

**INPUT PAPER CONCERNING THE *EVALUATION STUDY ON THE APPLICATION OF DIRECTIVE 2011/82/EU FACILITATING THE CROSS-BORDER EXCHANGE OF INFORMATION ON ROAD SAFETY RELATED TRAFFIC OFFENCES* FOR THE STAKEHOLDER MEETING OF 5 OCTOBER 2015**

**Date: 28 September 2015**

## **Table of Contents**

1	Introduction.....	3
1.1	The CBE Directive .....	3
1.2	The Study .....	3
1.3	Timeline .....	6
2	Methodology .....	6
2.1	Indicators .....	7
3	Preliminary findings of the Study on Tasks 1, 2, 3, 4, 5 and 7 .....	10
3.1	Task 1 progress and first findings .....	10
3.1.1	First findings for Task 1.....	10
3.2	Task 2 progress and first findings .....	11
3.2.1	First findings for Task 2.....	12
3.3	Task 3 progress and first findings .....	13
3.3.1	First findings for Task 3.....	14
3.4	Task 4 progress and first findings .....	15
3.4.1	First findings for Task 4.....	16
3.5	Task 5 progress and first findings .....	18
3.5.1	First findings for Task 5.....	19
3.6	Task 7 progress and first findings .....	21
3.6.1	First findings for Task 7.....	21
4	Preliminary conclusions of this Study and next steps.....	22

# 1 Introduction

The European Commission (hereinafter also, “the Commission” or “the CA”) has awarded to Grimaldi Studio Legale (“Grimaldi”) the contract (“the Contract”) having as its object an “Evaluation study on the application of Directive 2011/82/EU facilitating the cross-border exchange of information on road safety related traffic offences” (“the Study”). Final report of the Study will be delivered by 30 January 2016.

This paper explains the background of this Study, the methodology proposed and applied by Grimaldi and the progress made with the contractual tasks.

## 1.1 The CBE Directive

The CBE Directive has set up a procedure for the exchange of information on eight road traffic offences: speeding, non-use of a seat-belt, failing to stop at a traffic light, drug-influenced and drink-driving, failing to wear a helmet, use of a forbidden lane and illegally using a mobile phone.

Pursuant to the Directive, Member States (“MSs”) are given access to national data on vehicle registration to determine the person liable for the offence. Member States (except UK, Ireland and Denmark) had to transpose the CBE Directive by November 2013. The original legal basis of the Directive was Article 87(2) TFEU concerning prevention of crime.

The European Court of Justice (“ECJ”) has ruled that the legal basis of the CBE Directive was incorrect as its provisions do not concern ‘prevention of crime’ as defined under the police co-operation rules, but rather road safety, which is a transport issue.

However, given the importance of the Directive for road safety, the ECJ rules that 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<sup>1</sup> 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.

## 1.2 The Study

In this context, the object of this Study is to provide:

---

<sup>1</sup> Directive 2015/413/EU of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences, OJ L 68, 13.3.2015, p. 9–25.

- an *ex-post* evaluation of the Directive 2011/82/EU (the “**Directive**” or “**CBE Directive**”) and of its effects in terms of promoting road safety;
- an *ex-ante* evaluation of possible amendments to the Directive aimed at improving its effectiveness and mostly concerning its scope (e.g. need to harmonize road traffic rules, coverage of other related traffic offences) and other specific technical aspects such as the need to develop comparable methods, practices and minimum standards for automatic checking equipment and enforcement issues.

In order to provide the above *ex-post* and *ex-ante* evaluations, the Study will assess the relevance, effectiveness, sustainability, efficiency, EU added value and coherence of the CBE Directive and reply to a set of evaluation questions listed in Table 1 below.

**Table 1**

Evaluation questions
Relevance
<ol style="list-style-type: none"> <li>1. Is the scope of the CBE Directive in terms of traffic offences adequate? If it is not, in which respect?</li> <li>2. Does the CBE Directive adequately cover the issue of the awareness of citizens on rules in force in EU Member States in the field, covered by the CBE Directive? If not, in which respect?</li> </ol>
Effectiveness
<ol style="list-style-type: none"> <li>3. What are the impacts on fatalities and accidents of the measures set out in the CBE Directive?</li> <li>4. Are there any non-targeted significant results and impacts of the measures set out in the CBE Directive?</li> <li>5. What are the main problems with the implementation of the CBE Directive in Member States?</li> <li>6. Which factors have hindered the achievement of the general objectives of the CBE Directive?</li> <li>7. To what extent does EUCARIS contribute to the effective implementation of the CBE Directive, including equal treatment of resident and non-resident offenders?</li> <li>8. To what extent could the development of comparable methods, practices and minimum standards for automatic checking equipment improve the impacts achieved by the implementation of the Directive?</li> <li>9. To what extent could the follow-up procedures between competent authorities of the Member States for the transmission of the final decision to impose a financial penalty as well as the recognition and enforcement of the final decision improve the impacts achieved by the implementation of the CBE Directive?</li> <li>10. What are the impacts on the awareness of citizens on rules in force in EU Member States in the field, covered by the CBE Directive?</li> </ol>
Sustainability

