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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the application of Directive (EU) 2015/413 facilitating cross-border exchange of
information on road-safety-related traffic offences**

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1. INTRODUCTION

Under Article 11 of Directive 2015/413/EU facilitating the cross-border exchange of information on road-safety-related traffic offences¹ ('CBE Directive'), the Commission is obliged to evaluate specific aspects of the application of the Directive by Member States, and submit a report to the European Parliament and the Council by 7 November 2016. The present report, supported by an external evaluation study², meets this obligation.

In the accompanying evaluation staff working document³, it is further assessed whether the CBE Directive:

- is effective and efficient in reaching its objectives to improve road safety and facilitate the cross-border enforcement of sanctions for road traffic offences;
- is relevant to the identified needs;
- is coherent internally and with other EU policies;
- provides added value at EU level;
- has effects that are sustainable.

It should however be noted that this evaluation was carried out after less than 18 months of application of the Directive by most Member States, which is insufficient time for sufficient data and other evidence to have become available for the impacts of the Directive to be fully and soundly evaluated. Still the available data and evidence can already provide some useful initial indicators on aspects of the operation and impact of the Directive.

2. BACKGROUND

Directive 2011/82/EU facilitating the cross-border exchange of information on road safety related traffic offences⁴ was adopted on the basis of Article 87(2) TFEU i.e. the police cooperation legal basis that allowed the UK, Denmark and Ireland to opt out of applying the Directive. The European Court of Justice judgement of 6 May 2014 on Case C-43/12⁵ annulled Directive 2011/82/EU on the grounds that it was not valid to adopt it based on the police cooperation legal basis, and the Directive should have been adopted based on the transport legal basis, as originally proposed by the Commission (Article 71(1)(c) of the Treaty establishing the European Community, now Article 91 of Treaty on the Functioning of the European Union). The judgment maintained the effects of Directive 2011/82/EU for a period of time not exceeding 12 months from the date on which the judgement was delivered. The new Directive 2015/413/EU was adopted in March 2015 based on the modified legal basis,

¹ Directive 2015/413/ facilitating cross-border exchange of information on-road-safety related traffic offences (OJ L 68, 13.3.2015, p. 9)

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0043>.

² Evaluation study on the application of Directive 2011/82/EU facilitating the cross-border exchange of information on road safety related traffic offences, Grimaldi (2016)

http://ec.europa.eu/transport/facts-fundings/evaluations/annual_en.htm

<http://ec.europa.eu/transport/facts-fundings/evaluations/doc/2016-03-16-evaluation-study-application-cross-border-final-report.pdf>

³ Commission Staff Working Document on the evaluation of cross-border information on road traffic offences SWD (2016) 355

⁴ Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences, OJ L 288, 5.11.2011, p. 1

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0043>

without any amendments to the substance of the annulled Directive and covering all Member States.

The CBE Directive aims to ensure a high level of protection for all road users by facilitating the cross-border exchange of information on road safety related traffic offences, and thereby facilitating the enforcement of sanctions, where those offences are committed with a vehicle registered in a Member State other than the Member State in which the offence took place.

The CBE Directive envisages the use of an electronic information system which makes it possible for EU Member States to perform automated searches for vehicle registration data in order to identify the owner/holder of the vehicle with which a road traffic offence has been committed. It requires each Member State to designate a national contact point responsible for allowing other Member States' national contact points to search the information system using the full licence plate number of the vehicle in question (Article 4). All personal data must be processed in line with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Article 7).⁶

Once the vehicle's owner/holder or the person suspected of having committed a road safety related traffic offence has been identified, the Member State in which the offence was committed decides whether to initiate follow-up proceedings. The CBE Directive specifies the way in which the offence should be communicated to the person concerned and provides a (non-obligatory) template for the letter to be sent. This letter should be written in the same language as the vehicle's registration document or in one of the official languages of the Member State where the vehicle is registered.

