

Cross-border exchange of information between the member states of the European Union aimed at preventing and combating violations of traffic rules affecting road safety. Some critical opinions

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***Abstract:** Within the thesis we proceeded to the examination of the European legal instrument which establishes a special procedure for the cross-border exchange of information between the Member States of the European Union in connection with traffic offences affecting road safety. The novelty elements it brings to the work consist in the achieved examination as well as in the critical opinions formulated, opinions that may contribute to improving the legislative system in this area. The paper continues other published studies which aimed at examining some forms of legal assistance in criminal matters between the Member States, the aim being to prevent and combat infringement of rules of law in force. This paper can be useful to the academic environment, as well as practitioners in this field.*

***Keywords:** Information letter; the procedure for the exchange of information; data protection; failing to stop at the sign of the traffic police officer.*

Introduction

A central goal of the European Union with regard to the transport sector, is to improve road safety, leading to a reduction in fatalities, injuries and material damage. An important element of this policy is the consistent application of sanctions for violation of traffic rules that were committed in the territory of the European Union that significantly jeopardize road safety.

Amid the lack of adequate procedures and without bringing prejudice to decision 2008/615/JAI of the Council [1] and under decision 2008/616/JHA of the Council [2], very often financial penalties for certain violations of traffic rules are not enforced in cases in which irregularities have been committed by a vehicle registered in a Member State other than that in which the infringement has been committed.

On this background was adopted the Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 to facilitate the cross-border exchange of information on violations of traffic rules affecting road safety [3].

The communication made on July 20, 2010, called "Towards an European space of road safety: guidelines for road safety policy 2011-2020", the Commission pointed out that the application of the rules of road traffic is still a key factor with regard to creating the necessary conditions for significant reductions in the number of deaths and injuries. In its conclusions of 2 December 2010 on road safety, the Council requested, account should be taken of the fact that it is necessary to strengthen further the implementation of the road traffic rules at Member State level.

In this context, the Council invited the Commission to consider the possibility of harmonizing road traffic rules at the Union's level; subsequently it was adopted under article 87 para. (2) of TFEU Directive 2011/ 82/EU of the European Parliament and Council [4]; by the decision of the Court of Justice of 6 may 2014 in the case C-43/12, this regulatory action was cancelled on the grounds that it could not be validly adopted pursuant to article 87 para. (2) of the TFEU, but maintaining its effects until the entry into force, within a reasonable time not exceeding twelve months after the commencement of the judgment, of a new directive based on article 91 paragraphs 10 letter (c) of the TFEU.

Cross-border exchange of information between Member States will have to result in contacting the owner, holder of the vehicle involved or the person identified in another way, suspected of committing a violation of the traffic rules which affect road safety, to transmit information to the concerned person on the applicable procedures and the legal consequences of infringement under the law of the Member State.

In this regard, Member States should take into account the transmission of information relating to the violation of traffic rules affecting road safety in the language of the registration documents or in the language which, most likely, the person concerned understands.

It is also necessary to provide the equivalent translations in terms of the letter of information sent by the Member State where the infringement was committed, in accordance with the provisions of Directive 2010/64/EU of the European Parliament and of the Council [5].

The processing of data with personal character is necessary and adequate to attain the legitimate objectives pursued by the European legal instrument, namely, to ensure a high level of safety for all road users in the Union.

The data relating to the identification of an offender shall mean personal data, being applicable to the provisions of Directive 95/46/EC of the European Parliament and of the Council [6].

Since the objective of a examined European legal instrument, namely ensuring a high level of safety for all road users in the Union, by facilitating the cross-border exchange of information on violations of traffic rules affecting road safety, when such violations are committed with a vehicle registered in a Member State other than that in which the infringement is committed, cannot be sufficiently achieved by the Member States but given the scale and effects of the action, may better be achieved at Union level, it may adopt measures, in accordance with the principle of subsidiarity, as set out in art. 5 of the Treaty on European Union [Directive (EU) 2015/413, preamble, para. (1) to (4), (15), (21), (22) and (28)].

1. Objective, scope, definitions

Through the adoption of the examined regulatory act, the European legislator sought to ensure a high level of safety for all road users in the Union, thus facilitating the cross-border exchange of information on violations of traffic rules affecting road safety and facilitating, through it, the enforcement of penalties when violations are committed with a vehicle registered in a Member State other than the Member State in which the infringement has been committed (art. 1 of the examined European normative act).

