible using already existing software applications such as the one **especially designed for the purposes of Article 12 of Decision 2008/615/JHA, and amended versions of this software.**
4. Each Member State shall bear its costs arising from the administration, use and maintenance of the software application referred to in paragraph 3.

Article 4a

Information letter on the road safety related traffic offence

Where the Member State of offence decides to initiate follow-up proceedings in relation to the road safety related traffic offences as referred to in Article 2, it informs the holder, the owner or the otherwise identified person of the road safety related traffic offence in accordance with the law of the Member State of offence and of the legal consequences thereof within the territory of the Member State of offence in accordance with the law of that Member State.

When sending the information letter, the Member State of offence shall, in accordance with national law, include any relevant information such as the nature of the offence as set out in Article 2, the place, date and time of the offence and, where appropriate, data concerning the device that has been used for detecting the offence to the holder, the owner or the otherwise identified person.

The Member State of offence may use the template as set out in the Annex to this Directive.

Where the Member State of offence decides to initiate follow-up proceedings in relation to the road safety related traffic offences as referred to in Article 2, the Member State of offence, for the purpose of ensuring the respect of fundamental rights, sends the information letter in the language of the registration document, if available, or in one of the official languages of the Member State of registration.

Article 5

Reporting by Member States to the Commission

Member States shall send a report to the Commission every second year starting two years and six months after the date of transposition on the implementation of the Directive. The report shall indicate the number of automated searches conducted by the Member State of offence addressed to the national contact point of the Member State of registration following offences committed on its territory, together with the number of failed requests and the nature of such requests.

Article 6

Data protection

The provisions on data protection set out in the Council Framework Decision 2008/977/JHA shall apply to personal data processed under this Directive.

In addition, all relevant provisions on data protection set out in Council Decision 2008/615/JHA and in Council Decision 2008/616/JHA shall also apply to personal data processed under this Directive.

Article 7

Information for drivers in the Union

The Commission shall make available on its website a summary in all official EU languages of the rules in force in Member States in the field covered by this Directive. Member States shall provide information on these rules to the Commission.

Article 8
Revision of the Directive

By ...^{*} the Commission shall submit a report to the Parliament and the Council on the implementation of this Directive by the Member States, assess whether other road safety related traffic offences should be added to the list referred to in Article 2 and make, if appropriate, any proposal.

Article 9
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest twenty-four months after its entry into force. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

^{*} *Five years after the entry into force of this Directive.*

Article 11

This Directive is addressed to the Member States.

Done at ,

For the European Parliament

The President

For the Council

The President

TEMPLATE for the information letter

referred to in Article 4a

[COVERPAGE]

[Name, address and telephone number of sender] [Name and address of addressee]

INFORMATION LETTER

**regarding a traffic offence committed in [name of Member State where the offence has
been committed]**

[the above text appears on this cover page in all the official EU languages]

On [date] a traffic offence committed with the vehicle with registration number, make, model was detected by[name of the responsible body].

[Option1]⁹

You are registered as the holder of the registration certificate of the abovementioned vehicle.

[Option 2]⁹

The holder of the registration certificate of the abovementioned vehicle indicated that you were driving that vehicle when the traffic offence was committed.

The relevant details of the offence are described on page 3 below.

The amount of the financial penalty due for this offence is€ / national currency.

Deadline for the payment is

You are advised to complete the attached reply form (page 4) and send it to the address shown, if you do not pay this financial penalty.

This letter shall be processed in accordance with the national law of the Member State of offence.

⁹ Delete if not applicable.

Relevant details concerning the offence

(a) *Data concerning the vehicle with which the offence has been committed:*

Registration number:

Country of registration:

Make and model:

(b) *Data concerning the offence*

Place, date and time where it occurred:

Nature and legal classification of the offence:

speeding, non-use of seatbelt, failing to stop at a red traffic light, drink-driving, driving under the influence of drugs, non respect of minimum safety distance, failing to wear a safety helmet, use of a forbidden lane, illegally using a cell phone or any other communication devices while driving¹⁰

Detailed description of the offence:

Reference to the relevant legal provision(s):

Description of or reference to the evidence for the offence:

(c) *Data concerning the device that has been used for detecting the offence*¹¹

Type of device for detection of speeding, non-use of seatbelt, failing to stop at a red traffic light, drink-driving, driving under the influence of drugs, non respect of minimum safety distance, failing to wear a safety helmet, use of a forbidden lane, illegally using a cell phone or any other communication devices while driving¹⁰:

Specification of the device:

Identification number of the device:

Expiry date for the last gauging:

(d) *The result of the application of the device:*

[example for speeding; other offences to be added:]

The maximum speed:

The measured speed:

The measured speed corrected for margin of error:

¹⁰ Delete what is not applicable.

¹¹ Not applicable if no device has been used.

Reply form

(please complete using block capitals and mark the applicable option)

A. Identity of the driver:

- Name and first name:
- Place and date of birth:
- Number of driving licence:...delivered (date):...and at (place):
- Address:

B. List of questions:

Is the vehicle, make... registration number...registered in your name? yes/no

If not, the holder of the registration certificate is:

(name, first name, address)

Do you acknowledge that you committed the offence?

yes/no

If you do not acknowledge this, please explain why:

Please send the completed form within 60 days from the date of this information letter to the following authority:

at the following address:

INFORMATION

This case will be examined by the competent authority in the State where the offence has been committed.

If this case is not pursued, you will be informed within 60 days after receipt of the reply form.

If this case is pursued, the following procedure applies:

[to be filled in by the State of offence - what the further procedure will be, including details of the possibility and procedure of appeal against the decision to pursue the case. These details shall in any event include: Name and address of the authority in charge of pursuing the case; deadline for payment; name and address of the body of appeal concerned; deadline for appeal].

This letter as such does not lead to legal consequences.