Evaluation questions
11. Would the application of the CBE Directive without any modifications or follow-up initiatives be still appropriate in 5 years? If not, which aspects need to be reinforced?
<b>Efficiency</b>
12. To what extent are the costs involved in the cross-border exchange of data and for the follow-up procedures adequate to achieve the objectives of the CBE Directive?
13. What aspects of the implementation of the CBE Directive generate unnecessary administrative burden and how could this be improved?
14. Would it be possible to achieve the same level of road safety protection more efficiently by other methods of enforcement of traffic rules?
<b>Added value</b>
15. What are the advantages of an exchange of vehicle registration data at EU level? In how far could the same or better results be achieved by bilateral or multilateral agreements between Member States?
<b>Coherence</b>
16. To what extent has the CBE Directive contributed to the improvement of road safety in the context of other factors/initiatives having effects on road safety (e.g. 3rd Driving Licence Directive)?
17. How far the specific objectives of the CBE Directive, i.e. to facilitate the enforcement of road traffic rules and to raise awareness of citizens on traffic rules are synergic and complement each other?

The work to be carried out in order to reply to the above evaluation questions is articulated in 7 Tasks:

1. Quantitative assessment of the effectiveness of the CBE Directive on the reduction in the number of fatalities and accidents on EU roads in 2013/2015 (partially) (“**Task 1**”);
2. Assessment of whether EUCARIS guarantees an effective, expeditious, secure and confidential exchange of specific vehicle registration data, including the quantitative analysis on how many road safety related traffic offences detected automatically are followed by searches via EUCARIS in 2013/2015 (partially) (“**Task 2**”);
3. Assessment of the need to develop comparable methods, practices and minimum standards for automatic checking equipment and elaboration of a proposal for road safety guidelines outlining the best practice of the automated enforcement of road traffic rules, at least for the following offences: speeding, drink-driving, non-use of safety belts and failure to stop at a red traffic light (“**Task 3**”);
4. Assessment of the follow-up of the exchange of information in order to strengthen the enforcement of sanctions, especially in the case where a financial penalty is refused to be paid.

Elaboration of proposal of common criteria for the procedures concerning mutual recognition of financial penalties. Assessment of whether the mutual recognition of financial penalties for the offences covered by the CBE Directive requires the harmonization of relevant road traffic rules.

Assessment of whether other road safety related traffic offences should be added to the scope of the CBE Directive (“**Task 4**”);

5. Quantitative assessment of administrative costs, including for the cross-border exchange of data and for the follow-up procedures (“**Task 5**”);

6. Organization of a stakeholder meeting whose conclusions will be used for the draft final report of the Study (“**Task 6**”).

7. Assessment of the legal consistency of the CBE Directive (“**Task 7**”).

### 1.3 Timeline

#### Timeline

Deadline	Milestones
30 April 2015	➤ Signature of the Contract
28 July 2015	➤ Approval of the First Progress report
18 September 2015	➤ First draft of the Second Progress report
5 October 2015	➤ Stakeholder meeting
1 November 2015	➤ Second Progress report
11 December 2015	➤ Draft Final Report
30 January 2016	➤ Final Report

## 2 Methodology

The methodology that the Contractor is applying in order to carry out the contractual tasks is based on desk research and the consultation of stakeholders.

From the desk research Grimaldi has already analyzed the national measures transposing the CBE Directive in all 28 Member States, the national and EU statistics on road fatalities and accidents and statistics on road traffic offences detected on EU roads and made publicly available.

The Contractor has organized a consultation of stakeholders based on 3 Questionnaires: Questionnaire 1, 2 and 3 and on the organization of this stakeholder meeting.

The consultation of stakeholders has been carried out as follows.

Questionnaires 1 and 2 have been sent to stakeholders via email to the relevant contact person in each organization during the first week of August. Stakeholders have been invited to reply to the questionnaires in writing or in an oral interview. In consideration of the summer break, the Contractor has set two different deadlines for providing replies. The first tentative deadline was set for 3 September 2015. A final deadline has been set for 30 September 2015.

In addition, in order to ensure an appropriate response rate and to confirm the information collected through the desk research, the Contractor has proposed an oral interview to some selected stakeholders. Requests for an oral interview have been sent in September 2015.