According to the provisions of art. 2 of European legal instrument, the exchange of information between Member States shall be carried out for the violation of the following rules affecting road safety:

- a) speeding;
- b) not wearing a seatbelt;
- c) non-compliance with the red traffic light;
- d) driving under the influence of alcohol;
- e) driving under the influence of drugs;
- f) failing to wear a safety helmet;
- g) the use of a prohibited lane;

h) illegal use of mobile phones and other communication devices while driving [7].

In order to avoid other interpretations than those accepted, the European legislator has defined a series of terms and expressions as follows:

a) *vehicle* means any power-driven vehicle, including motorcycles, which is normally used for the transport of persons or goods;

b) *Member State where the infringement was committed* means the Member State where the infringement has already been occurred;

c) *the Member State of registration* means the Member State in which the vehicle, with which the violation was committed, is registered;

d) *speeding* means exceeding the speed limits in force in the State in which the infringement was committed for the road sector in question or for the type of vehicle concerned;

e) *not wearing a seatbelt safety* means failure to comply with the requirement to wear safety seatbelt or to use safety devices for children in accordance with Directive 91/671/EEC of the Council [8] and the law of the Member State where the infringement was committed;

f) *failure to comply with the red traffic light* means driving without stopping at the red traffic light color or any other stop signal equivalent, as defined in the law of the Member State where the infringement was committed;

g) *driving under the influence of alcohol* means driving under the influence of alcohol, as defined in the law of the Member State where the infringement was committed;

h) *driving under the influence of drugs* means driving under the influence of drugs or other substances with similar effects, as defined in the law of the Member State where the infringement was committed;

i) *failing to wear a safety helmet* means non-compliance with the requirement to wear a helmet for protection, as defined in the law of the Member State where the infringement was committed;

j) *use of a forbidden lane* means illegal use of a road sector (such as an emergency lane, a lane which is reserved for public transportation or a lane temporarily closed for reasons of congestion or as a result of carrying out of works), as defined in the Member State where the infringement was committed;

k) *illegal use of a mobile phones and other communication devices while driving* means illegal use of mobile phones and other communication devices while driving, as defined in the law of the Member State where the infringement was committed;

l) *national contact point* means a competent authority designated for the exchange of data on vehicle registration;

m) *automated search* means a procedure for online access in order to consult the database of one, several or all Member States or participating countries;

n) the holder of the vehicle means the person in whose name the vehicle is registered, as defined in the law of the Member State of registration (art. 3 of the examined European Normative Act).

Examination of definitions of certain terms or phrases specific to traffic safety and road transport, lead to the conclusion that the European legislator wished to achieve an unanimous legal interpretation for all Member States, noting that, each time it starts from the definition of the term in the state in whose territory the violation of the road safety rules occurred.

On the other hand, one can appreciate that the European legislator wished to avoid other unilateral interpretations which can be given to these terms or phrases from the Member States, interpretation leading to the appearance of malfunctions in the application of the uniform rules within the European Union territory.

2. The procedure applicable between Member States

For the research purposes of the violation of traffic rules affecting road safety and implicitly the application of the law, the Member States shall provide access to the national contact points of other Member States, to the following data relating to the vehicle registration, authorizing them to conduct automated searches on:

- data relating to vehicles; and
- data relating the owners or keepers of vehicles.

Such referrals shall be made in compliance with the data referred to in annex I to the European Normative Act.

Any searches in the form of written request shall be carried out by the national contact point of the Member State in which the infringement is committed by using a complete registration number.

Searches shall be conducted according to the procedures described in Chapter 3 of the annex to decision 2008/616/JHA [9], with the exception of section 1 of Chapter 3 of the annex of the mentioned normative act, in the case in which annex I of the examined normative act (to which I have made earlier reference) applies.

In all circumstances the Member State in which the infringement has been committed will use the data obtained for the determination of the person liable for the violation of traffic rules affecting road safety (rules provided for in article 2 of the examined normative act).

Member States shall ensure the security and protection of transmitted data, by using, to such an extent as possible, the existing computer applications, as well as that referred to in article 15 of decision 2008/616/JHA, and amended versions of computer applications in accordance with Annex I to the examined normative act and sections 2 and 3 of Chapter 3 of the annex to decision 2008/616/JHA.

As regards the costs arising from the administration, use and maintenance of computer applications, they will be incurred by each Member State [7].

3. Informing letter concerning the violation of traffic rules affecting road safety

In all circumstances the decision to initiate proceedings subsequent violations of traffic rules affecting road safety referred to above, belongs to the Member State in whose territory the infringement occurred.

