European Transport Safety Council

Proposal for Directive "facilitating cross-border enforcement in the field of road safety"
Position
European Transport Safety Council
2010

1. Introduction

The European Transport Safety Council (ETSC)[1] welcomed the proposal for a Directive which aims to "facilitate cross-border enforcement in the field of road safety" published on the 19th of March 2008. We also welcomed the European Parliament's overwhelming support to the proposed Directive with the adoption of their Report in the Plenary on the 17th of December 2008. ETSC supports the incorporation of best enforcement practices into the legislative proposal. This would significantly strengthen it and lead to a more substantial contribution to reducing the 35,000 annual deaths on Europe's roads.

2. Legal Basis

We are convinced that this legislative instrument belongs under the EU's transport policy Article 91c as it will clearly contribute to the EU's road safety policy and reaching the EU's target of halving deaths on the EU's roads by 2010. Traffic law enforcement by Europe's Police should also fulfill their role in reaching this goal. The next Belgian Presidency must work with the Transport Council to find a solution which all Member States support under the EU's Common Transport Policy. Otherwise the future of police co-operation across the borders and an improvement of traffic law enforcement is in jeopardy and Europe's citizens will pay the painful price.

3. Life saving potential of enforcement and of the EC proposal on cross border enforcement

Enforcement is a means to prevent collisions from happening by way of persuading drivers to comply with the safety rules. It is based on giving drivers the feeling that they run too high a risk of being caught when breaking the rules. Effective enforcement leads to a rapid reduction in deaths and injuries. Moreover, sustained intensive enforcement that is well explained and publicised also has a long-lasting effect on driver behaviour. According to the EC impact assessment study of the enforcement Directive would save between 350-400 road deaths a year. The European Commission also had a cost-benefit analysis carried out concerning the three enforcement areas of speeding, drink driving and seat belt use. It assessed that increased

[1] The European Transport Safety Council (ETSC), founded in 1993 is a Brussels-based independent non-profit making organisation dedicated to the reduction of the number and severity of transport crashes in Europe. The ETSC seeks to identify and promote research-based measures with a high safety potential. It brings together 42 national and international organisations concerned with road safety from across Europe.

enforcement would result in a total annual reduction of 14,000 road deaths and 680,000 injuries in the EU 15, and in a net benefit of 37 billion Euro or 0.44% of GNP (ICF 2003). This means that optimised enforcement could reduce road deaths in Europe by about one third.

A major reduction could be achieved in eliminating the three most risky behaviour offences. If average driving speeds dropped by only 1 km/h on all roads across the EU, more than 2,200 road deaths could be prevented each year. Even if the number of deaths in accidents in which a driver is over the alcohol limit were no greater than is recorded in the accident statistics, at least 3,500 deaths could have been prevented in 2009 if drivers concerned had not drunk before taking the wheel. If, as estimated by the EC, 25% of road deaths occur in such accidents, then at least 7,500 could have been so prevented. Across the EU, an estimated 12,400 occupants of light vehicles survived serious crashes in 2009 because they wore a seat belt. Another 2,500 deaths could have been prevented if 99% of occupants had been wearing a seat belt. (ETSC, 2010).

This means in sum that:

- If average driving speeds dropped by only 1 km/h on all roads across the EU, more than 2,200 road deaths could be prevented each year,
- If, as estimated by the EC, 25% of road deaths occur in drink driving accidents, then at least 7,500 deaths could be prevented if all were to drive sober.
- If 99% of occupants wear a seat belt then 2,500 deaths could be prevented.

This Directive in its current form will make a small contribution to saving lives on Europe's roads but a small contribution is better than none at all. Beyond the immediate impact of the Directive one could expect a certain spill over effect which could increase the potential lives saved.

4. Specific Comments on the Proposal

a) Convergence towards best practice in Enforcement: New Article 2a

The Commission proposal sees the Committee on road safety enforcement will develop common rules concerning the exchange of information by electronic means. ETSC supports the adopted EP amendment that this Committee should also be charged with overseeing an exchange of best practice by Member States in the field of enforcement in these priority areas and adopting Guidelines based on the EC Recommendation on Enforcement in the field of Road Safety to this effect.

b) Offence Notification: Driver/Owner Liability (Article 5)

One of the key challenges in following up speeding offences continues to be that the owner of the vehicle identified on the basis of the number plate may not be the driver. Full owner liability is when the owner has to pay the fine no matter who was driving the car. This is the case in the Netherlands. In other countries such as Poland, follow up relies on driver liability. For driver liability it is necessary to determine who the driver is either with a photo or through information on the spot. In other countries the owner is not even obliged to provide details concerning the

actual driver, so fines can be avoided. At present only approximately half the EU has owner liability.

At present Article 5.3 does not clearly set out the provisions for countries which do not have owner liability. The Directive should clarify what should happen to owners in countries who do not have owner liability, if the owner was not driving at the time of the offence and is not willing to disclose the driver of the car.

