

## **P6\_TA(2008)0616**

### **Cross-border enforcement in the field of road safety \*\*\*I**

**European Parliament legislative resolution of 17 December 2008 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))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0151),
  - having regard to Article 251, paragraph 2 and Article 71, paragraph 1(c) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0149/2008),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0371/2008),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

## **P6\_TC1-COD(2008)0062**

**Position of the European Parliament adopted at first reading on 17 December 2008 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1)(c) thereof,

Having regard to the proposal from the Commission<sup>||</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>1</sup>,

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<sup>1</sup> OJ C ...

*Having regard to the opinion of the European Data Protection Supervisor<sup>2</sup>,*

*Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,*

**Whereas:**

- (1) The European Union is pursuing a policy to improve road safety with the objective of reducing fatalities, injuries and material damage. Consistent enforcement of sanctions for road traffic offences which are known to considerably *jeopardise* road safety is an important instrument for achieving this objective.
- (2) However, sanctions in the form of financial penalties for certain road traffic offences are often not enforced if they are committed with a vehicle which is registered in a Member State other than the Member State where the offence took place because of a lack of appropriate mechanisms.

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<sup>1</sup> OJ C ...

<sup>2</sup> *OJ C 310, 5.12.2008, p. 9.*

<sup>3</sup> *Position of the European Parliament of 17 December 2008.*

- (3) In order to improve road safety throughout the European Union and to ensure equal treatment between resident and non-resident offenders, enforcement should be facilitated irrespective of the Member State in which the vehicle with which an offence has been committed is registered. To this end, a system of cross-border exchange of information should be put in place.
- (4) Such a system is of particular value in relation to road traffic offences detected by automated devices where the identity of the offender cannot immediately be established, such as speeding or failing to stop at a red traffic light. It is also useful in order to enable the follow-up of offences where verification of the vehicle registration details may be necessary, in the case where the vehicle has been stopped. This is notably the case for drink driving.
- (5) The types of road traffic offences to be covered by this system should reflect their seriousness in terms of endangering road safety and should cover offences which are qualified as traffic offences in the laws of all Member States. It is accordingly appropriate to make provision in relation to speeding, drink-driving, non-use of a seat-belt, and failing to stop at a red traffic light. The Commission will continue to monitor developments across the *European Union* in respect of other road traffic offences with serious implications for road safety. ***Following the submission of a report on the implementation of this Directive two years after its entry into force, the Commission should, if appropriate, propose a revision of the Directive regarding the possibility of extending its scope to include any other categories of road traffic infringements.***
- (6) ***To guarantee a sufficient degree of road safety and to ensure that the financial penalties applicable are proportionate, the Commission should hold discussions with the Member States on the introduction of harmonised fixed financial penalties for road traffic infringements and should also encourage the exchange of best practices between Member States.***

- (7) In order to ensure its effectiveness, the system of enforcement should cover the phases between the detection of an offence and the sending of an offence notification, based on a standard model, to the holder of the registration certificate of the vehicle concerned. Once a final decision has been taken, || Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties<sup>1</sup> of 24 February 2005 *may apply. Where that Framework Decision cannot be applied, for example because sanction decisions do not fall within the scope of criminal law, the effectiveness of the sanctions should nevertheless be ensured by other sanction enforcement measures. A minimum standard ought to be introduced for offence notifications, including the reply form and by using more compatible methods of sending them so that cross-border enforcement becomes more reliable and more effective.*
- (8) Further, the cross-border exchange of information should be carried out rapidly by electronic means. To this end, *it is desirable that secure Community electronic networks be set up, enabling the exchange of information to be carried out in secure conditions and ensuring the confidentiality of the data transmitted.*
- (9) Since the data relating to the identification of an offender is personal, Member States must take the measures necessary to ensure that Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>2</sup> is complied with. *The offender should be informed accordingly, when notified of the offence, of his or her rights regarding access to, rectification of and deletion of data and of the maximum legal period for which the data can be kept.*
- (10) *Apart from the temporary nature of their storage, data collected under this Directive should not, under any circumstances, be used for purposes beyond what is required in order to follow up road safety offences. The Commission and the Member States should accordingly ensure that the processing of personal data and the management of the Community electronic network will serve to prevent any data collected from being used for purposes other than those specifically related to road safety.*
- (11) *As far as road safety controls are concerned, Member States should harmonise their methods so that their practices are comparable at EU level. Minimum standards on control practices should thus be developed in each Member State.*