The procedure for the cross-border enforcement of sanctions for road traffic offences consists of the following main steps:

- 1) The offence is detected.
- 2) The elements of the offence are established.
- 3) The owner, holder or driver of the vehicle is identified.
- 4) Evidence is gathered.
- 5) If the Member State in which the offence is committed decides to initiate follow-up proceedings, the police or other relevant authority deliver a penalty notice/information letter to the presumed offender.
- 6) The presumed offender pays the fine (or identifies the actual offender and step 5 is repeated, or appeals).
- 7) If the fine is not paid, and if the Member State in which the offence is committed decides to initiate follow-up proceedings, the Member State's administrative or criminal courts issue a final decision.
- 8) The Member State to which the decision is sent (possibly) recognises the decision and enforces the sanction.

The CBE Directive plays a vital role only in steps 3 and 5. Cases where the offender refuses to pay a financial penalty may be covered by Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties.⁷

⁶ OJ L 281, 23.11.1995, p. 31

⁷ OJ L 76, 22.3.2005, p. 16

3. POSSIBLE EXTENSION OF THE CBE DIRECTIVE'S SCOPE

The CBE Directive's scope can be considered adequate as it covers the eight most important road safety related traffic offences. Offences such as speeding, failing to use a seat belt, drink-driving and the use of communication devices (distraction) are a major threat to road safety and are often committed by non-resident drivers. The need for the electronic information exchange system is less pronounced if the vehicle needs to be stopped for the offence to be detected, since then the offender is identified on the spot⁸. This is the case for drink-driving and driving while under the influence of drugs, where the driver must take an alcohol or drug test. However, maintaining drink-driving and driving under the influence of drugs in the Directive's scope is considered as appropriate, taking into account the specific objective to raise citizens' awareness of traffic rules and the applicability of sanctions in Member States.

Some stakeholders, including Member State authorities, would welcome the addition of other offences to the scope of the CBE Directive. These include: not keeping a sufficient distance from the vehicle in front; dangerous overtaking; illegal or dangerous parking (which in theory could be detected automatically, but in many Member States is not); and 'tolling' offences which would facilitate the cross-border enforcement of sanctions for non-payment of a toll, especially where there are free-flow microwave or satellite tolling systems.⁹

It may be useful to consider including not keeping a sufficient distance from the vehicle in front, dangerous overtaking and dangerous parking in the Directive's scope, due to the increased use of automatic checking equipment. However, adding tolling offences raises the question of the Directive's internal and external coherence, since road pricing falls under different transport legal basis than road safety and its main objective is elimination of distortions of competition between transport undertakings in Member States. The same applies to illegal parking linked to non-payment of municipal charges or taxes, and to the violation of municipal orders that are not related to road safety.

4. IMPACT OF THE CBE DIRECTIVE ON ROAD SAFETY

The CBE Directive is expected to improve Member State authorities' ability to identify non-resident offenders and increase non-resident road users' awareness of road traffic rules in force in other Member States. This should have a deterrent effect on non-resident road users, leading to better compliance with the rules. Greater respect for the rules i.e. better behaviour and fewer offences, should lead to fewer road fatalities and fatal accidents.

Information on road users' awareness of road traffic rules in other Member States is not available. The open public consultation carried out by the Commission had few replies from road users so it is impossible to draw conclusions about the information on road traffic rules in force, which is provided according to Article 8 of the CBE Directive. Moreover, it is impossible to draw any reasonable conclusions about the CBE Directive's possible impact on citizens' awareness of the rules in force in other Member States, due to the absence of a theoretical approach to assessing the impact of awareness measures on the behaviour of road users. Nevertheless, it is generally recognised that in order to improve compliance, it is necessary to improve road users' awareness of the rules.

The CBE Directive's impact on road safety is strongly embedded in the ability to improve the identification of non-resident offenders. As described in more detail in Section 8, the number

⁸ Some stakeholders mentioned that the exchange of vehicle registration data in such cases could be useful to verify/rectify the data in the registers. This is, however, not envisaged in the CBE Directive.