In parallel to the above survey, the Contractor has organized an online survey based on Questionnaires 1 and 2. This online survey was launched on 10 August 2015. The online survey is available on EUSURVEY at the following links:

- Questionnaire N°1: [https://ec.europa.eu/eusurvey/runner/DGMOVE\\_Q1](https://ec.europa.eu/eusurvey/runner/DGMOVE_Q1)
- Questionnaire N°2: [https://ec.europa.eu/eusurvey/runner/DGMOVE\\_Q2](https://ec.europa.eu/eusurvey/runner/DGMOVE_Q2)

## 2.1 Indicators

In order to reply to the evaluation questions listed above, the Contractor has elaborated the following indicators listed in the table below.

**Table 2**

Task	Evaluation questions	Indicators
1	3	1. Decrease/increase of fatalities and accidents in % (number of fatalities and accidents in 2011/2012 number of fatalities and accidents in 2013, 2014 and 2015)  2. Estimates on the decrease/increase of fatalities and accidents caused by offences committed by non-residents in % (number of fatalities and accidents in 2011/2012 number of fatalities and accidents in 2013, 2014 and 2015)
	4	3. Improvement of police cooperation in combating delicts other than those related to road safety
	5-6	4. Increase/decrease of the complexity of the system
	16	5. Improvement of the consistency of the EU legal framework on road safety
		6. Improvement of the awareness of citizens on road traffic rules, sanctions for offences and their consequences

		7. Decrease/ increase of visits to the Commission Going Abroad webpage in 2013 – 2015 (%) and/or similar webpages/websites of MS/NGOs
	10	7. Improvement of the level of awareness of citizens concerning road traffic rules in force in EU Member States
	17	8. Improvement of consistency of EU legal framework
<b>2</b>	7	9. % of automatically detected offences since 2013 out of the total number of offences (per year and per type of offence) covered by the CBE Directive 10. % of automatically detected offences committed by foreign vehicles since 2013 out of the total number of offences (per year and per type of offence) covered by the CBE Directive 11. % of followed/investigated offences which are automatically detected since 2013 (outgoing searches) out of the total number of offences (per year and per type of offence) covered by the CBE Directive 12. % of failed outgoing searches 13. Degree of satisfaction in the use of EUCARIS among stakeholders 14. Degree of compliance with the security provisions of Article 4(4) 15. Degree of compliance with the data protection provisions of Article 7 16. % of MSs having implemented the EUCARIS/CBE application
<b>3</b>	8	17. Number of refusals of access to Member States' VRD on the grounds that the checking equipment used is found not appropriate 18. Number of recording devices/equipment for the detection of offences covered by the CBE Directive divided by number of registered vehicles in 2013 – 2015 per MS
	11	19. Number of refusals of enforcement of sanctions on the grounds that the checking equipment used is found not appropriate and infringes the fundamental rights of the individuals
<b>4</b>	1	20. Number/estimate of sanctions for offences not covered by the Directive committed by non-resident drivers/divided by the number of sanctions for the same offences not enforced 21. Number/estimate of offences not covered by the Directive and committed by non-resident drivers divided by the number of the same offences committed by residents
<b>4</b>	9-11	22. Number of successfully investigated traffic offences (number of offences where a sanction has been successfully enforced) as defined in Article 2 of the CBE Directive, committed by vehicles registered in another MS (cross-border offences) where searches under the CBE Directive regime have been used in



		<p>2013-2015 per MS/in the EU (or share of those in a given geographical area)</p> <p>23. Number of all judicial decisions issued in cases where a foreign offender refused to pay a sanction for a traffic offence in 2013–2015 per MS/in the EU</p> <p>24. Number of judicial decisions mutually recognized in cases where a foreign offender refused to pay a sanction for a traffic offence in 2013–2015 per MS/in the EU</p> <p>25. Number of judicial decisions issued for all (not only traffic) cross-border offences in 2013–2015 per MS/in the EU</p>
	14-15	26. Improved rapidity/success rate of enforcement as substantiated by examples of success stories
<b>5</b>	12-13	<p>27. Total IT costs (expressed as Total Cost of Ownership) for administering, using and maintaining EUCARIS in the last 3 years in the context of the CBE Directive</p> <p>28. Comparison of EUCARIS total IT costs with similar applications maintained by the European Commission</p> <p>29. Increase of the administrative costs related to vehicle registration data exchange (in % or absolute figures) comparing the situation before 2013, where no data were exchanged for the purpose of the CBE Directive (but practically the same data were exchanged under the PRUM Decisions), with the situation in 2015 (A)</p> <p>30. Increase (in % or absolute figures) of the revenues generated by the enforcement of sanctions for traffic offences covered by the CBE Directive (B) plus reduction (in % or absolute figures) of the costs generated by the increased level of safety on EU road or on MSs' roads (C)</p> <p>31. Ratio between the A and B+C.</p>
<b>7</b>	1-11	32. Consistency/inconsistency of the legal framework

### 3 Preliminary findings of the Study on Tasks 1, 2, 3, 4, 5 and 7

The paragraphs below will provide an overview of the progress made with all the Tasks of the Study except for Task 6.

