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THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a Directive of the European Parliament and of the Council facilitating the cross-border exchange of information on road safety related traffic offences
– Statement of the Council's reasons
Adopted by the Council on 17 March 2011

I. Introduction

On 19 March 2008, the Commission presented its proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety.

Intensive discussions took place under French Presidency during the second semester of 2008. The majority of delegations welcomed the proposal although expressing concerns about the legal basis for the Directive. At the TTE Council of October 2008, 15 Ministers privileged a "third pillar solution". At its meeting of 9 December 2008, the TTE Council was therefore not able to reach an agreement and it was agreed that Council preparatory bodies should continue working to find a solution.

On 17 December 2008, the European Parliament voted its opinion at first reading.

The Council resumed the examination of the proposal, from July 2010, based on new Belgian Presidency proposals, in particular on the legal basis (Article 87(2) TFEU, police cooperation). On 2 December 2010, the Council adopted unanimously a conclusion on the political agreement with respect to the proposed Directive. On that occasion, the Commission issued a statement noting that there was unanimity within the Council on the draft Presidency compromise, including on the replacement of the legal basis proposed by the Commission, namely Article 91(1)(c) TFEU by Article 87(2) TFEU. While the Commission shared the view of the Council about the importance of pursuing the aims of the proposed Directive to improve road safety, it considered however from a legal and institutional perspective that Article 87(2) TFEU did not constitute the appropriate legal basis.

On 17 March 2011, the Council adopted its position at first reading in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

II. Analysis of the Council position at first reading

1. General

On 19 March 2008, the Commission presented a proposal aiming at facilitating the sanctioning of certain traffic offences committed in a Member State with a vehicle registered in another one by setting up a system for the exchange of relevant data between Member States. Four road safety offences were covered in the Commission proposal: speeding, driving under the influence of alcohol, failure to wear a seat belt and failure to observe red traffic lights. Given that these are the offences which cause the greatest number of accidents and deaths on the European roads. The proposal would introduce a network for the exchange of electronic data throughout the EU to enable the owner of a vehicle to be identified so that the authorities of a Member State in which an offence has been committed can serve notice on the owner of the vehicle with which the offence was committed.

The Council position at first reading shares the same objectives and underlying principles as the Commission proposal. It also intends to improve road safety and to ensure equal treatment of drivers irrespective of their state of residence. However, it uses a different legal basis and provides for a simpler implementation system than what is foreseen in the Commission proposal. The Council approach furthermore provides for a better protection of personal data which are exchanged under the Directive, and its scope includes four additional offences which were not foreseen in the Commission proposal.

2. Main issues

i) Legal basis

The legal basis of the Commission proposal is Article 71(1) (c) of the Treaty establishing the European Community (transport)¹.

¹ Now Article 91(1) (c) TFEU.

Considering the legal options provided by the TFEU, the Council chose another legal basis (Article 87(2) TFEU, police cooperation).

The European Parliament, which voted its opinion before the entry into force of the Lisbon Treaty, followed the Commission proposal on this issue.

As indicated above, the Commission has not been able to endorse the change of legal basis and, therefore, unanimity is required to reach an agreement amongst the Member States.

ii) *Scope*

The Commission proposed that the scope of the Directive would include four offences (speeding, drink-driving, non-use of a seat-belt and failing to stop at a red traffic light).

The Council in its position at first reading added four new offences: driving under the influence of drugs, failing to wear a safety helmet, use of a forbidden lane, and illegally using a cell phone or any other communication devices while driving. The Council specified that this list may be extended in the future through a revision of the Directive, following a Commission report to the European Parliament and the Council at the latest five years after the entry into force of the Directive.

The European Parliament followed the Commission proposal with respect to the scope of the Directive. It suggested that the Commission should submit a report on its implementation and effectiveness to the European Parliament and the Council, which could be followed by the extension of the scope of the Directive, in essence similarly to what is provided for in the Council position at first reading (except that the EP suggested a deadline of two years). However, the EP amendment also indicates that such report could include Commission proposals to harmonize checking equipment, as well as an assessment of the implementation of road safety guidelines.

iii) Definitions

The Commission proposed a list of definitions reflecting the wording used in the text of its proposal.

The Council modified the Commission proposal in this respect to adapt the list of definitions to the new wording of its position at first reading.

