

TRAFFIC OFFENCES FROM THE EU AND V4 PERSPECTIVE – AN ELEMENT OF SAFETY¹

JUDr. PhDr. Peter Potasch, PhD.

Paneuropean University in Bratislava – Faculty of Law,

Department of Administrative Law, Financial Law
and Environmental Law

peter.potasch@uninova.sk

ABSTRACT

The presented study deals with the issue of safety on European roads. Special attention is paid to the fact that every year thousands of people die on European roads with some of the V4 countries presenting negative statistical features to this end. At the same time, the study deals with the general fact that many offences are caused by foreign drivers on the territory of other Member States than the Member State of registration (of their vehicle). From the point of psychology, one must mention that drivers have a tendency not to follow legal rules if they know that in a short period of time they will leave the territory of the host Member State and will return to their Member State of residence (home Member State). In such cases it is almost impossible for the Member State where the offence took place, to enforce the fine or other sanctions that apply to the offence committed by a foreign driver on their territory. The psychological determinant that imposed fines cannot be enforced in a foreign country leads to dangerous driving in many cases. The V4 countries are not an exception to this. All these facts led to the adoption of a new European Directive in September 2011. The aim of this Directive is to reduce accidents and traffic offences on European roads and to improve the level of safety for all road users in the EU. Bearing in mind that all V4 countries are also Member States of the EU, there are no doubts about the fact that this Directive will create a set of new rights and obligations especially in relation to the national police forces of the respective countries. The presented study deals with the basic features of the above Directive.

¹ The study/paper was prepared for the IV. International Scientific Conference on Quality in Action on Internal Safety of the Visegrad Group countries from the European Perspective held in Józefów, Poland (21 November 2011)

KEYWORDS: *traffic, road, safety, offence, Visegrad, EU, European Union, statistics, Poland, Slovakia, Hungary, Czech Republic*

INTRODUCTION

Every year, thousands of people die on European roads. Their death is caused by a number of factors, however, one of the most serious and frequent ones is simply the fact that drivers are not willing to follow the national laws and rules on driving. It is not surprising to say that the ways people drive in European countries differ enormously. While in some Member States the drivers are relaxed and concentrated, in other countries, they have more “passion” for driving often resulting in causing death. There are many other factors that influence road safety such as the quality of the roads, the quality of road signs etc. Nevertheless, one of the key factors determining the quality and discipline of drivers is the legal system, especially traffic laws and their efficiency.

In order to support the above information with some statistical data, it can be mentioned that the United Kingdom of Great Britain and Northern Ireland, Sweden and the Netherlands belong to the safest countries with “only” 38 to 39 traffic fatalities per million inhabitants in 2009. On the other hand in Greece this number was 129 and in Romania: 130. The numbers for the Visegrad 4 countries are somewhat lower and are as follows:

Slovak Republic: 71 fatalities per million inhabitants (2009), **Hungary:** 82 fatalities per million inhabitants (2009), **Czech Republic:** 86 fatalities per million inhabitants (2009), **Poland:** 120 fatalities per million inhabitants (2009)².

The average value of the same kind for the EU as a whole is 70 fatalities per million inhabitants (2009), which means that all V4 countries are above this value – with Slovakia being slightly over the value and with Poland being highly over the average. Hungary and Czech Republic are approximately in the middle scale but still about the average value of the EU. Although very sad, causing death is only the peak of the pyramid. There are hundreds of other types of traffic offences in which death is not involved. Nevertheless, with the borders open, with the possibility of free driving on the territory of another Member State and without having to undergo any strict formalities, thousands of drivers cross borders daily either for pleasure or work (professional drivers). In the course of driving their vehicles, they often commit traffic offences. At the same time, know-

² http://ec.europa.eu/transport/road_safety/pdf/gis/mapcare_fatal_2009.pdf

ing the system of traffic policing in many countries, also those in the V4 countries, those who commit the offence are often not prosecuted. If they happen to be stopped by the police or other relevant traffic authority, they are sometimes fined or some other penalties are imposed on them in line with the laws of the country in which they have committed the traffic offence.

Knowing, however, that in some hours or days they will leave the territory of the country and probably will not ever return there, drivers often have a tendency not to pay the fine at all. From the point of psychology, if drivers know that committing a traffic offence abroad will not cause them any problems once they return home, may make – under certain circumstances – the way they drive even more dangerous. Every day, hundreds and thousands of people cross borders that exist between the V4 countries usually for shopping, holidays or other leisure activities, some of them for professional reasons. All these drivers represent a potential threat on the roads of the territory of the host country, either by causing injury or death to themselves or other individuals present on the roads. Of course, the possibility of causing damage to the property of others shall not be omitted either. In all these cases, if the offence is investigated or dealt with on the spot, the driver (in most cases) accepts the fine ticket and leaves the place (unless a more serious accident was caused or a criminal act is involved etc.).