For the sake of readability of this paper, the Contractor is describing the progress made in relation to each Task and presenting the relevant first findings in different paragraphs.

#### 3.1 Task 1 progress and first findings

Task 1 is aimed at providing a quantitative assessment of the impacts of the CBE Directive on the reduction in the number of fatalities and accidents on EU roads in 2013/2015 (partially).

This Task implies also assessing the impact on awareness of the provisions of the Directive and understanding to what extent the provisions of the Directive on vehicle registration data exchange (Article 4) and on the awareness of EU road users on applicable traffic rules (Article 8) are complementary.

Within this Task, the Contractor has gathered and are gathering information and data on fatalities and accidents on EU roads in the years 2011-2015 (where available). The Contractor has also collected data on the implementation of the Directive in the 28 Member States of the EU in order to assess to what extent the impacts of the Directive on road safety can be measured based on quantitative data.

##### 3.1.1 First findings for Task 1

It is premature to draw conclusions on all the issues to be addressed under Task 1 and concerning the impacts of the Directive. However, based on the replies received by stakeholders and on the findings of our desk research, the Contractor can already draw some preliminary conclusions that are relevant for the assessment of the impacts of the Directive. Such findings will be further verified in the light of the replies that the Contractor will receive from stakeholders by the end of September and in October 2015 and during this stakeholder meeting. Our first preliminary conclusions are listed below:

1. It is too early to assess the impacts of the Directive at the EU level on road safety based on quantitative data and notably on the number of fatalities and road accidents on EU roads occurring after the entry into force of the Directive because many Member States have not implemented the Directive in 2013 but only in 2015. Another factor making such an assessment difficult is that it seems that most MSs do not collect data on accidents and fatalities committed by non-resident vehicles/drivers. This conclusion

is preliminary as the Contractor has not yet received replies from all Member States but only from some of them.

2. At this stage, assessing the national trends on the number of offences covered by the Directive and detected in 2014 and (possibly) in 2015 might lead to drawing more meaningful conclusions on the impacts of the Directive on road safety.

3. The Directive complements existing EU legislation and fills in a legal gap. However, its limited scope might prevent the achievement of its road safety objectives. Notably, provisions on cooperation in investigations aimed at identifying and finding the offender are missing in the Directive.

4. EU drivers tend to be more aware of road traffic rules in force in Member States where they do not reside and this has a positive impact on compliance with such rules.

### 3.2 Task 2 progress and first findings

Task 2 concerns the *ex-post* part of this evaluation and aims at assessing the extent to which the CBE Directive and EUCARIS interface are effective, i.e. to what extent EUCARIS has facilitated the exchange of specific vehicle registration data between Member States.

In other words, Task 2 aims at answering the following evaluation questions: **“To what extent does EUCARIS contribute to the effective implementation of the CBE Directive, including equal treatment of resident and non-resident offenders?”**

For this purpose, a set of eight indicators were set at the early stage of this project. These are listed in Table 1 above and are the indicators N° 9-16.

As of the time of this paper, the Contractor has mostly focused on data collection activities, in particular desk research on secondary data, questionnaires and interviews. While the desk research activities were performed during the summer period, consultation with stakeholders only started in September 2015 to avoid the negative effects of the holiday period.

The Contractor conducted an interview with RDW/NL on 15.09.2015.

### 3.2.1 First findings for Task 2

Based on the data provided by stakeholders, EUCARIS/CBE application was operational in 14 EU countries as of 12.12.2014 while as of 22.06.2015, EUCARIS/CBE application was operational in 16 EU countries. 2 EU countries passed the implementation test with RDW/NL and are now waiting for the final decision of their competent ministry (7%); 2 countries were in the testing phase (7%); 1 country was developing the EUCARIS/CBE application (3%) and 10 had not yet started implementing the application (30%), out of which 3 have until 06 May 2017 to do so (UK, IE, DK).

That said the Contractor found that data concerning searches carried out by MSs via EUCARIS tend to be scarce, not providing the sufficient level of detail necessary in order to apply some of the indicators proposed by the Contractor in order to perform Task 2.

The Contractor found out that eight countries (57%) were able to report to the Commission on the total number of outgoing searches performed and failed searches.

The Contractor found that some MS have not reported to the Commission on the number of outgoing and failed searches and some Member States did not carry out any searches using the EUCARIS/CBE application. The Contractor found also that one MS has not carried out any searches through EUCARIS/CBE application because the information exchange includes only data relating to vehicles and vehicle owners and this MS does not use a system of owner liability for road traffic rules.