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<sup>1</sup> OJ L 76, 22.3.2005, p. 16.

<sup>2</sup> OJ L 281, 23.11.1995, p. 31.

- (12) *Technical equipment for road safety controls should also be harmonised in future in order to ensure the convergence of control measures between Member States. Technical harmonisation of this kind should be proposed by the Commission during the revision referred to in Article 14.*
- (13) *The Commission and Member States should take whatever measures are necessary to inform, and raise the awareness of, EU citizens as regards the implementation of this Directive. Appropriate information on the consequences of a failure to comply with road safety rules may thus have a deterrent effect upstream on the commission of road traffic offences.*
- (14) *The Commission should focus in the future on facilitating cross-border enforcement of road traffic infringements, in particular those related to serious traffic accidents.*
- (15) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup>.
- (16) In particular, power should be conferred on the Commission to adopt measures concerning the adaptation of the Annex. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (17) Since the *objective* of this Directive, namely facilitating the cross-border enforcement of sanctions for certain road traffic offences, cannot be sufficiently achieved by the Member States themselves and can therefore, by reason of their scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this Directive does not go beyond what is necessary in order to achieve *that objective*,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>1</sup> OJ L 184, 17.7.1999, p. 23. ||

# CHAPTER I

## GENERAL PROVISIONS

### Article 1

#### Subject matter and scope

1. This Directive establishes a system to facilitate the cross-border enforcement of sanctions for the following road traffic offences:
  - (a) speeding;
  - (b) drink-driving;
  - (c) non-use of a seat-belt;
  - (d) failing to stop at a red traffic light.
2. This Directive only applies insofar as the sanction to be imposed for the offence concerned is or includes a financial penalty.

### Article 2

#### Definitions

For the purpose of this Directive the following definitions shall apply:

- (a) "holder" means the holder of the registration certificate of the vehicle concerned, ***including motorcycles***;
- (b) "State of offence" means the Member State where the offence has been committed;
- (c) "State of residence" means the Member State where the vehicle with which the offence has been committed is registered;
- (d) "competent authority" means ***a single contact point in each Member State responsible for facilitating the implementation of this Directive***;
- (e) ***"central authority" means the authority responsible for ensuring data protection in each Member State;***

- (f) ***"final administrative decision" means any final decision requiring a financial penalty to be paid, other than a decision falling within the definition of Article 1 of Framework Decision 2005/214/JHA;***
- (g) "speeding" means exceeding speed limits in force in the State of offence for the road or type of vehicle concerned;
- (h) "drink-driving" means driving with a blood alcohol level higher than the maximum level in force in the State of offence;
- (i) "non-use of a seat belt" means failing to comply with the requirement to wear a seat-belt or use a child restraint in cases where the use of such equipment is mandatory in accordance with Council Directive 91/671/EEC<sup>1</sup> or the national law in the State of offence;
- (j) "failing to stop at a red traffic light" means the offence of driving through a red traffic light as it is defined in the law of the State of offence.

### **Article 3** ***EU-wide road safety guidelines***

1. ***With a view to pursuing a road safety policy aiming for a high level of protection for all road users in the European Union and taking into account the widely differing circumstances within the European Union, Member States shall act, without prejudice to more restrictive policies and laws, in order to provide for a minimum set of road safety guidelines within the scope of this Directive. To achieve that aim, the Commission shall adopt EU-wide road safety guidelines in accordance with the regulatory procedure with scrutiny referred to in Article 13(2). The guidelines shall conform to the basic principles set out in this Article.***

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<sup>1</sup> Council Directive 91/671/EEC of 16 December 1991 on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3,5 tonnes (OJ L 373, 31.12.1991, p. 26) || .

