

# Traffic Offences and Cross-border Exchange of Information

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*Improving road safety is a prime objective of the European Union's transport policy. An important element of that policy is the consistent enforcement of sanctions for road traffic offences committed in the Union which considerably jeopardise road safety. In order to improve road safety throughout the Union and to ensure equal treatment of drivers, namely resident and non-resident offenders, enforcement should be facilitated irrespective of the Member State of registration of the vehicle. To this end, a system of cross-border exchange of information should be used for certain identified road-safety-related traffic offences, regardless of their administrative or criminal nature under the law of the Member State concerned, granting the Member State of the offence access to vehicle registration data (VRD) of the Member State of registration. A more efficient cross-border exchange of VRD, which should facilitate the identification of persons suspected of committing a road-safety-related traffic offence, might increase the deterrent effect and induce more cautious behaviour by the driver of a vehicle that is registered in a Member State other than the Member State of the offence, thereby preventing casualties due to road traffic accidents.*

**Słowa kluczowe:** traffic offence, cross-border exchange of information, vehicle registration data, owner of the vehicle, holder of the vehicle, EUCARIS

## Wstęp

In case the unlawful conduct in the field of road safety, have been committed within the territory of a Member State other than that in which the vehicle is registered, the other Member States were not able to identify the perpetrator of a traffic offence. In such cases the sanctions in the form of financial penalties for road traffic offenses are often not possible to apply.

## 1. Directive 2011/82/EU on exchange of information about traffic offences

To resolve this unfavorable situation, the European Directive 2011/82/EU [9] has been adopted, which are European Union Member States obliged to transpose into their own legislations by 7 November 2013<sup>th</sup>.

The aim of the directive is to ensure a high level of protection for all traffic participants in all Member States of the European Union by the identification of the perpetrator of a traffic offence, irrespective of where the misconduct has been committed. Directive should have improved the road safety with the objective of reducing fatalities, injuries and material damage. An important element should have been the consistent enforcement of sanctions for road traffic offenses committed in the European Union which considerably jeopardize road safety. A system of cross-border information exchange of certain

identified road traffic offenses should have been implemented, regardless of the administrative or criminal nature of the offence under the law of each Member States. This system would allow the Member State where a traffic offense has been committed, access to vehicle registration data from the Member State in which the vehicle concerned is registered.

Closer cooperation between law enforcement authorities should be accompanied with respect of fundamental rights, notably the privacy rights and protection of personal data, guaranteed by special data protection arrangements, which should take particular account of the specific nature of cross-border online access to da-tabases.

Software applications that have been introduced would allow an ongoing exchange of information in secure environment and ensure the confidentiality of the data transmitted. The data collected under this Directive shall not be used for any other purposes other than the purpose they laid down in this Directive. Member States should respect the obligations and the conditions of use and of the temporary data storage. The existing software applications should have been the basis for the data exchange under this Directive. These applications should provide for the fast, secure and confidential exchange of specific vehicle registration data between EU member states. For this information exchange a software application, the European Vehicle and Driving Licence Information System (EUCARIS) should be used. Terms of vehicle registration data, is mandatory for Member States under the Prüm Decision [1,2].

Although EUCARIS should be mainly used in re-registration of vehicles between Member States, not all Member States have signed this Treaty and use it. Mandatory use of the information system EUCARIS to exchange information on traffic offenses as stated in Directive 2011/82/EU should make this information system more attractive for individual Member States.

## 2. Repeal of Directive 2011/82/EU on exchange of information about traffic offences

### 3.1. Action of the European Commission

The European Commission took the view that Directive 2011/82/EU was adopted on an incorrect legal basis. The European Parliament and the Council used as a legal basis the Article 87(2) of the Treaty on the Functioning of the European Union concerning police cooperation. According to the European Commission, the Article 91(1)(c) of the Treaty on the Functioning of the European Union, which refers to measures for improving

the transport safety should have been used as a legal basis for this Directive.

On this basis, the European Commission brought a legal action against the European Parliament and the Council, proposing to annul the Directive 2011/82/EU and at the same time stated that the effects of the Directive are considered final.

In this dispute, the Kingdom of Belgium, Ireland, Hungary, Poland, the Slovak Republic, Sweden and the United Kingdom of Great Britain and Northern Ireland joined the side of the European Parliament and the European Council.