The **amendment 111** of the European Parliament adopted in December adds that: "should the holder not have been the driver at the moment when the offence was committed, he shall supply the identity of the driver *in the respect of the law of the State of Residence*". This clarifies but does not close the loophole.

According to the accompanying memo to the Directive, in the case that the offender is not the holder of the vehicle certificate (i.e. not the owner) the reply form the owner will receive will give him the possibility if he was not driving at the time when the offence was committed to provide the relevant data for identifying the driver. The form included in the annex includes the possibility for the owner to 'not acknowledge' the offence and 'explain why'.

The Directive should clarify what should happen to owners in countries who do not have owner liability in their legal regime and if the owner was not driving at the time of the offence.

ETSC proposes that the owner should pay an administrative fee if they are not willing to identify the offender driving their car at the time of the offence.

c) Article 1: subject matter and scope-Drugs and Mobile Phone Use

Effective enforcement of road safety rules would lead to a rapid and massive reduction in road deaths. Most drivers involved in traffic crashes do not comply with speed limits, blood alcohol levels and/or the EU-wide obligation to wear safety belts. The European Commission had a cost-benefit analysis carried out concerning the three enforcement areas of speeding, drink driving and seat belt use. ETSC supports the choice of given priorities but would also like to see other offences included and in particular drugs offences and mobile phone use. ETSC supported **amendment 124** of the European Parliament which would see this as one of the issues to be included in the assessment report two years after entry into force of the Directive.

In the case of drugs the use of illegal drugs whilst driving is a cause for concern noticeably among young adults. All EU Member States have 'driving through impairment' as an offence included in their traffic law. An increasing number of countries are also introducing legislation enabling their police forces to enforce drug driving. Mobile phones are a risk to drivers due to the distraction they bring about. Research shows that driving while using a mobile phone significantly impairs driving ability.

d) Process of follow up of enforcement

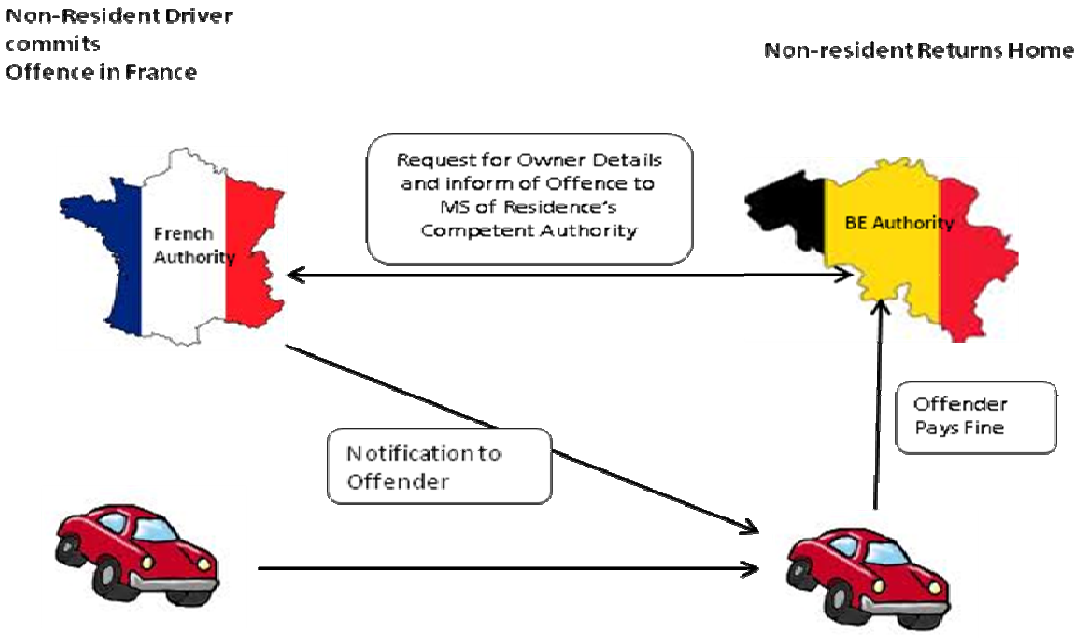
It is essential for the public perception of the Directive that the enforcement chain is carried through. The impact of police enforcement does not end with the detection of the offence. In fact the follow up is just as important, as research shows (ESCAPE 2003). This is also recognised in the EC Recommendation[2] on enforcement which stresses that the follow up of detected offences should be "effective, proportionate and dissuasive and not, as is currently the case, for instance with respect to non-use of seat belts in some Member States, with only a warning." See both table and diagram below showing the enforcement chain.

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Detection/ Registration of an offence	Identification of the vehicle	Identification of the Driver/ Owner	Notification of the Driver/ Owner	Refusal to Pay: Judicial Decision	Execution of the sanction

Table 1 depicting the Enforcement Chain prepared by ETSC January 2008.

