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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL facilitating the cross-border exchange of information on
road safety related traffic offences
- Adopted by the Council on 17 March 2011

DIRECTIVE 2011/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

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,

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 17 December 2008 (OJ C 45E, 23.2.2010, p. 149) and position of the Council of ... (not yet published in the Official Journal). Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of

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 committed in the Union which considerably jeopardise road safety.
- (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 crime¹ and of Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA² (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 be ensured.

¹ OJ L 210, 6.8.2008, p. 1.

² OJ L 210, 6.8.2008, p. 12.

- (3) In order to improve road safety throughout the Union and to ensure equal treatment of drivers, namely 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, granting the Member State of the offence access to vehicle registration data (VRD) of the Member State of registration.
- (4) A more efficient cross-border exchange of VRD, which should facilitate the identification of persons suspected of committing a road safety related traffic offence, may increase the deterrent effect and induce more cautious behaviour by the driver of a vehicle that is registered in a Member State other than the Member State of the offence, thereby preventing casualties due to road traffic accidents.
- (5) The road safety related traffic offences covered by this Directive are not subject to 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 how those offences are qualified under national law.

- (6) In the framework of the Prüm Decisions, Member States grant each other the right of access to their VRD in order to improve the exchange of information and to speed up the procedures in force. 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 included in this Directive.
- (7) Advantage should be taken of the fact that the European Vehicle and Driving Licence Information System (Eucaris) software application, which is mandatory for Member States under the Prüm Decisions as regards VRD, provides for expeditious, secure and confidential exchange of specific VRD between Member States. That software application should therefore be the basis for the data exchange under this Directive and should, at the same time, also facilitate the reporting by Member States to the Commission.
- (8) The scope of Eucaris is limited to the processes used 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 Eucaris.
- (9) The Information Management Strategy for EU internal security aims at finding the most simple, easily traceable and cost-effective solutions for data exchange.

- (10) Member States should be able to contact the owner, the holder of the vehicle or the otherwise identified person suspected of committing the road safety related traffic offence in order to keep him informed of the applicable procedures and the legal consequences under the law of the Member State of the offence . In doing so, 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 to be understood by the person concerned, to ensure that that person has a clear understanding of the information which is being shared with him. This will allow that person to respond to the information in an appropriate way, in particular by asking for more information, settling the fine or by exercising their rights of defence, in particular in the case of mistaken identity. 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 the 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 proceedings¹.

¹ OJ L 280, 26.10.2010, p. 1.

- (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 Union to this effect. Such an agreement would have to include necessary provisions on data protection.
- (14) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, as referred to in Article 6 of the Treaty on European Union.
- (15) In accordance with Articles 1 and 2 of the Protocol (No 21) 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 to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (16) In accordance with Articles 1 and 2 of the Protocol (No 22) 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.

- (17) In accordance with point 34 of the Interinstitutional Agreement on better law-making¹, 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 the transposition measures, and to make them public.
- (18) Since the objective 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 that objective.
- (19) The European Data Protection Supervisor was consulted and adopted an opinion²,

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ C 321, 31.12.2003, p. 1.

² OJ C 310, 5.12.2008, p. 9.

Article 1

Objective

This Directive aims 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 and thereby the enforcement of sanctions, where those offences are committed with a vehicle registered in a Member State other than the Member State where the offence took place.

Article 2

Scope

This 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 mobile telephone or any other communication devices while driving.

Article 3
Definitions

For the purposes 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 the 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 the speed limits in force in the Member State of the offence for the road and the 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/EEC of 16 December 1991 relating to the compulsory use of safety belts and child-restraint systems in vehicles¹ and the law in the Member State of the offence;
- (f) "failing to stop at a red traffic light" means driving through a red traffic light or any other relevant stop signal, as defined in the law of the Member State of the offence;
- (g) "drink-driving" means driving while impaired by alcohol, as defined in the law of the Member State of the offence;
- (h) "driving under the influence of drugs" means driving while impaired by drugs or other substances having a similar effect, as defined in the law of the Member State of the offence;
- (i) "failing to wear a safety helmet" means not wearing a safety helmet, as defined in the law of the Member State of the 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 defined in the law of the Member State of the offence;

¹ OJ L 373, 31.12.1991, p. 26.