Assuming that the State decides to initiate these proceedings, that State shall notify, in accordance with its national law, the owner, keeper of the vehicle or person identified in another way, suspected of having committed violations of traffic rules affecting road safety.

In consonance with the provisions of the rules of national law, the information shall present the legal consequences of the infringement in question in the territory of the Member State in which the infringement has been committed under the law of that Member State.

When they transmit the informing letter to the owner, keeper of the vehicle or person identified in any other way, suspected of having committed violations of traffic rules affecting road safety, the Member State in which the infringement was committed includes, according to the provisions of its domestic law, any relevant information, in particular the nature of such violations, the place, date and time at which it was committed, a reference to the relevant provisions (including their title in national law that have been violated and the related penalty as well as, where appropriate, data concerning the device used for recording the infringement. To this end, the Member State in which the infringement has been committed may use the model set out in annex II of the European normative act.

In order to guarantee fundamental rights, the Member State in whose territory the infringement was committed will send the information letter in the language of the vehicle registration document, if it is available, or one of the official languages of the Member State of registration.

4. Member States' reports to the Commission. Data protection and information for road users in the European Union

Until May 6, 2016 and thereafter, every two years, each Member State shall send the Commission a report which will contain the number of applications for automated search carried out by the Member State where the infringement was committed and addressed to the national contact point of the Member State of registration due to the violations committed in the territory of the first, as well as the nature of violations for which applications have been submitted and the number of applications rejected.

In addition, this report will also include a description of the situation at national level in relation to follow-up actions taken with regard to violations of traffic rules affecting road safety, based on the proportion of infringements which were the subject of information letters.

In the application of provisions contained in the examined European legal instrument, the provisions of Directive 95/46/EC on the protection of personal data will be applied.

All processed personal data will only be used to achieve the objective mentioned above, and the relevant persons have the same rights to information, to access, rectification, deletion, to compensation and judicial ways of attack, as the people who are sending and requesting the application and observance of rules of national law.

The concerned subjects have the right to obtain information regarding to which personal data registered in the Member State of registration have been submitted by the Member State in which the infringement was committed, including the date of application and the competent authority of the Member State in which the infringement has been committed (articles 6, 7 and 8 of the European normative act).

When applying the provisions of the European normative act, the Commission will publish on its website in all the official languages of the institutions of the European Union, a summary of the rules in force in the Member States relating to the area covered by the examined European normative act, on the basis of the information supplied by each Member State.

At the same time, Member States will provide road users the necessary information on the rules applicable in their territory and measures for implementing the regulatory provisions of the examined regulatory act, in cooperation with (among other organizations), the bodies responsible for road safety, non-governmental organizations that operate in the field of road safety and automobile clubs (articles 6, 7 and 8 of the European normative act).

5. Some critical opinions

In addition to some provisions that may contribute to the increase in road traffic safety within the European Union, the examination of the European legal instrument allow the formulation of critical opinions.

A first observation aims at the exclusion from the violations affecting road safety of the driver's deed that to not stop at the signal of the authorized agent of a concerned Member State.

Another observation relates to the fact that the driving record is no longer maintained. It can be seen as a sum of extremely important data that can be sent to the Member State in whose territory the violation has been committed.

A final critical opinion refers to the fact that there are no legal rules under which the person sanctioned according to the provisions of the European legal instrument can address a court or a competent national court if he is not satisfied with the penalty applied.

We also appreciate that it should be mentioned the possibility of using a way of attack on the territory of the State where the violation of the norm has occurred through which road safety is impaired.

Conclusions

The increase from one period to the other of infringements of normative acts regulating safety on public roads in the territories of the Member States of the European Union, infringements committed by citizens of other Member States, and in particular the need to ensure punishment of such violations, prompting the European legislator to adopt this legislation.

As it appears from the examination of the European legal instrument, it ensures the transmission of the information required to ensure the sanctioning of individuals who, as drivers of some vehicle, violate the safety rules on public roads while driving in the territory of another Member State.

In an overall conclusion one can appreciate that the adoption of this legal instruments was necessary, the application of these provisions by all Member States is meant to protect the participants to the road traffic within the European Union.

References

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- [3] Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 to facilitate the cross-border exchange of information on violations of traffic rules affecting road safety, published in JOUE L 68 from 13 March 2015;
- [4] Directive 2011/82/EU of the European Parliament and of the Council of 25 November 2011 to facilitate the cross-border exchange of information on violations of traffic rules affecting road safety, published in OJ L 288 from 05 November 2011;
- [5] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, as published in OJ L 76 from 22 March 2005;
- [6] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 23 November 1995;
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