Why is this topic interesting from the European perspective?

While non-residents represent around 5% of the road users in the EU countries for which such data are available, the proportion of non-resident drivers committing speeding offences is in the range of 2.5% to 30%³. These figures suggest that non-resident drivers are quantitatively well involved in speeding offences.^{4 5}

Speeding, driving under the influence of alcohol, not using seat belts, driving under the influence of drugs and using a mobile phone while driving belong to the most frequent offences which sometimes cause death on European roads. The EU understands this problem and through its institutions and agencies it has been implementing various policies and actions. In the presented study we will only focus on the Cross-Border Enforcement

3 2.5% in Denmark, 4% in Finland, 6% in the Netherlands, 8% in Catalonia (Spain), 14% in Belgium, 15% in France, and 30% in Luxembourg.

4 In France, for instance, their share in traffic is 5.5%, but their share in offences is 15%. The corresponding figures in the Netherlands are 4.1% traffic share, but 6% share in offences.

5 Council of the European Union, Press Release, 14413/11

Directive that was adopted by the European Parliament in July this year (2011). On the 29th September 2011 ministers of the 27 Member States of the EU gave their formal approval for the Cross-Border Enforcement Directive. One of the main aims of the adoption of the Directive was the reduction of fatalities on European roads and to make the enforcement of traffics sanctions more real in the cross-border perspective. Until now, if a Slovak driver caused a traffic offence in Poland while on a shopping trip in Nowy Targ or a Czech driver was speeding on his way to the High Tatras etc., if stopped by the police a fine ticket would be issued in their name (unless they were willing to pay the fine on the spot). Upon their arrival at their home country, they were “at safe” since the authorities of the other state had no mechanism on enforcing the fine imposed in Slovakia by Slovak authorities in Poland etc. (unless special arrangements existed). Technically, until now, a driver of any Member State was discriminated against a driver of another Member State for the same traffic offence. The citizen of that Member State was usually easier to detect and punish, while the “visiting” driver had a possibility of escaping a fine. The Directive of the European Parliament and of the Council facilitating the cross-border exchange of information on road safety related traffic offences⁶ (in this paper also referred to as “the Directive” or “Directive”) was adopted by the Council at the end of September 2011 and it aims to combat road traffic offences that considerably jeopardise road safety, by facilitating cross-border exchange of information. A member state in which an offence has been committed with a vehicle registered in another member state will be able to identify the holder of the vehicle and investigate who is personally liable for the offence, so that sanctions can be enforced. This will also help ensure equal treatment of drivers irrespective of their country of residence. According to an impact assessment carried out by the Commission, up to 5 000 lives could be saved every year by the application of such a measure.⁷

1. THE DIRECTIVE

As suggested in the text above, traffic offences are often not prosecuted and punished if committed by a vehicle registered in a Member State other than the Member State in which the offence was committed. This applies even more in those situations in which the offence is recorded by automatic means (e.g. audio visual tools) without the offender coming into

⁶ At the moment of writing this study, the Directive has not been officially published yet.

⁷ Council of the European Union, Press Release, 14413/11

direct interaction with the enforcing authority. Under this new Directive, Member States will provide each other with access to the database of registered vehicles in order for the foreign enforcing authority to be able to identify the owner or holder of the vehicle and to be able to proceed with the imposition of a penalty for the offence committed. After identifying the person who committed the offence, the Member State on the territory of which the offence has been committed will approach the offender with a letter informing the offender on the facts of the case. The key rule is, that whether the conduct constitutes a traffic offence will be determined by the law of the country where the conduct occurred and if so, it will be prosecuted in line with the laws of that very country.

Three Member States (The United Kingdom, Ireland and Denmark⁸) do not participate on the measure (nevertheless, they have to possibility of joining it later). The Directive will have to be implemented into the national legal system within two years following its official publication.

According to Article 87 of the Treaty on the Functioning of the European Union, the Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.

Following this principle, the European Parliament and the Council may in line with the ordinary legislative procedures establish measures concerning the collection, storage, processing, analysis and exchange of relevant information etc.