## 3.2. Judgment

### 2 Judgment

The European Court of Justice with its judgment from 6 May 2014 in Case C-43/12<sup>1</sup> in the present case annulled Directive 2011/82/EU, while the effects of the directive shall be preserved until in a reasonable period, which shall not exceed twelve months from the date of this judgment, a new Directive based on an appropriate legal basis, namely, Article 91(1)(c) of the Treaty on the Functioning of the European Union would come into force.

The Court of Justice of the EU agreed with the European Commission and confirmed that the main aim of the directive was to ensure a high level of protection for all road users in the EU by facilitating the cross-border exchange of information on traffic offenses, and police cooperation in exchanging information on traffic offenses is only a complementary objective. Therefore, the Article 91(1)(c) of the Treaty on the Functioning of the European Union, which refers to measures for improving the transport safety and not Article 87(2) of the Treaty on the Functioning of the European Union concerning police cooperation, should be used as the legal basis for adoption of the directive.

## 4. Directive (EU) 2015/413 on cross-border exchange of information on road-safety-related traffic offences

Due to the annulment of the original Directive 2011/82/EU, the European Parliament and the European Council adopted a new directive (EU) 2015/413 [1] this time using the correct legal basis, which was the Article 91(1)(c) of the Treaty on the Functioning of the European Union.

### 4.1. Purpose of the Directive

The aim of the directive (EU) 2015/413 is to ensure a high level of protection for all road users in the Union by facilitating a cross-border exchange of information on traffic offenses related to road safety and thereby to facilitate the application of sanctions, where those offenses are committed with a vehicle registered in a Member State other than the State in which the offense took place.

### 4.2. Scope

<sup>1</sup> Judgment in Commission v Parliament and Council, C-43/12, EU:C:2014:298.

Directive (EU) 2015/413 shall apply to the following traffic offenses related to road safety:

- a) speeding;
- b) failing to use a seat-belt;
- c) failing to stop at a red traffic light;
- d) drink-driving;
- e) driving while under the influence of drugs;
- f) failing to wear a safety helmet;
- g) the use of a forbidden lane;
- h) illegally using a mobile telephone or any other communication devices while driving.

- '*Speeding*' means exceeding speed limits in force in the Member State of offence for the road or type of vehicle concerned;
- '*Failing to use a seat-belt*' means not complying with the requirement to wear a seat-belt or to use a child restraint;
- '*Failing to stop at a red traffic light*' means driving through a red traffic light or any other relevant stop signal, as defined in the law of the Member State of the offence;
- '*Drink-driving*' means driving while impaired by alcohol, as defined in the law of the Member State of the offence;
- '*Driving under the influence of drugs*' means driving while impaired by drugs or other substances having a similar effect, as defined in the law of the Member State of the offence;
- '*Failing to wear a safety helmet*' means not wearing a safety helmet, as defined in the law of the Member State of the offence;
- '*Use of a forbidden lane*' means illegally using part of a road section, such as an emergency lane, public transport lane or temporary closed lane for reasons of congestion or road works, as defined in the law of the Member State of the offence;
- '*Illegally using a mobile telephone or any other communication devices while driving*' means illegally using a mobile telephone or any other communication devices while driving, as defined in the law of the Member State of the offence.

### 4.3. The exchange of information between Member States

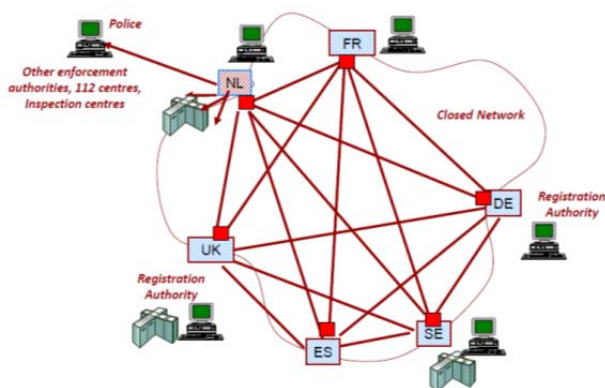
Traffic offenses related to road safety, regulated by this Directive are not addressed in a uniform manner in all of the Member States. Some Member States qualify such offenses under national law as administrative offenses, while in the other Member States these are classified amongst the criminal offences. Directive (EU) 2015/413 should be enforced regardless of how are these illegal activities qualified under national law.