⁹ This may also be relevant for electronic vignette systems used for passenger cars in Hungary and Slovakia.

of investigated road traffic offences committed by non-residents increased by approximately four times between 2013 and 2015 in the Member States that implemented the Directive. However, there is still a potential to increase the use of the electronic information exchange system for the benefit of road safety. As explained in Section 6, the evaluation has also identified issues that reduce the effectiveness of sanctions for road traffic offences: approximately half of the sanctions could not be successfully enforced. This is likely to have hindered the deterrent effect of the CBE Directive, which was expected to improve compliance of non-resident road users with road traffic rules.

Furthermore, there are also general factors e.g. technical failure in vehicles, vehicle safety equipment, road infrastructure, emergency response in case of crash, economic development and its impact on the volume of traffic, the weather and climate change, the increase of vulnerable users such as cyclists, enforcement practices as well as the number of automatic checking equipment, the use of communication tools, the behaviour of road users and the impact of other road safety related EU law¹⁰ that affect the current situation of the total number of road fatalities not being significantly reduced since 2014.

The trends in road traffic offences in Member States reflect this situation: data on road traffic offences committed by both residents and non-residents for 2013-2014, which were provided by 13 Member States,¹¹ do not indicate a clear correlation between the CBE Directive and non-resident road users' compliance with road traffic rules. The same is true for the proportion of road fatalities and fatal accidents involving non-residents in the total number of road fatalities and fatal accidents,¹² which makes it impossible to provide clear evidence of the Directive's impact in this area.

5. AUTOMATED ENFORCEMENT OF ROAD TRAFFIC RULES

The evaluation did not identify any cross-border cases where the evidence produced by automatic checking equipment was refused or not recognised because the equipment was unreliable. However, as the implementation of the CBE Directive continues, the possibility of this happening may increase. If it does, harmonised EU-level standards, type approval procedures and periodic checks of automatic checking equipment (e.g. calibration of equipment)¹³ could increase the reliability of the equipment.

¹⁰As specified in the Interim Evaluation of the Policy Orientations on Road Safety 2011-2020

http://ec.europa.eu/transport/road_safety/events-archive/interim_eval_report_2011_2020_en.htm.

¹¹Austria, Belgium, Estonia, France, Hungary, Croatia, Latvia, Lithuania, the Netherlands, Poland, Slovakia, Slovenia and Sweden provided information on road traffic offences. However, only Belgium, Estonia, France, Hungary, Latvia, the Netherlands, Poland and Slovakia provided information on the proportion of offences involving foreign registered vehicles in all road traffic offences, by type of offence under the scope of the CBE Directive.

¹²CARE Database http://ec.europa.eu/transport/road_safety/specialist/statistics/index_en.htm.

¹³There are court rulings in Italy requiring that the checking equipment used to detect offences is tested at least once a year (e.g. decision of the '*Corte Costituzionale*' of 18 June 2015 no. 186). In Spain, the Administrative Court of Madrid established that a fine is not valid if it is not accompanied by a document proving the reliability of the detecting equipment and its compliance with relevant Spanish rules (Juzgado de lo Contencioso-Administrativo no. 23 de Madrid — February 2013). In the UK, the Brighton Magistrates Court stated in December 2008 that the evidence behind a speeding ticket was not reliable because the camera was not functioning under the conditions set by the 1988 Road Traffic Offenders Act, section 20(4), in particular, that the device had not been approved by the Secretary of State. While some Member States (e.g. UK, Germany and Poland) apply detailed rules concerning technical parameters and use of speed cameras, in other Member States (e.g. Italy) it was impossible to find such rules.

Member States have different ways of automatically detecting speeding offences (practically, there are no different automatic detection methods for other road traffic offences). In some Member States, it is possible to detect speeding offences by measuring not only instant speed but also the average speed on a section of road. In other Member States, legal and practical obstacles (e.g. higher costs) make the use of section control devices problematic. As long as there is no evidence of any significant impact on road safety or the cross-border enforcement of sanctions, harmonising detection methods at this stage would be seen as non-justified interference in Member States' enforcement policy choices.