The Contractor has identified also a main risk of the data collection for Task 2 related to the fact that reporting on data on searches is only compulsory for 2014 and 2016 (Art 6 of the CBE Directive). Consequently, it may be more difficult to gather data for 2015.

Within Task 2 the Contractor aims also at evaluating the satisfaction of the EUCARIS/CBE application's user groups. Based on analysis of the replies received from stakeholders, the Contractor concluded that it is not possible to draw any conclusion on the level of satisfaction of users on EUCARIS/CBE application.

The Contractor found that no survey has been submitted to MSs to measure their satisfaction with EUCARIS/CBE application or the service provided by RDW/NL.

Therefore, the Contractor will verify the possibility to send a satisfaction survey to EUCARIS/CBE application's user groups, ideally during the next EUCARIS General Assembly, planned on 8th and 9th October 2015.

The Contractor is aware that users sometimes have difficulties distinguishing the issues related to EUCARIS/CBE application and issues related to the content of the national registers, e.g. countries providing no, inaccurate or incomplete information, and therefore will formulate the questions very clearly so as to avoid confusion in the answers. The analysis carried out found that the exchange of information of VRD between Member States via EUCARIS is in full compliance with the security provisions of Article 4(4) and that the data protection provisions of Article 7 are all met by EUCARIS where relevant.

In addition, the analysis clarified that EUCARIS only transfers data from one MS to another and the system does not store any information apart from these included in the logging, as part of the security measures and that this information is retained in accordance with the related legislation on data protection.

The Contractor has also carried out an analysis aimed at assessing whether the indicators proposed and listed in Table 1 should be replaced and concluded that some should. Notably, based on an analysis of the available data, the Contractor will propose to the Commission to replace indicators N° 9, 10 and 11 listed above with the following indicators:

➤ Proposal for indicator N°9: Number of automatically detected road safety related traffic offences committed by non-resident offenders (per MS, per year and per type of offence covered by the CBE Directive) since 2013 out of the total number of road safety related traffic offences committed by non-resident offenders (per MS, per year and per type of offence covered by the CBE Directive) since 2013.

The Contractor proposes to modify this indicator so as to focus on offences committed by non-resident offenders.

➤ Proposal for indicator N°10: Number of road safety related traffic offences committed by non-resident offenders (per MS, per year and per type of offence covered by the CBE Directive) since 2013 out of the total number of road safety related traffic offences committed (per MS, per year and per type of offence covered by the CBE Directive) since 2013.

➤ Proposal for indicator N°11: Number of automated searches (using EUCARIS/CBE application) related to road safety related traffic offences committed by non-resident offenders out of the total number of road safety related traffic offences (per year and per type of offence) committed by non-resident offenders since 2013.

### 3.3 Task 3 progress and first findings

Within Task 3 the Contractor is assessing:

A. The extent to which Member States use different methods, practices and standards for automatic checking equipment creates obstacles to the cross-border enforcement of sanctions in the EU.

B. Whether there is a need to develop comparable methods, practices and minimum standards for automatic checking equipment.

C. Whether there are best practices in the automated enforcement of road traffic rules.

In the light of the findings of our analysis above the Contractor will draft guidelines for the automated enforcement of road traffic rules for the following offences: speeding, drink-driving, non-use of safety belts and failure to stop at a red traffic light.

Within this Task the Contractor has carried out desk research aimed at identifying and analyzing case law on the national and cross-border enforcement of sanctions for road traffic offences and the national legislation of some MSs laying down standards for automatic checking equipment.

The Contractor has also analyzed the first replies received from our stakeholder consultation.

In addition, the Contractor has activated cooperation with TISPOL that will be aimed at identifying what the best practices in the automated enforcement of road traffic rules are and standards are needed.

### 3.3.1 First findings for Task 3

The desk research for this Task has identified national case law which has annulled sanctions for infringements of road traffic offences on the grounds that the automatic checking equipment used was not appropriate.

On the other hand, due also to the recent implementation of the CBE Directive, the Contractor was not able to identify cross-border cases.

In this context, the Contractor has found that national courts have expressed principles that might be applied in the future by national courts in cross-border cases and notably when offenders will challenge sanctions for road traffic offences imposed by a Member State where they do not reside.

An analysis of the case law shows that the national courts of some Member States require that the automatic checking equipment used to detect offences is tested on a regular basis.

Some national courts have expressly required that the equipment used to detect an offence need to be identified, or that the automatic equipment need to be signaled.

In conclusion, based on the analysis of case law and also on the replies received by stakeholders, the Contractor has concluded that lack of common standards for automatic checking equipment will in the future most likely prevent an effective cooperation between authorities of different Member States.