The European Parliament followed largely the Commission proposal, but introduced four additional definitions:

- it extended the definition of "holder" so that motorcycles are also covered by the Directive. The spirit of that amendment has been included in the Council position at first reading since one of the offences covered by the Directive is "failing to wear a safety helmet";
- it specified that a "competent authority" is a single contact point. That amendment has not been included in the Council position at first reading as some Member States have more than one registration authority;
- two other definitions ("central authority", "Final Administrative Decision") could not be accepted as the Council position at first reading does not use such wording.

iv) Information letter

The Commission proposal included a form for the offence notification which had to be sent to the holder of the vehicle registration certificate. It *requested* this holder to give details concerning the driver of the vehicle when the offence was detected if the holder did not accept to pay the penalty. It was then left to the Member State of offence to decide whether or not to pursue the driver.

The offence notification contained the necessary information for payment of the amount due and information on the possibilities of contestation and appeal. As a last resort, in the case of non-payment by the offender, Council Framework Decision 2005/214/JHA would apply.

The Council position at first reading provides for a template for the information letter whose content is very similar to the offence notification included in the Commission proposal. However, considering that the information letter is non compulsory (while the offence notification is), the information letter only *advises* the offender to fill in the reply form attached to it.

The European Parliament followed the Commission proposal with some modifications aiming at adding more information to the offence notification. In the event where the holder of the vehicle registration certificate was not the driver of the vehicle at the time of the offence, the holder of the vehicle registration certificate *might* reveal the identity of the driver, but did not have to do so.

v) Data protection

The Commission proposed to use Directive 95/46/EC to ensure data protection under the Directive, and it provided for a right of access, correction and deletion with respect to the data of the persons concerned.

The Council considered that in the specific context of the Directive, in view of the new legal basis, it would be more appropriate to refer to the data protection provisions set out in Council Framework Decision 2008/977/JHA, as well as in Council Decisions 2008/615/JHA and 2008/616/JHA.

The European Parliament followed largely the Commission proposal but insisted on a strong system of data protection to be put into place:

- ensuring the confidentiality of the data transmitted;
- ensuring that the data subject is aware of his/her rights of access, rectification and deletion of his/her personal data;
- preventing any personal data gathered under the Directive from being used for purposes other than those specifically related to road safety.

Those safeguards requested by the European Parliament are broadly included in the legislative acts (Council Framework Decision 2008/977/JHA, Council Decisions 2008/615/JHA and 2008/616/JHA) referred to in the Council position at first reading.

vi) Information of EU citizens

The Commission did not provide for the information of European drivers with respect to traffic rules in its proposal.

The Council included in its position at first reading the obligation for the Commission to make available on its website a summary in all EU official languages of the rules in force in the Member States concerning road safety.

The European Parliament insisted on the importance of drivers information for road safety policy, the necessary information being communicated to EU citizens through Member States and the Commission. One of the means proposed by the European Parliament is the Commission website, which is also mentioned in the Council position at first reading.

3. Other amendments adopted by the European Parliament

Further amendments not included in the Council position at first reading concern in particular the:

- introduction of harmonised fixed penalties for road traffic offences;
- harmonisation of road safety control practices and of the technical equipment used for that purpose (through the adoption of EU-wide road safety guidelines);
- the introduction of a system of follow-up of road traffic offences, recognition and enforcement of sanctions, and transmission of information concerning decisions on such offences when financial penalties remain unpaid;
- committee procedure;
- general principles of law (non discriminatory financial penalties imposed by the law of the State of Offence; non-retroactivity).

III. Conclusion

In establishing its position at first reading, the Council has taken full account of the proposal of the Commission and of the European Parliament's opinion at first reading.

However, considering that the text agreed upon by the Council in December 2010 differs significantly from the 2008 Commission proposal whereon the EP amendments are based, the Council did not consider relevant to examine each single amendment individually. Indeed, the entry into force of the Lisbon Treaty and the change of legal basis have constrained the Council to redraft most provisions of the Commission proposal.

With respect to the amendments proposed by the European Parliament, the Council observes that a number of amendments have - in spirit, partially or fully - already been included in its position at first reading.

Negotiations with the European Parliament should therefore start as such at second reading, on the basis of the text agreed by the Council in December 2010, rather than on the basis of the Commission proposal.
