European Transport Safety Council

# Proposal for Directive "facilitating cross-border enforcement in the field of road safety"
# Position
# European Transport Safety Council
# September 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. The Directive applies to non commercial traffic and should complement the EU's existing legislation on enforcement of Social Rules covering the professional transport sector Regulation 2006/561. The Directive should cover the main offences causing death and serious injury in the EU: speeding, drink/drug driving, non use of seat belts and mobile phone use. It should follow through a watertight enforcement procedure including an offence notification step. This new instrument should fill an important gap in the enforcement chain thus enabling the information exchange needed to follow through police's and enforcement authority efforts to achieve full compliance with the traffic law and improve road safety. Moreover, ETSC supports the incorporation of best enforcement practices into the legislative proposal. This would significantly strengthen the proposal and lead to a more substantial contribution to reducing the 35,000 annual deaths on Europe's roads.

## 2. Legal Basis

This legislative instrument was originally proposed in 2008 under the EU's transport policy (then Article 71c) now Article 91c. The new Treaty on the Functioning of the EU has made some important changes to both the procedure for adoption of such a text and might affect the possible legal basis chosen for the future Directive on Cross Border Enforcement. If Police Co-operation (Article 87.2) is chosen as a legal basis then possible opt outs or opt ins of Member States should not reduce the scope of this Directive and therefore its efficiency. We remain confident that the changes brought about in the new Treaty will help to provide solutions for overcoming previous obstacles. The Directive would clearly contribute to the EU's road safety policy and reaching the EU's new target of halving deaths on the EU's roads by 2020[2] a cornerstone in the EU's Common Transport Policy. Traffic law enforcement by Europe's Police and

[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.

[2] EC Communication: "Towards a European road safety area: policy orientations on road safety 2011-2020" http://ec.europa.eu/transport/road_safety/pdf/com_20072010_en.pdf

other enforcement authorities should also fulfill its role in reaching this goal. ETSC supports the efforts of the Belgian Council Presidency and the European Commission to develop the text of the Directive and find a solution which all Member States support as a matter of urgency. The future of police co-operation across the borders and the safety of Europe's citizens depends on this.

## 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 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. Public Opinion on Enforcement

Public opinion on road safety issues is important in informing decision makers as regards to the support of the EU citizens for the introduction of new measures including the upcoming one on

Cross Border Enforcement. The results of the recent Eurobarometer[3] show that Europeans not only recognize the danger of main risky behaviour in road traffic, but also expect more policy actions to address them. The majority of citizens polled would like to see more action on drunk driving and speeding and enforcement including of non-residents as priority issues.

**Perceptions about the seriousness of road safety problems:**

- People driving under the influence of alcohol considered to be a *major* safety problem by 94% of EU citizens
- Drivers exceeding speed limits (78%)
- Drivers/passengers not wearing seatbelts (74%).

**Measures that national governments should focus on to improve road safety:**

- Improving road infrastructure safety (52%)
- Enforcement of traffic laws (42%)
- Cross Border Enforcement (36%)
- Awareness campaigns
- Introduction of periodic driver re-training schemes

## 5. Specific Comments on the Proposal

### a) Article 1: subject matter and scope

At present, 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 referenced above. ETSC supports the choice of given priorities and stress that it is essential that they be retained. ETSC would also welcome seeing other road safety related offences included in particular drugs offences and mobile phone use.

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 and enforcement authorities 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.

### b) Offence Notification: Procedure first steps for enforcement

It is essential for the public perception of the enforcement chain that the Directive contributes the first steps to carrying through to the entire chain to the end. ETSC insists that for the Directive to be effective the Directive should require the State of Offence to notify offenders in accordance

[3] http://ec.europa.eu/public_opinion/flash/fl_301_en.pdf

with their national legislation. Without a credible, workable end to the enforcement chain, the police and enforcement authority activity at the start of the chain, risks losing its deterrent effect. This is the effect which police strive towards and ultimately aims to improve road safety. 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[4] on enforcement which stresses that the follow up of detected offences should be "effective, proportionate and dissuasive." See both table and diagram below showing the enforcement chain.

The latest version of the CBE text risks missing out this vital step of notifying the offender (previous Article 6). As well as leaving out important improvements proposed by the European Parliament to Article 6 it also skips further newly proposed Articles 7 Follow up of road infringements and Article 8 Recognition and enforcement of financial penalties and Article 9 information transmitted by the State of Residence of the European Parliament in December 2008.

The setting up of such a new network should enable the information exchange and enforcement of offences that validates the administrative efforts and work entailed of enforcement officers and the judicial services both in States of Offence and Registration.