Indeed, if national courts have annulled sanctions issued by the national authorities of their respective MS because they have found that the equipment used was not appropriate, *a fortiori* they might in the future uphold actions brought by alleged offenders claiming that the equipment used to detect offences in another MS is not appropriate.

Based on the analysis of the case law, the Contractor has also elaborated some general principles which could be included in EU guidelines on automated enforcement of road traffic rules and notably:

- I. Principle of reliability of the equipment used as ensured *inter alia* by regular tests conducted at least on a yearly basis.
- II. Principle of utility (i.e. the automatic equipment should be placed in the right places and should (for speeding) distinguish between different types of vehicles).
- III. Principle of accuracy of the detection.
- IV. Principle of traceability: i.e. it has to be possible to identify the automatic equipment that detects an offence.

Finally, based on the replies received by stakeholders, the Contractor has identified as possible best practices for the automated enforcement of road traffic rules the systems of the following Member States: France, Germany, Austria, Hungary, UK, Netherlands and Italy.

### 3.4 Task 4 progress and first findings

Within Task 4 the Contractor started assessing, *inter alia*, whether the scope of the Directive is appropriate taking into consideration the offences that it covers (A) and the fact that it is limited to the cross-border exchange of information on road safety related traffic offences (B).

Sub A) it will be useful to recall that the Directive covers the following offences:

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

Of the above offences, at least two cannot be detected automatically. On the other hand, there are other offences not covered by the Directive that can be detected automatically but are out of the scope of the Directive.

In this context, this Study will assess whether there are road traffic offences not covered by the Directive that affect road safety and that are likely to be committed by non-resident drivers.

Sub B) it will be useful to recall that the Directive does not cover the enforcement of sanctions for road traffic offences but only the exchange of information among Member States, thus allowing the Member States of the offence to identify the owner of the vehicle resident in another Member State.

The Directive does not cover the situations where the offender refuses to pay which is partially covered by the Framework Decision 2005/214/JHA on the Application of the Principle of Mutual Recognition to Financial Penalties <sup>2</sup> (“the **Framework Decision**” or “**FD**”).

Within this Task, the Contractor has analyzed *inter alia* the findings of a previous study conducted by Optimity Advisors (our subcontractor) having as its object a “Study for Elements of the Impact Assessment on the Framework Decision 2005/214/JHA on the Application of the Principle of Mutual Recognition to Financial Penalties (FD) in the context of the multiple framework contract JLS/2009/A1/001”.

Finally, the Contractor has assessed to the extent possible how bilateral and multilateral agreements signed by Member States and aimed at facilitating the cross-border enforcement of road traffic rules work and to what extent their scope and geographical scope are appropriate.

### 3.4.1 First findings for Task 4

The analysis carried out under Task 4 allows the Contractor to draw some final and preliminary conclusions concerning the issues to be addressed under this Task.

Firstly, it can be stated that there is consensus among the stakeholders consulted that the fact the Directive covers all Member States and not only some Member States is an advantage compared to bilateral and multilateral agreements. Consequently, there are no better alternatives to an exchange of information such as the one put in place by the CBE Directive.

That said, the Directive seems to have an added value only for automatically detected offences as Member States apply/may apply efficient systems for enforcing sanctions imposed when the vehicle is stopped (e.g. seizing the vehicle). It is instead highly controversial whether the scope of the Directive is adequate in terms of offences covered and does not need to be extended.

---

<sup>2</sup> Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ L 76, 22.3.2005, p. 16–30.



In addition, our analysis found that one of the flaws of the Directive is that it does not cover the phases of the enforcement that follow the identification of the owner of the vehicle and that under the current EU legal framework the cross-border enforcement of sanctions for road traffic offences is ensured only to the extent that the offender voluntarily pays a fine imposed by another MS.

In this context, based on analysis of the replies received, the Contractor can also conclude that the fact that there are different qualifications of road traffic offences in the EU Member States still prevents an effective enforcement of sanctions committed by non-resident drivers.

In conclusion, it is agreed that the lack of an EU-wide mechanism of cooperation in the enforcement of sanctions for traffic offences has the potential to affect negatively the impact of the Directive on the cross-border enforcement of the above sanctions.

However, an analysis of the replies received within our consultation shows that it is highly controversial whether to extend the scope of the CBE Directive as to cover the conduct of follow-up procedures would affect the procedural autonomy of Member States.

#### *3.4.1.1 Quantitative data necessary to carry out our assessment under Task 4*

A first analysis of the replies received within our stakeholder consultation shows that the stakeholders consulted are not in the position to provide most of the quantitative data required in order to carry out the assessment under Task 4.

In the light of above, the Contractor intends to interview in the month of October additional stakeholders that the Contractor has identified in the first draft of the Second Progress report of this Study.