Member States should grant each other the right of access to their VRD in order to improve the exchange of information and speed up the procedures in force. To this end, the Directive (EU) 2015/413 should, where possible, include provisions concerning the technical specifications and the availability of automated data exchange set out in the Prüm Decisions.

For the purpose of investigation of traffic offenses related to road safety, Member States' are allowing national contact points to access to the national vehicle registration data, with the power to conduct automated search for data on the vehicle registration and the owners or drivers of the vehicle.

Existing software applications should be the basis of the data exchange according to Directive (EU) 2015/413 and also should facilitate reporting to the European Commission by Member States. These applications should facilitate fast and secure exchange of specific VRD between Member States while preserving their confidentiality. The information system EUCARIS should be used.

Figure 1. shows basic view of the scheme of information exchange within the EUCARIS system between Member States via national access points.



**Fig. 1.** Scheme for the exchange of information within the information system EUCARIS [14].

Vehicle registering Member State shall provide the Member State traffic offense following data:

1. to vehicles
  - registration number,
  - chassis number/VIN,
  - member State of registration,
  - make of the vehicle (e.g. FORD, OPEL, RENAULT),
  - commercial name of the vehicle (e.g. FOCUS, ASTRA, MEGANE),
  - vehicle category,
2. to owners or holders of the vehicles
  - registration holders' (company) name,
  - first name holders of the vehicle,
  - address holders of the vehicle,
  - gender (male/female) holders of the vehicle,
  - date of birth holders of the vehicle,
  - place of birth holders of the vehicle,
  - legal entity holders of the vehicle (individual, association, company, firm, etc.),
  - ID number holders of the vehicle,
  - owners' (company) name,
  - first name owners of the vehicle,
  - address owners of the vehicle,
  - gender (male/female) owners of the vehicle,

- date of birth of the vehicle owner,
- place of birth of the vehicle owner,
- legal entity of the vehicle owner (individual, association, company, firm, etc.),
- ID number of the vehicle owner.

## 4.4. Compulsory transposition

Member States were required to transpose the Directive (EU) 2015/413 before the 6<sup>th</sup> May 2015. Given that the directive (EU) 2015/413 was adopted on 11 March 2015, it may seem that this is a short period for the mandatory transposition. It is not so, because Member States should have had internal regulation implemented in regards to the transposition of the Directive 2011/82/EU, the effects of which were cancelled precisely on the date of May 6, 2015.

Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, had a two-year exemption from compulsory transposition as the repealed Directive 2011/82/EU did not apply to these countries.

Currently, the following Member States carry out the cross-border exchange of information on traffic offenses: Estonia, the Netherlands, Latvia, Germany, Romania, Austria, Belgium, Bulgaria, Spain, Poland, Sweden, France, Hungary, Slovakia, Greece, Malta and Croatia. Other Member States are still not involved in the cross-border exchange of information on traffic offenses, despite the fact that the directive (EU) 2015/413 is currently in place.

## 4.5. Revision of the Directive

Each Member State shall send a complex report to the European Commission before May 6, 2016 and then every two years thereafter. The complex report shall indicate the number automated searches addressed to the national contact point of the Member State, which the Member States where the offenses took place per-formed in response to offenses committed in their territory, alongside with the type of offenses and the number of applications with no results. The complex report includes a description of the situation at national level in relation to the procedure in relation to road traffic offenses related to road safety based on the pro-portion of such offenses, which was followed by fact sheets.

Subsequently, the European Commission will present the European Parliament and the Council a report on the application of the Directive (EU) 2015/413 by Member states based on the complex reports sent by each Member States by November 7, 2016. In its report, the European Commission highlights

following aspects, and where necessary make proposals concerning them:

- Assessment whether the Directive should cover other traffic offenses related to road safety;
- Assessment of the effectiveness of this Directive taking in account the number of fatalities on Union roads;
- Assessment of the need for developing common standards for automatic control mechanism and procedures;
- Assessment of the need to tighten enforcement of sanctions for traffic offenses related to road safety and to propose common criteria concerning the follow-up procedures in case of non-payment of financial penalties in the framework of all relevant EU policies, including the common transport policy;
- If necessary, an option for harmonization of traffic rules;
- Assessment of the software applications in order to ensure proper implementation of this Directive as well as guaranteeing an effective, rapid and secure exchange of specific VRD that preserves confidentiality.