Cross Border Enforcement Directive Proposal July 2010

Framework Decision 2005/214

| Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 6 | Step 7 |
|---|---|---|---|---|---|---|
| Detection/ Registration of an offence | Identification of the vehicle | Identification of the Driver/ Owner | Notification of the Driver/ Owner | Refusal to Pay | Judicial Final Decision | Execution of the sanction |

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

| Cross Border Enforcement Directive Proposal 2008 | | | | | Framework Decision 2005/214 | |
|---|---|---|---|---|---|---|
| **Step 1** | **Step 2** | **Step 3** | **Step 4** | **Step 5** | **Step 6** | **Step 7** |
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**Table 1 depicting the Enforcement Chain (Proposal 2010 and Proposal 2008) prepared by ETSC**

The Cross Border Enforcement Directive should cover steps one to four and not stop at step 3. 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, once identified, not to pay (steps 6-7).

The mechanics of this part of the Directive (Article 4) are already covered by the Prűm Convention under Article 12 and the Directive should draw inspiration from this.

See also detailed diagram in Annex from VERA3 Final Report detailing the current gaps in the current procedure and where the CBE Directive could add value in closing them and set up a watertight enforcement chain.

### c) 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 this is on their work programme for 2011. The framework decision represents the final element in the enforcement chain.

| Cross Border Enforcement Directive Proposal 2008 | | | | | Framework Decision 2005/214 | |
|---|---|---|---|---|---|---|
| **Step 1** | **Step 2** | **Step 3** | **Step 4** | **Step 5** | **Step 6** | **Step 7** |
| **Detection/ Registration of an offence** | **Identification of the vehicle** | **Identification of the Driver/ Owner** | **Notification of the Driver/ Owner** | **Refusal to Pay** | **Judicial Final Decision** | **Execution of the sanction** |

**Table 2 depicting the Enforcement Chain: CBE and Framework Decision prepared by ETSC**

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 the final 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 2008). 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. ETSC argues that the EU 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.

### d) Offence Notification: Driver/Owner Liability (Article 4)

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 4.b 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 European Parliament adopted an amendment to the text in December that adds: "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'. ETSC proposes that the owner could pay an administrative fee, as in some Member States, to cover the costs of the investigation if they are not willing to identify the offender driving their car at the time of the offence.

### e) Exceptions

ETSC would stress the need for the text to clarify what sort of exceptional circumstances under Article 4 would be allowed as a reason for Member States of registration to allow the central authority not to provide the information requested. Such exceptions should be clearly defined in the Directive and kept to a bare minimum. Otherwise this could undermine the effectiveness of the Directive.

### f) Territoriality and Information to Non Resident Drivers

The principle of territoriality is an important element of this proposed Directive. ETSC supports Article 9 that explains that Member States and the European Commission should inform drivers about road safety related legislation. Following this European citizens should respect all transport legislation, especially that related to road safety whilst driving in countries other than their own. The Cross Border Enforcement Directive applies to non commercial traffic and should complement the EU's existing legislation on enforcement of Social Rules covering the professional transport sector Regulation 2006/561[1]. The Regulation 561/2006 enshrined the principle of extra territoriality for professional transport namely that:

[1] CORTE Factsheet on Regulation (EC) no 561/2006 Factsheet No. 001/2009 www.corte.be

*"A Member State shall enable the competent authorities to impose a penalty on an undertaking and/or driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or third country."* Article 19 Regulation 561/2006

Although this is different as this applies to enforcement of the EU's Social Legislation in the professional transport sector, rather than non commercial, this regulation introduces an exception to the principle of territoriality (according to which an infringements can only be prosecuted on the territory of the country where the infringement has been committed) that may be relevant to the discussions on setting up a Directive to enable Cross Border Enforcement of traffic offences related to road safety.

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

The original Commission proposal foresaw that a Committee on road safety enforcement would 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. This should link into plans outlined by the European Commission in it's new Communication: "Towards a European road safety area: policy orientations on road safety 2011-2020" and the road safety enforcement strategy it foresees within it. This proposal would need to be updated to take the implications of the Lisbon Treaty and delegated acts into account.

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

### a) The need to save lives on Europe's roads

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.

### b) 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[5], whereas the share of non-resident drivers in speeding offences is around 15% on average[6].

### c) 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.

### d) 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.

### e) 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.
CAPTIVE, 2006 Common Application of Traffic Violations Final Report.
PEPPER 2008 http://www.pepper-eu.org
Vera 3 Cross Border Enforcement of Road Traffic Violations