Interviews will be aimed at gathering the following data:

- Number of successfully investigated traffic offences (number of offences where a sanction has been successfully enforced) as defined in Article 2 of the CBE Directive, committed by vehicles registered in another MS (cross-border offences) where searches under the CBE Directive regime have been used in 2014-2015 per MS/in the EU.
  
- Number of all judicial decisions issued in case where a foreign offender refused to pay a sanction for a traffic offence in 2014–2015 per MS/in the EU.

- Number of judicial decisions mutually recognized in cases where a foreign offender refused to pay a sanction for a traffic offence in 2014–2015 per MS/in the EU.
- Number of judicial decisions issued for all (not only traffic) cross-border offences in 2014–2015 per MS/in the EU.
- Number of road traffic offences not covered by the CBE Directive committed by non-residents in the EU in 2013-2014-2015.
- Number of road traffic offences not covered by the CBE Directive in the EU/Member States.
- Number refusals to enforce a sanction imposed by another Member State.
- Most common reasons for refusals to access to data (per type of offence).

Should some data not be available the Contractor will propose to replace some of the indicators proposed for Task 4 listed in Table 1 above or simply to reduce the number of such indicators.

### 3.5 Task 5 progress and first findings

Task 5 is a part of the *ex-post* and *ex-ante* evaluation and aims at assessing and comparing the costs and benefits of the cross-border exchange of data for the follow-up procedures related to the enforcement of sanctions for road traffic offences.

In other words, Task 5 aims at answering the two following evaluation questions: **“To what extent are the costs involved in the cross-border exchange of data and for the follow-up procedures adequate to achieve the objectives of the CBE Directive?”** and **“What aspects of the implementation of the CBE Directive generate unnecessary administrative burden and how could this be improved?”**

For this purpose, a set of five indicators have been set at the early stage of the project. These are listed in Table 1 above.

In the period from end of July 2015 to mid-September 2015, the Contractor mostly focused on data collection activities, in particular analysis of replies to questionnaires and interviews.

Notably, the Contractor conducted an interview with RDW/NL on 15.09.2015.

### 3.5.1 First findings for Task 5

The CBE system is funded by Member States. These must indeed bear the costs arising from the administration, use and maintenance of the software applications as specified in Article 4(4) of the Directive. Since the implementation deadline for CBE users was on 7 November 2013, all EU Member States, except for the Member States that had opted out (DK, IE and UK), were considered full CBE User as of 2013 and have therefore been paying the CBE contributions as of 2013 as well. The Republic of Croatia joined the European Union on 1 July 2013 and has contributed since 2014.

As of 2015, when the legal basis of the CBE was changed, DK, IRL and UK are also considered as full CBE Users.

The overall cost for administering the EUCARIS application was estimated in 2013 by RDW/NL.

Table 3 provides the figures related to the following cost categories for the EUCARIS application:

**Table 3 TCO (Total costs of ownership) of EUCARIS**

Expenditure	Amount of the funding (in €m)					
	2013	2014	2015	2016	2017	Total
Infrastructure						
Development	0.3	0.3	0.3	0.3	0.3	0.3
Maintenance	0.1	0.1	0.1	0.1	0.1	0.1
Support	0.3	0.3	0.3	0.3	0.3	0.3
Training						

Based on data provided by stakeholders, the Contractor was able to estimate the costs related to the management of EUCARIS interface per MS (including the administration, use and maintenance of EUCARIS).

In this regard, it is estimated that the costs (per MS and per year) related to the development and implementation of the EUCARIS/CBE application were as follows: 2013: € 8,805; 2014: € 2.633 2015: € 1.680; 2016: € 750.

As of 2016, countries will also pay an amount to cover the operational costs for CBE as well (EUR 500).

In addition, the Contractor asked MSs to quantify the administrative costs related to the management of the software applications necessary to carry out the searches under the CBE Directive regime, in Questionnaire N°1 (Q1.18). The costs for 2015 and 2016 were confirmed by some Member States in their answers to Q1.18. The data on costs provided by Member States vary significantly (costs of one MS seem to be seven time higher than the ones declared by another MS of similar size).

In addition to the development and operational costs, Member States pay a yearly general maintenance fee for their EUCARIS connection. This fee is on average EUR 15.000 per year and can be divided by the number of EUCARIS functionalities a country uses. In general, Member States use two to five different functionalities, meaning a cost comprised between EUR 3,000 and EUR 7,500 per service (e.g. the CBE application).

In order to assess the efficiency of the System put in place by the CBE Directive, the Contractor will compare its costs to RESPER, the European Criminal Records Information System (ECRIS from DG JUST) and Interconnection of the National Insolvency (IRI from DG JUST). Since the analysis of these systems is at the inception phase, the Contractor is not yet able to present the related findings in this document.

