

EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

2008/0062(CNS)

11.9.2008

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Transport and Tourism

on the proposal for a directive of the European Parliament and of the Council
facilitating cross-border enforcement in the field of road safety
(COM(2008)0151 – C6-0149/2008 – 2008/0062(COD))

Rapporteur: Renate Weber

PA_Legam

SHORT JUSTIFICATION

Rules set in the proposal are intended to facilitate the enforcement of sanctions provided for traffic offences (irrespective of their qualification as criminal or administrative offences) where the offender cannot be immediately identified, for instance because the offence was detected by means of electronic devices, or the offender is immediately identified but further investigation is required as, according to the proposal, it is the case for drink-driving.

The scope of the proposal is rather narrow and covers four road traffic offences, meaning: speeding, drink-driving, non-use of seat-belt and failing to stop at a red traffic light.

The proposal raises some concern from the point of view of the protection of fundamental rights.

With regard to the offence of drink-driving, it must be noted that according to Article 2 (f) drink-driving means "driving with a blood alcohol level higher than the maximum level in force in the State of offence". This means that, irrespective from the fact that there are other less intrusive ways to detect drink driving, such as the breathalyzer, the proposal does not take into consideration the option of detecting drink-driving in a way which does not imply taking a blood sample from the suspect. This might deeply affect fundamental rights as far as no provision in the Directive clearly states that nobody can be obliged to provide a blood sample for this purpose and that drink-driving should in first instance always be detected by means of a breathalyzer.

With regard to procedural guarantees, it is the opinion of the LIBE Committee that the Directive should provide that the offence must be detected by automated equipments or by competent law enforcement authorities at the time of its occurrence and that the notification procedure is compliant with the rule of law and notably with the principle of non self-incrimination.

Finally, the LIBE Committee agrees with the opinion delivered by the EDPS, stating that the proposal is compliant with data protection requirements.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive **Article 1 – paragraph 1 – point d e (new)**

Text proposed by the Commission

Amendment

(de) any other major road safety offences;

Justification

The directive should reflect the efforts of Europe's cities and regions to implement innovative sustainable transport policies such as road charging, green zones and traffic restrictions to improve the speed of public transport modes in cities to encourage modal shift. Challenges such as climate change, pollution and congestion are common to all Europe's cities and an effective cross-border enforcement mechanism to underpin these innovative policies is crucial.

Amendment 2

Proposal for a directive Article 1 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

***(1a) The offence of drink-driving may be detected in first instance only by means of a breathalyzer.
Blood samples may be taken only with the consent of the suspect.
No legal consequence may come from the refusal of the suspect to give a blood sample***

Justification

Taking blood samples could deeply affect fundamental rights if done without the consent of the suspect. Priority should therefore be given to other less intrusive means of detection such as the breathalyzer. A provision clearly stating that nobody can be obliged to provide a blood sample is therefore required keeping in mind the scope of the Directive (traffic offences not serious crimes).

Amendment 3

Proposal for a directive Article 1 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) This Directive shall apply only to the road traffic offences detected by means of automated equipment or, in the event of non-automated means being used, by competent law enforcement authorities at the time of its commission.

Justification

Certainty and lack of abuses in the detection of offences should always been ensured. In this view, it should be provided that the road offences within the scope of this Directive are detected either directly by law enforcement authorities or by means of automated equipment.

Amendment 4

Proposal for a directive Article 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) “central authority” means the authority responsible for ensuring data protection in each Member State;

Amendment 5

Proposal for a directive Article 5 - paragraph 2

Text proposed by the Commission

Amendment

2. The offence notification shall contain a description of the relevant details of the offence concerned and the amount of the financial penalty that the holder is required to pay, the possibilities for the holder to contest the grounds for the offence notification and to appeal against a decision imposing a financial penalty, and the procedure to be followed in case of dispute or appeal.

