

# Cross-border exchange of information on road safety related traffic offences

2008/0062(COD) - 17/03/2011 - Council position

The Council position at first reading shares the same objectives and underlying principles as the Commission proposal. 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.

The main issues are as follows:

**(1) Legal basis:** the legal basis of the Commission proposal is Article 71(1) (c) of the Treaty establishing the European Community (transport), now Article 91(1) (c) of the 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. 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.

**(2) 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: (i) driving under the influence of drugs, (ii) failing to wear a safety helmet, (iii) use of a forbidden lane, and (iv) 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.

**(3) Definitions:** 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.

**(4) Information letter:** 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.

**(5) Data protection:** although the Commission proposed to use Directive 95/46/EC to ensure data protection under the Directive, 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: (i) ensuring the confidentiality of the data transmitted; (ii) ensuring that the data subject is aware of his/her rights of access, rectification and deletion of his/her personal data; (iii) preventing any personal data gathered under the Directive from being used for purposes other than those specifically related to road safety.

**(6) Information of EU citizens:** 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.

**Other amendments** adopted by the European Parliament 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).