- (k) "illegally using a mobile telephone or any other communication devices while driving" means illegally using a mobile telephone or any other communication devices while driving, as defined in the law of the Member State of the 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 Member States or of the participating countries;
- (n) "holder of the vehicle" means the person in whose name the vehicle is registered, as 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 3 of this Article, access to the following national VRD, with the power to conduct automated searches on:
 - (a) data relating to vehicles; and
 - (b) data relating to owners or holders of the vehicle.

The data elements referred to in points (a) and (b) 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 Decision 2008/616/JHA.

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

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

The Member State of the offence shall, under this Directive, use the data obtained in order to establish who is personally liable for road safety related traffic offences referred to in Articles 2 and 3.

3. 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.

4. 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 existing software applications such as the one especially designed for the purposes of Article 12 of Decision 2008/615/JHA, and amended versions of that software.
5. Each Member State shall bear its costs arising from the administration, use and maintenance of the software applications referred to in paragraph 4.

Article 5

Information letter on the road safety related traffic offence

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

2. When sending the information letter to the owner, the holder of the vehicle or the otherwise identified person suspected of committing the road safety related traffic offence, the Member State of the offence shall, in accordance with its law, include any relevant information such as the nature of the road safety related offence referred to in Article 2, the place, date and time of the offence and, where appropriate, data concerning the device used for detecting the offence.

For that purpose, the Member State of the offence may use the template as set out in the Annex.

3. Where the Member State of the offence decides to initiate follow-up proceedings in relation to the road safety related traffic offences referred to in Article 2, the Member State of the 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 6

Reporting by Member States to the Commission

Member States shall send a report to the Commission by ...* and every two years thereafter. The report shall indicate the number of automated searches conducted by the Member State of the 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.

* OJ: Date: fifty four months after the entry into force of this Directive.

Article 7
Data protection

The provisions on data protection set out in the Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters¹ shall apply to personal data processed under this Directive.

All relevant provisions on data protection set out in the Prüm Decisions shall also apply to personal data processed under this Directive.

Article 8
Information for drivers in the Union

The Commission shall make available on its website a summary in all official languages of the institutions of the Union 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.

¹ OJ 350, 30.12.2008, p. 60.

Article 9
Revision of the Directive

By ...* the Commission shall submit a report to the European Parliament and the Council on the application of this Directive by the Member States, assess whether other road safety related traffic offences should be added to Article 2 and, if appropriate, make a proposal.

Article 10
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by**. 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.

* OJ: Date: sixty months after the entry into force of this Directive.

** OJ: Date: twenty-four months after the entry into force of this Directive.

Article 11
Entry into force

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

Article 12
Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at,

For the European Parliament
The President

For the Council
The President

ANNEX

TEMPLATE for the information letter
referred to in Article 5

[COVERPAGE]

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

INFORMATION LETTER

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

Page 2

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

[Option1]¹

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

[Option 2]¹

The holder of the registration certificate of the abovementioned vehicle indicated that you were driving that vehicle when the road safety related 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.... [name of the Member State of the offence} .

¹ 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 the offence has been committed:

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, failing to wear a safety helmet, use of a forbidden lane, illegally using a mobile telephone or any other communication device while driving¹

Detailed description of the offence:

Reference to the relevant legal provision(s):

Description of or reference to the evidence for the offence:

¹ Delete if not applicable.

(c) *Data concerning the device that has been used for detecting the offence*¹

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, failing to wear a safety helmet, use of a forbidden lane, illegally using a mobile telephone or any other communication devices while driving²:

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:

¹ Not applicable if no device has been used.

² Delete if not applicable.

Reply form

(please complete using block capitals)

A. Identity of the driver:

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

B. List of questions:

1. Is the vehicle, make... registration number...registered in your name? yes/no¹

If not, the holder of the registration certificate is:

(name, first name, address)

2. Do you acknowledge that you committed the offence? yes/no¹
3. 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:

¹ Delete if not applicable.

INFORMATION

This case will be examined by the competent authority of[name of the Member State of the offence].

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 Member State of the 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.