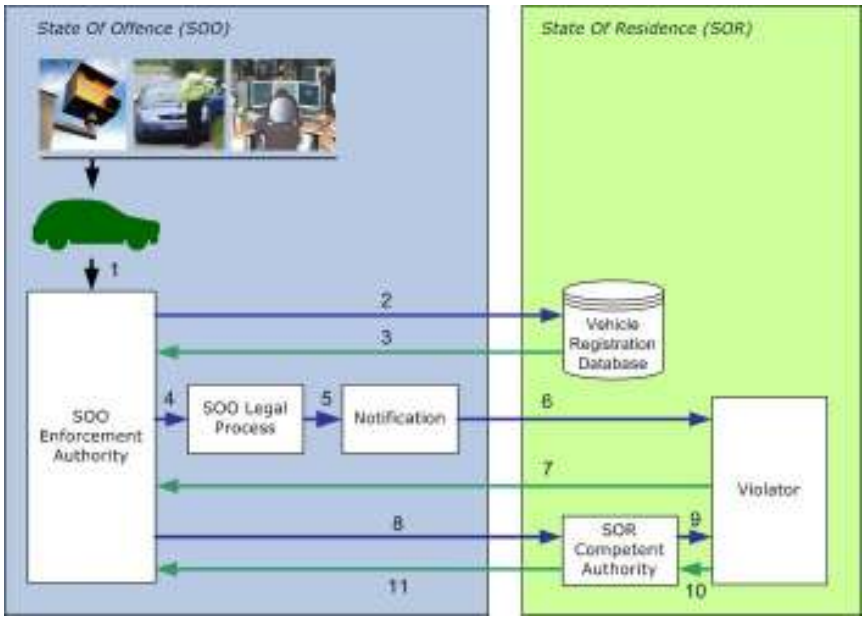
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[5] Source Eurostat: The 5% is based on the evidence from a selected group of countries. It means that of the vehicle-kms made on the roads, some 5% is made by vehicles registered in another country. Results show 5.5% in France, 3.9% in Germany, 4.1%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

[6] 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).

## Annex A Extract from the VERA 3 Final Report

The following provides a detailed explanation of the cross-border enforcement process for financial penalties for criminal road traffic offences and highlights where legislation is still needed.




| No. | Procedure | Requirements | Legal basis |
|---|---|---|---|
| 1 | Detect and record violation | • A violation is detected either:<br>– automatically via a roadside enforcement camera or<br>– manually (via enforcement officer at the roadside or stationed remotely in a control centre viewing images or a video feed from a roadside camera for example).<br>• All data which constitutes evidence of the violation as defined by national legislation in the SOO is recorded and stored<br>• Additional data may need to be recorded and stored to satisfy the minimum common data requirements | • Member States' national legislation<br>• Member States' national legislation<br>• Legislation needed |
| 2 | Identify violator | • The enforcement authority in the SOO identifies the State where vehicle is registered (the SOR). This might be through the country marker on the vehicle's licence plate or through a search using EUCARIS<br>• SOO requests details of the vehicle owner and keeper from the SOR (this may be part of the same process) | • Prüm for enabling mechanism although new legislation may be needed to require States to use the mechanism |
| 3 | Return identity of owner[7] | • The identity of the owner of the vehicle (or normal search variants such as not found, partial | • Prüm for enabling mechanism |

[7] "Vehicle owner" is also intended to mean the same as "vehicle keeper" where this terminology is used

| No. | Procedure | Requirements | Legal basis |
|---|---|---|---|
| | | match, etc) is returned to the SOO<br>• The owner and/or the violator can be a natural and/or legal person depending on the violation in question | although new legislation may be needed to require States to do this<br>• Member States' national legislation |
| 4 | Set penalty | • A penalty is set in accordance with national laws of SOO | • Member States' national legislation |
| 5 | Prepare notification | • An original notification is prepared by the competent authority in the SOO using the same forms it would use for resident violators<br>• A translated version of the original notification is prepared in the official language(s) of the SOR | • Member States' national legislation<br>• Legislation needed |
| 6 | Notify driver/ owner/operato r | • The original and translated notifications are issued to the violator in the SOR<br>• The mechanism for issuing the notifications shall be defined by the SOO<br>• The notification may need to be re-issued if the violator nominates another person as the driver at the time of the violation, an alternative address is provided or if no satisfactory response is received within a specified time | • Legislation needed<br>• Member States' national legislation<br>• Member States' national legislation |
| 7 | Response to notification | • The violator's responses to the notification include payment of the penalty, appeal, ignore, nominate, not known at the address, etc | • Member States' national legislation |
| 8 | Delegate power to enforce penalty | • In the event that no response which is satisfactory to the SOO authorities has been obtained from the violator after all of the processes required by national legislation in the SOO have been concluded, the competent authority in the SOO delegates the authority to enforce what is now the "final" penalty to the competent authority in the SOR<br>• The SOR needs to accept the SOO's evidence of the offence other than under certain specific conditions | • COPEN[8]<br>• COPEN |
| 9 | Enforce penalty | • The final penalty is enforced on the violator | • COPEN |
| 10 | Penalty enforced | • The final penalty is paid to the competent authority in the SOR | • COPEN |
| 11 | Acknowledge ment of penalty being enforced | • The competent authority in the SOR acknowledges payment of the final penalty to the SOO enforcement authority<br>• Some or all of the final penalty may be transferred to the enforcement authority in the SOO depending on agreements between the two States | • COPEN<br>• Agreements needed |

[8] European Council Framework Decision 2005/214/JHA on the Application of the Principle of Mutual Recognition to Financial Penalties, 24 February 2005