2. The offence notification shall contain ***the subject of the notification, the name of the authority responsible for enforcing the sanctions and the purpose of the notification, the name of the competent authority responsible for applying this Directive***, a description of the relevant details of the offence concerned and the amount of the financial penalty that the holder is required to pay, ***the date by which it must be paid***, the possibilities for the holder to contest the grounds for the offence notification, ***a statement of her/his privileges against self-incrimination and of his/her right to appeal*** against a decision imposing a financial penalty, and the procedure to be followed in case of dispute or appeal.

Justification

It seems relevant for the addressee of the notification that he/she is clearly informed about the

offence, the authority that has detected it and about the object of the notification. The principle of nemo tenetur se detegere is one of the fundamental values of the rule of law. It should be respected in any criminal/administrative proceeding, including this one.

Amendment 6

Proposal for a directive

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Any financial penalty imposed under this Directive shall be non-discriminatory in terms of nationality and shall be imposed under the law of the State of offence.

Amendment 7

Proposal for a directive

Article 5 - paragraph 4 a (new)

Text proposed by the Commission

Amendment

(4a) In any event privilege against self-incrimination shall be granted. The holder shall not be held liable if he/she was not driving and he/she is unable to indicate the identity of the driver.

Justification

The principle of nemo tenetur se detegere is one of the fundamental values of the rule of law. It should be respected in any criminal/administrative proceeding, including this one.

Amendment 8

Proposal for a directive

Article 5 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. No penalty shall be issued in respect of an offence committed before the date of entry into force of this Directive.

Amendment 9

Proposal for a directive

Annex – page 3 (Relevant details concerning the offence) - point b - subparagraph 3

Text proposed by the Commission

speeding, drink-driving, non-use of seatbelt or child restraint system, failing to stop at a red traffic light.

Amendment

speeding, drink-driving, non-use of seatbelt or child restraint system, failing to stop at a red traffic light, ***moving traffic offences, major road safety offences.***

Justification

If the scope of the directive is extended, the notice needs to reflect this change.

Amendment 10

Proposal for a directive

Annex - form for the offence notification - page 4

Text proposed by the Commission

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:

Amendment

Reply form

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

A. Identity of the driver:

Were you the driver of the vehicle at the time of the commission of the offence (yes/no)

If yes, please complete the following:

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

If you were not the driver of the vehicle at the time of the commission of the offence, are you able to indicate the identity of the driver (yes/no)

If yes, please complete the following:

- Name and first 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/no

If not, the holder of the registration certificate is:

(name, first name, address)

(2) Do you acknowledge that you committed the offence?

yes/no

(3) If you do not acknowledge this, please explain why:

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

at the following address

(1) 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)

(2) Do you acknowledge that you committed the offence?

yes/no

(3) If you do not acknowledge this, ***or if you refused to reveal the identity of the driver,*** please explain why:

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

at the following address

Justification

The amendments proposed in the text must be reflected in the form.

PROCEDURE

Title	Cross-border enforcement in the field of road safety	
References	COM(2008)0151 – C6-0149/2008 – 2008/0062(COD)	
Committee responsible	TRAN	
Opinion by Date announced in plenary	LIBE 10.4.2008	
Drafts(wo)man Date appointed	Renate Weber 28.5.2008	
Discussed in committee	14.7.2008	8.9.2008
Date adopted	8.9.2008	
Result of final vote	+: 32	–: 0
	0: 1	
Members present for the final vote	Alexander Alvaro, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Jean-Marie Cavada, Carlos Coelho, Elly de Groen-Kouwenhoven, Esther De Lange, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Claudio Fava, Armando França, Kinga Gál, Patrick Gaubert, Jeanine Hennis-Plasschaert, Ewa Klamt, Wolfgang Kreissl-Dörfler, Henrik Lax, Baroness Sarah Ludford, Claude Moraes, Javier Moreno Sánchez, Rareș-Lucian Niculescu, Martine Roure, Inger Segelström, Renate Weber, Tatjana Ždanoka	
Substitute(s) present for the final vote	Edit Bauer, Frieda Brepoels, Elisabetta Gardini, Sylvia-Yvonne Kaufmann, Jean Lambert, Marian-Jean Marinescu, Siiri Oviir	