

Subject: EVALUATION STUDY ON THE APPLICATION OF THE DIRECTIVE 2011/82/EU FACILITATING THE CROSS-BORDER EXCHANGE OF INFORMATION ON ROAD SAFETY RELATED TRAFFIC OFFENCES (Contract n° MOVE/C4/2014-255). Questionnaire SM

Introduction

The European Commission has mandated Grimaldi to carry out an evaluation of Directive 2011/82/EU facilitating the cross-border exchange of information on road safety related traffic offences (“**CBE Directive**” or “**Directive**”), currently replaced by Directive 2015/413 (“EVALUATION STUDY ON THE APPLICATION OF DIRECTIVE 2011/82/EU FACILITATING THE CROSS-BORDER EXCHANGE OF INFORMATION ON ROAD SAFETY RELATED”) (“the **Study**”).

It will be useful to recall that this Directive offers an automated tool for enforcement authorities in the Member State where the offence was committed to pursue and fine the drivers of cars registered in other EU Member States when they commit traffic offences.

Current cooperation agreements exist in the form of bi-lateral and multi-lateral agreements and many EU Member States already have systems in place to follow up on traffic fines and therefore it is important to understand how the mechanism put in place by the Directive interacts with such other mechanisms.

In May 2014, the European Court of Justice ruled that the legal basis of the Directive on the Cross-Border exchange of Information related to road safety (which came into force in November 2013) was incorrect. The European Court of Justice found that the measures proposed in the Directive do not concern ‘prevention of crime’ as defined under the police cooperation rules, but rather road safety, which is a transport issue. However, given the importance of the law for road safety, the ECJ said the current rules will stay in place while a new proposal is agreed upon. The Court has granted a one-year transition period, meaning the rules have remained in effect until May 2015. Following the ruling, a new Directive 2015/413 was adopted in March 2015 with a legal basis under the EU transport policy. EU Member States had to transpose the new legislation into their national law by May 2015. Three countries, UK, Ireland and Denmark, have a later transposition deadline of May 2017.

Within the context of the Study, Grimaldi has organized a stakeholder meeting that takes place on 5 October 2015, to which you are invited.

The meeting will take place in Brussels on October 5th from 10:00 am to 17:30 pm. The venue will be the “Centre de Conférences Albert Borschette”, Room 3A, Rue Froissart 36.

This Questionnaire is aimed at providing you with an overview of the issues that will be discussed at this meeting and of the questions that we will ask to stakeholders during our discussion.

In case you need any additional information about this evaluation, please do not hesitate to contact Grimaldi Studio Legale directly by addressing an email to the following address: dfrisani@grimaldilex.com.

The objective of this questionnaire

This Questionnaire is aimed at discussing the preliminary findings of our Study on the impacts of the Directive on road safety and on the awareness of EU citizens on the necessity to comply with road traffic rules and on more general issues, such as the automated enforcement of road traffic rules in the EU and the effectiveness of cross-border enforcement of sanctions for infringements of road traffic rules.

Section 1 Impact of the Directive

The questions included in this Section concern the impacts of the Directive, *rectius* of the national measures transposing the Directive, on road safety and on drivers' awareness of the road traffic rules in force in the Member States of the EU.

We will ask your opinion on the data that we gathered on the status of the implementation of the Directive and on the development of the number of offences/fatalities in the EU.

Questionnaire SM – Section 1

Q.SM.1 - Do you think that the low rate of implementation of the CBE Directive has affected its overall impact on road safety in the EU?

Yes

No

I don't know

Q.SM.2 - Based on the first findings of our Study, it seems that there has been no

change in the number of fatalities/accidents caused by non-resident drivers in the EU/in Member States. Do you agree?

Yes

No

I do not know

According to you, what are the reasons for the above trend? How do you explain the fact that accidents have increased by 10 % in the EU in 2014 compared to 2013? What do you think will happen in 2015?

Can we argue that accidents have increased because the volume of traffic has increased in 2014 compared to 2013? What do you think will happen in 2015?

Can you identify other reasons underlying the trends of road fatalities/accidents in EU?

Based on our findings the number of offences detected on the roads of some Member

States have increased in 2014 compared to 2013. Can you identify the reasons for such an increase? Have the number of controls increased in some Member States?

Q.SM.3 - It seems that one of the main problems with the implementation of the CBE Directive in the EU is that many Member States are not concretely implementing it/exchanging information under the CBE Directive. Would you agree?

Yes

No

I do not know

Q.SM.4 - It seems that one of the main factors that prevent an effective cross-border enforcement of sanctions is that the competent authorities perceive such enforcement as too expensive. Would you agree?

Yes

No

I do not know

Q.SM.5 - Based on our desk research, only a few Member States have adopted specific measures in order to inform citizens about the impact of the Directive and the fact that drivers will be punished even if they infringe road traffic rules abroad. Would you agree?

Yes

No

(PLEASE STATE)

I do not know [__]

Section 2 EUCARIS

The questions included in this section of the Questionnaire are aimed at assessing the functioning of EUCARIS.

Questionnaire SM – Section 2

Q.SM.6 - To what extent does EUCARIS facilitate cross-border exchange of VRD between Member States?