The Directive in its Preamble clearly states that the Directive itself is a measure adopted in line with Article 87 par. 2 of the Treaty on the Functioning of the European Union. On the other hand, one must bear in mind that par. 2 of the above mentioned Article provides us with a reference to Article 87 par. 2 of the TFEU and in this Article there is no mention of other offences than criminal offences, most importantly, there is no mention of offences of administrative nature. Not going into deep analyses about the issue since it would be worth a special study, in the presented study we will deal only with the key issues of the Directive as adopted by the Parliament and the Council. Understanding the main motives of the Union, especially to improve road safety and to reduce fatalities, injuries and material damages on European roads, there are no doubts that the Directive is a good starting point for such measures.

⁸ <http://www.europarl.europa.eu/sk/pressroom/content/20110629BKG22876/html/Cross-border-traffic-offence-penalties-to-improve-road-safety>

The main objective of the Directive is to protect all road users on European roads by facilitating the cross-border exchange of relevant information. The Exchange of information to this extent shall apply to traffic offences and the enforcement of sanctions if the offence committed in one Member State was committed with a vehicle registered in another Member State, i.e. other than the Member State where the offence took place.

Nevertheless, one must also mention that the Directive – as adopted – **does not apply to all traffic offences** punishable in compliance with the national legal systems. Bearing in mind this fact, the Directive's scope relates only to the following offences:

a) **speeding** – in the most general sense, speeding refers to exceeding the speed limit in force in the Member State where the offence took place (for the specific type of vehicle and type of road)

b) **non-use of seat-belts** – unlike in the case of speeding, this offence has a European dimension as well: it is committed if the person fails to comply with the requirement to wear a seat-belt or use a child-restraint according to the relevant European Directive⁹ or if the relevant person fails to comply with the laws of the Member State where the offence took place (offences relating to wearing seat-belts or child restraints)

c) **failing to stop at a red traffic light** – in this case, the European law again provides a reference to the laws of the Member States where the offence took place. In the gist of it, this offence is committed if one fails to stop at a red light or any other signal with a „stop“ effect (in line with the laws of the Member State)

d) **driving under the influence of drugs and drink-driving** – refers to the driving a vehicle if impaired by drugs or other substances having a similar effect, the second offence mentioned in this section refers to driving a vehicle if impaired by alcohol. In both cases, in order to establish the liability of the person involved, the national law of the Member States where the offence took place, applies.

f) **failing to wear a safety helmet** - the laws of the Member State may define an obligatory use of a safety helmet. Failure to do so may result in an offence punishable according to the national laws of the Member State.

g) **use of a forbidden lane** – is an offence, in which in line with the national law of the Member State, a special section of the road was used by a driver without legal justification (e.g. emergency lanes, public transport

⁹ Council Directive 91/671/EEC of 16 December 1991 relating to the compulsory use of safety belts and child-restraint systems in vehicle, OJ L 373, 31.12.1991, p. 26.

lanes, closed lanes etc.)

h) **illegal use of a mobile telephone or any other communication device while driving** - the laws of the Member State may define that using a mobile phone or some other communication device while driving a vehicle constitutes a traffic offence. If so, the law of the Member State will be applicable.

Although not all parties involved were satisfied with the outcome (since many road-safety organisations wanted for the Directive to have a broader scope of application) but the adopted version seems to be a smart compromise. An interesting thing we must mention especially in relation to some laws is the fact, that the two key terms used by the Directive are: „**a vehicle**“ and „**a holder of a vehicle**“. The term vehicle has a rather broad legal definition in the Directive and it refers to any power-driven vehicle including motorcycles which is normally used for carrying persons or goods by road. However, the definition of „holder of the vehicle“ may cause some difficulties in the implementing phase. The holder of the vehicle is the person in whose name the vehicle is registered as defined in the law of the Member State of registration. A problem occurs if – according to the law of the Member State – the one who committed the offence is liable for the offence and not the person who holds the vehicle. This situation may occur e.g. in Slovakia. According to the Slovak Act on Petty Offences and the Road Transport/Traffic Acts, public authorities have the duty to sanction the driver not the holder of the vehicle. In many cases, the holder of the vehicle is not the person who committed the traffic offence. Although there are various legal instruments in the Slovak laws that may request the cooperation of the holder of the vehicle as to the identification of the person who was driving the car at the moment of committing the offence, the situation is somewhat more complicated and in many cases, the person who committed the crime – cannot be identified – at all. The key idea of the Directive is the Exchange of information. In order to make such exchange more efficient, each Member State is obliged according to Article 4 par. 3 of the Directive designate a „national contact point“. The operation of the national contact point will be governed by the laws of the Member State. The Directive is based on the principle that national contact points gain access to the vehicle registration data of other Member States when investigating offences mentioned above. The access shall apply to details relating to vehicles and the owners and/or holders of vehicles in another Member State. The data elements necessary to conduct the search shall be in compliance with Annex I. to the Directive thus

shall be as follows:

Table 1:

Data elements related to the search:

(Note: M = mandatory when available in national registry, O = optional, ² = Harmonised document abbreviation, see Council Directive 1999/37/EC of 29 April 1999)

Item	M/O ¹	Remarks
Data relating to the vehicle	M	
Member State of registration	M	
Licence number	M	(A ²)
Data relating to the offence	M	
Member State of the offence	M	
Reference date of the offence	M	
Reference time of the offence	M	
Purpose of the search	M	Code indicating the type of offence as listed 1 = Speeding 2 = Drink-driving 3 = Non use of seat belt 4 = Failing to stop at red traffic light 5 = Use of forbidden lane

Table 2:

Data elements provided (relating to vehicles):

(Note: M = mandatory when available in national registry, O = optional, ² = Harmonised document abbreviation, see Council Directive 1999/37/EC of 29 April 1999)

Item	M/O ¹	Remarks
Licence number	M	
Chassis number/VIN	M	
Country of registration	M	
Make	M	(D.1 ²) e.g. Ford, Opel, Renault, etc.
Commercial type of the vehicle	M	(D.3) e.g. Focus, Astra, Megane
EU Category Code	M	(J) mopeds, motorbikes, cars, etc.

Table 3:**Data elements provided (relating to holders or owners of the vehicle):**

(Note: M = mandatory when available in national registry, O = optional, ² = Harmonised document abbreviation, see Council Directive 1999/37/EC of 29 April 1999)

Item	M/O ¹	Remarks
Data relating to holders of the vehicle		(C.1 ²) The data refer to the holder of the specific registration certificate.
Registration holders' (company) name	M	(C.1.1) Separate fields shall be used for surname, infixes, titles, etc., and the name in printable format shall be communicated.
First name	M	(C.1.2) Separate fields for first name(s) and initials shall be used, and the name in printable format shall be communicated.
Address	M	(C.1.3) Separate fields shall be used for Street, House number and Annex, Post code, Place of residence, Country of residence, etc., and the Address in printable format shall be communicated.

Item	M/O ¹	Remarks
Gender	O	Male, female
Date of birth	M	
Legal entity	M	Individual, association, company, firm, etc.
Place of Birth	O	
ID Number	O	An identifier that uniquely identifies the person or the company.
Data relating to owners of the vehicle		(C.2)The data refer to the owner of the vehicle.
Owners' (company) name	M	(C.2.1)
First name	M	(C.2.2)
Address	M	(C.2.3)
Gender	O	Male, female
Date of birth	M	
Legal entity	M	Individual, association, company, firm, etc.
Place of Birth	O	
ID Number	O	An identifier that uniquely identifies the person or the company.
		In case of scrap vehicles, stolen vehicles or number plates, or outdated vehicle registration no owner/ holder information shall be provided. Instead, the message "Information not disclosed" shall be returned.

Such searches shall have the nature of „automated search“, i.e. shall be based on an online-access procedure for consulting the database of one, several, or all of the Member States or of the participating countries. Any searches in the form of outgoing requests shall be conducted by the national contact point of the Member State of offence using a full registration number. At the same time, the Directive expressly defines that the Member State of the offence shall use the data obtained in order to establish who is personally liable for the road safety related traffic offence. Nevertheless, in Article 7 of the Directive, the Member State shall ensure the protection of personal data, i.e. they must ensure that the personal data processed under the Directive are rectified if inaccurate, or erased or blocked when they are no longer required. All these actions relating to data protection must be carried out within appropriate time periods and in compliance with the Framework Decision 2008/977/JHA. From the perspective of economics, the Directive sets forth that every Member State is obliged to bear its costs relating to the administration, use and maintenance of the software application enabling the exchange of information in compliance with the Directive.