### **3.5.1.1 Indicators**

Based on the analysis of the first replies provided by stakeholders to our questionnaires, it appears that:

- Member States are not able to provide data that will allow the Contractor to compare the administrative costs related to vehicle registration data exchange under the CBE Directive with the costs of the exchange of such data under previous regimes in the years preceding the entry into force of the Directive.
- Member States are not able to quantify the number of lives saved due to an alleged improvement of road safety linked to the entry into force of the Directive for the reasons that the Contractor has identified above in connection with Task 1.

In the light of all above, the Contractor has realized that there is a need to reformulate some of the indicators proposed in the inception phase of this Study and listed in Table 1 above. This will be further discussed with the European Commission and proposed to the Commission in the Second Progress report of this Study.

However, the Contractor can anticipate that in the light of the available data an assessment of the efficiency of the system under the CBE Directive should be carried out applying the following indicators:

- Proposal for indicator N°29: Administrative costs related to vehicle registration data exchange (in % or absolute figures) compared to the administrative costs related to the implementation of other (similar) applications.

- Proposal for indicator N°30: Amount of revenues generated by the enforcement of sanctions for road safety related traffic offences (covered by the CBE Directive) committed by non-resident offenders.
- Proposal for indicator N°31: Ratio between the total costs (including Total Cost of Ownership [A] and administrative costs [B]) and the revenue generated [C] related to EUCARIS.

### 3.6 Task 7 progress and first findings

Within Task 7, the Contractor is assessing whether the CBE Directive is fit for the purpose it has been adopted and notably its consistency with regard to its scope and its objectives, i.e. improving road safety and increasing the awareness of EU citizens on applicable traffic rules as well as improving the cross-border enforcement of sanctions for specific road traffic offences.

The Contractor is also trying to assess whether some difficulties in the implementation of the Directive are due to the way some of its provisions are formulated from a legal standpoint.

In order to carry out such an assessment, the Contractor has analyzed the wording of the Directive and the replies received from our stakeholder consultation.

#### 3.6.1 First findings for Task 7

Based on our legal analysis and on analysis of the replies received the Contractor concluded that:

- While the Directive is overall an appropriate legislative tool for facilitating the cross-border exchange of information on road safety related traffic offences due to its wide coverage and to the fact that it fills in a legal gap in the EU legal and international legal frameworks. There are some provisions of the Directive that should be formulated in a better way. One example is the provisions on awareness in Article 8 of the Directive.
- In addition, the scope of the Directive has not been designed in a way that ensures its consistency. Notably, the mechanism put in place by the Directive should facilitate the enforcement of sanctions for the offences that are detected automatically to the extent that it allows identifying the owner of the vehicle with which an offence was committed. On the other hand, sanctions for offences such as drink-driving and drug-driving currently fall into the scope of the Directive but are imposed on offenders whom have been previously stopped and identified. In this context, a mechanism that allows identifying the owner of the vehicle does not facilitate the

enforcement of sanctions for drink- and drug-driving to the extent that offenders have been already identified when the above offences are detected. In conclusion, the Contractor believes that the scope of the Directive is not appropriate as it covers offences that should not be covered by the CBE Directive such as drink- and drug-driving.

#### **4 Preliminary conclusions of this Study and next steps**

Based on the analysis carried out, so far it is possible, the Contractor concludes that the CBE Directive has filled a legal gap at the EU level and has the potential to improve substantially the level of road safety in the EU as it includes provisions aimed at facilitating the cross-border enforcement of sanctions for road traffic rules and on awareness of road users which are considered as complementary legal tools in order to increase road safety.

That said, there are some aspects of the Directive related to its scope (i.e. typologies of offences covered and phase of the cross-border enforcement of sanctions for infringements of road traffic rules covered) and to the wording of some provisions (i.e. provisions on awareness) that might affect its coherence, EU added value, relevance, effectiveness and sustainability.

These conclusions are preliminary and need to be further verified in the light of further qualitative and quantitative data that stakeholders will possibly provide.

On this respect, the Contractor would like to point out that it is of foremost importance that, where available, stakeholders provide the quantitative data requested in our Questionnaires N° 1, 2, 3 and in the Questionnaires SM that will circulate at this stakeholder meeting.

In addition, the Contractor intends to carry out thematic interviews in the month of October aimed at gathering further data that are necessary in order to carry out the assessment object of this Study based on the proposed indicators.

The findings of the activity that have been carried out so far and will be carried out in October, as well as the conclusions of this stakeholder meeting, will feed into the Second Progress report of this Study to be submitted on November 1<sup>st</sup>.

Brussels 28 September 2015

Dalila Frisani