It is generally recognised that the exchange and application of best enforcement practices, including the deployment¹⁴ and operation of automatic checking equipment can have a positive impact on road safety. An example of practice for the effective automated enforcement of road traffic rules, which is based on the information provided by Member States in the evaluation study, is in annex to this report. The practice concerns all road traffic offences which can be detected automatically.

6. FOLLOW-UP PROCEDURES IN THE CASE OF NON-PAYMENT OF A FINANCIAL PENALTY

The follow-up procedures in cases of non-payment of a financial penalty for road traffic offences should be based on common criteria. These criteria should reflect the fundamental rights and principles recognised by the Charter of Fundamental Rights of the EU and upheld by the CBE Directive, namely the protection of personal data, the right to a fair trial, the presumption of innocence, and the right of defence.

The significant potential of the CBE Directive to improve road safety can be further maximised. Approximately 50% of investigated road traffic offences committed by non-residents are currently not successfully enforced because of the following issues with the enforcement chain not covered by the Directive:

- Member States' lack of mutual assistance and cooperation in investigating road traffic offences after exchanging vehicle registration data as explained in Section 8; or
- decisions issued by Member States in cases of non-payment of a financial penalty for these offences often do not fall under Council Framework Decision 2005/214/JHA.

Moreover, the number of mutually recognised decisions that fall under the Framework Decision and relate to financial penalties for road traffic offences is very low. The proportion of successfully enforced financial penalties in all financial penalties which are not paid voluntarily varies from 0 to 1%.¹⁵ Only Germany (the Federal Ministry of Justice) provided detailed information on incoming and outgoing requests to recognise decisions related to financial penalties for road traffic offences (e.g. in 2011-2014, Germany issued 15 843 decisions related to road traffic offences committed by non-residents of which 43 % was not executed). It appears that the procedures under the Framework Decision are not tailored to the current situation where millions of financial penalties for detected road traffic offences have

¹⁴There may be specific principles linked to deployment practices e.g. the requirement that the checking equipment needs to be signposted to drivers, as stated by Italian courts (Corte di Cassazione (Supreme Court), Order number 680 of 13 January 2011).

¹⁵If 100 % of detected offences were investigated, there could be approximately **5 million** road traffic offences committed by non-residents per year (see Section 8), for which financial penalties are not paid voluntarily. It should be noted that there is no information on the number of financial penalties for road traffic offences which cannot be enforced due to the lack of mutual assistance and cooperation between Member States.

to be enforced and therefore do not adequately complement the exchange of information under the CBE Directive. The Directive's positive impact on road safety through the deterrent effect of sanctions for detected road traffic offences is not yet visible and even if achieved might not be sustainable if the sanctions are not enforced.

Council Framework Decision 2005/214/JHA is a mutual recognition instrument intended to cover all types of criminal offences. It is not meant to deal with mass road traffic offences which are usually (minor) administrative delicts. The external evaluation study identifies that the most significant legal barrier to the successful application of the Framework Decision is related to differences in Member States' normative qualification of road traffic offences (criminal vs administrative qualification) and their impact on national procedures and rights granted to presumed offenders. Currently, Member States' decisions on financial penalties can be only recognised if road traffic offences are qualified as criminal offences or if their review is carried out under a procedure that is similar to criminal proceedings. Despite recent interpretation by the European Court of Justice¹⁶, there still seems to be a legal uncertainty that makes it difficult for Member States' administrative authorities to assess whether the courts of other Member States issuing the decisions can be qualified as courts with jurisdiction in criminal matters or as (administrative) courts who review traffic offences under a procedure that is similar to criminal proceedings.

Most stakeholders who have experience in applying Council Framework Decision 2005/214/JHA emphasised that sending decisions and certificates concerning financial penalties to the executing Member State electronically is the most appropriate way of ensuring effective cross-border enforcement of financial penalties for road traffic offences.

The Commission published an evaluation report concerning the Framework Decision in 2008¹⁷ and is currently working with experts from several Member States to design standardised forms to facilitate the procedure for cross-border enforcement of financial penalties under the Framework Decision.