## 5. Automatic Checking equipment

Individual Member States use a variety of automatic monitoring control devices, which record the violation of traffic rules. Control devices in the traffic can be installed as fixed control equipment or mobile control equipment.



**Fig. 2.** Fixed control equipment



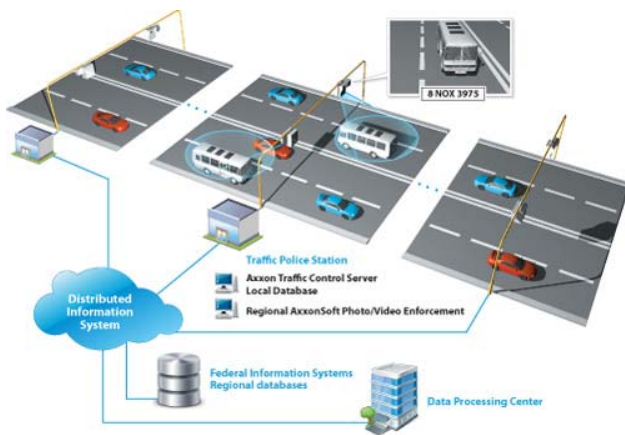
**Fig. 3.** Mobile control equipment (trailer category O1)



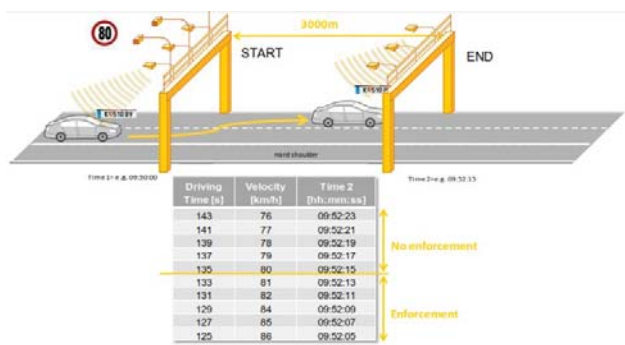
**Fig. 4.** Road signs indicating the control equipment.

Ideally the control equipment operates completely automated. This automation can be divided into the following steps:

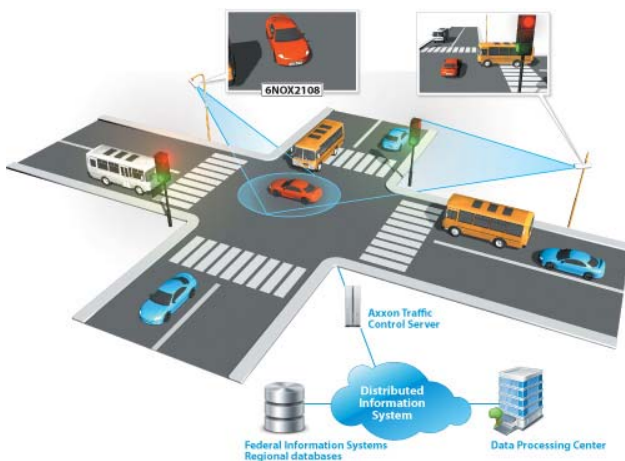
1. Recording of the traffic offense - automatic control device records the specific traffic offense and prepares the photographic documentation.
2. Sending to the processing center – recorded traffic offense including photographic documentation is encrypted and sent to the processing center
3. Evaluation in the processing center – decoding of the photographic documentation is performed (type of traffic offense, the violation found, date, time) and the vehicle registration number is loaded; and then it's identified.
4. The penalty for the road traffic offense is determined - as soon as the vehicle is identified, the consignment is processed together with the notice (sanctions) regarding the traffic offense, which is immediately sent.
5. The holder of a vehicle receives a consignment together with the notice (sanctions) regarding the traffic offense.
6. Payment of the penalty or its objecting, part of which must be the reasoning of the objections.



**Fig. 5.** Automatic control device for detecting the breaking of authorized speed limit (measurement of the instantaneous speed of the vehicle).