I do not know [__]

Q.SM.7 - To what extent does EUCARIS facilitate the reporting by the Member States to the Commission?

I do not know [___]

Q.SM.8- In your opinion, what are the main reasons for failed automated searches (using EUCARIS/CBE application)?

[PLEASE STATE]

I do not know [___]

Section 3 Automatic checking equipment

Section 3 of this Questionnaire aims at understanding whether the lack of common standards for automatic checking equipment across the EU negatively affects the cross-border enforcement of sanctions for road traffic offences and at identifying best practices in the automated enforcement of road traffic rules.

Questionnaire SM – Section 3

Q. SM.9 - Based on the results of our desk research, the national courts of some MS have annulled sanctions for infringement of road traffic rules because the automatic equipment used to detect the offence was not appropriate. We found relevant case law in Italy, Spain and UK. Are you aware of similar case law in other Member States of the EU?

I do not know [___]

Q.SM.10 - If any, what do you think will be the main legal and practical problems caused by the existence of different standards for automatic checking equipment in the Member States of the EU?

I do not know

Q.SM.11 - Are there Member States that use more effective automatic checking equipment than others? If yes, please list them and explain why you consider their checking equipment more effective.

Yes

No

I do not know

How many automatic equipment per number of vehicle registered in one Member State should be installed?

Section 4 Enforcement procedures

The questions included in this section aim at understanding how the cross-border enforcement of sanctions for road traffic offences concretely works and at identifying problems that need/should be addressed by EU legislation or by other measures such as international agreements.

Questionnaire SM – Section 4

Q.SM.1 - What are the most recurrent road traffic offences other than the ones covered by the CBE Directive? Which ones are likely to be committed by non-resident drivers? In your opinion, what other road safety related traffic offences should be added to the scope of the CBE Directive?

I do not know [__]

Q.SM.13 - Are there figures/estimates on the number of offences not covered by the CBE Directive committed by non-resident drivers at the national level or EU level for the years 2013-2015?

For example are there figures on the number of offences such as: dangerous overtaking, not stopping after an accident, failure to keep minimum distance?

I do not know [__]

Q.SM.14 - Member States currently apply some bilateral agreements to enforce sanctions for traffic offences committed by foreign offenders (e.g. bilateral, multilateral agreements).

Are they efficient?

Yes

No

I do not know

Can you list the Member States that have agreements that cover the cooperation on the enforcement of sanctions for road traffic offences as well as the exchange of information?

Yes

No

I do not know

Are you aware of agreements that cover the enforcement of sanctions but do not cover the exchange of information aimed at identifying the owner of the vehicle?

Yes

No

Q.SM.15 - Which problems, if any, do Member States face when you try to enforce sanctions in other Member States for road traffic offences not covered by the Directive?

I do not know [__]

Q.SM.16 - Do you think that the Council Framework Decision 2005/214/JHA and the EU Convention on Mutual Assistance in Criminal Matters of 2000 (MLA Convention) ensure an effective enforcement of sanctions for road traffic offences?

I do not know [__]

Q.SM.17 - Would you agree that one of the problems with the functioning of the above Framework Decision is that cooperation between competent authorities does not work smoothly?

Yes

No [__]

I do not know [__]

Q.SM.18 - What are the consequences of the refusal to pay a sanction imposed by another MS? Is this enforced in the same way as for purely domestic cases?

I do not know [__]

Q.SM.19 - Is refusal to pay a financial penalty imposed by another Member State upheld by national courts in general? Are there data available for the years 2013-

2014-2015?

Yes

No

I do not know

Q.SM.20 - Based on your experience are there any other forms of cooperation among Member States in the area of enforcement of road traffic offences which are efficient, i.e. that are rapid and ensure a high rate of successful enforcement of sanctions committed by non-resident drivers? If the answer is positive, please identify such forms.

Yes

(PLEASE STATE)

No

I do not know

Would you agree with the opinions of stakeholders who argue that enforcement should focus on the penalty point system and that cooperation among Member States is needed in this area?

Yes

No

I do not know

Section 5 Future perspectives for the cross-border enforcement of sanctions for road traffic offences

The questions included in this section aim at understanding if new legislative action needs to be taken at the EU level and, assuming that the answer is positive, what needs/should be done.

Questionnaire SM – Section 5

Q.SM.21 - Based on the preliminary findings of our Study, it seems that one of the limits of the CBE Directive is that it does not cover cooperation in investigations in cases where, for example, the owner of the vehicle is not found because the address is not correct. Would you agree?

Yes

No

I do not know

Q.SM.22 - What follow-up measures regarding the enforcement of sanctions do you consider as crucial to improving the application of the CBE Directive? Are there emerging types of offences which did not exist during the introduction of the CBE Directive?

I do not know

Q.SM.23 - What are the possible alternatives to the vehicle registration data exchange under the CBE Directive? Can you identify them and their possible comparative advantages?

I do not know

Q.SM.24 - Some of the stakeholders consulted stated that Member States should also be allowed, according to Article 4 of the CBE Directive, to use other databases (not only vehicle databases but also driver databases)? Do you agree?

Yes

No

I do not know

Are there other provisions of the Directive that should be amended? Should Member States be requested to collect data on offences and accidents committed by non-resident drivers?

Yes

No

I do not know