7. POSSIBLE HARMONISATION OF ROAD TRAFFIC RULES

The external evaluation study assessed the question of a possible harmonisation of road traffic rules from the perspective of improving the effectiveness of the CBE Directive and ensuring effective cross-border enforcement of sanctions.

Whilst some stakeholders suggested that there is a need for such a harmonisation, the analysis indicates that the harmonisation of road traffic rules at the EU level is neither a pre-condition for an effective functioning of cross-border enforcement of road traffic rules nor necessary to improve the effectiveness of the CBE Directive.

8. IMPLEMENTATION OF VEHICLE REGISTRATION DATA EXCHANGE

Article 4(4) of the CBE Directive stipulates that *'Member States shall take all necessary measures to ensure that the exchange of information is carried out by interoperable electronic means without exchange of data involving other databases which are not used for the purposes of this Directive. Member States shall ensure that such exchange of information is conducted in a cost-efficient and secure manner. Member States shall ensure the security*

¹⁶cf. Baláz Case (C-60/12)

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62012CJ0060&from=EN>

¹⁷Report from the Commission COM(2008) 888 final of 22.12.2008 based on Article 20 of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

and protection of the data transmitted, as far as possible using existing software applications such as the one referred to in Article 15 of Decision 2008/616/JHA¹⁸ and amended versions of those software applications, in compliance with Annex I to this Directive and with points 2 and 3 of Chapter 3 of the Annex to Decision 2008/616/JHA. The amended versions of the software applications shall provide for both online real-time exchange mode and batch exchange mode, the latter allowing for the exchange of multiple requests or responses within one message.'

As set out in Article 6 of the annulled Directive 2011/82/EU, Member States had to send a preliminary report to the Commission by 7 November 2014. Member States also had to send a comprehensive report (on the application of vehicle registration data exchange) by 6 May 2016 and every two years thereafter. Since the content of the preliminary report was not specified, the Commission requested that Member States provide the information as required for the comprehensive report, particularly the number of automated searches carried out by the Member State in which the offence occurred (reporting Member State), addressed to the national contact point of the Member State of registration (outgoing searches). Beyond the requirement, the Commission asked the Member States to provide available statistics on the offences covered by the CBE Directive, including the offences committed by non-residents/foreign vehicles. By the end of 2014, the Commission only received preliminary reports from Austria, Bulgaria, Estonia, Finland and Hungary. All other Member States (except the UK, Ireland and Denmark) delivered their reports by summer 2015, following a pre-infringement procedure launched against them by the Commission. In general, the Commission did not consider the reported data as adequately complete and the information received had to be substantially complemented by surveys and desk research.

The provision regarding the comprehensive report was kept in Article 6 of the new Directive 2015/413/EU, as the original transposition date of November 2013 fell before the annulment and Member States could have started implementing the Directive. By 1 June 2016, the Commission received reports from Austria, the Czech Republic, Germany, Estonia, Latvia, Lithuania, Romania and Slovenia.

According to the external evaluation study, the total number of detected offences covered by the CBE Directive and committed by non-residents/foreign vehicles in the EU is estimated at **10 million** for 2014 (Member States which provided the data for 2014 detected approximately 5 million non-resident offenders). This is out of approximately **200 million** road traffic offences covered by the CBE Directive (committed by residents and non-residents) which could have been detected in 2014.

In line with Article 4(4) of the CBE Directive, Member States use the electronic information system EUCARIS¹⁹ for vehicle registration data exchange, i.e. the EUCARIS software application as referred to in Article 15 of Council Decision 2008/616/JHA. Based on data received from the Member States who actively used the system i.e. carried out outgoing searches (searches following offences committed on their territory), it appears that approximately **2 million** outgoing searches were carried out in 2015. This suggests that half of the total number of offences committed by non-residents were investigated using a search in

¹⁸Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA, OJ L 210, 6.8.2008, p. 12. The Decisions aim to improve the exchange of information between the authorities responsible for the prevention and investigation of serious criminal offences. They set out provisions concerning: automated access to DNA profiles, fingerprints and specific vehicle registration data; supply of data in relation to major events; supply of information in order to prevent terrorism; other measures for stepping up cross-border police cooperation.