2. *As regards speed, the use of automatic checking equipment on motorways, secondary roads, and urban roads shall be encouraged in particular on those sections of the road network where the number of accidents caused by speeding is higher than average.*

*The recommendations adopted for the purposes of these guidelines shall seek to ensure that the number of speed checks using automatic equipment increases by 30% in Member States where the number of road fatalities on is above the EU average and the fall in the number of road fatalities on since 2001 is below the EU average. A good geographical coverage of the territory of each Member State shall be ensured.*

3. *As regards drink-driving, Member States shall, as a matter of priority, carry out random tests in places where, and at times when, non-compliance is frequent and the risk of accidents increases.*

*Member States shall ensure that at least 30% of drivers can be tested annually.*

4. *As regards the use of seat belts, intensive checking operations shall be conducted for at least six weeks in any one year by Member States where less than 70% of road users wear seat belts, in particular in places where, and at times when, non-compliance is frequent.*
5. *As regards failure to stop at a red traffic light, automatic checking equipment shall be used primarily for junctions where the rules are often breached and a higher than average number of accidents occur as a result of driving through a red traffic light.*
6. *The guidelines shall recommend that Member States exchange good practices; in particular, they shall call on Member States which are most advanced in the area of automatic checking to provide technical assistance to those Member States which so request.*



## CHAPTER II

### PROVISIONS FACILITATING CROSS-BORDER ENFORCEMENT

#### *Article 4*

##### Procedure for the exchange of information between Member States

1. When an offence has been committed in a Member State with a vehicle which is registered in another Member State, and the case is not sanctioned and closed immediately by an authority which is in charge of pursuing the offence in the State of offence, the competent authority in that State shall send the vehicle registration number and information concerning the place and date of the offence to the competent authority in the other Member States or the State of residence if this can be identified. It shall do so in the same circumstances and under the same conditions in which it would pursue that offence if committed with a vehicle registered in its own territory.
2. The competent authority in the State of residence shall transmit immediately the following information only to the competent authority in the State of offence:
  - (a) the make and model of the vehicle which has the registration number concerned;
  - (b) in cases where the holder of the registration certificate of the vehicle concerned is a natural person, the name, address, date and place of birth;
  - (c) in cases where the holder of the registration certificate of the vehicle concerned is a legal person, the name and address.
3. ***Information exchange with regard to the processing of personal data and the free movement of data in this connection shall take place in compliance with Directive 95/46/EC. The competent authorities of the other Member States shall not store the information sent by the State of offence. This information shall be sent solely for the purposes of this Directive, and, upon conclusion of proceedings, all data must be verifiably deleted.***

## Article 5

### Use of an electronic network

1. Member States shall take all necessary measures to ensure that the exchange of information described in *Article 4* is carried out by electronic means. For this purpose, Member States shall take all necessary measures to ensure that **a Community** electronic network based on common rules is set up no later than 12 months after the date mentioned in *Article 15(1)*.
2. Common rules concerning the implementation of paragraph 1 shall be adopted by the Commission by the date mentioned in *Article 15(1)* in accordance with the regulatory procedure **with scrutiny referred to in Article 13(2)**.