At no stage in the enforcement chain should there be an option to either enforcement by the Member State of Offence (steps 1-2) or an option for the offender not to pay (steps 4-6).**Diagram**

1. A possible process Model for discussion



[2] EC Recommendation on Enforcement in the field of Road Safety 2003

5. The Enforcement Chain and Recasting of Council Framework Decision 2005/214/JHA

At present DG JLS is in the first preparations to recast the Council Framework Decision 2005/214/JHA and is on their work programme for 2011. The framework decision represents the final element in the enforcement chain. Without a credible, workable end to the enforcement chain, the police enforcement activity at the start of the chain, risks losing its deterrent effect which ultimately aims to improve road safety.

Cross Border Enforcement Directive				Framework Decision	
Step 1	**Step 2**	**Step 3**	**Step 4**	**Step 5**	**Step 6**
Detection/ Registration of an offence	**Identification of the vehicle**	**Identification of the Driver/ Owner**	**Notification of the Driver/ Owner**	**Refusal to Pay: Judicial Decision**	**Execution of the sanction**

Table 2 depicting the Enforcement Chain: CBE and Framework Decision prepared by ETSC January 2008.

This table shows that without any exchange of data at the start of the enforcement chain for traffic offences the last part will make little sense. This would be a case of making a second step before the first. At present the FD only applies to penalties imposed by the judicial and administrative authorities of another Member State but only decisions where " the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters" (Article 1 aii).

Not all traffic offences in the EU fall under criminal law. In the case of speeding offences for example there is a split within different Member States: in roughly one third of countries traffic offences are dealt with as administrative offences, in another third they fall under criminal law and in the remaining third this is a mixture (TISPOL Questionnaire included in the EC Impact Assessment). Whereby for example a minor speeding offence may at first be an administrative offence but then with non-payment this will turn into a criminal offence. Or for a minor speeding offence this would be administrative but for major over-speeding at 50 km/h over the limit this then shifts to criminal law.

ETSC would welcome a recast of the Framework Decision, especially if this provides the opportunity to include civil/administrative offences as this would provide an important final part in the enforcement chain. But we would see this as part of a package though. They would still

need the Cross Border Enforcement Directive to ensure the data exchange and motivate Member States to increase enforcement to bring about higher levels of road safety.

6. A swift adoption of the Directive is needed because of

a) The scope of the cross border problem and its consequences

In an increasingly mobile, integrated and enlarged EU, non-resident drivers make up an ever increasing part of the traffic flow. This is particularly so in transit countries such as France, Czech Republic and Germany. There is increasing evidence from different Member States that non-resident drivers flout traffic laws when travelling abroad as they do not fear punishment. According to available data, non-residents represent around 5% of road traffic in the EU[3], whereas the share of non-resident drivers in speeding offences is around 15% on average[4].

b) The growth of Safety Cameras across the EU

It will be particularly important to ensure a system which enables countries to follow up speeding offences across borders. ETSC's research show that ever more countries are moving to introduce automated fixed safety cameras. This means the automated detection of a violation, identification of the vehicle and the owner (and/or driver) is being used increasingly.

c) Non-discrimination and fair treatment

If road traffic violations are committed EU citizens are entitled to fair and equal treatment. The principle of nondiscrimination is enshrined in Article 12 of the Treaty. At present this principle is not being applied.

d) EU-wide approach needed

Current co-operation agreements exist in the form of bi-lateral and multi-lateral agreements. However they are often not able to deal with the increasingly complex cross-border problems posed by traffic offenders. This Directive would present an EU wide approach which would also prevent the need of EU MSs who do not yet have such agreements of negotiating them with their European neighbouring countries.

For more information:

ETSC 2010 PIN Flash 16 Tackling the 3 Main Killers on the Road
ETSC, 2009.2010 on the Horizon ETSC 3rd Pin Road Safety Report.
ETSC, 2007. Traffic Law Enforcement across the EU: Time for a Directive.
ETSC, 2006 Enforcement in the EU.

[3] Source Eurostat: The 5% is based on the evidence from a selected group of countries. It means that of the vehicle-kms made on the roads, some 5% is made by vehicles registered in another country. Results show 5.5% in France, 3.9% in Germany, 4.1% in the Netherlands, and 3.9% in the UK.

[4] 2.5% in Denmark, 4% in Finland, 6% in the Netherlands, 8% in Catalonia (Spain), 14% in Belgium, 15% in France and 30% in Luxembourg. In France their share in traffic is 5.5%, but their share in offences is 15%. The corresponding figures in the Netherlands are 4.1% traffic share, but 6% in offences (Centraal Justitieel Incasso Bureau, the Netherlands).

CAPTIVE, 2006 Common Application of Traffic Violations Final Report.
PEPPER 2008 http://www.pepper-eu.org

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