2.THE PRACTICAL PROCEDURAL ASPECTS

The main aim of the Directive is to make the enforcement of sanctions imposed for traffic offences more efficient. Once the Member State of offence has received the relevant information from the vehicle registration database of another Member State, the Member State where the offence took place decides whether to initiate any follow-up proceedings. Such decision will have to be made according to the national laws of the Member State of offence. In case the Member State of offence decides to initiate proceedings relating to the traffic offence, they shall inform the relevant person – be it the owner, holder or otherwise identified person suspected of committing the offence – of the road safety traffic related offence. This information will be served on the relevant person according to the laws of the Member State of offence and it shall include the following information:

- a) the potential consequences of the offence the person is believed to have committed,
- b) the nature of the offence (see the applicable offences above)
- c) the place, date and time of the offence
- d) the title of the texts of the national law infringed
- e) the applicable sanctions

f) and if relevant – the device used for the detecting the offence

This letter is sent in the language of the registration document – or if available – in one of the official languages of the Member State of registration. It is worth mentioning that that the language issues are dealt with in the Directive with reference to the fundamental rights of the persons involved, however, the Directive uses the term „if available“. We strongly believe that the Member States or the EU shall make sure that full templates of such letters exist¹⁰ in all applicable language versions. This is not only a legal view, but also a practical one. If one of the aims of the Directive is to make the enforcement of traffic sanctions more efficient, it seems to be a must to use the appropriate language, i.e. the language of the person concerned.

The Directive provides the following English template of such letter¹¹:

[COVERPAGE]

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

Information letter

regarding a road safety related traffic offence committed in

[name of Member State where the offence has been committed]

Page 2

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

[Option1]¹²

You are registered as the holder of the registration certificate of the above-mentioned vehicle.

¹⁰ When referring to full templates, the author refers not only to the basic text that is to be filled in, but also to all other potential texts that may be needed when filling in the templates (e.g. various language mutations of all the relevant traffic laws of all Member States etc.).

¹¹ Due to publication rules of the conference proceedings, the structure of the letter, the numbering of footnotes, font types etc. do not necessarily follow the structure as seen in the relevant Directive.

¹² Delete if not applicable.

[Option 2]¹³

The holder of the registration certificate of the abovementioned vehicle indicated that you were driving that vehicle when the road safety related traffic offence was committed.

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

You are advised to complete the attached reply form (page 4) and send it to the address shown, if you do not pay this financial penalty.

This letter shall be processed in accordance with the national law of ... [name of the Member State of the offence].

Page 3

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 the offence has been committed:

Nature and legal classification of the offence:

speeding, non-use of seatbelt, failing to stop at a red traffic light, drink-driving, driving under the influence of drugs, failing to wear a safety helmet, use of a forbidden lane, illegally using a mobile telephone or any other communication devices while driving¹⁴:

Detailed description of the offence:

Reference to the relevant legal provision(s):

Description of or reference to the evidence for the offence:

¹³ Delete if not applicable.

¹⁴ Delete if not applicable.

(c) Data concerning the device that has been used for detecting the offence¹⁵:

Type of device for detection of speeding, non-use of seatbelt, failing to stop at a red traffic light, drink-driving, driving under the influence of drugs, failing to wear a safety helmet, use of a forbidden lane, illegally using a mobile telephone or any other communication devices while driving¹⁶:

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:

Page 4

Reply form

(please complete using block capitals)

A. Identity of the driver:

- Full 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/no¹⁷

If not, the holder of the registration certificate is:

(name, first name, address)

2. Do you acknowledge that you committed the offence? yes/no¹⁸

3. If you do not acknowledge this, please explain why:

Please send the completed form within 60 days from the date of this information letter to the following authority:

¹⁵ Not applicable if no device has been used.

¹⁶ Delete if not applicable.

¹⁷ Delete if not applicable.

¹⁸ Delete if not applicable.

at the following address:

INFORMATION

This case will be examined by the competent authority of ...
[name of the Member State of the offence].

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

If this case is pursued, the following procedure applies:

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

This letter as such does not lead to legal consequences.

CONCLUSION

Road safety has been a major concern for the EU for more than a decade. Bearing in mind that thousands of people die every year due to the lack of concentration or simply due to not following the relevant legal rules, the EU has come to the conclusion that the time has come to introduce some effective measures. Fines imposed in one Member State are often not executed due to the fact that foreign public authorities do not have access to the key information: the holder/owner of the vehicle with which the offence was committed. The Directive which is really new to the legal system of the EU and has been adopted only in September 2011 aims at making the enforcement of fines more efficient thus positively influencing the concentration of drivers and their willingness to follow the laws of the Member State. Although the Directive does not apply to all traffic offences (but only to some of them), it is considered a major step in improving traffic safety in EU Member States, including the road safety in all V4 countries. The study analyses the key elements of the Directive especially from the basic attributes of the legal regime by focusing on the relevant types of traffic offences and exchange of information.