These common rules shall include in particular provisions on the following:

- (a) the format of the data exchanged;
- (b) the technical procedures for electronic exchange of the data between Member States, **guaranteeing the security and confidentiality of the data transmitted**;
- (c) **personal data security and protection rules to prevent data being used for purposes other than those for which they were intended.**

## Article 6

### Offence notification

1. Upon receipt of the information described in *Article 4(2)*, the authority in the State of offence which is in charge of pursuing the offences covered by this Directive shall send an offence notification to the holder. The notification shall be established on the basis of the model set out in the Annex.
2. The offence notification shall, **as a minimum**, contain **the subject of the notification, the name of the authority responsible for enforcing the financial penalties, the name of the competent authority responsible for applying this Directive and** a description of the relevant details of the offence concerned. **It shall specify** the amount of the financial penalty, **the simplest payment procedures, the date by when it must be paid**, the possibilities for **contesting** the grounds for **issuing** the offence notification and **for appealing** against a decision imposing a financial penalty, and the procedure to be followed in case of dispute or appeal.
3. **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.**

4. The offence notification shall inform the holder that he must complete a reply form *within a specified period* if he does not intend to pay the *financial* penalty. ***It shall also inform the holder that, any refusal to pay, shall be communicated to the competent authority of the State of residence for enforcement of the decision.***
5. ***The offence notification shall notify the holder that his or her personal data shall be treated in accordance with the provisions of Directive 95/46/EC and shall point out his or her rights as regards access, correction and deletion, as referred to in Article 11 of this Directive.***
6. ***Should the holder not have been the driver at the time when the offence was committed, he or she shall supply the details of the identity of the driver in compliance with the law of the State of residence. This shall not apply where there is an agreement between two or more Member States aimed at dealing with problems arising from the implementation of this Article.***
7. The offence notification shall be communicated to the holder in the official language or languages of the State of residence, as specified by this State.
8. The Commission may adapt the model offence notification in order to take account of technical developments. Those measures designed to amend non-essential ***technical*** elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 13(2)*.
9. ***For the purposes of this Directive no financial penalty shall be issued in respect of an offence committed before the date of entry into force of this Directive.***

#### ***Article 7***

##### ***Follow-up of road traffic infringements***

1. ***Where the financial penalty has not been paid and the procedures to be followed in the case of a dispute or appeal have been exhausted, Framework Decision 2005/214/JHA shall apply as regards the financial penalties referred to in Article 1 of that Framework Decision.***
2. ***In cases of non-payment referred to in paragraph 1, but in respect of financial penalties which do not fall within the scope of that Framework Decision, the competent authority of the State of offence shall transmit the final decision to the competent authority of the State of residence for enforcement of the financial penalty.***

**Article 8**  
**Recognition and enforcement of financial penalties**

1. *The competent authority of the State of residence shall, without any other formality, recognise a final administrative decision imposing a financial penalty transmitted to it pursuant to Article 7(2) and, without delay, take every step required to enforce it, except where it decides to invoke one of the following grounds for non-recognition or non-enforcement:*
  - (a) *the law of the State of residence provides for immunity which makes enforcement of the decision impossible;*
  - (b) *the party concerned has not been informed of his or her right of appeal and of the deadline for lodging such an appeal.*
2. *Enforcement of the decision imposing the financial penalty by the competent authority of the State of residence shall be governed by the law of the State of residence in the same way as a financial penalty in the State of residence.*
3. *The competent authority of the State of offence shall immediately inform the competent authority of the State of residence of any decision or measure which stands in the way of enforcement of the decision. The competent authority of the State of residence shall cease the enforcement of the decision as soon as it has been informed of that decision or measure by the competent authority of the State of the offence.*

**Article 9**  
**Information transmitted by the State of residence**

*The competent authority of the State of residence shall forthwith inform the competent authority of the State of offence by any means in which the following is recorded in writing of:*

- (a) *the transmission of the decision to the competent authority;*
- (b) *any decision not to enforce a decision together with the reasons justifying such a decision;*
- (c) *the enforcement of the decision as soon as it has been completed.*

*Article 10*  
Central authorities

1. Each Member State shall designate a central authority to assist with the application of this Directive.
2. Each Member State shall communicate to the Commission within six months of the entry into force of this Directive the names and addresses of the central authorities designated pursuant to this Article.
3. The Commission shall communicate the information described in paragraph 2 to the other Member States.

