

Cross-Border Enforcement

Why the need for cross-border enforcement?

There is increasing evidence from different Member States that non-resident drivers flout traffic laws when travelling abroad as they do not fear punishment. The implications are twofold: firstly, their dangerous behaviour can lead to road accidents, and secondly it raises criticism in the country they are travelling as police are not always able to fairly apply the sanctions. In France, in the first four months of operation of the national automated speed enforcement system (which started in 2003), approximately 25% of the violations were committed by vehicles registered outside France.

The enforcement of traffic law is one of the most effective ways of reducing road casualties in Europe. Police enforcement of rules covering speeding, drink driving and the use of seat belts alone can help avoid 14 000 fatalities by 2010, according to Commission estimates. Yet more must be done urgently to see that these rules are applied equally to all EU nationals as they travel across national boundaries.

What are the obstacles to cross-border enforcement?

The most obvious stumbling block for the effective follow-up of cross-border offences is the minimal harmonisation between traffic enforcement law in Europe. Some countries have a penalty points system, others do not or use a different system. Moreover, there are different levels of financial penalties for the same offence.

The other main barrier relates to the exchange of relevant information. A common system is sorely needed through which cross-border offenders can be identified and located. This information must be exchanged swiftly, efficiently and securely. Security of personal data is a difficult issue and has prevented progress before.

IN LUXEMBOURG, a total of 23% of fatal accidents are estimated to have been caused by non-resident drivers in 2003. To tackle the problem of non law-abiding non-resident drivers, the country introduced in 2002 a penalty points system which foresees that non-resident offenders have a 'virtual' Luxembourg driving licence opened in their names. By the end of 2004, a total of 6,290 non-resident drivers had such a licence opened, representing 30.6% of all drivers charged with penalty points in Luxembourg.

Legal framework

The European Commission and the EU Council of Ministers have recognised the problems posed by cross-border enforcement. EU Transport Ministers have included the issue of cross-border enforcement both in the Verona Declaration on Road Safety of 2003¹ and in the Council Conclusions from a follow up meeting in 2004². The European Commission has adopted a Recommendation on the enforcement of traffic law³ which includes requirements on cross-border aspects. Member States are asked to set up enforcement co-ordination points to ensure that serious or repeated offences jeopardising road safety committed by non-resident drivers are reported to the competent authority of the Member State in which the vehicle is registered.

Efforts to ensure the enforcement of traffic law across the boundaries of different European countries date back to the 1960s.

Legislation	Year of adoption	Status
Council of Europe Convention on the Punishment of Road Traffic Offences ⁴	1964	In force
UN Convention on Road Traffic ⁵	1968	In force
Exchange of information on driving licences, including information on driving disqualifications, first featured in the European Driving Licence Directive ⁶	1991	Only partially implemented
EU Convention on Driving Disqualifications ⁷	1998	Only ratified by Spain
Schengen Community draft Agreement on Co-operation in Proceedings for Road Traffic Offences ⁸	1999	Not yet entered into force due to concerns amongst Member States regarding privacy
Principle of Mutual Recognition by the European Council ⁹	1999	In force
Council Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (COPEN 24) ¹⁰	February 2005	In force as of 2007

Exchange of Information

Currently twelve Member States use the European Car and Driving Licence Information system ('EUCARIS') to exchange driving licence information. The main reason for this is that so far the exchange of driving licence information is not obligatory according to the European Driving Licence Directive in force. This might however change with the latest revision of the Driving Licence Directive.

EUCARIS (www.eucaris.net) is a system based on a treaty of 29 June 2000. It is the infrastructure by which participating countries can search databases of other participating countries which hold driving licence and/or vehicle information. This system has been primarily used to trace stolen vehicles. By the end of 2005, EUCARIS should make it possible to exchange also personal data for cross-border enforcement of financial penalties.

The Council and Commission have decided to set up RESPER (subject to a feasibility study) to exchange information and data on all European driving licences. This is also part of the revision of the European Driving Licence Directive.

Those Member States who have already sought to work together to address this part of the Driving Licence Directive have drawn up bi-lateral or multi-lateral agreements with other countries in close geographical proximity.

Research and possible future legislation

The VERA project¹¹ on the harmonisation of enforcement across the EU has established an important principle stating that: "In order to invoke the enforcement of penalty for a violation across Member States' borders, all legal processes have to be concluded in the Member State where the violation took place. If, once these processes are complete, the penalty incurred cannot be enacted on the vehicle/driver responsibility, the power to enforce the penalty can be delegated to the Member State where the vehicle owner/driver is resident." Some Member States have since worked to put this principle into practice.

FRANCE started on 21 January 2005 sending speeding tickets based on automated camera detection to Luxembourg residents. The procedure is based on an informal agreement between France and Luxembourg under the Schengen Treaty. On the basis of the licence plate number, the Luxembourg police provide the French colleagues in the Police and Customs Co-operation Centre with the contact details of the vehicle owner.

The follow-up project VERA 2 has identified a data exchange system ('eNFORCE') allowing Member State authorities to carry out the responsibilities associated with the cross-border enforcement of financial penalties. Researchers who participated in this project also recommended that a European Directive be prepared under the first pillar to facilitate cross-border enforcement of financial penalties in the EU-25.

Another EU project entitled CAPTIVE kicked-off in January 2005 to examine the state of play in the cross-border enforcement of non-pecuniary sanctions such as driving bans, restrictions to drive and criminal penalties. The one-year project will analyse the current multi-lateral and bilateral instruments and propose recommendations as to how to overcome problems faced in this field. A possible legal instrument dealing with the cross-border enforcement of non-pecuniary sanctions is not expected until the findings of the CAPTIVE project have been considered.

In an increasingly mobile, integrated and enlarged European Union, non-resident drivers make up more of the traffic flow. This is particularly so in transit countries such as France and Germany. Current co-operation agreements are not able to deal with the increasingly complex cross-border problems posed by traffic offenders. Legislation proposing a workable EU wide approach is needed in order to ensure that drivers respect traffic law in whichever EU country they are driving. This should enable Member States to follow up offences including both financial penalties and driving restrictions such as bans. In the case of financial penalties, both the basis for possible legislation and the necessary framework for an information exchange system have been prepared.

There is a clear value added case for EU action. Moreover key transit Members States, as well as enforcement authorities, would welcome European wide action in this area. It is now time to start with the legislative procedure. Otherwise the number of cross-border travellers who break traffic law and undermine national enforcement efforts will continue to rise.

References

- 1 Verona Declaration on Road Safety 2003
- 2 Transport Council Conclusions of 9-10 December 2004
- 3 EC Recommendation on enforcement in the field of road safety 2004
- 4 Council of Europe Convention on the Punishment of Road Traffic Offences of 30 November 1964
- 5 UN Convention on Road Traffic of 8 November 1968
- 6 Driving Licence Directive 91/439/EEC
- 7 EU Convention on Driving Disqualifications of 17 June 1998
- 8 Decision of the Schengen Executive Committee of 28 April 1999
- 9 European Council Conclusions October 1999
- 10 Council Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (COPEN 24) 2005
- 11 VERA Video Enforcement for Road Authorities 1998
- 12 VERA 2 Video Enforcement for Road Authorities 2004