**Fig. 6** Automatic control device for detecting the breaking of authorized speed limit (pattern odometry)



**Fig. 6** Automatic control device for detecting driving through a red signal at traffic light

In regards to automatic control devices, the European Commission needs to prepare a report for the European Parliament and the Council by the November 7, 2016, where the

European Commission will evaluate the need for developing common norms for automatic control equipment and for procedures.

## Conclusion

Cross-border exchange of information on traffic offenses makes it possible to identify the perpetrator of a traffic offense for unlawful conduct in the field of road safety. It will be required from the state where the vehicle is registered to provide data on the holder of the vehicle under the cross-border exchange of information agreement.

For the holder of the vehicles it means that if traffic offense is committed with his vehicle by any driver, the Member State of the offense shall send a notice to the holder of the vehicle to expose misconduct, together with the amount of the financial penalty that was imposed for the traffic offense.

It should be noted that traffic offenses in the field of road safety, covered by the exchange of information agreement are not subject to uniform rules. In some Member States, under the national law such offences are classified as offenses in the area of administrative law (administrative offenses) and in other Member States as criminal offenses (court offenses). The exchange of information on traffic offenses will apply regardless of the qualification of those offenses under national law.

## Bibliografia

1. Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.
2. Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.
3. Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences.
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.
5. EUCARIS – European Car and Driving License Information System <https://www.eucaris.net>.
6. Lewicki W., Inteligentne systemy transportowe jako narzędzie inżynierii ruchu drogowego. Autobusy – Technika, Eksploatacja, Systemy Transportowe 2012, nr 7-8.
7. MORAVČIK, Ľ.: EUCARIS a výmena informácií o dopravných deliktoch, In: Karlovarská právni revue – recenzovaný časopis se zaměřením na právní vědu a praxi, kriminalistiku a forenzní disciplíny, no 3/2013, pages 90 – 98, ISSN 1801-2191.

8. MORAVČÍK, L.: *Súd zrušil smernicu o výmene informácií o dopravných deliktoch*, In: *Autoškolák – odborný časopis pre prevádzkovateľov a inštruktorov autoškôl*, no II/2014, 19.6.2014, pages 18, ISSN 1338-6794.
9. MORAVČÍKOVÁ, J.: *Cezhraničná výmena informácií o dopravných deliktoch má nové pravidlá*. In: *Autoškolák: odborný časopis pre prevádzkovateľov a inštruktorov autoškôl* č. IV/2015. ISSN 1338-6794. str. 16-17.
10. MORAVČÍKOVÁ, J.: *Cezhraničná výmena informácií o dopravných deliktov – EUCARIS*. In: *Bezpečnostní teorie a praxe = Security theory and practice: periodikum Policejní akademie České republiky v Praze*. - ISSN 1801-8211. - č. 4 (2015), s. 111-118.
11. Notification of the Ministry of Foreign Affairs of the Slovak Republic No 17/2011 Z. z. – The Treaty of European Car and Driving License Information System (EUCARIS).
12. RAK, R., ZRUBÁK, R.: *Project Eucaris*, In: *Kontroly technického stavu vozidiel/ Roadworthiness tests, Proceedings of the 2<sup>nd</sup> seminar, 14 March 2013 Nitra, Národná asociácia STK*, 20 pages, ISBN 978-80-970237-2-0.
13. TALLO, R., RAK, R., TURČEK, J.: *Moderné technológie ochrany osôb a majetku/ Modern technologies of protection of persons and property*, Bratislava: Police Academy in Bratislava, 2006, 229 pages, ISBN 80-8054-387-96, EAN 9788080543877.
14. TALLO, R., RAK, R.: *Dopravno-bezpečnostné technológie/Traffic-Safety Technologies*, Bratislava: Police Academy in Bratislava, 2012, 128 pages, ISBN 978-80-8054-537-6, EAN 9788080545376.

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## Analysis and evaluation of selected problems of bicycle traffic safety in Szczecin

*This article refers to the problems of bicycle traffic safety in Szczecin. Some of them are being addressed by adequate infrastructure or other improvements, while others can be solved by the responsible behavior of cyclists. In areas with low bicycle traffic, some cyclists may perceive cycling as a form of recreation rather than a means of transport, and therefore may not understand their responsibilities on the road. Campaigns promoting safe cycling include educating, encouraging and supporting safe cycling.*

**Key words:** track vehicle, safety, road accidents.