*Article 11*  
Right of access, correction and deletion

1. Without prejudice to the right of data subjects under national legislation pursuant to Article 12(a) of Directive 95/46/EC, any person shall have the right to obtain communication of their personal data recorded in the State of residence which was transmitted to the requesting Member State.
2. Without prejudice to the observance of the procedural requirements for appeal and the redress mechanisms of the Member State concerned, any person concerned shall have the right to obtain the correction of any inaccurate personal data or the deletion of any data recorded unlawfully without delay.
3. Data subjects can exercise the rights mentioned in paragraph 2 before the central authority of their country of residence.

*Article 12*  
*Information for drivers in the European Union*

1. ***Member States shall take appropriate action in order to provide road users with the necessary information about the measures implementing this Directive. Such information may be passed on through, among other organisations, road safety bodies, non governmental organisations active in the field of road safety or automobile clubs.***

***Member States shall ensure that the rules on speed limits are displayed on signs erected on every motorway crossing their borders.***

2. ***The Commission shall post a summary of the rules in force in Member States in the field covered by this Directive on its website.***

## CHAPTER III

### COMMITTEE PROCEDURE

#### *Article 13* Committee

1. The Commission shall be assisted by a Committee on road safety enforcement
2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### *Article 14* *Revision and report*

1. *By ...\* the Commission shall submit a report to the Parliament and the Council on implementation of this Directive by the Member States and its effectiveness in terms of the goal of reducing the number of fatalities on the EU's roads.*
2. *On the basis of that report, the Commission shall consider how the scope of this Directive might be extended to cover other road traffic infringements.*
3. *In the same report the Commission shall put forward proposals to harmonise checking equipment on the basis of Community criteria and road safety checking procedures.*
4. *In the report the Commission shall further assess how the Member States have, on a voluntary basis, implemented the EU-wide road safety guidelines referred to in Article 3 and shall consider whether those recommendations contained in those guidelines should be made mandatory. If appropriate, the Commission shall submit a proposal amending this Directive.*

## CHAPTER IV

### FINAL PROVISIONS

#### *Article 15* Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest twelve months after its entry into force. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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

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*Two years after the entry into force of this Directive.*

of national law which they adopt in the field covered by this Directive.

*Article 16*  
*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 17*  
*Addressees*

This Directive is addressed to the Member States.

Done at ||,

For the European Parliament  
The President

For the Council  
The President

## ANNEX

FORM for the offence notification

referred to in *Article 6*



[COVERPAGE]

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

NOTIFICATION

Of a traffic offence committed in ..... [name of Member State where the offence has been  
committed]

[the above text appears on this coverpage in all the official EU languages]

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

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

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 .....

If you do not pay this financial penalty, you are obliged to complete the attached reply form (page 4) and send it to the address shown. ***This reply form may be transmitted by [the competent authority of the State of offence] to [the competent authority of the State of residence] for enforcement of the sanction decision.***

### ***INFORMATION***

***This case will be examined by the competent authority in the State of offence.***

***If this case is not pursued, you will be informed within 60 days from receipt of the reply form.***

***If this case is pursued, the following procedure applies:***

***[to be filled in by the State of 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 relevant appeal body; deadline for appeal].***

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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 it occurred:

Nature and legal classification of the offence:

speeding, drink-driving, non-use of seatbelt or child restraint system, failing to stop at a red traffic light<sup>1</sup>

Detailed description of the offence:

Reference to the relevant legal provision(s):

Description of or reference to the evidence for the offence:

- (c) Data concerning the device that has been used for detecting the offence<sup>2</sup>

Type of device for detection of speeding, drink-driving, failing to stop at a red traffic light or non-use of seat belt<sup>1</sup>:

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:

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<sup>1</sup> Delete what is not applicable.

<sup>2</sup> Not applicable if no device has been used.

## 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 in respect 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:

- (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, *and if you refuse 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:

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