¹⁹European Vehicle and Driving Licence Information System

the system. This figure is considered to be low since the system's potential is much higher. Each detected offence usually has to be investigated by the police and the target should be to follow up all of automatically detected offences (provided that all elements of the offence are established). The external evaluation study indicates that 18 out of 28 Member States were connected to the system in 2015. However, the CBE Directive is still not fully implemented in November 2016, with 23 out of 28 Member States connected to the system.²⁰

EUCARIS significantly contributes to the effective cross-border enforcement of road traffic rules, although outgoing searches are not always successful. Taking into account the total number of failed searches²¹ performed by Belgium, France, Croatia, Hungary, the Netherlands and Poland (the Member States that provided information by the end of the evaluation in February 2016), out of the total number of outgoing searches in 2013-2015, 7.43 % resulted in a failure (not necessarily linked to the functioning of EUCARIS). This percentage is considered to be rather low. EUCARIS also complies with the security provisions of Article 4 and the data protection provisions of Article 7 of the CBE Directive.

It should be noted, that before EUCARIS was implemented, Member States investigated road traffic offences committed by non-residents only occasionally, based on mutual agreements where the exchange of vehicle registration data was usually paper-based. The automated online exchange of vehicle registration data through EUCARIS providing the necessary information practically immediately has had a positive impact on the cross-border enforcement of sanctions: the number of investigated road traffic offences committed by non-residents (outgoing searches) increased by approximately four times between 2013²² and 2015, even though only a few Member States actively implemented the CBE Directive during that time.

9. CONCLUSIONS

The CBE Directive is an effective tool with a significant potential to improve road safety by making possible identification of non-resident offenders through an electronic information system and by raising citizens' awareness of traffic rules and the applicability of sanctions in Member States. The Directive provides the automated online exchange of vehicle registration data in all Member States, which was not ensured by existing bilateral or multilateral agreements.

The electronic information system which ensures the expeditious, secure and confidential exchange of vehicle registration data is effective since it has had a positive impact on the cross-border enforcement of sanctions: the number of investigated road traffic offences committed by non-residents increased by approximately four times between 2013 and 2015 in the Member States that implemented the Directive.

However, the system has not been used to its full potential. In November 2016, 23 out of 28 Member States were connected to the system. Approximately 50 % of detected road traffic offences committed by non-residents were not investigated, in 2015. There is a clear need for the Member States to better exploit the potential of the system by more active investigation of road traffic offences committed by non-residents.

²⁰The UK, Ireland and Denmark have derogation and can transpose the CBE Directive by 6 May 2017.

²¹A 'failed search' is one that cannot access the desired data in the consulted database(s), preventing a Member State from identifying a non-resident offender.

²²It is estimated that, before 2013, there may have been approximately 600 000 road traffic offences investigated in the EU each year, under bilateral and multilateral agreements. Complete information is not available, however. This means that the CBE Directive may have more than doubled the number of investigated road traffic offences by 2014.

There is also a potential need to strengthen the enforcement of sanctions for investigated road traffic offences which are committed by non-residents. Approximately 50 % of the sanctions are currently not successfully enforced due to the lack of mutual assistance and cooperation between Member States in investigating road traffic offences after exchanging vehicle registration data or, because judicial decisions issued by Member States in cases of non-payment of a financial penalty for these offences often do not fall under Council Framework Decision 2005/214/JHA.

A need to include additional road-safety-related offences in the scope of the CBE Directive, such as not keeping sufficient distance from the vehicle in front, dangerous overtaking and dangerous parking, may be useful to consider due to the increased use of automatic checking equipment.

Maximising the CBE Directive's potential to improve road safety through increased compliance of non-resident road users with road traffic rules in force would require a holistic approach to create a synergy with other instruments, namely those related to mutual assistance and cooperation between Member States in investigating road traffic offences and mutual recognition to financial penalties.